



## Considerations in Drafting Individual Teacher Contracts

Wisconsin law, Wis. Stat. § 118.21, requires school boards to enter into written individual contracts with their teachers. However, Wisconsin law sets few requirements on what must be included in these contracts. As a result, school districts retain a great amount of discretion in how to draft these contracts. A recent Wood County Circuit Court decision discussed the legal ramifications of some common provisions that schools districts might include in their individual contracts. This FYI will discuss this recent case and how this case might impact the way that school districts draft their individual contracts with teachers.

### Recent Wood County Circuit Court Decision

In *Marks v. Bd. of Educ. of the Wis. Rapids Pub. Sch.*, Case No. 14CV205 (May 3, 2016), Judge Robert Shannon ruled on three important issues regarding individual contracts. While circuit court decisions are not binding on other courts, the analysis in this decision provides insight on how other judges across the state might analyze similar issues regarding individual contracts.

First, Judge Shannon found no support in the applicable statutory language or case law for reading into individual teacher contracts an implied “for cause” termination standard. Historically, the standard for termination during the term of an individual teacher contract was a matter for collective bargaining. Here, the district and the teachers through their individual teacher contracts established the standard for termination as “non-arbitrary, non-capricious”. Judge Shannon stated that the “non-arbitrary, non-capricious” standard is a readily articulable standard recognized in the law.

Second, the contracts also contained a provision allowing the District, at its discretion, to provide employees with additional benefits and supplemental compensation other than the fixed base wage. The judge found this language permissible. According to the judge, no statute prohibited the board from granting additional benefits and salary to teachers, nor did any statute require the contract to describe such additional benefits and salary in a particular way.

Third, Judge Shannon ruled that the District could provide in the contract that nonrenewals were not subject to the District’s grievance procedure. The contract stated that nonrenewals were subject to the procedure established by Wis. Stat. § 118.22 and not subject to the grievance procedure established under Wis. Stat. § 66.0509(1m) for terminations, discipline, and workplace safety. Judge Shannon concluded that no statute provided evidence that the legislature intended nonrenewals to be subject to the grievance procedure. The nonrenewal statute and the grievance procedure statute address two separate and distinct aspects of the employment relationship between school boards and teachers. Therefore, the individual teacher contracts did not unlawfully exclude nonrenewals from the grievance procedure. [NOTE: There is no requirement to have a standard at all for nonrenewal].

## Prior Brown County Circuit Court Decision

In 2014, a Brown County Circuit Court judge issued a decision regarding individual teacher contracts. *Schneider v. Howard Suamico Sch. Dist.*, Case No. 2013-CV-397 (Brown Cnty. Cir. Ct. Jan. 22, 2014). Just as in the recent *Marks* case, the Brown County Circuit Court judge in *Schneider* ruled that an individual contract could include a standard for termination, and that standard does not have to be “for cause.” Additionally, the judge ruled that a contract complied with Wis. Stat. § 118.21 by providing only a base wage for a set number of days of employment. [Re-view our March 2014 Individual Teacher Contracts FYI newsletter summarizing the \*Schneider\* case at <http://www.boardmanclark.com/march-fyi>.](http://www.boardmanclark.com/march-fyi)

The two cases come to notably different conclusions regarding whether nonrenewals are subject to the statutory grievance process under Wis. Stat. § 66.0509(1m). In *Schneider*, the judge ruled that certain nonrenewals might constitute discipline, which would then be subject to the grievance procedure. Relying upon a rationale used by the Wisconsin Court of Appeals in deciding an earlier case involving the statutory grievance procedure, the judge looked at a dictionary definition of discipline that equated discipline to punishment. Some nonrenewals, such as those for poor performance, could constitute punishment. Therefore, the judge ruled that the District could not categorically exclude all nonrenewals from the grievance procedure. However, nonrenewals for non-disciplinary reasons, such as those for financial considerations or decreased enrollment, might still be excludable from the grievance procedure. The *Marks* decision, by contrast, stated that all nonrenewals could be excluded from the grievance process.

## Conclusion

Based on these two decisions, Districts may wish to review their individual teacher contracts to ensure that they provide sufficient flexibility to the district and comply with the law. Districts do not have to have teacher contracts that are identical. Contracts can be individualized with specific provisions applicable only to the specific teacher. Districts should consult with legal counsel over how best to integrate the two circuit court decisions. Districts that have not yet issued teacher contracts to returning teachers or new hires may be able to enter into contracts with those teachers that include language based on these decisions. Districts that have already issued contracts for the school year should consider whether to modify their individual teacher contracts for the 2017-18 school year.

## Check-Up List

Based in part on these recent developments on individual teacher contracts, we have developed the following Check-Up List for you to review and consider with respect to your District’s individual teacher contracts.

Do the District’s individual teacher contracts include a standard for  
yes no unknown termination other than “for cause” or “just cause”?

Do the District’s individual teacher contracts contain a provision for  
yes no unknown liquidated damages?

Do the District’s individual teacher contracts include language  
yes no unknown permitting the District to provide additional benefits and supplemental  
compensation to the teacher at the District’s discretion?

yes no unknown Do the District's individual teacher contracts include a provision permitting each teacher to choose between 9-month and 12-month payroll?

yes no unknown Are the District's individual teacher contracts consistent with Board policies, handbooks and the grievance procedure?

Feel free to follow-up with any Boardman & Clark LLP School Law Attorney listed below regarding any of the items in this FYI.

---

■ Michael J. Julka	(608) 286-7238	■ JoAnn M. Hart	(608) 286-7162	■ Richard F. Verstegen	(608) 286-7233
■ James K. Ruhly	(608) 283-1738	■ Douglas E. Witte	(608) 283-7529	■ Brian P. Goodman	(608) 283-1722
■ Eileen A. Brownlee	(608) 822-3251	■ Steven C. Zach	(608) 283-1736		

---

*Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.*