

supplemental contracts are a distinct type of limited contract, granted for duties in addition to teaching, and that the automatic renewal provisions that apply to limited teaching contracts do not apply to supplemental contracts. The court did not clearly address the issue of whether, in the absence of a specific termination date, a supplemental contract given to a teacher concludes at the end of the school year or whether a longer term may apply.

In view of these decisions the contract should clearly state that all supplemental duties automatically terminate when the contractual activity ends for the school year. One example is a contractual provision to coach “through the regular season and all applicable tournament rounds.” Another is to “advise the yearbook for the 200_ school year.” By specifying contract length, districts may be able to avoid claims for multiyear supplemental contracts. Failure to provide a clear expiration date may result in the unexpected scenarios of two appeals court decisions.

One court held that where a teacher had been granted a continuing contract that specified a certain amount of extended service but did not include an expiration date for the supplemental duties, the board will be presumed to have granted an extended service contract for the maximum period allowable for a limited contract (five years) (*Swaykus v. Board of Education of the East Holmes Local School District* (Feb. 7, 1983), Holmes App. No. CA 338, unreported).

Another court held that a notation on a basic teaching contract relating to “extended service” results in the creation of an independent supplemental contract that will be presumed to be of the same duration as the underlying teaching contract, provided the supplemental contract does not recite the term of employment (*Beifuss v. Westerville Bd. of Educ.* (Dec. 18, 1984), Franklin App. No. 83AP-775, unreported).

A board should ensure that the negotiated agreement and the individual contracts specify clear termination dates.

Nonrenewal of supplemental contracts

At one time, the Ohio Supreme Court held that since a supplemental contract is defined by statute as a limited contract, it was controlled by the procedural requirements for nonrenewal of limited contracts under RC 3319.11 and thus was subject to automatic renewal for failure of a board to give written notification of intent to nonrenew on or before April 30 (*Tate v. Westerville City Bd. of Educ.* (1983), 4 Ohio St.3d 206).

However, the legislature’s enactment of House Bill 330 in 1988 altered the method by which supplemental contracts can be nonrenewed. Supplemental contracts for certificated employees now are exempt from the evaluation, notice and hearing provisions applicable to all other limited contracts (RC 3319.11(I)).

Language now may be incorporated into supplemental contracts providing for a specific termination date, eliminating the need for later board action. For nonteaching holders of supplemental contracts, the routine nonrenewal of all expiring supplementals by April 30 still is recommended.

If the state board suspends, revokes or limits the pupil-activity program permit of a nonlicensed individual, the school district may terminate or suspend that person’s employment contract.

In the case of extended service contracts, the Ohio Revised Code no longer requires the board to hire certificated individuals as a condition for foundation funding. The Ohio Supreme Court also has held that extended service contracts are supplemental contracts that in the case of teachers expire automatically each year (*Hara v. Montgomery Cty. Joint Vocational School Dist.* (1996), 75 Ohio St.3d 60).

Since an extended service contract is separate from a teaching contract, a board of education may reduce the terms of these contracts in accordance with district priorities, regardless of the length of an individual’s teaching contract. Of course, this is subject to any applicable collective bargaining agreement.

Continuing contract status for supplemental duties

The Ohio Supreme Court has held that continuing contract status cannot be obtained with respect to supplemental teaching duties, even though a teacher has attained tenure under a regular teaching contract (*Tate v. Westerville City Bd. of Educ., supra*).

A court of appeals has held that where a teacher’s continuing contract provides for supplemental duties such as “extended service,” the board will be presumed to have granted the teacher a supplemental contract for the maximum period allowed for limited contracts, which is five years (*Swaykus v. Board of Education of the East Holmes Local School District, supra*).

Again, the best way to avoid this issue is to set forth the terms of the supplemental contract in a separate document with a specified term and termination date.

Bargaining implications

When negotiating collective bargaining provisions relating to supplemental contracts, the board must consider the implications of the RC Chapter 4117. Since provisions relating to supplemental contracts directly involve terms and conditions of employment, they constitute mandatory subjects of bargaining.

Since supplemental contracts are by law limited contracts, negotiated provisions relating to limited contracts might be construed to apply to supplemental contracts as well. The Ohio Supreme Court has noted that supplemental contracts for teachers do not automatically renew pursuant to RC

3319.11. But a board should be familiar with the conditions of dismissal and nonrenewal that the bargained agreement imposes. The failure to comply with any negotiated requirement might result in the invalidation of board action to nonrenew or terminate a supplemental contract. Many negotiated agreements specify that all supplemental contracts automatically nonrenew at the end of the school year.

Retirement contributions for supplemental service

The Ohio attorney general has opined about retirement contributions for individuals who are employed to direct or coach a pupil-activity program. Such duties should be considered to be “certificated” when performed by a teacher and “noncertified” when performed by a nonteaching employee. Contributions for supplemental duties by a teacher should be made to the State Teachers Retirement System, and contributions made by noncertified coaches, directors, and pupil activity supervisors should go to School Employees Retirement System.

Sick leave accumulation for supplemental service

Confusion exists as to how a school district should calculate sick leave with respect to supplemental duties.

According to the auditor of state, school districts have discretion to adopt local policies regarding sick leave accumulation for supplemental contracts. Accumulation for supplemental service can be accounted for separately if local school district policy so permits.

The state auditor permits sick leave record keeping to be done on an hourly basis, rather than by entire days. But calculations still are based on the total average hours worked per week and computed at the regular rate of 1 1/4 days per month.

Overtime

Supplemental duties count as potential overtime hours for nonteaching employees. These hours must be carefully and accurately recorded for the supplemental contract and any nonteaching position. The hours of both positions must be aggregated for overtime purposes. To avoid paying overtime, a board can reduce the total hours, but pay the employee at the same hourly rate, subject to any applicable collective bargaining agreement (*Ohio Ass’n of Public School Employees, Chapter No. 672 v. Twin Valley Local School Dist. Bd. of Educ.* (1983), 6 Ohio St.3d 178).

School officials should pay especially close attention to supplemental contract overtime issues. An increasing number of school districts have been liable for Fair Labor Standards Act claims in recent years.

The information in this pamphlet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.

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The ins and outs of supplemental contracts



The nature of a supplemental contract

This brochure is designed to provide school personnel with a better understanding of supplemental contracts and their legal requirements.

The information in this brochure is of a general nature. Readers should seek the advice of legal counsel when specific problems or questions arise concerning supplemental contracts.

What is a supplemental contract?

State law requires boards of education to issue written supplemental contracts to teachers who receive compensation for performing duties that are in addition to the teacher's regular teaching duties (Ohio Revised Code Section (RC) 3319.08).

The determination of what "additional duties" are depends to a large extent on what the teacher's regular duties include. The Ohio attorney general has opined that a board of education, by its employment contract with the teacher, designates what shall exactly constitute "regular duties" and "additional duties," and determines the amount of compensation relative to each, as authorized under RC 3319.08 (1969 Ohio Atty. Gen. No. 025).

In practice, boards award supplemental contracts for additional duties such as athletic coaching, supervision of extracurricular activities and clubs, extended service and advisory positions.

It also would appear legal to issue a supplemental contract as compensation for certain cultural and professional activities such as graduate work, publication of articles and summer travel experience (1958 Ohio Atty. Gen. No. 3145 and 1974 Ohio Atty. Gen. No. 082). It generally is not advisable to issue supplemental contracts for the discharge of extra in-school duties or extracurricular activities performed during the course of the contract. Training, education and experience

are more easily and better recognized through increments on the salary schedule (*Anderson's Ohio School Law*, Section 7.10).

May a district that traditionally has assigned extracurricular duties to a teacher through board rules and regulations without entering into a supplemental contract continue to do so?

Case law interpreting RC 3319.08 indicates that unless otherwise provided in a collective bargaining agreement, the board must issue a supplemental contract to teachers who perform duties in addition to their regular teaching duties. The Ohio Supreme Court has held that where a school board authorized a separate salary for extracurricular duties performed in addition to regular teaching duties, RC 3319.08 requires issuance of a supplemental contract to the teacher (*Wolf v. Cuyahoga Falls City School Dist. Bd. of Educ.* (1990), 52 Ohio St.3d 222).

The court recognized that boards retain the right to include extra duties such as coaching or advising in a teaching contract by means of a negotiated agreement. In fact, the decision affirmed the validity of an earlier appeals court decision approving a negotiated agreement that specifically assigned extracurricular duties under the teaching contract (*Ballard v. Board of Education of the Goshen Local School District* (1984), 13 Ohio App.3d 439).

From a management perspective this arrangement of duties may be unwise. Before acting to condense what would be separate supplemental duties into one teaching contract, the board should consider that it is much more difficult to nonrenew a limited teaching contract than a supplemental contract. By consolidating extracurricular duties within a teaching contract, the board may unwittingly deprive itself of options it otherwise would have to bring someone else

into the supplemental position if problems arise. Hiring individuals under supplemental contracts that automatically nonrenew protects the board and students from unforeseen difficulties.

These cases also teach that any change to the teaching job description is likely to be a substantial change in the terms and conditions of employment and a mandatory subject of bargaining. As a caution, a board that is considering assigning extracurricular duties to teachers without issuing supplemental contracts should consult legal counsel.

Can an administrator serve under a supplemental contract?

Certified administrators may be eligible for supplemental contracts. RC 3319.08 authorizes the issuance of supplemental contracts to "teachers." RC 3319.09(A) defines "teacher" as including any individual, certified to teach, who is currently employed in certain designated administrative positions. Thus, a qualified administrator may be entitled to the statutory preference afforded teachers for supplemental contracts. A district also may preclude administrators from specified supplemental positions by contract or policy.

Procedure for employment under a supplemental contract

By law, a board of education must first seek qualified certificated individuals before selecting a noncertificated person to perform services under a supplemental contract. Note that under the law, a certificated nonemployee of the district has equal status with a certificated school district employee. Your bargaining agreement may give preference to current staff members. Boards of education should follow the employment procedures established under RC 3313.18 and 3319.07 when engaging teachers under supplemental contracts. Under RC 3313.18,

upon the superintendent's recommendation, a motion to employ an individual under a supplemental contract requires an affirmative vote of at least a majority of the full board. Any individual hired for coaching or supervising a pupil-activity program must meet the minimum qualifications as established by the State Board of Education (Ohio Adm.Code 3301-27-01 et seq.).

RC 3319.07 specifies that no teacher may be employed in a city, local or exempted village school district unless he or she has been nominated by the school district's superintendent. By a three-fourths vote of its full membership, the board may reemploy any teacher whom the superintendent refuses to nominate.

Hiring a noncertificated or nonlicensed person

The procedure for hiring noncertificated individuals under supplemental contracts is found in RC 3313.53. Only candidates that hold a valid pupil-activity program permit issued by the state board of education under RC 3319.303(A) may be considered. Before employing such persons, the board must by resolution affirm that the position has been offered to certificated district employees and that the board has not found a qualified employee. The board's resolution also must recite that the position has been advertised to any qualified certificated person not employed by the board and that none has been found.

Once these procedures have been followed, the board may hire a qualified candidate who does not have a teaching certificate. Notably, the statutes require the superintendent's nomination for all teachers, but no such requirement exists for the employment of noncertificated individuals. For noncertificated persons, a superintendent's recommendation, although common, is merely advisory.

An often-asked question is whether a board of education must offer a coaching or supervisory position for a pupil-activity program to a certified employee of the district who indicates interest, when the board believes a noncertificated candidate would be best qualified for the position. In some districts, the collective bargaining agreement may require the board to fill all supplemental contracts with certificated personnel. In the absence of such a provision, the board generally has discretion to determine qualifications of candidates.

Despite statutory language providing that a teacher who meets minimum job qualifications must be given first preference for the position, some case law indicates that the board of education is not compelled to employ a certified staff member in this situation. The courts have concluded that a board decision as to who is "qualified" is subject to deference and will not be overturned absent an abuse of discretion.

In one case, the court held that RC 3313.53 does not impose any obligation to hire an applicant from the staff to fill a supplemental position, even if all the other preconditions other than the board's actual vote have been met (*Gardner v. Liberty Center Local Schools Board of Education* (June 1, 1982), Henry App. No. 7-81-14, unreported).

Another court has reasoned that a certified person is not automatically "qualified" for a supplemental position, and the determination of a person's qualifications is a matter entrusted to the board of education that cannot be overturned absent a showing that the board's decision was an abuse of discretion (*Harrah v. Harrison Hills City School District Board of Education* (Aug. 11, 1981), Mahoning App. No. 369, unreported).

If a board of education decides to employ a noncertificated person over a certified employee who is both qualified and has expressed an interest in the job, the board

should have very specific reasons for its determination that the noncertificated individual is the better qualified applicant for the position.

After a noncertificated person has been granted a supplemental contract, RC 3313.53(D)(2) allows the board to renew the contract without first offering the contract to any qualified certificated person and without adopting the resolution required for the initial award of such a contract. RC 3313.53(D)(2) seems to permit a school district to renew such a contract for one or more years. However, RC 3313.53(F) limits these supplemental contracts to one year. Therefore, whether multiple-year contracts are permissible is not clear from the statute. Renewing a supplemental contract for a term not to exceed one year avoids this potential uncertainty.

Format and terms of supplemental contracts

RC 3319.08 and related court decisions define supplemental contracts as "limited contracts." But only some of the traits of limited teaching contracts apply to supplemental contracts. A supplemental contract must be in writing, specifying the additional duties the teacher must perform and the salary. A supplemental contract also should have a clear statement of its duration, especially the date of termination. A supplemental contract should contain language to the effect that the teacher agrees to perform the duties of the supplemental position as prescribed under Ohio law, board rules and regulations under any relevant job description adopted by the school board.

Unfortunately, two Ohio Supreme Court decisions addressing the issue of supplemental contract length are somewhat unclear. In *Hara v. Montgomery Cty. Joint Vocational School Dist.* (1996), 75 Ohio St.3d 60, and *State, ex rel. Savarese v. Buckeye Local School District Bd. of Edn.* (1996), 74 Ohio St.3d 543, the court reaffirmed that