

Yellow Medicine East ISD 2190 School Board Meeting Agenda



Monday, January 22, 2018 at 6:00 PM
Board Work Session Meeting
YME Board Room - # 113

Our Mission is: To provide a caring environment of high expectations that prepares every student for a successful future and instills the value of learning.

1. Call the Meeting to Order
2. Pledge of Allegiance
3. Roll Call of Board Members
4. Approval of Agenda
5. Reading of the YME Mission Statement
6. Public Address to the Board of Education
7. Discussion
 1. General Timeline 2
 2. Superintendent Search
 1. Search Consultants
 1. BKB Executive Search Consultants 3
 2. MSBA Superintendent Search Options 13
 3. PEER Solutions 16
 3. Lessons Learned: Minefields Encountered When School Boards Use Alternatives to the Full-Time Superintendent's Model Contract - MSBA Leadership Conference Presentation - January 13, 2017 21
 1. Minnesota Statutes 33
 2. Model Contract 35
 3. Contract Handbook 43
 4. Superintendent Evaluation 69
 5. Open Meeting Law Summary/MSN Articles 85
 8. Adjourn the Meeting

Board of Education Superintendent Search Timeline

1. January 22, 2018 – Work Session for the determination of:
 - a. Full Time Position
 - b. Part Time Position
 - c. Shared Time with another District
 - d. Part Time Position with other duties assigned
2. January 22, 2018 – Work Session for the determination of:
 - a. District Self-Search
 - b. Employment of Search Consultant.
3. January 22, 2018 – Work Session to determine interview protocol
 - a. Size of interview committee(s)
 - b. Make-up of interview committee(s)
 - c. Combination of self and consultant
4. January 22, 2018
 - a. Determine budget for search
 - b. Determine district contact – (if self search)

- Development of Ideal Candidate characteristics
- Development of Interview Questions.
- Interview – number of finalist – finalist are public information while candidates are not required to be made public.
- Determine whether there will be candidate visitation/interviews
 - Who will be on the visitation committee
 - How many candidates will be visited
- Pay and Benefits list to be determined
- Contract to be used. (MSBA/MASA has condition options)
 -

Recommendations –

Determine FTE value of superintendent by March 12 ,2018

Determine use of self-search or consultant by May 2018

Determine make up of interview committee(s) by September 2018

If self-search: development of interview questions

If self-search: contact/seek interviewers

BKB

Executive Search Consultants

Dr. Rick Clark
Superintendent of Schools
Yellow Medicine East Schools
Granite Falls, MN

Dear Dr. Clark:

Thank you for the opportunity to present a proposal for the School Board to consider when selecting a search firm.

BKB is a regional firm that conducts searches with a national recruiting outreach. BKB has assisted Boards and communities for 22 years to build a leadership profile that guides BKB in searching for candidates that are best suited for the needs of its client.

The advantages of retaining BKB are: experienced search firm, recruitment of more experienced candidates, building community support, assisting the Board with consensus, managing the challenges of the search, and assisting with negotiation of a contract.

The attached materials will outline information about BKB, the services that it provides, and the fee structure. It will be pleased to discuss its services further at an interview if the Board desires.

Sincerely,

Brian Boettcher, Managing Partner

**421 Diamond Creek Road
Mankato, Minnesota 56001
Office: (507) 345.7461**

Focusing on Executive Development and Placement

BKB ASSOCIATES

Executive Search Consultants

**A PROPOSAL TO ASSIST
Yellow Medicine East ISD 2190**

Search for Superintendent

January, 2018

BKB ASSOCIATES

EXECUTIVE SEARCH CONSULTANTS

BKB Associates Executive Search Consultants provides professional services to school boards in the recruitment and selection of a new school superintendent or other education executive. The consultants will provide the necessary guidance and work closely with the board in the identification of the traits and qualifications desired in a new superintendent or education executive and guide the recruitment and selection process.

A full range of services is available to boards including the identification of expected experience and background, aggressive recruitment of quality applicants, creation of a file of qualified candidates, preliminary screening of applicants, and coordination of the interview and final selection process. The consultants make every effort to assure that equal opportunity and affirmative action guidelines are fully applied.

Employing boards are actively involved with the consultants in each step of the search and selection process. Each board may personally tailor its individual needs and expectations in determining the best “match” possible in a new superintendent or education executive.

The Consultants

Brian E. Boettcher, EdD

Mankato

Professor Emeritus of
Educational Leadership

- Assistant superintendent
& interim
superintendent
- High school principal
- Doctorate in Educational
Administration –
University of Minnesota

Jerry Robicheau, PhD

Faribault

Professor of Educational
Leadership

- Superintendent of
Schools
- Doctorate in Educational
Policy and
Administration –
University of Minnesota

BKB ASSOCIATES

EXECUTIVE SEARCH CONSULTANTS

AVAILABLE SERVICES

BKB Associates Executive Search Consultants will provide those services which the hiring governing board wishes to have performed. Services frequently include the following:

- Develop in collaboration with the governing board, those criteria and qualifications which the board expects the new executive to possess. Work with citizen and staff advisory committees at the discretion of the board.
- Prepare brochures, position profile, vacancy announcements, advertisements, application forms, candidate prospect list and other materials necessary to conduct a wide and thorough search for potential candidates which insures adequate candidates.
- Devote substantial efforts to recruiting to assure selection from a number of suitably qualified candidates.
- Receive applications and provide preliminary background checks to assure that only qualified candidates will be considered by the board.
- Conduct preliminary screening interviews with those candidates who appear to meet the board's requirements.
- Select a group of candidates for presentation to the board for their preliminary consideration.
- Discuss the qualifications of preliminary screened applicants with the board in order to determine which candidates the board wishes to interview.
- Identify and develop with the board those elements, questions, persons, or groups which they wish to include in the interview process.
- Contact those candidates who have been designated semi-finalists by the board to arrange interviews with them.

- Be present during the interviews of semi-finalist candidates in order to accommodate and facilitate the process. If desired by the board, video-tape the interviews for later study and review.
- Notify candidates of their status including those being offered the opportunity for a final interview with the board. Acquire assurance from each finalist that they would accept a position with the hiring organization if offered.
- If the board wishes, assist the board in reaching consensus in the selection of the candidate to whom the position will be offered.
- Assist with contract development and at the direction of the board.

NOTE: The entire search and selection process is performed at the discretion and in collaboration with the board and committee. It is the board's process. The consultants serve only at the direction of the board and will provide any services provided above, delete services identified, or provide additional services as requested.

BKB ASSOCIATES

Superintendent Recruitment and Selection Summary

PHASE I – Complete Leadership Profile and Initial Advertising - Development of the Leadership Profile is essential to guiding the superintendent search process.

The Profile accomplishes the following:

- Involves stakeholders in the process
- Guides recruiting and screening of candidates
- Guides the interview and selection process

Development of the Leadership Profile consists of the following:

- Interview School Board.
- Conduct a focus group with school staff in approximately one hour session.

PHASE II– Recruitment and Selection - One of the most valuable services provided by BKB Associates is recruiting viable candidates for consideration by the School Board. BKB Associates will use its resources to secure a list of candidates that meet the requirements outlined in the Leadership Profile by

- Preparing a professional recruitment brochure for distribution if the Board desires
- Organize application data.
- Advertise the position with professional organizations, college and university placement agencies, and professional periodicals.
- Screen applicants by contacting references and measuring against requirements of the Leadership Profile:
 - a) Maintain confidential applicant files
 - b) Communicate with applicants regarding status of application
 - c) Select candidates for recommendation to the School Board.
- Present candidates to the School Board for their review and final approval. The School Board makes the final determination as to who is selected to be interviewed.

PHASE III– Interview / Selection - BKB Associates will assist in the organization and coordination of the final interview and selection process by...

- Training interview teams. BKB will conduct a training session with the selected interviewing members to cover interview protocol, legal issues, and assist in development of interview questions.
- Developing an interview schedule for candidates and interviewing members. The number of interviewing members and groups will be determined by the School Board.
- Assist School Board in final selection decision and assist in developing contract terms with selected superintendent.

BKB ASSOCIATES

EXECUTIVE SEARCH CONSULTANTS

Representative Searches Conducted – Listed From Most Recent to Oldest

Independent School District 2144	Chisago Lakes, Minnesota
Independent School District 861	Winona, Minnesota
Independent School District 309	Park Rapids, Minnesota 11
Independent School District 2180	Clara City, Minnesota
Independent School District 155	Wadena, Minnesota 11
Special School District No. 06	South St. Paul, Minnesota
East Metro Integration District	Maplewood, Minnesota
Independent School District 241	Albert Lea, Minnesota
Independent School District 912	Milaca, Minnesota
Independent School District 753	Long Prairie, Minnesota
Intermediate School District 917	Rosemount, Minnesota
Independent School District 911	Cambridge, Minnesota
Independent School District 656	Faribault, Minnesota
Independent School District 709	Duluth, Minnesota
Independent School District 413	Marshall, Minnesota
Independent School District 761	Owatonna, Minnesota
Independent School District 31	Bemidji, Minnesota
Independent School District 887	Buffalo, Minnesota
Independent School District 51	Foley, Minnesota
Independent School District 361	International Falls, Minnesota
Independent School District 477	Princeton, Minnesota – 11
Independent School District 454	Fairmont, Minnesota - 11
Independent School District 282	St. Anthony-New Brighton, Minnesota
Independent School District 564	Thief River Falls, Minnesota - 11
Independent School District 12 (Centennial)	Circle Pines, Minnesota
Independent School District 88	New Ulm, Minnesota – 11
Independent School District 882	Monticello, Minnesota
Independent School District 309	Park Rapids, Minnesota
Independent School District 829	Waseca, Minnesota
Independent School District 877	Buffalo-Montrose-Hanover, Minnesota I
Independent School District 197	West St. Paul-Mendota Heights-Eagan, Minnesota
School District of New Richmond	New Richmond, Wisconsin

** Indicates number of times searches conducted for the district.*

BKB ASSOCIATES FEE AND REIMBURSEMENT SCHEDULE

Basic Fee:

A basic fee is negotiated with the board and then billed for all services rendered. The activities necessary to perform all phases of the search are listed below:

- Interviewing board members, conducting meetings with staff, collecting information on the schools and the community.
- Writing the copy, publishing and distributing a brochure announcing the position vacancy. Performing other advertising activities. Does not include printing or mailing costs.
- Recruiting candidates.
- Screening, evaluating and performing preliminary interviews of candidates.
- Assisting with board interviews.
- Reporting of search results, preparing the board for interviews and performing Follow-up activities.

The fee is negotiable depending on the level of services provided. The fee for the search as described in the proposal is \$7,500.00 in addition to expenses.

Reimbursement:

The consultants are reimbursed for normal expenses based upon the actual costs to provide such services. These are estimated to be \$1000.-\$1500.

Printing

Advertising

Meals/Lodging

Mailing/Postage

Auto Mileage .55/mile

The board may wish to have some of the actual expenses billed directly to the school district.



Rick Clark <rclark@isd2190.org>

Superintendent Search

3 messages

Rick Clark <rclark@isd2190.org>
To: Sandy Gundlach <sgundlach@mnmsba.org>

Wed, Jan 3, 2018 at 1:07 PM

Sandy,

Happy New Year to you and all of yours too!

Yellow Medicine East will be searching for and employing a new superintendent with duties to begin on July 1, 2019. We are looking at this year to begin the process so the process can be completed professionally and timely.

I would like you to provide me with information on the MSBA search protocols. Thank you in advance.

Dr. Rick Clark
Superintendent of Schools
ISD #2190
Phone - 320-564-4081
Fax - 320-564-4781
email - rclark@isd2190.org
cell-320-522-2553

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Sandy Gundlach <sgundlach@mnmsba.org>
To: Rick Clark <rclark@isd2190.org>

Wed, Jan 3, 2018 at 1:57 PM

Happy New Year, Rick! I hope that you and your family had a wonderful Christmas!

Below is information about MSBA's superintendent search-related options/protocols for the board's consideration.

- In-district Superintendent Search Workshop and planning session includes: Cost: \$1,350
 - In-district Hiring the Right superintendent workshop.
 - Facilitated board development of search timeline, hiring criteria, 1-page brochure, and first round interview questions.
 - Cost: \$1,350
- Superintendent Search Assistance includes:
 - First meeting in district to provide overview training of the process, develop the hiring criteria, create the timeline, start work on the vacancy brochure, develop the application process, and develop the selection process.
 - MSBA would develop a draft of materials needed to start the process (brochure, hiring criteria, etc.) and send to the district to update, revise, and approve.
 - MSBA will post the position and collect applications.
 - MSBA team will review all applications.

- Second in-district meeting, MSBA will present the list of candidates, conduct additional training relative to interviews and review the process one more time before turning it over to the school district.
- Cost: \$3,850

- Superintendent Search includes: - Cost: \$6,800
 - Superintendent Search would include all of the above services.
 - Includes an online survey and staff/community listening sessions.
 - MSBA would perform additional marketing and mailing.
 - MSBA consultant would be present for all interviews.
 - MSBA consultant would develop interview schedules and contact the candidates.

Please let me know if you have questions.

Sandy

Sandy Gundlach

Director of School Board Services

Minnesota School Boards Association

1-800-324-4459, ext. 128

sgundlach@mnmsba.org



The contents of this e-mail and any attachments are provided for informational use only and are not to be construed as legal advice. If you need legal advice, please consult your attorney.

From: Rick Clark [mailto:rclark@isd2190.org]
Sent: Wednesday, January 3, 2018 1:07 PM
To: Sandy Gundlach <sgundlach@mnmsba.org>
Subject: Superintendent Search

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Rick Clark <rclark@isd2190.org>
To: Sandy Gundlach <sgundlach@mnmsba.org>

Wed, Jan 3, 2018 at 2:18 PM

THANK YOU

Dr. Rick Clark
Superintendent of Schools
ISD #2190
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cell-320-522-2553

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SUPERINTENDENT SEARCH SERVICES

RFI RESPONSE FOR ISD 2190

Our Firm and Experience:

PEER Solutions has been a partnership of Greg Vandal and Charlie Kyte for the past five years. Both Greg and Charlie are active consultants to school districts and the businesses that interact with schools. We have several Associates working with us on a variety of projects.

Greg and Charlie have been teachers, principals and superintendents themselves and have a long record of helping superintendents be successful. Charlie culminated his career as the Executive Director of the MN Association of School Administrators (MASA) and served as an important spokesperson for public education both in Minnesota and nationally. Greg is a former Minnesota Superintendent of the Year and is now a noted strategic planner with strong involvement in the communities in which he works. In related volunteer work, Charlie is immediate past chair of a local hospital board and Greg is the immediate past chair of the Lutheran Social Service of Minnesota Board of Directors.

Searches that Greg and Charlie have led in the last five years include Melrose, Sauk Centre, West Central, Holdingford, Foley, East Grand Forks, Browerville, Cambridge, Hibbing, Hayfield, Dodge Center, East Central (Sandstone), Zumbrota-Mazeppa, Staples and Brownton. They have assisted other firms on searches including St. Cloud and Sartell. A set of references is attached. Additional references can be provided upon request.

A search in your region would most likely be led by Greg with significant support from Charlie and the entire PEER Solutions team. Greg has a strong connection with Central and Southern Minnesota; He has lived and worked in this region for 40 years.

The Search Process – a Standard Approach:

- 1). The search begins with an introductory meeting with the school board to develop a timeline for the search and to familiarize all with the process.
- 2). The position is listed and advertized using web resources across the upper Midwest. Minnesota school leaders in particular are targeted. A posting notice, used as an advertising template, is developed and released. All applications are accepted through the PEER Solutions application site.
- 3). The search associate will spend a day in the district interviewing several groups of stakeholders within the schools and in the community as well as working with board members to gather important search information. A stakeholder survey can be made available to gather additional input. From these discussions and the survey, a Profile of the ideal candidate is developed.
- 4). The search firm works with the Board to develop a salary range that a candidate might be offered.
- 5). All candidate applications are reviewed and promising candidates are vetted by the search team. We will then meet with the Board Search Committee to make a final selection of candidates to be interviewed.
- 6). The search associate will set up a full day interview process and be on-site to manage the interview sessions. Groups of staff, administrators and community members have an opportunity to interview each candidate and will be able to offer candidate feedback to the school board prior to a hiring decision. The school board will conduct the final interviews and have the responsibility of making a final selection.
- 7). The search will conclude with the school board offering a contract to a candidate and a contract will then be negotiated. The search team can help facilitation of the development of a contract if desired.

Tentative Search Timeline:

Mid-December through January: List the position and recruit candidates; stakeholder focus group sessions held.

Early February: Candidate field vetted and narrowed. Interview candidates selected

Late February: Interviews of final candidates

Mid-March: Board approves contract for next superintendent

Why PEER Solutions?

- We will be your partners, manage the full process, and be present at every step.
- We have a deep knowledge of possible candidates and will be able to recruit outstanding prospects.
- We will recruit and will do thorough background checks on candidates.
- We will handle the full application process and we will minimize stress on your own staff.
- We will communicate with you, your staff and the community so they can be knowledgeable about each step in the process.
- We will organize and supervise the full interview process.
- Our process is thorough as well as time and cost efficient.
- We have a strong track record of success.

Scope of Search and Price:

Our fee is competitive in the search marketplace and we take pride in staying on time and on budget. In addition, the firm will be reimbursed for real expenses in a “not to exceed” sum clearly identified in the contract. For services mutually agreed upon to be beyond the proposed search parameters, an additional fee may be negotiated.

Conclusion:

We would be honored to be considered to conduct a superintendent search for your school district. We have an extensive knowledge both of the field of available candidates and also the qualities necessary to be a successful school leader. We are experienced in conducting searches and will work closely with you to engage an effective process and produce a positive result.

Contact Information:

Charlie Kyte, Partner
PEER Solutions
455 Rosewood Road
Northfield, MN 55057
charles.kyte@peersolutions-usa.com
651-247-6505

Greg Vandal, Partner
PEER Solutions
1404 9th Avenue North
Sauk Rapids, MN 56379
greg.vandal@peersolutions-usa.org
320-247-3739

Visit www.peersolutions-usa.com for more information about PEER Solutions, the clients we have served, and the resources we can bring to your organization.

PEER Solutions Search References

"Greg met and exceeded ALL of our expectations for our Superintendent search. He took the time to talk with us to find what we really needed... Always honest, always able to provide valuable insights because he took the time to get to know the candidates, and the perfect consultant to lead us through a very uncertain (and sometimes overwhelming) process. I have recommended Greg several times already and have the highest regard for him."

~**Gerriann Friday**, Board Chair for Holdingford Public School

Cell: 320-333-5577

"Greg is an exceptional person and leader, helping in finding and attracting exceptional leaders for key school positions. He has helped Foley Public Schools in the past, bringing high amount of energy in meetings and bringing top talent for the board to consider. He was instrumental helping community, staff and board to come to a unanimous decision. I was very impressed with the candidates that Greg was able to bring to the table and he was instrumental in helping Foley finding a great leader for years to come."

~**Dave Walz**, Board Chair for the Foley Public Schools

Cell: 320-493-5648

"Charlie Kyte... is able to attract candidates because of his personal contacts throughout the state of Minnesota and nationwide. Charlie was able to lead the school board, community stakeholders, and school staff to produce a superintendent profile. This allowed all stakeholders to have input and buy in to the search process... Not only will Charlie deliver, but you will add him as a professional resource to support your school district for years to come."

~**Andrew M. Almos**, Superintendent for East Central Public Schools

Office: 320-245-2289

"I cannot imagine going through the hiring process without the guidance and leadership that Charlie gave us. His positive and professional approach with our board made the process of hiring the best candidate for our district as easy as possible. Charlie was upfront and honest about the challenges that our district faced and brought realistic expectations to our board throughout the process."

~**Lana Mindrup**, Board member for the Hayfield Public School

Phone: 507-272-9891

"I had the pleasure of working with Charlie Kyte during the Superintendent Search for Hibbing Public Schools. Charlie was professional, organized and had great communications skills during the process of our search. After a successful hire, Charlie followed up to make sure the transition went smooth."

~**Trina Baumgardner**, Administrative Assistant for the Hibbing Public School

Office: 218-208-0848

"Our school district is very pleased with the work Charlie Kyte did for us. The process we went through using Charlie's services worked very well (and) we are very pleased two and a half years later with the Superintendent we hired. Charlie is thorough and professional, and I would recommend him."

~**Tim Hitchings**, Board Chair for the Cambridge School District

Phone: 612-251-4443

"Charlie Kyte provided a very thorough and thoughtful search service to our district. He conducted a very detailed and transparent assessment of our community needs. He was very sensitive to the needs of our rural constituents. In addition he provided an objective perspective for our Board during the interview process."

~**Jeff Larson**, Board Chair for the Milaca Public School

Phone: 612-251-8206

EXHIBIT 1

Superintendent Search Services PEER Solutions Work Scope

Steps	Activity	Timeline	Person
1	SITE VISIT – Attend a planning meeting with the Board/committee and develop a working relationship with key support staff (ie: Admin Ass't). Establish a search calendar of events and develop a relationship with local media if appropriate.	Week one	Lead search consultant
2	Post position, assist with establishing a district website presence regarding the search, identify Team leaders and participants, set up interview process and initiate process to develop interview questions. Develop a salary range with board leadership. Recruit candidates for position. Note – applications are accepted through the PEER Solutions AppliTrack account.	Week two for posting. (five week period) Weeks two through seven for other activities.	Lead search consultant w/recruitment assistance from other associates
3	SITE VISIT – Meet with stakeholder groups to identify candidate attributes and district needs over next two years. Implement a survey as desired.	By end of week seven (close of posting)	Lead search consultant
4	Develop a candidate profile of attributes, secure and review all candidate applications, perform due diligence on a selected group of applicants and establish the financial viability of candidates.	Week eight	Lead search consultant/PS team
5	SITE VISIT – Work with Board committee to select candidates to interview and work with interview team leaders to prepare for the interview process.	Week nine	Lead search consultant
6	SITE VISIT – Orchestrate the interview process including team preparation, oversee the one-day interview process, and manage the final selection decision. Make contact with all interviewed candidates immediately!	Week ten or eleven	Lead search consultant
7	Conduct the search close out process including notifying applicants and performing 'overwatch' on contract negotiations.	Week eleven or twelve	Lead search consultant



Where School Boards Learn to Lead

Lessons Learned: Minefields Encountered When School Boards Use Alternatives to the Full-Time Superintendent's Model Contract

MSBA Leadership Conference, Minneapolis Convention Center
Friday, January 13, 2017

Presenters:

Sandy Gundlach
Director of School Board Services
Minnesota School Boards Association
800-324-4459, Ext. 128
sgundlach@mnmsba.org

Peter Martin
Attorney
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Where School Boards Learn to Lead

Presented by:

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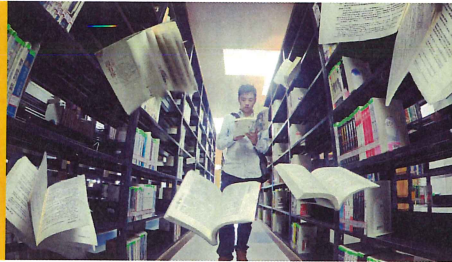
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LESSONS LEARNED:

MSBA
Leadership Conference



January 13, 2017

Minefields Encountered when School Boards Use Alternatives to the Full-Time Superintendent's Model Contract



MSBA'S MISSION:

The Minnesota School Boards Association, a leading advocate for public education supports, promotes, and strengthens the work of public school boards.

AGENDA

- What does it mean to employ a superintendent?
- What are the options for filling the position?



What does it mean to employ a superintendent?

M.S. § 123B.143 SUPERINTENDENT.
Subdivision 1. Contract; duties. “All districts maintaining a classified secondary school must employ a superintendent who shall be an ex officio nonvoting member of the school board. . .”

www.mnmsba.org



What does it mean to employ a superintendent?

- Required for districts that maintain classified secondary school
- Does not specify amount of time superintendent must work in school district

www.mnmsba.org



MSBA/MASA Superintendent Contract

- Joint effort between the MSBA and the Minnesota Association of School Administrators (MASA)
- Provides a template for negotiating superintendent contracts
- Meets the basic hiring and employment needs of both parties
- Includes eleven articles and some sections
- Includes “Notes” to emphasize a provision, statute, or concept

www.mnmsba.org



What are the options for filling the position?

- Full-time
- Superintendent/Principal
- Part-time
- Shared
- Interim

www.mnmsba.org



Option: Full-Time Superintendent

- Majority of Superintendent's work is full-time for a single school district
- Best leadership and management option

www.mnmsba.org



Option: Superintendent/Principal

PROS

- Financial savings for the school district
- Reduces number of administrators
- First-hand knowledge of building happenings

CONS

- Balancing requirements of an expanded duty list or job description
- May need to hire additional staff
- Statutory requirements relative to teacher and principal evaluations
- Statutory provision relative to continuing contract/tenure rights

www.mnmsba.org



If the Superintendent/Principal is Hired from Within

PROS

- Familiar with school district staff, students, programs, etc.
- Known to the school board
- May realize some savings

CONS

- Must resign from current school district position to accept the Superintendent/Principal position
- Retains continuing contract/tenure protections for principal portion of the position
- History - known to school district staff and parents
- Possible Equal Employment Opportunity concern

www.mnmsba.org



If the Superintendent/Principal is an External Hire

PROS

- Fresh start - bring new ideas
- No preconceived ideas
- Satisfies Equal Employment Opportunity requirements

CONS

- Not familiar with the school district
- If not performing, the Superintendent/Principal retains continuing contract/tenure rights for the principal aspect of the position, if he/she has met probationary requirements

www.mnmsba.org



Superintendent/Principal Contract Options

ONE EMPLOYMENT CONTRACT

- Articulate amount of time for Superintendent and Principal positions in percentages based on 1 F.T.E. (for example: Superintendent (50%)/Principal (50%))
- MSBA/MASA Model Superintendent Contract does not include dual role/position-related language, some modifications would be needed

TWO SEPARATE EMPLOYMENT CONTRACTS

- Articulate amount of time for Superintendent and Principal positions in percentages based on 1 F.T.E. (for example: Superintendent (50%)/Principal (50%))
- MSBA/MASA Model Superintendent Contract for Superintendent part of the position and MSBA Model Principal Agreement for the Principal part of the position

www.mnmsba.org



If Superintendent/Principal is Hired from Within

- Articulate amount of time for Superintendent and Principal positions in percentages based on 1 F.T.E. (for example: Superintendent (50%)/Principal (50%))
- Person selected resigns from current position to accept the Superintendent/Principal Employment Contract
- MSBA/MASA Model Superintendent Contract does not include language allowing the person to return to former position if the Superintendent/Principal position doesn't work out

www.mnmsba.org



Example: Superintendent/K-4 Elementary Principal

ARTICLE V DUTIES

Section 1. Superintendent. The Superintendent shall have charge of the administration of the schools under the direction of the School Board. The Superintendent shall be the chief executive officer of the School District; shall direct and assign teachers and other School District employees under his/her supervision; shall organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the School District subject to the approval of the School Board; shall select all personnel subject to the approval of the School Board; shall, from time to time, suggest policies, regulations, rules, and procedures deemed necessary for the School District; and, in general, perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the School Board from time to time. The Superintendent shall abide by the policies, regulations, rules, and procedures established by the School Board and the State of Minnesota. The Superintendent shall have the right to attend all School Board meetings and all School Board and citizen committee meetings, serve as an ex-officio member of the School Board and all School Board committees, and provide administrative recommendations on each item of business considered by each of these groups.

Section 2. Principal. The K-4 Elementary Principal shall be the educational leader of the K-4 elementary school building, evaluate teachers in accordance with school district policy, and fulfill all K-4 elementary school administrative and supervisory duties.

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Option: Part-Time Superintendent

PROS

- May save the school district money
- Favorable public perception – less administration

CONS

- Lack of visibility in the community/community engagement
- Superintendent is someplace else – at least part of the time
- Requires strong principal(s)
- Employee concern related to leadership – vacuum

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Option: Shared Superintendent

PROS

- May save the school district money
- Favorable public perception – less administration
- Many examples of situations where sharing a superintendent has worked for a period of time

CONS

- Lack of visibility in the community/community engagement
- Superintendent has to be some place else
- Requires strong principal(s)
- Possible employee concern related to leadership – vacuum

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Shared Superintendent: Contract Options

TWO SEPARATE CONTRACTS

- Superintendent works for more than one school district and has a contract for each school district
- Working out the benefits and payroll issues related to each contract

BUY TIME FROM ANOTHER DISTRICT

- One school district buys superintendent time from another school district (for example, neighboring school districts)
- One school district holds the contract
- Balancing out time spent in each school district

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Option: Interim Superintendent

PROS

- Address short-term needs of the school district
- Not afraid to do what's needed because not concerned about job retention
- Can have a calming effect on the school district
- Provides a transition to new superintendent

CONS

- Long-term school district needs may remain unfilled/unmet
- Shorter length of service by definition

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What questions do you have for us?



www.mnmsba.org

OPTIONAL FORM NO. 10 MAY 1962 EDITION GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT
OFFICE OF MANAGEMENT AND BUDGETING
WASHINGTON, D. C. 20503

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Minnesota Statutes 2015

123B.143 SUPERINTENDENT.

Subdivision 1. **Contract; duties.** All districts maintaining a classified secondary school must employ a superintendent who shall be an ex officio nonvoting member of the school board. The authority for selection and employment of a superintendent must be vested in the board in all cases. An individual employed by a board as a superintendent shall have an initial employment contract for a period of time no longer than three years from the date of employment. Any subsequent employment contract must not exceed a period of three years. A board, at its discretion, may or may not renew an employment contract. A board must not, by action or inaction, extend the duration of an existing employment contract. Beginning 365 days prior to the expiration date of an existing employment contract, a board may negotiate and enter into a subsequent employment contract to take effect upon the expiration of the existing contract. A subsequent contract must be contingent upon the employee completing the terms of an existing contract. If a contract between a board and a superintendent is terminated prior to the date specified in the contract, the board may not enter into another superintendent contract with that same individual that has a term that extends beyond the date specified in the terminated contract. A board may terminate a superintendent during the term of an employment contract for any of the grounds specified in section 122A.40, subdivision 9 or 13. A superintendent shall not rely upon an employment contract with a board to assert any other continuing contract rights in the position of superintendent under section 122A.40. Notwithstanding the provisions of sections 122A.40, subdivision 10 or 11, 123A.32, 123A.75, or any other law to the contrary, no individual shall have a right to employment as a superintendent based on order of employment in any district. If two or more districts enter into an agreement for the purchase or sharing of the services of a superintendent, the contracting districts have the absolute right to select one of the individuals employed to serve as superintendent in one of the contracting districts and no individual has a right to employment as the superintendent to provide all or part of the services based on order of employment in a contracting district. The superintendent of a district shall perform the following:

- (1) visit and supervise the schools in the district, report and make recommendations about their condition when advisable or on request by the board;
- (2) recommend to the board employment and dismissal of teachers;
- (3) annually evaluate each school principal assigned responsibility for supervising a school building within the district, consistent with section 123B.147, subdivision 3, paragraph (b);
- (4) superintend school grading practices and examinations for promotions;
- (5) make reports required by the commissioner; and
- (6) perform other duties prescribed by the board.

Subd. 2. **Disclose past buyouts or contract is void.** (a) For the purposes of paragraph (b), a "buyout agreement" is any agreement under which a person employed as a superintendent left the position before the term of the contract was over and received a sum of money, something else of value, or the right to something of value for some purpose other than performing the services of a superintendent.

(b) Before a person may enter into a superintendent's contract with a board, the candidate shall disclose in writing the existence and terms of any previous buyout agreement, including amounts and the purpose for the payments, relating to a superintendent's contract with another board. A disclosure made under this paragraph is public data.

Minnesota Statutes 2015

123B.143

(c) The superintendent's contract of a person who fails to make a timely disclosure under paragraph(b) is void.

History: Ex1959 c 71 art 4 s 16; 1969 c 9 s 27; 1971 c 144 s 1; 1973 c 492 s 7; 1974 c 37 s 1; 1975c 162 s 25; 1975 c 432 s 16; 1978 c 706 s 13-15; 1978 c 764 s 31,32; 1979 c 334 art 6 s 8; 1981 c 175 s1; 1983 c 314 art 7 s 18; 1986 c 444; 1987 c 398 art 8 s 8; 1990 c 562 art 8 s 21,22; 1991 c 265 art 9 s 34,35; 1993 c 224 art 9 s 22; art 12 s 15; 1Sp1995 c 3 art 9 s 19; art 16 s 13; 1998 c 397 art 6 s 55-61,124; art 11 s 3; 1998 c 398 art 6 s 16; 2000 c 489 art 6 s 8; 1Sp2001 c 6 art 1 s 5; 2007 c 146 art 2 s 16; 2009 c 96 art 2 s 34; 1Sp2011 c 11 art 2 s 21

Superintendent Contract

ARTICLE I PURPOSE

This Contract is entered into between Independent School District No. _____, _____, Minnesota, hereinafter referred to as the School District, and _____, hereinafter referred to as the Superintendent, a legally qualified and licensed superintendent who agrees to perform the duties of the Superintendent of the School District.

ARTICLE II APPLICABLE STATUTE

This Contract is entered into between the School District and the Superintendent in conformance with M.S.123B.143.

ARTICLE III LICENSE

The Superintendent shall furnish the School Board, throughout the life of this Contract, a valid and appropriate license to act as superintendent in the State of Minnesota as provided by applicable laws, rules, and regulations.

ARTICLE IV DURATION, EXPIRATION, TERMINATION DURING THE TERM, MUTUAL CONSENT, AND CONTINGENCY

Section 1. Duration: This Contract is for a term of _____ years commencing on July 1, 20____, and ending on June 30, 20____. It shall remain in full force and effect unless modified by mutual consent of the School Board and the Superintendent or unless terminated as provided in this Contract.

NOTE 1: Pursuant to M.S. 123B.143, Subd. 1., a School Board may enter into a Contract with a Superintendent for a period of time no longer than three (3) years. The Contract must provide that the School Board, at its discretion, may or may not enter into a subsequent Contract. Such a Contract may not be extended during its term. However, during the last three hundred sixty-five (365) days of such a Contract, a School Board may negotiate and enter into a subsequent Contract to take effect upon the expiration of the existing Contract. Such subsequent Contract must be contingent upon the Superintendent completing the terms of the existing Contract.

Section 2. Expiration: This Contract shall expire at the end of the term specified in Section 1. above. At the conclusion of its term, neither party shall have any further claim against the other, and the School District's employment of the Superintendent shall cease, unless a subsequent Contract is entered into in accordance with M.S. 123B.143, Subd. 1. Six (6) to nine (9) months prior to the expiration of this Contract, at the Superintendent's written request, the School board shall conduct a performance evaluation of the Superintendent pursuant to M.S. 13D.05, Subd. 3.

NOTE 2: See "NOTE 1."

Section 3. Termination During the Term: The Superintendent's employment may be terminated during the term of this Contract only for cause as defined in M.S. 122A.40, Subd. 9. and Subd. 13., but,

except for purposes of describing grounds for discharge, the provisions of M.S. 122A.40 shall not be applicable. If the School Board proposes to terminate the Superintendent during the term of this Contract for cause as described in M.S. 122A.40, Subd. 9. or Subd. 13., it shall notify the Superintendent in writing of the proposed grounds for termination. The Superintendent shall be entitled to a hearing before an arbitrator provided the Superintendent makes such a request in writing to the School Board Chair within fifteen (15) calendar days after receipt of the written notice of the proposed termination. In such event, the parties shall jointly petition the Minnesota Bureau of Mediation Services (BMS) for a list of five (5) arbitrators. The arbitrator shall be selected by the parties through the striking process as provided by BMS rules. The arbitrator shall conduct a hearing under arbitration procedure rules and issue a written decision. The decision of the arbitrator shall be final and binding on the parties, subject to judicial review of arbitration decisions as provided by law. The Superintendent may be suspended with pay pending final determination by the arbitrator. If the Superintendent fails to request a hearing as provided in this section within the fifteen (15)-day calendar period, he/she shall be deemed to have acquiesced to the School Board's proposed action, and the proposed action shall become final on such date as determined by the School Board, and the Superintendent shall have no further claim or recourse.

Section 4. Mutual Consent: This Contract may be terminated at any time by mutual consent of the School Board and the Superintendent.

Section 5. Contingency: If this Contract is a subsequent Contract entered into prior to the completion of an existing Contract, this subsequent Contract is contingent upon the Superintendent completing the terms of the existing Contract.

ARTICLE V DUTIES

The Superintendent shall have charge of the administration of the schools under the direction of the School Board. The Superintendent shall be the chief executive officer of the School District; shall direct and assign teachers and other School District employees under the Superintendent's supervision; shall organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the School District subject to the approval of the School Board; shall select all personnel subject to the approval of the School Board; shall, from time to time, suggest policies, regulations, rules, and procedures deemed necessary for the School District; and, in general, perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the School Board from time to time. The Superintendent shall abide by the policies, regulations, rules, and procedures established by the School Board and the State of Minnesota. The Superintendent shall have the right to attend all School Board meetings and all School Board and citizen committee meetings, serve as an ex-officio member of the School Board and all School Board committees, and provide administrative recommendations on each item of business considered by each of these groups.

ARTICLE VI DUTY YEAR AND LEAVES OF ABSENCE

Section 1. Basic Work Year: The Superintendent's duty year shall be for the entire twelve (12)-month Contract year, and the Superintendent shall perform duties on those legal holidays on which the School Board is authorized to conduct school if the School Board so determines. The Superintendent shall be on duty during any emergency, natural or unnatural, unless otherwise excused in accordance with School Board administrative policy.

Section 2. Vacation: The Superintendent shall earn _____ working days of annual paid vacation each Contract year. Unused vacation must be taken within six (6) months after the end of the Contract

year in which it is earned. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to unused earned and accrued vacation days.

Section 3. Holidays: The Superintendent shall be entitled to _____ paid holidays as designated by the School Board each Contract year.

NOTE 3: The specific holidays should be listed.

Section 4. Sick Leave: The Superintendent shall earn paid sick leave at the rate of _____ day(s) each working month, and earned sick leave may accumulate to a maximum of _____ days. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused sick leave days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to unused earned and accrued sick leave days.

Section 5. Workers' Compensation: Pursuant to M.S. Chapter 176, the Superintendent injured on the job in the service of the School District and collecting workers' compensation insurance may draw sick leave and receive full salary from the School District, the salary to be reduced by an amount equal to the insurance payments, and only that fraction of the days not covered by insurance will be deducted from accrued sick leave.

Section 6. Bereavement Leave: The Superintendent shall be granted bereavement leave for a death within the Superintendent's immediate family. The time utilized shall be in an amount to be determined after conferring with the School Board Chair. Days utilized [will or will not] be deducted from the Superintendent's sick leave. "Immediate family" is defined as the Superintendent's spouse, child, parent, brother, sister, or other relative who was living in the same household as the Superintendent.

Section 7. Emergency Leave: The Superintendent may be granted paid emergency leave at the discretion of the School Board.

Section 8. Jury Service: The Superintendent who serves on jury duty shall be granted the day or days necessary as stipulated by the court to discharge this responsibility without any salary deduction or loss of basic leave allowance. The compensation received for jury duty service shall be remitted to the School District.

Section 9. Military Leave: Military leave shall be granted pursuant to applicable law.

Section 10. Disability: If the Superintendent is unable to perform his/her regular duties because of personal illness or disability and has exhausted all accumulated sick leave, the School Board shall provide additional paid sick leave at a salary equal to _____ percent of the Superintendent's regular salary until the expiration of the waiting period for long-term disability insurance.

Section 11. Medical Leave: Pursuant to M.S. 122A.40, Subd. 12., the Superintendent shall have a right to a leave of absence for health reasons.

Section 12. Insurance Application: A Superintendent on unpaid leave is eligible to continue to participate in group insurance programs if permitted under the insurance policy provisions. The Superintendent shall pay the entire premium for such insurance commencing with the beginning of the leave and shall pay to the School District the monthly premium in advance. In the event the Superintendent is on paid leave from the School District under Section 4. above or supplemented by sick

leave pursuant to Section 5. above, the School District will continue insurance contributions as provided in this Contract until sick leave is exhausted. Thereafter, the Superintendent must pay the entire premium for any insurance retained.

ARTICLE VII INSURANCE

Section 1. Health and Hospitalization and Dental Insurance: The School District shall provide the Superintendent and the Superintendent's dependents with health and hospitalization and dental insurance coverage under the School District's group health and hospitalization and dental insurance plans at the expense of the School District.

[or]

The School District shall provide the Superintendent and the Superintendent's dependents with health and hospitalization insurance coverage under the School District's group health and hospitalization insurance plan. The School District shall contribute the sum of \$_____ per month toward the premium for such insurance. The balance of the premium shall be paid by the Superintendent through payroll deduction. The School District shall also provide the Superintendent and the Superintendent's dependents with dental insurance coverage under the School District's group dental insurance plan. The School District shall contribute the sum of \$_____ per month toward the premium for such insurance. The balance of the premium shall be paid by the Superintendent through payroll deduction.

NOTE 4: In the event this Contract will cause or does cause penalties, fees, or fines to be assessed against the School District, the parties agree to reopen negotiations that result in a revised Contract between the parties that eliminates or reduces penalties, fees, or fines to be assessed against the School District. The amount of any reduction in the School District's contribution toward the Superintendent's healthcare benefits as a result of addressing the "highly compensated employee" component of the ACA will be placed into another School District provided benefit(s) (i.e., a retirement HRA, salary, etc.) as agreed upon between the parties.

Section 2. Life Insurance: The School District shall provide, at its own expense, term life insurance for the Superintendent under the School District's group term life insurance plan in the amount of \$_____, payable to the Superintendent's named beneficiary(ies).

NOTE 5: According to the Internal Revenue Service rules, the amount of School District premium contribution that pays for life insurance coverage in excess of \$50,000 is considered taxable income, so the School District should be certain that it is reporting that contribution as such, and the Superintendent needs to know why that amount is being reported.

Section 3. Long-Term Disability Insurance: The School District shall provide, at its own expense, long-term disability insurance for the Superintendent under the School District's group long-term disability insurance plan.

Section 4. Eligibility: The eligibility of the Superintendent and the Superintendent's dependent(s) and beneficiary(ies) for insurance benefits shall be governed by the terms of the insurance policies purchased by the School District pursuant to this article.

Section 5. Claims Against the School District: The School District's only obligation is to purchase the insurance policies described in this article, and no claim shall be made against the School

District as a result of denial of insurance benefits by an insurer if the School District has purchased the policies and paid the premiums described in this article.

ARTICLE VIII
OTHER BENEFITS

Section 1. Tax-Sheltered Annuities: The Superintendent is eligible to participate in a tax-sheltered annuity plan through payroll deduction established pursuant to Section 403(b) of the Internal Revenue Code of 1986, M.S. 123B.02, Subd. 15., School District policy, and as otherwise provided by law.

Section 2. Vehicle: The School District shall compensate the Superintendent for business use of his/her private vehicle at the rate of ____ cents per mile pursuant to M.S. 471.665, Subd. 1.

[or]

The School District shall provide the Superintendent with a monthly allowance of \$____ for business use of his/her private vehicle pursuant to M.S. 471.665, Subd. 3.

NOTE 6: Prohibition Against Combination of Options. One of the two (2) options above should be selected and the other option deleted. Some School Districts have been utilizing a combination of M.S. 471.665, Subd. 1. and Subd. 3. – i.e., in-district travel and out-of-district travel. However, an opinion by the Minnesota Attorney General indicates that using the combination is improper (see Op. Atty. Gen. 11/20/95).

NOTE 7: Prohibition Against Personal Use of School District Vehicle. Two opinions by the Minnesota Attorney General conclude that a School District may not provide a school district-owned vehicle which the Superintendent utilizes for personal use even if the Superintendent pays for such personal use (see Op. Atty. Gen. 161b-12 1/24/89 and Op. Atty. Gen. 395b- 10/24/89).

NOTE 8: Statutory Restrictions on Personal Use of District-Owned Vehicles. M.S. 471.666 prohibits personal use of a vehicle owned, leased by, or loaned to a School District, except for incidental use related to School District business. Such a vehicle may not be used for transportation to or from the residence of the School District employee except for narrow, incidental use related to the School District's business. The effect of this restriction is so limiting that a School District's provision of District-owned, leased, or loaned vehicles for any personal use by the Superintendent is impractical (see M.S. 471.666).

Section 3. Conferences and Meetings: The School District shall pay all legally valid expenses and fees for the Superintendent's attendance at professional conferences and meetings with other educational agencies when such attendance is required, directed, or permitted by the School Board. The Superintendent shall periodically report to the School Board relative to all meetings and conferences attended. The Superintendent shall file itemized expense statements to be processed and approved as provided by School Board policy and law.

ARTICLE IX
SALARY

The Superintendent shall be paid an annual salary of \$_____ for the 20____-20____ Contract year, \$_____ for the 20____ - 20____ Contract year, and \$_____ for the 20____ - 20____ Contract year.

During the term of this Contract, the annual salary may be modified but shall not be reduced. The annual salary shall be paid in ____ equal installments during the Contract year.

[or]

The Superintendent shall be paid an annual salary of \$_____ for the 20__ - 20__ Contract year. The parties shall endeavor to agree by April 1 of each subsequent year as to the amount of the salary for the following year. During the term of this Contract, the annual salary may be modified but shall not be reduced. The annual salary shall be paid in ____ equal installments during the Contract year.

NOTE 9: Options. School Boards should use only one of the paragraphs above. The first paragraph fixes a salary for more than one (1) year, while the second paragraph fixes the salary for one (1) year and requires mutual agreement for the subsequent year(s). Practices vary from School District to School District.

ARTICLE X OTHER PROVISIONS

Section 1. Outside Activities: While the Superintendent shall devote full time and due diligence to the affairs and the activities of the School District, he/she may also serve as a consultant to other school districts or educational agencies, lecture, engage in writing and speaking activities, and engage in other activities if, as solely determined by the School Board, such activities do not impede the Superintendent's ability to perform the duties of the superintendency. However, the Superintendent may not engage in other employment, consultant service, or other activity for which a salary, fee, or honorarium is paid without the prior approval of the School Board.

Section 2. Indemnification and Provision of Counsel: In the event that an action is brought or a claim is made against the Superintendent arising out of or in connection with his/her employment and the Superintendent is acting within the scope of employment or official duties, the School District shall defend and indemnify the Superintendent to the extent provided by law. Indemnification, as provided in this section, shall not apply in the case of malfeasance in office or willful or wanton neglect of duty, and the obligation of the School District in this regard shall be subject to the limitations as provided in M.S. Chapter 466.

Section 3. Dues: The Superintendent is encouraged to belong to and participate in appropriate professional, educational, economic development, community, and civic organizations when such membership will serve the best interests of the School District. Accordingly, the School District will pay the membership dues for such organizations as are required, directed, or permitted by the School Board. The Superintendent shall present appropriate statements for approval as provided by law.

NOTE 10: Until 2007, School Districts were restricted to paying dues for their superintendents to belong to professional and educational organizations, but the 2007 Minnesota Legislature enacted M.S. 123B.02, Subd. 24., allowing School Districts to pay dues for other organizations if their School Boards deemed such membership to be appropriate.

Section 4. Medical Examination: The Superintendent shall have a comprehensive medical examination not less than once every ____ years. A summary document from the physician certifying the fitness of the Superintendent to perform the duties of the position shall be provided to the School Board Chair. The cost of said examination not covered by the School District's insurance program shall be paid by the School District.

[Section 5. Other Applicable Provisions: In this section, other terms and conditions of employment as agreed on between the parties should be included. Items such as severance pay, payment for unused sick leave, and extended leaves of absence, if provided to the Superintendent, are examples of what could be included. Since superintendents' contracts vary greatly in the manner in which they address such provisions, no attempt has been made to develop specific model Contract language. However, if the parties are considering the inclusion of such provisions, both MSBA and MASA may be able to provide sample language upon request.]

NOTE 11: Since July 31, 1993, severance pay for highly compensated employees has been restricted. A "highly compensated employee" is an employee with estimated annual wages that are greater than sixty percent (60%) of the governor's salary and are equal to, or greater than, eighty percent (80%) of the estimated annual wages of the second highest paid employee of the School District. Severance pay for highly compensated employees is restricted to an amount equivalent to six (6) months of wages. For purposes of this restriction, payments for accumulated vacation and sick leave liquidated to cover the cost of group term insurance may be paid in addition to the six (6) months of severance pay. For exceptions to the six (6)-month restriction, see M.S. 465.722, Subd. 3., which may be found in section "D.5." of "Chapter 3" in the MSBA Service Manual.

ARTICLE XI
SEVERABILITY

The provisions of this Contract shall be severable, and if any such provision or the application of any such provision under any circumstances is held invalid, it shall not affect any other provisions of this Contract or the application of any provision thereof.

IN WITNESS WHEREOF, I have subscribed
my signature this ____ day of
_____, 20__.

Superintendent

IN WITNESS WHEREOF, we have subscribed
our signatures this ____ day of
_____, 20__.

School Board Chair

School Board Clerk

Superintendent's Employment Contract Handbook

Minnesota School Boards Association



Revised: September 2016

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Superintendent's Employment Contract Handbook

Introduction

The superintendent's employment contract is a written agreement between the school board and the superintendent and consists of the terms and conditions of the superintendent's employment. Like all employment contracts, the superintendent's employment contract is an important legal document that should be well-written. Unfortunately, the superintendent's employment contract is often written in haste, over a short span of time, and, in the case of new superintendents, the terms and conditions included in the employment contract are often the same provisions that were included in the previous superintendent's contract regardless of whether those provisions continue to make sense. Each new superintendent's employment contract provides a school board with an opportunity to modify and/or review the contract it has with its chief executive officer, and employment contracts should be tailored to individual superintendents.

Agreeing to an employment contract is an important step in establishing a positive working relationship between the school board and its superintendent; therefore, the terms and conditions of employment must be clear and concise so as not to cause future problems. Ultimately, employment contract negotiations should define the terms and conditions of employment for a specific period of time, thus providing a foundation on which the school board and superintendent can build expectations.

The *Superintendent's Employment Contract Handbook (Handbook)* should be used in conjunction with the MSBA's *Model Superintendent Contract*, which can be found in the MSBA Service Manual, Chapter 3. The *Handbook* content includes an overview of relevant Minnesota laws for employing superintendents, provides a review of the provisions that should be included in superintendent employment contracts as well as discretionary provisions, highlights potential issues in superintendent employment contracts, referred to as "problem clauses," and identifies trends.

Relevant Minnesota Law

Several state laws directly impact superintendent employment contracts. A review of some of the relevant laws is provided below.

Employment of a Superintendent

Pursuant to Minnesota Statutes (M.S.) 123B.143, every school district maintaining a classified secondary school is required to employ a superintendent. School boards are vested with the authority to select and employ a superintendent, but the law does not specify a daily, monthly, or yearly amount of time that the superintendent must work. Thus, superintendents may be employed on a full- or part-time basis and may be employed by a single school district or shared by two or more school districts. Superintendents may also work in combined positions, such as a superintendent/principal.

M.S. 123B.143 also provides that no individual has a right to employment as a superintendent based on order of employment in any school district. According to the law, if two or more school districts agree to purchase or share the services of a superintendent, “the contracting school districts have the absolute right to select one of the individuals employed to serve as superintendent in one of the contracting school districts and no individual has a right to employment as the superintendent to provide all or part of the services based on order of employment in a contracting district.” So, if each of the contracting school districts already employs a superintendent, those school districts have the right to employ either one or neither of the currently employed superintendents.

Superintendent’s Ex Officio Status

According to the same law, the superintendent is an ex officio, or nonvoting, member of the school board. Because of their ex officio member status, superintendents have the right to attend all school board meetings and any other meetings of the school board including committee and subcommittee meetings. As a result, the school board may not exclude the superintendent from attending any of those meetings.

Licensure and Continuing Education Requirements

Minnesota law requires superintendents who work in Minnesota to hold a superintendent’s license from the State of Minnesota. For purposes of licensure, superintendents are supervisory personnel whose jobs require them to “devote 50 percent or more of their time to administrative or supervisory duties over other personnel” (M.S. 122A.15, Subd. 2., and Minnesota Rule (M.R.) 3512.0300).

In 1991, the legislature authorized establishing an alternative path to superintendent licensure. Under the alternative licensure provisions, a candidate for alternative licensure is required to: “...hold a master’s degree in an administrative area; have been offered an administrative position in a school district, group of districts, or an education district approved by the commissioner of education; have five years of experience in a field related to administration; and document successful experiences working with children and adults” (M.S. 122A.27).

Under M.R. 3512.0300, superintendent candidates who are superintendents in other states and who have been prepared in other states may apply to the State of Minnesota for an initial superintendent’s license.

Pre-Employment Issues

Before entering into a superintendent employment contract, the candidate must disclose any previous superintendent employment contract buyout(s) with another school board(s) as well as the terms of the buyout agreement(s) including the amount and purpose of the payments. Disclosure under M.S. 123B.143, Subd. 2 (b) must be in writing, and the data is classified as public data. M.S. 123B.143 also provides that failure of the candidate to disclose the buyout information in a timely manner renders the new employment contract void.

School districts are required by statute (M.S.123B.03) to conduct criminal history background checks on any individuals who are offered school district employment. Therefore, the superintendent should be given notice that his/her offer of employment is conditioned upon the results of the criminal background check.

Negotiating and Presenting the Employment Contract

No exception exists in Minnesota's Open Meeting Law (OML) or other statute that allows a school board to close school board meetings or school board committee meetings to negotiate or discuss the superintendent's employment contract or salary. The exception allowing school boards to close a meeting to consider labor negotiations strategy (M.S. 13D.03) does not apply to superintendents; the exception only applies to negotiations strategy for reaching agreements with bargaining units which have been certified by the Bureau of Mediation Services (BMS) and does not apply to negotiations with employees (such as superintendents) who are not members of or represented by exclusive representatives recognized by the BMS. Also, because the information discussed during negotiations and included in the employment contract (for example "actual gross salary; salary range; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary") is classified as public personnel data (M.S. 13.43, Subd. 2.), the exception to the OML pertaining to non-public data (M.S. 13D.05) does not apply, and the negotiation meetings must be open.

Approval of Employment Contract

Because a superintendent is considered to be a teacher under M.S. 122A.40, Subd. 1., and M.S. 122A.41, Subd. 1. (a), school boards must take action on the superintendent's employment contract at a duly called school board meeting, and the school board's vote must be noted in the official school board meeting minutes. The employment contract must be signed by the superintendent, school board chair, and school board clerk. As a matter of practice, school boards complete the approval with a motion and vote to approve the employment contract.

Contract Term and Duration

The length of a superintendent's employment contract, whether initial or subsequent, is limited to a maximum of three years (M.S. 123B.143). State statute also prohibits school boards from extending the duration of an existing superintendent employment contract, whether by action or inaction, so, "rollover clauses" are prohibited (M.S. 123B.143).

Subsequent Employment Contract

Upon expiration of an existing employment contract, the school board has the discretion to either negotiate a subsequent employment contract or not. The law does not impose a time line requirement for notifying the superintendent of the school board's intent regarding whether to

offer a subsequent employment contract but does limit the parties from beginning to negotiate a subsequent employment contract any sooner than 365 days prior to the expiration of the existing contract. Any subsequent employment contract will take effect upon expiration of the existing contract and is contingent upon the superintendent's successful completion of his/her existing employment contract (M.S. 123B.143).

Reopener Clause

A superintendent's employment contract may be reopened during the term of the employment contract if the parties mutually agree (M.S. 179A.20, Subd. 3.).

Legal Expenses

School districts may reimburse superintendents and any of their other employees for legal expenses incurred by the employees to defend charges against the employees arising from the performance of duties for the school districts (M.S. 123B.02, Subd. 20.).

Insurance

State statute (M.S. 471.6161) allows the school district to use public funds to pay for employee insurance benefits that are part of the school district's group insurance programs. Under the law, the school district has the right to select the insurance carrier; however, the school district may not unilaterally reduce the aggregate value of an existing insurance policy during the term of an employment contract.

Each insurance policy purchased by the school district from qualified insurance providers comes with its own specific terms of use, including eligibility requirements. All insurance-related provisions included in negotiated employment contracts should align with the school district's insurance policies.

Leaves

State and federal law provides many leave options for qualifying employees, including superintendents. Most, but not all, are generally unpaid leaves. Each leave provided in statute contains its own eligibility requirements; however, the school district will typically define the application guidelines and procedures. Some of the leaves governed by statute include, but are not limited to, care of relatives leave under M.S. 181.9413, pregnancy and parenting leave under M.S. 181.941, medical leave under M.S. 122A.40, Subd. 12., leave for court service under M.S. 593.50, Family and Medical Leave (FMLA) under 29 U.S.C. 2601, and military leave under various state and federal statutes. Detailed information regarding each of these leaves can be found in the MSBA Service Manual, Chapter 13, Law Bulletin M. Employment contracts may also include additional discretionary leave provisions. Examples of discretionary leaves are emergency, personal, and bereavement leaves.

Residency

School boards typically prefer to employ a superintendent who will reside in their communities. However, pursuant to M.S. 122A.40, Subd. 3., school districts are prohibited from requiring residency as a condition of employing a teacher, and, since superintendents are considered teachers under M.S. 122A.40, Subd. 1., the same prohibition applies to their employment.

Tenure Exclusion

Pursuant to M.S. 122A.40, the continuing contract protections provided teachers under the law do not apply to superintendents; however, the continuing contract protections apply to principals. So, if the superintendent holds a dual-duty position of superintendent/principal, and if he/she has attained continuing contract rights in the school district, the superintendent/principal would retain continuing contract rights for the portion of time dedicated to his/her performance of the principal's duties.

Termination

According to M.S. 123B.143, a school board may terminate a superintendent during the term of an employment contract for any of the grounds specified in M.S. 122A.40, Subd. 9. and Subd. 13. Prior to discharge, the superintendent must be notified in writing of the grounds for the proposed discharge; the superintendent has the right to request a hearing, and final school board action may not be taken until after the hearing has been held. The school board may suspend the superintendent without pay pending the conclusion of the hearing and the school board's subsequent determination. Pursuant to M.S. 122A.41 (which applies to "cities of the first class"), a school board may discharge or demote a teacher (superintendent) during the term of an employment contract for any of the grounds listed in M.S. 122A.41, Subd. 6.

Specific Superintendent Employment Contract Provisions

The *Model Superintendent Contract (Model)* provides a template for school boards and superintendents to use as the basis for negotiating all superintendent employment contracts. The *Model* is a joint effort of the MSBA and the Minnesota Association of School Administrators. As a result, the specific provisions included in the *Model* provide the basis for negotiating the employment contract and meet the basic hiring- and employment-related needs of both parties. The *Model* is organized into eleven articles, some of which include additional sections. Several “NOTES” are provided in the *Model* to call attention to a particular provision, statute, or concept.

Employment contract provisions may be classified as essential or discretionary. Essential provisions are those which the employment contract must address and includes licensure, duration, duties of the superintendent, etc. Other provisions provided in the employment contract are discretionary and include such items as vacation, insurance, payment of dues, etc. The provisions of the *Model* are reviewed below.

Purpose

An employment contract should include language that identifies the parties to the contract. Sample language has been provided in *ARTICLE I*.

Applicable Statute

Superintendent employment contracts should include language specifying the statutory authority for employing the superintendent. Sample language has been provided in *ARTICLE II*.

License

Information relative to superintendent licensure has already been provided. The language in *ARTICLE III* obligates the superintendent to maintain a valid license for the duration of the employment contract, and this language should be included in the employment contract.

Duration, Expiration, Termination During the Term, Mutual Consent, and Contingency

Superintendent employment contracts should include a provision regarding the duration of the employment contract, and, because superintendent employment contracts may be reopened during their term if the parties mutually agree to do so, a reopener clause should be included as well. *ARTICLE IV, Section 1*, addresses both of these issues and should be included in the employment contract.

In the past, most, if not all, superintendent employment contracts included language suggesting a time line for notifying the superintendent of the school board’s intent to offer or not offer a subsequent employment contract. However, that language (formerly, “Section 2.”) was removed from the *Model* because problems were created for both school boards and superintendents. Because state statute does not include a legal requirement for school boards to notify their superintendents of such intent, the “subsequent contract language” proved to be confusing, contradictory, and difficult to implement. As previously noted, M.S. 123B.143 provides: 1) superintendent employment contracts expire at the end of the term specified in the contracts; 2) school boards may not extend the term of an existing employment contract; and 3) a subsequent employment contract is contingent upon the successful completion of the existing employment contract. Further, while the language in an employment contract may bind a school board, employment contract language cannot supersede statute. As a result, if the superintendent

is offered a subsequent contract, the school board should remove the “subsequent contract language” from it, and such language should not be included in an employment contract for a newly hired superintendent.

Superintendent employment contracts should contain the contract expiration language found in *ARTICLE IV, Section 2*. The *Model* language makes clear that the employment contract expires at the end of its term; neither party has any further claim against the other, and the school district’s employment of the superintendent ceases unless a subsequent employment contract is entered into per state statute. In addition, new language in the third sentence allows the superintendent to request the school board to conduct a performance evaluation of his/her performance six to nine months prior to the expiration of the existing employment contract. The language requires a written request and stipulates that the performance evaluation be conducted as provided in M.S.13D.05, Subd. 3. To preserve the school board’s rights, including, the school board’s right to determine the evaluation criteria, form, process, and procedures to be used for the evaluation, the school board would be wise to decline negotiating any further performance evaluation-related language into the employment contract.

As explained earlier, a school board retains the right to terminate the superintendent’s employment for cause during the term of the contract. *ARTICLE IV, Section 3*. makes clear that the superintendent’s employment may be terminated for cause as defined in statute, includes a process for notifying the superintendent of the termination, entitles the superintendent to a hearing before an arbitrator, and outlines the hearing process. An additional protection provided in the *Model* allows the school board to suspend the superintendent without pay pending final determination by the arbitrator. The *Model* language provides much needed protections for the school district and should be included as written.

The superintendent’s employment contract should also include language that would allow for termination of the contract during its term upon the mutual consent of the school board and superintendent. *ARTICLE IV, Section 4*. addresses this issue and should be included.

Many superintendent employment contracts are missing *ARTICLE IV, Section 5*. headed, “Contingency.” Statute provides that the superintendent’s subsequent employment contract is contingent upon the successful completion of the existing employment contract, and, in order to protect the school district, the *Model* language should be included.

Duties

Superintendent employment contracts typically include a provision outlining the superintendent’s duties. *ARTICLE V* addresses the issue and includes language relative to the superintendent’s status as an ex officio, nonvoting member of the school board (M.S. 123B.143). Also, in order to strengthen the school board’s right to assign, the language, “...other duties prescribed by the school board,” should be included (M.S. 123B.143, Subd. 1., (5)). Finally, Teacher Retirement Act (TRA) benefits are not basic benefits of the employment contract; rather, they are governed by statute and TRA rules and/or regulations. If a school board is disciplining a superintendent by removing him/her from the position of superintendent, the school board would have no more responsibility for the superintendent’s TRA benefits than the school board would have if the superintendent resigned. So, a wise school board will avoid negotiating language that would require it to ensure that the superintendent’s duties and assignments are sufficient for TRA benefit service credit at all times.

Duty Year and Leaves of Absence Provisions

Employment contracts should include provisions relative to the superintendent's duty year as well as the number of leaves of absence available and guidelines for using them. Because other leave provisions exist in state and federal statute, the school board should refrain from including too many "leave-related" benefits in the superintendent's employment contract. School districts would be wise to have well-defined written procedures to address employee, including the superintendent, requests for and use of leaves.

The language found in *ARTICLE VI, Section 1.* references a twelve-month duty year and requires the superintendent to be on duty in the event of an emergency.

Paid vacation days should be included in the employment contract. State law does not require school districts to pay for unused vacation days, nor does the law require unused vacation days to be carried over to subsequent years. Language allowing unused vacation days to be carried over to subsequent years and/or language requiring school district payment for unused vacation days is discretionary. The *Model* language in *ARTICLE VI, Section 2.* allows unused vacation days to be carried over but includes language requiring the superintendent to use them within six months or lose them. After all, vacation days were designed to allow employees to get away from their jobs, and, thus, refresh themselves; vacations were never intended to be used as a retirement or severance benefit. If including other language addressing payment for unused vacation days is desired, the parties should negotiate the rate at which the payment for said days will be made (i.e., flat per diem, current daily rate, etc.), address vacation roll-over rights, vacation forfeiture provisions, and maximum allowable vacation accumulation. In doing so, school boards need to keep in mind that payment based on the daily rate of pay will increase as the superintendent's salary increases. Because leaving the school district voluntarily is different from being involuntarily terminated, the third sentence in the *Model* should be included as written. A 2007 Minnesota Supreme Court case validates the need to set clear parameters regarding if or when payment for unused vacation days will be made and how the amount will be paid out (*Lee v. Fresenius*). Additionally, payment of accumulated vacation pay is outside of the statutory severance pay limits of M.S. 465.722. Three language options addressing vacation days, including "Option 1." from the *Model*, are provided below.

Option 1. Section 2. Vacation: The Superintendent shall earn ___ working days of paid vacation at the beginning of each Contract year. Unused vacation must be taken within six (6) months after the end of the Contract year in which the unused vacation is earned. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to payment for unused earned and accrued vacation days.

[or]

Option 2. Section 2. Vacation: The Superintendent shall earn ___ working days of paid vacation at the beginning of each Contract year. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3. or if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued vacation days.

[or]

Option 3. Section 2. Vacation: The Superintendent shall earn ___ working days of paid vacation at the beginning of each Contract year. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section up to a maximum of ___ vacation days; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3. or if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued vacation days.

A school board should select the option that best meets the school board's and its community's beliefs and expectations regarding school district payment for unused vacation days to exiting superintendents.

Paid holidays should be included in the employment contract. The number of allowable holidays and the name of each holiday should be listed as noted in the *Model (ARTICLE VI, Section 3.)*. Legal holidays are defined in state law (M.S. 645.44, Subd. 5.).

Superintendent employment contracts should include sick leave provisions. The employment contract should include *ARTICLE VI, Section 4.*, which addresses the rate at which sick leave days may be earned and whether the days may be accumulated (if so, the maximum number of allowable, accumulated sick leave days should be listed). If sick leave is allowed to accumulate and if the superintendent is to be paid for those unused days, to avoid public outrage over these large payments often referred to as "golden parachutes," the school board should calculate the potential long-term cost implications of the provision prior to approving the employment contract. Finally, an increasing number of superintendent employment contracts include sick leave provisions whereby the sick leave is "granted," rather than earned. The school board should then address the issue of how any unused sick leave may be recouped in the event the superintendent resigns during the contract year. Two sick leave provision options, including the option from the *Model*, are provided below.

Option 1. Section 4. Sick Leave: The Superintendent shall earn paid sick leave at the rate of ___ day(s) each working month, and earned sick leave may accumulate to a maximum of ___ days. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused sick leave days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to payment for unused earned and accrued sick leave days.

[or]

Option 2. Section 4. Sick Leave: The Superintendent shall earn paid sick leave at the rate ___ days(s) each working month, and earned sick leave may accumulate to a maximum of ___ days. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused sick leave days earned and accrued pursuant to the provisions of this section to a maximum of ___ days; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3., or, if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued sick leave days.

A school board should select the option that best meets the beliefs and expectations of the school board and its community.

Some employment contracts include a provision allowing the superintendent to carry over a predetermined number of sick leave days to subsequent years, and the language often requires the school district to compensate the superintendent for all or a portion of the unpaid, accumulated sick leave upon separating from the school district. While this idea may initially sound good, the language may have a compounding effect (the days are paid at the superintendent's current daily rate, not at the daily rate in place when the days were earned), thus, often resulting in a much larger lump-sum payment at the time of separation. Also, the parties should avoid negotiating language that would subject the superintendent and the school district to "constructive receipt," and corresponding tax consequences. According to Treasury Regulations, Subchapter A, Sec. 1.451-2, "income although not actually reduced to a taxpayer's possession is constructively received by him/her in the taxable year during which it is credited to his/her account, set apart for him/her, or otherwise made available so that he/she may draw upon it at any time, or so that he/she could have drawn upon it during that taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions." So, contract language that does not include a "risk of forfeiture" of a superintendent's income would be subject to constructive receipt, whereas language which includes a forfeiture risk would not. For example, language limiting the days paid to "unused, accrued/accumulated sick days" would create a "risk of forfeiture" because the superintendent would be paid for only unused sick leave days, as opposed to language specifying that "the superintendent will receive an amount equal to five (5) days of pay for each year of service upon voluntary termination of employment" which creates no forfeiture risk. Therefore, if such language is desired, the school board should seek assistance from a qualified tax professional or the school district's legal counsel to address the issue of "constructive receipt."

Superintendent employment contracts should include a workers' compensation provision. *ARTICLE VI, Section 5.* aligns with state statute, allows a superintendent who is injured on the job and collecting workers' compensation insurance to draw sick leave and receive full salary from the school district, reduces the superintendent's salary by an amount equal to the insurance payments, and allows only the fraction of the days not covered by insurance to be deducted from accrued sick leave. The school board should avoid negotiating additional language that would further obligate the school district.

Bereavement leave is included in the *Model*. The bereavement leave language from *ARTICLE VI, Section 6.* addresses when the days may be used, whether additional days may be granted and by whom, whether the days used will be deducted from accrued sick leave days, and how the term, "immediate family," will be defined. The school board would be wise to avoid expanding the definition of "immediate family" to include other persons, thus, allowing the school board to maintain control over this discretionary leave.

Emergency leave is also included in the *Model*. The terms, "emergency leave" and "personal leave," are often used interchangeably in employment contracts; however, the *Model* takes a specific approach by providing only "emergency leave" language. If included in the employment contract, the language should specify either emergency leave or personal leave (the employment contract should not include both leaves), and use should be limited to situations that are true emergencies. The language found in *Section 7.* should be included as written.

Superintendent employment contracts should include language relative to jury duty and military leaves. *ARTICLE VI, Section 8.*, simply requires that jury duty leave be provided without loss of salary or basic leave allowance and requires the superintendent to remit compensation

received to the school district. Because differences in state and federal requirements exist, the military leave language found in *ARTICLE VI, Section 9.*, should be included in the employment contract as written.

Leave language addressing long-term disability insurance should be included in superintendent employment contracts. Such language is driven by the terms of the school district's group long-term disability insurance policy. Most superintendent employment contracts include a benefit that pays up to 66 2/3 of the superintendent's regular salary in the event he/she is unable to perform his/her regular duties due to personal illness and/or disability. *Model* language can be found in *ARTICLE VI, Section 10.* Since the school board is not required to provide disability leave, the school board should take care to not promise more than the disability leave policy provides or than the school district can afford, and the school board should periodically check the policy for changes.

Superintendent employment contracts should include a leave of absence for health reasons. Even though, pursuant to M.S. 122A.40, Subd. 1., the provisions of M.S. 122A.40, Subd. 12., do not apply to superintendents, nothing in statute prevents the parties from including medical leave language in the superintendent's employment contract. If including medical leave language is desired, the language found in *ARTICLE VI, Section 11.* should be utilized because that language limits the superintendent's right to a leave of absence for health reasons as defined in statute, includes procedures for utilizing that leave, and would not create an additional medical leave.

Another topic to include in the employment contract is language stipulating when insurance premiums must be paid by the superintendent in order to remain in the school district's group insurance programs while he/she is on leave. *ARTICLE VI, Section 12.* requires a superintendent on unpaid leave to pay the premiums upon commencing the leave; whereas, the school district would continue to pay the premiums for a superintendent who is on a paid leave until sick leave is exhausted.

Insurance

Insurance benefits are commonly included in the superintendent's employment contract. Health and hospitalization insurance options may include family or single coverage. In addition, some employment contracts include dental insurance options. In order to maintain some control over insurance costs, the school district's contribution to premium costs should be stated as flat dollar amounts as referenced in *ARTICLE VII, Section 1.* School boards are reminded that the Affordable Care Act (ACA) may require school boards and superintendents to revise existing health and hospitalization insurance plans and contribution amounts in order to meet the requirements of this law.

Most superintendent employment contracts also include life insurance benefits. *Model* language can be found in *ARTICLE VII., Section 2.* Under the Internal Revenue Code (IRC) Section 79, an employer (school district) can provide an employee (superintendent) up to \$50,000 of group term life insurance without any tax consequences. However, if the total amount of the group term life insurance policy exceeds \$50,000, the imputed cost of coverage in excess of \$50,000 must be included as income and is subject to Social Security and Medicare taxes. Additionally, because eligibility for insurance coverage is governed by the terms and conditions of the policy purchased and because the terms and conditions may change, school boards should periodically check the policies for changes.

Another topic to address in the employment contract is long-term disability insurance (*ARTICLE VII., Section 3.*). *Model* language requires the school district to provide and pay for

long-term disability insurance under the school district's group policy. Again, because eligibility for long-term disability insurance coverage is governed by the terms and conditions of the policy purchased and because the terms and conditions may change, school boards should regularly check the policies for changes.

Superintendent employment contracts should also include language relative to eligibility for insurance (*ARTICLE VII, Section 4.*). The employment contract should include language specifying that eligibility is governed by the terms and conditions of the policy purchased, and, since the policies purchased may change, language which promises or guarantees specific coverage under the school district's group insurance policies should be avoided. Also, superintendent employment contracts should include language such as that in *ARTICLE VII, Section 5.*, holding the school district harmless in the event the superintendent's insurance benefits are denied.

Some superintendent employment contracts include language that allows the superintendent to be paid cash in lieu of a benefit such as health insurance. Contract language allowing the superintendent to be paid cash instead of a health benefit creates another option, and, if another option exists, the benefit in question would no longer be considered a health benefit; rather, that benefit would then become taxable to those who choose it. The Internal Revenue Service (IRS) has an unpublished opinion stating that if a "cash-in-lieu-of option" exists, then all other school district employees would also have to pay taxes on the benefit. Unless the school district has established a qualified "Cafeteria Plan" per IRC Section 125, such language may have unintended tax consequences not only for the superintendent but also for all of the school district's employees who are eligible for the benefit. For this reason, the school board should seek input from a qualified benefit and/or tax professional or the school district's legal counsel prior to including such language in the employment contract.

Other Benefits

The *Model* includes provisions that address other discretionary benefits such as tax-sheltered annuities, vehicle use, and attendance at conferences and meetings. Each item is addressed below.

Superintendent employment contracts usually include language relating to tax-sheltered annuities. Tax-sheltered annuities are covered under both state and federal law and are regulated by the IRS. In 2008, the number and identity of 403b vendors became a term and condition of employment, which is subject to bargaining (M.S. 123B.02, Subd. 15.), and the allowable employer contribution amount increased from \$2,000 to one-half of the available elective deferral permitted per year per employee under the IRC (M.S. 356.24, Subd. 1.). Because the elective deferral permitted per year is set by the IRC and the deferral amount will likely increase, the school board should avoid including language that would require the school district to automatically pay the maximum allowable amount or to contribute based on a percentage of salary. Again, flat dollar amounts are preferred. Due to the complexity of 403b-related issues, *ARTICLE VIII, Section 1.* is limited to a simple statement that the superintendent is eligible to participate in a tax-sheltered annuity plan, and the plan offered must comply with state and federal laws and school district policy. School boards should seek assistance from a qualified plan administrator or the school board's legal counsel prior to negotiating additional 403b language.

Superintendents are expected to be visible in their schools and communities, and, for this reason, most superintendent employment contracts include language that allows the school

district to compensate the superintendent for the use of his/her personal vehicle for business purposes. Two options are provided in *ARTICLE VIII, Section 2.*, and both options meet the requirements provided in statute (M.S. 471.665, Subds. 1. and 3.). Language that allows the superintendent to combine the two options and/or language that states the school district will provide a school district-owned vehicle for the superintendent's personal use is prohibited under opinions rendered by the Minnesota Attorney General, and state law imposes restrictions on the superintendent's personal use of a school-district-owned vehicle. In addition, the parties should be aware of any potential tax complications prior to negotiating vehicle-use language.

School boards typically encourage the continuing professional growth of their superintendents by paying for the superintendent's attendance at and participation in professional conferences and workshops. The employment contract should also include language which requires the superintendent to submit all conference- and meeting-related expenses for school board approval as provided in *ARTICLE VIII, Section 3.*

Salary

All superintendent employment contracts include salary provisions. *ARTICLE IX* provides two options relative to salary language. The first option specifies the amount of salary the superintendent will be paid each contract year, and the second option provides the annual salary amount for the first contract year and requires the school board and superintendent to agree to an amount for each subsequent contract year by a date certain. As previously explained, unlike teacher master agreements, the superintendent's employment contract may be reopened during the term of the contract upon the mutual consent of the parties (M.S. 179A.20, Subd. 3.).

Other Provisions

The *Model* includes language addressing other provisions commonly included in the superintendent's employment contract, such as outside activities, indemnification, provision of counsel, dues, and medical examination.

While superintendents are expected to devote their full time, attention, and energy to the affairs and activities of the school district, some superintendents serve as consultants to other school districts or engage in other activities not related to their regular employment. *ARTICLE X, Section 1.* stipulates that the outside activities must not interfere with the superintendent's ability to perform his/her regular duties and requires school board approval of any activity that would provide a salary, fee, or honorarium and should be included as written.

Most superintendent employment contracts include language addressing indemnification and provision of counsel, and some of them include "liability insurance" provisions; however, prior to negotiating employment contract language, school boards should know the difference between these two issues. M.S. 466.06 gives each school district the option to purchase liability insurance for their employees (superintendent) for damages resulting from an action arising out of the employees' (superintendent's) performance; however, school boards are not required to purchase liability insurance for the employees (superintendents). Under M.S. 466.07, if an action is brought or a claim is made against the superintendent for an action arising out of or in connection with his/her employment and the superintendent is acting within the scope of his/her employment or official duties, the school district is required to defend and indemnify the superintendent to the extent provided by law; however, indemnification does not include malfeasance in office or willful or wanton neglect of duty. *ARTICLE X, Section 2.* addresses the issue of indemnification and provision of counsel only. Since school districts are not required to provide liability insurance, which

currently is limited to \$1,500,000 per single incidence (M.S. 466.04), any requests from the superintendent for additional coverage should be resisted due to the impact an increase would have on a settlement in the event of a lawsuit. School boards would be wise to resist expanding the indemnification language beyond what is provided in the *Model*.

State law allows the school district to pay dues for its superintendent to belong to professional, educational, economic development, community, and civic organizations (M.S. 123B.02, Subd. 24.). Dues payments should be limited to those organizations that serve the best interests of the school district; therefore, the school district should only pay the membership dues for those organizations which are required, directed, or permitted by the school board as provided in the *Model* (*ARTICLE X, Section 3.*). Because this payment is discretionary, any additional language relative to dues that would cost the school district more or limit the school district's discretion should be avoided.

Unlike other school district employment contracts, some superintendent employment contracts include language that requires the superintendent to have a comprehensive medical examination on a predetermined basis. The requirement is usually included due to the superintendent's status as the chief executive of the school district and the school board's concern relative to his/her ability to perform the duties of the position. However, under the privacy regulations provided in state and federal law, health-related information that is maintained is considered personnel data and classified as private data on individuals. *ARTICLE X, Section 4.* addresses this issue by requiring the superintendent to provide the school board chair with a summary document from the physician certifying the superintendent's fitness to perform his/her duties. The language should expressly limit the payment for the comprehensive medical examination to that amount which is not covered by the school district's group health and hospitalization insurance plan. While such language is included in the *Model*, an increasing number of superintendent employment contracts do not include this discretionary provision.

Other employment contract provisions agreed to by the school board and superintendent should be included in separate sections within this article. Examples of language that could be addressed in this area are provided in *ARTICLE X, Section 5.* Also, the *Model* does not include specific "severance" language; however, "*NOTE 10,*" and M.S. 465.72 and M.S. 465.722 provide guidance regarding the topic. Typically, superintendents fall within the definition of "highly compensated employee"; therefore, the school board should pay particular attention to M.S. 465.722 when considering the inclusion of severance-related language.

Severability

Superintendent employment contracts should also include severability language. *ARTICLE XI* stipulates that if any employment contract provision is found invalid, that determination would not have an effect on the remaining contract provisions.

Ten Facts for Employing a Superintendent Under Minnesota Law

1. School boards are authorized by statute to select and employ a superintendent.
2. The superintendent is an ex officio, nonvoting member of the school board.
3. The school board may not meet in a closed session to discuss or negotiate the terms and conditions of the superintendent's employment contract.
4. A school board must take action at an open meeting to approve the superintendent's employment contract.
5. The superintendent's employment contract is a public document.
6. The length of the superintendent's employment contract, whether an initial contract or subsequent contract, may not exceed three years.
7. Upon expiration of the existing employment contract, the school board has the discretion to either negotiate or not negotiate a subsequent employment contract.
8. State law does not provide tenure protection for the superintendent.
9. School boards may terminate a superintendent during the term of an employment contract for grounds specified in statute.
10. School districts are authorized to pay reasonable work-related expenses.

Problem Clauses

Unfortunately, superintendent employment contracts are not immune from the inclusion of irresponsible, illegal, or costly language. The ideas proposed for inclusion in employment contracts come from a variety of sources, including the incumbent's employment contract, neighboring school districts, model contracts, school law attorneys, the private sector, proposals from the parties, etc.

Because negotiating an employment contract is a "give and take situation," school boards should carefully scrutinize the language of all items presented prior to including them in the contract. School boards should be aware that some language may not be appropriate or desirable from the school board's perspective, and, even though the proposed idea may be "recommended," the language may actually not be good for either party. Some of the provisions that may lead to unintended consequences are provided below.

Beneficiary Language

Because employees (including superintendents) are anxious to ensure that the benefits they receive pass on to their beneficiary(ies), employment contracts often include beneficiary language which is triggered by a variety of events. However, the school board should keep in mind that the benefits provided in a superintendent's employment contract are provided for the benefit of the superintendent during his/her employment and, only if negotiated, upon his/her retirement; they are not intended for anyone else. Therefore, if the parties determine such language is desired, the school board should work with its legal counsel to ensure the language clearly limits and identifies the qualifying event upon which benefits will be paid to the superintendent's beneficiary(ies).

Retirement

Most employment contracts provide retirement provisions; however, negotiations relative to retirement often result in language that is costly and may even be illegal. Problematic retirement-related language commonly found in superintendent employment contracts includes mandatory retirement age, early retirement incentive, severance for highly compensated employees, payment for unused, accumulated sick leave, and payment of retiree health insurance premiums. Information addressing each issue is provided below.

Under state and federal law, no mandatory retirement age exists, so school boards and superintendents should avoid negotiating language that requires superintendents to retire by a specific age, such as "by age 60 or 65." However, Minnesota law allows eligible teachers (superintendents) to retire prior to "normal retirement" age under M.S. 122A.48. The statute defines "eligibility," provides an application deadline, and includes other important information that school boards should know prior to negotiating retirement-related contract language. Because an early retirement option exists in statute already, including additional language in the employment contract is unnecessary.

Under M.S. 465.722, a highly compensated employee's severance pay is restricted to an amount equal to six months of wages. Severance pay is discretionary, so school districts are not required to provide it. The school board should consult legal counsel prior to including severance pay language in the employment contract.

Superintendent employment contracts often include language requiring the school district to pay for the superintendent's and, perhaps, his/her dependents' health and hospitalization insurance

premiums for a specified length of time after employment has ceased. Language that requires the school district to pay for retiree health insurance benefits should be avoided due to the long-term cost implications of providing the coverage. In addition, the Government Accounting Standards Board Summary Statement No. 45 (GASB 45) requires school districts to conduct actuarial studies of the long-term fiscal commitments of paying for these benefits (at the school district's expense) to ensure the school district's ability to pay said costs over time.

In Minnesota, the TRA was enacted by the Legislature as a means to allow qualified teachers, including superintendents, to provide for their retirements. TRA also allows superintendents and their school districts to make contributions to the superintendent's retirement fund. Since calculating retirement pay can be complex, questions and concerns regarding retirement plan design specifics are best handled by TRA professionals. In addition, TRA allows superintendents who are receiving retirement benefits to resume superintending under the provisions provided in M.S. 354A.31.

Due to the complexity of retirement-related issues, the school district should consult a qualified retirement professional or the school district's legal counsel prior to negotiating language relative to these, or any other, retirement provisions.

Trends

Over the years, new ideas emerge that are written into employment contracts. Trends represent ideas that are not included in the *Model*, so school boards should carefully weigh the advantages and disadvantages of including them in employment contracts. Some current trends include language relative to performance pay, performance evaluation, rehiring of retired superintendents, employing superintendent/principals, and other superintendent employment contracts. Each item is addressed below.

Performance Evaluation

State law does not require a school board to evaluate its superintendent's performance. However, superintendent performance evaluation is an important activity that should be conducted at least annually as a best practice. The evaluation process and procedures used are a matter of local policy. School boards should control when and how often the evaluation(s) will be held, what criteria and tools will be used, and what evaluation-related procedures will be followed. As a result, the *Model* does not provide sample language relative to performance evaluation other than that found in *ARTICLE IV, Section 2*. School boards would be wise to avoid expanding that *Model* language because language in the superintendent's employment contract can only be changed if the parties mutually agree; thus, the school board's inherent managerial rights would be limited. If the parties negotiate performance evaluation-related language beyond that which is found in *ARTICLE IV, Section 2.*, the language should be limited to a general statement only, and the specific details outlining the evaluation criteria, indicators, measures, evaluation instrument, ratings system (if used), evaluation process, time lines, and procedures should be determined in advance by the school board and be included in policy.

Pursuant to M.S.13D.05, Subd. 3. (a)., a school board may close a portion of a meeting to evaluate the superintendent's performance. However, the meeting must be open at the request of the subject of the meeting (superintendent), and the closed meeting must be recorded. So, including language in the employment contract addressing the issue of closing a meeting for performance evaluation purposes is not necessary. Additionally, state statute also requires the board to summarize its conclusions regarding the evaluation at its next open meeting. Finally, during the closed meeting, the school board is prohibited from taking a "straw vote" or otherwise trying to get a sense of where the members stand on offering a subsequent employment contract and discussing salary or the specifics of a subsequent employment contract, and the school board is required to record the closed meeting, so, evidence of any illegal discussion will exist.

Performance Pay

A few employment contracts include performance pay provisions. The goal of providing performance pay is to make the superintendent accountable for outcomes. Since superintendent employment contracts already include salary provisions, performance pay provisions are typically considered additional compensation. For example, the superintendent may receive all, part, or none of the compensation set aside for reaching specific, predetermined, and mutually agreed upon targets and/or expectations in addition to receiving all of his/her basic compensation. The *Model* does not include sample language addressing the issue of performance pay. MSBA recommends school boards exercise caution when considering performance pay-related language proposals to avoid problems. If performance pay-related language is included in the employment contract, the language should require the parties' mutual agreement, be general

but clear enough to allow the superintendent to know what's expected of him/her while maintaining the school board's inherent management rights and authority, and be included in the employment contract. For purposes of transparency, details outlining the mutually agreed upon goals and/or expectations, measures of progress and/or achievement, timelines for accomplishing the goals/expectations, etc., should be included in the employment contract. As previously discussed, a performance evaluation may occur in a closed session; however, no statute exists that would allow the school board to close a meeting to discuss performance pay.

As an aside, school districts are prohibited from paying "year-end bonuses" to employees for past services; as a result, school boards should avoid provisions that allow "bonus pay."

Retired Superintendent

Minnesota law allows superintendents who have retired and are receiving retirement benefits under TRA to return to work as a superintendent. For a variety of reasons, many school boards are choosing to hire retired superintendents to fill their vacancies for both short and extended periods of time. Two options for retired superintendents seeking to return to work are provided under M.S. 354.44. Specifics concerning each option can be found in statute.

Due to the complexity of the issue and to avoid mistakes that could impact the superintendent's TRA payments over time, the superintendent should seek assistance from TRA prior to being employed as a retired superintendent.

Superintendent/Principal

An increasing number of school districts are opting to hire superintendents who have additional duties as a principal. Before the dual-duty position is offered and the employment contract is signed, the school board should do its homework. The employment contract should address the percentage of time to be spent performing the duties of each position. Oftentimes, superintendents in these positions find completing their superintendent duties to be difficult due to the amount of time the principal duties require. In addition, because principals have continuing contract rights under M.S. 122A.40 and, if so, retain seniority rights in the school district, if the school board determines not to offer the superintendent/principal a subsequent employment contract after he/she has attained continuing contract rights in the school district, he/she would retain the right to that portion of the time identified to perform the principal's duties.

Other Superintendent Employment Contracts

School boards should work very hard to maintain their inherent managerial rights and functions. Superintendents should be employed by and be directly responsible to local school boards; thus, superintendent employment contracts that do not support that relationship should be avoided because they leave school boards at risk of being unable to control their own futures and increase the school district's risk of liability. When school boards contract with an outside sub-contractor, the superintendent becomes an employee of the sub-contractor rather than the school district. Although a legal option, such contracts typically include ambiguous language and lack the clarity and protections for the school district that can be found in the *Model*. Good employment contracts will 1) outline the duties to be performed by the superintendent, 2) define the superintendent's status as an ex officio member of the school board, 3) require the superintendent to abide by the policies, regulations, rules, and procedures established by the school board and the State of Minnesota, and 4) establish that the superintendent performs under the direction of the school board, etc., as provided in *ARTICLE V*. Other superintendent

employment contract options not addressed in the *Model* should be reviewed by the MSBA and/or the school district's legal counsel early on to protect the school board's inherent managerial rights and the school district.

Miscellaneous

Cell Phones and Other Electronic Devices

Some superintendent employment contracts include provisions regarding school district compensation for cell phones and other electronic devices for the superintendent's use outside of the school district's premises in the performance of his/her duties. Prior to the passage of the Small Business Jobs Act (SBJA) (H.R. 5297), these electronic items were considered "listed property" under IRC 280F (d) (4) and required employees to account for their business and personal use of said devices. However, effective taxable years beginning after December 31, 2009, employer-provided cell phones and other electronic devices are no longer considered "listed property." Unfortunately, the SBJA did not address the proper tax treatment of said devices. Therefore until the IRS provides guidance, school boards are wise to consult with qualified tax professionals prior to negotiating employment contract language that provides superintendents with a monthly allowance for communication purposes.

Moving Expenses

Some superintendent employment contracts include language requiring the school district to pay the new superintendent's transportation-related moving costs up to a specified amount. While no statute specifically authorizes payment of a superintendent's moving expenses, a part of the school board's implied powers found in M.S. 123B.02, Subd. 1. allows school boards to pay the moving expenses of the superintendent on a one-time basis as part of the superintendent's compensation (Minnesota Attorney General Opinion 107-a-3). If moving expenses-related language is included in the employment contract, 1) to ensure accountability, the agreed upon costs should be capped and, 2) as a condition of reimbursement, the superintendent should be required to submit valid receipts as proof of payment.

School Attorneys

Employment contracts are legal documents, and the provisions included in them should be well understood by both the school board and superintendent. Because this *Handbook* and the *Model* cannot possibly address every item superintendents will request to be included in their employment contracts, school boards should consult with MSBA or qualified school attorneys during such negotiations. The school district's legal counsel is an important contact for a school board. Legal counsel has the depth of knowledge and experience needed to identify illegal and problem language and suggest improvements.

Conclusion

The *Handbook* has been designed to provide guidance to school boards as they negotiate superintendent employment contracts. The information provided should assist school boards in negotiating employment contract language that is fair to both parties. Finally, MSBA staff is available to answer school board members' superintendent employment contract-related questions and, if asked, provide a detailed, written analysis of the superintendent's employment contract.



Superintendent Evaluation

A Resource for School Board Members and Superintendents



Minnesota School Boards Association

Minnesota Association of School Administrators



Revised July 11, 2016

Superintendent Evaluation

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INTRODUCTION

This guide, along with the supporting resources, is designed to help school board members and superintendents implement an effective, meaningful superintendent evaluation process that is focused on improving student achievement.

The resources referenced in this document were developed jointly by staff of the Minnesota School Boards Association (MSBA) and staff and officers of the Minnesota Association of School Administrators (MASA).

The basis for all resources are the Program Requirements for All Administrative Licenses, Subparts “1” and “2” (Minnesota Rule 3512.0510).

FOR MORE INFORMATION

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OVERVIEW

Evaluation of a superintendent's performance is one of a school board's most important responsibilities, and school boards must comply with Minnesota's Open Meeting Law (OML) – Minnesota Statute 13D – Minnesota's Government Data Practices Act (Data Practices Act) – Minnesota Statute 13 – and other privacy laws which protect superintendents from public disclosure of private data. Keeping in mind that fact, this document was created from a conservative point-of-view in order to protect both parties.

Done correctly, an evaluation is a useful governance tool that helps drive school improvement. In fact, a high quality evaluation process helps develop positive school board-superintendent relationships, clarifies leadership roles, creates common understandings, and provides a mechanism for satisfying the public's desire for accountability.

An extremely important fact to keep in mind, however, is that evaluations are most effective when they are designed and used for improving existing performance and communicating future expectations, not simply for punitive reasons and reviewing past performance.

WHY EVALUATE THE SUPERINTENDENT?

A quality superintendent evaluation process provides benefits not only for a school board and its superintendent but also benefits the school community and the community at large by:

- allowing school board members to follow school district progress and learn about a superintendent's ongoing professional development;
- providing input, feedback, and support for a superintendent to help him/her improve throughout the school year;
- creating and establishing a climate of trust and collaboration;
- providing the school community and the community at large with assurance that their priorities are being addressed; and
- providing oversight and assurance that a school board's vision, priorities, and policies are being implemented as intended.

HOW DO WE EVALUATE OBJECTIVELY AND FAIRLY?

While every evaluation process will include some degree of subjectivity, using effective tools and procedures will make the process more objective. The components listed below are necessary in any quality evaluation process.

- **Documentation.** An evaluation is more than a checklist – it requires careful consideration of supporting documented evidence to decide whether expectations are being met. School board members and their superintendent should work together to reach consensus on the evidence to be used, keeping in mind that school districts already produce a variety of annual reports, curriculum studies, budget printouts, contracts, meeting minutes, etc., all of which could be used to document a superintendent's progress and accomplishments relative to the established goals.
- **Criteria and Ratings.** An effective evaluation requires school board members to rate performance through the use of criteria that are mutually agreed upon, understandable, realistic, and measurable.
- **Written Comments.** Written comments are essential as they offer school board members the opportunity to provide specific constructive praise and criticism, and they provide the superintendent with useful information that he/she can use to continually improve.
- **Evaluation Conferences.** Face-to-face meetings between a school board and its superintendent are essential. Meetings should occur to discuss evaluation criteria, establish goals, determine the evaluation instrument and process, present supporting evidence, and

discuss the results of the school board's mid-year formative and year-end summative evaluations. As previously stated, school boards must comply with the OML – Minnesota Statute 13D – the Data Practices Act – Minnesota Statute 13 – and other privacy laws. For more information regarding the OML and the Data Practices Act, refer to MSBA/MASA's model policies 205 and 206, contact MSBA or MASA, or go to the website of the Office of the Revisor of Statutes.

BEFORE BEGINNING THE EVALUATION PROCESS

A school board's evaluation of its superintendent is an inherent managerial right, unless it has been negotiated away. Therefore, all school board members should review their superintendent's employment contract to determine what, if any, evaluation-related terms, timelines, and protocols may have been included. As a reminder, wise school boards avoid including language in employment contracts that limits inherent managerial rights.

RESOURCES

Sample resources are provided in the appendixes, and school boards and their superintendents may agree to modify the various components to best fit the needs of their school districts.

EVALUATION OPERATING PRINCIPLES

Operating principles provide a road map for structuring an effective superintendent evaluation by outlining the purpose and outcome underlying the entire process.

TIMELINE FOR SUPERINTENDENT EVALUATION

While an effective superintendent evaluation process is ongoing, the sample twelve-month timeline presents a suggested schedule that breaks the process into small steps to be completed. During the twelve-month period, a superintendent may be given any number of formative evaluations but must be given at least one summative evaluation. According to the Minnesota Department of Education, a formative evaluation is an activity that may include informal or formal assessment of current practice that offers feedback suited to improve future performance; whereas, a summative evaluation is formal, is based on all evidence collected throughout the evaluation period, results in a superintendent receiving an overall performance rating, and is placed in the superintendent's personnel file.

SUPERINTENDENT JOB DESCRIPTION

The sample superintendent job description is based on the competencies in Minnesota Rule 3512.0510 and articulates the functions of a school district's chief executive officer. A sample job description is located in Appendix A.

GOALS-BASED EVALUATION

Goals-based evaluation is a framework that is useful in helping to establish district-level and professional development goals for superintendents and then evaluate the progress made toward those goals. The competencies included in Minnesota Rule 3512.0510 are assumed to be embedded in the established goals. Goals-based evaluation commentary and forms are located in Appendix B.

SUPERINTENDENT SELF-EVALUATION

Superintendents are encouraged to engage in an annual self-evaluation of their progress toward meeting performance goals and/or to reflect on their professional experience. Self-evaluation provides a structure for considering future goals and determining strategies for achieving them. MSBA and MASA suggest that the data from a self-evaluation be the sole property of the superintendent and shared with his/her school board only if the superintendent so chooses. A sample superintendent self-evaluation is located in Appendix C.

Superintendent Evaluation Operating Principles

A comprehensive superintendent evaluation process must:

1. Provide opportunities for personal and professional development.

- **Rationale:** To be successful, evaluation processes must address the whole person and be oriented toward continuous improvement.

2. Be intended to improve performance, not prove incompetence.

- **Rationale:** An effective evaluation process is established on the premise of providing feedback for growth, not on finding evidence of shortcomings. While a school board is able to use evaluation for purposes of termination, doing so should not be its priority.

3. Provide legal, realistic, accurate, useful, and measurable criteria reflective of the competencies in Minnesota Rule 3512.0510.

- **Rationale:** Competencies of any kind are only effective if they are legal, realistic, accurate, useful, and measurable. Examples of multiple data sources are school district/school improvement plans; documents that address previous goals; school board meeting agendas; a superintendent self-evaluation; a portfolio compiled by the superintendent; etc.

4. Be ongoing and connected to school district/school improvement goals.

- **Rationale:** An evaluation is a process, not a once-a-year conversation, and, thus, must be embedded in the school district's goals and plans.

5. Connect the school district's goals with its community's vision for its schools.

- **Rationale:** Goals cannot be developed in isolation, so a school district's goals must reflect the community's hopes for its public schools and students.

6. Link to academic, social, and emotional growth for all students in the school district.

- **Rationale:** Accountability must include multiple measures of student learning.

7. Recognize the importance of a superintendent's leadership work to facilitate a better quality of life for all groups, both inside the school community and in the community at large.

- **Rationale:** The larger work of the superintendent is concerned with shaping the future of the community and having a positive effect on people's lives.

Sample Timeline for Superintendent Evaluation

<u>TIMELINE</u>	<u>ACTION</u>
Summer or Early Fall	<ol style="list-style-type: none"> 1. The school board and the superintendent review the superintendent's job description, the evaluation process, form(s), indicators, and timelines, and identify acceptable supporting documents, information, and data to be used to measure performance. 2. The superintendent and school board create goals which are based on the school district's goals and which are measurable and can be accomplished in twelve months. In the unlikely event that the school board and the superintendent are unable to come to mutual agreement, however, as the legal employer, the school board's determination prevails.
Winter	<ol style="list-style-type: none"> 3. During a school board meeting, the school board chair and the superintendent review the evaluation process and form(s) with new school board members following their election and officially taking their seats on the school board. 4. The superintendent may complete a self-evaluation, with supporting documents to be provided to the school board. The data from a self-evaluation is the sole property of the superintendent and may be shared with his/her school board only if the superintendent so chooses. 5. The superintendent makes mid-year progress reports to the school board on school district goals and his/her professional development goals. 6. Each school board member completes the evaluation form(s) for the superintendent's mid-year, formative evaluation and returns them to the school board chair. 7. The school board chair creates a mid-year formative evaluation summary document consisting of each school board member's ratings and comments. 8. The school board chair brings the mid-year formative evaluation summary document to the superintendent's evaluation meeting. Unless the superintendent requests the evaluation meeting be open, the school board may close the meeting. If the superintendent wants the evaluation to occur in an open meeting, the school board chair shall get the request in writing. 9. The school board shares and discusses with the superintendent the formative evaluation of his/her performance. The superintendent provides additional clarification/progress reports, if any, on school district goals and his/her professional development goals. 10. The school board, at its next open meeting, shall summarize its conclusions regarding the formative evaluation. 11. The formative evaluation shall be attached to the summative evaluation and placed in the superintendent's personnel file (see number 17. below).
Spring	<ol style="list-style-type: none"> 12. Each school board member completes the summative evaluation form(s) and returns it to the school board chair. 13. The school board chair creates a summative evaluation summary document consisting of each school board member's ratings and comments. 14. The school board chair brings the summative evaluation summary document to the superintendent's evaluation meeting. Unless the superintendent requests the evaluation meeting be open, the school board may close the meeting. If the superintendent wants the evaluation to occur in an open meeting, the school board chair shall get the request in writing. 15. The school board shares and discusses with the superintendent its evaluation of his/her performance. The superintendent provides additional clarification/progress reports, if any, on school district goals and professional development goals. Changes to the evaluation may be made as a result of the discussions. 16. The school board, at its next open meeting, shall summarize its conclusions regarding the summative evaluation. 17. A copy of the final written summative evaluation form is placed in the superintendent's personnel folder.
Summer or Early Fall	<ol style="list-style-type: none"> 18. Return to the beginning of the cycle.

NOTE: *In the last year of a superintendent's employment contract, the suggested timeline may need to be altered to allow for a summative evaluation to take place 6-9 months prior to the expiration date of said contract. Pursuant to M.S. 123B.143, subsequent employment contract negotiations may begin 365 days prior to the expiration of the existing contract, and the new contract will take effect upon expiration of the existing contract and is contingent upon the superintendent's successful completion of his/her existing contract.*

Creating/Revisiting a Job Description

To be effective in their school districts, superintendents must focus on meeting the regular, ongoing responsibilities that cause the school district to function effectively. To do so, and to ensure that school boards and superintendents share a common understanding of these roles and ongoing responsibilities, superintendents must have a clearly-defined job description. This job description should be grounded in the competencies of Minnesota Rule 3512.0510, address the specific needs of the school district, and be re-visited regularly to ensure that the description accurately describes the full scope of the superintendent's ongoing responsibilities and roles. The job description must also be consistent with what the school board expects, what the school district needs, and what should be occurring.

Sample Superintendent Job Description

General Position Description

The Superintendent is the chief executive officer of the School District, is the professional advisor to the School Board, and is directly accountable to the School Board.

The Superintendent is responsible for guiding and directing all operations and activities of the School District and for informing the School Board of all the needs related to the current and future operations of the School District. The Superintendent shall recommend policies to the School Board and, when adopted by the School Board, shall be responsible for implementing, interpreting, and executing those policies.

Specific Duties

The Superintendent shall do the following:

- Provide leadership for the School District's educational programs, staff-development programs, and curriculum development to provide the best possible learning environment for all the School District's students;
- Inform and advise the School Board about programs, practices, and problems of the School District and keep the School Board informed of the activities operating under the School Board's authority;
- Explain the educational needs of the School District to the School Board, recommending necessary new and/or revised policies and staffing changes for School Board action;
- Act as liaison between the community and the School District and respond to concerns of parents, students, citizens, and staff in order to increase understanding of policies and practices and to keep them informed of and involved with School District activities;
- Oversee all financial operations of the School District and prepare, present, and recommend budgets to the School Board;
- Interpret employee proposals to the School Board, recommend adjustments to employee policies and salary structures as appropriate, and be responsible for the management of all employee contracts and policies;
- Develop and maintain a comprehensive strategic planning process, which includes short-term and long-term planning and the development of School District goals and instructional goals;
- Establish and maintain working relationships with agencies and personnel outside the School District to promote the best interests of the School District through contact with legislators, other superintendents, local government leaders, business, etc.;
- Maintain and improve effective School Board-Superintendent relationships by participating in joint seminars and training sessions;
- Delegate responsibility and authority to School District employees as appropriate, define the authority and responsibilities of and effectively evaluate mid-management staff;
- Complete in a timely manner all required school board, state, and federal reports; and
- Assume the ultimate responsibility for all aspects of the School District's operation.

Goals-Based Evaluation

Before starting the evaluation process, school board members and superintendents should keep the following “dos” and “don’ts” in mind.

DO	DON'T
Collaborate on the evaluation process, timeline, and expectations.	Expect the school board or the superintendent to manage the work of evaluation alone.
Compile one final evaluation summary of the superintendent so that the school board speaks with one voice.	Provide separate individual evaluation summaries from each school board member.
Develop an effective process for the entire school board and superintendent to conduct the evaluation.	Appoint a committee of the school board or a single school board member to conduct the evaluation.
Provide agreed-upon ratings along with written commentary, feedback, and recommendations to the superintendent.	Provide only the agreed upon ratings without written commentary, feedback, and recommendations to the superintendent.
Allow time for the school board to discuss the results and the superintendent to give input and respond to the evaluation.	Conduct evaluation as a one-way communication from the school board to the superintendent.

Goals-Based Evaluation Step 1: Establishment of Goals

The superintendent and school board establish at least two, but no more than three, school district goals and at least one, but no more than two, professional development goals. The goals should be clearly aimed at improving student learning and/or the climate for student learning, and each goal must include Minnesota Rule 3512.0510 competencies linked to achieving the goal as well as measurable progress indicators to be accomplished by the superintendent during the next twelve months, understanding the circumstances may necessitate modifications during the year.

When possible, measurable progress indicators, the evidence the school board expects to determine whether goals have been accomplished, should be mutually agreed to by the school board and superintendent. Each measurable progress indicator should be clear, understood by both the school board and superintendent, and recorded under the goal.

This document detailing goals, Minnesota Rule 3512.0510 competencies, and progress indicators will be part of the Superintendent's ongoing evaluation and included as part of the annual summative evaluation.

Sample - Establishment of Goals					
	Pertinent MN Rule 3512.0510 Competency	Measurable Progress Indicator 1	Measurable Progress Indicator 2	Measurable Progress Indicator 3	Timeline for Achieving the Goal
Superintendent-School District Goal One:					
Superintendent-School District Goal Two:					
Superintendent-School District Goal Three:					
	Pertinent MN Rule 3512.0510 Competency	Measurable Progress Indicator 1	Measurable Progress Indicator 2	Measurable Progress Indicator 3	Timeline for Achieving the Goal
Superintendent-Professional Development Goal One:					
Superintendent-Professional Development Goal Two:					

Evaluation Period: _____ To: _____

Superintendent's Signature: _____ Date: _____

School Board Chair's Signature: _____ Date: _____

Goals-Based Evaluation Step 2: Mid-Year Formative Evaluation

Mid-way through the evaluation cycle, school board members should conduct a formative evaluation of the superintendent to assess his/her progress toward the previously established goals. At this time, the superintendent may also choose to complete a self-evaluation. The school board's completed formative evaluation form is to be placed in the superintendent's personnel file and attached to the summative evaluation. The school board and superintendent are reminded they must comply with the OML – Minnesota Statute 13D – and the Data Practices Act – Minnesota Statute 13. Also, see steps, 8, 9, and 10 in the sample timeline on page 5.

Sample - Mid-Year Formative Evaluation	
<u>Superintendent-School District Goal One: Evidence of Progress Toward Attainment</u>	
<u>School Board Member Comments:</u>	
<u>Superintendent-School District Goal Two: Evidence of Progress Toward Attainment</u>	
<u>School Board Member Comments:</u>	
<u>Superintendent-School District Goal Three: Evidence of Progress Toward Attainment</u>	
<u>School Board Member Comments:</u>	
<u>Superintendent-Professional Development Goal One: Evidence of Progress Toward Attainment</u>	
<u>School Board Member Comments:</u>	
<u>Superintendent-Professional Development Goal Two: Evidence of Progress Toward Attainment</u>	
<u>School Board Member Comments:</u>	

Mid-Year Evaluation Period: _____ To: _____

Superintendent's Signature: _____ Date: _____

School Board Chair's Signature: _____ Date: _____

Goals-Based Evaluation Step 3: End-Of-Year Summative Evaluation

At the end of the evaluation cycle, the school board should conduct a summative evaluation of the superintendent. The school board's completed summative evaluation form is to be placed in the superintendent's personnel file. Again, the school board and superintendent are reminded they must comply with the OML – Minnesota Statute 13D – and the Data Practices Act – Minnesota Statute 13. Also, see steps 14, 15, and 16 in the sample timeline on page 5.

At the end of the established twelve-month period, school board members shall assign ratings, along with supporting evidence, based on the superintendent's accomplishment of the school board-approved goals. Presentations made by the superintendent to the school board throughout the twelve months, along with an ongoing discussion of progress toward goals, will provide school board members with necessary data and evidence.

Each school board member completes an end-of-year summative evaluation form and returns it to the school board chair. The school board chair summarizes the responses onto an end-of-year summative evaluation form, which he/she brings to the superintendent's evaluation meeting. The school board shares and discusses with the superintendent its evaluation of his/her performance. The superintendent provides additional clarification/progress reports, if any, on school district goals and professional development goals. Based on the discussion, the school board completes an overall end-of-year summative evaluation form and places a copy of it in the superintendent's personnel file.

When considering which rating to choose, school board members should keep the following brief descriptions in mind:

- “Distinguished” – exceeded school board expectations and met each progress indicator;
- “Accomplished” – exceeded school board expectations and met most progress indicators;
- “Satisfactory” – met school board expectations and met most progress indicators;
- “Unsatisfactory” – did not meet school board expectations and/or failed to meet most progress indicators.

Sample - End-Of-Year Summative Evaluation

Superintendent-School District Goal One: Evidence of Attainment

School Board Member Rating (circle the appropriate response)

4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
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Comments:

Superintendent-School District Goal Two: Evidence of Attainment

School Board Member Rating (circle the appropriate response)

4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
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Comments:

Superintendent-School District Goal Three: Evidence of Attainment

School Board Member Rating (circle the appropriate response)

4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
--------------------	-------------------	-------------------	---------------------

Comments:

Superintendent-Professional Development Goal One: Evidence of Attainment

School Board Member Rating (circle the appropriate response)

4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
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Comments:

Superintendent-Professional Development Goal Two: Evidence of Attainment

School Board Member Rating (circle the appropriate response)

4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
--------------------	-------------------	-------------------	---------------------

Comments:

Sample - Overall End-Of Year Summative Evaluation

Place *one* check [✓] in each row for each goal and *one* check [✓] for overall rating.

	4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
Superintendent-School District Goal One				
Superintendent-School District Goal Two				
Superintendent-School District Goal Three				
Superintendent-Professional Development Goal One				
Superintendent-Professional Development Goal Two				

	4 Distinguished	3 Accomplished	2 Satisfactory	1 Unsatisfactory
OVERALL RATING				

A. In regard to the listed goals, which best illustrates the Superintendent's greatest strength and why?

B. In regard to the listed goals, which presented the Superintendent with the greatest challenge and why?

C. What supports might the School Board offer to enhance the Superintendent's strengths and assist him/her in overcoming existing challenges?

D. Superintendent's Comments:

Evaluation Period: _____ To: _____

Superintendent's Signature: _____ Date: _____

School Board Chair's Signature: _____ Date: _____

Appendix C

Sample - Superintendent Self-Evaluation Form (Optional)					
Superintendent		School Year		Date	
	Pertinent MN Rule 3512.0510 Competency	Measurable Progress Indicator 1	Measurable Progress Indicator 2	Measurable Progress Indicator 3	Timeline for Achieving the Goal
Superintendent-School District Goal One: Areas of strength: Areas needing work/strategies for improving performance:					
Superintendent-School District Goal Two: Areas of strength: Areas needing work/strategies for improving performance:					
Superintendent-School District Goal Three: Areas of strength: Areas needing work/strategies for improving performance:					
Superintendent-Professional Development Goal One: Areas of strength: Areas needing work/strategies for improving performance:					
Superintendent-Professional Development Goal Two: Areas of strength: Areas needing work/strategies for improving performance:					

Open Meeting Law Summary

Minnesota's Open Meeting Law (M.S. Ch. 13D) requires all school board meetings to be open to the public with few exceptions. A public body must begin in an open meeting and state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. A majority vote is needed to close the meeting, with the time and place announced at the public meeting before going into closed session. For specific questions, consult with legal counsel.

The Exceptions

A school board **MUST** close

- 1. Discussion of Not Public Data** (M.S. § 13D.05, Subd. 2(a)). The school board must close a meeting to discuss certain data that is not public. Any portion of a meeting must be closed if the following types of data are discussed: (a) data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults; (b) active criminal investigation data; (c) student educational data (personally identifiable and not directory information), health data, medical data, welfare data, or mental health data; (d) an individual's medical records. This closed meeting must be electronically recorded at the expense of the school district. The recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.
- 2. Discussion of Preliminary Consideration of Allegations or Charges** (M.S. § 13D.05, Subd. 2(b)). The school board must close a meeting to discuss preliminary consideration of allegations or charges against a school district employee. The employee can request* the meeting be open. If the meeting is closed, it must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.
- 3. Dismissal of a Licensed Teacher** (M.S. § 122A.40, Subd. 14). A hearing on the dismissal of a licensed teacher must be closed unless the teacher requests* it to be open. If this hearing is closed, it must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.
- 4. Student Expulsion Hearing** (M.S. § 121A.47, Subd. 5). A hearing on dismissal of a student pursuant to the Pupil Fair Dismissal Act must be closed unless the pupil, parent, or guardian requests* an open hearing. If a student dismissal hearing is held before the school board and is closed, this closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

A school board **MAY** close

- 5. Labor Negotiations Strategy** (M.S. § 13D.03). A school board may, by majority vote in a public meeting, decide to close a meeting to consider strategy for labor negotiations. The time and place of the closed meeting shall be announced at the public meeting. A written roll call of members and other persons at the closed meeting must be made available after the meeting. This meeting must be electronically recorded and the recording kept for two years after the contract discussed at the meeting is signed. Recordings will be public after all collective bargaining agreements for that budget period are settled.

*MSBA recommends you get this request in writing.

6. Sessions Closed by the Bureau of Mediation Services (M.S. § 179A.14, Subd. 3). All negotiations, mediation sessions, and hearings between the school board and its employees or their respective representatives are public meetings except when otherwise provided by the Commissioner of the Bureau of Mediation Services (BMS) or when another exception applies. If BMS closes the meeting, no recording is allowed. Minn. Rules 5510.2810, Subp. 5.

7. Employee Evaluations (M.S. § 13D.05, Subd. 3(a)). A school board may close a meeting to evaluate the performance of an individual who is subject to its authority. The school board must identify (and notify) the individual to be evaluated before closing the meeting. The employee can request* the meeting be open. If the evaluation is closed, at the next open meeting, the school board must give a detailed summary of its conclusions regarding the evaluation. This closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

8. Attorney-Client Privilege (M.S. § 13D.05, Subd. 3(b)). The school board may close a meeting to consult with the school board's attorney on pending litigation or litigation that appears imminent (not just threatened). If the attorney is not present, the meeting cannot be closed. The school board must describe the subject to be discussed before closing a meeting. This closed meeting does not have to be recorded.

9. Purchase or Sale of Property (M.S. § 13D.05, Subd. 3(c)). The school board may close a meeting to determine the asking or offering price or consider offers for buying or selling property. The property must be identified and this closed meeting must be electronically recorded and the recording made available after the property is purchased or sold. The recording must be preserved for eight years after the date of the meeting.

10. Security Issues (M.S. § 13D.05, Subd. 3(d)). The school board may close a meeting to discuss issues, other than financial, related to security. Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this paragraph, the public body must describe the subject to be discussed by referring to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. This closed meeting must be electronically recorded at the expense of the governing body. The recording must be preserved for at least four years after the date of the meeting.

*MSBA recommends you get this request in writing.

Negotiating a New Superintendent Employment Contract: Relevant Law, Employment Contract Language, and Best Practices

Source: December 2, 2011, *Management Services Newsletter*

Based on the number of phone calls received and the type of questions asked, a seemingly large number of superintendents are in the final year of their employment contracts. State statute and specific provisions in a superintendent's employment contract provide guidance when considering a subsequent contract. This article reviews relevant laws and employment contract language and offers best practices for holding the contract-related discussions.

Relevant Laws

Several Minnesota laws that directly impact superintendent employment contracts are highlighted below.

1. The continuing contract provisions provided "teachers" under the law do not apply to superintendents (M.S. 122A.40).
2. The statutory authority for employing a superintendent is found in M.S. 123B.143. Pursuant to that statute, a school board may enter into a subsequent contract with a superintendent for a period of time no longer than three years. The employment contract must provide that the school board, at its discretion, may or may not enter into a subsequent contract. Such an employment contract may not be extended during its term. During the last 365 days of the employment contract, a school board may negotiate and enter into a subsequent contract to take effect upon the expiration of the existing contract, and such subsequent contract must be contingent upon the superintendent completing the terms of the existing contract.
3. Per M.S. 13D.03, no exception exists in Minnesota's Open Meeting Law or any other Minnesota statute allowing a school board to close school board meetings or school board committee or subcommittee meetings to negotiate or discuss the superintendent's employment contract or salary. Additional information may be found in the February 2011 issue of the *MSBA Management Services Newsletter* and in the MSBA publication, *Superintendent's Employment Contract Handbook*. A copy of the handbook may be downloaded from the "Members Area" of the MSBA home page at www.mnmsba.org.
4. Minnesota law does not require school boards to evaluate their superintendent's performance; nevertheless, superintendent performance evaluation is an important activity that should be conducted at least annually as a best practice. Pursuant to M.S. 13D.05, Subd. 3. (a), a school board may close a portion of a meeting to discuss the performance evaluation of any employee subject to its authority (including the superintendent); however, the meeting must be open at the request of the subject of the meeting (for example, the superintendent), and the closed meeting must be recorded.
5. The superintendent's evaluation, like any evaluation, generates private, personnel data that are intended for the hiring and supervising authority (the school board) and the superintendent only (M.S. 13D.05), and, as a result, the school board must protect the privacy of that information.

Superintendent Employment Contract

MSBA provides its members with a *Model Superintendent Contract (Model)* as a starting place for superintendent contract language and negotiations. The *Model* is a joint effort of the MSBA and the Minnesota Association of School Administrators (MASA). The specific provisions included in the *Model* provide the basis for negotiating superintendent employment contracts and meet basic hiring and employment-related needs of both parties. The *Model* may be found in “Chapter 3” of the MSBA Service Manual, which can be downloaded from the home page previously provided.

Superintendent employment contracts should include a provision limiting the contract term to a maximum of three years (M.S. 123B.143) – language allowing the contract to “continue” or “roll over” is legally prohibited.

Many superintendent employment contracts include language suggesting a time line for notifying the superintendent of the school board’s “intent to offer or not offer a subsequent contract” (formerly, “Section 2.” of the *Model*). Two years ago, MSBA and MASA representatives and legal counsel reviewed the *Model* and agreed to remove the “subsequent contract language” because that language created problems for both school boards and superintendents. Because Minnesota statute does not include a requirement for school boards to notify their superintendents of their intent to offer or not offer a subsequent contract, the language in question proved to be confusing, contradictory, and difficult to implement. Superintendents and school board members typically believed that the superintendent would be given a subsequent contract if the school board failed to meet the “subsequent contract language” time lines; however, the fact of the matter is that M.S. 123B.143 provides: (1) superintendent employment contracts expire at the end of the term specified in the contracts; (2) school boards may not extend the term of an existing superintendent employment contract; and (3) a subsequent employment contract is contingent upon the successful completion of the existing contract. While language included in the employment contract may be interpreted to bind the school board, such language cannot supersede statute. Even so, if the superintendent’s existing employment contract includes “subsequent contract language,” the school board is encouraged to follow the contractual language because they agreed to it, even though failing to do so does not guarantee a subsequent employment contract will be offered, because other consequences – such as monetary damages – may result if the contract terms are not followed. To date, no law suit has been filed against a school board for failing to follow the “subsequent contract language” because the parties understand that the law supersedes said language, but school boards are strongly urged to avoid “subsequent contract language” when negotiating a subsequent superintendent employment contract and when hiring a new superintendent.

Now, the issue of when the superintendent’s employment contract expires is addressed in “Section 2.” of the *Model*. That “expiration language” specifies that (1) the existing employment contract expires at the end of the term specific in it; and (2) at the end of the contract term, neither party has any further claim against the other, and the school board’s employment of the superintendent ceases unless a subsequent employment contract is entered into per Minnesota statute. Two years ago when MSBA and MASA reviewed the *Model*, the parties agreed to add new language to this section providing that “Three (3) to six (6) months prior to the expiration of this Contract, at the Superintendent’s written request, the School Board shall conduct a performance evaluation of the Superintendent pursuant to “M.S. 13D.05, Subd. 3.” That language provides a means of beginning the process of deciding whether a school board intends to offer its superintendent a subsequent employment contract that is triggered by the superintendent three to six months prior to the expiration of his/her existing contract. As an aside, that language does not prevent a school board from conducting other performance evaluations, and school board members are cautioned to follow the requirements of M.S. 13D.05, Subd. 3. (a).

Best Practices

- As the hiring entity, school board members, whether new or veteran, should be familiar with the terms and conditions of their superintendent's employment contract.
- Because the majority of superintendent employment contracts are for more than one year, the school board's decision-making process should begin soon enough to ensure that a new employment contract will be in place by July 1 or, if applicable, conduct a search for a new superintendent and allow the existing superintendent to seek employment elsewhere.
- If "subsequent contract language" is included in the superintendent's existing employment contract, the school board should be familiar with the time line. For instance, does the employment contract specify (1) who is responsible for initiating the discussions regarding a subsequent contract; (2) when must the school board's final action be taken, etc.? As an aside, commenting in this article about every possible time line is not practical; however, if questions about the "subsequent contract language" exist, school board members should contact MSBA or the school board's legal counsel for help.
- The school board should schedule a closed meeting for purposes of discussing the superintendent's performance evaluation. To follow the most common practice, the school board chair would distribute the evaluation form to the other school board members a week or two prior to the scheduled meeting. The board members' completed forms will be kept confidential and returned to the school board chair, who would then prepare a single evaluation summary document comprised of all the school board members' numeric ratings and comments. The chair would then bring that summary document to the evaluation meeting, and said document will form the basis for the board's discussion. Again, school board members need to remember that the performance evaluation must be conducted in compliance with M.S. 13D.05, Subd. 3. (a).
- The school board's discussions concerning a subsequent superintendent employment contract must occur in the public. Many school board members struggle to balance meeting the spirit of the Open Meeting Law with the logistics of holding an honest discussion about the needs of the school district and the superintendent's performance and making a decision in an open meeting. School board members would be wise to review their "public participation policy," including the requirement to rule out of order any discussion by any person, including school board members, which would violate an individual's statutory data privacy rights. Ultimately, the less said about the superintendent's performance during this discussion, the better, even though saying little or nothing will likely frustrate some school board members, the superintendent, and some members of the public.

Following these laws and best practices can lead to a smoother, less troublesome transition from one superintendent employment contract to another.

Reorganizing the District's Administrative Team

Source: January 2008, *Management Services Newsletter*

With the approach of spring, school districts are looking at ways to save money by reducing programs and/or positions. MSBA staff is often asked whether this goal could be achieved through a reorganization of the district's leadership team, and the most frequently considered options are employing a shared superintendent (a superintendent employed by two or more districts), creating a superintendent/principal combination, and/or adding a dean of students. No simple answers exist, and, in reality, reducing the number of administrators is often easier said than done. As a result, school boards should carefully consider these factors before moving ahead with any decision.

- *Superintendent Required.* State law requires that "All districts maintaining a classified secondary school must employ a superintendent who shall be an ex officio nonvoting member of the school board" (M.S. 123B.143). The law does not specify an amount of time that the superintendent must work in the district, whether on a daily, weekly, or monthly basis.
- *Superintendent Employment Contract.* State statute provides that a superintendent's employment contract, whether initial or subsequent, may not exceed three years (M.S. 123B.143). As a result, a superintendent's contract may not be changed during its term, unless the parties mutually agree to do so. A superintendent's employment contract, unlike teachers' Master Agreements, may be reopened during its term upon the mutual consent of the school board and superintendent (M.S. 179A.20, Subd. 3).
- *Licensure Required.* According to Minnesota Rules, "a superintendent, principal, assistant superintendent, and assistant principal must hold the appropriate license as a superintendent or principal." See Minnesota Rules, Part 3512.0200, Subp. 1. See also, M.S. 123B.147, Subd. 2.
- *Dean of Students.* According to state statute, "'Supervisory employee' means a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees' grievances on behalf of the employer" (M.S. 179A.03, Subd. 17). For licensure purposes, "supervisory personnel" are defined as "superintendents, principals, and professional employees who devote 50 percent or more of their time to administrative or supervisory duties over other personnel, and includes athletic coaches" (M.S. 122A.15). The above definitions do not include deans of students, and, in point of fact, deans of students are not required to possess any type of license at all. Thus, a dean of students would not have the preparation or license required to legally supervise staff or discipline students under the Pupil Fair Dismissal Act, and, consequently, school boards should consider student and staff supervision and discipline issues when deciding whether to pursue this option.

- *Tenure.* Principals are considered "teachers" for the purposes of M.S. 122A.40. Once tenured, a principal has continuing contract rights, so a district's ability to eliminate a principal's position is limited. A district has two options; it could fire the principal under the provisions of M.S.122A.40, Subds. 9 or 13, or it could place the principal, either fully or partially, on unrequested leave of absence (ULA). Additionally, when a principal has been placed on ULA, he/she "must be reinstated to the positions from which they have been given leaves of absence or, if not available, to other available positions in the school district in fields in which they are licensed" (M.S. 122A.40, Subd. 11). When districts want to reorganize their administrative teams, they often wrongly think that they can just eliminate a principal's position by placing him/her on ULA and reassigning his/her duties to another district employee (for example, another principal, the superintendent, or some other configuration). In reality, the affected principal's position still exists, in whole or in part, and he/she could make a claim for that position or portion of the position for which he/she is qualified. With this fact in mind, the only way a school district could legally reduce the number of principal positions would be to truly eliminate the positions.
- *Authority to Purchase or Share Superintendent Services.* State law allows two or more districts to enter into an agreement for the purchase or sharing of a superintendent's services. See M.S. 123B.143.

Whether to reorganize the district's administrative team or not is a local issue that should be considered in light of what's best for students and the district. School boards would be wise to analyze the issues before deciding. For more information, contact a member of MSBA's Membership Services Team or your school district's legal counsel.

Deans of Students

Source: February 27, 2008, *Management Services Newsletter*

The article, "Reorganizing the District's Administrative Team," appeared in the January 2008, issue of this newsletter, and a portion of that article addressed deans of students. In regard to the position of "dean of students," the Minnesota Department of Education has identified the following duties as being acceptable for someone in that position to perform.

Dean of Students:

An individual working as a dean of students may monitor students' attendance, handle day-to-day discipline functions, direct student activities, serve as athletic director, oversee extra-curricular activities, serve as a school representative at regional and state events, coordinate testing, assist administration and counseling staff with enrollment of new students, scheduling, and transcript preparation. A dean of students may serve as an active member of child study teams, crisis response teams, and student assistance teams when designated by the school administrator. A dean of students may also contact parents, arrange and attend parent/teacher conferences, coordinate with administration or counseling staff for post-secondary opportunities and scholarships.

If a dean of students is suspending students or performing staff evaluations other than peer reviews of staff (summative or job retention-related evaluations, for example), the individual **MUST** be a licensed administrator. If the assignment is more representative of those duties of a principal or counselor, the individual must be appropriately licensed in those areas."

Important for school districts to remember is that a dean of students (like an athletic/activities director) is **NOT** required to hold any sort of license. Important for districts to also remember is to never allow a dean of students to perform duties other than those specifically allowed and noted above.

Obligation to Employ Principals

Source: March 10, 2008, *Management Services Newsletter*

Articles which appeared in the past two issues of this newsletter (i.e., “Reorganizing the District’s Administrative Team” in the January issue and “Deans of Students” in the February issue) have generated questions regarding a school district’s legal obligation to employ principals. With that fact in mind, your MSBA staff contacted the Minnesota Board of School Administrators for an answer. What follows is the pertinent portion of the Board’s response.

“...[Minnesota Statute] 123B.147...provides:

‘Each public school building, as defined by section 120A.05, subdivisions 9, 11, and 13, in an independent school district may be under the supervision of a principal....If pupils in kindergarten through grade 12 attend school in one building, one principal may supervise the building.’

While neither statute nor rule requires a principal in every building, functions performed by a principal require a licensed principal to perform those functions or the granting of a variance by the Minnesota Board of School Administrators to have an unlicensed person serve as principal.

Minn. R.[ule] 3512.0300, subp. 1 provides:

‘A person who serves as or performs the duties of a superintendent or principal shall hold a license appropriate to the position of school superintendent or school principal.’

A school district could have a licensed principal responsible for more than one school building. A school district could contract with another school district to have a licensed principal perform principal functions for the contracting school district. A school district could ask the Board for a variance because the district could not find a licensed principal to meet its needs.

While statutes and rules do not require a principal, only a licensed principal, or an unlicensed person for whom the school district has obtained a variance, can perform the functions of a principal.”

“Interim” Superintendent

Source: March 4, 2005, *Management Services Newsletter*

M.S. 354.44, Subd. 5a, “Retirement Benefits,” meant for retirees only, identifies an “interim superintendent” as an individual who performs the services as an “interim superintendent because of the death, disability, termination, or resignation of the previous superintendent.” These individuals are exempt from earning limitations and reductions as noted in Subd. 5 of that same law for up to 90 days in any one year. During the period of up to 90 days, the Board may pay the interim superintendent at any rate, up to the rate paid to the previous superintendent. It is important to note that this exemption only applies if the School Board hiring the interim superintendent makes application to and receives approval of its plan from the executive director of the Teachers’ Retirement Association. With the 2002 passage of M.S. 356.47, “Disposition of Amount in Excess of Reemployed Annuitant Earnings Limitations,” which allows for the reemployment of retirees without the long-term loss of retirement earnings, few, if any, superintendents and Boards are using this provision of law.

More and more Minnesota public school districts are hiring individuals, both active and retired TRA members, to serve as superintendents in their districts and calling them “interims.” Some serve for short terms and others for as long as three years, but few are truly “interims” as defined by law. While their tenure in the district may be temporary, it is important for boards to remember that these individuals, unless they have knowingly waived their rights, have all of the same legal rights as any licensed superintendent holding a like position.

School districts should be careful when identifying individuals as “interims.” Superintendents holding these positions may be temporary replacements in the eyes of the board, but may not meet the legal definition of an interim superintendent.

Evaluating the Superintendent's Performance

Source: June 25, 2012, *Management Services Newsletter*

Over the past several months, MSBA staff have received a large number of phone calls from school board members relative to the topic of superintendent evaluation. Board members' questions range from how to set performance expectations to how to plan for and conduct an evaluation to questioning the merits of using 360-degree evaluations to how to address performance-related issues and concerns. MSBA staff have long stressed the importance of setting clear expectations for superintendents and conducting annual performance evaluations to identify the superintendent's strengths and opportunities for improvement. This article highlights performance expectations and annual performance evaluations and provides a process for handling differences that emerge relative to performance.

Evaluation Basics

Minnesota law does not require school boards to evaluate their superintendents' performance; however, MSBA has long held that evaluation is an important activity that should be conducted at least annually as a best practice. The superintendent's evaluation should be based on his/her performance (as defined in the superintendent's job description) and on previously established expectations and/or performance goals. Superintendents, like other employees, need direction and feedback from their supervisors about (1) what is most important, (2) what they are doing that is going well and should be continued; (3) what is not going so well; and (4) how performance-related concerns are to be addressed. If a school board fails to set expectations, its superintendent will have to "guess" what is important, or he/she will attempt to satisfy the different expectations of six or seven board members resulting in confusion, discord, and lack of clarity.

Setting Expectations

Every year, a fairly large number of school boards conduct searches for new district leaders. Minnesota superintendents typically work for a contract year extending from July 1st through June 30th. A school board would be wise to meet with its newly hired superintendent as soon as possible after the superintendent has been hired in order to set expectations for his/her performance. Setting expectations for the superintendent's performance early on will ensure that everyone will be "reading off the same page," and this need exists even though the school board and superintendent will likely have discussed expectations during the actual selection process.

All superintendents need clear performance expectations and feedback – even those who have been employed in the same school district for many years. Ultimately, things change; as a result, expectations and priorities typically also change, and the new expectations need to be determined and clearly communicated to all involved.

Many school boards schedule a special meeting to establish mutual expectations with their superintendents, while others address the issue during their regular meetings. Regardless, the conversation must take place in an open meeting because no exception to Minnesota's Open Meeting Law (OML) exists that allows school boards to close board meetings for this purpose.

360-Degree Evaluations

MSBA continues to recommend that school boards avoid using “360-degree evaluations” to evaluate their superintendents. Typically, 360-degree evaluations are tools used to gather information from a variety of individuals (such as subordinates, peers, parents, students, and members of the public) to be used by school boards to determine their superintendents’ strengths and/or areas in need of improvement. While advocates of such evaluations may believe that non-board members’ evaluations are beneficial as one of several information sources, concerns exist relative to governance, the OML, data privacy, and past practices. School boards considering “360-degree evaluations” would be wise to review the article in the July 2011 issue of the MSBA *Management Services Newsletter* titled “Superintendent Evaluation and 360-Degree Evaluations” before doing so.

Developing the Evaluation Process

The process and procedures used to plan for and conduct the superintendent’s evaluation are determined by the school board; however, the process and procedures to be used must still comply with Minnesota’s OML and Government Data Practices Act. Some of the questions school boards consider when developing a superintendent-evaluation process and procedures are provided below.

- What is most important and, thus, should be evaluated?
- What can the school board expect to see next year as a result of the superintendent’s work that is not seen now?
- What documentation must the superintendent provide to show progress and/or accomplishment?
- What evaluation format will be used?
- When will the actual evaluation meeting be held?
- Who will distribute the evaluation forms to the board members for their completion?
- Who will compile the results of the completed evaluations in preparation for the actual evaluation meeting?
- Who will be responsible for placing the superintendent’s evaluation on the meeting agenda?
- Who will run the evaluation meeting?

As a best practice, the school board’s answers to the questions above provide the basis for the evaluation process and procedures. The process and procedures developed are documented and can be used to facilitate subsequent evaluations.

The process most school boards follow is provided below.

- Approximately a year prior to the evaluation, the school board, in consultation with the superintendent, sets and agrees on the performance expectations and/or goals for the coming year, what tool(s) will be used to gather information from the school board members and superintendent, when updates will be provided to the school board, and when the final, summative evaluation meeting will take place.
- Approximately a month prior to the evaluation, the school board schedules a closed meeting for purposes of discussing the superintendent’s performance evaluation in compliance with M.S. 13D.05, Subd. 3(a).
- Approximately one or two weeks prior to the closed evaluation meeting, the school board chairperson distributes the evaluation form to the other school board members for their completion.

- The board members' completed evaluation forms are kept confidential and are returned to the school board chairperson who then prepares a single evaluation summary document compiled using each school board member's ratings and comments.
- The school board chairperson brings the evaluation summary document to the closed evaluation meeting, and the document forms the basis for the board's discussion.
- The school board chairperson ensures that the school board complies with all of the requirements of M.S. 13D.05, Subd. 3(a).

Resolving Differences Between the School Board and the Superintendent

School boards would be wise to adopt a procedure that allows them to attempt to resolve any differences that may arise between them and their superintendents. Hopefully, the procedure, which must comply with Minnesota laws including M.S. 123B.143, Subd. 1, will allow for differences – including perceived unsatisfactory performance – to be addressed sooner rather than later. The steps to resolving the differences between a school board and its superintendent provided below have been taken from “Chapter 3” of the MSBA Service Manual.

1. A designated member of the school board should informally discuss the issue(s) with the superintendent to facilitate articulation and recognition of the problem(s).
2. If the informal discussion does not result in agreement or resolution of the problem(s), the school board and the superintendent should then seek outside advice, including contacting their respective professional organizations. This step is aimed at resolving differences without resorting to formal proceedings or legal involvement.
3. If the involvement of outside resources still does not result in agreement or satisfactory performance after a reasonable time, the school board should inform the superintendent in writing, specifically outlining the deficiency or deficiencies and allow him/her a reasonable time during which to produce a remedy or remedies after consultation with and advice from the school board. Such consultation and advice should represent positive efforts by the school board to support and assist the superintendent's remedial actions.
4. If the issue is still not resolved and termination of the employment contract appears to be the only solution, then both the school board and its superintendent should seek legal counsel for advice regarding appropriate action.

Following these steps for superintendent evaluation can assist school boards in developing and maintaining effective and positive relationships with their superintendents.

Superintendent Evaluation and 360-Degree Evaluations

Source: July 2011, *Management Services Newsletter*

The superintendent's performance evaluation is an important activity that should be conducted at least annually as a best practice even though no legal requirement to that effect exists. The evaluation should be based on the superintendent's job description and any previously established goals and/or expectations. School boards should determine when and how often the evaluation(s) will take place, what criteria and tools will be used, and what evaluation procedures will be followed.

MSBA has long recommended that school boards not use "360-degree evaluations" to evaluate their superintendents. Such evaluations gather information from a variety of individuals (such as subordinates, peers, parents, students, and the public) to be used by school boards to determine their superintendents' strengths and/or areas in need of improvement. Advocates of 360-degree evaluations typically believe non-board members' evaluations are beneficial as one of several information sources. However, MSBA's reasons for rejecting 360-degree evaluations are provided below.

Governance: the school board, as a body, is the hiring authority. Because the school board employs and directs the superintendent, the school board is the entity responsible for evaluating the superintendent's performance. School district staff and community members are not responsible for hiring or directing the superintendent. They do not possess all of the information about the entire school district needed to effectively judge the superintendent's performance, and the school district's staff is directed and evaluated by the superintendent – not the other way around.

Open Meeting Law: school boards, unlike boards of private entities, are subject to Minnesota's Open Meeting Law (OML). When 360-degree evaluations are used, respondents often take the opportunity to vent their frustrations about the superintendent's (or other employee's) performance, and performance data is protected data which cannot be discussed in an open meeting. The school board is then expected to address those negative comments at an open school board meeting, and, if it does not do so, respondents may be disappointed, and unnecessary conflict may result.

Data Privacy: another factor to consider is data privacy. The superintendent's evaluation, like any evaluation, generates private, personnel data that are intended for the hiring and supervising authority (the school board) and superintendent only. The data that are created by the 360-degree evaluations are considered to be government data, and, as noted above, if a respondent includes comments about the superintendent's performance, the comments may be classified as private, personnel data. If so, the school board must protect the privacy of that information. In addition, some respondents may take the opportunity to vent about other school district employees, which may create additional private data that must also be protected.

Past Experience: in situations where 360-degree evaluations are helpful, the superintendent – not the school board – controls the process. The information gleaned from the evaluations is used for personal reflection and self-improvement. The superintendent decides whether to share the evaluation results with the school board. If a positive school board-superintendent relationship exists, the 360-degree evaluation may be viewed as useful; conversely, if problems exist, the evaluation will likely make matters worse. Newly hired superintendents are often expected to use the 360-degree evaluation process that was developed for the previous superintendent, even though the priorities and performance expectations have changed. Ultimately, the evaluation of a new superintendent must be determined by the school board working with that superintendent based on the superintendent's goals and the school board's expectations.