



Hogan
Lovells



Negotiating Your Contract 2016 AASA National Conference on Education

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Who Should Negotiate Your Contract?

- You
- A lawyer



Pros and Cons of Negotiating Your Own Contract

Pros

- Can avoid paying legal fees, although it is possible to get legal fees to be paid by the board
- May make process more informal

Cons

- May not have legal knowledge/expertise
- May lack experience in negotiating contracts
- May make it difficult to work with board in future

Pros & Cons of Hiring a Lawyer to Negotiate Your Contract

Pros

- Have benefit of legal knowledge/expertise
- Have benefit of someone with experience negotiating contracts
- Provides an intermediary

Cons

- May be more expensive, but possible to get fees paid by the board as part of contract or side letter

Pros and Cons of Negotiating Your Own Contract

District/Board Used Legal Counsel to Negotiate The Employment Agreement

<i>Responses</i>	<i>2015/2016 Data</i>	
	Count	Percent
Yes	435/757	59.8%/54.4%
No	291/610	40.0%/43.8%
Omitted Response	2/25	0.3%/1.8%
Total	728/1392	100.0%/100.0%

- Somewhat more than half of the respondent superintendents indicated that the district used legal counsel to negotiate superintendent's contract.


Pros and Cons of Negotiating Your Own Contract

Superintendent Used Legal Counsel to Negotiate The Employment Agreement

<i>Responses</i>	<i>2015/2016 Data</i>	
	Count	Percent
Yes	179/374	24.6%/26.9%
No	548/996	75.3%/71.6%
Omitted Response	1/22	0.1%/1.6%
Total	728/1392	100.0%/100.0%

- In contrast to the use of legal counsel by the district, only about a quarter of respondent superintendents used legal counsel to negotiate their contract.

If you decide to hire a lawyer to negotiate your contract, what criteria do you use to select a lawyer?



Your lawyer should:

- Have an understanding of how school systems work
- Have experience working with school boards and an understanding of the role of school boards
- Have experience working with superintendents and an understanding of the role of superintendents
- Have some knowledge of your school district
- Have negotiating skills
- Have experience negotiating contracts

Negotiating a Contract: Knowing Your Legal Bounds



Be aware of the governing state and local laws and negotiate in light of those laws

Examples of State Laws

- Length of term
- Salary cap
- Severance pay

Negotiating a Contract: Knowing Your Legal Bounds

Is your 2016-17 contract base salary subject to a "cap" imposed by any of the following?

<i>Gender</i>	<i>Subject to "Salary Cap"</i>					
	Yes - Based on State Law	Yes - Based on District Policy, Reg. or Practice	No	Other	Omitted Salary Cap	Total
Male	70 (6.7%)	16 (1.5%)	937 (89.2%)	20 (1.9%)	7 (0.7%)	1050 (100%)
Female	17 (5.4%)	7 (2.2%)	285 (90.5%)	5 (1.6%)	1 (0.3%)	315 (100%)
Omitted Gender	2 (7.4%)	2 (7.4%)	3 (11.1%)	1 (3.7%)	19 (70.4%)	27 (100%)
Total	89 (6.4%)	25 (7.8%)	1225 (88%)	26 (1.9%)	27 (1.9%)	1392 (100%)

Negotiating a Contract: Know the Other Party

- Be sure the board, mayor or appropriate contracting party has the power to enter into the proposed contract
- Understand the needs and interests of the other party



Negotiating A Contract: Say What You Mean and Mean What You Say

Clearly define all terms and provisions that you want in your contract

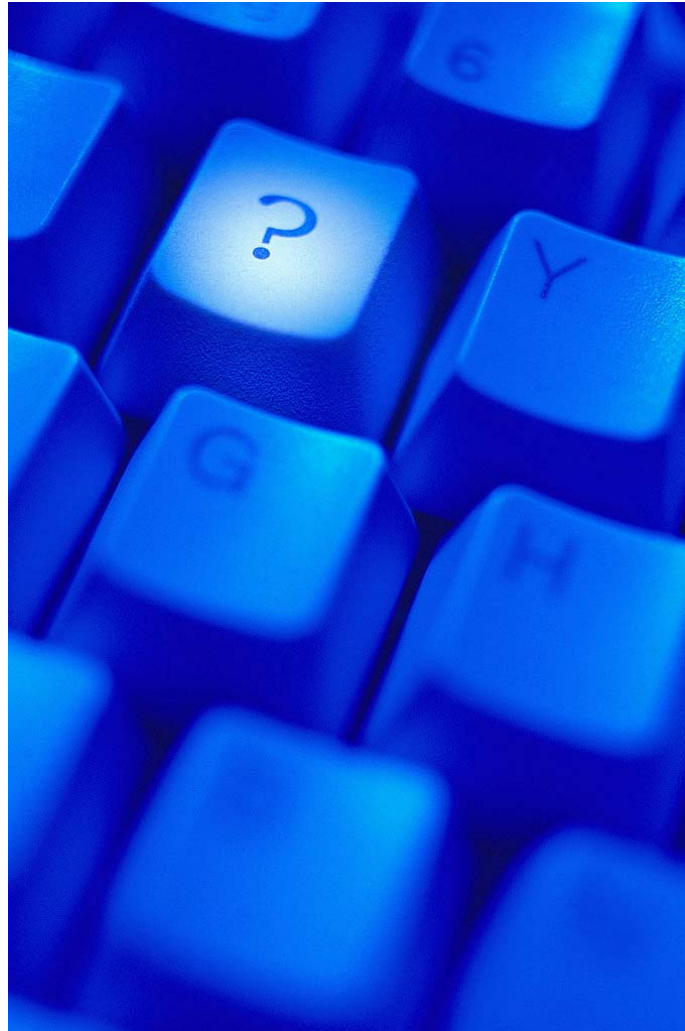


Negotiating A Contract: Maintaining Relationships

When negotiating, remember that you will have to interact with the other party many times after the contract is signed. Be conscious of preserving valuable relationships.



What provisions do you want in your contract?



Examples of Provisions to Consider

- Term
- Duties and Responsibilities
- Board/Superintendent Communications and Roles/Responsibilities
- Annual Base Salary and Increases After Initial Year
- Performance Compensation
- Deferred Compensation
- Retirement
- Evaluation

Examples of Provisions to Consider (continued)

- Community Involvement
- Professional Speaking and Other Activities
- Residency
- Technology
- Automobile
- Business Expenses
- Health and Related Benefits
- Life Insurance
- Disability Insurance

Examples of Provisions to Consider (continued)

- Professional Liability/Indemnification
- Professional Development/Growth
- Moving and Related Expenses
- Temporary Living Expenses
- Termination
- Housing Allowance
- Longevity

Term of Contract

How do you determine the term or length of your contract?



Term of Contract

- Determine whether there are any state law limitations on the term of the contract
- Determine about how long you need or want to stay in the district
- Consider what the board has said about its thinking regarding the term of the contract
- Consider whether there will be a provision for renewal, and if so, the conditions for renewal

Term of Contract

Survey Results

Gender	Term of 2016-17 Contract							
	Less than 1 Year	1 Year	2 Years	3 Years	4 Years	5+ Years	Omit	Total
Male	22 (2.1%)	128 (12.2%)	244 (23.2%)	431 (41%)	114 (10.9%)	104 (9.9%)	7 (0.7%)	1050 (100%)
Female	10 (3.2%)	45 (14.3%)	76 (24.1%)	130 (41.3%)	26 (8.3%)	28 (8.9%)	0 (0%)	315 (100%)
Omitted Gender	1 (3.7%)	7 (25.9%)	2 (7.4%)	4 (14.8%)	2 (7.4%)	3 (11.1%)	8 (29.6%)	27 (100%)
Total	33 (2.4%)	180 (12.9%)	322 (23.1%)	565 (40.6%)	142 (10.2%)	135 (9.7%)	15 (1.1%)	1392 (100%)

Term of Contract--Renewal Considerations

- Automatic renewal
- Criteria for determining whether the contract will be renewed
- Unilateral or bilateral renewal
- Contract terms if there is a renewal
- Process for amending the contract if there is a renewal

Term of Contract--Renewal Considerations

Survey Results

Gender	2016-17 Evergreen Provision			
	Yes	No	Omitted Provision	Total
Male	380 (36.2%)	662 (63.1%)	8 (0.8%)	1050 (100%)
Female	99 (31.4%)	211 (67%)	5 (1.6%)	315 (100%)
Omitted Gender	3 (11.1%)	15 (55.6%)	9 (33.3%)	27 (100%)
Total	482 (34.6%)	888 (63.8%)	22 (1.6%)	1392 (100%)

- Less than one in three superintendents have an evergreen or rollover provision. This represents a small change from previous years.

Duties and Responsibilities



Duties and Responsibilities

- Consider any state law requirements
- Consider your priorities
- Consider the board's priorities
- Include provision detailing duties and responsibilities
- Include a provision regarding no reassignment to other position and no reassignment of duties

Board/Superintendent Communications and Roles/ Relationships



Board/Superintendent Communications and Relationships

- Include provision regarding the process that will use to communicate with board
- Include provision regarding how board will communicate with you
- Include provision requiring board to include superintendent in all executive or closed session meetings
- Include provision requiring board to include superintendent in all regular meetings of board
- Include provision requiring board to refer all material criticisms, complaints and suggestions to superintendent for investigation and appropriate action

Annual Base Salary



**How do you determine what annual
base salary to request?**



Do research to find out

- Salary of previous superintendents
- Salary of superintendents in region
- Salary of superintendents in state
- Salary of superintendents in comparable school districts
- Salaries of superintendents nationally

Do research to find out

Survey Results

2016-17 District Enrollment										
2016-17 Super. Base Salary	Less than 300		300 to 2,499		2,500 to 9,999		10,000 to 24,999		25,000 or more	
Gender	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Minimum	56000	62500	57750	55865	98500	105000	129553	50000	133527	166762
10%	69250	71000	95000	99750	126000	116000	142800	98054	189500	166762
25%	75000	82420	105000	108000	145000	120000	165000	151050	200000	170000
Median	91000	90200	121996	121900	165000	161331	184975	198682	229000	225000
75%	108500	105000	141270	143000	187148	185661	214000	210000	273010	269860
90%	136740	118000	159700	162398	217000	214364	250000	243000	313239	286867
Maximum	177000	134450	276000	260000	320000	272000	279000	258358	393000	305000
N	115	43	590	164	239	79	52	17	29	8

Do research to find out

Survey Results

Ratio of 2016-17 Median Superintendent Salaries with that of Beginning Teacher Median Base Salary by District Enrollment 2016-17

2016-17 Superintendent / Beginning Teachers	2016-17 Median Salaries (Number of Respondent Superintendents)				
	Less than 300	300 to 2,499	2,500 to 9,999	10,000 to 24,999	25,000 or more
Superintendent Median Salary	91000	121996	165000	185658	227000
Beginning Teacher Median Base Salary	33400	36000	39657	39211	41849
Ratio 2016-17	1:2.7	1:3.4	1:4.2	1:4.7	1:5.4
Ratio 2015-16	1:2.8	1:3.4	1:4.2	1:4.7	1:6.0
Ratio 2014-15	1:2.5	1:3.2	1:3.9	1:4.5	1:5.0

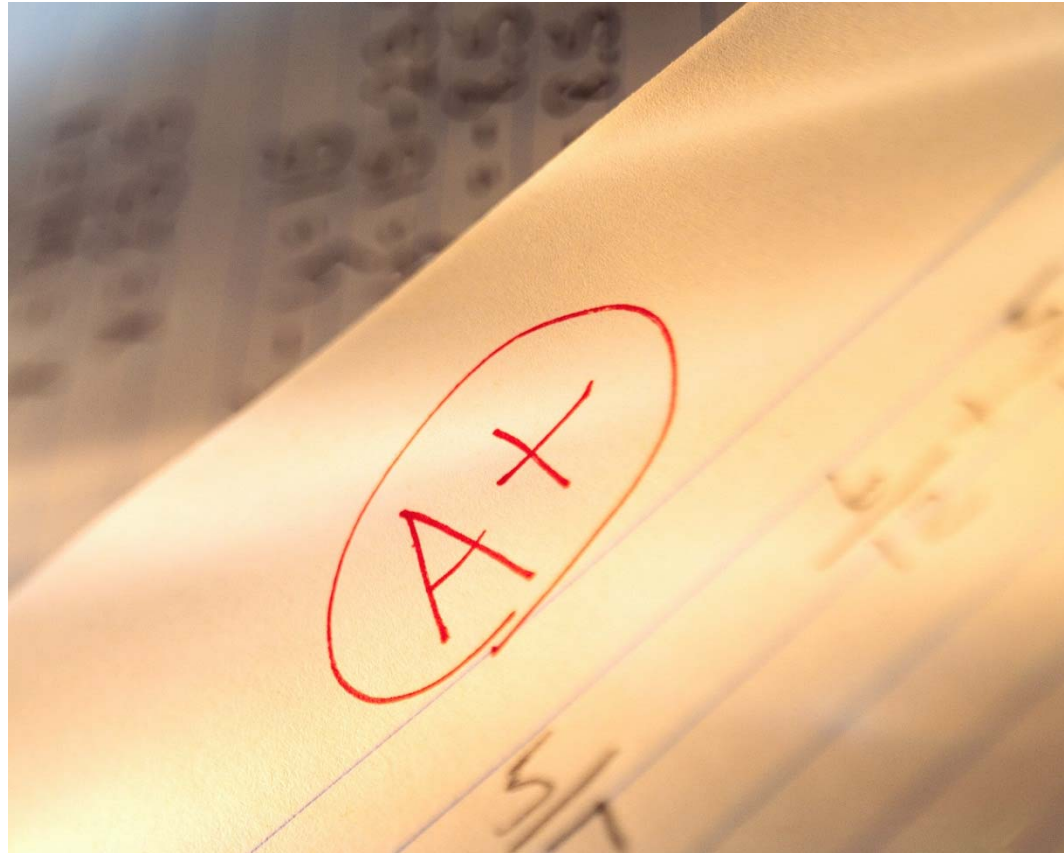
Do you want a raise after the first year of your contract?



Examples of Ways to Determine Base Salary After Initial Year

- Include provision in contract for how increase will be determined
- Examples
 - Link increases to district collective bargaining agreements
 - Link to cost of living increase
 - Provide for specific increase
 - Provide that will be negotiated each year

Performance Compensation



**Do you want a performance
compensation provision?**



Performance Compensation Provisions: What Are They?

- Agreement between superintendent and board to link superintendent's pay to indicators of job performance
 - Bonuses for a job well-done
 - Salary decreases for poor performance

Examples of Potential Benefits of Performance Compensation Provision

- Creates a set of clearly-defined goals for the district to focus on
- Creates a detailed feedback-oriented evaluation system
- Serves as a symbolic commitment to accountability

Examples of Potential Problems with Compensation Provisions

- May not have resources and support necessary to achieve the goals
- Lack direct control over teaching and learning in every classroom
- May lead teachers and principals to complain that superintendent is placing pressure on them
- May not be able to accept because of financial situation of district

How to Write a Performance Compensation Provision

- Consider what criteria will be used, when will the criteria be determined and who will determine criteria
- Consider what compensation will be if meet criteria, who will determine if meet the criteria and when will be paid if criteria met
- Develop clearly-defined and measurable goals
- Allow sufficient time to implement structure/training necessary to achieve stated goals

Example of Indicators to Determine Performance Compensation

- Test scores
- Parent involvement
- Business and community partnerships
- Attendance and dropout rates
- Balanced budget
- New programs

Deferred Compensation



Deferred Compensation

- Consider Section 403(b) plan
- Consider Section 457(b) plan
- Other

Deferred Related Compensation

Salary Results

<i>Benefit</i>	<i>Data</i>	
	Count	%
Conference Attendance Fees Paid	1193	85.7%
Guaranteed Vesting in Retirement Plan	531	38.1%
Paid Physical Exam	508	36.5%
Provision for Conducting Outside Consulting	465	33.4%
Professional Liability Coverage	422	30.3%
Provision for Conducting Outside Teaching	377	27.1%
Tuition Reimbursement	375	26.9%
Whole Life Insurance (Accumulates to employee)	291	20.9%
Deferred Compensation	122	8.8%
Support for Coach/Mentor for Superintendent	106	7.6%
College Savings Plan	5	0.4%

Retirement Benefits



Retirement Benefits

- Consider what retirement plan or system
- Consider how much will be paid by board
- Consider whether any payment by board will be considered part of annual base salary or any performance compensation
- Consider whether board will buy years in retirement system

Retirement Benefits

Does the school district make a contribution to an annuity or private retirement account that you have?

<i>Contribution</i>	<i>2015-16/2016-17 Data</i>	
	Count	%
Yes (Less than \$1,000)	7/21	1.0%/1.5%
Yes, (\$1,000 -\$5,000)	111/182	15.2%/13.1%
Yes, (\$5,001-\$10,000)	71/116	9.8%/8.3%
Yes, More than \$10,000	77/123	10.6%/8.8%
No	452/923	62.1%/66.3%
Omitted	10/27	1.4%/1.9%
Total Responses	728/1392	100.0%/100.0%

Professional Development/Growth



Professional Development/Growth

- Consider provision for memberships in professional organizations, such as AASA and state administrators association
- Consider provision for professional meetings and conferences
- Consider provision for coach or mentor
- Consider provision for tuition reimbursement

Professional Development/Growth

Salary Results

<i>Benefit</i>	<i>2016-2017 Data</i>	
	Count	%
Conference Attendance Fees Paid	1193	85.7%
Guaranteed Vesting in Retirement Plan	531	38.1%
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Whole Life Insurance (Accumulates to employee)	291	20.9%
Deferred Compensation	122	8.8%
Support for Coach/Mentor for Superintendent	106	7.6%
College Savings Plan	5	0.4%

Note: Percentages added exceed 100 since a participant may select more than one answer for this question.

Professional Development/Growth

Which of your professional association membership dues are paid by the school district?

<i>Responses</i>	<i>2015-16/2016-17 Data</i>	
	<i>Count</i>	<i>%</i>
Regional Professional Organizations (e.g., state association)	708/1301	97.3%/93.5%
National Professional Organizations (e.g., American Association of School Administrators)	625/1015	85.9%/72.9%

Community Involvement



Community Involvement

- Consider provision memberships and fees for community organizations and civic organization

Professional Speaking and Other Professional Activities



Professional Speaking and Other Professional Activities

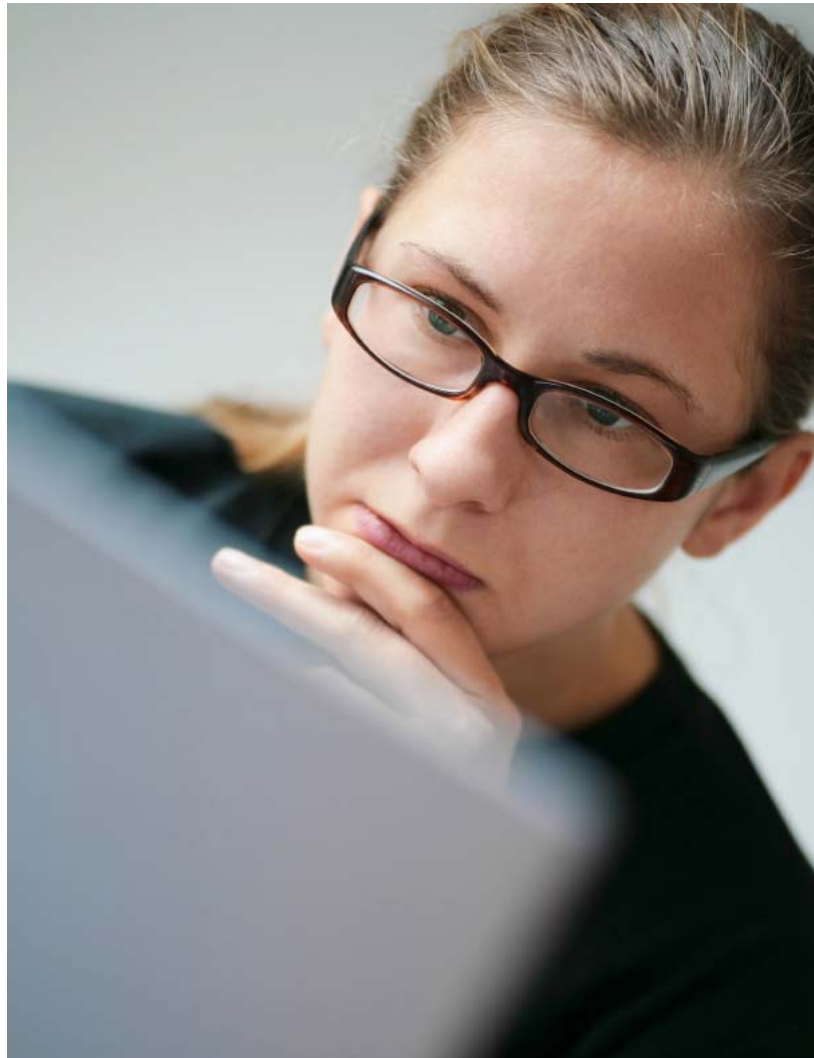
- Include provision regarding teaching, speaking, writing and consulting
- Consider whether with or without honorarium

Professional Speaking and Other Professional Activities

Survey Results

<i>Benefit</i>	<i>2016-17 Data</i>	
	Count	%
Conference Attendance Fees Paid	1193	85.7%
Guaranteed Vesting in Retirement Plan	531	38.1%
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Deferred Compensation	122	8.8%
Support for Coach/Mentor for Superintendent	106	7.6%
College Savings Plan	5	0.4%

Evaluation



Evaluation

- Include provision that provides that board and superintendent will jointly determine criteria, instrument and process to be used to evaluate performance
- Include provision when the evaluation will be done
- Consider confidentiality issues

Evaluation

Survey Results
Does Employment Agreement Specify the Process,
Measures, and Indicators to be Used in
Evaluation?

<i>Responses</i>	<i>2016-17 Data</i>	
	Count	%
Yes	694	40.6%
No	680	39.8%
Omitted (183 selected "yes" and "no")	336	19.7%
Total Responses	1710	100.0%

Evaluation

Survey Results

Is Formal Performance Evaluation Linked to Objectives or Directions Specified in Previous Year's Performance Assessment?

<i>Responses</i>	<i>2015-16/2016-17 Data</i>	
	Count	%
Yes	394/768	54.1%/54.7%
No	331/607	45.5%/43.5%
Omitted	7/26	1.0%/1.8%
Total Responses	732/1396	100.0%/100.0%

Evaluation

Survey Results Is Your Formal Evaluation Linked to 360 Degree Feedback?

<i>Responses</i>	<i>2016-17 Data</i>	
	Count	%
Yes	213	15.3%
No	1155	82.7%
Omitted	29	2.1%
Total Responses	1397	100.0%

Evaluation

Survey Results

Is your formal performance evaluation linked to student outcomes/performance?

<i>Responses</i>	<i>2015-16/2016-17Data</i>	
	Count	%
Yes	300/522	41.2%/36.7%
No	421/862	57.8%/66.7%
Omit or Multiple Answers	11/29	1.5%/2.0%
Total Responses	732/1421	100.0%/100.0%

Evaluation

Survey Results

Is the outcome of your formal performance evaluation made public?

<i>Responses</i>	<i>2015-16/2016-17 Data</i>	
	Count	%
Yes	274/492	37.6%/35.2%
No	442/879	60.7%/62.8%
Omitted	13/28	1.8%/2.0%
Total Responses	729/1399	100.0%/100.0%

Residency



Residency

- Determine whether law requires you to live in district
- Consider whether will agree to live in district

Technology



Technology

- Include provision to ensure have technology necessary to carry out duties of being superintendent
- Consider following examples:
 - Smartphone, including monthly charges
 - Tablet, including monthly charges
 - Laptop
 - Personal computer
 - Home fax/copy/scan machine

Automobile/Automobile Allowance



Automobile/Automobile Allowance

- Consider options for automobile
 - District-owned car
 - Leased car
 - Monthly car allowance
- Consider mileage within and outside of district
- Make sure that there are no restrictions on use of the car if district-owned or leased vehicle

Automobile/Automobile Allowance

2014 Survey Results

<i>Responses</i>	<i>Data</i>	
	Count	Percent
Yes	318	13.4%
No	2022	85.4%
Omitted Response	29	1.2%
Total	2369	100.0%

Business Expenses



Business Expenses

- Consider general language, such as: “The District shall reimburse the Superintendent for reasonable and usual expenses connected with carrying out the duties of the Superintendent.”
- Consider whether you want a set amount per month for business expenses
- Consider whether want district credit card for expenses

Health and Related Benefits



Health and Related Benefits

- Consider areas to be covered, such as group health and hospitalization, mental health, dental, vision, prescription drug
- Consider who should be covered – superintendent, spouse, family
- Consider the amount to be paid by board and superintendent

Health and Related Benefits

Survey Results

What health insurance coverage do you receive in your contract?
Coverage Paid for Superintendent: Medical/Hospital

<i>Response</i>	<i>2015-16/2016-17 Data</i>	
	Count	%
Yes	576/1028	79.1%/73.7%
No	79/198	10.9%/14.2%
Omitted	75/171	10.3%/12.3%
Total	730/1395	100.0%/100.0%

Health and Related Benefits

Survey Results

What health insurance coverage do you receive in your contract? Coverage Paid for Superintendent's Family:
Medical/Hospital

<i>Response</i>	<i>2015-16/2016-17 Data</i>	
	Count	%
Yes	475/790	65.2%/56.7%
No	207/399	28.4%/28.6%
Omitted	47/204	6.5%/14.7%
Total	729/1393	100.0%/100.0%

Life and Disability Insurance



Life and Disability Insurance

- Consider whether you want whole or term life insurance and the amount of coverage that you want
- Consider amount of disability insurance that you want
- Consider the amount insurance to be paid by board

Disability Insurance

Survey Results

What health insurance coverage do you receive in your contract?

Coverage Paid for Superintendent: Disability Insurance

<i>Response</i>	<i>2015-16/2016-17 Data</i>	
	<i>Count</i>	<i>%</i>
Yes	382/616	52.5%/44.1%
No	266/589	36.5%/42.2%
Omitted	83/192	11.4%/13.7%
Total	731/1397	100.0%/100.0%

Sick and Personal Leave

MEDICAL CENTER

NAME _____ AGE _____
ADDRESS _____ DATE _____

R

SIGNATURE

LABEL
REFILL 0 1 2 3 4 5 PRN NR

Sick and Personal Leave

- Consider how many sick leave days you want each year
- Consider how many personal leave days you want each year
- Consider how many days may be accrued and carried forward each year
- Consider how much you will be paid for any accumulated unused days, when you will be paid for any accumulated unused days and whether there is a cap on the total amount paid

Sick and Personal Leave

Survey Results Upon Departure from the District, How is Sick Leave Accrual Handled?

Sick Leave Accrual	Gender/Response							
	Male				Female			
	Yes	No	N/A or Omit	Total	Yes	No	N/A or Omit	Total
Credited to Retirement	396 (37.7%)	518 (49.3%)	136 (13%)	1050 (100%)	128 (40.6%)	152 (48.3%)	35 (11.1%)	315 (100%)
Payment Made to Super.	448 (42.7%)	493 (47%)	109 (10.4%)	1050 (100%)	126 (40%)	157 (49.8%)	32 (10.2%)	315 (100%)
Credit/Payment Made at Daily Rate	327 (31.1%)	484 (46.1%)	239 (22.8%)	1050 (100%)	96 (30.5%)	152 (48.3%)	67 (21.3%)	315 (100%)

Vacation



Vacation

- Consider the number of vacation days that you want per year
- Make sure vacation days are in addition to district holidays
- Consider how many days may be accrued and carried forward each year
- Consider how much you will be paid for any accumulated unused days, when you will be paid for any accumulated unused days and whether there is a cap on the total amount paid
- Consider pay out at end of each year for unused days

Vacation

Survey Results Upon Departure from the District, How is Vacation Leave Accrual Handled?

Vacation Leave Accrual	Gender/Response							
	Male				Female			
	Yes	No	N/A or Omit	Total	Yes	No	N/A or Omit	Total
Credited to Retirement	160 (15.2%)	718 (68.4%)	172 (16.4%)	1050 (100%)	49 (15.6%)	224 (71.1%)	42 (13.3%))	315 (100%)
Payment Made to Super.	615 (58.6%)	316 (30.1%)	119 (11.3%)	1050 (100%)	178 (56.5%)	103 (32.7%)	34 (10.8%))	315 (100%)
Credit/ Payment Made at Daily Rate	552 (52.6%)	307 (29.2%)	191 (18.2%)	1050 (100%)	157 (49.8%)	88 (27.9%)	70 (22.2%))	315 (100%)

Professional Liability/Indemnification



Professional Liability/Indemnification

- Consider any state law requirements

<i>Benefit</i>	<i>Data</i>	
	Count	%
Conference Attendance Fees Paid	1193	85.7%
Guaranteed Vesting in Retirement Plan	531	38.1%
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Provision for Conducting Outside Consulting	465	33.4%
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Tuition Reimbursement	375	26.9%
Whole Life Insurance (Accumulates to employee)	291	20.9%
Deferred Compensation	122	8.8%
Support for Coach/Mentor for Superintendent	106	7.6%
College Savings Plan	5	0.4%

Moving and Related Expenses



Moving and Related Expenses

- Consider cost of moving expenses and travel to district to relocate
- Consider provision for temporary housing
- Consider travel for spouse to assist in relocating

Termination



Example of Possible Termination Provisions

- Termination by mutual consent
- Unilateral termination by the superintendent
- Unilateral termination by the board
- Termination by the board for cause
- Termination resulting from disability of superintendent

Termination

Survey Results

Does your contract have a severance (buy out) clause?

<i>Gender</i>	<i>Severance Clause</i>			
	Yes	No	Omitted Clause	Total
Male	247 (23.5%)	793 (75.5%)	10 (1%)	1050 (100%)
Female	73 (23.2%)	242 (76.8%)	0 (0%)	315 (100%)
Omitted Gender	3 (11.1%)	16 (59.3%)	8 (29.7%)	27 (100%)
Total	323 (23.2%)	1051 (75.5%)	18 (1.3%)	1392 (100%)

Termination

Racial/Cultural Group	Severance Clause			
	Yes	No	Omit	Total
American Indian or Alaska native	3 (20%)	11 (73.3%)	1 (6.7%)	15 (100%)
Asian	0 (0%)	2 (100%)	0 (0%)	2 (100%)
Black or African American	7 (24.1%)	21 (72.4%)	1 (3.5%)	29 (100%)
Hispanic or Latino	9 (28%)	23 (72%)	0 (0%)	32 (100%)
Native Hawaiian or other Pacific Islander	1 (50%)	1 (50%)	0 (0%)	2 (100%)
White (non Hispanic or Latino)	297 (23.2%)	974 (76.2%)	8 (0.6%)	1279 (100%)
Other	2 (20%)	8 (80%)	0 (0%)	10 (100%)
Omitted	4 (17.4%)	10 (43.5%)	9 (39.1%)	23 (100%)
Total	323 (23.2%)	1050 (75.4%)	19 (1.4%)	1392 (100%)

- Where sufficient number of respondents exists, about a quarter of superintendent respondents in each racial/cultural group had a severance provision, which represents little change from the previous year survey.

Examples of Other Provisions



Examples of Other Provisions

- Provision to guarantee a position in district if you are terminated by the board
- Provision for attorneys fees for negotiating contract
- Provision for same benefits as other administrators
- Provision for work prior to becoming superintendent in district
- Provision for a transition team
- Provision regarding longevity
- Provision for housing allowance

Longevity

Survey Results

Does your contract have a longevity clause (i.e., a lump sum payment you will receive for the number of years you remain in the position)?

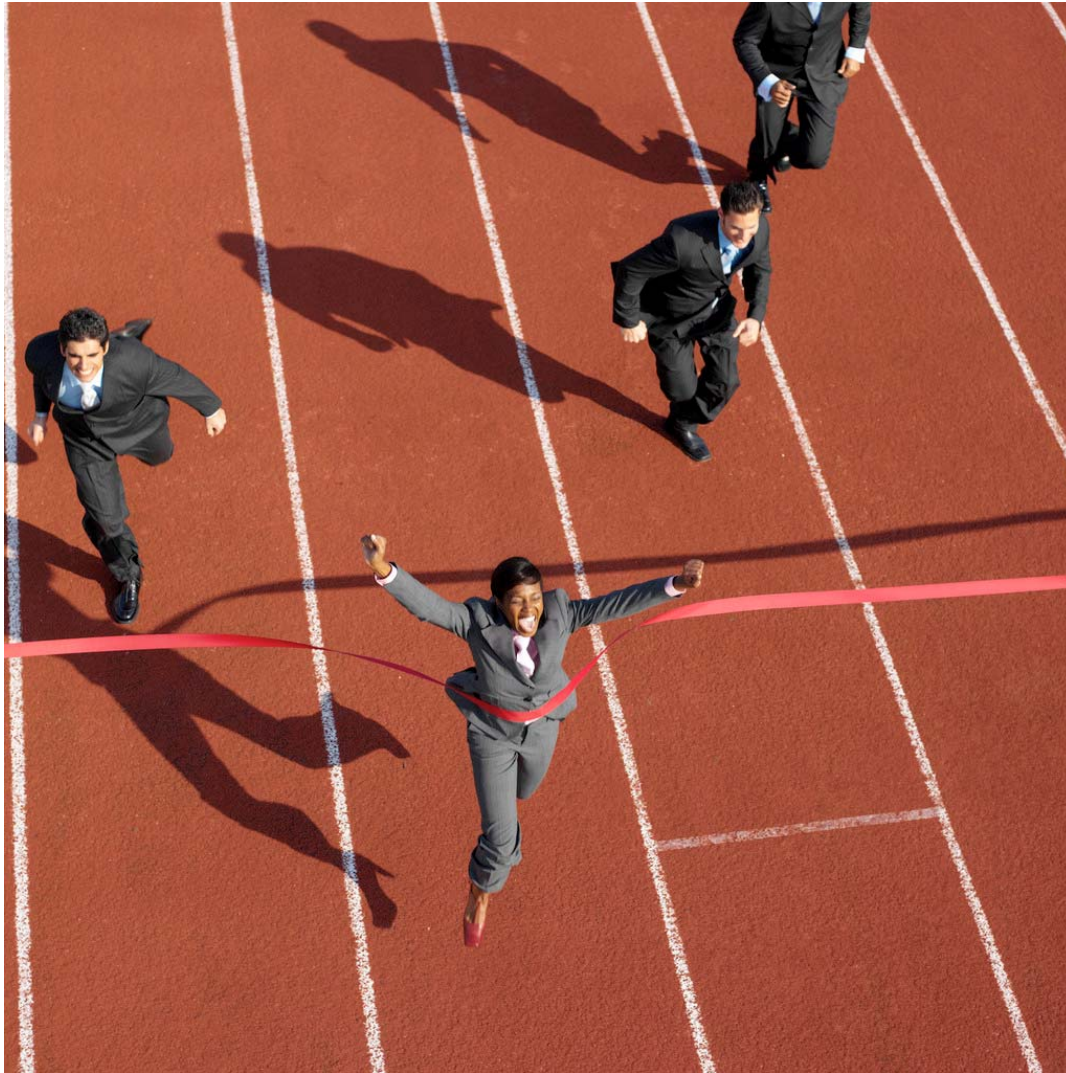
<i>Gender</i>	<i>Longevity Clause</i>			
	Yes	No	Omitted Clause	Total
Male	79 (7.5%)	959 (91.3%)	12 (1.1%)	1050 (100%)
Female	31 (9.8%)	283 (89.8%)	1 (0.3%)	315 (100%)
Omitted Gender	0 (0%)	19 (70.4%)	8 (29.6%)	27 (100%)
Total	110 (7.9%)	1261 (90.6%)	21 (15%)	1392 (100%)

Circumstances and Provisions Most Prone to Litigation



- Vacation and sick leave
- Notice of Termination and Automatic Renewal
- Other Termination Cases
- Illegal Contracts

THE END





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