

MEMORANDUM

State of Alaska
Department of Law

TO: Sanna Green, Executive Director
Professional Teaching Practices
Commission

DATE: August 6, 1996

FILE NO.: 661-95-0807

TELEPHONE NO.: 269-5200

SUBJECT: Professional Discipline Related
to Teacher Contracts

FROM: Teresa Williams
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Fair Business Practices Section
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You have posed two questions relating to contracts between teachers and school districts for the purposes of professional discipline:

1) Whether an educator violates 4 AAC 18.010(d) and 20 AAC 10.020(d)(15), and is subject to discipline by the Professional Teaching Practices Commission under AS 14.20.030(a)(3) and (4), if an educator breaches a contract but pays the amount of liquidated damages specified in the contract.

2) Whether an administrator may be disciplined for employing a substitute teacher for the remainder of a school term, and for a period of more than 20 in-session days, without placing the teacher on a contract.

AS 14.20.030 establishes grounds for discipline against a teaching certificate. The commission may sanction an educator under AS 14.20.030(a)(3) for violating a regulation of the Department of Education and under 14.20.030(a)(4) for violating the ethical standards stated by the commission in 20 AAC 10.020.

1. LIQUIDATED DAMAGE PROVISION IN CONTRACT

SHORT ANSWER

A remedy provided under a contract for a school district does not preclude discipline action by the commission against an educator for a breach of contract violation of the ethics code.

DISCUSSION

20 AAC 10.020(d)(15) provides that an educator "may not unlawfully breach a professional employment contract." 4 AAC 18.010, a regulation of the Department of Education, establishes the contract requirements. Subsection (d) provides that the contract may be terminated by mutual consent and with 30 days notice. The subsection also provides that a teacher who leaves without the requisite notice or without assent of the employing board is subject to revocation of certificate for breach of contract.

In your example, the school district wrote a contract that included a \$1,500 "fine" for breaching the contract and also stated that breach of contract may result in disciplinary action. The question you raise is whether such a fine is liquidated damages that is the sole remedy against a teacher for breach of contract.

The remedy between a teacher and employing school district is not relevant to license discipline.¹ The purpose of license discipline is to protect a broader public interest that may be lesser or greater than the interest of a particular entity such as the employer. Under 4 AAC 18.010, the Department of Education has defined breach of contract to mean leaving without the requisite notice or without the assent of the employing board. The public is harmed when a teacher leaves mid-year without sufficient notice or consent because of the interruption of the students' education. In rural areas, where a replacement may not be readily obtainable, this public interest is even greater. In determining the sanction to be imposed, the commission has discretion to look at all the circumstances, including compelling reasons for the teacher's conduct and other consequences the teacher has suffered.²

¹ I will not address here whether such a contract provision is appropriate or excludes any other remedy by the school district. That issue is more properly addressed by the school district and the affected teacher.

² The purpose of a sanction in professional discipline is to deter future misconduct by the educator, deter such misconduct by other certificated educators, affirm professional standards and norms of reasonable conduct, and encourage rehabilitation of the certificated educator. Punishment is not a proper purpose for an administrative sanction, as this function belongs to criminal sanctions. The overriding purpose of any sanction is to protect the public.

2. SUBSTITUTE TEACHERS

SHORT ANSWER

A school administrator who fails to place a substitute teacher under contract when the period of employment meets the requirement of 4 AAC 18.121 may be disciplined for failure to substantially comply with school statutes and regulations and for failure to accord just and equitable treatment.

DISCUSSION

4 AAC 18.021(b) requires that a substitute teacher be employed under the requirements set in 4 AAC 18 if the school district “knows” that the person being replaced “will be absent for the remainder of the school term” and “more than 20 in-session days remain in the term.” Under 4 AAC 18.010, all public school educators’ contracts must contain a number of mandatory minimum provisions. The section is not particularly artfully written, because the requirement that teachers and administrators be under contract is not expressly stated there or in AS 14.20. However, that requirement can certainly be inferred from 4 AAC 18.010 and 4 AAC 18.021 and AS 14.20.145, 14.20.155, and 14.20.158.

Under AS 14.20.030(a)(3), a certificated educator is subject to discipline for “substantial noncompliance” with state school statutes or Department of Education regulations. Additionally, the code of ethics requires the certificated educator to “accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.”

You provided several examples that pose issues:

1) A substitute is employed for more than 20 days, but not until the end of a term.

4 AAC 18.021(b) only applies to substitutes who are both employed for more than 20 in-session days and employed for the remainder of the school term.³

2) The school professes not to “know” that the period of absence will extend to the end of a term.

The requirement of “knowledge” does not protect a willful blindness to the facts. Even under the criminal code, a person is held to “know” a circumstance exists if the person is

³ A school term is defined in AS 14.03.030 to encompass the 180-day in-session school year.

aware of a substantial probability of the circumstance's existence. AS 11.81.900(a)(2); Sen. J. Supp. No. 47, at 139-43 (June 12, 1978).

3) The school determines after the substitute has been employed for a time that the period will extend to the end of the term.

At the time that a school district "knows," as defined above, that the substitute's term of employment will extend to the end of year, the school district at that point must comply with the requirements of 4 AAC 18. I find no requirement under the regulation that the school backdate any action to the date the substitute was first hired.

4) A school district terminates a substitute after 19 days and then rehires the substitute.

Terminating the substitute after 19 days and rehiring does not avoid the requirements of the regulation, because the regulation objectively calculates the number of days remaining in the term, rather than the individual substitute's length of employment. Such an effort to subvert the regulation in fact appears to aggravate the licensing violation.

TW:jem