



Community College “Last Chance Agreements” Unenforceable, Will Apply to K-12 Certificated Employees

In Farahani v. San Diego Community College District (July 28, 2009, D054087) __ Cal.App.4th __ [2009 WL 2232205], the Fourth Appellate District held that Education Code section 87485 rendered a “last chance agreement” between a community college district and a member of its faculty null and void.

After several reported incidents of misconduct, Sam Farahani, a college faculty member, executed a last chance agreement with San Diego Community College District, requiring him to refrain from further misconduct for 18 months. The agreement provided that, should Farahani fail to comply with the terms of the agreement, he would be subject to termination at the chancellor’s discretion without the right of appeal. Farahani was terminated 18 months later following further reports of misconduct. Subsequently, Farahani filed a petition for a writ of mandate requiring the District to reinstate him and provide back pay.

The appellate court affirmed the trial court’s ruling granting the writ of mandate, holding that Education Code section 87485, rendered the last chance agreement unenforceable. Section 87485 is found within Chapter 3 of the Education Code, which contains a wide range of sections relating to the employment of faculty, including the classification of faculty positions, the calculation of service to tenure, and a description of evaluation and discipline procedures. Specifically, section 87485 provides that “any contract or agreement” to waive any of the benefits described Chapter 3 is “null and void.”

The court was emphatic that section 87485 applies to any agreement to waive any of the benefits set forth in Chapter 3, and rejected the District’s contention that its affect is limited to waiver of tenure and classification rights. The court also rejected the District’s argument that Farahani’s right to appeal was a private right he could lawfully waive, holding that the employment rights guaranteed by Chapter 3 were enacted for a public purpose and are incapable of being waived through a private act.

The court’s decision undercuts the utility of last chance agreements; only those agreements that preserve the faculty member’s due process rights in full are likely to be enforceable. Further, we note that the practical impact of the court’s decision is likely not limited to the community college context. Education Code section 44924, applicable to certificated employees in elementary and secondary schools, contains language nearly identical of that in section 87485, suggesting last chance agreements would be equally unenforceable with certificated employees.

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