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Superintendent

3:40-E Exhibit - Checklist for the Superintendent Employment Contract Negotiation Process

The Board of Education hires and employs the Superintendent. The Superintendent shall be in charge of the administration of the schools under the direction of the Board, through its policies. See 105 ILCS 5/10-21.4 and 105 ILCS 5/10-16.7. As an effective employer, the Board must develop and maintain a productive relationship with the Superintendent. See IASB's *Foundational Principles of Effective Governance*, **Principle 3. The board employs a superintendent**, at: www.iasb.com/training-and-events/training/training-resources/foundational-principles-of-effective-governance.[C1]

The foundation for a productive employment relationship begins when the Board identifies the most qualified superintendent candidate (*successful superintendent candidate*) after an established interview process. The Board then extends an offer of employment to the successful superintendent candidate. The employment search process and resulting relationship should consist of mutual respect and a clear understanding of respective roles, responsibilities, and expectations. This relationship should begin with the Board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See *Principles* at the link above.

Below, the *Checklist for the Superintendent Employment Contract Negotiation Process (Checklist)* provides a column entitled **Superintendent Contract Term Considerations for the Board**. It lists common superintendent employment contract terms and points of consideration for boards to prepare for during the contract formation process. Another column entitled **Explanation, Special Considerations, and Resources** provides extra information about these common superintendent employment contract terms.

The *Checklist* is intended to serve as a resource to educate and guide the Board through the employment contract negotiation process with its successful superintendent candidate. Board members who are educated about the content within the *Checklist* are crucial to successful negotiation processes. An educated contract formation and negotiation process, along with a well-written contract and job description for the

Superintendent, all set the foundation for mutual respect and a clear understanding of the Board and Superintendent's respective roles, responsibilities, and expectations. **Important:** This *Checklist* is a resource for contract formation; it is not a list of must-have items for a superintendent's employment contract or a basis for a board to re-open contracts currently in effect.

Prior to providing the successful superintendent candidate an offer for employment and contract for review, consideration, and negotiation, consult the Board Attorney about the *Checklist* and the scope of the terms the Board wishes to offer the successful superintendent candidate. The Board and the successful superintendent candidate should expect and encourage each other to seek the advice of their respective attorneys during the employment contract formation process.

Many attorneys agree, and best practices suggest that boards and successful superintendent candidates work with their own separate attorneys in an amicable and cooperative manner to complete the employment contract negotiation process.

☐ **Board Attorney.** Prior to providing any successful superintendent candidate with an offer for employment and a contract for review, consideration, and negotiation, best practices suggest consulting the Board Attorney about the *Checklist*. **Note:** Boards should view a successful superintendent candidate retaining his or her own attorney as a best practice (as opposed to a warning sign). Each party is beginning the employment relationship in a cooperative manner to set an appropriate foundation to the future working relationship.

☐ **Power and Duties of the Superintendent**

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Duties	Does the Board enumerate the duties of the Superintendent in the employment contract? 1. Are the statutory duties of the Superintendent listed? 2. Has the Board incorporated policy references to the other duties related to the Superintendent's employment?

	See 105 ILCS 5/10-21.4 and 105 ILCS 5/10-16.7.
Full-time, Attention and Energy Clause	How will the Board address outside activities of the Superintendent? 1. How will the Board define *outside activities*? 2. Will the Board restrict the Superintendent from engaging in outside activities during the term of the employment contract? 3. Will the Board require approval/notification before the Superintendent engages in outside activities? Will the Board designate the Board President or another individual to review and/or approve the Superintendent's outside activities?

☐ Employment and Compensation

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Duration of Contract	A superintendent's employment contract may not exceed five years. If its duration is two to five years, the contract must reference goals and suspension of tenure during the contract term. No performance-based contract shall be extended or rolled over prior to its scheduled expiration unless all the performance and improvement goals contained in the contract have been met. See 105 ILCS 5/10-23.8. If the duration is one year or less, then the contract need not reference goals or suspension of tenure.
Salary	Special Considerations for the Board may include: 1. What is the estimated Board contribution to the Teachers' Retirement System (TRS) for any raises above six percent (40 ILCS 5/15-155(g)) prior to retirement?

	2. What is the *cost shift* implication for the District if the Board offers or later agrees to a salary that is equal to or greater than the governor's statutory salary? School districts are responsible for paying the actuarial cost of the pension benefits earned on the portion of a TRS member's salary that exceeds the governor's statutory salary. The governor's annual salary is published by TRS at: www.trsil.org/employers/payments/contribution-rates_earnings-limitations. 3. Do any administrative cost cap triggers exist (105 ILCS 5/17-1.5, amended by P.A. 104-261)? Items the Board may see the successful superintendent candidate request of it: 1. A fixed salary for each year of the contract. 2. A guaranteed minimum salary. 3. Compensation increases.
Severance Agreements	Any contract that contains a condition of severance pay must include the following provisions required by the Government Severance Pay Act (GSPA), 5 ILCS 415/10: 1. A restriction to an amount not exceeding 20 weeks of compensation; and 2. A prohibition for any severance if the Superintendent is fired for *misconduct* by the Board. See the *Severance Pay* row under the **Changes to the Superintendent's Employment Contract** subhead below for a definition of what misconduct means in the context of this law.
Teachers Retirement System (TRS) & Teacher Health Insurance (THIS)	How does the Board want to address: 1. Pension contributions (TRS-THIS)? 2. Inclusion of salary and other compensation in the payment of TRS and THIS? Or, will TRS and THIS be paid (also commonly referred to as "picked up and paid") by the Board in addition to salary and other compensation? 3. Unforeseen pension reform issues?

☐ Conditions of Employment

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Administrative License	Does the Board want to require the successful superintendent candidate to guarantee that as the future Superintendent of the District, he or she has and will maintain the appropriate licensure throughout the employment contract?
Criminal Background Check Law	105 ILCS 5/10-21.9. See also **PRESS** sample policy 5:30, *Hiring Process and Criteria*, and the subhead entitled **Fingerprint-based Criminal History Records Information Check** in administrative procedure 5:30-AP2, *Investigations*.
Sexual Misconduct Related Employment History Review Law	105 ILCS 5/22-94, amended by P.A. 104-831, eff. 1-1-27. See also **PRESS** sample policy 5:30, *Hiring Process and Criteria* and **PRESS** sample administrative procedure 5:30-AP3, *Sexual Misconduct Related Employment History Review (EHR)*.
Other Background Check Laws	Does the Board want to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9 and sexual misconduct related employment history review required by 105 ILCS 5/22-94, amended by P.A. 104-831, eff. 1-1-27, and discussed above? If yes, consult the Board Attorney and consider the following laws: 15 U.S.C. § 1681 et seq., Federal Fair Credit Reporting Act (FCRA), is a federal law that regulates the gathering and use of information about consumers by third-party *consumer reporting agencies*, including credit information, criminal background, driving record, personal characteristics/reputation, etc. The law requires consumer reporting agencies to comply with certain procedural notice

	requirements when gathering information from a consumer. 820 ILCS 75/, Ill. Job Opportunities for Qualified Applicants Act, prohibits employers from inquiring about an applicant's criminal history until the application has been determined qualified and notified that he/she has been selected for an interview (a/k/a *Ban the Box* law). 820 ILCS 55/, Ill. Right to Privacy in the Workplace Act (RPWA), prohibits employers from: 1. Requesting, coercing, or requiring any employee or prospective employee to provide a username and password for any personal online account; 2. Requesting, coercing, or requiring an employee or applicant to invite the employer to have access to that individual's personal online account; and 3. Taking an adverse employment action against an individual (including refusal to hire) based on that individual's use of a lawful product off District property during nonworking hours, i.e., tobacco, cannabis, or alcohol. (**Note:** RPWA allows employers to regulate employees' use of those lawful products that impair an employee's ability to perform the employee's assigned duties. See policy 5:50, *Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*, and its f/ns). 820 ILCS 70/, Ill. Employee Credit Privacy Act, prohibits employers from inquiring into an individual's credit history or taking action against an employee based such history unless a satisfactory credit history is a *bona fide occupational requirement*, which is further defined in the statute. The job descriptions of superintendents generally meet this standard because they: (1) describe a managerial position that involves direction of school districts; (2) include signatory power over more than $100; and (3) involve having access to confidential and financial information. **Note:** Any one of these grounds alone is sufficient.

Medical Examination	105 ILCS 5/24-5 requires new employees to submit evidence of physical fitness to perform assigned duties and freedom from communicable diseases. The Americans with Disabilities Act allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. 42 U.S.C. §12112(d)(4). Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r). See also **PRESS** sample policy 5:30, *Hiring Process and Criteria*, specifically f/ns 25 and 26.
Tenure	<u>Suspension of Tenure</u> With multi-year contracts and multi-year extensions, superintendents waive their rights to tenure in a school district, but no previously acquired tenure may be lost. <u>Continued Tenure</u> Superintendents serving multiple one-year contracts may still accrue service toward and acquire tenure. See 105 ILCS 5/10-23.8 and the *Duration of Contract* row in the **Employment and Compensation** checkbox, above.

☐ **Evaluations and Goals**

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Board Goals and Indicators of Student Performance and	105 ILCS 5/10-23.8 requires each performance-based contract to include the goals and indicators of student performance and academic improvement determined

Academic Achievement for the Superintendent	and used by the Board to measure the performance and effectiveness of the Superintendent and other information as the Board may determine. Regarding its goals and indicators, has the Board: 1. At a minimum, addressed student performance and academic achievement (105 ILCS 5/10-23.8 states "and such other information as the local school board may determine")? 2. Included them in the body of the employment contract? Or as an exhibit to it? 3. Set them to be: a. Measurable and achievable, i.e., are they within the Superintendent's control? b. Objective, subjective, or a combination of both? 4. Set a timeline for achievement, and if so is it: a. On an annual basis? b. Prior to completion of the employment contract? 5. Set them as procedural, substantive, or a combination of both? For more information about setting goals and indicators for superintendents regarding student performance and academic achievement, see: www.iasb.com/training-and-events/training/workshops Contact an Outreach and Training Director regarding the following IASB workshops and/or offerings that may set the stage for school boards to hold their superintendents accountable for district performance, including academic achievement: *Setting District Goals and Direction* (leads a board and superintendent (and staff, parents, and community members, if desired) in articulation of values, mission, vision, and district goals)

	The Superintendent Evaluation Process (analyzes the current components of the superintendent evaluation process and how to improve them)
Superintendent Evaluation	Once the Board has developed its goals and indicators (as discussed immediately above), 105 ILCS 5/10-20, 5/10-23, and 5/10-23.8 require the Board to (105 ILCS 5/10-16.7): 1. "Direct, through policy, its superintendent in his or her charge of the administration of the school district;" and 2. Evaluate the superintendent in his or her "administration of school board policies and his or her stewardship of the assets of the district." How will the Board evaluate the successful superintendent candidate upon its outlined goals and indicators? Does the Board state when it will evaluate the successful superintendent candidate upon the goals and indicators that it set? **Note:** Some districts do not consider the superintendent evaluation to be a *one-time event* and put an ongoing process into place. Contrast other districts, which, depending on their preferences, generally find the best time of year to evaluate is in the winter or spring. Is the Board or the successful superintendent candidate responsible for triggering the components of the Superintendent's evaluation process? What evaluation instrument will be used? How will the evaluation be documented? Will an evaluation instrument be outlined by the Board in its employment contract with the successful superintendent candidate? Is the evaluation instrument the Board will use tied to its goals and indicators of student performance and

	academic improvement and other information as the Board may determine? For more information about best practices when planning for and evaluating the Superintendent, see: *The Superintendent Evaluation Process* at: www.iasb.com/training-and-events/training/workshops/the-superintendent-evaluation-process; IASB's *Foundational Principles of Effective Governance*, **Principle 3. The board employs a superintendent**, at: www.iasb.com/training-and-events/training/training-resources/foundational-principles-of-effective-governance; stating "the board employs and evaluates one person — the superintendent — and holds that person accountable for district performance and compliance with written board policy."

☐ **Expenses and Benefits**

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Expenses and Allowances	How will the Board address expenses and allowances in its employment contract negotiations with the successful superintendent candidate? <u>Business</u> 1. What standard will the Board use, e.g., reasonable, itemized, etc.? 2. Will the Board designate the Board President or another individual to review and/or approve the Superintendent's expenses? 3. Will the Board provide the Superintendent with a District-owned cell phone or reimburse the Superintendent's cell phone expenses?

	4. Will the Board reimburse the Superintendent for educational and other professional development expenses? 5. Will the Board provide moving expenses for candidates who must move into the region? <u>Transportation</u> Will the Board reimburse travel? If yes, what types of travel will the board reimburse? Some transportation topics that successful superintendent candidates request discussion about include: 1. Vehicle insurance reimbursement(s) 2. Vehicle repair reimbursement(s) 3. A travel allowance only at either a set amount or the District's per mile rate 4. A vehicle 5. Out-of-District travel
Insurance	Will the Board address insurance in its employment contract negotiations with the successful superintendent candidate? Some items successful superintendent candidates request include: 1. Insurance contributions as part of a Cafeteria Plan, or in the alternative, the Board paying the premiums. 2. Specific insurance coverages from the Board, such as health, dental, vision, life, disability, etc.
Vacation	Will the Board address vacation days in its employment contract negotiations with the successful superintendent candidate? If yes, then: 1. How many days? 2. Will vacation days accumulate? And, if so, how? 3. Will the Board designate itself, the Board President, or a Board officer to approve or

	receive notification from the Superintendent prior to taking a vacation? If yes, describe the process. 4. Will the Board address reimbursement for unused days? 5. Will vacation days need to be used for days off during Thanksgiving, winter, or spring breaks?
Sick Leave/Days	Will the Board address sick days in its employment contract negotiations with the successful superintendent candidate? If yes, then: 1. Will sick leave be limited to annual sick leave days in the District's teachers' contract or will a different amount be provided? 2. How will sick day accumulation be addressed? 3. Will the Board designate itself, the Board President, or a Board officer to approve or receive notification from the Superintendent prior to taking or upon returning from a sick day? If yes, describe the process.
Professional Activities and Organizations | Memberships in Community Organizations	Will the Board address memberships in professional activities/organizations and/or community organizations its employment contract negotiations with the successful superintendent candidate? If yes, then: 1. How many organizations will the Board allow the Superintendent to join? 2. Which organizations will be allowed? 3. What is the Board's limit for the cost of dues to professional organizations?
Retirement	Will the Board address any type of payment(s) upon the Superintendent's retirement? If yes, then: 1. Has the Board thoroughly examined and addressed: a. Any consequences or other penalties to it? b. The impact of any prior salary increases?

	c. Potential pension reform issues? 2. Often, a successful superintendent candidate's attorney has interest in the following issues: a. Available post-retirement options available, e.g., payments for sick/vacation days, post-retirement insurance, longevity annuity payment, etc. b. Whether a potential retirement payment will be properly creditable for TRS purposes. **Note:** Ultimately, only TRS has the authority to determine creditability.
Annuities and Other Deferred Compensation	Will the Board address any type of annuities and other deferred compensation issues? If yes, then: 1. Will it offer such compensation in addition to the Superintendent's agreed-upon salary? 2. Will it contribute creditable earnings for TRS purposes?
Bonuses, Lump Sum Payments	Will the Board consider compensation other than salary, including bonuses, payment for optional TRS service credit, or other lump sum payments?

☐ **Changes to the Superintendent's Employment Contract**

Superintendent Contract Term Considerations for the Board	**Explanation, Special Considerations, and Resources**
Non-Renewal at End of Contract	How will the Board and successful superintendent candidate agree to address orderly end to the employment contract when the Board chooses not to renew it? 1. Will there be a non-renewal notification date? Do both parties' attorneys find it reasonable? 2. Will the Board require the Superintendent to remind it of the non-renewal date?

	3. Will there be any agreement to modify the requirement for an automatic one-year renewal if the Board fails to provide end-of-contract non-renewal notification or the right to a hearing upon non-renewal? See 105 ILCS 5/10-21.4.
Renewal at End of Contract	Will the Board agree to a procedure for renewing the employment contract at its end? If yes, then: 1. What date would be the earliest that the Board could renew its employment contract with the Superintendent? 2. What criteria will the Board base its renewal upon? For example, some boards base renewal upon superintendents achieving their stated goals and indicators of student performance and academic improvement and other information they required.
Contract Extensions	Will the Board agree to allow for an extension of its employment contract during its term? If yes, then: 1. Will the Board agree to extend it during its term if the Board determines that the Superintendent successfully met all of the Board's stated goals and indicators of student performance and academic improvement and other information it required? 2. Will the Board agree to extend a one-year contract when the Superintendent is not required to meet any goals? See 105 ILCS 5/10-23.8.
Terminations	If the successful superintendent candidate accepts employment with the Board and becomes the Superintendent, how will the Board outline the grounds and procedures for terminating the Superintendent's employment during the contract's term? 1. Will the Board and the successful superintendent candidate agree to terminate it upon mutual agreement?

	2. Will the Board allow retirement to be an appropriate reason for terminating its employment contract with the Superintendent? And if so, will the Board require reasonable notice from its Superintendent? 3. Could either the Board or Superintendent terminate the employment contract without cause by providing notice to the other? If so, under what terms? 4. Will the Board terminate the employment contract for permanent disability of the Superintendent? a. How will the Board define permanent disability in the contract? b. Will the Board require the Superintendent to obtain a permanent disability determination through physician certification, and/or c. Will the Board consider duration of absence; e.g., 90-days after exhaustion of available leave, whichever is greater? See **PRESS** sample policy 5:180, *Temporary Illness or Temporary Incapacity*. 5. What standard will the Board use to terminate the employment contract for cause? Items to consider include: a. Any conduct detrimental/prejudicial to the District;* b. Just cause; c. Sufficient to dismiss a tenured teacher; d. Material breach of contract; or e. Not arbitrary and capricious. *50 ILCS 205/3c requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964. See **Severance Pay** row directly below. 6. Will the Board agree to provisions for hearing and due process for the Superintendent?

	7. How will the Board address death of its Superintendent during the duration of the employment contract?
Severance Pay	Any renewal or renegotiation that adds a condition of severance pay must include the following provisions of GSPA, 5 ILCS 415/10(a): 1. A restriction to an amount not exceeding 20 weeks of compensation; and 2. A prohibition for any severance if the Superintendent is fired for *misconduct* by the Board. This law defines misconduct to include sexual harassment and/or discrimination. But 50 ILCS 205/3c limits sexual harassment or discrimination to instances when an employee is "found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964." For more discussion about these laws, see f/n 7 in policy 2:260, *Uniform Grievance Procedure*.
Liquidated Damages	Will the Board agree to liquidate damages with its Superintendent if one or the other terminates the employment contract? 1. Have both the Board and the successful superintendent candidate discussed the practical consequences of a liquidated damages clause with their respective attorneys? 2. If the Board terminates the contract, has it discussed with the Board Attorney how it can avoid litigation with its former Superintendent?
Amendments	How will the Board and Superintendent agree to allow for amendments to the employment contract?

☐ What technical clauses need to be in the Superintendent's employment contract?

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Technical clauses (common in contracts)	If the employment contract contains any of the following technical provisions, have the Board Attorney and Superintendent's attorney reviewed them? 1. Notice 2. Applicable law 3. Headings and numbers 4. Complete understanding, i.e., do the Board members and Superintendent share the same understanding of the various provisions written in the employment contract? 5. Counterparts 6. Effect of Policy Amendments 7. Severability 8. Advice of Counsel

☐ **Miscellaneous Issues**

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Board Obligations Under the Employment Contract	Do all members of the Board understand the District's obligations under the employment contract and what not complying with them will mean to the District? Specifically, are Board members aware of the Board's specific obligations regarding: 1. The Superintendent Evaluation 2. Goal setting 3. Required notifications/actions by each party prior to termination of the employment contract

Ongoing Monitoring of Each Party's Compliance with the Contract	Are the Board and Superintendent actually complying with the terms of the employment contract? Has the Board Attorney explained how the Board should monitor compliance with the employment contract?
Legislative Issues	How might pending pension reform legislation or other trending legislation affect the employment contract?

Joliet Township High School District 204

PRESSPlus Comments

C1 Rewritten for PRESS Plus. The exhibit is updated in response to 105 ILCS 5/22-94, amended by P.A. 104-831, clarifying that applicants only need to list their current employer during the sexual misconduct employment history review (EHR) process if their current job involves direct contact with children or students, and for continuous improvement. A redlined version showing the changes made is available at PRESS Online by logging in at www.iasb.com. **Issue 123, October 2026**