

CSBA Sample

Board Policy

Administration

BP 2121(a)

SUPERINTENDENT'S CONTRACT

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

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

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

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

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

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

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

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

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

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

(cf. 3350 - Travel Expenses)

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SUPERINTENDENT'S CONTRACT (continued)

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

(cf. 4040 - Employee Use of Technology)

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

(cf. 4161/4261/4361 - Leaves)

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

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

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

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

6. General duties and responsibilities of the position

(cf. 2110 - Superintendent Responsibilities and Duties)

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

(cf. 2140 - Evaluation of the Superintendent)

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

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

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

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

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SUPERINTENDENT'S CONTRACT (continued)

11. Conditions and process for termination of the contract, including the maximum cash settlement that the Superintendent may receive if the contract is terminated prior to its expiration date
12. Matters related to liability and indemnification against demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his/her official capacity in the performance of duties related to his/her employment

Note: Pursuant to Government Code 54957, personnel matters related to the appointment or employment of an employee may be discussed in closed session under the "personnel exception." However, **Government Code 54957 prohibits the use of closed session for discussion or action on the Board may not discuss or act upon** any proposed change in compensation other than a reduction of compensation that results from the imposition of discipline **in closed session under this exception**. In San Diego Union v. City Council, a California Court of Appeal held that the "personnel exception" provided in Government Code 54957 does not extend to discussions of salary and compensation.

Notwithstanding Government Code 54957, the Board is authorized pursuant to Government Code 54957.6, the "labor exception," to hold closed sessions with the district's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees, including the Superintendent. The Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a board may only meet in closed session for such purposes with a designated representative who is involved with the "bona fide" negotiations with represented and/or unrepresented employees. The Attorney General's publication The Brown Act: Open Meetings for Local Legislative Bodies, also states that the "labor exception" applies to meeting in closed session to instruct its representatives concerning negotiations with prospective employees. Boards wishing to discuss the Superintendent's salary in closed session under the "labor exception" are encouraged to consult legal counsel before doing so.

In addition, pursuant to Government Code 54956, the Board is prohibited from deliberating on the salary or other compensation of the Superintendent at a special meeting. See BB 9320 - Meetings and Notices and BB 9321 - Closed Session Purposes and Agendas.

The following paragraph should be revised to reflect district practice.

The Board may deliberate about terms of the contract in closed session at a regular meeting. **However, ~~discussions~~** regarding the salary, salary schedule, or other compensation may occur in **the** closed session **of a regular meeting** only **as permitted under Government Code 54957.6** between the Board and its designated representative(s), **as permitted under Government Code 54957.6** (the "labor exception"), for the purpose of reviewing the Board's position **and/or** instructing the designated representative(s) prior to or during bona fide negotiations with the

current or prospective Superintendent. **Such deliberations shall not be held during a special meeting.** (Government Code 54956, 54957, 54957.6)

The Board may consult with district legal counsel prior to holding a closed session with the designated representative(s) to discuss compensation to be paid to the current or prospective Superintendent.

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SUPERINTENDENT'S CONTRACT (continued)

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

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

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

Note: Pursuant to Government Code 54953, as amended by SB 1436 (Ch. 175, Statutes of 2016), the Board must, in open session, orally report a summary of the recommendation for final action on the Superintendent's salary or benefits and must make related records available to the public in accordance with the California Public Records Act. Thus, Government Code 54953 limits the Board's ability to approve changes to salary or benefits as part of a consent calendar and instead requires such approval to be a separate agenda item. For identical requirements regarding final action on the salary or benefits or other district executives, see BP 4312.1 - Contracts.

The Board shall take final action on the Superintendent's contract ~~in an open meeting~~ **during an open session of a regularly scheduled Board meeting, which and that action** shall be reflected in the Board's minutes. **At that meeting, prior to taking action, the Board shall orally report a summary of the recommendation for the final action on the Superintendent's salary or compensation in the form of fringe benefits.** (Government Code **3511.1**, 53262, **54953**, 54957.6)

Copies of the contract **and other public records created or received in the process of developing the recommendation related to the Superintendent's salary, benefits, and other compensation** shall be available to the public upon request. (Government Code 53262, **54953**, 54957.6)

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

Termination of Contract

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

salary multiplied by 18. For a Superintendent contract executed on or after January 1, 2016, Government Code 53260, ~~as amended by AB 215 (Ch. 240, Statutes of 2015)~~, provides that the maximum cash settlement is the monthly salary multiplied by 12. Cash settlements may be less than these maximums. The district must make termination agreements available to the public upon request. See AR 4117.5/4217.5/4317.5 - Termination Agreements.

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

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SUPERINTENDENT'S CONTRACT (continued)

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

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

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

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

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

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

Legal Reference: (see next page)

SUPERINTENDENT'S CONTRACT (continued)

Legal Reference:

EDUCATION CODE

35031 Term of employment

41325-41329.3 Conditions of emergency apportionment

GOVERNMENT CODE

3511.1-3511.2 Local agency executives

6250-6270 California Public Records Act

53243-53243.4 Abuse of office

53260-53264 Employment contracts

54953 Oral summary of recommended salary and benefits of superintendent

54954 Time and place of regular meetings

54956 Special meetings

54957 Closed session personnel matters

54957.1 Closed session, public report of action taken

54957.6 Closed sessions regarding employee matters

UNITED STATES CODE, TITLE 26

105 Self-insured medical reimbursement plan; definition of highly compensated individual

UNITED STATES CODE, TITLE 42

300gg-16 Group health plan; nondiscrimination in favor of highly compensated individuals

CODE OF FEDERAL REGULATIONS

1.105-11 Self-insured medical reimbursement plan

COURT DECISIONS

San Diego Union v. City Council, (1983) 146 Cal.App.3d 947

ATTORNEY GENERAL OPINIONS

57 Ops. Cal. Atty. Gen. 209 (1974)

Management Resources:

CSBA PUBLICATIONS

Superintendent Contract Template, 2015

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Local Legislative Bodies, 2003

WEB SITES

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

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

California Office of the Attorney General, Department of Justice: <http://eaag.state.ca.us>;

<https://oag.ca.gov>

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Policy Reference UPDATE Service

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