

Strategies for Late Teacher Resignations in a Climate of Teacher Shortages

Missouri public schools will increasingly face a shortage of qualified teachers. According to recent projections by both the U.S. Department of Education and the Missouri Department of Elementary and Secondary Education, these shortages will disproportionately impact not only certain geographic locations, but also a number of specific subject areas statewide¹. This, coupled with steady increases in enrollment, means that teachers will soon find themselves in high demand.

This may be welcome news to teachers, but for school administrators, it means new and expanding legal issues. One such issue is that an increasing number of teachers – competitively recruited by other schools – will seek to submit late resignations. This can prove costly to a school district, regardless of how it responds. The key to mitigating these costs is to be prepared by crafting appropriate board policies and teaching contracts.

1. *When is a teacher's resignation "late?"*

Teacher resignations are governed by MSBA Policy GCPB and MCE Policy 4710². As is often the case, there is a significant difference in how resignations are treated for probationary teachers on the one hand, and tenured teachers on the other. A tenured teacher must submit their resignation for the following school year by June 1st. A resignation submitted on June 2nd or after is considered "late," and must be approved by the Board.

A probationary teacher, on the other hand, is bound by the terms of the contract as soon as it is signed and returned to the District. There is no "grace" period after signing the contract, during which the teacher may resign. As such, any attempted resignation under a probationary contract would have to be approved by the Board.



1 For more information, please refer to the DOE's 2017 evaluation: <https://dese.mo.gov/sites/default/files/Teacher-Shortage-Area-Report-2017-2018.pdf>

2 In Missouri, most school districts adopt policies modeled by either the Missouri School Board Association ("MSBA") or Missouri Consultants for Education ("MCE").

2. *When should a teacher's resignation be accepted?*

In order for the teacher's resignation request to be considered, the board will need: (1) a detailed explanation of the reasons for the request; and (2) an effective date for the resignation. If this information is not provided with the teacher's initial notice of resignation, then the teacher should be asked to supplement accordingly.

Your District's board policies will provide guidance on when a resignation should or should not be accepted. The MSBA and MCE differ in their approach to this issue, and of course, your District may have enacted a modified version. That said, the following are summaries of the non-modified model policies:

MSBA: The Board considers serious illness, transfer of a spouse, and military service legitimate reasons for resignation of professional spouse, but the Board will consider each resignation on an individual basis. An employee will not be released from a contract unless a suitable replacement is found.

MCE: It is the practice of the administration to recommend to the Board those certificated employees who request to resign after June 1 and prior to July 31 be released from their contracts when there is good cause determined by the Board. After July 31, a certificated employee may petition the Superintendent to recommend a release from his/her contract for extremely unusual reasons.

Under each of these policies, the board is granted significant discretion in determining whether to release a teacher from their contract. Indeed, they each necessarily require the board to consider the circumstances of each individual request. However, it is important remember that all similarly situated employees should be treated in the same manner. Otherwise, the District will be vulnerable to claims of discrimination under various state and federal statutes, including the Missouri Human Rights Act.



3. *We've decided not to release the teacher from his or her contract. Now what?*

If the board has decided the circumstances do not warrant releasing the teacher from their contract, there are generally two ways to proceed: (1) seek revocation of the teacher's license; or (2) seek liquidated damages. The following chart summarizes the benefits of each:

License Revocation	Liquidated Damages
If successful, it prevents a teacher from teaching in a Missouri public school district in the future (and thus from potentially absconding on another contract).	The District does not force a teacher to stay in an unpleasant situation.
May prevent a teacher from resigning during that year.	The District is compensated for the costs associated with finding a replacement, and the penalty can increase given the point in the school year when the resignation is submitted.
Teacher's cannot simply "walk away" by payment of a financial penalty.	Teachers have clear notice of the penalty and process of late resignations.
Sends a message to other staff that large resignation is not acceptable, harms students, and costs the District money to find a replacement.	Typically, this is less expensive than license revocation.

Revocation of License

RSMo. § 168.071 empowers a school district to file charges with the Missouri State Board of Education seeking revocation of a teacher's license. There are five bases upon which a school district may do so, including the teacher's breach of contract. However, whereas a school district can typically petition the Attorney General to file charges on the school district's behalf, this is not available when the basis for charges is simply breach of contract. A school district filing charges on the basis of breach of contract will be solely responsible for the time and expense of pursuing those charges.



Liquidated Damages

In order to recover liquidated damages, a school district should do two things: (1) adopt a revised board policy requiring payment of liquidated damages; and (2) include a provision regarding liquidated damages in the teachers' contracts.

The liquidated damages policy should set an increasing schedule of damages based upon when the resignation is submitted. The first penalty date should be no earlier than June 2. By including the liquidated damages policy in the teaching contracts, it will be easier to demonstrate an agreement on the part of the teacher to pay the penalty.

4. What if a teacher does not voluntarily pay liquidated damages?

As an initial matter, if a teacher resigns and fails to comply with the terms of the contract, indicates they will not pay the penalty, or if a suitable replacement cannot be found, the District can probably take the position that it will not accept the resignation. If however, the District accepts a teacher's resignation (perhaps based upon the teacher's apparent willingness to pay the penalty), and the teacher subsequently fails to actually pay, the District will be required to bring a breach of contract lawsuit against the teacher in order to enforce payment.

Liquidated damages are not automatically enforceable. Rather, courts conduct an analysis to determine if the size of the liquidated damages bears some relation to the actual loss. The District, as the damaged party, will be required to show that the actual damages are difficult or impossible to determine, and that the liquidated amount established by the parties' contract is reasonable under the circumstances.

It is important to keep in mind that pursuing an action to collect liquidated damages can be costly – perhaps even outweighing the amount of recovery sought. At the same time, if a District fails to follow through, it may inadvertently send a message to other teachers that payment of the penalty is effectively optional. The District must carefully consider these issues before deciding how to proceed.



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5. *Conclusion.*

In responding to a teacher's late resignation request, a "one size fits all" policy is likely not the best policy. This is true in terms of whether to release the teacher from their contract, as well as what remedy to pursue if their request is denied. In many situations, a simple liquidated damages penalty may be sufficient, while in more egregious situations, it may be appropriate to file charges seeking revocation of their license. That is why every school district should be armed with the tools necessary to pursue any of these remedies, as appropriate under the circumstances.



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