

Use CSBA Sample As Is

CSBA Sample Board Policy Superintendent's Contract

BP 2121
Administration

Note: The following optional policy should be modified to reflect district practice.

The Governing Board believes that the Superintendent's employment contract should outline the framework through which the Board and Superintendent are to work together to achieve district goals and objectives. When approving the Superintendent's employment contract, the Board shall consider the need for stability in district administration and shall ensure the best use of district resources.

(cf. 0200 - Goals for the School District)
(cf. 2120 - Superintendent Recruitment and Selection)
(cf. 4312.1 - Contracts)
(cf. 9000 - Role of the Board)

***Note: The following list of contract components is consistent with a template for superintendent contracts developed by CSBA. The annotated template contract with additional context and suggestions is available by contacting legal@csba.org. ***

The contract shall be reviewed by the district's legal counsel and may include the following:

1. Term of the contract, which shall be for no more than four years pursuant to Education Code 35031
2. Length of the work year and hours of work

***Note: The contract should include the salary, health and welfare benefits, and other compensation for the position, as provided in item #3 below. Federal law (26 USC 105; 42 USC 300gg-16; 26 CFR 1.105-11) prohibits favoring "highly compensated" individuals (i.e., the highest paid 25 percent of all employees, with specified exceptions) in terms of the level of benefits provided. Although implementation of this provision with respect to group health plans has been delayed until the issuance of federal regulations or guidance, it is recommended that districts prepare to comply with the expected rules. See AR 4154/4254/4354 - Health and Welfare Benefits. ***

3. Salary, health and welfare benefits, and other compensation for the position

(cf. 4154/4254/4354 - Health and Welfare Benefits)

Comment [WT1]: Updated section to align with Federal law

4. Reimbursement of work-related expenses, including mileage reimbursement, consistent with Board policies, regulations, and guidelines applicable to other professional administrative staff

(cf. 3350 - Travel Expenses)

The contract may also address payment for professional dues and activities, the district's provision of cell phones or other technological devices, and the Superintendent's use of his/her personal vehicle.

(cf. 4040 - Employee Use of Technology)

5. Vacation, illness and injury leave, and personal leaves

(cf. 4161/4261/4361 - Leaves)

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4161.2/4261.2/4361.2 - Personal Leaves)

(cf. 4161.5/4261.5/4361.5 - Military Leave)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

6. General duties and responsibilities of the position

(cf. 2110 - Superintendent Responsibilities and Duties)

7. Criteria, process, and procedure for annual evaluation of the Superintendent

(cf. 2140 - Evaluation of the Superintendent)

8. A statement that any subsequent increase in the Superintendent's salary shall be at the sole discretion of the Board

9. A statement that there shall be no automatic renewal or extension of the contract, although the Board can enter into a new contract with the Superintendent prior to the expiration of the existing contract

***Note: Pursuant to Education Code 35031, the Governing Board must notify the Superintendent at least 45 days in advance if it decides to not reemploy him/her. If the Board fails to provide the required prior written notice, the Superintendent shall be deemed reemployed for a term of the same length as the one completed, under the same terms and conditions, and with the same compensation. ***

10. Timeline for providing written notice to the Superintendent if the Board does not wish to enter into a new contract, which shall be at least 45 days in advance of the expiration of the term of the contract pursuant to Education Code 35031, and the responsibility of the Superintendent to

remind the Board in a timely manner of the requirement to give notice

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

11. Conditions and process for termination of the contract, including the maximum cash settlement that the Superintendent may receive if the contract is terminated prior to its expiration date

12. Matters related to liability and indemnification against demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his/her official capacity in the performance of duties related to his/her employment

***Note: Pursuant to Government Code 54957, personnel matters related to the appointment or employment of an employee, except proposed compensation, may appropriately be discussed in closed session. In addition, pursuant to Government Code 54956, the Board is prohibited from deliberating on the salary or other compensation of the Superintendent at a special meeting. See BB 9320 - Meetings and Notices and BB 9321 - Closed Session Purposes and Agendas. ***

The Board shall deliberate in closed session about the terms of the contract, except that salary or other compensation shall be discussed in public at a regular meeting. (Government Code 54956, 54957)

(cf. 9320 - Meetings and Notices)
(cf. 9321 - Closed Session Purposes and Agendas)
(cf. 9321.1 - Closed Session Actions and Reports)

Terms of the contract shall remain confidential until the ratification process commences.

(cf. 9011 - Disclosure of Confidential/Privileged Information)

The Board shall ratify the Superintendent's contract in an open meeting, which shall be reflected in the Board's minutes. Copies of the contract shall be available to the public upon request. (Government Code 53262)

(cf. 1340 - Access to District Records)
(cf. 3580 - District Records)

Termination of Contract

***Note: Pursuant to Government Code 53260, every employee contract must include a provision limiting the maximum cash settlement the employee may receive upon termination of the contract to an amount equal to his/her monthly salary multiplied by the number of months left on the contract. For a superintendent contract executed prior to January 1, 2016, if the unexpired term is greater than 18 months, this maximum is equal to the monthly salary multiplied by 18. For a

superintendent contract executed on or after January 1, 2016, Government Code 53260, as amended by AB 215 (Ch. 240, Statutes of 2015), provides that the maximum cash settlement is the monthly salary multiplied by 12. Cash settlements may be less than these maximums. The district must make termination agreements available to the public upon request. See AR 4117.5/4217.5/4317.5 - Termination Agreements. ***

Comment [WT2]: Updated section to align with New Law AB 215

Prior to the expiration of the contract, the Board may terminate the Superintendent's employment contract in accordance with law and applicable contract provisions.

(cf. 4117.5/4217.5/4317.5 - Termination Agreements)

In such an event, any cash settlement that the Superintendent may receive upon termination of the contract shall not exceed his/her monthly salary multiplied by the number of months left on the contract or, if the unexpired term of the contract is more than 18 months and the contract was executed prior to January 1, 2016, no greater than the Superintendent's monthly salary multiplied by 18. For any contract executed on or after January 1, 2016, any cash settlement shall not exceed the Superintendent's monthly salary multiplied by 12. (Government Code 53260)

The cash settlement shall not include any noncash items other than health benefits, which may be continued for the same duration of time as covered in the settlement or until the Superintendent finds other employment, whichever occurs first. (Government Code 53260, 53261)

***Note: AB 215 (Ch. 240, Statutes of 2015) amended Government Code 53260 to eliminate the option to provide a settlement equivalent to up to six months' salary when the Superintendent's contract is terminated for specified causes. ***

However, when the termination of the Superintendent's contract is based upon the Board's belief and subsequent confirmation through an independent audit that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, no cash or noncash settlement of any amount shall be provided. (Government Code 53260)

In addition, if the Superintendent is convicted of a crime involving an abuse of his/her office or position, he/she shall reimburse the district for payments he/she receives as paid leave salary pending investigation or as cash settlement upon his/her termination, and for any funds expended by the district in his/her defense against a crime involving his/her office or position. (Government Code 53243-53243.4, 53260)

Legal Reference:

EDUCATION CODE

35031 Term of employment

41325-41329.3 Conditions of emergency apportionment

GOVERNMENT CODE

3511.1-3511.2 Local agency executives

53243-53243.4 Abuse of office

53260-53264 Employment contracts
54954 Time and place of regular meetings
54956 Special meetings
54957 Closed session personnel matters
54957.1 Closed session, public report of action taken
UNITED STATES CODE, TITLE 26
105 Self-insured medical reimbursement plan; definition of highly compensated individual
UNITED STATES CODE, TITLE 42
300gg-16 Group health plan; nondiscrimination in favor of highly compensated individuals
CODE OF FEDERAL REGULATIONS
1.105-11 Self-insured medical reimbursement plan

Management Resources:

CSBA PUBLICATIONS

Superintendent Contract Template, 2015

WEB SITES

CSBA: <http://www.csba.org>

Association of California School Administrators: <http://www.acsa.org>

(11/04 11/11) 12/15