

REFLECTIONS ON THE SUPERINTENDENT'S CONTRACT

by

OUTLINE OF SUPERINTENDENT'S CONTRACT

New York State

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The contents of this document are general information and advisory only. Other opinions exist. Any prospective superintendent entering into contract discussions with a board of education should be represented by an experienced advisor knowledgeable of superintendent contract law in New York State.

Education law provides that the Superintendent be appointed for no less than 3 years nor more than 5 years. The law doesn't actually require that this take the form of a contract, but this is strongly recommended. The contents of every superintendent's contract vary. NYSCOSS provides a model contract. However, every piece of that model will most likely not be available to an individual; you have to pick and choose those aspects that are most important to you in your unique situation. There are two basic components of the contract; 1 - salary and benefits, and 2 - the legal aspects. You want to ensure that you have very good protection regarding termination as superintendents are not tenured. For the most part, the superintendent operates as an "employee at will" and employment with the district can be terminated for a variety of reasons.

Advice is given to the prospective superintendent not to engage in direct discussions with the Board's attorney during the contract negotiations. If the Board's attorney is involved in discussions, you should ask to have your attorney respond to them. The Board's attorney works for the Board and not for the candidate.

The general content of the superintendent's contract, along with the advice of two expert consultants, follows:

A. TERM OF EMPLOYMENT AND WORK YEAR

The term is between 3 and 5 years. If possible, you would like the term to run consistent with the school year (July 1 – June 30) no matter when you are actually appointed. This coincides with the normal cycle of the school year, and gives you the greater flexibility if you should leave the district for another position. If you do not start employment on July 1st, you can request that the term of your employment end in 3+ years, with an end date of June 30 in any case.

B. DUTIES AND RESPONSIBILITIES OF SUPERINTENDENT AND BOARD

1. Regular duties and responsibilities
2. Other employment
3. Certification
4. Notified of and shall have the right to attend all meetings of the Board, including executive sessions of the Board, except that the Board may exclude the Superintendent from any portion of a meeting during which they are discussing his performance or salary.
5. The Board, individually and collectively, shall promptly and discretely refer to the Superintendent, in writing, for his study and recommendation, any and all criticisms, complaints, suggestions, communications or comments regarding the administration of the District or the Superintendent's performance of his duties.
6. Medical exam - District to pay costs in excess of insurance - in lieu §913

This section varies from very broad and general, to the attachment of a detailed job description. Neither approach is right or wrong, and is often guided by what the district is used to doing. You may want provisions for other employment, for example to teach a course at the college level or to do consulting or public speaking. The customary language to address this is that you will have the opportunity to pursue other employment as long as it doesn't interfere with your normal job duties. It's also customary in this section to note the provision for maintenance of your certification as a condition of continued employment.

You really would like to ensure the provision that you shall be notified of and have the right to attend all meetings of the Board, including executive sessions of the Board, with the exception that the Board may exclude you from any portion of a meeting during which they are discussion your performance or salary. By including this in the contract, you can not be excluded from attending all meetings of the Board, including executive sessions.

Another area you would like to include is to obligate the board to tell you about problems as they become aware of them. This places an affirmative obligation on the BOE to communicate issues to you in a timely manner. Sample wording might be, "The Board, individually and collectively, shall promptly and discretely refer to the Superintendent, in writing, for his study and recommendation, any and all criticisms, complaints, suggestions, communications or comments regarding the administration of the District of the Superintendent's performance of his duties." This is tied to later language re: termination procedures. You should not be subject to discipline or termination for issues not brought to your attention.

A final area that may be covered in this section is generally at the Boards' request that you have an annual physical examination to determine your fitness for the job. This doesn't mean disclosure of personal information, but a written statement from the physician verifying your general fitness to perform the duties of the position.

In terms of the detail of the language of the job responsibilities, a key area to include is, “the superintendent has the right to transfer staff”. Typically, Board’s request this be done with “Board approval”. It is preferential for the superintendent to word this as “with notification of the Board”, rather than with their “approval”. Over time, superintendents work hard to get these and other important prerogatives established in their contracts, while still being respectful of the district’s traditions. Often, the spelling out of some of these specific responsibilities occurs as part of the Board’s annual reorganization meeting. These discussions can be a double-edged sword, however; when you bring up a certain item you bring attention to it, perhaps attention that the item doesn’t deserve. So, advice here is to prioritize and include only those items of significant important to your ability to do your job with the necessary authority and discretion.

C. COMPENSATION

1. Salary
2. Bonus
3. Longevity
4. Date of determination
5. TSA Contribution

Salary is typically set in relationship to other local districts comparable in size to yours. NYSCOSS and the local District Superintendent can be helpful in sharing these with you. It is increasingly likely that you may start at a salary similar to or even higher than the superintendent who is leaving, although this is not always the case, particularly if the superintendent leaving has been with the district for many years. This is being driven by supply and demand for the position. You should also include language that prohibits the Board from lowering your salary in subsequent years.

Bonus or merit pay (which is becoming more and more common in contracts) are used by Boards when they want their superintendent to reach certain goals and offer to compensate you when they are attained. If you are in any Tier other than Tier I, you want to concentrate on salary and salary only. Other compensation will not count in your FAS (Final Average Salary) for purposes of retirement unless it becomes part of your based salary in the following year. If such payments are seen as a one time payment, it will not be credited in your FAS.

Longevity is also helpful to you if you either plan to stay in the district for a long time.

Date of Determination refers to a date by which the Board will formally determine your salary for the next school year. A practical time to do this would be at budget time, to allow planning for that payment. Many districts prefer to wait until June or July, however. Some superintendents and Boards set the salary in December or January (sometimes effective July 1), to keep the decision away from the pressure of the budget process.

TSA contributions are very helpful to you, but also will not count in FAS unless you are in Tier I.

It's important to recognize that the retirement system is cracking down on what they will allow as part of the FAS. They will always go back at least 5 years to watch for patterns of benefit and salary. You are advised not to wait until the last 3 years of employment to convert benefits to salary as TRS is not likely to accept those changes for purposes of calculating FAS. For example, if you have had health insurance provided for the last 10 years, and in the final 3 years they see that you no longer receive benefits but have had an increase of \$10,000 in salary, they are likely not to include it. Depending upon the Tier you fall into, there are limits on the annual percent increase allowed. Even within those limits, if you've historically received a 3-5% increase and in the last 3 years you receive 10%, it has been upheld that you will be limited, in terms of your FAS, to the percent increase that you have historically earned. You simply can not "write around" this limitation. When changing districts to achieve a higher salary, the caps continue to count in the first year of your new employment. So, if you need three years for your FAS, you will actually need to work for 4 years.

Boards generally set annual salary increase and do not opt for multi-year pre-specified increases. One reason for this is that bargaining units will look at the percent of your raise when negotiating their own. This can "set the bar" for their own expectations and can become a source of difficult public relations.

You are urged to use care if the salary is advertised as a "range", and should have a discussion about where you expect to fall within that range fairly early on with the search consultant or DS. Boards often seem to carry the low end of that range in their collective minds and you may be thinking of yourself as falling into the higher end of the advertised range.

When offered the job, don't make the mistake of going in and meeting with the Board President or their attorney to discuss details of your contract. Ask to bring your attorney to that initial meeting or have the two attorneys meet.

Prioritize. What's critical to you? For example, if you are near retirement and expect health insurance in retirement, explore this option early on with your potential employer. If instead you need time to raise children or to care for parents, identify that. Determine what you need and whether it's attainable before you leave where you are. It was suggested that when you are invited back as a finalist (one of three or four candidates), if these issues aren't asked of you, that you bring this up. For example, you may say that you are very interested in the position, and hope that you are selected and that you expect that your salary would fall in the upper end of the range advertised. It's often a good time to get a commitment from the Board regarding the range.

NOTE: The Board attorney's involvement in the details of the contract varies across the state.

D. ANNUAL GOALS, OBJECTIVES AND EVALUATION

These vary from the simple adherence to Part 100, which requires only that an annual evaluation, be completed, to contracts that include detailed and complex procedures. In this section, you are looking for goals that you are comfortable with and that are manageable. Beware of unreachable goals, and those that aren't measurable. Make sure that you understand what the Board means by each goal and that a date of review is attached to these. Typical items might relate to completion of all staff evaluations, or a specified improvement in student test scores. Often, goals may relate to problems encountered with the previous incumbent. In general, you are encouraged to keep these as simple as possible and follow the adage "under promise and over deliver". Often, these goals are set jointly, through conversation and dialogue with the Board.

E. BENEFITS

1. Sick Leave:
 - a. Credit up front - up to amount needed for disability insurance
 - b. Accumulation without limit
 - c. Pay for unused sick leave days
 - d. Family illness days
2. Bereavement Leave
3. Personal Leave
 - a. Accumulate as sick leave days.
4. Vacation Leave
 - a. Payment at end
5. Conferences
 - a. how many and/or how much money
6. Holidays
7. Insurance:
 - a. Health Insurance
 - b. Dental Insurance
 - c. Insurance in Retirement
 - d. Life Insurance
 - e. Disability Insurance
8. Residency /Moving Expenses
9. Mileage Reimbursement
10. Association Dues
11. Automobile
12. Professional Development / Continuing Education
13. Other Expenses (i.e. cell phone, home computer / fax, PDA, etc.)

You must avoid language that states the "me too" clause, that you will receive the benefits accorded to everyone else. Under the law, your benefits can not be expressly tied to those of other bargaining units. They may well be aligned, but can not explicitly state this. At the same time, you should look at what others get and try to build off of that.

Typical benefits include: sick leave, bereavement leave, personal leave, vacation leave, conferences, holidays, insurances, residency/moving expenses, mileage reimbursement, association dues, automobile, professional development/continuing education and other expenses.

Sick Leave If you are moving from one district to another, try to get a bank of days up front, especially if you've accrued a lot of days that you don't want to leave behind. It's preferred to include language that allows you to accumulate those days without limit. Payment for unused sick days is becoming less and less common. Boards tend to treat this provision as a form of insurance. If you need it, it's there for you, but they are increasingly reluctant to offer you cash for these days when you leave. If you are nearer retirement, you may look for conversion of unused days to help pay for your health insurance in retirement.

Bereavement In this section you should look towards clarification of those people to whom this will apply.

Personal Leave You may look to convert unused days to your sick leave bank.

Vacation Leave Unlike sick leave, Boards are more likely to offer payment for unused vacation days. These days are seen as more of an entitlement than are sick days. Typically, new superintendents are offered 20-25 days/year for vacation leave. It is often difficult to actually take these days off, particularly when you are starting a new position. Here, the provision that you will receive payment for unused days is a helpful benefit.

Conferences Here you may state the number of conferences or days allowed and the amount of funding available to support your attendance at conferences.

Holidays This section lists those days that will count as paid days off from work.

Insurances: Health, Dental, Insurance in Retirement, Life Insurance and Disability Insurance

You'll want to know what others in the district receive and the percentage of the premiums that are paid. Generally, what you are provided follows what's available to others, and may provide a bit more. It's reported that disability insurance is being offered less frequently, but this may be important to you to negotiate if you are the sole provider for your family or have young children. Perhaps the most critical of these to ensure is the provision of health insurance in retirement.

Residency/Moving Expenses If you are required to move, you'll want a provision for moving expenses. A lot of districts seem to be moving away from the residency requirement, at least partly in response to the shrinking candidate pool. However, if you make a promise of residency, you must fulfill that promise. Failure to do so is a breach of trust and Boards have terminated a superintendent for failure to honor that commitment.

Association Dues Here you may wish to establish that the district will pay for your membership in associations that are important to you, e.g. NYSCOSS, NYSASBO, NYSSBA, etc.

Automobile This is being seen less frequently in contracts. Generally, districts will opt to pay either mileage reimbursement or a flat amount monthly. The flat amount is preferable for you as you will not have to keep detailed records, however, the amount should be reasonable and based on actual distances customarily driven for your work.

Professional Development/Continuing Education If this is an area of importance to you, raise it here. Districts may help to defray these costs, offer tuition payments for completion of advanced degrees, or payment for credits accrued. Of importance if working on an advanced degree is the Board's support of to time you will need.

Other Expenses Cell phone, home computer, fax, PDA would go here. You should be certain to be clear that the intent is for work-related activities only. If you intend any of these for personal use, you are advised to provide those services at your own expense.

Sections F and G (Agreement Renewals and Agreement Termination) are the most important part of the legal contracts.

- F. AGREEMENT RENEWALS
1. At least one year in advance of termination
 2. Evergreen Clause
 3. Extension - get new contract; possibly addendum
 4. No Fault Terminations - serious problems!
 5. Date of Extension - Boyle case

Here you are looking to ensure that a date is established by which the Board will inform you if they are or are not going to extend your contract. You may well wish to have this date set at the end of your first year of employment in a three year contract; however, most Boards want to wait until the end of the second year. If you are on a 3-year contract, you should include language in this section that you will know, in writing and through formal action by '06 that you will be extended to '09. The point is to establish a date and that it is at least one year in advance of the end of your existing contract.

Evergreen Clause Means different things to different people. In essence, it means that you have a "rolling contract", and at least a three year agreement at all times. You will also want to have this determined by a Board action rather than to rely on inaction; "if the Board does nothing, the contract is automatically extended". In rulings by the Commissioner, he has shown a reluctance to rule for things that occur as a result of inaction.

Contract Extension You do not need to completely rewrite your contract each year. It is customary to simply add an addendum when you extend annually.

No Fault Termination Walk away from these! If this clause is in your contract, the Board can decide to terminate you without cause. They may still have to pay you through the end of the year or through the end of your contract, but your benefits typically end, you do not accrue time towards retirement and it will definitely hurt your chances for future employment. You should avoid this clause as it basically means that you have no employment contract.

You are reminded, at this point, never to resign your old position until you have a signed contract and have been appointed by the Board. Contract negotiations can be a dangerous time for the candidate. You may want to take a look at the contract of the incumbent (and NYSCOSS can help you acquire this). You will have done a lot of homework to prepare for the interview process, and an understanding of positions the Board may take on this and other issues of critical importance to you is one part of your "homework" as you scan the district. When there is either a hardening of positions or one side gives in but isn't happy about it, things can go badly. Flexibility, honesty, and your ability to prioritize those elements that are critical to you are important. These are not "typical" negotiations, there should not be "throw away" items introduced - just those things that really matter to you - salary and benefits and the legal considerations.

- G. AGREEMENT TERMINATION
1. By Superintendent on notice
 2. By mutual agreement
 3. For Cause
 - a. Binding Arbitration
 - b. Advisory Arbitration
 - c. By Board - Get narrow definition of cause

By Superintendent on Notice This is a desirable clause and is typically set at 60 to 90 days, with 60 being preferable to the candidate. If you leave the district, the new district will want you to be able to begin as soon as practicable. Boards are often willing to waive this provision in the event that they would like to see you move on as quickly as possible. However, you will want to ensure that you have conducted the critical business of the district before leaving in any case.

By Mutual Agreement This is a typical inclusion in many contracts.

For Cause:

With Binding Arbitration You will want binding arbitration, and most Boards will agree to this clause. Some Boards may want you to have been with the district for a few years, often 3 years, before they will offer the inclusion of this language.

Advisory Arbitration If you are unable to get the first clause (binding arbitration), you want at least advisory arbitration through a third party.

By Board If this is the best you can do in this section, you will want a very narrow definition of what constitutes "cause". This should not be vague or addressed in general terms, e.g. "incompetence". The candidate should insist upon binding arbitration or advisory arbitration, and if it comes to this clause then it should be as narrow and specific as something like dismissal "for conviction of a felony crime".

In general, Boards still commonly agree to binding arbitration. However, if you find yourself, down the road, in a situation where you and the Board are at the point of employing any of these clauses, you should really begin in earnest to look elsewhere and look to temporary solutions such as agreement to time to find new work or to at least receive a buyout. It rarely comes to this, and these first two clauses serve as leverage to, in fact, avoid situations like this.

H. DISABILITY

As defined in disability policy

Here, you spell out what occurs if you become disabled. If the Board wants this provision, you will want to be sure that the determination of disability is made by a physician and not by the Board itself.

I. INDEMNIFICATION

This ensures that the Board has an obligation to provide you with a defense and legal representation if a lawsuit is brought against you in the context of you performing your job responsibilities on behalf of the district.

J. SURVIVAL

In the event of a merger, this clause will ensure that your job is protected. This may be of particular importance if you are accepting employment in a smaller district.

**Remember to take your oath of office
every time you renew or extend your employment and have it notarized.**
(Suggestion: Take once a year at the Board Reorganizational Meeting.)