

**SUMMARY, EXPLANATION
AND ANALYSIS
OF
SUPERINTENDENT
CONTRACT PROVISIONS**

**PREPARED FOR THE EXCLUSIVE
USE OF
MEMBER SCHOOL COMMITTEES**

**MASSACHUSETTS ASSOCIATION OF
SCHOOL COMMITTEES**

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CONTRACTING ISSUES WITH SUPERINTENDENTS

Below are some of the common elements of the employment contracts between the School Committee and superintendent. MASC has several sample contracts for the review of its members. MASC recommends strongly that School Committees consult closely with their district legal counsel during the planning, negotiation, and execution of the contract document.

CONTRACT PROVISION

COMMENTS AND RECOMMENDATIONS

TERM/LENGTH OF CONTRACT

Massachusetts law limits contract length to six years. Typical contracts run three years but there are many exceptions. A good contract should state the start date and the termination date. If the contract excludes a “roll-over” provision, the School Committee should specify that the contract excludes a roll-over. It has been the position of MASC that any contract that has been in place for six years should be revised and not extended.

ROLL-OVER PROVISION

Roll-Over clauses provide for an automatic extension of the contract. Most roll-overs automatically extend the contract by a fixed period of time, usually one additional year, unless the school committee specifically votes to notify the superintendent that it will not extend the agreement.

For example, in a typical roll-over provision, the School Committee must notify the superintendent of its intent not to extend the contract beyond the termination date. If the board fails to so notify the superintendent, the contract would be extended automatically for a specific period of time.

Notification dates vary. Some provide for an April 15th date, but others occur at any time during the year. Moreover, some contract clauses require as much as two, three or more advance years of notification. For example, one three year contract would normally expire in June, 2007, but if notification of intent not to renew is not provided by April 15, 2004, the termination date is extended to June 2008. Another contract uses a June 30 date but extends the contract life for two years if notice of non-renewal is not provided. At least one district offered a 6-year advance notice for the roll-over provision.

We strongly advise caution when including roll-over provisions in contracts because they weaken the position of the board over the long term. Some boards, wishing to demonstrate to others the level of faith and trust they have in their superintendents, will include such provisions right from the start, or after some period of collaboration with the superintendent.

CONTRACT RE-NEGOTIATIONS

Contracts may specify a procedure for re-opening the contract for any purpose, including to extend the life of the agreement,

or to redraft a whole new one. Contracts often include provisions to re-open negotiations for salary adjustments and for other benefits.

In most cases, the School Committee and/or the superintendent are required to notify each other of their interest in renegotiating provisions of the contract. The timetable for renegotiations and means of communicating this interest should be spelled out clearly in any contract.

TERMINATION DATE OF CONTRACT

Contracts should specify the date on which the contract will terminate. Moreover, the School Committee should include a termination notice requirement from the superintendent. These notices range from 60 days and beyond. It is important that boards be able to receive advance notice from the superintendent in order to organize a new search or replacement process. For this reason, contracts may include incentive clauses to assure that this notice will be provided. For example, some contracts provide a bonus of some kind for superintendents who remain throughout the life of the contract or for a specified number of years. Veteran superintendents are often able to secure better benefits of this kind. Incentives include the ability to “buy-back” unused vacation time or sick leave, a cash payment, or contribution to an annuity. (See below.)

PROCESS FOR RENEWAL OR NON-RENEWAL

The contract may specify how the contract is to be renewed, renegotiated, or not renewed. (See roll-over provisions, above and below.) School Committees should make this process as simple as possible for them to follow and provide for a majority decision. Some superintendents may seek a contract provision calling for a super-majority of some size (2/3 vote, 5 out of nine, etc.) of intent not to rehire, or the contract would be extended automatically for another period of time. Others may seek a public hearing on a decision not to renew.

NOTICE OF NON-RENEWAL

Dates for notifying the superintendent that the School Committee does not wish to renew the contract should be specified clearly. It is common for these dates to be set a year before the end of the contract. Some agreements have an earlier date, and some a later one.

JOB DESCRIPTION

Some contracts include the superintendent’s job description. Others refer to a job description approved by the School Committee without putting the actual document in the contract. Others are more vague. Any contract should, however, give the School Committee the right to change or negotiate modifications to the job description based on its determination of the needs of the school district.

DUTIES UNDER EDUCATION REFORM

Contracts should include provisions to require the superintendent to perform the duties of the position faithfully and to the best of one’s abilities. To comply with the law, the

contract should indicate that the superintendent will act as the executive officer of the School Committee.

School Committees should have an approved job description for the superintendent as part of its district personnel policies.

SUPERINTENDENT POWERS AND DUTIES

Contracts will frequently include language to assure that the superintendent will have the powers and responsibilities set forth in the Massachusetts Education Reform Act including the authority to a) direct and assign teachers and other employees; b) organize the administrative and supervisory staff; c) select, transfer, and place personnel; and d) hiring and firing of personnel.

Contracts may also specify how the School Committee will deal with criticisms, complaints, and suggestions by requiring the board to refer all such matters to the superintendent.

Superintendents may also seek language that the board will not diminish their power or authority and specify that all duties assigned by the School Committee will be appropriate with the professional status of the superintendent.

School Committees should be careful to link these provisions specifically to the law and consider carefully whether they want to relinquish some of their own statutory powers to the superintendent. These powers that are generally those of the School Committee may include meeting schedules, use of subcommittees, authorization of spokespersons, representation to external groups, or performance of duties that the law leaves with School Committees such as hiring of legal counsel, approval of line item budget transfers during the year, setting of policy, or negotiation of collective bargaining agreements.

PHYSICAL EXAMINATION

A holdover provision from the days when every employee had to prove they didn't have tuberculosis. It still appears in some contracts. It requires only that superintendents demonstrate that they don't have TB. However, districts may also wish to ensure that the superintendent is in good health.

COMPENSATION: SALARY

Compensation includes benefits as well as actual salary.

The contract should specify the salary, any pre-agreed adjustments over time, and milestones for which salary and compensation packages will be negotiated. Often the parties will agree to re-open the contract during its life to negotiate salary adjustments and changes in other economic provisions. Occasionally, salary increments will be tied to such items as a) outcome of annual evaluation; b) student achievement; c) district achievement based on various criteria; d) economic indicators such as the Consumer Price Index or the Cost of Labor Index (available on line from the US Department of Labor, Bureau of Labor Statistics); or some other criteria.

School Committees should be mindful that employees, including collective bargaining units, follow superintendent compensation trends carefully. They may call into question salary adjustments that exceed what the unions are getting for their members. Similarly, other local officials and media follow carefully the progress of negotiations and contract evolution with the superintendent. As a result, School Committees often consider valuable additional benefits that are specifically not “salary” to avoid the charge of extravagance or objections on the grounds of equity with other employees.

SPECIAL NOTE: In some cases, vacation leave, military leave, other forms of leave and sick time are accrued monthly or yearly. In other cases, the full complement of leave days is deposited into the superintendent’s leave bank on the anniversary date of the contract for use during the year. But what happens if the superintendent leaves mid-way through the year after a full bank of leave time has been deposited at the start of the year?

It is very important to specify how and when these benefits are accrued. For example, Superintendent Jones receives 30 vacation days, 15 sick days, and 15 special leave days on the first day of each contract year, and is permitted to carry over 30 days from year to year. In February, 2019, Jones decides to “retire” in late August by a) using the full allotment of unused days from 2018-2019, and b) because the unused vacation time extends past the following July 1 anniversary date, Jones also demands a full allotment of leave days for 2019-2020 even though he will retire in August. Thus, with over 75 days due, Jones can go on leave in late April and continue on the payroll until late August without appearing for work. This could have been avoided by limiting the number of days that can be carried over from year to year, and specifying that vacation, sick and other leave time to be used only as fast as it is accrued on a monthly basis.

END OF CONTRACT SALARY ESCALATION

Variations on what has come to be known as the “Lexington Plan” provide for salary escalators in the final three years of a superintendent’s service. This has the effect of raising the average high three year salary for pension calculation purposes. In some cases, superintendents agree to forego or sacrifice accumulated or general vacation, sick time, or other benefits for the purpose of loading up on pure salary. In most cases, there is little additional cost to the district, but significant pension benefit to the individual. NOTE: The state Teacher Retirement Board frowns on this process and has moved to restrict this kind of benefit.

OTHER FORMS OF COMPENSATION AND BENEFITS

(Also, see section on Evaluation)

There are many elements to the economic package superintendents will seek. They include the obvious ones

(vacation, sick pay, life insurance, etc.), but they also include items that are not obvious to the School Committee or the general public. Superintendents often seek economic benefits related to compensation that may be exempt from income taxes. These items, if you agree to include them, should be specified in the contract and are listed below.

Tax Sheltered Annuities. School department employees are eligible for tax sheltered annuities. They may make contributions from their own earnings or the employer may match them in whole or in part.

Using special provisions in the law, the School Committee may make additional contributions for the superintendent. These may require special arrangements that can be worked out with annuity brokers or with retirement counselors.

Annuities are not taxed as income until they are withdrawn. As a result, an annuity can represent an additional “virtual salary” that is not considered as a wage for accounting or reporting purposes.

The annuity provisions for superintendents can range from:

1. Allowing the individual to contribute to an annuity on one’s own.
2. Matching the individual’s contribution up to a specified point.
3. Contributing to the tax-sheltered annuity on behalf of the individual, his/her own contribution notwithstanding.
4. Contributing to an annuity that is not tax exempt.

Bonus for Remaining During the Life of the Contract: Some contracts provide a predetermined additional amount to be paid to the superintendent upon completion of a fixed amount of time – usually at the end of the contract life. Other contracts may allow for the “buy-back” of sick or vacation leave if the superintendent remains on the job for a fixed period of time. Other contracts allow for buy-back at the discretion of the superintendent regardless of length of service.

Tuition Reimbursement: Reimbursement for professional development or course work completed at an institution of predetermined status. If this is to be included, it should be specified in the contract.

Longevity. This provision is often found in contracts for superintendents whose tenure in the district dates back to their years as a teacher or principal. Because the individual would be entitled to a longevity payment as a teacher, it is argued that this longevity is consistent with rewards given to other employees for long term service. In other circumstances, a longevity payment may be based on the length of one’s career elsewhere. Longevity payments are not always linked to “salary” by those who report on superintendent wages.

Sick Leave: The contract should be clear as to the number of sick days provided per year and specify if they can be accumulated with or without limit, or bought back at a specified point in full or in part.

As with longevity, some superintendents who have risen from within a school district seek to protect and retain the sick days they had accumulated as teachers or administrators by specifying it in their contracts. For career employees, this can be measured in the hundreds of days. Note carefully that you may end up “buying-back” these sick days.

Sick Leave Buy-Back: Some sick leave buy-back provisions are linked to the provisions of teacher contracts. Note carefully that superintendents frequently play an important role in collective bargaining with unions. Linking their own buy-back to the language they negotiate with unions can be problematic.

Vacation: The contract should be clear as to the number of vacation days provided and should specify if they can be carried over from year to year. Specify clearly how many vacation days can be accumulated and whether they must be used for professional development, conferences, or other out-of-district meetings.

Vacation Buy-Back: Provisions that allow the Superintendent to exchange a specified number of unused vacation days for a pre-determined amount. As with sick leave, the buy-back provisions should be clearly delineated.

Bereavement Leave: Should be specified as to whose deaths would trigger bereavement leave. For example, some collective bargaining agreements include immediate family, other family members, in-laws, “dear friends,” “professional associates,” etc.

Personal Leave: These are usually days taken at the discretion of the employee that do not count against other forms of leave. Historically, some personal leave days have their roots in the desire to be absent for religious holidays.

Military Leave. School districts are often military veterans on reserve status, subject to activation or limited annual active duty status. Some contracts provide for paid leave as additional time off, or authorize leave within the scope of the superintendent’s normal vacation leave. Language usually assures the superintendent of the right to return to the position upon release from military duty. Recently, several districts across the nation lost superintendents to long term activation for military duty. The contract should specify what happens if military duty extends beyond the normal life of the contract or disrupts the evaluation or roll-over provisions.

Religious Days: Days off granted for religious holidays. MASC recommends that, if this benefit is included, they should be included as personal leave without specificity.

Days Before Holidays: Most often sought “days before holidays” occur when major holidays fall on Saturdays or prior to or immediately following major holidays when other workers are also off such as Independence Day, Thanksgiving, Christmas, New Year’s Day.

Insurance: This may include group health insurance for the employee and family members, Workers’ Compensation, Accidental Death and Disability, Disability Income Replacement, Life Insurance (see below) and automobile insurance.

MASC recommends that group health insurance should be provided under the same terms and conditions as that for other district employees.

Some forms of Life Insurance carry cash values that can be obtained in exchange for surrendering the policy. This includes Whole Life, Universal Life, and some other forms of coverage. Skillfully negotiating superintendents may seek these benefits because they incorporate a death benefit for survivors with a cash exchange value if it is the superintendent survives to the maturity date. As with an annuity, this benefit can be as valuable as cash and will not appear as salary.

REIMBURSEMENT FOR STATE PENSION CONTRIBUTION.

Your superintendent may contribute as little as 5% or as much as 11% to the MA Teacher Retirement System, depending upon the original entry date to the pension system. Some contracts include a provision to reimburse the superintendent for all or part of the amount contributed by the employee. In some instances, administrators may seek reimbursement for the cost of “buying back” previously earned pension time or other eligible pension time that state law may allow.

REIMBURSEMENT FOR CONTRIBUTION TO THE MEDICARE PROGRAM

While Massachusetts public employees are not part of the Social Security System and do not pay the Social Security payroll tax, most public employees in the Bay State do contribute to the Medicare Program in the amount of 1.65% of their earnings. Your district pays a matching amount for Medicare. Recently, some contracts have included reimbursement to the superintendent for this amount.

REIMBURSEMENT FOR TRAVEL, EXPENSES, AND DUES

The contract should specify how the superintendent will be reimbursed for expenses related to his/her work. (See below.)

Some superintendents travel extensively and participate as attendees or speakers at conferences. Some School Committees may use this section to limit out-of-state and national conference travel to what is appropriate for the district. Superintendents will usually seek reimbursement for dues for the MA Association of School Superintendents and the American Association of School Administrators as well as other national and state associations.

Reimbursement to local, state, and national conferences, professional development venues, academic institutions, and other related events may be included. MASC recommends that these expenses be specified as some conferences can involve extended travel, accommodations, and other costs.

Travel reimbursement by automobiles is usually set at a per-mile rate (the IRS sets a standard reimbursement rate) or by providing a pre-determined auto allowance, or by leasing a vehicle in full or in part.

Automobile insurance reimbursement may also be sought.

Cell reimbursement is a frequently cited contractual benefit as districts seek to maintain quick access to their administrators.

DUTIES AND RESPONSIBILITIES

Most contracts include the language of the law that defines the responsibilities of the superintendent of schools. In other instances, the contract may also include the job description of the superintendent. Job descriptions should always be qualified so as to allow the School Committee to make changes as the needs and policies of the district require.

GOALS AND OBJECTIVES

Contracts often include provisions for a process for setting goals and objectives to ensure that both parties have an opportunity to develop clear language about what is expected and how they would define success.

OUTSIDE PROFESSIONAL ACTIVITIES

Superintendents will appreciate a contract that allows them to attend professional meetings, engage in consulting work, accept speaking engagements, and other work. Districts should be very careful to include language that these duties should not interfere with the superintendent's work responsibilities. Some contracts specify the number of outside consulting days in which a superintendent may engage. School Committees may need to be very clear that they consider their school district superintendency the primary responsibility of the chief executive. In setting parameters on outside professional activities, the contract should specify clearly such items as professional days, consulting, conference reimbursement, and other time away from the district, and they should have a means of monitoring these benefits defined with appropriate language in their agreements.

CERTIFICATION

Some candidates, including those from out of state, may not have MA certification but they are probably eligible to receive it or to work with the Department of Education to obtain it under a transitional arrangement. State law and regulation do provide a transition period during which the superintendent-designate can obtain certification. While Massachusetts law and regulation are flexible in allowing districts to recruit and hire a superintendent from among a range of professional backgrounds and training experiences, your contract should specify how and when the superintendent will acquire state certification from the Department of Education.

EVALUATION

Massachusetts state law and Department of Elementary and Secondary Education are highly detailed with regard to evaluating the superintendent. In contracting, you may wish to leave the evaluation process to the discretion of the School Committee or include these provisions in the contract so that the superintendent will know the standards to which he/she will be held and the process for applying them. Superintendents are likely to want the parties to agree to a *mutually agreeable evaluation tool*. This has proven problematic in cases where the superintendent refuses to agree to the tool, standards, or process where local discretion is permitted. MASC also strongly recommends that the School Committee not bind itself unreasonably regarding the confidentiality of the evaluation process. Under the Open Meeting Law, discussions of professional competence must be in public. In addition, if a School Committee agrees to make the entire evaluation process, or critical parts of it, confidential, the public may fail to understand a decision not to renew the contract of an under-performing superintendent.

Similarly, the School Committee may expect broad discretion in carrying out the evaluation process. A frequent topic at national conferences for school boards is the contentiousness over which evaluations can take place, especially if the superintendent's contract limits the areas of evaluation or restricts the discretion of the board to raise issues as part of the process.

Some contract provisions challenge the School Committee to specify carefully, extensively, and with ample documentation the basis for unfavorable evaluations. Others have strict timeframes that require completion of the board's assessment by a certain date. If the School Committee does not complete the process by a certain time, they find their ability to terminate the contract compromised.

MENTORING, COACHING, AND EXECUTIVE COACHING

Many superintendents seek the help of assistance of experienced and knowledgeable people to guide, counsel, or mentor them. Several organizations, including the Massachusetts Association of School Superintendents, offer such professional assistance/mentoring for a fee. School Committees often urge their new superintendents to participate

in a mentoring program, and others support their veteran superintendents who make use of executive coaching.

DISMISSAL OR SUSPENSION

This is a very important provision for the contract. State law provides grounds for suspending or dismissing the superintendent during the term of a contract. (MGL, Ch. 71, Sec. 42 and 42d.) Your contract may also provide for additional grounds or processes.

In particular, you may wish to include a provision that would invalidate the contract if it were proved that the superintendent falsified any information on his/her application for employment or provided credentials that are fraudulent.

School Committees should be very cautious in agreeing to additional steps leading to dismissal or suspension that exceeds the requirements set by law. For example, the terms “cause,” “good cause,” and “just cause,” when used to define circumstances for dismissal, suspension, or otherwise sanctioned have very distinct definitions under the law and can require different degrees of documentation, proof, or process.

Conversely, School Committees may wish to set lower standards than the law requires by mutual agreement. Superintendents will be as reluctant to agree to lower standards as School Committees should be in concurring on higher standards for dismissal.

SEVERANCE OR BUY-OUT OF THE CONTRACT

The contract might contain a provision that allows the School Committee to terminate the contract at its discretion or in certain circumstances. This is usually linked to specified financial terms. Most often, the School Committee would agree to pay the superintendent for a range of time (including the life of the contract) even though the individual would no longer serve as the chief executive officer. The contract may require the School Committee to honor the entire length of the contract or a lesser period.

Some negotiators would seek language that would also include payment for unused sick leave, vacation time, or personal time as a condition or contract buy-out.

It is also not unusual for a School Committee and superintendent who fail to develop a mutually agreeable relationship to renegotiate the contract during its life to expedite a departure sooner than originally planned.

SEVERANCE FOR DISABILITY

Some contracts provide a specially identified period of payment for a disability occurring during the life of the contract. For example, a superintendent who is disabled and unable to work as a result of an illness unrelated to job performance may appreciate protection for an extended period

of time. Other extended disabilities related to the job, such as injury while traveling on district business, may benefit from Workers' Compensation insurance or from a disability insurance program.

STATE RETIREMENT PROGRAM

All superintendents desire a provision in the contract specifying that they are members of the Teacher's Retirement System established under Massachusetts law (Chapter 32, Sec. 2). The state's retirement program is generous to long term employees, but there are limits to the amount of out-of-state service that can be credited to the MA retirement system. The public pension system awards retirement benefits based on a formula that considers the number of years employed under the system, the age of the employee at the time of retirement, and the average salary for the highest three consecutive earning years. The system rewards lengthy service in the Massachusetts.

Some superintendents may use the fact that they are limited to the amount of out-of-state time they can "transfer" to the Massachusetts system as the rationale for a higher contribution to the Tax Sheltered Annuity plan or for other economic benefits, including an end-of-contract bonus, cash-value insurance, or other provisions.

Other provisions may seek to have the district pay the required contribution for the superintendent to "buy-in" time transferred from other states or for other eligible employment, or to "pay back" the retirement system for money withdrawn for some other purpose in earlier years.

Also: See Reimbursement, above, relative to reimbursement for State Retirement Contributions and Medicare payroll tax contributions.

INDEMNIFICATION

An indemnification section to the contract protects the superintendent from suit, claims, demands, and even legal costs for actions taken in the performance of duty. Superintendents and School Committees are often sued or named as defendants by those with claims against the district, the implications can fall years after the employees or board members have left their positions. A well crafted indemnification clause will protect the superintendent, School Committee, and the district. It will also exclude behavior of the superintendent that falls within the legal definition of malice, gross negligence, or other actions under MA General Laws, Chapter 257, Section 9. The provision will also require that the superintendent cooperate with the district in defending itself in the future against any claim, suit, or litigation.

PERFORMANCE PROVISION

This section specifies that the superintendent will fulfill all aspects of the contract. Any exceptions to the contract provisions should require mutual agreement between the School Committee and superintendent. This provision

protects the board, but clearly requires written documentation of changes.

ENTIRE AGREEMENT PROVISION

This provision specifies that the contract includes all terms and conditions and that there are no other inducements, promises, terms, conditions or obligation other than what is in writing in the document. It also requires that all contract changes be made in writing.

INVALIDITY PROVISION

This section protects both parties in case any section should be invalidated or found to be invalid. It specifies that the remaining provision of the contract will remain in force.

When the provisions of a contract are finalized, it should be formally approved by the School Committee. The board should designate an authorized person to sign the contract for the board, or each member should sign the contract. The superintendent should also sign the contract. Every member should receive a copy.

Final Guidance on Contracting:

- Get good legal guidance as you negotiate the contract. There are many provisions of contracts and contract law about which your counsel is an expert.
- Be comfortable with your understanding of all the contract provisions, including rollovers and compensation. If there is ANYTHING you do not understand or if there is something that you feel is unnecessarily vague or ambiguous, insist that it be clarified.
- Pay particular attention to any provisions that limit the role of the School Committee, reference state and federal laws and regulations, and otherwise bind the School Committee.
- Watch out for the impact of carried over leave time and the deposit of a full year's benefits on the anniversary of the contract without specified obligations that the days must be earned to be used. (See salaries and compensation, above.)
- Make clear that in negotiations is no agreement until all provisions are agreed to as a whole.
- Note that the superintendent's contract is a public document and must be shared with the public upon request. This is not negotiable, nor is this disputable.