INTERPRETING SCHOOL POLICIES

Guidelines for Employees

Arizona Education Association

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Contents

Introduction

School employees often ask questions about their rights in the workplace. Many answers are found in school district policies. Unfortunately, sometimes those policies are unclear. This booklet contains useful information to help school employees interpret and understand the policies that affect them.

For more information or assistance, contact your local association leader or AEA Organizational Consultant. Call AEA headquarters at (602) 264-1774 or (800) 352-5411 to find the name and telephone number of your Organizational Consultant. AEA members can also go to *www.arizonaea.org/helpdesk*.

For over 100 years, AEA and its members have worked to improve the learning and working conditions in Arizona schools. AEA is proud of that long tradition. This booklet is part of AEA's continuing effort to inform school employees of their rights and to encourage them to work together to improve their schools.

Jarrett Haskovec
AEA General Counsel

Finding Your District's Policies

If your district uses Arizona School Boards Association (ASBA) policies, then you may be able to read those policies on the ASBA website, *https://policy.azsba.org/asba/browse/allmanuals/welcome/root*," click and then choose your school district. Section G contains most of the personnel policies and is divided into sub-sections. GB contains policies that pertain to all employees. GC contains policies that pertain to teachers and administrators. GD contains policies for all other personnel, including education support professionals.

The district's policies and regulations also may be on the district's Web page, usually under the "Governing Board" section.

You also may find copies of district policies in the school library, the principal's office, or the district office. The meet-and-confer agreement, consensus agreement, and the employee handbook also may contain some district policies that pertain to personnel issues.

Why Is Policy Interpretation Important?

Questions about how to interpret governing board policy occur frequently. Employees and administrators often disagree about the meaning of a particular word or provision in a contract or policy.

For example, policies usually include deadlines for filing a grievance or disciplinary appeal. Suppose the deadline is "five days." Does this mean five school days, five calendar days, or some other measure? The answer to that question is important to preserve a school employee's rights, and that answer may depend on how the applicable governing board policy is interpreted.

Resolving Policy Disputes

Disputes often arise about the meaning and application of governing board policies. Many disputes are resolved informally through amicable discussions involving school administrators, employees, and local association leaders. Everyone "wins" when disputes are resolved in a cooperative and collaborative manner.

Some policy disputes are more difficult to resolve. Almost all school districts have grievance policies that provide a mechanism for employees to complain about violations, misapplications, or misinterpretations of policies. Grievance policies vary from district to district. If you decide to file a grievance, check your district's grievance policy, and follow it very carefully. Some grievance policies have very short deadlines, such as 5 or 10 days, so act quickly! For more information on grievances, review the AEA booklet "Grievances in Arizona Schools," available from AEA staff.

Nearly all grievance and discipline policies provide a procedure to appeal an unsatisfactory decision. Review those policies to ensure that you appeal to the correct individual within the required deadline. In some districts, the superintendent is the last step in the appeal process. Elsewhere, the school district governing board is the final step.

In a few Arizona districts, policies provide for advisory arbitration. In those districts, an impartial arbitrator will hear the dispute and make a recommendation to the school district governing board. The arbitrator's decision is only advisory, and the governing board makes the final decision. If your district has advisory arbitration, please refer to "Resources for Arbitration" later in this booklet.

If advisory arbitration is not available in your district, then judicial review may be the only remedy available after you have exhausted all steps of the grievance or disciplinary appeal procedure. Unfortunately, courts do not like to interfere in the everyday decisions of school districts and generally defer to district decisions unless they are clearly arbitrary or capricious or an abuse of discretion. Additionally, court action can be very expensive, time-consuming, and frustrating.

Many problems are resolved during the meet-and-confer process between local associations and school districts. Convincing a school board to change unfavorable policy or clarify ambiguous policy language may be difficult. Often, however, that is the most effective way to solve ongoing policy problems.

Common Sense Tips for Solving Workplace Problems

- **Check deadlines for action.** Most districts have short deadlines for filing grievances and disciplinary appeals. If you need more time, ask the district administrator to extend the deadline and put any agreement in writing. Extensions often are granted before the deadline, but rarely are granted after the deadline has passed.
- **Gather information about the problem and brainstorm possible solutions.**

  Gather information and identify the nature of the problem or dispute. For most grievances, you must identify the policy that has been violated and identify the harm caused by the violation.

  Is there a factual dispute? Factual disputes involve differences of opinion about what happened.

  Is there a dispute about the meaning of a policy or how it should be applied to a specific situation? Some problems have both a factual dispute and a dispute over the meaning of a policy.

  Think carefully about what you (or the member you are assisting) really want. Be creative and brainstorm several possible remedies or solutions to the problem. If you do not achieve everything you want, think about the next best alternative or compromise.
- **Look for relevant policies and evidence.**

  Find the strongest evidence for your "side of the story." Interview potential witnesses. Locate and review relevant correspondence, memos, emails, and documents.

Look up all relevant policies. Do not rely on your memory. Look at the exact words of the policy.

Check to see that you have a complete and updated version of a relevant policy. Sometimes districts are not careful about updating their policies on the Internet. The most up-to-date policy book often is at the district office, maintained by the governing board secretary, the Human Resources or personnel director, or the superintendent. District policies are public records. Districts must make such public records available, upon reasonable request. They may charge for photocopies.

Look for any documents that help you understand the meaning of the policy. For example, check the employee handbook, consensus agreement, administrative guidelines, the governing board minutes, memos, and correspondence.

Look to the history of a policy to help you understand its meaning. Seek the reason for any change in a policy. Board minutes, meet-and-confer or negotiation team minutes, administrative memos, and previous grievances may help you understand why a policy was changed or adopted. Sometimes a brief conversation with the past association president or grievance representative can provide useful historical information.

Check Webster's latest New International Dictionary to see if there is a helpful definition of any disputed word in a policy.

- **Choose a strategy.**

  Consider trying to resolve the problem informally, through discussions with your co-workers, supervisor, or other administrators. Usually, you should follow the "chain of command" unless the problem is extremely serious.

  Be realistic. Most problems are not solved immediately. Grievances can take several months to resolve. It may take years for a local association to succeed on a particular issue through the meet and confer process.

  Set priorities. Fight hard and persevere on the most impor-tant issues when there is a reasonable chance of success. Do not waste time on endless appeals of disputes that you know are "losers."

  Avoid contacting board members who may have to decide the issue later.

  Many workplace problems are not easy to resolve. Often these problems involve personality conflicts and differences of opinion, rather than any policy or legal violation. Before you give up and decide that the problem cannot be solved, consult an experienced grievance representative or your Organizational Consultant. Maybe they will have a helpful idea.

- **Prepare reasonable arguments and proposals.**

  Make it easy for the reader to understand your argument. Organize the evidence and facts in a logical manner to make your point. Usually, it is helpful to tell a story in chronological order, with emphasis on the most important facts. Use short, separate paragraphs for each new idea. Use headings and sub-headings to separate sections. Underline critical words or phrases to add emphasis.

  Make it easy for the reader to locate the relevant policy and documents. Quote relevant policies and documents, and attach copies. Ask for what you want, explain why you want (and deserve) it, and then ask for what you want again.

  Add just a bit of passion or a plea for fairness. It can be very effective to add an emotional plea for fairness at the end of a very logical and reasonable request. However, an overly dramatic, emotional, or accusatory plea may be viewed as mere whining or "ranting and raving."

  Avoid extreme statements, profanity, unfounded accusations, and other unprofessional statements and conduct.

  If time permits, ask an association leader, grievance representative, or AEA Organizational Consultant for their ideas to solve the problem. This is especially important when your problem involves policy interpretation. Ask them for any ideas to make your proposals or writing more logical and easier to understand.

  See the AEA Advocacy booklet *Writing Persuasively* for more tips, available from AEA staff.

How to Use the Basic Principles of Contract Interpretation

You may wish to use the "basic principles of contract interpretation" to help convince an administrator or school board to interpret a policy in a certain manner. You can use these principles in various advocacy situations, including grievances, disciplinary appeals, and letters to the school board about policy and contract interpretation.

The following sections provide exact quotes from Arizona cases about how contracts and policies should be interpreted. A "plain English" explanation follows each quote because some of the cases are written in "legalese." Some examples also are provided to help you understand how to use the principles.

Caution: Each side of a dispute often can find a principle of contract interpretation to support its point of view. Do not assume that you will win because you have found one principle to support your interpretation. Courts review all of the circumstances and theories presented to them before making a decision.

Basic Principles of Contract Interpretation

Principles of Contract Interpretation Determine the Meaning of Contracts

"Interpretation is the process by which we [courts] determine the meaning of words in a contract." *Taylor v. State Farm Mut. Auto. Ins. Co.,* 175 Ariz. 148,152, 854 P.2d 1134, 1138 (1993).

The Basic Principles of Contract Law Apply to Teacher Contracts

"[O]rdinary principles of contract law apply [to contracts between teachers and school districts] and both parties are bound by the terms of their contract and neither can unilaterally disregard the same with impunity." *Carlson v. School Dist. No. 6*, 12 Ariz. App. 179, 181, 468 P.2d 944, 946 (1970)

Explanation: Courts generally use the same legal principles for interpreting business contracts and teacher contracts.

Teacher Contracts Include District Policies and Rules

Teacher contracts include "the rules and regulations of the school district." *Haverland v. Tempe Elementary School Dist. No. 3*, 122 Ariz. 487, 489, 595 P.2d 1032, 1034 (App. 1979); *see also Board of Trustees v. Wildermuth*, 16 Ariz. App. 171, 172, 492 P.2d 420, 421 (1972) (Rules and regulations set forth in a pamphlet given to teachers were incorporated into a teacher's contract by reference to "rules.")

Explanation: District policies adopted by the school district governing board are the "fine print" of every district employment contract. Teachers, staff, and administrators must comply with district policies, whether or not they have read them. Consensus agreements and other meet-and-confer negotiated agreements become district policy when they are formally approved by a vote of the school district governing board. The basic principles of contract interpretation also apply to policy interpretation because policies are part of employment contracts.

State Law Is a Part of Every Contract

"[T]he laws of this state are a part of every contract." *Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Products, Inc.*, 167 Ariz. 383, 389, 807 P.2d 1119, 1125 (App. 1990).

Explanation: Arizona law also is an invisible part of every con-tract. A contract that violates the law will not be enforced.

Example: A school district could not agree to give a teacher "continuing status" or "tenure" after two years. Arizona law requires that a teacher receive a fourth consecutive contract to have "tenure."

Courts Interpret Contracts "Reasonably"

"In interpreting a contract the court must apply a standard of reasonableness…." *Gesina v. General Elec. Co.*, 162 Ariz. 39, 45, 780 P.2d 1380, 1386 (App. 1989).

Explanation: The word "reasonable" is an invisible part of every contract. Courts will not enforce contract terms that are unreasonable.

Example: Most employment contracts include a phrase such as "other duties as assigned." Courts will interpret this phrase as though it said "other *reasonable* duties as assigned," or "other duties as assigned *that are reasonable under the circumstances*."

What is reasonable? It is hard to determine. It is probably "reasonable" for a principal to direct a teacher to supervise the cafeteria at lunch or to meet with difficult parents one evening after school. These are typical and "reasonable" tasks expected of most teachers. It probably is not "reasonable" for a principal to require a teacher to do janitorial tasks or to attend a private function on a weekend.

Circumstances – and what is considered reasonable – may change in a true emergency. Normally, a principal could not reasonably require a teacher to perform unpleasant tasks not usually assigned to a teacher. In an emergency situation, such as when a school building is seriously damaged due to vandalism or flooding, a principal might reasonably expect all employees to pitch in to clean up and help get the school ready for classes.

Courts Try to Find Out What the Parties Intended

"It is a fundamental rule in the interpretation of contracts that the court must ascertain and give effect to the intention of the parties at the time the contract was made if at all possible." *Polk v. Koerner*, 111 Ariz. 493, 495, 533 P.2d 660, 662 (1975).

Explanation: Courts try to find out what people intended, or meant, when they signed a contract. Then courts usually enforce that meaning or interpretation of the contract.

Example: A district adopts a sick leave policy that permits employees to be absent during the illness of a member of their "immediate family." If an employee questions what "immediate family" means, a court would try to find out what the district and its employees intended "immediate family" to mean at the time the policy was adopted. If there is evidence that everybody intended "immediate family" to include all relatives living in the employee's home, then a court likely will adopt that meaning. If there is evidence that everybody intended "immediate family" to include an employee's spouse, parents, and children, then a court likely will adopt that meaning.

Courts Look to the Surrounding Circumstances to Determine the Parties' Intent

Arizona courts consider surrounding circumstances to help them determine the intent of the parties and the meaning of contract language. For example, courts have considered evidence of "negotiation, prior understandings, and subsequent conduct." *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 153, 854 P.2d 1134, 1139 (1993); *see also Smith v. Melson, Inc.*, 135 Ariz. 119, 121, 659 P.2d 1264, 1266 (1983) ("A contract should be read in light of the parties' intentions as reflected by their language and in view of all the circumstances.")

Past Practice Helps Determine the Meaning of Unclear Language

"[T]he acts of the parties under the contract, before disputes arise, are the best evidence of the meaning of doubtful contractual terms." *Godbey v. Roosevelt School Dist. No. 66*, 131 Ariz. 13, 21, 638 P.2d 235, 243 (App. 1981).

Explanation: If there is a disagreement about the meaning of contract language, courts often look to the past practice or previous conduct of the parties to the contract. Evidence of past practice helps the court determine what the parties thought the disputed language meant before any dispute or controversy. Courts generally do not consider past practice if the contract language is clear or if the contract language was different when the past practice occurred.

Example: A school district provides sick leave to an employee for the illness of a member of his "immediate family." When an employee requests sick leave for his uncle's illness, the district refuses because it does not consider an uncle to be "immediate family." If the district had approved leave for another employee due to the illness of an aunt or grandfather, this would be important evidence of past practice that the district intended "immediate family" to have a broader meaning than just parents, children, and spouse.

Courts Usually Use the Ordinary, Plain Meaning of Words

"Where the language of the contract is clear and unambiguous, it must be given effect as it is written." *Hadley v. Southwest Properties, Inc.*,116 Ariz. 503, 506, 570 P.2d 190, 193 (1977). "The controlling rule of contract interpretation requires that the ordinary meaning of language be given to words where circumstances do not show a different meaning is applicable." *Chandler Medical Bldg. Partners v. Chandler Dental Group*, 175 Ariz. 273, 277, 855 P.2d 787, 791 (App. 1993).

"In ascertaining the parties' intent, the court will look to the plain meaning of the words as viewed in the context of the contract as a whole." *United California Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 259, 681 P.2d 390, 411 (App. 1983).

"Agreements which are clear and unambiguous will be enforced according to their terms, and words used will be given their normal meaning." *Horizon Resources Bethany Ltd. v. Cutco Industries, Inc.*, 180 Ariz. 72, 77, 881 P.2d 1177, 1182 (App. 1994).

Explanation: Courts generally enforce the plain meaning of contract words.

Example: If district policy states that an employee is entitled to "8 days of sick leave," a court will not consider an employee's suggestion that he is really entitled to 8 days of leave for vacation or purposes other than illness.

Courts Use Webster's New International Dictionary

Webster's New International Dictionary is accepted by the Arizona Supreme Court "as giving the commonly understood definitions of all words in the English language." *State ex rel. Frohmiller v. Hendrix, 59* Ariz. 184, 189, 124 P.2d 768, 771 (1942).

Explanation: Use a dictionary definition to help determine the common meaning of a word. Webster's New International Dictionary is the standard dictionary used by Arizona's courts.

Contract Language Is Ambiguous If It Has More Than One Reasonable Meaning

"A contract is not ambiguous just because the parties disagree as to its meaning.… Language used in a contract is ambiguous only when it can reasonably be construed to have more than one meaning." *Phillips v. Flowing Wells Unified School Dist. No. 8*, 137 Ariz. 192, 193, 669 P.2d 969, 970 (App. 1983).

Example: If district policy permits an employee to appeal discipline within five "days" and the word "days" is not defined, then the word is ambiguous. Some people may reasonably interpret "days" to mean calendar days, and others may think it means school days.

Evidence Helps Interpret the Contract Words, But Cannot Contradict Them

Courts can consider evidence outside of the actual words of the contract ("parol evidence") to help "interpret" the contract, but not to "contradict" the meaning of the written words of the contract. See *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 153, 854 P.2d 1134, 1139 (1993).

Explanation: Courts look to evidence outside the contract to help determine the meaning of contract words, especially when those words are ambiguous and can have more than one reasonable meaning. Courts will not use outside evidence to contradict the words of the contract.

Example: A school district provides sick leave for an employee during the illness of a member of his "immediate family." A court likely will consider evidence about possible meanings, such as whether "immediate family" includes a step-child, an aunt, or a committed "life partner." A court will not consider outside evidence that contradicts any ordinary meaning of "immediate family," such as a third cousin living in another state or the family pet.

Courts Try to Give Meaning to Every Part of a Contract

"[T]he court will not construe one provision in a contract so as to render another provision meaningless." *Chandler Medical Bldg. Partners v. Chandler Dental Group*, 175 Ariz. 273, 277, 855 P.2d 787, 791 (App. 1993). A court will not read a clause "as though it stood by itself, disjointed from the other paragraphs… [The court] must read each section of the agreement in relationship to each other, to bring harmony, if possible between all parts of the writing." *Brisco v. Meritplan Ins. Co.*, 132 Ariz. 72, 75-76, 643 P.2d 1042, 1045-46 (App. 1982). Courts "will, if possible, interpret a contract in such a way as to reconcile and give meaning to all of its terms, if reconciliation can be accomplished by any reasonable interpretation." *Gfeller v. Scottsdale Vista North Townhomes Ass'n*, 193 Ariz. 53, 54, 969 P.2d 658, 660 (App. 1998).

Explanation: Courts look at the whole contract and interpret it so that all of its parts have meaning, and no parts become meaningless or unnecessary.

If Two Contract Provisions Are Inconsistent, Courts Favor the More Specific Provision

"Where there is an inconsistency between two provisions in a contract, we will construe the more specific provision to qualify the more general provision." *Norman v. Recreation Centers of Sun City, Inc.*, 156 Ariz. 425, 428, 752 P.2d 514, 517 (App. 1988).

Explanation: When a specific, more detailed contract provision seems inconsistent with more general language elsewhere in the contract, a court usually rules in favor of the more specific language.

Example: District policy has a general provision that administrators may involuntarily transfer an employee "at any time" to "meet the needs of the district." Assume that another district policy includes a more specific provision that a tenured teacher can be involuntarily transferred only "if no other qualified applicants apply for the vacancy." A court likely would find that the more specific provision applies to tenured teachers, and that they could not be involuntarily transferred until others had been given an opportunity to apply for the vacant position.

All Parties to a Contract Have a Duty to Act in Good Faith

"Good faith and fair dealing" is implied in all contracts. "The duty of good faith requires that neither party act in a manner that would damage the rights of the other party to receive the benefits flowing from the under-lying contractual relationship." *Taylor v. State Farm Mut. Auto. Ins. Co.*, 185 Ariz. 174, 176, 913 P.2d 1092, 1094 (1996).

Explanation: People have a duty to act in "good faith" to provide the benefits they promise to others in contracts. They should not act unreasonably to make it impossible for someone to receive a benefit promised in the contract.

Example: An employer promises that each employee is entitled to 8 sick days per year. The employer may act in "good faith" to determine whether the employee is actually sick and entitled to use sick leave – subject to the applicable provisions of Arizona's paid sick leave law. The employer may not act in "bad faith" to arbitrarily deny sick leave to all employees.

If a Contract Lists Several Items in a Category, a Court Will Assume That Any Unlisted Items Are Not Included

"[T]he expression in a contract of one or more things of a class, implies the exclusion of all things not expressed, although all would have been impliedly included had none been specifically expressed." *Herman Chanen Constr. Co. v. Guy Apple Masonry Contractors Inc.*, 9 Ariz. App. 445, 447, 453 P.2d 541, 543 (1969).

Explanation: If a contract lists several similar items, then a court will assume that anything not listed is not included. If no items are listed, then a court will assume that all items are included.

Example: Assume that a district policy states that "a stipend will be paid for coaching basketball, football, and volleyball teams." Coaching the swim team is not on the list, so a court likely will assume that the policy does not promise a stipend to the swim team coach. Now assume that the contract states that "a stipend will be paid for coaching athletics." No specific types of athletic teams are listed, so a court likely will assume that all athletic coaches are entitled to a stipend.

Ambiguities Are Construed Against the Writer of the Contract, but Courts Generally Defer to a Reasonable Interpretation by a Government Entity

"If the meaning [of the contract] remains uncertain after application of primary standards of construction, including consideration of the surrounding circumstances, a secondary rule of construction provides that ambiguity is to be strictly construed against the drafting party." *Harris v. Harris*, 195 Ariz. 559, ¶15, 991 P.2d 262, 265 (App. 1999).

Explanation: If a court still cannot determine the meaning of a contract after using the principles of contract interpretation, then the court may adopt the interpretation that is unfavorable to the writer of the ambiguous contract language.

Caution: Although courts may construe contracts against the drafter, this usually does not help school employees. School district governing boards nearly always draft the contract and policy language, but courts generally do not construe contracts against them. Rather, courts generally defer to a district's reasonable interpretation of its own policy. *See Romo v. Kirschner,* 181 Ariz. 239, 240, 889 P.2d 33, 34 (App. 1995) (an administrative agency's interpretation of regulations which it implemented is generally given great weight).

Resources for Arbitration

Arbitrators rely on the same basic principles of contract interpretation. However, they may cite arbitration cases rather than court cases. Arbitrators also tend to look at each contract and employment dispute separately and are not bound to follow previous arbitration decisions.

Many arbitrators rely on resources that summarize arbitration principles and cite arbitration cases. Two excellent examples are Elkouri & Elkouri, *How Arbitration Works* (8th ed. 2016) and BNA Editorial Staff, *Grievance Guide* (14th ed.2017). Both of these books are available at many local libraries and at AEA headquarters.

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A Final Note

For more information and assistance, contact your local association, *arizonaea.org/helpdesk*, or your AEA Organizational Consultant.

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This booklet is a general guide for AEA members and is not intended to provide complete information or legal advice on specific problems. Changes in laws and cases may modify the information provided. To find Arizona statutes on the Internet, go to *www.azleg.gov*.

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