



Hot Legal Issues in Enrollment and Employment Contracts

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Scenarios

- *Student decides in August not to get the required COVID-19 vaccine and family withdraws. Wants tuition refund. Families were told before the binding date that vaccines would be required by the Fall.*
- *Employee hired in March is no longer needed as enrollment has not been met for that class. School wants to rescind the offer.*
- *Family wants partial refund of tuition because School did not offer theater program due to COVID-19.*



Agenda

- Key Updates to Enrollment and Employment Contracts
- Issue Spotting
- Develop Transparency and Set Expectations
- Build in Flexibility for What Might Come Next
- Ensure Strong Enforcement Provisions
- Ensuring Consistency with Handbooks, Policies, and Procedures
- Consider Messaging in Other Ways



Employment Agreements

At-Will V. Contract

- Employment is “at-will” unless employee has a contract
 - At-will
 - Employee or school can separate at any time for any lawful reason or no reason
 - Consider School’s culture and feeling of commitment by the School
 - Contract
 - Defined period (start date / end date)
 - Reasons for termination in ‘for cause’ terminations
 - Possible notice requirements if ‘no cause’ termination
 - Force majeure and modification language that addresses situations outside of the school’s control (natural disasters, pandemic, government orders, war, insurrections)

Who gets a contract?

- Faculty
- Staff
- Head of School gets a separate contract
- Many schools giving multi-year contracts to CFO's
- Coaches
- Summer camp employees

Flexibility

- Include ability to rescind the contract before year begins for certain reasons (i.e., low enrollment, budget, financial reasons, program changes)
- Include flexibility to modify terms
 - job duties, compensation, require professional development, start date, schedules or calendar, extended year, and modify method of delivering program, if necessary
- Ensure that employees agree to perform additional, different duties than those in their job description or performed in past
 - Filling in for employee who is quarantining or home with a child who is quarantining for lunch duty

Policies

- By signing the agreement, the employee agrees to comply with the school's policies
 - School has discretion to update policies without notice
 - Agree to comply with policies and procedures established by the school
- School reserves the right / will require COVID-19 vaccines, testing, masks, flu shots and other protocols
- Employee understands that job is located on campus (not virtual) unless permitted/instructed by head of school
- Reference the handbook (but don't incorporate the handbook)
- Anti-Bias, Anti-Discrimination

Pay and Benefits

- Benefits
 - Reference benefits as offered to employees
 - Separate page describing benefits and value of each benefit
- Pay
 - Exempt or nonexempt
 - Full time or part time
 - Payroll schedule
- What's included?
 - Salary includes certain additional duties
 - Stipends
- Pay and benefits end when employment ends
 - Include tuition remission, housing, car allowance, etc?
- 10 month v. 12 month contract
 - Align payments with start of duties

Other Considerations

- Contingent upon background check, reference checks, work authorization (Form I-9)
 - Especially important if offers go out before background check is complete
- Intellectual Property (even after employment ends)
 - All work product, ideas, inventions created as part of the job / on school time / using school resources belongs to the school
 - Unless a separate agreement is reached
- Return of Property
 - At the end of employment, employee agrees to return all equipment, keys, fobs, ID cards, work product
- Confidentiality of student information (even after employment ends)



Enrollment Contracts

Core Terms

- Tuition
 - Amount
 - Payment Options
- Grade / Year
- Deadlines
 - Non-refundable deposit
 - Binding date
 - Review state law
 - After binding date, entire tuition is owed if student withdraws or school terminates enrollment
 - Include key terms regarding liquidated damages: school makes budget decisions based on commitments made by binding date
 - Offer tiered cancellation provisions?
 - Consistent enforcement is key
 - Payment plans and / or refunds should be offered only in exchange for a release (incl. confidentiality and non-disparagement)

Enforcement

- Enrollment contingent upon
 - Successful completion of the current year (including from other school)
 - Up to date on tuition payments
 - Health records and immunization documentation
- Consequences for failure to uphold tuition obligation
 - Withhold student records, recommendation letters (check state law)
 - Ineligible to attend classes, sit for exams, attend events (prom, trips), play sports, attend graduation
 - Attorney's fees and costs of collection efforts
 - Interest
- Payment plans and partial refunds
 - Try to be consistent
 - Get a release of claims, confidentiality and non-disparagement in exchange
- Tuition Refund Plans
 - Review plan information, eligibility requirements
 - Required or optional?

Flexibility

- Force Majeure Clauses
 - Review covered events (pandemic and everything else you can think of)
 - Ensure that the clause clearly describes its effect on the parties' contractual obligations
 - Address remote learning, partial / full closures, schedule changes, and changes to program
- Program Flexibility
 - Don't promise particular educational programs, activities, or curriculum
 - Address distance-learning
 - Cement the School's right to modify programming at its discretion

Home/School Partnership

- Reference the parent/student handbook and ensure parents consent to comply with policies and procedures in the handbook
- Parental comportment and support of school mission, philosophy, policies, procedures
 - Parents must be supportive of the school’s commitment to a diverse and inclusive community / anti-bias policy and training
 - Clearly set forth the School’s expectations regarding support for the School’s policies and standards of conduct
- Agreement to comply with COVID-19 Safety Protocols
 - Covid-19 vaccine (require? Reserve the right to require?)
 - Other vaccinations; flu shot; masks; quarantine; testing; other precautions
- Consequences for behavior of parent, or other adult involved in the school (step-parent, grandparent) that is disruptive, overly aggressive, or that seriously undermines the School’s policies or decisions

Modern Families

- Signatures
 - Ideally, get both signatures
 - If one signature, assume signing for both, if married
 - If divorced, each parent must sign
- Separate addendum for financially responsible party?
- Parents must provide divorce or custody documents for special arrangements
 - Only one parent can pick up; get records; make decisions; etc
- Semester or year away
- Age of Majority (parents will continue to be responsible for terms of the enrollment contract and students will not prohibit school from communicating with parents)

Other Key Terms

- Holding enrollment for semester or year away
- Digital Privacy Best Practices:
 - Hardwire parental consent for students' use of EdTech into the enrollment contract – school consent on behalf of parents/students
 - Limit the type, amount of student personal information provided to third-parties
 - Review contracts with third-party vendors to understand how student data is used
- Attorney's fees and costs if school gets involved in litigation as third party
 - Get a retainer or down payment?
- Use of student images
- Reporting discipline to colleges / universities / other schools to which the student may apply

Legal Issues No One Likes

- Payment plans may trigger the Truth In Lending Act
 - Wherever a finance charge is imposed (note, not a late fee) or there is a payment plan for 5 or more payments, the School will need to ensure that it provides a TILA disclosure “at or before the time of consummation of the agreement”
 - Can include it as a link or a page during the electronic enrollment process
 - Not technically compliant to email it after the contract has already been signed
- Electronic signatures and enrollment process
 - Parents / guardians must consent to enroll electronically
 - Option to exit out / get a paper document
 - Authorize electronic signature
 - Send a link or electronic copy of the fully executed contract once process is complete to confirm enrollment

Consider Including

- Activity and field trip permission and waiver of claims
- COVID-19 assumption of risk / waiver of claims
- Emergency medical treatment and authorization to administer necessary treatment if parents / guardians cannot be reached
- Parents / students do not speak on behalf of the school without permission (including on social media, use of logos, statements to the press)
- Accommodation
 - School reserves the right to review accommodation requests and make determinations in its sole discretion
 - Not required to fundamentally alter the program
- Evaluations
 - School may require evaluation of student (education testing, mental health evaluation) and/or additional services as a condition of enrollment
- Authorization to search student's property (including cell phones, laptops, backpacks, vehicles)

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