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WHAT TYPE OF CONTRACT ARE YOUR RETIRED TEACHERS ON?

by Greg D. Loeffler

Many teachers that reach retirement age but aren't ready to give up the profession find it is financially beneficial for them to begin collecting their OTRS benefits while remaining employed by the school district at a temporarily reduced salary. While teachers that choose this path do not surrender their teaching certificate, the law provides that they can no longer be employed by a school district under a certified continuous teaching contract.

Employment of "Retired" Teachers

Okla. Stat. tit. 70 § 17-116.10 provides that OTRS members may enter into postretirement employment with a school district following the expiration of 60 calendar days and subject to a period of income limitations. In addition,

the same statute also provides that OTRS "[m]embers returning under this section shall only be employed pursuant to a **temporary contract.**" Okla. Stat. tit. 70 § 17-116.10(3).

School districts are familiar with the traditional limitations of temporary contracts. Typically, the law limits employment under temporary contracts to just four semesters. However, this limitation does not apply to retired teachers returning to employment. In other words, there is no limit to how long a retired teacher may be employed by the school district under a temporary contract.

Contracts Contrary to State Law Are Void

Unaware of the requirements, many school districts retain their "retired" teachers under their usual certified con-

tinuous teaching contract. Employing a teacher who is collecting OTRS benefits under a contract other than temporary violates a specific provision of state law. Oklahoma law has declared since statehood that contracts “which are [c]ontrary to an express provision of law” are unlawful and, thus, void. Okla. Stat. tit. 15 § 211. This position is further bolstered by the decisions of the Oklahoma Supreme Court. See, e.g. *Great Am. Reserve Ins. Co. of Dallas v. Strain*, 1962 OK 241 (“A contract may be void in the sense of being illegal; if so, the obligation, being prohibited by law, is a nullity in its contemplation; hence incapable of affirmance, ratification and enforcement.”).

A school district employing a retired teacher under a certified continuous teaching contract should consider the contract void and place the teacher on a temporary contract at the earliest opportunity. Movement of a retired teacher from an unlawful certified continuous teaching contract to a valid temporary contract likely does not entitle the teacher to due process rights, as the certified continuous teaching contract is void as a matter of law. However, districts should consult their RFR attorney for guidance and consideration of other factors.

As a brief, but important, aside, when employing a retiree, ensure districts must also comply with all applicable OTRS obligations relating to post-retirement contributions and statutory fees relating to that employment. In addition to contacting OTRS for guidance, districts may consult their online employer manual or contact an RFR attorney for assistance.

“Employing a teacher who is collecting OTRS benefits under a contract other than temporary violates a specific provision of state law.”

MORE THAN A JOKE?

by Abigail Thomas

The U.S. Supreme Court first recognized constitutional protections for student speech at school more than half a century ago. But like the methods and means by which students express themselves, the Supreme Court’s interpretation of those protections continues to evolve.

In 2023, the Supreme Court in *Counterman v. Colorado* ruled that schools must use both objective and subjective standards when determining whether a student’s speech amounts to a true threat. 600 U.S. 66 (2023). This standard requires consideration of the student’s mental state at the time the speech was made, rather than just its objective content. The ruling argues that anything less would chill free speech, and that cen-

soring non-threatening speech simply because it appears threatening should be discouraged. In practical terms, the ruling in *Counterman* requires schools to ask the following when confronted with speech which might be considered threatening: 1) objectively, would a reasonable person, after considering the context and circumstances under which the expression was made, find the speech threatening?; and 2) subjectively, is the speaker aware that others could regard this statement(s) as threatening violence and deliver it anyway?

Consider this hypothetical. Justin Time, a high school sophomore, posted a picture of Hannibal Lecter on Instagram with the caption, "Wanted: Local cannibal. Payment will be in the form of Paige Turner." Paige is another sophomore. Is this a joke or a threat?

After investigating further, you determine that an art class was given the assignment to create engaging media on a topic of their choice. Paige told you she had an on-again-off-again relationship with Justin. You also learn that Justin told Paige all about the assignment, including that he planned to use her name. Paige's information and the existence of the assignment establish that Justin likely did not believe his post was threatening.

An objective analysis of this situation lends itself to a belief that Justin poses a threat to Paige. The ruling in *Counterman* tells us that relying on this analysis alone may result the school district illegally stifling Justin's speech. But, taking a subjective

view, which requires a full fact investigation and, most importantly, appropriate interviews, tells us that Justin's speech likely poses no threat to Paige and, instead, warrants only a conversation with Justin about the importance of context in communication.



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Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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Consult your RFR attorney for guidance on walking this difficult line.

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Greg Loeffler was born and raised in Tulsa and Creek County, Oklahoma. He holds a Bachelor of Journalism degree with an emphasis in strategic communication from the University of Missouri. Admitted in 2024, Greg represents the fourth generation of his family to be admitted to the Oklahoma bar. He is a graduate of the University of Tulsa College of Law where he served on the editorial board of the Energy Law Journal. While in law school, Greg clerked for RFR and the University of Tulsa Office of the General Counsel, as well as studied at Worcester College in Oxford, England. Greg joined the RFR team as an Associate Attorney in early 2024.



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Author Abigail Thomas is a student of University of Tulsa College of Law. She is currently employed by Rosenstein, Fist & Ringold as a Law Clerk, with the anticipation of her joining our firm as an Associate attorney upon successful completion of the July 2025 Oklahoma Bar Exam.



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