

# TIME OUT

WITH  
WALSH GALLEGOS

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## It's Not You, It's Me: Educator Resignations and Contract Abandonment

BY: KATIE PAYNE

Each summer, contract employees resign their employment prior to the upcoming school year, for any number of reasons that have nothing to do with how attractive your district looks in swimsuit season. Breaking up may be hard to do, but resignations are penalty-free, unless they are submitted less than 45 days before the first day of instruction in the new school year.

**RESIGNATION WITH CONSENT.** Generally, in order to resign from an employment contract, (1) the employee must submit an offer to resign, (2) the employer must accept the offer and (3) the employer must communicate notice of the acceptance. If the employee withdraws the offer to resign before notice of the acceptance is communicated, there is no resignation and the employment relationship remains as if the employee had never submitted a resignation offer. For this reason, if an employee submits a resignation, it should be accepted immediately by a person with the authority to accept resignations and the acceptance communicated to the employee.

Until recently, in many school districts, a "person with authority" meant the nearest administrator holding a pen who could immediately sign "Accepted!" In 2014, the Commissioner of Education held that for any resignation, other than a written resignation

effective at the end of the school year and submitted at least 45 days prior to the first day of instruction, the resignation must be accepted by the Board of Trustees or the Board's designee. *Harris v. Fort Bend Indep. Sch. Distr., Tex. Comm'r of Educ. Decision No. 028-R8-1011 (May 12, 2014)*. The Commissioner also made clear that while the Board could take action to delegate authority to accept resignations to, for example, the Superintendent, the Superintendent may not further delegate that authority to anyone else. In response to this decision, your Board of Trustees likely took action in the last year to either amend Board Policy DFE (Local) to identify which district officials are authorized to accept resignations, or adopted a board resolution along the same lines.

For any contract employee resignation, Policy DFE (Local) should be checked to confirm who within the district has authority to accept the resignation. Second, the employee should be notified in writing of the acceptance immediately. Many districts communicate acceptance by noting on the letter of resignation that it is "accepted," along with the signature and date of the administrator issuing the acceptance. Remember, until acceptance of the resignation is communicated to the employee, the employee may withdraw the resignation.

IF THE EMPLOYEE WITHDRAWS THE OFFER TO RESIGN BEFORE NOTICE OF THE ACCEPTANCE IS COMMUNICATED, THERE IS NO RESIGNATION . . . IF AN EMPLOYEE SUBMITS A RESIGNATION, IT SHOULD BE ACCEPTED IMMEDIATELY . . .

**NOTICE TO SBEC.** If the Superintendent will be making a report to SBEC about the resigning employee because the educator has engaged in one of the specific types of educator misconduct listed in Education Code 21.006(b), such as engaging in an unlawful act with a minor, the Superintendent must inform the educator in writing that a report will be filed which may result in sanctions against the employee's certificate, prior to accepting the resignation.

**UNILATERAL CONTRACT RESIGNATION.** There is one very large exception to the general rule that resignation requires both offer and acceptance. If an employee with a probationary, term, or continuing contract submits an unequivocal written resignation no later than 45 days before the first day of instruction of the following school year (also called the "unilateral resignation" or "penalty-free resignation" date), the resignation is effective upon filing with the District. According to the Commissioner of Education, the school district cannot reject such a resignation, nor can the teacher withdraw the resignation on the grounds that the district has not accepted it. *Fantroy v. Dallas ISD*, Docket No. 034-R8-0206 (Comm'r Educ. 2009). If the resignation is mailed by prepaid certified or registered mail to the Board President or the Board's designee, it is considered filed at the

time of mailing and cannot be withdrawn by the educator or rejected by the District. Even in the case of a unilateral contract resignation, the safest course remains immediate communication of written acceptance for all resignations by a person with authority to accept the resignation.

**SANCTIONS FOR ABANDONMENT OF CONTRACT.** Other than the unilateral resignation submitted in writing at least 45 days prior to the first day of instruction, any resignation by an educator requires consent of the Board or the Board's designee. If an educator employed under a probationary, term, or continuing contract fails to comply with the unilateral resignation deadline, or fails to receive Board consent, and does not perform the contract, he or she may be subject to sanctions by the State Board for Educator Certification (SBEC). However, SBEC will not pursue sanctions against an educator for contract abandonment, unless the Board of Trustees:

- (1) takes action to find that good cause did not exist for the educator to abandon the contract;
- (2) files a written complaint within 30 calendar days of the date the educator fails to appear for work under the contract, without District permission; and

(3) attaches to the written complaint: the resignation letter; any agreement with the educator regarding the effective date of employment separation; the educator's contract; and Board meeting minutes indicating a finding of "no good cause."

In determining whether there was good cause for the educator to abandon the contract, SBEC analyzes the reason for quitting and the educator's efforts to minimize the impact. A better offer at another district, including a promotion to a higher position, does not constitute good cause for contract abandonment. Relocation because a spouse has taken a job in a distant city may constitute good cause, but only where the educator takes steps to minimize the disruption caused by an untimely departure. The most common sanction issued by SBEC for contract abandonment is suspension of the educator's certification for one calendar year.

Hopefully, all resignations you receive this summer will be timely, unequivocal, and welcome. In the event that the old adage that all relationships end badly, otherwise they wouldn't end, applies to your situation, contact one of your Walsh Gallegos attorneys, and we'll be happy to assist you.

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## LAND IS UNIQUE!

School districts sometimes find themselves with surplus real estate. It may be vacant land, perhaps obtained by donation or foreclosure, or a school facility that is no longer needed or used. Either way, when a school district, through its board of trustees, determines that it is in the district's best interest to offer real property for sale, there are specific

statutory requirements that must be followed, depending on the type of conveyance.

Districts are often confronted with proposed real estate transactions that do not fit in a nice, one-size-fits-all category. However, when it comes to real estate, the answers are in the statutes, every time. A sale or

exchange of real property by a school district must comply with Texas Local Government Code Chapter 272, which sets forth the notice and bid requirements for these transactions. If facilities are located on the land, Texas Education Code Section 11.1542 also requires that a school district give each open-enrollment charter school located wholly or partly within the

BY: ANN MEWHINNEY

boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility.

**WHAT IF A DISTRICT RECEIVES A VERY LUCRATIVE OFFER?** State law requires that the notice for bids be made first (including to open-enrollment charter schools, if applicable). Thus, the third party who approached the district with a terrific offer would have an opportunity to submit a bid in the same manner as anyone else. Of course, there are exceptions to this statutory requirement, but they are narrowly tailored and specific criteria must be met.

**WHAT ABOUT EASEMENTS?** School districts are frequently approached by third party entities (commonly utility companies) seeking to obtain an easement across school district property for the purpose of installing a water line, electrical facilities, or perhaps to relocate a pipeline. Although an easement is not a conveyance of fee simple title, it is a conveyance of an interest in real property and is therefore governed by Local Government Code Chapter 272 as well. Easements limit and restrict the school district's use of its own property. Most often, easements proposed by third parties contain language that the easement is exclusive and that the district may not use the easement area in a manner that conflicts with the easement purpose. This typically means the

school district cannot construct any improvements, including roadways or parking lots, in the easement area.

Unless a third party requesting an easement fits under one of the specific statutory exceptions, the school district is required to go through the notice and bid process before awarding an easement. A common exception seen with easements is when the third party requesting the easement has the power of eminent domain. In this instance, notice and bid are not required; however, Local Government Code Chapter 272 contains additional requirements for this type of contemplated transaction. Either way, conveyance of an easement interest in real property is governed by Chapter 272 and requires board action to approve.

**A MINERAL LEASE IS NOT A SALE, RIGHT?** This issue is often raised when the district is approached by a landman seeking to lease school district property for mineral exploration. A landman often presents an Oil, Gas & Mineral Lease to a district and requests a signature. However, Texas Education Code Section 11.153 and Chapter 71 of the Texas Natural Resources Code require the district to follow specific procedures in order to lease property for this purpose, including the requirement of a specific board determination, followed by the publication of notice for three consecutive weeks of its intent to

receive bids, and a public hearing for consideration of the bids. Natural Resources Code Chapter 71 also contains statutory requirements that must be followed regarding the actual terms of the lease. Caution should be taken to ensure that the proposed lease adheres to these specific statutory requirements. Lastly, since oil and gas exploration can be a very dangerous operation, districts should place restrictions in any such lease prohibiting fracking operations from being conducted and prohibiting fracking pools from being located on district property.

**CAN'T WE JUST DONATE THE PROPERTY?** A sale or exchange of real property is also governed by Article III, sections 51 and 52 of the Texas Constitution. These provisions, which prohibit a "gift" of public property, require that a school district receive fair market value for any property sold (including easement interests). There are exceptions to the prohibition of gifts; but again, these exceptions are narrowly tailored and governed by statute.

**IN SHORT, LAND IS UNIQUE.** If it involves real estate, it also involves specific statutory requirements, and will always require board action. Because matters of real estate can have far-reaching and costly implications to a school district, it is always advisable to work closely with legal counsel and seek advice before considering action.

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## CASE NOTES & LEGAL GUIDANCE

BY: DOUG BROCK

**E.E.O.C v. ABERCROMBIE & FITCH STORES, INC., 575 U.S. \_\_\_\_\_ (2015).** This recent Supreme Court decision dealt with employer discrimination on the basis of religion. The basic facts are as follows: Ms. Elauf, a practicing Muslim, applied for a job with an Abercrombie and Fitch store and was granted an interview with

the assistant manager. During the interview, Ms. Elauf wore a headscarf, consistent with her religious beliefs. At no time during the interview did Ms. Elauf disclose her religious beliefs. However, the assistant manager assumed that Ms. Elauf was Muslim based on the headscarf. The assistant

manager evaluated Ms. Elauf as qualified for hire. However, the assistant manager had concerns regarding Ms. Elauf's wearing of the headscarf as it was not consistent with the store's dress code. The dress code prohibited all headwear. The assistant manager took her concern to her supervisors and informed her

supervisors that she believed Ms. Elauf wore the headscarf because of her faith. The assistant manager was directed to not hire Ms. Elauf because the wearing of a headscarf would violate the dress code.

Ms. Elauf filed a complaint with the E.E.O.C. alleging that she was not hired due to her religious beliefs. The E.E.O.C. filed a lawsuit on Ms. Elauf's behalf against Abercrombie alleging religious discrimination and the case made its

way to the Supreme Court. The Supreme Court held that a prospective employee need not request a religious accommodation for liability to attach. According to the Court, an employer may be liable for religious discrimination when the need for an accommodation was a motivating factor in the employer's decision.

More simply stated, and as articulated by example in the Supreme Court

opinion, "suppose that an employer thinks (though he does not know for certain) that a job applicant may be an Orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommodation is a motivating factor" in the decision to not hire, the employer is liable for religious discrimination.

## FIRM NEWS

**CLIENT RECEPTION IN JULY.** We will be holding our annual client appreciation reception in July during the TCASE conference. The reception will be on Wednesday, July 15, from 5–6:30 at Fleming's. We would love to see you!

**2015/2016 AUDIO CONFERENCE SCHEDULE.** We are planning our Audio Conference Schedule for the 2015/2016 school year and hope to release it in early August. Our retainer clients receive a free audio conference so be sure and keep checking our website for the schedule!

**BACK TO SCHOOL WORKSHOPS.** Walsh Gallegos can help you with your training needs for back to school. Call Haley Armitage at 1-800-252-3405 for information on our inservice training. Our training programs can be customized to meet the needs of your specific district.

**WALSH GALLEGOS 2015-2016 STUDENT CODE OF CONDUCT.** The interactive Walsh Gallegos Student Code of Conduct program addresses tricky discipline situations while giving you maximum flexibility to make decisions that are right for your district.

### FOR MORE INFORMATION

on retainer programs or the firm, please write to P.O. Box 2156, Austin, TX 78768, visit our website at [www.WalshGallegos.com](http://www.WalshGallegos.com) or call us at 512-454-6864.

Our software, now available on a streamlined web platform, allows you to mark your discipline preferences and choose alternate language with the click of a mouse button. Based on the selections you make, the program will generate a final Student Code of Conduct that you can download and send to your printer. Due to popular demand, the 2015-2016 Student Code of Conduct program continues to provide added flexibility to:

- Generate a custom cover page featuring your school logo,
- Print in either portrait or landscape formats, and
- Work from multiple devices and browsers.

With editorial notes and policy checklists, revising your Code of Conduct has never been easier.

Another great time-saving tool, our **LEGAL GUIDE TO DAEP AND EXPULSION PROCEDURES** includes updated forms and checklists to guide you through the DAEP or expulsion process from start to finish. Currently in its 9<sup>th</sup> Edition, this practical

product will improve consistency in addressing student misconduct and ensure campus administrators comply with the legal requirements for DAEP placement or expulsion. The Legal Guide to DAEP and Expulsion Procedures will also be updated to include the latest legislation..

These two great tools can be purchased together for a 5% discount as part of our Student Discipline Survival Kit. Also available as part of Walsh Gallegos Campus Collection are the:

- Extracurricular Code of Conduct,
- Student Dress Code,
- Student Activity Guide, and
- The Administrator's Anti-Bullying Toolkit.

To order the Walsh Gallegos Code of Conduct, the Legal Guide to DAEP and Expulsion Procedures, or any of our other campus products, simply **order online**, send us an email at [info@wabsa.com](mailto:info@wabsa.com) or call Victoria Beltran in our Austin office at 1-800-252-3405. As always, retainer clients enjoy a discount.

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