

California School Boards Association's Superintendent Contract Template (Annotated Version)

INSTRUCTIONS AND NOTICE TO USER

This Superintendent Contract template is intended by the California School Boards Association (CSBA) to be a starting point for school boards in developing a contract to present to their new superintendent and, as necessary, negotiating with the superintendent over details of the contract. Thus, the template should be revised to best reflect local needs and expectations.

Annotations in the template provide context, explanations, commentaries, and suggestions that are intended to aid board member understanding of contract development and negotiation. This template is also consistent with recommended statements and practices in CSBA's sample board policy BP 2121 - Superintendent Contract.

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Contract Term

1. Governing Board of the _____ (District) employs _____ to be District's Superintendent commencing on _____ and ending on _____, unless such employment is terminated earlier or extended in accordance with the provisions of this Contract.

Paragraph 1 establishes the term of the Contract, which typically begins on July 1 and ends on June 30, and lasts two, three or four years. Pursuant to Education Code 35031, a term may not be more than four years. Districts with greater uncertainty about the Superintendent contract may want a two year contract, and districts with greater confidence in the effectiveness of the Superintendent may opt for three or four year contracts. However, for interim or mid-year appointments, the term should be adjusted as appropriate.

Work Year and Hours of Work

2. Superintendent shall render twelve (12) months of full and regular service to District except when on vacation, District-approved holidays, and approved leaves as set forth in the Contract. It is understood that the demands of the position of Superintendent will require more than eight (8) hours per work day and/or forty (40) hours per work week. Superintendent is not entitled to receive overtime compensation.

Paragraph 2 establishes a traditional 12-month work year for the Superintendent and allows for vacation (approved by the Board President), District holidays (e.g., Presidents' Day), and other leaves as permitted by the Contract. Importantly, this language also indicates that the Superintendent is expected to work more than a 40-hour week and is not entitled to overtime.

However, Boards may consider using an alternate approach (known as the "positive work year" approach), which establishes the number of days in a year that the Superintendent will work. The typical positive work year is 225 days. The main benefit of the positive work year approach is its simplicity – since the focus is solely on the number of workdays, other benefits such as vacation, leaves, and holidays need not be provided. The main drawbacks of this approach are the logistics of keeping track of what constitutes a workday and the cost associated with additional pay for workdays beyond the number established in the Contract will require.

Compensation

3. Superintendent is employed as a full-time employee of District with an annual salary of _____ (\$ _____ .00). The annual salary shall be payable in installments of one-twelfth (1/12) of the annual salary on the last day of each month for services rendered during that month. The daily rate for the purpose of prorating the annual salary provided for in the Contract shall be \$ _____.

4. The annual salary may be increased at the sole discretion of Board. Any increase in salary shall be discussed and approved in open session at a regular Board meeting pursuant to Government Code Section 54956, subdivision (b). A change in salary during the term of the Contract shall not, in and of itself, constitute the creation of a new contract or extension of the Contract.

Paragraph 3 establishes the annual salary of the Superintendent. While other portions of the Contract may be as important – e.g., the provisions related to duties and evaluation – this is the section that often attracts the most attention. Local media, unions, and other interest groups often view a high superintendent salary with suspicion, using it as indication of fiscal mismanagement, inequities in treatment of employees, and other finance-related problems. Unfortunately, these pressures may result in a compensation scheme where salary is kept relatively low yet other benefits are increased substantially. Even when faced with such pressures, Boards should avoid using "creative" compensation schemes that tend to erode public trust, such as a low salary but exorbitant benefits. In contrast, a simple compensation package, with a competitive salary and reasonable benefits, determined based on a comparative study (i) will help attract qualified candidates, (ii) will be consistent with the limitations on defined pension benefits eligible as earnable compensation, (iii) will be aligned with state retirement laws, (iv) may help the Board justify the need for such a salary and avoid any long-term issues with superintendent compensation. In addition to determining the annual salary, Paragraph 3 also includes the specific daily pro rata rate; this will help avoid any conflict over a difference of opinion regarding the calculation of this rate.

Paragraph 4 prevents automatic salary increases but allows the Board to provide a salary increase based on performance, the financial condition of the District, and other local considerations that may not be foreseen at the time the Contract is signed. It is not uncommon for districts to tie superintendent salary increases to general compensation increases for certificated employees or make them dependent on satisfactory evaluation. Paragraph 4 may be modified to reflect such local practices. This language is consistent with Government Code Section 3511.2, which prohibits an automatic renewal of a contract that provides for an automatic compensation increase in excess of a cost-of-living adjustment.

Fringe Benefits

Medical, Dental and Vision Insurance

5. During his/her employment under the Contract, Superintendent may select any medical, dental, and vision plan available to other certificated management employees within District. Superintendent shall be responsible for any employee contribution of the plan selected.

Life Insurance

6. On behalf of Superintendent, District shall purchase a _____ (\$ _____ .00) whole life insurance policy.

Retirement Contribution

7. Superintendent is responsible for his or her share of contributions to CalSTRS.

Moving Expenses

8. Accepting the position of Superintendent may involve Superintendent moving his or her place of residence, which is currently located at _____. To assist in defraying the one-time costs associated with this move, District shall reimburse Superintendent for his or her actual expenses associated with moving his or her household goods by a professional moving company, up to a maximum of \$ _____, provided that (i) Superintendent's new place of residence will be located within the geographic boundaries of District, (ii) Superintendent moves to his or her new place of residence within the first 18 months of the Contract, and (iii) the distance between Superintendent's current and new place of residence is at least 50 miles. The amount shall be paid to Superintendent within 30 days of submission of itemized moving and relocation expense invoices to District. Reimbursement is contingent upon pre-approval by Board President and upon Superintendent placing an item on the first available Board meeting agenda disclosing all moving expenses.

Paragraphs 5 through 7 address health benefits, life insurance, and retirement, respectively. It is not uncommon for the Superintendent to be treated the same as other certificated management employees with respect to health benefits, although the practice varies among districts. It is also optional but common for districts to purchase a life insurance policy for their superintendent. As for retirement, the Superintendent is typically responsible for the employee share of the Superintendent's CalSTRS contributions just like all other employees.

Paragraph 8 provides for the reimbursement of moving expenses and may be used on a case-by-case basis. In addition, Boards may modify the conditions for reimbursement to reflect local circumstances.

Work Related Expenses

Reimbursement for work related expenses

9. District shall reimburse Superintendent for ordinary and necessary expenses incurred relative to employment as Superintendent, including mileage, consistent with Board policies, regulations, and guidelines applicable to other certificated management employees.

10. Unless otherwise addressed in the Contract, if the Superintendent seeks to be reimbursed for the cost of traveling outside of the District, such as for attending an out-of-district conference, the Superintendent shall obtain written approval from Board President before incurring the expense.

Professional Dues

11. District shall pay the annual dues for Superintendent's membership of the Association of California School Administrators (ACSA).

Technology Devices

12. At its sole discretion, Board shall provide to Superintendent, at District expense, a cell phone and a laptop computer and/or tablet, hereinafter "Technology Devices." District shall pay any costs and expenses associated with owning, licensing, operating and maintaining such Technology Devices. This does not include costs associated with maintaining home internet access. All Technology Devices so provided are the property of District and District shall have the right to control the access to, and use of, Technology Devices through its Board policies, including its technology use policies, personnel policies, and its risk management policies.

13. All District-provided Technology Devices are provided to facilitate performance of Superintendent's duties and obligations as an employee of District. Superintendent may use District-provided Technology Devices for personal use within reasonable limits and in a manner consistent with Board policies, including its technology use policies, personnel policies, and its risk management policies. Superintendent shall not use any Technology Device in any manner that is inconsistent with such policies.

14. When Technology Devices are provided by District, Superintendent shall not conduct District business on devices that are not provided or owned by District.

15. Superintendent hereby waives any and all rights and protections over the content of any Technology Device or other electronic device (e.g., cell phone, computer, tablet) on which he or she has conducted any District business, regardless of whether the device is provided by District pursuant to the Contract. This waiver permits Board or anyone authorized by Board to examine the contents of any such device without requiring additional permission, including, but not limited to, a separate waiver or a warrant.

Paragraphs 9 and 10 provide for reimbursement for work-related expenses. This is a typical condition of a superintendent contract. The advantage to this approach over a per diem amount is that it improves transparency both with the public and the Board.

Paragraph 11 requires the District to cover the cost of the Superintendent's membership in the Association of California School Administrators ("ACSA"). This provision is commonly included in a superintendent contract to facilitate and encourage networking among school administrators.

Paragraphs 12 through 15 address the need for the Superintendent to conduct District business via cell phone and laptop or tablet. Specifically, Paragraph 12 provides the Superintendent with a cell phone and laptop/tablet in order to conduct District business. This approach – as opposed to permitting the Superintendent to conduct District business on personal electronic devices – allows the District to more easily access information related to District business conducted on electronic devices in the event of an internal investigation or a Public Record Act request. Paragraphs 13 and 14 make it clear that while personal business may sometimes be conducted on a District-provided device, no District business may be conducted on any personal device. Paragraph 15 constitutes a waiver by the Superintendent permitting the Board or its designee access to any electronic device, such as his or her cell phone, on which District business has been conducted. The Board should consult legal counsel regarding the appropriate scope of the waiver and before conducting any search of a personal device.

Leaves

Illness Leave

16. Superintendent shall accrue illness leave at the rate of _____ (__) days per month.
17. Accrued unused illness leave shall not be compensable upon separation.

Vacation

18. Superintendent shall accrue paid vacation at the rate of _____ (__) days per month, and shall accrue no more than _____ hours, as provided by district policy for 12-month certificated management employees. All vacation must be scheduled in advance and approved by Board President. Superintendent may accrue the same number of vacation day as certificated management employees. Once this maximum accrual level is reached, Superintendent will cease accruing additional vacation until his or her balance falls below this level.

Holidays and Personal and other leaves

19. Superintendent shall be entitled to all paid holidays approved by Board for District employees and to personal necessity, bereavement, and other leaves provided to District's certificated management employees.

Paragraphs 16 and 17 set the number of sick days provided to the Superintendent and establish that any accrued sick leave is not compensable when the Superintendent leaves.

Paragraph 18 sets the number of vacation days provided to the Superintendent with the same number of, and cap on accrual of vacation days, as provided to other certificated management employees. Another option is to set the number of vacation days with an accrual cap independent of any group of employees. However, this may create a potential conflict of interest, as it puts the Superintendent in a situation to benefit from any decision to increase the number of vacation days for certificated management employees. In addition, if the Board seeks to reduce the accrual rate or cap on vacation days for certificated management employees, the Superintendent would be put in a position of having to advocate reduction to his or her own benefits. This paragraph also provides for the Board President to approve the Superintendent's vacation requests.

Paragraph 19 establishes that the Superintendent is treated the same as other certificated management employees with respect to all other types of leave. Unlike with vacation, it is less likely that this will create a conflict of interest, since such leaves are used less frequently and are rarely a subject of concern with respect to the benefits provided to certificated management employees.

Professional Development

20. If requested by Board or at Superintendent's option, with Board approval, Superintendent shall participate in the ACSA Leading the Leaders Program at district expense. District shall provide the release time for Superintendent to participate in the Program and Superintendent shall provide a timely report to Board.

21. If requested by Board or at Superintendent's option, with Board approval, Superintendent shall participate in operations, programs and other activities conducted or sponsored by local, state or national school administrator and/or school board associations, including the following:

Tier One (Within first 12-18 months of tenure)

- Superintendent and the newly formed governance team participate in a CSBA Good Beginnings workshop within the first ninety (90) days of the Contract.

- *Superintendent attends CSBA's Institute for New and First Term Board Members with the newly elected member(s) of the governance team within the first year of the Contract.*
- *Superintendent and a majority of Board (or those newly elected, or who have not already participated) attain their Masters in Governance certificate through participation in CSBA's Masters in Governance Program within the first year of the Contract.*
- *Superintendent and Board participate in CSBA's Superintendent Evaluation and Board Self-Evaluation training at end of first year of the Contract to establish/set goals for the coming year.*

Tier Two (18 months - 3 years of tenure)

- *Superintendent and a majority of Board attend CSBA's Annual Education Conference and Trade Show.*
- *The Executive Assistant to Superintendent participates in CSBA's Training for Executive Assistants scheduled in conjunction with the Annual Education Conference and Trade Show (or at a regionally scheduled session) in order to enhance their effectiveness in support of the governance team.*
- *Superintendent and Board engage CSBA's Governance Consulting Services as a follow-up to the Good Beginnings workshop.*
- *Superintendent schedules a policy development workshop through CSBA's Policy Services to ensure that Board policies are both relevant and in compliance.*

Superintendent participation in any of these shall be at District expense. District shall provide Superintendent release time and Superintendent shall provide a timely report to Board accordingly.

Paragraphs 20 and 21 ensure that the Superintendent and the Board take advantage of resources and professional development opportunities provided by CSBA and ACSA.

- *ACSA's Leading the Leaders program: Places participants into a yearlong cohort (North or South) and tackles the current issues faced by superintendents in four workshop settings taught by experienced superintendents. For more information, please visit: <http://www.acsa.org/Programs.html>.*
- *CSBA's Good Beginnings workshops: Designed for new governance teams following the hiring of a new superintendent and/or the election of new board members. Workshops are individually tailored for districts and are conducted as open meetings of the governing board in accordance with the Brown Act. The pre-workshop process includes individual*

phone interviews with all governance team members. For more information, please email Renata Hoffman at rhoffman@csba.org.

- *CSBA's Institute for New and First-Term Board Members*: A two-day seminar that covers the four major areas of board responsibility and authority: effective governance, finance, student learning and human resources. The seminar is designed to help board members become more effective and make a greater impact in their district or county office. For more information, please contact Stephanie Goodlett at sgoodlett@csba.org.
- *CSBA's Masters in Governance Program*: Equips board members and superintendents with the knowledge and skills to build and support an effective governance structure. The program, in which more than 2,000 board members and superintendents have participated, offers modules at various locations throughout the state and throughout the year, allowing participants the flexibility to choose where and when to attend. For more information, please visit: <http://www.csba.org/TrainingAndEvents/MastersInGovernance.aspx>.
- *CSBA's Superintendent Evaluation and Board Self-Evaluation Training*: Offers governing boards help with evaluating their superintendents and themselves, an essential component to become a more effective governance team. For more information, please visit: <http://bse.csba.org>.
- *CSBA's Annual Education Conference and Trade Show*: Premier continuing education and training program that provides strategies to help governance teams from districts and county offices of education improve student learning and achievement. Designed for everyone – new or veteran board members, superintendents and their management staff, executive assistants or other board support professionals – attendees will come away with practical ideas and a renewed commitment to accomplish the critical work of student learning and achievement. For more information, please visit: <http://aec.csba.org>.
- *CSBA's Governance Consulting Services*: Provides in-district training, workshops, resources, and guidance for building effective governance teams by working with boards and superintendents in a manner that is collaborative, results focused, flexible and adaptive. For more information, please visit: <http://www.csba.org/GovernanceAndPolicyResources/EffectiveGovernance/GovernanceConsultingServices.aspx>
- *CSBA's Policy Development and Maintenance Services*: Help districts and county offices of education build a strong foundation through development and maintenance of effective policies and policy manuals. These services offer sample board policies and administrative regulations as well as information and analysis on key education issues. For more information, please visit:

General Duties

22. Pursuant to Article 3 (commencing with Section 35026) of Chapter 1 of Part 21 of Division 3 of Title 2 of the Education Code, Superintendent agrees to be the Chief Executive Officer of District.

23. Superintendent agrees to perform, at the highest level of competence, all services, duties, and obligations required by (i) the Contract, (ii) the District Superintendent job description, (iii) applicable laws and regulations, (iv) Board rules, regulations, and policies and as otherwise directed by Board. Superintendent may delegate any of his or her duties to a responsible District employee unless otherwise prohibited by Board or any applicable law, Board rule, regulation, or policy.

24. Superintendent shall have primary responsibility for the management of all District affairs. In carrying out his or her duties, Superintendent shall provide educational leadership to District and make student learning and student success his or her highest priorities. Superintendent shall endeavor to maintain and improve his or her professional competence by all available means, including subscription to and reading of appropriate periodicals and membership in appropriate associations.

25. Superintendent shall be responsible for the operations of District, including, but not limited to, the areas of general administration, instruction, human resources, communications, government relations, facilities, and business affairs.

26. Superintendent shall appoint a responsible District employee to temporarily fulfill Superintendent's duties whenever at least one district facility is open and Superintendent is unavailable. Superintendent shall notify Board President when doing so.

Paragraph 22 includes reference to the Education Code section permitting a district to hire a superintendent and Paragraph 23 establishes, in broad terms, the duties of the Superintendent.

Paragraphs 24 and 25 identify general duties of the Superintendent, including management of district operations. These duties are typical of every superintendent contract.

Paragraph 26 reflects the importance of having someone in charge of the District when the Superintendent is sick, on vacation, at a conference out of the district, or otherwise unavailable and enables the Board to take action via the Superintendent's evaluation if this duty is not met.

Administrative and Board-Related Duties

27. *Superintendent shall establish and maintain positive community, staff, and Board relations.*

28. *Superintendent shall attend every Board meeting and Board committee meeting unless excused in writing by Board President. This duty may not be delegated unless permitted in writing by Board President.*
29. *Superintendent shall serve as Secretary to Board and perform the duties as prescribed in Section 35025 of Chapter 1 of Part 21 of Division 3 of Title 2 of the Education Code.*
30. *Superintendent shall have primary responsibility for the implementation of District policies. Superintendent will review all policies adopted by Board and make appropriate recommendations to Board for addition, deletion, or modification. Board retains primary responsibility for formulation of Board policies.*
31. *Superintendent shall be responsible for the development of administrative regulations required or necessary for the implementation of District policies, and shall place any new or modified administrative regulation on the agenda of a Board meeting for Board information and/or approval.*
32. *As permitted by any applicable law including, but not limited to, the Brown Act, Superintendent shall, in advance of Board meetings, keep all Board members advised of emerging issues that could have a material impact on Board or District.*
33. *Superintendent shall serve as liaison to Board with respect to all matters of employer-employee relations and shall make recommendations to Board concerning those matters.*
34. *Superintendent shall submit financial and budgetary reports to Board and shall advise Board on possible sources of funds to carry out District programs.*
35. *Annually, Superintendent shall prepare and submit a recommended District budget to Board, with supporting financial information to assist Board in approving a sound budget.*
36. *Superintendent shall enter into contracts for and on behalf of District, subject to Board approval or ratification as required by law.*
37. *Superintendent shall have such other duties properly delegated to him or her by Board.*

Paragraphs 27 through 37 provide a detailed list of administrative duties and Board-related duties. These include some basic duties (e.g., attend every Board meeting and serve as secretary to the Board) as well as duties that are much more complicated (advising the Board on emerging issues). Paragraph 31 provides for Board involvement in the process for the development of administrative regulations, even as Board approval is generally not required by law. A Board that does not approve administrative regulations should still place them on the Board agenda as information items. Paragraph 32, in particular, is important because the Superintendent must be aware of the Brown Act requirements when individually communicating with a majority of Board members. (For more information on the Brown Act, CSBA has published a Brown Act book that

is available <https://www.csba.org/ProductsAndServices/CSBAStore.aspx>.) The Board should also be aware that any written report by the Superintendent to the Board in between Board meetings, even if marked confidential, may still be subject to public disclosure via the Public Records Act. Boards may include additional administration and communication-related duties by adding new paragraphs or modifying existing paragraphs.

Personnel Duties

38. *Superintendent may appoint a cabinet of senior District administrators to advise Superintendent and shall evaluate all cabinet members pursuant to their contracts and applicable Board policies and regulations.*

39. *Superintendent shall have primary responsibility for making timely and appropriate recommendations to Board regarding personnel matters, including the employment of personnel and any release, non-reelection, or termination of an employee. Upon request by Superintendent, Board may authorize Superintendent to employ personnel without Board approval.*

40. *As required by Education Code Section 35035, and subject to the approval of Board, Superintendent is responsible for assigning all District employees employed in positions requiring certification qualifications. Superintendent shall also be responsible to periodically evaluate or cause to be evaluated all District employees.*

41. *Superintendent shall provide leadership and direction in negotiations with all labor groups.*

Paragraphs 38 through 41 permit the Superintendent to constitute a cabinet and direct the Superintendent to bring recommendations on employment and labor-related matters to the Board for consideration. The last sentence of Paragraph 39 allows the Board to fully delegate the authority to employ staff to the Superintendent. (This is typically done when the Board does not meet over the summer months.) Paragraph 40 requires the Superintendent to ensure that all employees are evaluated. Boards may include additional duties related to personnel, employment, and labor relations by adding new paragraphs or modifying existing paragraphs.

External Relation Duties

42. *Superintendent shall represent District before the public, and shall develop and maintain public relations strategies and protocols as may be necessary to improve understanding and to keep the public informed about District activities, needs, and results.*

43. *Superintendent will act as the primary liaison with the local, state, and federal agencies and elected representatives.*

44. *Superintendent is encouraged to attend appropriate local community meetings. Reasonable expenses thereby incurred shall be reimbursed in accordance with Paragraphs 9 and 10 of the Contract.*

45. *Superintendent shall regularly report to Board on all external relations activities.*

Paragraphs 42 through 45 relate to external relations and direct the Superintendent to be the face of the District with the local community and with state and federal agencies and representatives. Boards may include additional duties related to public information and external communication by adding new paragraphs or modifying existing paragraphs.

Other Duties

Annual Medical Exam

46. *In light of the unique nature of the professional duties of Superintendent, Superintendent shall receive, at district expense, a complete medical examination prior to February 15 of each year during the Contract. The examination shall be conducted by a licensed physician selected by Superintendent. The written statement which shall be provided to Board shall be limited to the physician's determination of the continued fitness of Superintendent to perform the duties required under the Contract, with or without reasonable accommodations. The statement shall otherwise be confidential. Nothing in this provision precludes Board from directing Superintendent to submit to a fitness for duty exam at any time, or as otherwise permitted by law.*

Driver's License

47. *Superintendent is required to maintain a valid California Driver's License and have a vehicle available at all times to perform the duties of the position.*

Additional Duties

48. *Superintendent shall carry out all lawful activities as directed by Board from time to time.*

Paragraph 46 provides for an annual medical exam to ensure that Superintendent is physically capable of performing the required duties. As such, the statement and any related documentation received by the Board from the physician are confidential. The requirement to receive an annual medical exam is included so that any failure to receive an annual medical exam constitutes grounds for termination under the Contract if the Board so chooses.

Paragraph 47 simply provides the Superintendent must have a valid license and an available vehicle in order to perform his or her duties as needed.

Paragraph 48 is a catch-all phrase that allows the Board to add new contract-based Superintendent duties that may not be known at the time the Contract is signed and as circumstances may subsequently dictate during the term of the Contract. Failure to perform any added duty would then be grounds for termination under the Contract if the Board so chooses.

Evaluation

49. Board shall evaluate Superintendent in each year, utilizing the process set forth in Paragraphs 50 through 56, inclusive.

50. Prior to September 1 of each year, Board shall meet to establish Superintendent's performance goals and objectives for that school year based on the duties and responsibilities set forth in the Contract, Board's strategic planning priorities and any other criteria chosen by Board. These goals and objectives shall be reduced into writing and, at Board discretion, may include input provided by Superintendent.

51. Prior to October 1 of each year, Board shall, in writing, provide Superintendent with the evaluation instrument that Board will use to assess Superintendent's performance based on the goals and objectives established pursuant to Paragraph 50. The evaluation instrument shall include an overall job performance rating of "Exceeds Expectations," "Satisfactory," "Needs Improvement," and "Unsatisfactory."

52. Prior to April 1 of each year, Superintendent shall remind Board in writing of Board's evaluation obligations under the Contract, and Superintendent and Board shall agree on dates for Superintendent's evaluation and the other steps of the evaluation process as described herein.

53. At a regularly scheduled Board meeting prior to May 31 of each year, Superintendent shall present Board with a report on the state of District.

54. Prior to June 1 of each year, Superintendent shall present Board with a written self-evaluation. The self-evaluation shall mirror the form of the written evaluation instrument.

55. Prior to June 30 of each year, and after receiving Superintendent's state of the District report and self-evaluation, each of the following shall occur:

- Each Board member shall individually complete the evaluation instrument;
- Board will devote a portion of at least one (1) meeting to a discussion and evaluation of Superintendent's performance, including the working relationship between Superintendent and Board.
- Board President shall be responsible for utilizing the individual Board member evaluations and Board discussion to prepare a single, evaluative document that communicates Board's collective feedback and expectations.

56. *The evaluation of Superintendent by Board will be in writing and placed in a sealed envelope in Superintendent's personnel file marked as follows: "Confidential. Only to be opened upon authorization of Board." A copy of the evaluation will be provided to Superintendent.*

57. *Failure of Board to complete the evaluation process does not constitute a material breach of the Contract and shall not result in the amendment or extension of the Contract. Failure of Board to evaluate Superintendent shall not preclude Board from giving notice of termination or nonrenewal in accordance with Paragraphs 59 through 70, inclusive.*

Paragraphs 49 through 57 establish the process by which the Board evaluates the Superintendent. This process places the Board in charge of designing the evaluation tool while permitting input from the Superintendent. Notably, the process includes a self-evaluation by the Superintendent and directs each Board member to individually evaluate the Superintendent which the Board President can then use to prepare the evaluation that will serve to communicate the Board's feedback and expectations.

Paragraphs 50 through 55 establish a specific timeline for the completion of the evaluation process but these dates may be adjusted based on the unique needs and capacities of each district. Paragraph 57 permits the Board to deviate from the evaluation process, while still preserving the Board's authority to terminate the superintendent without completing an evaluation as otherwise required under the Contract.

Contract Renewal or Extension

58. *Parties agree that there shall be no automatic renewal or extension of the Contract. Should Board desire Superintendent to continue as Superintendent beyond the term of the Contract, the Parties shall negotiate and execute a new contract.*

Paragraph 58 provides that the Contract cannot be renewed or extended without Board action. This provision encourages the Parties to be more deliberate and specific about the terms under which Superintendent may remain employed beyond the term of the Contract. In many situations, the Parties may decide to use the existing Contract except with a change in term (Paragraph 1) and compensation (Paragraph 3). Nevertheless, the act of agreeing to a new contract (rather than simply extending the existing one) will encourage a more thorough review of the Contract and of the Board's expectations prior to the initiation of a new contract. This is distinct from an "evergreen" provision, which would automatically extend the term of the Contract under certain conditions, such as if the Superintendent receives a satisfactory evaluation. Evergreen provisions are particularly problematic when the composition of the Board turns over and when members of the Board are not familiar with (and have had no input on) the content of the Contract. Board may want to provide for the possibility of reopening discussion of a new contract before the expiration of a current contract. Such a Board may insert language

in the contract that specifies a date before the final year of the contract when discussions about a new contract could begin at the option of the Board.

Contract Non-Renewal

Notice

59. *Should Board determine that it does not wish to negotiate and execute a new contract at the end of the term of the Contract, Board shall give written notice of the decision to Superintendent, at least forty-five (45) days prior to the end of the Contract, as required pursuant to Education Code Section 35031. The Parties expressly agree to waive the automatic renewal provision in Education Code Section 35031 when Board fails to give the required notice. Rather, if Board fails to provide notice of non-renewal, the Contract shall automatically renew, and its provisions shall be in effect for a period of one year.*

Superintendent's Duty to Notify Board

60. *Between ninety (90) days and one hundred and twenty (120) days prior to the end of the Contract, Superintendent shall, in writing, remind Board of Board's obligation to give written notice pursuant to Paragraph 59. Superintendent agrees that his or her failure to provide the reminder notice to Board shall invalidate the notice requirement under Paragraph 59 and shall operate as a waiver of the automatic renewal provision in Education Code Section 35031 and in Paragraph 59.*

Paragraph 59, as specified under state law, requires the Board to notify the Superintendent, at least 45 days prior to the expiration of the current Contract, of the Board's intent not to negotiate and execute a new contract when the current Contract expires. Education Code Section 35031 provides that failure to provide the Superintendent with such a timely notice automatically extends the Contract for the term of the Contract (i.e., three years if this is the term adopted in Paragraph 1). The second sentence of this paragraph explicitly waives this provision and replaces it with a provision that automatically extends the Contract for one year only. As no court has yet ruled on this approach (or any similar approach), it is recommended that the Board ask its legal counsel to specifically review this provision.

Paragraph 60 requires the Superintendent to notify the Board of its notice obligation in Paragraph 59. Paragraph 60 is written so that Superintendent's failure to provide the Board with this reminder will (i) invalidate the notice requirement in Paragraph 59 and (ii) waive any automatic renewal. This paragraph helps protect the Board in the instance where it fails to notify the Superintendent 45 days prior to the expiration of the Contract that the Board does not intend to negotiate or execute a new one. Again, as no court has yet ruled on this approach (or any similar approach), it is recommended that the Board ask its counsel to specifically review this provision.

Termination for Cause

61. *Notwithstanding any other provision of the Contract, Superintendent may be terminated for cause prior to the expiration of the Contract, for any of the following:*

- *Failure by Superintendent to possess or maintain a valid California Administrative Credential*
- *Suspension or revocation of Superintendent's California Administrative Credential*
- *Neglect of Duty*
- *Physical or mental inability of Superintendent to perform his or her duties*
- *Material breach of the Contract*
- *Superintendent interviews for any other position during the term of the Contract and he or she fails to notify Board President within three days of the interview*
- *Any other legally permissible reason*

62. *Any other legally permissible reason includes, but is not limited to, conduct that is seriously detrimental to District. Conduct that is seriously detrimental to District includes, by way of illustration and not limitation, failure of good behavior, either during or outside of duty hours, which is of such a nature that it causes discredit to District, unprofessional conduct, or incompetence. Superintendent acknowledges that he or she is District's most visible representative and is required to maintain higher standards of personal conduct than any other employee. In order to represent District with integrity and high ethical standards, Superintendent shall avoid professional or personal situations that might reflect negatively on Superintendent, District, or Board.*

63. *Prior to terminating Superintendent for cause, Board shall give Superintendent thirty (30) days written notice of its intention to terminate him or her for cause. Such written notice shall include a statement of the specific acts or omissions which give rise to the proposed action. No action shall be taken on a proposed termination for cause until Superintendent has had an opportunity to meet with Board to be heard by way of explanation, defense, or a showing that the specific acts or omissions have been corrected. This opportunity to be heard shall be provided within fifteen (15) calendar days after Superintendent is served the notice of Board's intention. This meeting with Board is not an evidentiary hearing. The Parties are expected to provide each other with a reasonable, complete explanation of their positions and either party may be accompanied by an attorney. Superintendent's right to meet with Board shall be exclusive of any right to any other hearing otherwise required by law.*

64. Any decision to terminate Superintendent for cause shall be effective upon the date determined by Board, except that such date shall not be sooner than thirty (30) calendar days after the notice of termination is given to Superintendent. In the event that Superintendent is terminated for cause, all rights and obligations of the Parties under the Contract shall be deemed fully satisfied on the effective date of the termination and Superintendent shall not be entitled to any further benefit under the Contract including, but not limited to, the benefits described in Paragraphs 5 through 8, inclusive.

65. A determination as to whether cause exists to terminate Superintendent shall always be at the sole discretion of Board.

Paragraphs 61 and 62 identify the bases for terminating the Superintendent for cause. The second-to-last bullet in Paragraph 61 enables the Board President to be notified that the Superintendent may be leaving the District. Such notice serves to encourage ongoing and open dialogue with the Superintendent about the Superintendent's satisfaction in working with the Board and about his or her long-term employment plans, so the Board could take steps to prevent disruptions to district programs or operations if the Superintendent were to leave. Paragraph 62 illustrates the types of conduct, on or off the job, which could be considered to be seriously detrimental.

Paragraphs 63 through 65 describe the process the Board uses to terminate the Superintendent for cause.

Termination without Cause

66. Notwithstanding any other provision of the Contract, Board shall have the sole right to terminate Superintendent without cause at any time before normal expiration of the Contract. If Board so terminates Superintendent, it shall pay to Superintendent his or her base salary and medical/dental/vision and other benefits provided under the Contract for either six (6) months or the number of months remaining on the Contract, whichever is less.

67. The compensation set forth in Paragraph 66 shall be the only compensation of any kind which shall be due to Superintendent if Superintendent is terminated without cause by Board.

Paragraphs 66 and 67 establish the process for terminating the Superintendent without cause, and provide the compensation that may be payable to Superintendent in such a situation.

Termination by Mutual Consent

68. Notwithstanding any other provision of the Contract, Board and Superintendent may, by mutual consent, terminate the Contract before its expiration.

69. If the Contract is terminated under Paragraph 68, the maximum cash settlement that Superintendent may receive shall either (i) an amount equal to the monthly salary of Superintendent multiplied by the number of months left on the unexpired term of the Contract or (ii) an amount equal to the monthly salary of Superintendent multiplied by twelve (12), whichever is less. Termination of the Contract by mutual consent shall constitute a release of all claims Superintendent may otherwise have against Board or District. This paragraph is set forth herein because it is required by subdivision (a) of Government Code Section 53260, but the Parties agree that it shall be superseded by the provisions set forth in Paragraphs 61 through 65 in the event that Superintendent is terminated for cause or by the limitations set for in Paragraphs 66 and 67 in the event that Superintendent is terminated without cause.

Paragraph 68 provides that in lieu of termination for cause or termination without cause, the Contract may be terminated by mutual consent. Mutual consent is typically reflected in a settlement agreement resolving any dispute between the parties.

Paragraph 69 establishes that the maximum compensation for termination by mutual consent is for the lesser of 12 months and the number of months remaining on the Contract. (State law recently reduced this to 12 months; previously, it was 18 months. The 12-month maximum cash settlement only applies to contracts entered into after January 1, 2016.) Paragraph 69 also serves to relieve the Board of liability for any claim that Superintendent may have under the contract. While required to be included in the Contract by state law, the last sentence clarifies that this 12-month maximum cash settlement does not apply to termination for cause (compensation ceases as of the day of termination) or to termination without cause (4 month maximum).

Termination by Death

70. The Contract shall terminate immediately upon the death of Superintendent and all rights and obligations of the Parties under the Contract shall be deemed fully satisfied.

Paragraph 70 provides that the Contract terminates immediately if the Superintendent dies.

Liability for Taxes

71. Notwithstanding any other provision of the Contract, District shall not be liable (except in cases of District errors or omissions) for any state or federal tax consequences to Superintendent, any designated beneficiary hereunder, or the heirs, administrators, executors, successors, and assigns of Superintendent. Superintendent shall assume sole liability for any state or federal tax consequences of the Contract or any related contract and agrees to indemnify and hold District harmless from such tax consequences.

Paragraph 71 provides that the Superintendent is responsible for any tax consequences stemming from the Contract and will hold the District harmless as well.

Superintendent Indemnification

72. District shall include Superintendent as a named insured in its liability and errors and omissions insurance policies.

73. District shall, to the full extent permitted by law, defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against him or her in his or her personal or official capacity as an agent and/or employee of District, provided that the incident arose while Superintendent was acting on matters related to his or her employment with District.

74. In no event will any individual Board member be personally liable for indemnifying Superintendent.

Paragraphs 72 through 74 protect the Superintendent and individual Board members from liability stemming from the Superintendent's conduct while performing his or her job duties. Under this provision, the District agrees to insure and indemnify the Superintendent while also ensuring that it is the District, not Board members personally, who are financially responsible for doing so. This provision applies only to actions taken within the scope of the duties of the Superintendent.

General Provisions

Full and Complete Contract

75. The Contract is the full and complete contract between the Parties. Contract can be changed or modified only in writing signed by Superintendent and Board President or designee after Board approval.

Entire Contract

76. The Contract contains the entire understanding between the Parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in the Contract. The Contract is intended by the Parties to be the sole instrument governing the relationship between the Parties unless a provision of law, now or hereinafter enacted, is specifically applicable to the Contract or to the relationship between Board and Superintendent.

Applicable Laws

77. Except as modified pursuant to Paragraphs 59, 60, and 69 or by another express term of the Contract, the Contract is subject to all applicable laws of the State of California, the rules and

regulations of the State Board of Education, and Board rules, regulations, and policies. The laws, rules, regulations, and policies referenced herein are a part of the terms and conditions of the Contract as though fully set forth herein.

Construction

78. The Contract will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of the Contract, it is understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting hereof and no such contract term shall be construed or resolved against either party based on any rule of construction.

Delivery of Notices

79. All notices permitted or required under the Contract shall be given to respective parties at the following address:

<u>Superintendent:</u>	<u>Board:</u>
_____	_____
_____	_____

80. Such notices shall be deemed received when personally delivered or when deposited in the U.S. Mail. However, actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

Headings

81. The headings of sections of the Contract have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of the Contract.

Attorney's Fees

82. In the event of any action or proceeding to enforce or construe any of the provisions of the Contract, Superintendent and Board shall each bear the cost of their own attorney's fees and costs regardless of the outcome of the action or proceeding.

Severability

83. If any portion of the Contract is declared invalid or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforceability of the remaining provisions of the Contract.

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84. If Superintendent is convicted of a crime involving abuse of his or her office, Superintendent shall reimburse District for all applicable costs pursuant to Article 2.6 (commencing with Section 53243) of Chapter 2 of Part 1 of Division 2 of the Government Code.

85. Pursuant to Government Code Section 53243.2, any funds received by Superintendent from District resulting from Board's decision to terminate Superintendent without cause pursuant to Paragraphs 66 and 67, inclusive, shall be fully reimbursed to District if Superintendent is convicted of a crime involving the abuse of his or her powers of office. If District funds the criminal defense of Superintendent against charges involving the abuse of his or her office or position, and Superintendent is then convicted of those charges, Superintendent shall fully reimburse District for all District funds paid for Superintendent's criminal defense.

Governing Law and Venue

86. The Contract, and the rights and obligations of the Parties, shall be governed by and construed in accordance with the laws of the State of California. The Parties also agree that in the event of litigation, venue shall be the proper state or federal court serving _____ County, State of California.

No Assignment

87. Superintendent may not assign or transfer any rights granted or obligations assumed in the Contract.

Conflict with Board Policies

88. In the event of a conflict between the terms of the Contract, or any amendments thereto, and the terms of Board-adopted policies, the terms of the Contract shall prevail.

Paragraphs 75 through 88 contain generic language found in almost any contract (Paragraphs 75 and 76 ensure that the Contract is full and complete; Paragraph 83 ensures that if one section of the Contract is void, the remainder of the Contract is still valid) as well as how to apply and interpret the Contract (Paragraph 77 states the Contract is subject to all applicable laws except those that have been waived; Paragraph 78 provides that the Contract should not be interpreted against any party; Paragraph 81 provides that the section headers should not influence how to interpret the Contract). Also included is important language to protect the Board in the case of litigation between the Board and Superintendent (Paragraphs 79 and 80 establish how each side should serve and notify the other with legal documents; Paragraph 82 provides that each side bears their own attorney's fees to minimize financial incentives for litigation; Paragraph 86 provides for the venue for litigation). Finally, there is language that provides that the Superintendent must reimburse the District for certain expenses where the Superintendent is convicted of particular crimes (Paragraph 85), that the Superintendent may not assign or transfer any contractual rights or obligation to another (Paragraph 87), and that the terms of the Contract shall prevail over any Board policy (Paragraph 88). District counsel often substitute their own versions of these paragraphs or have other general provisions to add.

IN WITNESS WHEREOF, this Contract has been executed this _____ day of _____, 20__.

Board President

(Superintendent)_____

June 2017