"What Do You Mean I Leased the Copy Machine for Three Years?"

By: Jill K. Osborne, Esq.

Contracts are an essential part of running a successful school. They provide enforceable obligations against third parties but can also create potential liabilities for schools and administrators. It is important to know how agreements become enforceable legal contracts and how to protect your school from costly litigation over contract disputes. In addition, contracts from vendors or other third parties must be reviewed carefully. Knowledge of basic contract law is beneficial for any school that enters into contractual obligations.

What Is a Contract?

In its simplest form, a contract is an agreement between two or more parties. Most contracts are enforceable when an offer, an acceptance, and consideration are present. An offer contains a promise that something will or will not take place for a specified amount of time. The subsequent acceptance is the act of a return promise or a performance. In addition, the contract needs to have consideration, meaning all parties bargain for the exchange detailed in the contract.

Why Is a Written Contract Preferred?

A contract can generally take one of two forms: oral or written. The difficulty of proving an oral contract in court arises when parties disagree on the terms of the agreement. For example, a copy machine vendor tells a school official that a machine can be leased for one year and quotes a specific price. The school official verbally agrees to the terms, does not sign any paperwork, and accepts the copy machine when it is delivered the next week. A month later, the school official receives an invoice and is surprised to see an amount higher than that originally quoted. If the vendor and the school official are not able to come to mutually agreeable terms on their own, a court might have difficulty assessing the parties' understanding because a written record does not exist. In this scenario, the responsibility may lie with the school official to pay the higher invoice amount, regardless of the prior verbal deal.

The best practice for a school is to ensure that all agreements take the form of a written contract. The written contract should include all of the terms that are verbally discussed and subsequently decided on by all parties. The terms of a written contract provide a clear understanding of what the parties expect out of the relationship. Written contracts also make certain that both parties are aware of their responsibilities, obligations, and the possible consequences of violating the terms of the contract.

In a majority of states, there are categories of contracts that are required to be in writing. The "Statute of Frauds" collects the requirements into state law in Arizona. The Statute of Frauds

specifies that a contract must be in writing for real estate transactions, including leases; agreements that will last longer than a year; and agreements to buy or sell goods valued over $500, unless there is evidence of partial performance.[1] The Statute of Frauds also requires that the contract be signed by the party that is being accused of violating the terms of the agreement.

All contracts should be signed by the individual who has the authority to make legal decisions on behalf of the school. It is important that all school officials, personnel, administrators, and staff members are aware of the official who is authorized to sign a contract and enter into legally binding agreements.

What Is Enforceable in a Written Contract?

Only the terms in the written contract are considered enforceable, and a court will not consider any evidence that contradicts the provisions of a contract, when the meanings of the provisions are plain and unambiguous. If the terms of a contract are clear, a court will not admit evidence outside of the written document that would contradict the written terms.

To illustrate, prior to signing a contract, a school official requests a lease for one year on a copy machine. The vendor mentions that a one-year lease is a possibility, even though copy machines are usually leased for a minimum of three years. The signed, written contract states that the lease is for three years. The contract is considered the final expression of the agreement, and the terms of the contract cannot be contradicted by evidence of negotiations that occurred prior to signing. The vendor's statements would probably not be admissible evidence because they would contradict the terms of the final, written agreement, which the school official authorized. Evidence of negotiations prior to signing is only admissible if it helps explain or supplements the terms of the written contract.

If, after the signing of the original contract, amendments become necessary, schools should make sure those amendments are in writing and include all required signatures. In addition, if there are subsequent contracts, school officials should be careful to read all the terms of the contract and ensure that there have not been any disagreeable changes made from the original contract. Subsequent contracts should also be signed and saved.

When in Doubt. . .

Reading and rereading any contract before signing is imperative. Rereading ensures that all revisions and terms are included in the contract, and future complications are avoided by a mutual understanding. Do not wait until after signing the contract to make changes. The signature on the contract finalizes the exchange. It is always acceptable to say "no" or delay signing the agreement if there are still questions or concerns. Important contracts, such as leases, contracts of duration greater than a year, or contracts over a certain amount, should be reviewed by an attorney. If you do not understand all the terms in a contract, do not sign it.

Jill K Osborne, Esq., is a partner with the law firm of Udall Shumway & Lyons. Jill's practice is primarily focused in school law and employment law. She can be contacted at jko@udallshumway.com or (480) 461-5300.

[1] Partial performance can include accepting a portion of the goods, giving something to bind the contract, or partial payment for the goods.