

Managing Superintendent Evaluations and Contracts

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Board Member Oath

- NMSA 1978, Section 22-5-9.1
 - All elected or appointed members of local school boards shall take the oath of office prescribed by Article XX, Section 1 of the constitution of New Mexico.
- Constitution of the State of New Mexico
 - Article XX, Section 1
 - Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

Powers of the Board

- NMSA 1978, Section 22-5-4:
- A local school board shall have the following powers or duties:
 - A. subject to the rules of the department, develop educational policies for the school district;
 - B. **employ a local superintendent for the school district** and fix the superintendent's salary;
 - C. review and approve the annual school district budget;
 - D. acquire, lease and dispose of property;
 - E. have the capacity to sue and be sued;

Powers of the Board (Continued)

- Section 22-5-4 (cont.)

- F. acquire property by eminent domain

- G. issue general obligation bonds

- H. provide for repair & maintenance of property

- I. subpoena witnesses for school hearings

- J. contract for expenditure of funds, except for salaries

Powers of the Board (Cont.)

- Section 22-5-4 (cont.)

- K. adopt rules for administration of all powers and duties of the board

- L. accept or rejects gifts to the District

- M. pay rewards for information regarding theft, defacement or destruction to school property

PED Regulations

Powers of the Board (cont.)

- 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

- ❑ 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

- 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

- 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

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

- ❑ Teachers are evaluated by principals.
- ❑ Principals are evaluated by the Superintendent.
- ❑ Should the Superintendent be evaluated?
- ❑ Can Board Members evaluate the Superintendent?



YES!!!

- The Superintendent **SHOULD** be evaluated by the Board of Education.
- The District's CEO should receive regular and formal feedback and guidance.

Why should the Superintendent be evaluated?

- 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



Superintendent Evaluation

The Board can govern when it knows

*-what the Superintendent is going to do
and*

-whether it's getting done.



The Superintendent Evaluation

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



An Effective Superintendent Assessment Offers:

- ❑ Encouraging praise
- ❑ Constructive criticism and clear instruction of Board's expectations.
- ❑ Suggestions for overcoming shortcomings and problems

It clarifies roles, expectations & performance

Getting Started

Board must agree upon:

- HOW the Board will determine what to evaluate,
- WHAT instrument / form(s) or method it will use to evaluate,
- WHEN the evaluation's various steps will occur & timelines for completion.

What should be evaluated?

- 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

- 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.

Meeting in Executive Session

- Executive Session may be used to:
 - Discuss the Superintendent's Contract (Hiring or Renewal)
 - Discuss the Superintendent's Evaluation
 - Discuss the Superintendent's PDP, PIP, or PGP
 - Final Personnel Action – Open Meeting
 - Appointment, hiring, renewal and salary should be acted upon publicly!



How is the Superintendent's Performance Measured?

Use Specific, Measurable Goals/Objectives

- Narrowly focused
- Objective
- Quantify, when possible

Identification of Deficiencies or Unsatisfactory Work

- Tie each deficiency to a Competency or District Goal
- Be Specific
- Use examples

Develop goals / objectives to address deficiencies.

Expectations Must Be Specific

- ❑ **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

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



Just Cause

- A reason that is rationally related to an employee's competence or turpitude or the proper performance of his duties and that is not in violation of the employee's civil or constitutional rights

NMSA 1978, Section 22-10A-2F

Uncorrected Unsatisfactory Work Performance

- **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

- *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*

SUGGESTED TIMELINE

- ***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

The Superintendent's Contract

- 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

- 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).
- Elsewhere in regulations, “Administrator” means an individual licensed in education administration and employed in an administrative capacity, including but not limited to superintendents, assistant superintendents, principals, and assistant principals. NMAC 6.20.3
- 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.

- 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

- 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.

- 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.

3 YEARS MAX

- 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

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

- 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

- 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.

- 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

- ❑ 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

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