



Employment Issues

Late Teacher Resignation

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General Information

This information was originally published in February 2000.

Background

The July *ER Memo* summarized *Harlan v. Eastern Allamakee* and the problem of late teacher resignations. The Eastern Allamakee school district hired Sara Oswald, a teacher, still under contract with the Harlan school district. Because a suitable replacement was not found, Oswald was not released from her Harlan contract.

Iowa law clearly states that a teacher cannot be under contract with two school districts for the same time period. *Iowa Code* § 279.13(1) states, "The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved." The case never went to trial, as the parties settled and filed consent and settlement decrees with the district court.

The consent decree states the contract between Oswald and Eastern Allamakee was

an invalid contract since Oswald had already entered into a contract with Harlan. It also states public funds could not be lawfully paid under the invalid contract between Eastern Allamakee and Oswald. In the settlement decree, Harlan retroactively released Oswald from her contract back to the start of the 1998-99 school year, which then validated her salary for the 1998-99 school year. Harlan also agreed to withdraw the complaint it filed against Oswald with the Board of Educational Examiners (BOEE). In the settlement decree, Eastern Allamakee agreed to pay Harlan's attorney fees in the amount of \$2,400 and court costs of \$135.

Current Law

Under Iowa law, school districts cannot offer teacher contracts until March 15. Most districts extend the contracts as soon as possible to determine which employees will be returning for the next school year. Once a contract has been extended and returned by the teacher, the district and the teacher have a contractual agreement to continue the employment relationship for the next school year unless there is cause for teacher termination. Despite these contractual obligations, frequent late resignations still occur. A school district has the following options after receiving a late resignation:

Grant a release to the teacher

Enforcing the contract may not be the best for the students or the district if a teacher doesn't want to be there. A district has the option of granting a release or a "conditional" release. Granting a release is

usually the best alternative when the teacher needs to leave for personal reasons like family illness or relocation. If the teacher is asking for a release because he or she has secured another job offer, the district may decide to grant a conditional release only if a suitable replacement is found.

Finding a suitable replacement typically requires advertising the position, but it does not require the district to accept any applicant. The district has the right to review the applicant pool and determine whether there is a "suitable" candidate. The search for a suitable replacement may continue for up to a month so the district has sufficient time to advertise, interview and offer the position.

In either case, when granting a release or a conditional release, districts are usually required to pay advertisement and other search costs unless there is a board policy or collective bargaining language addressing a licensed employee's financial responsibility for costs associated with late resignations. There are parameters for what kind of search fees can be imposed.

A Story County district court addressed a school district's options after receiving a late resignation. In *Scholten v. Nevada Community School District*, (Unpublished case) the court considered whether the school district could impose a late resignation fee. The district had a board policy relating to resignation that included a penalty calculated by using a percentage of the employee's salary. The percentage varied depending on the month in which the employee resigned. The school district exercised this policy, and the teacher brought suit against the district. The court considered whether the district could impose a late resignation fee. It determined that as long as the fee reflected the additional costs of recruiting, advertising, interviewing and travel expenses (*excluding any administrative or support costs for employee time and not merely a penalty*) then the fee could be imposed. Because of 91A of the

Iowa Code, that fee cannot be deducted from the employee's paycheck unless the district has the employee's consent. If the employee fails to pay those costs, the district can sue in small claims court.

Refuse to release the teacher

The board is within its rights to refuse to release the teacher and enforce the contract. Be advised that enforcing the contract does not require the employee to stay in the district. The teacher may still choose to leave and the district may be forced, like Harlan, to initiate legal action. The district can also report the teacher to the BOEE. The BOEE can determine whether to impose sanctions or penalties against the teacher for violating professional ethics.

Specifically, the rules provide that the educator "shall adhere to the terms of the contract..." *Iowa Administrative Code* 282 Chapter 12.3(4)e. Historically, the BOEE has taken the view that it will not impose a penalty unless there is proof that the teacher is a "habitual offender." *Iowa Administrative Code* 282 Chapter 12.1 (1)b. For those teachers going out of state or leaving the teaching profession, a report to the BOEE may not present a threat because the teacher can afford to lose Iowa licensure.

Collective Bargaining Language

Negotiating collective bargaining agreement language or having a policy that addresses late resignation and the teacher's financial responsibility is recommended. A proposal is a permissive subject of bargaining, so the school district and teachers' association have to agree to discuss the issue and include it within the collective bargaining agreement. The recommended language clearly delineates how resignations are handled in the district.

In cases where collective bargaining agreement language addresses late

resignation and the teacher's financial responsibility, the teacher can be liable for search costs if the district advertised and interviewed but denied the release because of inability to find a suitable replacement.

Sample Resignation Language:

A. Resignations during the school year or after the contract has been issued and signed by the employee

1. An employee who requests release from a signed contract after (date), [**optional language:** *provided the decision to resign was entirely of the employee's own volition and not due to extenuating circumstances beyond his/her control*] shall be held responsible for the actual costs incurred with recruitment, advertising and interviewing [**optional language:** *up to a maximum of \$___*] to secure a qualified replacement.

NOTE: Including optional language in the proposal allows the district to make exceptions for circumstances that may not be within the employee's control.

2. If the district advertised and interviewed but denied the employee's release because of inability to find a suitable replacement, the employee is still liable for actual costs incurred with recruitment, advertising and interviewing to find a suitable replacement. [**optional language:** *up to a maximum of \$___*]
3. The employee will be billed for those costs or, at the employee's written request, those costs will be deducted from the employee's paycheck.

B. Resignations prior to issuance of contracts

An employee who resigns prior to issuance of new contracts shall notify the (name of the official at the

district) in writing. Notification in writing shall also be sent to the building principal or the immediate supervisor.

Conclusion

Late resignations create district staffing obstacles and additional search costs. Some school districts have included late resignation language in policy. Districts can be proactive by taking time to review this issue with their local counsel and bargaining teams to decide whether negotiating language in the collective bargaining agreement will reduce the likelihood of these occurrences.

The *Harlan v. Eastern Allamakee* case is an example of a late teacher resignation case resulting in litigation. Best practice dictates that a district avoid offering a contract to a teacher already under a contract with another district.