

VOGEL Law Firm

Superintendent Negotiations & Contracts

February 2, 2023 (Thursday), 10:45 am – 12:00 pm

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Licensed in North Dakota and Minnesota



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TODAY'S AGENDA:

- I. School District Superintendent – Duties
- II. Superintendent Hiring Process
- III. Superintendent Contract
- IV. Contract Negotiation Process



I. SCHOOL DISTRICT SUPERINTENDENT

– JOB DUTIES

Before Negotiations even begin...

- The School Board and Potential Superintendent must know:
 - ✓ Expectations of the position
 - ✓ Statutory requirements of the position
 - ✓ Needs of the specific school district



Superintendent Job Duties

- **6 Statutorily-Required Duties** (N.D.C.C. § 15.1-14-01):
 1. Supervise the general operation of the school district.
 2. Supervise the provision of education to students.
 3. Visit the schools of the district.
 4. Supervise school personnel.
 5. Prepare and deliver reports requested by the board of the district.
 6. Perform any other duties requested by the board.

Superintendent Job Description

- **Job Description that is accurate (and up-to-date)**
essential to:
 - ✓ Establishing the relationship between the board and Superintendent
 - ✓ Managing expectations
 - ✓ Laying out the required statutorily-mandated evaluations of superintendent's job performance

Example – Job Description

- QUALIFICATIONS

- ✓ ND Teacher License and Superintendent Credential
- ✓ MA or Ph.D. in Education Administration/ Leadership

- EXPERIENCE

- ✓ [Input #] years of experience
- ✓ [Input type] experience required
- ✓ *E.g., A minimum of three (3) years experience working as a principal, assistant superintendent, or superintendent.*

Example – Job Description (cont'd)

- **CORE COMPETENCIES:**

- ✓ Ability to help school board set a data-informed vision and goals for the district in collaboration with key district stakeholders
- ✓ Ability to support and assist board in remaining vision oriented and goal focused ability to manage and motivate school personnel in a manner that supports the district's vision and accomplishes its goals
- ✓ Ability to strategically allocate resources and manage operations in a manner that supports goals and complies with law
- ✓ Ability to implement and oversee systems for monitoring progress toward goals and systems of continuous improvement specifically targeted at student achievement and instruction

Example – Job Description (cont'd)

- **REPORTS TO:**
 - ✓ [Name] School District School Board
- **SUPERVISES**
 - ✓ Directly or indirectly, every district employee [excluding/ including the business manager – depends on board's decision to delegate this oversight]
- **EVALUATION**
 - ✓ By Board in accordance with ND Century Code and [input board policy reference].

Example – Job Description (cont'd)

- **JOB EXPECTATIONS:**

- ✓ Assists the board with data-informed goal development and takes actions necessary to accomplish these goals.
- ✓ Competently carries out roles and responsibilities as assigned by the board and takes steps to assist the board with understanding and executing its role.
- ✓ Oversees qualified, high-quality district staff and maintains positive and professional working relationships with them.
- ✓ Oversees the development, review, and implementation of academic and support programming that fosters the growth and success of all district students.
- ✓ Is engaged in the community and takes steps necessary to ensure the community is engaged in district schools.
- ✓ Efficiently and prudently oversees school district finances and facilities, equipment, and supplies; operational decisions are aligned with the district's goals and strategic plan.

Example – Job Description (cont'd)

- **PERFORMANCE & RESPONSIBILITIES**

- ✓ Assists board with developing or updating a district-wide strategic plan that is based on district data, the district's mission, and other identified district needs; the plan outlines both short- and long-term goals.
- ✓ Provides for regular reports to the board on steps taken to accomplish short- and long-term goals and demonstrates progress toward accomplishing district goals.

Example – Job Description (cont'd)

- BOARD RELATIONS

- ✓ Works with the board president to set the board agenda; makes sure agenda contains more “big picture” items than minutia and that each month at least some agenda items relate to district’s goals and strategic plan.
- ✓ Executes all roles and responsibilities in the job description and in policy and reports to board on policy implementation and amendments as needed.
- ✓ Ensures that board packets contain information necessary for board decision making and submits meeting packets to board at least [#] days prior to board meetings.
- ✓ Answers board questions in a timely manner.
- ✓ Provides accurate information to the board, staff and public.
- ✓ Communicates with the board throughout the month via updates—not just at monthly board meetings. Complies with state and federal law.
- ✓ Complies with district policies. Upholds the ESPB Professional Code of Conduct. Makes all administrative decisions necessary for the proper function of the District that do not need review or reconsideration by the Board. Takes final responsibility for execution of any duties that are delegated.

Example – Job Description (cont'd)

HUMAN RESOURCE MANAGEMENT

- ✓ Ensures development of job descriptions for district staff; ensures hiring policies, procedures, and laws are followed to select and retain qualified employees.
- ✓ Makes infrequent recommendations to the board to nonrenew for cause, discharge licensed staff, or dismiss ancillary staff, typically after efforts to help the employee improve.
- ✓ Plans and executes staff training/professional development as evidenced by reports to the board, including reports on the outcome of staff training/professional development.
- ✓ Manages the personnel evaluation system including developing and reviewing personnel evaluation forms and ensuring completion of evaluations by applicable deadlines in law and/or district policy.
- ✓ Oversees system of employee remediation including ensuring that professional development is provided to teachers and principals who need to improve their instructional performance or administrative skills; reports to board on impact of coaching programs without referencing specific staff members.
- ✓ Ensures that district administrators hold orientation for new staff to familiarize them with policies, procedures, job duties.
- ✓ Recommends to the board programs to recognize outstanding staff members and to encourage staff engagement.
- ✓ Recommends to the board policies and negotiated agreement amendments designed to promote a fair, equitable, safe, and productive workplace, including policies on employee conduct, benefits, safety, and workload distribution.
- ✓ Seeks input from and regularly communicates with staff on district goals, needs, issues, and changes to programs/policies/procedures.
- ✓ Encourages and empowers principals to make decisions on behalf of their buildings and to implement innovative programs and services in their buildings.

Example – Job Description (cont'd)

- CURRICULUM & STUDENT SUPPORT SERVICES

- ✓ Presents the board with data on indicators of **student achievement and postsecondary preparation** (e.g., graduation rates, remedial coursework enrollment trends, college acceptance rates, grade remediation trends, number of scholarship recipients, etc.) to help identify curricular needs and inform the district's strategic plan.
- ✓ Brings **curriculum changes** to the board for approval as needed, explaining how these changes support the district's mission, strategic plan, and goals.
- ✓ Meets or **corresponds regularly with building administrators** to discuss implementation of curriculum, including instructional strategies and challenges associated with implementation; the superintendent shares these discussions with the curriculum committee.
- ✓ Recommends to the board for **approval programs** that allow for research-based instruction and course offerings; such programs include plans of implementation.
- ✓ Ensures that all school buildings have and use **intervention programs** to identify students in need of additional assistance academically, socially, and emotionally.
- ✓ Recommends to the board for **adoption policies and programs** designed to make the overall educational environment safe and to encourage student engagement including policies and programs on safety, conduct, recognition programs, and extracurricular activities.
- ✓ Schedules **annual board review of district policies** on student support services for special categories of students including disabled, migrant, English Language Learners, and homeless students to ensure these policies are meeting these students' needs.
- ✓ Completes **state assessments** in accordance with law, and required data are reported in **Powerschool** at the time and in the manner required by law.
- ✓ Reports **aggregated student assessment results** and other student achievement indicators to board, staff, and community as available.

Example – Job Description (cont'd)

- **COMMUNITY RELATIONS**

- ✓ Attends the meetings of, or is involved in the activities of, community and civic organizations as directed by the Board.
- ✓ Oversees implementation of a community communication plan, which includes a district newsletter issued to parents [and community members]; regularly speaks to the news media about school activities, successes, and events; and uploads information about district schools and initiatives on the district's website [and social media].
- ✓ Works with key community stakeholders to help further the district's mission and support district schools (e.g., law enforcement and social service agencies).
- ✓ Recommends to the board, as needed, public hearings to receive input on district issues.
- ✓ Identifies ways to invite the community into district schools for programs, activities, and events.

Example – Job Description (cont'd)

- OPERATIONS & RESOURCE MANAGEMENT
 - ✓ Makes **budget recommendations** to the board that take into account ending fund balance requirements in NDCC 15.1-07-29 and 15.1-27-35.3.
 - ✓ Ensures that the **special reserve fund** does not exceed limitations in NDCC 57-15-14.2; assists the **business manager** to ensure that these funds are invested in accordance with restrictions in law and in a manner meant to maximize return.
 - ✓ Explains to the board how the **budget** supports the district's **strategic plan and goals**.
 - ✓ Makes **mill levy recommendations** to the board based on actual needs as clearly explained to the board during budget discussions.
 - ✓ Makes **building levy recommendations** to the board that are based on justified needs, including long-term demographic information and/or a deferred maintenance plan.
 - ✓ Assists the **business manager** and board with ensuring that the **budget** is approved and mill levies are certified in accordance with deadlines in laws.
 - ✓ Oversees a **district-wide system of purchasing** that helps the district stay on budget and brings cost-savings recommendations to the board.

Example – Job Description (cont'd)

- OPERATIONS & RESOURCE MANAGEMENT

- ✓ Seeks and recommends to the board new sources of revenue (e.g., grants, loans, donor contributions) appropriate for the district.
- ✓ Ensures that school buildings, grounds, and equipment are well-maintained and typically in proper working order.
- ✓ Ensures that the insurance carrier has up-to-date information on all district-owned buildings, equipment, and supplies, and insurance coverage is adequate to cover potential loss.
- ✓ Develops, or assists the business manager with developing, a deferred maintenance plan for school buildings and a transportation replacement plan for the school fleet, which is discussed with the board.
- ✓ Establishes a process for administrators to request needed equipment and supplies and developed timelines for submitting these requests consistent with budget cycles.
- ✓ Performs or requires building administrators to perform a risk management assessment [with the assistance of its insurance carrier] to determine facilities and equipment that need repair.

What if this person is a Principal AND a Superintendent?

LEGALLY

- **NDCC 15.1-14-03.1. Individual functioning as a principal and a superintendent - Treatment.** Notwithstanding the provisions of chapter 15.1-15, if an individual is employed by the board of a school district to function as both a school principal and a school district superintendent, **that individual must be treated as a school district superintendent** for all purposes related to the individual's evaluation, discharge, and nonrenewal, as set forth in accordance with sections 15.1-14-03 through 15.1-14-12.

PRACTICALLY

- Job Description needs to be very clear on expectations.
- Negotiation items (particularly salary expectations) will be very particular.

What if this person is being employed by 2 or more school districts?

LEGALLY

- **15.1-09-55. School district superintendent - Joint employment - Accreditation.** The superintendent of public instruction may not impose through the accreditation process any penalties or sanctions on a school district for employing a superintendent jointly with one or more other districts. The superintendent may not require, through the accreditation process, that an employee of a school district having fewer than one hundred students in high school spend more than thirty-three percent of the employee's time performing the duties of a school principal if the school district employs a superintendent jointly with one or more other districts.
- *HB 1251 – School district superintendent – Limitation on compensation. Track at: https://ndlegis.gov/assembly/68-2023/regular/bill-index/bi1251.html?bill_year=2023&bill_number=1251*

PRACTICALLY

- Job Description needs to be very clear on expectations and Districts being served.
- Negotiation items (particularly salary expectations) will be very particular.



II. SUPERINTENDENT HIRING PROCESS

Next Steps...

1. Advertise for a Superintendent
2. Interview Candidates
3. Perform Criminal History Record Checks
4. Perform Background Check

**Applicable Board Policy is CAAA (Superintendent Recruitment and Appointment), which addresses Recruitment; Advertising; Qualification Screening; Competitive Personnel System; Interviews at Open Meetings; Selection; and Voting Requirements for Selection.*

Advertise for a Superintendent

- All advertising for a superintendent vacancy should include a statement that applicants are eligible for Veterans' Preference (in accordance with NDCC 37-19.1-02), and
- The district is an Equal Opportunity Employer, and
- The advertisement should also include a Closing Date.

Interview Candidates

- If the board as a whole, a quorum of the board, or a committee of board members with delegated authority, conducts interviews of the superintendent candidates =
- Interviews must be done at an **appropriately noticed open meeting.**

Perform Criminal History Record Checks

- North Dakota law requires that all individuals hired after June 30, 2011, and having unsupervised contact with students at the school =
- Undergo a criminal history records check required by the school district, OR
- Undergo a criminal history background check in order to be licensed by a state licensing board.

N.D. Cent. Code §15.1-06-06(1)(f).

What is a criminal history record check?

- A criminal history record check = a search of confidential law enforcement databases, cross-referencing by the person's name, date of birth, social security number, and other specific identifiers (including fingerprints). The **extensive cross-referencing** ensures that the result relates only to that person, even if the person has used several names or there are other individuals with the same name. By law, only the **North Dakota Bureau of Criminal Investigation (BCI)** can supply a criminal history record check. Criminal history records are confidential, and any board discussion about a superintendent candidate's criminal history record shall be held in **executive session**.
- **A criminal history record check is different from a background check.**

Perform Background Check

- Background Check = speaking with references and others who are familiar with the applicant,
- Search of publicly available online records (such as court records, sex offender registries, and other unofficial sources), cross-referencing only by the person's name. (These public records may have data for more than one person with the same name or may be out of date.)
- If question about information included on a background check report = school must contact the private company directly.



III. SUPERINTENDENT CONTRACT

What goes into a Superintendent Contract?

A non-exclusive list of terms...

- Term of Contract
- Qualifications
- Salary
- Sick Leave
- Personal Leave & Vacation Leave
- Personal Vehicle/ Local Mileage
- Professional Dues
- Moving Expenses
- Other Benefits
- Compliance with District policies
- Duties of Superintendent
- Evaluations
- Savings Clause
- Liquidated Damages
- Entire Agreement
- Law and Venue
- Deadline for Acceptance

Tips on Contracting

- The terms of the superintendent contract are different from terms of teacher contracts.
- Superintendent contract should specifically state number of months, start date/end date, and number of personal days (if any).
- Superintendent is not covered by the terms of a negotiated agreement; therefore, benefits should be specified in the contract.
- NOTE: *Some boards prefer to cover benefits, such as professional development leave, for superintendents in policy rather than contract. E.g., Policy CCA (Superintendent & Other Administrative Professional Development)*

Term of Contract

- Under ND Century Code, Superintendents may be offered up to 3-year contracts (NDCC 15.1-09-33 (25)).
- *Some* districts try to negotiate a 1-year term for the first year and then 1-3 year terms after the initial year. BUT this is a typical negotiation piece that depends on the circumstance.
- **Sample language:** The DISTRICT hereby employs SUPERINTENDENT, and SUPERINTENDENT hereby accepts employment, upon the terms and conditions hereinafter set forth for a period of three (3) annual terms, beginning on **July 1, 2023** and ending on **June 30, 2026**

Sample Language: Qualifications, Duties, Policy Compliance

- **QUALIFICATIONS:** SUPERINTENDENT certifies that SUPERINTENDENT holds or will hold a Superintendent Credential issued from the North Dakota Department of Public Instruction when the first annual term of this Contract begins.
- **DUTIES OF SUPERINTENDENT:** The SUPERINTENDENT agrees to abide by all applicable provisions of state and federal law in the performance of his job duties, including supervising the general operation of the school district; supervising the provision of education to students; visiting the schools of the district; supervising school personnel; preparing and delivering reports required by the board of the District; and performing any other duties as requested by the Board, following the provisions of N.D.C.C. § 15.1-14-01. The Superintendent reports directly to the Board and will maintain good communication and a professional relationship with the Board.
- **COMPLIANCE WITH POLICIES:** The SUPERINTENDENT agrees to abide by and comply with the policies of the DISTRICT so long as those policies do not conflict with state or federal law.

Sample Language: Pay & Leave

- **SALARY:** The DISTRICT agrees to pay the SUPERINTENDENT a salary as follows: [input amount year 1-3]. All payments under this Contract will be payable in twelve (12) equal installments in accordance with regular payroll procedures for each annual term under this Contract.
- **SICK LEAVE:** SUPERINTENDENT shall receive [input amount] of sick leave during each annual term of this Contract, which may roll over and cumulate in his sick leave bank at the end of each annual term and upon future contract renewal.
- **PERSONAL LEAVE:** SUPERINTENDENT shall receive [input amount] days of personal leave each annual term of this Contract, which may roll over and cumulate up to [input amount] days total in his personal leave bank at the end of each annual term and upon future contract renewal. At the end of each annual term, any unused accumulated personal leave in excess of [input amount] days shall be transferred to accumulated sick leave.
- **VACATION LEAVE:** SUPERINTENDENT shall receive [input amount] days of vacation during each annual term of this Contract, exclusive of legal school holidays. The following school holidays shall be counted towards the SUPERINTENDENT's 260 contracted days: New Year's Day, Good Friday, Memorial Day, July 4th, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day. Vacation days may not be carried over annually at the end of each Contract term or upon any Contract renewal.

Sample Language: Other Benefits

- **PERSONAL VEHICLE/LOCAL MILEAGE:** SUPERINTENDENT shall receive vehicle /local mileage reimbursement for any use of his personal vehicle in the performance of his duties for the DISTRICT in accordance with the current federal standard mileage rates.
- **PROFESSIONAL DUES:** The DISTRICT shall pay the professional dues to the appropriate administrator's associations, along with one local service club membership for SUPERINTENDENT.
- **MOVING EXPENSES:** The DISTRICT shall reimburse SUPERINTENDENT, upon providing receipts, of his one-time moving expenses during the full term of this Contract up to a capped amount of [input amount] . SUPERINTENDENT shall be required to contact at least three different moving company and utilize the company with the lowest amount. Any request for moving expenses reimbursement will be forfeited by SUPERINTENDENT at the end of the first annual term of this Contract.
- **OTHER BENEFITS:** Other benefits may be consistent with the standard administrative professional benefits offered in this DISTRICT and shall include the following: the DISTRICT shall (a) pay both the employer and employee contributions to the North Dakota Teachers' Fund for Retirement (TFFR); and (b) pay [input amount] of the monthly premium payments under the health insurance plan coverage the SUPERINTENDENT elects.

Evaluations

- **Sample Contract Language:** The SUPERINTENDENT shall be evaluated according to the duties required under this Contract, the duties required under the law as identified in N.D.C.C. § 15.1-14-01, and adherence to the provisions of this Contract and the policies of the District. The evaluation process shall follow the provisions of N.D.C.C. § 15.1-14.03.
-
- **The Law:** Requires all superintendents to receive two written performance reviews each year based on the job description and any other performance standards established by the board. The first evaluation is a formative evaluation of the superintendent's performance and must be completed and adopted by a majority vote of the school board **on or before November 15**. The second evaluation is a formal evaluation of the superintendent's performance and must be completed and adopted by a majority vote of the school board **on or before March 15**.
 - **POLICY REFERENCE:** Policy CAAB – Superintendent Evaluation Procedure

Sample Language: Miscellaneous Terms

- **SAVINGS CLAUSE:** If any portion of this Contract is determined to be invalid or unenforceable, the remainder of the Contract shall not be affected and shall remain in effect.
- **LIQUIDATED DAMAGES:** In the event that the SUPERINTENDENT breaches this Contract, the SUPERINTENDENT agrees to pay liquidated damages as follows: [input amount] of the total remaining salary owed under what remains of the full three-year term period of this Contract.
- **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties. It may be amended only by written agreement signed by the parties.
- **LAW AND VENUE:** This Agreement and the rights of the parties hereunder will be governed and interpreted in accordance with the laws of the State of North Dakota. Any dispute regarding this Agreement or the terms and conditions thereof shall be brought in the applicable administrative or district court in [] County.
- **DEADLINE FOR ACCEPTANCE:** This Contract must be signed and returned to the School Board President by 5:00 p.m. CST on [], 2023 or it will be deemed rejected.



IV. CONTRACT NEGOTIATION PROCESS

Typical Items of Negotiation

- ✓ Term of Contract
- ✓ Salary
- ✓ Benefits
 - ✓ Personal Time Off
 - ✓ Sick Leave
 - ✓ Vacation
 - ✓ Other

Seth's negotiation tips....

- In any negotiation, knowledge is power: do your homework
 - Know the market
 - Know the value of your offer
 - Find out what the other side wants
 - Engage in active listening: Different people have different motivations
- Review the file from the last negotiation
 - Debrief: What worked, what didn't, what you wished you'd done differently
 - Take and save notes

Seth's negotiation tips....

- Do not undercut your own claims
- Know your limits
- What is your BATNA?
 - Best Alternative to a Negotiated Agreement
- Be cognizant of which party has leverage
 - How many qualified applicants were there?
 - Negotiating with an applicant who is unemployed
 - Negotiating with an applicant who is employed
- Make sure the applicant is the right fit before addressing \$

Seth's negotiation tips....

- Practice if necessary
 - Some questions or inquiries are expected: Think through your response

Questions & Answers



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The Fine Print

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