

# Superintendent Contracts and Evaluations: From Start to Finish

Dr. Veronica C. Garcia  
SFPS Superintendent

Tony F. Ortiz  
Ortiz & Zamora, LLC  
December 2, 2017

# Goal of Presentation

- ▶ Review core elements of superintendent contracts and discuss common board concerns and mistakes.
- ▶ Discuss required components of the evaluation process and review how boards can avoid problems during this process.
- ▶ Analyze how these issues can be handled with a “win-win” approach for the board and superintendent.

# Contracts: The Right Attitude

- ▶ A superintendent's contract negotiation with the board may set the tone for the relationship.
- ▶ Although a board member's role is to protect the interests of the school district, be careful about trying to extract every possible "win" in the contract.
  - ▶ Most superintendents want the process to be "painless" and may relent. You want to make sure that you do not leave them feeling like they were treated unfairly.
  - ▶ Example: the superintendent who clearly wants more and feels that the contract is inadequate but is afraid to make a counter offer
- ▶ Generally, contracting with a superintendent should be collaborative and hopefully easy.

# New Mexico Requirements for Superintendent Contracts

- ▶ New Mexico Administrative Code 6.66.3.8
- ▶ This includes all the requirements for a school administrator contract.
- ▶ Very “bare bones”, but outlines the essentials.
  - ▶ Parties, term, service days, scope of duties, compensation, leave, evaluation, cancellation, termination, legislative funding.
  - ▶ Badly in need of updating but must be included to pass PED compliance

# Difficult Contract Issues:

## Term of the Contract

- ▶ How many years are you going to offer?
  - ▶ Law: Permits minimum of 1 year and maximum of 3.
- ▶ Cost/Contract Exposure:
  - ▶ Every additional year adds potential cost and legal exposure.
  - ▶ Salary and benefits multiplied by the number of years.
- ▶ Continuity/Stability versus “being stuck together”
- ▶ New versus long-serving superintendent
- ▶ Practice Pointer: I like short contracts, but sometimes longer terms are required to compete for good candidates or to keep a good superintendent.
- ▶ Practice Pointer: Being fair also involves consideration of the personal difficulty posed for a superintendent by a short term contract.

# Difficult Contract Issues: Compensation

- ▶ Tools for determining what is fair
  - ▶ What is the market for comparably sized districts in New Mexico?
  - ▶ Qualifications and experience.
  - ▶ Consideration for cost of living differences.
  - ▶ Is there institutional knowledge and experience that should be considered?
  - ▶ Past performance
  - ▶ Linking performance to pay incentives
  - ▶ Out of state candidates?
- ▶ What concerns should you have about mismanaging the negotiation?
  - ▶ Starting out on a bad note and damage to the relationship
  - ▶ Pushing your superintendent to consider other options.
- ▶ Other considerations:
  - ▶ Be mindful that past superintendent compensation may serve as the starting point for negotiations with a new superintendent.
  - ▶ Will paying slightly more save you money (and grief) in the long run (transition costs, unhappy executive)?
- ▶ Practice Pointer: If you can demonstrate the basis for your salary offer, it demonstrates that the board has considered superintendent's interests, studied the matter, and is "in line" with other districts and the market.

# Difficult Contract Issues: Leave and Leave Compensation

- ▶ How much leave should the superintendent be permitted to accrue?
    - ▶ Option: track employee accrual and limitations
  - ▶ How much is available for compensation upon separation?
    - ▶ Example: If the contract does not place limits, the board could have a very expensive bill to pay when the superintendent leaves, or you could have a superintendent that takes the last three months of his contract as vacation.
- \*Practice Pointer: Consider (1) placing a limit of 30 days on vacation accrual, and (2) placing a limit on vacation days available for compensation upon separation.
- \*Practice pointer: set accrual ceiling for sick leave and/or consider limiting the time that the superintendent can be out on sick leave before an automatic medical termination is triggered.

# Difficult Contract Issues: Additional Benefits and Issues

- ▶ Car:
  - ▶ mileage versus an assigned car; take home; personal use;
  - ▶ effects on income and taxation; particular vehicle.
- ▶ Phone: overages, personal use.
- ▶ Computer: home office, laptops.
- ▶ Travel: Limited trips; board oversight.
- ▶ Other Work: "moonlighting"
- ▶ Professional Dues
- ▶ "Rollover Provisions"

# Logistics of Negotiating the Contract

## ▶ Assessing Contract Issues:

- ▶ May be best to ask counsel to provide feedback in executive session or in a memo about the issues in the contract or the superintendent's requested changes.

## ▶ A board can consider the content of its offer in executive session

## ▶ A board can designate one person to negotiate the issues on behalf of the board with the candidate (board president or counsel).

## ▶ Public action:

- ▶ Motion to offer a contract should include at least the term and compensation amounts
- ▶ Ideally, most contract elements will have been discussed with the candidate/superintendent before the vote is taken
- ▶ Contract becomes a public record; do not assume parts can remain confidential.

# Renewals

- ▶ Timing and Elections
  - ▶ Existing board members versus new board members
  - ▶ Who knows the superintendent?
  - ▶ Who has the authority?
- ▶ Record of Performance
- ▶ Personal conflicts
- ▶ Community sentiment

# Superintendent Evaluations: Purposes and Goals

- ▶ Strengthen relationships
  - ▶ Regular and anticipated outlet for resolving conflicts
  - ▶ Provide dialogue mechanism
  - ▶ Gauge the superintendent's job satisfaction
  - ▶ Provide a mechanism for commending or rewarding good work
- ▶ Assessment and Improvement
  - ▶ Provide a basis for fairly assessing weaknesses and strengths (including those of the board)
  - ▶ Document the communication of board concerns
  - ▶ Accountability
  - ▶ Track progress toward goals
- ▶ Protect the District's Interests
  - ▶ Provides documentation for just cause.
- ▶ Best Practice: Take a look at your board practices. Do they help/hinder the superintendent? Consider asking the superintendent to simultaneously evaluate the board.
- ▶ Best Practice: Consider what you can do as a board member to keep the process positive and growth experience for both parties.

# Superintendent Evaluations

- ▶ What rules and guidelines do you have to follow?
  - ▶ Law: NMAC 6.69.3.8
  - ▶ Policy:
    - ▶ May set schedules, require collaboration, call for staff input, prescribe a specific form.
  - ▶ The superintendent's contract:
    - ▶ Almost always has a "collaboration requirement"
    - ▶ Often sets required schedules for creating the evaluation process and completing the evaluation
  - ▶ Any negotiated adjustments to the evaluation process
    - ▶ The board and superintendent often negotiate and discuss what additional issues should be considered, such as goals/objectives and staff surveys.

# Board Evaluation: Is the Board doing its job?

- ▶ Complying with policies
- ▶ Supporting the adopted aims of the district
- ▶ Minding roles:
  - ▶ What are the roles of the superintendent that are not for the board?
- ▶ Supporting the superintendent
- ▶ Speaking with one voice
- ▶ Measuring its progress
- ▶ What should this process look like?

# Measures of Effectiveness

## Effectiveness of the Board is Rooted in:

### ○ Efficiencies

- How we operate and how “functional” we are
- Whether we follow process

### ○ Communication

- How we communicate about our aims with one another and the public
- How we handle sensitive communications

### ○ Validation

- Whether our fellow board members and the public make our work feel important
- Whether others follow us.

### ○ Results

- Are we actually accomplishing the small and big goals?
- How do we measure that?

# What Makes a Board Effective?

## Eight Characteristics of an Effective School Board

- 1. Effective school boards commit to a **vision of high expectations** for student achievement and quality instruction and define clear goals toward that vision
- 2. Effective school boards have **strong shared beliefs and values** about what is possible for students and their ability to learn, and of the system and its ability to teach all children at high levels.
- 3. Effective school boards are **accountability driven**, spending less time on operational issues and more time focused on policies to improve student achievement.

# What Makes a Board Effective (continued)?

- 4. Effective school boards have a **collaborative relationship with staff and the community** and establish a strong communications structure to inform and engage both internal and external stakeholders in setting and achieving district goals.
- 5. Effective boards are **data savvy**; they embrace and monitor data, even when the information is negative, and use it to drive continuous improvement.
- 6. Effective school boards **align and sustain resources**, such as professional development, to meet district goals.
- 7. Effective school boards **lead as a united team with the superintendent**, each from their respective roles, with strong collaboration and mutual trust.
- 8. Effective school boards **take part in team development and training**, sometimes with their superintendents, to build shared knowledge, values and commitments for their improvement efforts.

# Superintendent Evaluation: Timing

- ▶ Building Your Evaluation:
  - ▶ Generally, in the Fall, the board and superintendent meet to collaborate on structure and substance of evaluation
  - ▶ It is important not to skip this step or to take for granted that a superintendent agrees with the board's desire to utilize particular data.
  - ▶ Timelines for periodic feedback during the year should also be built in.
  - ▶ I recommend a confirming letter to the superintendent that outlines the structure adopted.
- ▶ Formal Evaluation: Generally occurs in January or February. This allows evaluation to occur with enough time to make employment/contract decisions for the following year.

# Evaluation Errors: Have You Collaborated?

- ▶ Most policies and almost every superintendent contract call upon the board and superintendent to meet every year to establish an evaluation procedure.
- ▶ Most meet, but few actually hammer out commitments on forms, criteria, and inclusion of goals/objectives.
- ▶ Best practices: Be collaborative; then write it down.

# Evaluation Errors: Public Attacks on the Superintendent

- ▶ Public “evaluation” of the superintendent
  - ▶ Violation of personnel rights: Like other employees, he has the right to privacy with regard to evaluation and discipline
  - ▶ Undermining the actions and authority of superintendent
  - ▶ Creating incorrect impressions about the position of the board
  - ▶ Possible creation of claims
  - ▶ Harm to board/superintendent relationships
- ▶ How does a board member correctly manage his/her concerns about superintendent performance?
  - ▶ Evaluation
  - ▶ Executive Session expression of concerns: Possible discipline
  - ▶ Open meeting should be reserved to concerns about program

# Evaluation Errors: Board Criticism of Staff

- ▶ Board is not empowered to evaluate or discipline staff. For that reason, a board meeting is not a place for attacks on staff.
- ▶ Board members should strictly avoid specific or identifiable critiques of staff. It may lead to claims, complaints, admissions (against the district), grievances.
- ▶ Board members may discuss program
- ▶ If the board (or a member) has specific identifiable employee concerns, it should call an executive session. One on one meetings *may* also be appropriate.
- ▶ The over-riding principle to remember is that the superintendent is in charge of ALL decisions regarding HR.
  - ▶ Thus, any expression of concern about employees needs to be generously peppered with statements to the superintendent that the board knows that “it is his decision.”
  - ▶ The board cannot downgrade the evaluation where it disagrees with HR related decisions.

## Evaluation Errors:

### Trying to Change the Process in the Middle of the Evaluation

- ▶ Board members have not considered the structure, timing, forms, and what is “out of bounds”
  - ▶ This often leads to last minute attempts to change criteria or add new forms.
- ▶ Practice Pointer: If you are in the middle of the evaluation, you should avoid last minute attempts to add criteria or new forms.
- ▶ Practice Pointer: If you are unhappy with the current process, your best approach is to use what you have and prepare for changes to the process in the upcoming year.

# Evaluations Errors: Problems with Forms

- ▶ Rating System problems
- ▶ An Superintendent can only be discharged for performance that is “unsatisfactory”
  - ▶ Many districts use forms with scales from 1-5 or 1-10. “Exemplary” ratings.
- ▶ Practice Pointer: Consider altering your form to only three ratings, or at most, four. (satisfactory, needs improvement, unsatisfactory, not-observed).
- ▶ Practice Pointer: If you have no idea, do not rate it.

# Evaluation Errors: The Role of Staff Surveys

- ▶ Concerns:
  - ▶ Flaws in creation of questions
  - ▶ Are the correct sources being asked for information?
  - ▶ Collection Bias
  - ▶ Staff concerns about retaliation
  - ▶ Superintendent concerns about “payback” for hard decisions
  - ▶ Reliability in the evaluation process
- ▶ Best Practices:
  - ▶ Consider use of a third party to conduct surveys or climate reviews for you.
  - ▶ Make sure that you have negotiated with the superintendent to have the survey issues considered as part of the evaluation.

# Evaluations Errors: Failure to Provide Clear Guidance

- ▶ Scenario: Your board disagrees about the superintendent's evaluation, with 2 members highly critical and 3 very positive.
- ▶ Options:
  - ▶ Each board member submit his own evaluation (not recommended)
  - ▶ Board members debate and arrive at a consensus rating (possible, but difficult)
  - ▶ Mathematical average (workable)
  - ▶ Consider adding narrative comments, permitting the superintendent to see individual board forms, and/or having board members outline their individual concerns in executive session.

Best Practice: Make sure that the consolidation process is clearly understood between the board and superintendent. Include only agreed-upon evaluation tools and attachments in the file.

Recommendation: For boards with disagreements, I like the mathematical computation, with additional narratives and a chance for individual board members to share their individual concerns with the superintendent.

# Additional Pitfalls in Evaluation

- ▶ Measuring performance without carefully constructed standards, including evaluating criteria where that performance has not been observed.
  - ▶ Failing to choose measurable goals
- ▶ Posturing as psychologists
- ▶ Failing to give the superintendent an opportunity to respond to the evaluation
- ▶ Not providing adequate time for the superintendent to address the perceived deficiencies
- ▶ Assuming that a longer evaluation is a better evaluation
- ▶ Failing to determine (with the superintendent) what should go in the personnel file and/or failing to place it in the file.
- ▶ Simply asserting, "We need a new direction," or letting personality conflicts drive your evaluation.
- ▶ Evaluating based on areas outside of the board's purview, such as the superintendent's hiring choices.

# Superintendent Discipline

- ▶ Strictly confidential
- ▶ Can only be issued by the board
- ▶ Is not subject to a single board member's determination; requires full board decision and executive session protections
- ▶ Is not the subject of public discussion
- ▶ Multiple steps available
- ▶ Counsel can and should assist

# The Anatomy of a “Buy Out” : Why Evaluations Matter

- ▶ Boards often fail to adequately document performance concerns.
  - ▶ Well documented evaluation concerns increase the chances of being able to demonstrate just cause.
  - ▶ Strengthen your negotiating position.
- ▶ Where a superintendent knows that there is not “just cause” in the documentation, she can either refuse a buy out or take a hard-line in negotiating a buy out.
- ▶ PED has to authorize any buy out. PED may refuse to authorize a buy out where there is no evidence of good-faith efforts to evaluate and work through problems.

# Questions

- ▶ Tony F. Ortiz
  - ▶ Ortiz & Zamora, LLC
  - ▶ 505 986 2900
  - ▶ [tony@ortiz-zamora.com](mailto:tony@ortiz-zamora.com)