

A PRIVATE SCHOOL EDUCATION IS NOT A RIGHT: THE ROLE OF COOPERATION CLAUSES IN ENSURING PARENT CIVILITY

Insights
Jun 1, 2022

One of the more challenging issues that schools have faced during the pandemic is the increasingly difficult parent. The relationship between schools and their community has not been without controversy over the past two years, given the effects of masking and social distancing requirements, the shift to online learning and the return to the classroom, the cancellation of field trips, and annual class traditions having to be abandoned or curtailed. These choices by schools – all made with the best interests of students and the school community in mind – have not gone without challenges by parents, who have taken to social media, contacted the news, or even staged protests. How can your school protect itself when facing pushback from your parent community in the era of increasingly disruptive behavior from parents? The solution may be a “cooperation clause.”

Evolving Cooperation Clauses

Schools may look to implement a version of a “cooperation clause” in your enrollment contracts or your parent/student handbooks (or both). These clauses can vary in the degree of seriousness, from setting forth the expectations that your school has for students, families, and parents (i.e., being supportive of the school), to allowing the school to dismiss or put restrictive conditions on a family due to disruptive and aggressive conduct. As schools continue to see increasingly problematic behavior, you might seek to include stronger language so that families are put on notice of the consequences for their behavior.

Should Your School have a Cooperation Clause?

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The decision to implement a cooperation clause is one that should be taken after considering a variety of factors. They can bring both benefits and risks to your school.

Key Benefits

Cooperation clauses can provide schools with the ability to take action when facing a situation involving an aggressive parent or family. For example, a parent who is upset with the school's masking policy may threaten to file a lawsuit. By including language that addresses such conduct, your school has put the family on notice that such behavior may result in dismissal of that family.

The cooperation clause may also allow you to impose lesser consequences. For example, if a parent is involved in a physical altercation during a sporting event, you may opt to prohibit that specific parent from attending any school functions, but the student would be allowed to remain enrolled at your school.

Risks to Consider

The optics surrounding these types of clauses can create tension in your school community. Your school must consider potential public relations issues when you seek to enforce these types of clause – and be prepared for community backlash or even litigation. Because these clauses can impose serious penalties, your school must be proactive in educating the community about your expectations to eliminate any element of surprise.

Recommendations

You should also seek advice of counsel before separating a student, parent, or family from the school based on violation of the cooperation clause. This will ensure that you are on strong footing and will help you discern whether additional steps with the family should occur before separating. In addition, you should ensure that there is good documentation of the difficulties the school has experienced with the parent or family to support your school's position that the parent has breached the enrollment contract. Finally, make sure that you follow any and all internal procedures relating to separation of a student and/or family before making the final decision. If you don't, the family could argue that the school breached its commitments to fundamental fairness in the separation process.

Be Prepared for Litigation

A recent high-profile case highlights how thorny these issues can be. In a case involving Michelle Obama's brother and his wife against the private school where their children attend, the parents allege that their children were removed from the school after they raised concerns regarding racial discrimination. The parents allege that they received a termination letter from the school stating the parents had "violated the School's Common Trust and had not fulfilled their commitments as partners" with the school.

The parents sued for breach of contract, among other claims. The school defended its position in separating the family and stated that the removal was due to the parents' conduct in **how** they communicated not because of **what** they complained about. The school maintains that the family failed to follow the school's expectations for parents.

In the school's recently filed brief in support of its Motion to Dismiss, it references the media campaign the parents launched against the school, including an appearance on national television before even filing suit. The school notes the parent attended their son's virtual classes during the pandemic to observe and critique teachers, that the parents sent disrespectful emails and text messages regarding the teachers, and that in response, the school repeatedly reminded the parents that their communications with the school showed a "lack of respect, trust, and kindness" in violation of the school's policies. The school maintains that pursuant to their enrollment contract, it can decline to reenroll children for "any reason that enrollment is not in the best interest of the school."

Conclusion

If your school opts to include a "cooperation clause," you should be prepared to defend against potential lawsuits in the event a situation with a difficult parent should arise. Including specific language in the enrollment contract can prevent a claim that a parent was not on notice of certain consequences for disruptive conduct.

You should also recognize the possible negative publicity, which can extend beyond just the immediate school community. Clear expectations will go a long way in reducing your legal risks. Schools should seek guidance from their Fisher Phillips attorney as to how to best

implement and navigate these types of clauses in enrollment contracts.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Education Practice Group](#).