THE SCHOOL RULE:

Contracts 101: Basic "Boilerplate"

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This article is the third in our "School Rule" series on effective contract practices. The following provides an introduction to some of the basic contents of most formal contracts. Subsequent columns will address principles and components regarding specific types of contracts.

The last article in this series addressed basic contracting principles. This article examines some of the basic components of standard, formal contracts.[1] Most contracts have components that are very specific to the relationship and obligations of the parties. For instance, a school teacher's employment contract will typically identify specific duties, commitments, compensation and benefits, and grounds for dismissal. Enrollment contracts identify the commitments being made by the parents to the school, terms of payment, conduct standards, and causes for expulsion. In addition to these specific terms, most formal contracts typically share certain common general clauses. In legal parlance, these are often referred to as "boilerplate" clauses.[2] Sometimes such clauses are found at the end of the contract, perhaps in a "Miscellaneous" section. Despite such clauses' common usage and the ease by which we sometimes skim their somewhat uninteresting and confusing "legalese," they can have significant contractual effects. So, it's necessary to take these clauses seriously: to make sure all the right ones are included, that the language used is clear and appropriate, and that they don't contradict any of the specific clauses.

There is no defined or required list of standard boilerplate clauses. Those most commonly used and which should normally appear in a school's formal contracts, include the following types:

- Severability. This states that the rest of the contract remains valid if any particular clause is nullified or severed by a court.
- Integration and Attachments. This states that the written agreement contains all terms and conditions, supersedes any prior agreements between the parties, and precludes any other documents from being considered except by written mutual consent. This prevents a party from introducing other evidence (*e.g.*, a letter, an oral communication, an e-mail, etc.) to alter the terms of the written contracts. Any attachments or appendices that are included with the written contract, however, may be expressly included as part of that contract.
- Force Majeure. This refers usually to "Acts of God"[3] that are beyond the parties' control–earthquakes, floods, acts of war, etc.—the occurrence of which relieve or limit affected obligations of the parties.
- Notices. The parties agree to give notice to one another in accordance with agreed-upon procedures for various contractual events such as notices of non-performance, waivers of rights, breach of contract, or damages. These clauses specify such things as the timing and manner by which notice shall be provided or implied.
- Headings. This states that section headings of a contract (like headings in statutes) have no special meaning or legal significance. They serve only as guides for readability and clarity.
- Copies and Counterparts. For convenience, this allows parties to sign copies of a contract, so that parties do not have to simultaneously sign the contract or at the same location.
- Jurisdiction and Choice of Law. The parties agree on which legal jurisdiction and body of law will apply in interpreting and enforcing the contract.

Other less frequently necessary boilerplate clauses include the following:

- Damages. This specifies the types of damages that may or may not be allowed under the contract. (Normally, state law allows for certain standard damages, thus not having a damages clause does not preclude the legal right to obtain damages.) Types of damages can include compensatory, punitive, liquidated, and lost opportunities.
- Contract Resolution. Because of the expense of traditional litigation, some parties agree to some form of alternative dispute resolution that is either preliminary to the right to sue or is final. Options include resolution through an agree-upon neutral adjudicator, mediation, or arbitration.
- Attorney's Fees & Costs. This specifies whether and how parties will be compensated for pursuing their contractual rights and remedies, including attorneys fees.
- Waivers. This allows parties to relinquish a contractual right or right to sue without waiving other rights. Sometimes the clause also addresses expressed and implied waivers related to a party's conduct.

*The "**School Rule**" column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University (Boone, NC). He may be contacted at hos@Lex-is.com or (919) 308-4652. More information is available at www.Lex-is.com.*

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- Assignment. This determines the extent to and manner by which parties may assign their contractual rights to other parties.
- Warranty. This addresses any promises or assurance (or lack thereof) of any party to the other regarding a product or service.
- Indemnity. This provides that a party will compensate the other to cover costs incurred, typically when a party is sued by a third party, because of the other contractual party's conduct.

An important fiduciary duty of school board members and officials is to approve or sign binding contracts that serve the school's best interests. It is incumbent upon them, therefore, to ensure such contracts contain the necessary and appropriately drafted clauses to protect those interests. The clauses above provide a general (though not exhaustive) guide or checklist to aid in that process. As always, it is best to have a qualified attorney draft or review every contract for these purposes.

NOTES

1. Remember that contracts, technically, are a mutual agreement between two or more consenting parties to fulfill obligations toward one another. Such contracts (or agreements) can oftentimes, though not always, be oral or written, informal or formal, and can take many shapes, including a spoken understanding, a "letter agreement," a signed "memorandum of understanding," or a more formal contractual document of varying lengths and complexity. The type, length, and complexity of the contract is usually dictated by the nature of the commitments involved. In limited instances, some contracts are governed by very specific rules, such as a Commercial or Trade Code.

2. The origin of the word may derive from the use of plates of metal stamped onto boilers to patch them or, perhaps, the use of non-moveable type for printing presses that stamped the same information repeatedly.

3. The author is not aware of how the term "Acts of God" took on this common meaning, which implies that non-destructive and regular occurrences are somehow not acts of God.