

# Board and Superintendent Roles & Responsibilities, Superintendent Contracts & Board Evaluations of the Superintendent

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Presented by:

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**NMSBA 2016 School Law Conference**

**June 3-4, 2016**

# Powers of the Board

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- NMSA 1978, Section 22-5-4:
- A local school board shall have the following powers or duties:
  - B. employ a local superintendent for the school district and fix the superintendent's salary;
  - E. have the capacity to sue and be sued;

# PED Regulations

## Powers of the Board (cont.)

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- NMAC 6.29.1.9(A)
  - Employ and evaluate the local superintendent.  
NMAC 6.29.1.9(A)(2)
  - Delegate administrative and supervisory functions to the local superintendent.  
NMAC 6.29.1.9(A)(4)
  - Refrain from involvement in delegated administrative functions.  
NMAC 6.29.1.9(A) (5)
  - Ensure that district funds are appropriately managed and disbursed.  
NMAC 6.29.1.9(A)(9)
  - Be responsible for oversight of revenue and expenditures within the district budget.  
NMAC 6.29.1.9(A)(11)

# Statutory Powers of the Superintendent

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- ❑ Section 22-4-14 NMSA 1978
- ❑ Supt. is chief executive officer
- ❑ Carry out educational policies and rules of PED and the local board
- ❑ Administer and supervise the District
- ❑ Employ, fix salaries of, assign, terminate or discharge all employees of the District
- ❑ Prepare budget for approval by Board

# PED Regulations

## Powers of the Superintendent

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- NMAC 6.29.1.9(B)
  - Administer local board policies and state and federal regulations including the Public School Code.  
NMAC 6.29.1.9(B)(1)
  - Attend all board meetings or, when necessary, designate a licensed administrator to attend.  
NMAC 6.29.1.9(B)(4)
  - Ensure that school patrons and the public are informed and involved in the acquisition, planning, and development of school facilities, and that students are provided with adequate facilities which conform to state and federal mandates.  
NMAC 6.29.1.9(B)(5)
  - Be accountable for student safety.  
NMAC 6.29.1.9(B)(6)

# Governance v. Administration

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- The Board Governs
  - Legislative Function – Adopts Policies
  - Quasi-Judicial – Student & Employee Hearings
- The Superintendent Administers
  - Supervises & Directs work of employees
  - Administers the day-to-day functions
  - Follows policies adopted by the Board

# Administrator Contracts: May Be Up to Three Years

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- Contracts not to exceed three years are permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time. NMSA 1978 § 22-10A-21
- Boards may have difficulty attracting talent if unwilling to offer more than a one year contract

# PROBLEM: Board must prove just cause to discharge

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- ❑ Superintendents are “certified school employees.”
- ❑ “discharge” means the act of severing the employment relationship with a certified school employee prior to the expiration of the current employment contract; NMSA 1978 § 22-10A-2(A)
- ❑ A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause NMSA 1978 § 22-10A-27
- ❑ “just cause” means a reason that is rationally related to an employee's competence or turpitude or the proper performance of the employee's duties and that is not in violation of the employee's civil or constitutional rights. NMSA 1978 § 22-10A-2(G)
- ❑ § 22-10A-27 “applies to certified school personnel such as superintendents” W. v. San Jon Bd. of Educ.



# BUY-OUTS

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- Recent media attention has focused on “buy-outs” of Superintendents’ contracts.
- Estimates that NM Districts have paid out over \$1MM in the last five years by School Boards to Superintendent in exchange for early contract termination.
- PED Secretary, in approving a recent settlement, lamented “the weak language and low standards in employment contracts” which place tax-payers in a lose-lose situation.

N.M. Admin. Code 6.66.3

## 6.66.3. LICENSED SCHOOL ADMINISTRATOR CONTRACT

### 6.66.3.1 ISSUING AGENCY: Public Education Department

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- A. “All administrator contracts shall be uniform and shall substantially conform to the model set forth below...”
- Purpose of the standard contract is to prevent districts from giving too many contractual perks to an administrator (at the expense of taxpayers).
- Historically, PED has interpreted this regulation to apply to Superintendent contracts, and to require that they were uniform and complied with the regulatory model contract.

N.M. Admin. Code 6.66.3

## 6.66.3. LICENSED SCHOOL ADMINISTRATOR CONTRACT

### 6.66.3.1 ISSUING AGENCY: Public Education Department CONT'D.

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- The Model Contract states that the contract can be cancelled for cause, including unsatisfactory work performance, incompetence, insubordination, physical or mental inability to perform the required duties or for any other good and just cause, provided, that any such cancellation may be effected only in accordance with the New Mexico statutes and any applicable rules and regulations of the department and local board of education.
- May also be cancelled for cause not personal to the Administrator, like a RIF.

N.M. Admin. Code 6.66.3

## 6.66.3. LICENSED SCHOOL ADMINISTRATOR CONTRACT

### 6.66.3.1 ISSUING AGENCY: Public Education Department CONT'D

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- No administrator contract, including any amendment or addendum, shall be signed, entered into, or executed that permits the payment of monies, dividends, differentials, bonuses, incentives, salary, wages, or renewal inducements where the payment is neither tied nor traceable to services actually rendered.
- All Administrator contracts must be properly noticed and voted on openly at a public meeting held pursuant to the Open Meetings Act (10-15-1 to 10-15-4, NMSA 1978).

N.M. Admin. Code 6.66.3

6.66.3. LICENSED SCHOOL ADMINISTRATOR CONTRACT

**6.66.3.1 ISSUING AGENCY:** Public Education Department CONT'D.

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- The PED may take such action it deems necessary depending on the degree of noncompliance with this rule, including but not limited to, notifying the state auditor or other appropriate authorities, directing the district to cease and desist, directing the district to collect any improperly spent public funds, or imposing a budgetary codicil.

## IF THE BOARD WISHES TO PART WAYS WITH THE SUPERINTENDENT DURING THE CONTRACT TERM

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- Board must prove “just cause” for termination. Often involves a fight.
- Or, in order to avoid the time and expense of a fight, with a possibly uncertain outcome, parties may settle.

N.M. Admin. Code 6.20.3

## 6.20.3. PROCEDURES FOR THE PAYMENT OF SETTLEMENT AGREEMENTS

### 6.20.3.1 ISSUING AGENCY: Public Education Department

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- This rule establishes procedures to be followed if a local school board or governing body of a charter school intends to use public funds to pay a settlement to an administrator whose contract has been terminated prior to the end of the term of the contract.
- “Administrator” is any licensed administrator employed in an administrative capacity, including superintendents, assistant superintendents, principals, and assistant principals.

N.M. Admin. Code 6.20.3

## 6.20.3. PROCEDURES FOR THE PAYMENT OF SETTLEMENT AGREEMENTS

### 6.20.3.1 ISSUING AGENCY: Public Education Department CONT'D.

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- Procedure for approval of settlement agreement using public funds:
  - Notify PED Secretary and provide justification that includes:
    - Details of dispute and negotiations leading to proposed agreement, an accounting of the damages (lost wages) and any mitigation of damages (replacement job), the pleadings to be filed in court for approval; administrator's contract
  - Approval of local district court– requires “friendly” lawsuit to be filed
  - Approval of PED Secretary– No funds paid until approval



N.M. Admin. Code 6.20.3

## 6.20.3. PROCEDURES FOR THE PAYMENT OF SETTLEMENT AGREEMENTS

### 6.20.3.1 ISSUING AGENCY: Public Education Department

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- ❑ Any settlement payment made prior to Secretary's approval is an "unauthorized payment."
- ❑ Unauthorized payment may be grounds for suspension of the local board from acting as a board of finance
- ❑ Unauthorized payment may violate anti-donation clause that could lead to civil or criminal penalties

# PROPOSED LEGISLATION 2016

## HB 41 (did not pass)

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- Proposed amendment to §22-5-4 (Powers of School Boards) would have required Superintendent contracts to provide:
  - Superintendent is “at will” employee who can be fired for any reason or no reason
  - Superintendent not subject to School Personnel Act
  - Contracts may not exceed 2 years
  - Contracts cannot be renewed prior to six months before end of existing term

# PROPOSED LEGISLATION 2016

## HB 41 CONT'D (did not pass)

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- Termination provisions in Contracts:
  - If non-renewed at end of term, no severance pay.
  - Superintendent may resign during term with four weeks notice but may not receive severance.
  - Board may terminate without cause and, if so, may pay no more than 4 weeks severance. No severance payment without liability release.
  - Board may terminate, with cause, with no severance pay. Superintendent may request hearing before the Board. After that, Superintendent may appeal to Secretary
- Proposed bill would have made School Personnel Act inapplicable to Superintendent, Assistant Superintendent, and any employee making over \$150,000
- NMSBA did not support this proposed legislation



## Role of the School Board : Evaluation of the Superintendent – Solving Problems Before They Arise

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- ❑ Teachers are evaluated by principals.
- ❑ Principals are evaluated by the Superintendent.
- ❑ The School Board Evaluates the Superintendent, and should provide regular and formal feedback and guidance.

# Why should the Superintendent be evaluated?

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- Provides a basis for evaluating weak areas
- Provides a basis for rewarding satisfactory job performance
- Offers protection from lawsuits & criticism from BOTH terminated superintendents & constituents angered over the Superintendent's performance and salary
- At its best – Evaluation is a communication process



# The Superintendent Evaluation

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- Defines what is expected of the Superintendent
- Requires identifying and prioritizing the District's goals.

# *SUGGESTED TIMELINE*

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- ***Prior to or Early in School Year***
  - Identify strengths, weaknesses, what will be evaluated, instrument (s) or forms to be used, set evaluation schedule for the rest of the year.
- ***Nov. / Dec. - (Formative Evaluation)***
  - Assess the progress being made.
- ***Feb. / Early Spring Semester –***
- ***(Summative Evaluation)***
  - Determine if goals / objectives met
  - Make employment decision
  - Begin new cycle for next year

# What should be evaluated?

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- NM Admin. Competencies
- Job Description / Additional Supt. Competencies adopted by the local board - Examples:
  - Supt. / Bd. Relationship
  - Morale of Dist. Employees
  - Safety of Dist. Students
  - Parental Satisfaction
  - Relationships w/ Community Leaders
- District Goals adopted by the local board
- Supt's Professional Goals



# Supt. & Board Set Superintendent's Goals for Evaluation

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- BOARD EVALUATION **RESULTS** IN
  - Reaching agreed-upon goals
  - Solving agreed-upon problems
  - Making agreed-upon improvements

*Number of areas should be limited.*

*Do not include routine duties, such as report writing, unless the Supt. has been deficient in such area.*

# Expectations Must Be Specific

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- ❑ **What** task(s) need to be done?
- ❑ **How** does each task need to be done (written reports, oral reports, etc.)?
- ❑ **When** does each task need to be done?
- ❑ **For whom** does each task need to be done?
- ❑ Comments on these tasks – **Why** do they need to be done?



# Evaluation Process

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- Can be Used to Substantiate “*Just Cause*” for Discharge During Contract Term

# Uncorrected Unsatisfactory Work Performance

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- **Unsatisfactory Work Performance –**  
*6.69.2.7D NMAC*
- **Uncorrected Unsatisfactory Work  
Performance –** *6.69.2.7C NMAC*
- **Uncorrected Unsatisfactory Work  
Performance of a Certified Administrator is  
“just cause” for discharge –**  
*6.69.2.8A NMAC*

# Uncorrected Unsatisfactory Work Performance - Procedures

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- *2 or more conferences with immediate supervisor (the Board)*
- *Sufficient time allowed to correct*
- *Written record of all conferences, specifying area(s) of uncorrected unsatisfactory work performance, suggestions for improvement, signed by parties at conference. 6.69.2.8B NMAC*

# Contact Information

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