

DeKalb Schools Reach \$160K Settlement With 150 Teachers Over Contract Fees

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L-R Mike McGonigle and Julie Oinonen, Atlanta. *John Disney/ALM*

The DeKalb County School District has agreed to pay more than \$160,000 to settle a [lawsuit](#) claiming the district illegally withheld \$750 apiece from 150 teachers' final paychecks when they resigned at the end of the 2013 school year.

The settlement refunds that money, which was charged to the teachers as liquidated damages for breaching their contracts. The deal also includes \$50,000 in attorney fees and includes a moratorium on the imposition of such penalties going forward, according to Julie Oinonen of Williams Oinonen. She represents two of the teachers hit with the penalties who sued to have the policy overturned.

The attorney who handled the litigation for the school board, Brandon Moulard of Nelson Mullins Riley & Scarborough, said he did not have permission to discuss the case. A district representative did not provide a statement by press time. Oinonen and Mike McGonigle, the general counsel for the Georgia Association of Educators, said that, while the settlement marks a victory for the DeKalb teachers, the practice of using liquidated damages clauses in educators' contracts is growing.

"This is an issue for thousands of educators out there," said McGonigle. "They're essentially holding these teachers hostage to their contracts."

He said the DeKalb penalty was actually less onerous than those in other districts, which have warned teachers who breached contracts that they'd owe as much as \$3,200 in liquidated damages and face two years of ineligibility to teach.

Oinonen said it is likely other districts' practices will also be challenged in court. "We intend to go after other school boards [levying the fees], because liquidated damages cannot be used to deter a party from breaking a contract," she said.

The dispute centers on liquidated damages clauses DeKalb school officials placed into contracts teachers are asked to sign if they plan to teach in the following school year. As detailed in the complaint, state law requires that renewal contracts must be given to teachers by May 15. The law says teachers have the right to decline employment by notifying the district in writing before June 1, it said.

From late winter until the June 1 deadline, according to the complaint, teachers who may be leaving the district for jobs elsewhere typically "do not sign a new contract until they have been released from their current employment contract."

But many districts wait until the end of the school year, in late May or early June, to determine what the coming year's needs will be, making for a "careful dance" for Georgia teachers seeking work elsewhere, the complaint added.

"They cannot resign from their current district and risk having no job or losing their continuing employment status," or tenure, until a job offer comes in, it said.

Consequently, late May and early June is when a "wave of educators throughout Georgia generally resign from their current school district and accept a new offer to work someplace else."

But in 2014, DeKalb schools sent out contracts in late March, "before other career fairs and openings had even been advertised," and giving teachers an April 4 deadline to sign. The district "strong-armed" the teachers by "telling them that, if they resigned to leave for another job, they would be penalized with [a] \$750 fine as punishment, and they would be reported to the Georgia Professional Standards Commission for sanctions which would put their certificates at risk."

The \$750 fee was described as liquidated damages. The commission is the state agency that issues teaching licenses for public schools.

The district added to the pressure by sending out a memo on March 31, saying the Professional Standards Commission "does not uphold June 1 as the date for which educators may request a release from contract" without penalty.

In response, the complaint said, the commission told district officials that it, in fact, still recognized the June 1 deadline, but DeKalb continued to tell teachers who resigned before that date "that their resignations would be considered 'job abandonment' and 'penalties' may apply." In 2014, two teachers who resigned and relocated for family reasons, Chayka Bettis and Leslie Hein, sued the district, claiming breach of contract and violation of the implied duty of good faith and fair dealing.

The suit argued that, under the Georgia Supreme Court's 1976 decision in *Southeastern Land Fund Inc. v. Real Estate World*, 237 Ga. 227, the Georgia Supreme Court established a three-pronged test for determining whether a liquidated damages clause is valid and enforceable. First, the injury caused by a breach must be difficult to impossible to estimate accurately; second, the parties must intend to provide for damages, not a penalty; and third, the sum stipulated must be a reasonable pre-estimate of those damages.

In a response [filing](#), the district argued that the teachers had "willfully abandoned" their contracts. The \$750 was meant not as a penalty but to compensate for the district's costs in recruiting, interviewing and training replacement teachers, it said.

While the exact sum for which each such instance is impossible to ascertain, it said that the system's human resources director had estimated the necessary man-hours to recruit and replace a single teacher and multiplied that figure by the estimated salaries of the various employees required to perform those duties.

After comparing those figures with neighboring districts, the DeKalb system settled on \$750, although the HR director "believed the actual cost of replacing each employee who abandoned his or her contract was much greater" than that sum.

Each side moved for summary judgment, but Judge Dax Lopez denied both motions. He [noted](#) that "talking points" circulated by the district to explain the fees explicitly stated that one rationale for the \$750 was to "prevent individuals from leaving the school district at the last minute."

Citing prior case law stating that a sum inserted into a contract to prevent its breach qualifies as a penalty, Lopez said a jury should decide whether the liquidated damages were appropriate. He also said the calculations cited by the district for arriving at the figure were insufficient to meet the pre-estimation requirement for liquidated damages.

The Georgia Court of Appeals declined to the district's appeal, and the case went to mediation earlier this year, where the details of a settlement for all 150 teachers penalized by the fee were substantially agreed upon.

The board's final approval was necessary for it to be completed, and on Monday night the board approved the settlement.

Oinonen congratulated her opposing counsel, Moulard, for "his civility and ethical professionalism shown throughout the case," and also praised Lopez for shepherding the case to settlement.

Oinonen also hailed the school board and superintendent "for the great leadership example they have set for other school boards to follow by putting a moratorium on the liquidated damages provision in teacher contracts this year and returning the \$750 fee to 150 educators."

"It is our hope they continue to uphold the moratorium in the future and that other school boards will follow their lead to stop this unlawful, unconstitutional restraint on trade against the teaching profession," she said.

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