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Legal effects of your student handbooks: Recent developments

- By Hugh G. E. MacMahon

The Maine Supreme Judicial Court recently decided, in *Millien v. Colby College*,[1] that a college's student handbook was not a binding contract because it contained a "reservation clause" that allowed the college to make changes to the handbook at any time, without prior notice. Colby College was represented in that case by Melissa Hewey, Chair of DWM's Trial Services Practice Group.

This article briefly discusses the legal status of student handbooks and the advisability of including a "reservation clause" in those handbooks in light of recent judicial developments.

The legal status of student handbooks

The legal status of student handbooks has recently been an issue in three cases involving institutions of higher education in Maine. In the first case, *Goodman v. Bowdoin College,*[2] decided in 2001, the federal district court in Maine decided that under some circumstances the terms of a student handbook may define the terms of a contractual relationship between a college and its students. The court found that some of the provisions of Bowdoin's student handbook rose to the level of being binding contract terms.

The *Bowdoin* case was followed by *Gomes v. University of Maine,*[3] decided by the federal district court in Maine in April, 2005. The court in that case reviewed several terms of the University's Student Conduct Code to determine whether they had been breached by the University. The third case in this trilogy of cases was *Millien v. Colby College*, noted above.

This recent spate of judicial activity concerning the legal status of student handbooks at the college and university level prompts the question of whether courts would apply similar contract principles in evaluating the legal significance of student handbooks issued by public and private schools in Maine.

Handbooks issued by public schools

Courts have generally concluded that student handbooks issued by public schools do not constitute binding contracts.[4]

As courts have explained, student handbooks issued by public schools lack the customary characteristics – offer, acceptance, and consideration paid — of legally binding contracts. In contrast with the voluntary nature of ordinary contractual relationships, the admission and attendance of public school students are matters that are prescribed by law. Moreover, in contrast with ordinary contractual arrangements, whereby one party pays consideration to the other in exchange for an agreement to provide a product or service, the cost of pubic education is borne by the taxpaying public, and the education provided by public schools is mandated by law. In addition, unlike the relationship between ordinary contracting parties, the relationship between students, their parents, and public school districts is extensively defined and regulated by statutes and regulations. That relationship, therefore, is not one into which contract principles have to be imported by courts in order to provide a meaningful legal framework.

Furthermore, student handbooks must frequently be changed by school officials as circumstances change. The terms of student handbooks are not negotiated between school districts and students or their parents. Nor are student handbooks ordinarily signed by students or their parents.

In sum, based on these several considerations, courts have generally concluded that student handbooks issued by public schools do not constitute contracts that are binding on school districts.

Student handbooks issued by private schools

Where private schools are concerned, courts may be more receptive to the notion that provisions contained in student handbooks constitute contractual terms that are binding on the school. For example, the Supreme Court of Rhode Island recently found that the relationship between a private college preparatory school and its students was contractual in nature. In *Gorman v. St. Raphael Academy,*[5] the court noted that the academy and the students' parents (or guardians) signed a tuition contract and a student handbook for each year of a student's attendance at the academy.[6]

Implications for school officials

Although, to date, courts have generally concluded that student handbooks issued by public schools do not amount to binding contracts, there is no way of knowing whether courts will continue to be of that view in the years ahead. With regard to private schools, courts will probably continue to be more likely to find that student handbooks that are issued and signed in connection with tuition contracts do constitute enforceable contracts.

The implications for school officials are not insignificant. Under Maine law, the general statute of limitations for breach-of-contract claims is six years. If the plaintiff prevails, damages might be awarded. And what may be of even greater significance for school boards is that the school's liability insurance policies may not provide any coverage for contract claims.

Reservation clauses in student handbooks

As illustrated by the Maine Supreme Court's recent decision in the *Colby College* case, noted above, an educational institution can protect itself from contract claims based on the terms of a student handbook by including a properly worded reservation clause in its student handbooks. The Court's decision that Colby's student handbook was *not* a binding contract was based on a reservation clause that read as follows:

> NOTICE: The reader should take notice that while every effort is made to ensure the accuracy of the information provided herein, Colby College reserves the right to make changes at any time without prior notice. The College provides the information herein solely for the convenience of the reader and, to the extent permissible by law, expressly disclaims any liability which may otherwise be incurred.

The Court concluded that this provision rendered any obligations of Colby too indefinite for legal enforcement. As the Court explained, under Maine law, a reservation to either party of the unlimited right to determine the nature and extent of his performance renders his obligation "too indefinite for legal enforcement."

In short, a reservation clause that reserves to the school the unlimited right to change the terms of its student handbook at any time, without notice, has two important legal implications. First, it enables the school to

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make such changes without notice. But second, and even more significantly, it negates any contractual effect that might otherwise be given to terms contained in the handbook. As the Maine Court has explained, the reason this is so is that such a broadly worded reservation clause renders the school's obligations "too indefinite for legal enforcement."

Drafting considerations

To prevent a student handbook from being the basis of contract claims, a reservation clause should reserve to the school district the *unlimited* right to change the terms of the handbook at any time, without notice. Schools that are considering including a reservation clause in their student handbooks should also be sure that those handbooks do not contain any other provisions that might limit the scope of the school's authority to make changes in those handbooks. [7]

In view of the importance of preventing unnecessary contract claims against schools, school officials would be well advised to review their student handbooks and any reservation clauses with Ann Chapman, Policy and Labor Relations Consultant at Drummond Woodsum or with any of our school-law attorneys. For further information concerning the legal aspects of student handbooks, school officials may want to consult Ann Chapman's article on *Pitfalls to Avoid with your Student Handbooks* in the Spring 2000 issue of the *School Law Advisory.* ✔

Endnotes

1. Reported at 874 A.2d 397 (Me. 2005)

2. Reported at 135 F. Supp. 2d 40 (D. Me., 2001), *affirmed,* 380 F.3d 33 (2004), *cert. den*., 2005 LEXIS 525 (U.S., Jan 10, 2005).

3. Reported at 365 F. Supp. 2d 6 (D. Me. 2005).

4. *See Achman v.Chiscago Lakes Indep. Sch. Dist.,* 45 F. Supp. 2d 644 (D. Minn.1999); *Zellman v. Indep. Sch. Dist.*, 594 N.W. 2d 216 (Minn. Ct. App.1999); *Higginbottom v. Keithley,* 103 F. Supp. 2d 1075 (S.D. Ind. 1999).

5. Reported at 853 A. 2d 28 (R. I. 2004).

6. *See also VanLoock v. Curran*, 489 So. 2d 525 (Ala. 1986).

7. *See Goodman v. Bowdoin College,* 135 F. Supp.2d 40, 54 (D. Me. 2001).

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