



5 Tips for Schools to Strengthen Enrollment Contracts from a Litigation Standpoint

Insights

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You may feel like the school year just started, but as we near the end of 2023, it's already time to start preparing for the 2024-2025 school year. With that in mind, we wanted to briefly discuss one of the key documents that forms the basis of your school's relationship with the families you admit: the enrollment contract. This agreement is truly foundational, as it establishes the school's responsibilities to families, as well as families' obligations to the school. From compliance with school rules to reimbursement of legal fees, enrollment contracts can be another tool in a school's proverbial toolbox. Thus, having a strong enrollment contract can set you up for success and limit the impact of challenging situations that may arise. So, as we end 2023, here are five tips you should consider to help put your best foot forward for the upcoming year.

1. Add a Parental Partnership or Cooperation Clause

Simply put, schools operate best when teachers, administrators, and parents are all rowing in the same direction. When this is the case, you can focus on your primary mission of educating students rather than having to shift focus to mollify parental concerns or complaints. Hopefully this happens organically, but we also recommend including a parental partnership or cooperation clause in your enrollment contract. This provision requires parents (and other family members) to engage in responsible and respectful behavior, communications, and interactions both on and off campus. Ideally, this collaborative relationship will not need to be spelled out in writing, but it is better to have the clause in place and never use it than need it and not have it.

We also recommend including a provision that requires parents to cooperate with one another in the best interests of their student. Families come in all shapes and sizes, but whatever the relationship between parents, schools need to ensure they are working together and sorting out any differences amongst themselves, rather than placing the school in the middle, especially in family law disputes.

2. Seek Reimbursement for Family Court Legal Expenses

Hopefully the parental cooperation clause can incentivize and encourage families to sort out any issues amongst themselves, but that is not always the case. With increasing regularity, schools are being thrust into divorce and other custodial proceedings, whether through document production requests or subpoenas to testify. The enrollment contract can offer some measure of assistance in

these situations. Specifically, we recommend including cost-shifting language that requires parents to reimburse the school for any expenditures incurred in connection with parental legal disputes. These costs can include attorneys' fees, substitute teacher expenses, the cost of copying documents or providing records, as well as travel expenses. We find that having this language can provide a deterrent effect and often encourages families to leave the school out of legal issues. Additionally, including the provision may limit any request for documents or testimony when the parents are reminded that they will be footing the bill.

3. Separate from Litigious Families

Separating from families is always a tough decision for schools. However, it is often the right decision in the case of families who threaten litigation, are actively litigating against the school, or are otherwise disruptive. Litigation is a distraction for the school, and it takes teachers' and administrators' time and focus away from their core job responsibilities. So, while it is not an easy choice to separate from a student or their family, this is an option you should keep in your toolbox. Consider spelling out very clearly in your enrollment contract that you reserve the right to separate from families who threaten litigation or pursue litigation against the school.

4. Conduct Periodic Reviews

Reviewing contracts may not be everyone's idea of a good time, but we cannot recommend strongly enough that schools review their contracts on a regular basis. The law is constantly changing, and best practices are always evolving, so a school's enrollment contract should likely do so as well. In our experience, proper investment in an enrollment contract can save schools significant time and money on the backend, particularly in the event of litigation.

5. Consider Compromising on Collections

A legal dispute over tuition can arise when parents withdraw their child and the school cannot fill the vacancy. Many schools want to stand firm with respect to enforcement of their enrollment contracts and turnover unpaid balances to collections. However, it is difficult in some states to collect on a judgment even if you prevail in litigation. There are times when it is best to negotiate a compromise so you are certain you will receive at least a portion of the outstanding balance from the departing family.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on [our Education Team](#) to obtain practical advice and guidance on how to revise your enrollment contract. We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.

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