2018
The Council’s Model Contract

THE COUNCIL
of
SCHOOL SUPERINTENDENTS
Leaders - Educators - Advocates
INTRODUCTION

The Council is pleased to provide the 2018 Model Contract. This update reflects changes in law, practice and experience since the 2012 updated model was published.

Like the original and updated versions of the model contract, this serves as a guidepost to superintendents negotiating or renegotiating terms of their employment agreements. Circumstances and local practice often dictate different terms or conditions which may not be the same as The Council’s model contract.

As we have always advised, contact The Council for contract negotiations and legal advice. We want to ensure every superintendent has the benefit of the most complete information on their employment agreements.

Thank you again for allowing The Council to provide the highest level of service and legal support.

Sincerely,

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**PREAMBLE**

Set forth a clear and particularized statement of the parties’ intent when entering the agreement. If the agreement is a renewal make sure that the prior history between the parties is reflected. Rarely will this provision be the subject of debate or scrutiny but it is important to clearly state that the board intended to hire the superintendent or to continue the employment of the superintendent and that anything less would be a violation of the agreement.

**TRANSPARENCY**

Superintendents should be transparent with their contract. Transparency promotes awareness of the contract provisions between the Board and the Superintendent. In addition, contract provisions should be clear and easily understandable by the public.

**TERM AND WORK YEAR**

The Council reiterates the imperative of ensuring contract terms conform to statutory requirements – no less than three and no more than five years. The minimum term does not apply to City school districts. Contracts for District Superintendents of BOCES may not exceed three (3) years. Have The Council review your agreement to ensure compliance.

**CONTRACTUAL DUTIES**

**Distinguished Educator**

Education Law §211-b requires all superintendent agreements (including BOCES DS agreements) to include language related to distinguished educators. Distinguished Educators are individuals appointed by the Commissioner to assist low performing schools. The following language has been deemed to meet the requirement:

> “Consistent with and pursuant to Education Law §211-B (5)(a) the superintendent shall cooperate fully with any distinguished educators appointed by the Commissioner of Education.”

Distinguished educator language is required in all contracts even though a district may not be in a situation where distinguished educators will be placed in the district.

**Board Meetings**

Contracts should include a provision authorizing (though not requiring) the superintendent to be present at all board meetings, including executive sessions, unless the superintendent’s salary or performance evaluation is being discussed. Superintendents have statutory authority under Section 1711(3) of the Education Law to participate in all board meetings. The statute provides that superintendents have the
right to speak on all matters before the board. The Council maintains that superintendents cannot execute their right to speak on all matters unless they are able to be present at all board meetings.

**SALARY**

Increases in salary are either subject to annual negotiations or are provided for in the contract. The contract should set clear procedures and deadlines for such negotiations to take place.

**§3109 TSA Payments**

Education Law §3109 permits moneys to be deducted from salary for placement into a tax sheltered annuity.

Education Law §3109 permits school districts to establish tax sheltered annuities and have salary payments deposited into such accounts.

Superintendent contracts must ensure such provisions are correctly drafted. A portion of the salary should not be segregated as TSA money. Rather, the full salary should be set forth. A portion thereof is then deducted by the business office for deposit in the superintendent’s §3109 account.

In addition, districts may contribute to a TSA by making a non-elective employer contribution. Consult a financial professional regarding contribution limits.

Be clear about TSA moneys and contact The Council for advice on wording.

**ANNUAL GOALS & EVALUATION**

Most contracts set forth a process for goal setting and evaluations. Evaluation by the board is mandated by law 8 NYCRR 100.2.(o)(I)(vi), must be done annually and their evaluation tool must be filed with the clerk by September 10 each year. With the potential turnover in board members it is important to have a written history of the superintendent’s performance. It is often when a superintendent is doing a good job that the board sees the evaluation as a non-issue.

It is beneficial for both the board and the superintendent for the superintendent to complete his/her own self-evaluation. The final self-evaluation should be presented to the board and the board may adopt the superintendent’s self-evaluation as the board’s evaluation.

The Council has a Model Evaluation which can be obtained in paper through The Council or on an electronic platform through SuperEval.
BENEFITS

Paid Time Off

Whether dealing with vacation, sick, personal or other leaves, THE COUNCIL reminds superintendents that any form of paid time off, be it vacation, sick or personal time should be clearly set forth in contracts.

Ideally, such days should be credited effective July 1 of each year of the agreement. Boards often want superintendents to take their vacation during the summer, when school is not in session. If the days are prorated starting on July 1, superintendents will not be able to take the vacation days in the summer.

Sick Days for Family Members

Sick leave for family members is often common in the school setting. You should be sure that there is explicit language that provides that the sick leave may be used for family members.

CONFERENCES

Often conference expenses are permitted provided they do not exceed the budgeted amount for professional development. Even if the contract provides for conference expenses it is good practice to notify the Board prior to attending the conference.

INSURANCE

Health Insurance

Health insurance contributions should be comparable to other employees in the district. Buy-outs should be considered if you have alternatives for health coverage.

Insurance in Retirement

Retiree health insurance continues to be common in superintendent contracts.

Contract language dictates whether Medicare costs are covered by the district.

Other Insurances

Life, disability and to a lesser extent long term care insurance are often part of superintendent agreements.

Superintendents are encouraged to obtain quotes for insurance and to consult with their tax advisors as to the tax consequences of the payment of insurance premiums by an employer.
MOVING & RESIDENCY

Moving Expenses

With the mobility of superintendents on the rise, payment for moving expenses is increasingly important.

Residency

Boards of education often have strong feelings regarding residency.

This issue must be taken seriously as it may be an important issue for the board. While there is a legal definition of residency, the superintendent should discuss with the board their expectations of residency and the contract should reflect the same.

If residency is required, superintendents should call THE COUNCIL for advice. Superintendents should also be mindful of the practice tips noted herein.

PRACTICAL ASPECTS OF RESIDENCY

- If you own another home the contract should reflect that you need not give it up to be deemed a resident
- Seek a reasonable time to establish residency.

CAR ALLOWANCE/MILEAGE

Superintendents are invariably offered a car allowance or mileage reimbursement.

Many superintendents do not wish to track mileage and seek a car allowance. If this is done, appropriate tax advice should be sought.

PRACTICE TIP

If you receive automobile reimbursement, use the IRS rate.

PROFESSIONAL DEVELOPMENT

Continuing education improves school leaders’ ability and will have a direct positive impact on student achievement. This is rarely a major negotiation issue but is one that should be insisted upon.

CELL PHONE AND RELATED

Early Comptroller audits focused on cell phone use. This has waned in more recent audits as best practices have become more known and accepted.

When a cell phone is purchased and provided by a district, the record of use is a record of the district. If you wish to retain privacy, consider simply purchasing and maintaining your own phone or you may request that the District provide a stipend toward cell phone expenses.
The same can be said for computers and related devices.

If the contract provides for a cell phone, clearly indicate it is for business and incidental personal use. The latter ensures the superintendent is permitted to use the phone as needed, not just for work.

**PRACTICE TIP**

*Purchase the items yourself, eliminate any specific provisions in the contract and have salary reflected accordingly.*

**CONTRACT RENEWALS**

When renewing contracts, superintendents are advised to be careful to heed the restrictions regarding duration of superintendent contracts which are set forth in statute and emphasized in Commissioner’s decisions.

A superintendent’s contract must be a minimum of three (3) years and maximum of (5) years.

The Council attorneys can assist superintendents in ensuring compliance with the statutory term limit when extending a contract.

**DUE PROCESS**

**No-Fault Termination Clause**

Superintendents should be extremely cautious of No-Fault Termination Clauses. A No-Fault Clause permits a board to terminate the employment of a superintendent without due process whether for cause or for any arbitrary reason. It provides superintendents with little to no protection.

If a board insists on a No-Fault Clause, a superintendent must carefully weigh the risks and benefits. The superintendency is unique in that often superintendents are moving from a tenured position with great security to a position that has much less security.

Superintendents are encouraged to contact The Council attorneys when a board adamantly insists on a No-Fault Clause. We have developed a number of unique strategies to deal with this complicated issue.
EMPLOYMENT AGREEMENT BY AND BETWEEN
____________________ SCHOOL DISTRICT

AND ________________________

AGREEMENT, made this___day of________, ____,
by and between THE BOARD OF EDUCATION OF THE
____________________ SCHOOL DISTRICT,
____________________ County, New York (hereinafter, the “Board”) and
____________________
residing at _________________, New York
(hereinafter, the “Superintendent”).

WHEREAS, the Board of Education of the District
(hereinafter, “the Board”) at a meeting duly held on
____________________
passed a resolution appointing ____________________
as Superintendent of Schools of the District for a period of
_____________ (___) years from __________, ____ through June 30, ____ and the District wishes to
employ the Superintendent in such capacity; and

WHEREAS, the Superintendent has accepted the Board’s offer of
employment upon the terms and conditions set forth herein; and

WHEREAS, it is the parties’ belief that a written contract fully
specifying the terms and conditions of the Superintendent’s
employment by the District will promote effective communication
and true understanding between the parties; and

WHEREAS, the parties have mutually agreed upon the
following terms and conditions relative to the
Superintendent’s employment by the District.

NOW, THEREFORE, in consideration of the agreements
hereinafter set forth, and other good and valuable
consideration, the parties agree as follows:
ARTICLE I:
TERM OF EMPLOYMENT AND WORK YEAR
1. The Superintendent’s term of employment shall be for _____ (_ ) years commencing on _____________, _____ and terminating on June 30, _____, unless further extended or sooner terminated as hereinafter provided.
2. The Superintendent’s work year shall be 12 months, from July 1 to June 30.

ARTICLE II:
DUTIES AND RESPONSIBILITIES OF SUPERINTENDENT AND BOARD
1. The Superintendent shall have charge of the schools of the District under the direction of the Board; (s)he shall be the chief administrative officer of the District and shall perform all the duties and possess all the powers and authority now or hereafter imposed upon or granted to a superintendent of schools under the provisions of the Education Law or other applicable statutes, laws, rules and/or regulations and those duties and/or responsibilities established by the Board pursuant to such statutes, laws, rules and regulations.
2. During the term of this agreement, the Superintendent shall faithfully, diligently and in accordance with accepted professional standards perform and discharge the duties and responsibilities of Superintendent of Schools of the District as the same are set forth in the Education Law and other applicable statutes, laws, rules and/or regulations and the duties and/or responsibilities established by the Board pursuant to such statutes, laws, rules, and/or regulations.
3. Without limiting the foregoing, the Superintendent shall have the specific and exclusive authority, right and responsibility to:
   a. organize and reorganize the administrative and supervisory staff, including instructional and non-instructional personnel, in a manner which in the Superintendent’s judgment best serves the District;
   b. make recommendations to the Board of Education as a prerequisite to either the appointment or the termination of employment of both instructional and non-instructional personnel;
   c. supervise, direct and evaluate associate, assistant and other Superintendents, directors, supervisors, principals, teachers and all other persons employed in either the business management or the instructional activities of the District;

DUTIES:
It is good practice to set forth a detailed list of duties and responsibilities that mirror Education Law §1711(2)(e). This way all parties are aware of the statutory duties.
d. transfer teachers and administrators from one school to another, or from one grade of a course of study to another grade in such course, subject to the terms of any relevant collective bargaining agreements;

e. with respect to their relationships to one another and the determination of their respective powers and duties, the parties acknowledge that they are both subject to the laws of the State of New York and applicable rules and regulations of the Board of Regents and the Commissioner of Education of the State of New York.

4. The Superintendent’s duties are set forth on the job description annexed as Addendum “A”. The Board may, from time to time, prescribe additional or different duties and responsibilities for the Superintendent, provided, however that the Board shall not, without the Superintendent’s written consent, adopt a policy, by-law or regulation which impairs or reduces the duties and authority specified above; and, provided further, that all additional duties and responsibilities prescribed by the Board are consistent with those normally associated with the position of Superintendent of Schools in the State of New York. This provision shall continue in full force and effect during any period of suspension.

5. During the term of this Agreement, the Superintendent shall devote his/her full time, skills, labor and attention to the performance and discharge of his/her duties and responsibilities; provided, however, that the Superintendent may undertake consultation work, speaking engagements, writing, lecturing or other professional duties, obligations and activities, with or without remuneration, so long as such activities do not materially affect the performance and/or discharge of the Superintendent’s duties and/or responsibilities under this Agreement.

6. The Superintendent represents that (s)he will, throughout the term of this Agreement, hold a valid certificate to act as a Superintendent of Schools in the State of New York and that proof of such certification will be furnished to the District Clerk upon request. It is expressly understood that failure to hold and maintain such certification shall be cause for the immediate termination of this agreement and of the employment of the Superintendent.

7. The Superintendent shall be notified of and shall have the right to attend all meetings of the Board, including executive sessions of the Board, except that the Board may exclude the Superintendent from any portion of a meeting during which they are discussing his/her performance evaluation or salary.
8. The Board, individually and collectively, shall promptly and
discretely refer to the Superintendent, in writing for his/her
study and recommendation, any and all criticisms, complaints,
suggestions, communications or comments regarding the
administration of the District or the Superintendent’s performance
of his/her duties.

9. Consistent with and pursuant to Education Law §211-B (5)(a)
the superintendent shall cooperate fully with any distinguished
educator(s) appointed by the Commissioner of Education.

ARTICLE III:
COMPENSATION

The Superintendent shall be paid, as salary, for the year July 1, _____,
through June 30, _____, the sum of ______________________
Dollars ($__________).

1. Salary shall be increased by _____ % per year.

OR

2. For each subsequent twelve month period of employment,
the Superintendent’s salary shall be determined by negotiations
between the Board and the Superintendent. However, in no event
shall the Superintendent’s base salary for any twelve month period
of employment be less than the amount of base salary received
during the preceding twelve month period.

3. The Superintendent’s compensation for each subsequent twelve
month period of employment shall be determined by the Board
no later than ________ in each year.

4. All compensation, less deductions required by law or authorized
by the Superintendent, shall be paid in equal installments in the
same manner as salary is paid to other certified employees of the
District or as may be mutually agreed to by the parties.

5. Annuity - The Board shall deduct the annual sum of __________
Thousand Dollars ($_________) or such other amount as may
be designated by the Superintendent from the Superintendent’s
base salary as set forth above to pay the annual premium for the
purchase of a tax deferred annuity for the Superintendent with a
company designated by the Superintendent.

SALARY:
Good research into the financial condition of the District and comparable
Districts will be beneficial in negotiating salary.

ANNUITY:
IRS rules limit the amount that can be paid to deferred compensation plans. You
should consult with a certified financial planner for the applicable limits and rules.
403(b) contributions are not included within the final average salary calculations.

PERFORMANCE-BASED INCREASES:
If the Board wants salary increases linked to evaluation score, a more productive option may be linking the increase to goals.
AND/OR

The Board shall establish a tax deferred annuity account for the benefit of the Superintendent and shall make a non-elective employer contribution of $__________ per year [amount is limited by law], on __________ of each year, to such account.

OR

The Board shall make a non-elective employer contribution to the Superintendent’s tax deferred annuity account ([specify name of company, if desired]) for the benefit of the Superintendent, the amount of $__________ per year [amount is limited by law], on or before [date, i.e. July 1, December 31] of each year, beginning on __________, ____.

6. Longevity - In addition to annual salary, upon the completion of ______ year(s) of employment with the District, the Superintendent shall be entitled to a longevity payment of $__________ which shall be added to the base salary.

ARTICLE IV:

ANNUAL GOALS, OBJECTIVES AND EVALUATION

1. The Board shall devote at least a portion of one meeting during the month of _____ in each year of the Superintendent’s employment by the District to an evaluation in executive session of his/her performance and his/her working relationship with the Board.

2. The evaluation shall be based upon performance criteria as mutually established by the Board and the Superintendent by ____________ of each year which shall be reduced to writing in a form mutually agreed upon by the parties. The Superintendent shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the Board scheduled to discuss such evaluation.

3. The Board also shall devote at least a portion of one meeting during the month of [mid way through year, i.e. November] ______ in each year during the Superintendent’s employment by the District to a general discussion in executive session between the Board and the Superintendent with respect to his/her performance and his/her working relationship with the Board. A written memorandum summarizing that discussion shall be provided to the Board by the Superintendent subsequent to such discussion.

4. The performance evaluation prepared pursuant to this paragraph shall be confidential and shall be kept so by the Board and individual Board members.
OR

1. Within a reasonable time after the commencement of his/her employment and, thereafter, on or before September 1 of each subsequent school year of this Agreement, the Superintendent shall provide to the Board a written statement of the annual goals and objectives which the Superintendent intends to concentrate on during the upcoming school year. The Board shall review said goals and objectives and if the Board concurs with the Superintendent’s written statement of goals and objectives, the Board’s concurrence will be noted on said written statement via execution by the Board President. If the Board does not agree with the Superintendent’s written statement of goals and objectives, it shall meet with the Superintendent to form mutually acceptable goals and objectives.

2. Optional - The Board will conduct a mid year assessment of the Superintendent’s progress towards achieving the goals and objectives on or before _____________.

3. The Board shall conduct an annual evaluation of the performance of the Superintendent during each year of this Agreement and shall provide the Superintendent with a written evaluation to be discussed in an executive session of the Board, no later than ___________. The Board shall base its evaluation upon the Superintendent’s performance and progress towards the goals and objectives established by the Superintendent and the Board as set forth above, as well as on the general performance of the Superintendent in carrying out his/her required duties and responsibilities. The form of the written evaluation shall be mutually agreed upon between the parties.

   The Superintendent shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the Board scheduled to discuss such evaluation.

4. The Board may use [the mid-year assessment and] the end of the year evaluation to inform the Superintendent of any concerns it may have or any concerns it has received from others. The Board should inform the Superintendent of any complaints or concerns on an ongoing basis as they occur.

5. Any assessment or performance evaluation prepared pursuant to this paragraph shall be confidential and shall be kept so by the Board and individual Board members to the greater extent allowable by law.
ARTICLE V: BENEFITS

A. Sick Leave:

1. The Superintendent shall be credited with ________ days of sick leave upon the commencement of his/her employment with the District. Thereafter, the Superintendent shall be credited with _______ (__) days of paid sick leave per school year, which shall be credited on July 1 of each school year. Sick leave may be used for illness or injury to the Superintendent or a member of his/her immediate family. “Immediate family” shall be defined as spouse, children, parents, grandparents or siblings.

2. Unused sick leave days may be accumulated by the Superintendent from year to year, if unused, without limit.

3. The Superintendent shall be paid for any sick leave days that are unused and accumulated at the time his/her employment with the District terminates at the rate of [ex. 1/240th of his/her then current annual salary].

B. Bereavement Leave:

1. The Superintendent shall be entitled to _____ (_) days of paid leave due to a death in his/her immediate family. “Immediate family” is defined as spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, or any relative or person living in the Superintendent’s household.

2. If the death occurs while the Superintendent is on sick or vacation leave, the days used for the bereavement leave shall not be deducted from his/her accumulated sick leave. Unused bereavement leave days shall not be credited toward the Superintendent’s accumulated sick leave days pursuant to paragraph _____ of this Article.

3. The District may grant additional bereavement leave days in circumstances where it determines that such additional leave is necessary and justified.
C. Personal Leave:

1. The Superintendent shall be credited with $5$ days of personal leave each year for the purpose of conducting business which cannot be conducted at any other time.

2. Any unused personal leave will be added to the Superintendent’s accumulated sick leave.

D. Vacation Leave:

The Superintendent shall be entitled to ______ (__) days of paid vacation leave each school year, exclusive of holidays, credited on July 1st of each year. Unused vacation leave may be accumulated up to a maximum of ______ (__) days. Accumulated vacation leave may be used during any subsequent year of employment. In the event the Superintendent has unused accumulated vacation leave at the time his/her employment with the District terminates, (s)he shall be paid at the rate of $1/220$th for each such unused accumulated day.

OR

The Superintendent shall be paid at the rate of (ex. $1/240$th) for up to__________ unused vacation days annually.

E. Conferences and Other Expenses:

The Superintendent shall be entitled to attend professional conferences at the local, state and national level, with the expenses of such conferences paid by the Board. The Superintendent is authorized to incur other reasonable and necessary expenses, up to the approved budgeted amount in the discharge of his/her duties. Any items requiring expenditures beyond the budgeted amount shall require prior Board approval. The Superintendent shall be entitled to attend NYSCOSS (full year) programs without Board approval (i.e. New Superintendents Academy, Early Career).

F. Holidays:

Provided that school is not in session, the Superintendent shall be entitled to paid holiday leave on the following days (examples follow):

- Independence Day (July 4th)
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day and the day after
- Christmas Day, Christmas Eve and the day after Christmas

OR
The Superintendent shall be entitled to all holidays granted to the administrative staff.

G. Insurance:

1. **Health Insurance** - The Superintendent shall be entitled to coverage under the District’s health insurance plan, with prescription drug and optical coverage, for the Superintendent and his/her dependents. The District shall pay _______% of the cost of such coverage.

2. **Dental Insurance** - The Superintendent shall be entitled to coverage under the District’s dental insurance plan for the Superintendent and his/her dependents. The District shall pay _______% of the cost of such coverage.

Annually during the district’s open enrollment period, or upon a qualifying life event, the Superintendent shall have the option to accept compensation in lieu of health insurance. If the Superintendent chooses to accept a buyout, the Superintendent shall receive____% of the district’s cost for health insurance based off the individual or family cost, whichever the Superintendent is eligible for. The Superintendent shall only be eligible for such buyout upon demonstrating the Superintendent has alternative health insurance coverage.

3. **Insurance in Retirement** - Upon his/her retirement from the District, the Board will provide health and dental insurance, vision and prescription coverage under either an individual or family health and dental insurance, vision and prescription coverage (based on individual/family status) for the Superintendent and his/her spouse and dependents, for the remainder of their lives. The District will pay _______% of the premium cost of the appropriate insurance plans OR The District will pay the same percentage of the premium cost as it was paying in the year prior to the Superintendent’s retirement. This paragraph shall survive the term and be enforceable after the termination of this agreement.

4. The District shall reimburse the superintendent for Medicare premium payments for which (s)he becomes responsible for upon attaining age 65.

5. **Life Insurance #1** - The District will annually pay the premium for a whole/term life insurance policy for the Superintendent with a face value of $_______, said policy to be effective ___________________.

**LIFE INSURANCE:**

Be sure to speak to your tax advisor as to whether life insurance premiums paid by your employer are taxable income.

**HEALTH INSURANCE:**

You may want to consider a buy-out for each year you do not take health insurance from the district

**MEDICARE:**

Be specific about what medicare premiums the district is paying

**HEALTH INSURANCE:**

You may want to consider a buy-out for each year you do not take health insurance from the district

**MEDICARE:**

Be specific about what medicare premiums the district is paying
6. **Life Insurance #2** - The District will annually pay the premium for a whole/term life (specify term) insurance policy for the Superintendent with a face value of $_______, said policy to be effective _________________. Should the Superintendent retire from the District, the Board shall continue to pay the premium on said policy for a period of _____ ( ) years or until paid in full or the Superintendent may continue to pay.

Should the Superintendent retire or resign from the District, (s)he shall have no obligation to repay the District for any amounts which the District pays or has paid as premiums on this policy. At such time, the District shall release any and all liens it may have on the policy and shall not seek recovery of premiums paid or benefits due thereunder, from either the Superintendent, his/her beneficiaries and/or his/her estate. Upon his/her retirement, the District shall execute any instrument necessary to permit the Superintendent to utilize the economic value of this policy and to gain full ownership interest in the policy. There shall be no collateral agreement and this Agreement shall supercede any previous collateral agreement between the parties, if any.

7. **Disability Insurance** - The District will provide and annually pay the premium for a disability insurance policy with a maximum waiting period of sixty (60) days, and a benefit of ___ monthly salary, with a maximum premium cost of $_______ per month.

**H. Moving Expenses:**

The Superintendent shall be entitled to reimbursement for all costs associated with relocation, including but not limited to, payment for travel prior to commencement of employment, temporary housing and moving expenses, in an amount not to exceed $______.

**I. Physical Exams:**

The Superintendent agrees to have a comprehensive medical examination performed once during each twelve month/two year period of his/her employment by a duly licensed physician of his/her choice and to file a statement from the examining physician certifying his/her physical competency to perform his/her duties with the Clerk of the Board. Such statement will be treated as confidential information and shall not be discussed or released by any member of the Board of Education. Any cost for such annual medical examination not covered by the District sponsored health insurance plan shall be paid by the Board.
J. Mileage Reimbursement/Car Allowance:
The District shall reimburse the Superintendent for mileage at the IRS rates when (s)he is required to use his/her personal car in the performance of his/her official duties as Superintendent.

OR

The District will provide a monthly travel allowance of $________.

OR

The District will provide a recent model year automobile for use by the Superintendent for school business.

K. Association Dues:
The District shall pay 100% of the Superintendent’s annual membership fee for the Superintendent’s membership in the New York State Council of School Superintendents, the American Association of School Administrators and (local organization).

L. Continuing Education:
The District will pay for all costs associated with the Superintendent’s enrollment in a doctoral program, including but not limited to tuition, books, fees, printing and copying costs.

OR

The District will reimburse the Superintendent for successful completion of ______ graduate level course(s) each semester/school year.

M. Other Expenses:
The District shall make available to the Superintendent $______ annually for the purpose of other expenses such as (examples: cell phone, home fax, computer, etc.).

OR

The District shall provide the Superintendent with a cell phone, home fax machine, home computer, etc. for his/her business and incidental personal use. Such items shall be the property of the District and shall be returned to the District at the time the Superintendent leaves the employment of the District.

N. Jury Duty
Full pay, less any pay received, shall be granted for absence resulting from compliance with requirements of the court if the Superintendent attends the court in the course of her duty, or for jury duty. It shall be the responsibility of the Superintendent to give reasonable notice where possible to the Board.
RENEWALS:

Contracts must be for at least three and no more than five years. Contract extensions must be in writing, signed by the parties and should start on the same date as the Board approval of the extension. Engage in a discussion regarding contract extensions annually.

ARTICLE VI:
AGREEMENT RENEWALS

1. The Board shall notify the Superintendent, on or before _______, [one to two years before expiration of agreement], whether it intends to extend his/her employment for an additional period of time.

By June 30 of each school year thereafter the Board shall likewise act to notify the Superintendent whether it intends to extend his/her employment for an additional year commencing on July 1 of the year set for termination of the then current contract. At such time, a motion to extend the term of this Agreement and the Superintendent’s employment for an additional _______ year period will be moved, seconded and voted upon by the Board.

2. Should the Board fail to meet or act in regard to the Superintendent’s employment prior to _______, as required herein the Superintendent may, at any time subsequent to _______, request in writing that the Board inform him/her whether or not it intends to extend his/her appointment for an additional term. The Board shall, in writing, respond to this request in either the affirmative or the negative within thirty (30) days of its receipt of the request.

3. Any extension of the term of the Superintendent’s employment shall be evidenced by an amendment to this Agreement; and shall be upon the same terms and conditions as herein set forth unless otherwise agreed in writing by the parties. In no event shall the benefits provided to the Superintendent under this agreement and subsequent contract extensions be decreased or eliminated during the term of his/her employment, without his/her consent.

OR

Evergreen Language:

The Superintendent and the Board agree that the term hereof and the Superintendent’s employment shall be extended automatically for (1) additional year effective July 1 if the Superintendent provides the Board written notice of the terms of this paragraph during the month of May of each year of this agreement and the Board fails to inform the Superintendent in writing on or before June 30 of each year, of its intent not to extend the term. The Superintendent may withdraw the request for an extension any time after providing notice seeking an extension. Such automatic extension shall be upon the terms and conditions of this Agreement, unless otherwise negotiated and approved by the Board of Education.
ARTICLE VII:

AGREEMENT TERMINATION

1. This Agreement may be terminated at any time, without cause, by mutual agreement, in writing, between the Superintendent and the Board; or by the Superintendent’s written resignation on sixty (60) days notice to the President of the Board.

2. The Superintendent’s employment during the term of this Agreement may only be terminated for just cause, in accordance with the procedures set forth below.

3. Hearing Procedures:
   a. Charges against the Superintendent may only be brought by the Board and all such charges shall be in writing. The Superintendent shall be entitled to a fair hearing on said charges, upon at least thirty (30) days notice, before an independent hearing officer who shall be an attorney at law. The hearing shall be in executive or public session, at the option of the Superintendent. The hearing officer may be selected by mutual agreement between the Superintendent and the Board or, in the event no such agreement is reached within fifteen (15) days after the Superintendent’s receipt of the written charges, the parties shall authorize the American Arbitration Association to select an arbitrator pursuant to the American Arbitration Association’s Labor Arbitration Rules.

   b. The Superintendent shall be entitled to due process protection at such hearing, including but not limited to the right to elect a public or private hearing; to be represented by counsel, to present, cross-examine and subpoena witnesses, to subpoena documents, papers, letters or other tangible evidence, to have all testimony given under oath, to receive without cost an accurate written transcript of the proceedings; and to receive written findings of fact and conclusions of law. The hearing officer’s decision shall be final and binding upon the parties, subject to their respective rights to appeal in accordance with law. The District, at its expense, shall provide a certified shorthand or court reporter who will transcribe all proceedings. The District shall pay the fees, costs and expenses of the hearing officer.

   c. Any criticisms or complaints which have not been previously forwarded to the Superintendent in accordance with the provisions of Article __, paragraph “_____” of this Agreement shall not be admissible at such a hearing against the Superintendent. The hearing officer shall strike from the written charge or charges any such charge made against the Superintendent.

DUE PROCESS:

The due process provision of a contract is critically important. Superintendents should be extremely cautious of “no fault” provisions which provide that the Board can terminate the Superintendent for no reason with an agreed upon payment. You should consult with The Council’s attorney’s prior to accepting a no fault termination provision.
d. The hearing officer shall, upon the conclusion of the hearing, prepare and submit a written decision, which decision shall include findings of fact and a disposition of each charge. Both the Board and Superintendent shall be bound by the decision of the hearing officer. Both parties shall, however, retain their right to appeal the decision of the hearing officer to any forum with jurisdiction.

e. If the charges against the Superintendent are not sustained at such hearing or after any appeal therefrom, the Board shall reimburse the Superintendent for his/her costs and attorney’s fees incurred in defense of the hearing or appeal therefore.

ARTICLE VIII:
DISABILITY

1. The Board reserves the right, during the Superintendent’s term, in the event of his/her absence, illness, injury or other disability for 30 days or more, to appoint an Acting Superintendent of Schools who shall temporarily perform the duties of Superintendent at the pleasure of the Board. In the event of such illness, injury or disability, the Superintendent shall cause his/her physician(s) to make a written report to the Board of his/her condition, and shall, at the Board’s expense, submit to an examination by the Board’s physician(s) designated for that purpose, at such reasonable time or times as the Board shall request.

2. In the event that by reasons of illness, accident or other cause beyond his/her control, the Superintendent shall be incapacitated from rendering the services required for a period of six (6) months with pay beyond the expiration of his/her accumulated and unused leave entitlements, the Board may at its option and upon written notice to the Superintendent, terminate this contract. In such event the compensation provided for herein shall be paid to the Superintendent for a period of three (3) months beyond the month in which this contract shall have been so terminated.

ARTICLE IX:
INDEMNIFICATION

The District agrees, as a further condition of this employment contract, that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his/her individual capacity, or in his/her official capacity as agent and employee of the District, provided the incident arose while the Superintendent was acting within the scope of his/her employment or under the direction of the Board,
including but not limited to all uninsured financial loss arising out of any proceeding, claim, demand, suit or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person or damage to the property of any person.

OR

1. If in the good faith opinion of the Superintendent, a conflict exists as regards the defense to such claim between the legal position of the Superintendent and the legal position of the District, the Superintendent may engage counsel in which event the District shall indemnify the Superintendent for the costs of legal defense.

ARTICLE X:
SURVIVAL

1. If the District is dissolved, annexed to, merged or consolidated with one or more school districts, the Board agrees to make every reasonable effort to ensure that the Superintendent is appointed to the position of Superintendent of the merged district. If this is not possible, then the Board shall make every reasonable effort to ensure that the Superintendent is appointed to a position in the merged district which is consistent with the Superintendent’s education, background, experience, certification and former status and acceptable to the Superintendent. In either case, the Superintendent shall be entitled to receive salary, benefits and rights provided for under this Agreement for the balance of the unexpired term hereof.

2. If the Superintendent is not appointed to the position of Superintendent or a comparable position in the merged district, or if the Superintendent declines to accept such appointment, then the Board shall continue to pay the Superintendent all salary and benefits provided for under this Agreement, until the end of the term of this Agreement. If the merged district fails to pay said salary and benefits, such cost shall be a debt of the District, and the District shall continue in existence as provided by law for the purpose of paying such debt. Alternative severance arrangements may be entered into upon written agreement of the Superintendent and the Board.
ARTICLE XI:

MISCELLANEOUS

1. The validity or enforceability of any particular provision of this Agreement shall not affect its other provisions and this Agreement shall be construed in all respects as if such invalid or unenforceable provision has been omitted.

2. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

3. The failure of either party at any time to require the performance by the other of any of the terms, provisions or agreement hereof shall in no way affect the right thereafter to enforce same and shall not constitute the waiver of either party hereto of any breach of any of the terms, provisions or agreement or be construed as a waiver of any succeeding breach.

4. The original of this Agreement shall be filed with the Clerk of the Board of Education.

5. This Agreement constitutes the entire contract between the parties and contains all the agreements between them with respect to the subject matter hereof. This shall supersede all prior agreements and/or resolutions in regard to the employment of the Superintendent.

IN WITNESS WHEREOF, the parties have caused this Agreement to be subscribed on the day and year first above written.

______________________________ SCHOOL DISTRICT

By:______________________________

President, Board of Education

By:______________________________

Superintendent of Schools

RATIFICATION:

Once negotiations are complete, make sure that the Board approves the contract and designates a representative to sign the contract on behalf of the Board. The Superintendent must sign the contract as well. The final agreement should be filed with the District clerk and the Superintendent should keep a copy of the signed document. Be sure that it is the final agreement that is signed and not a draft.

OATH OF OFFICE:

Be sure that with the original contract and each renewal that you take an oath of office.
CONCLUSION

Superintendent contracts are fluid, living documents that are critically important. Review salient provisions of the agreement with the board annually.

THE COUNCIL can assist in all superintendent contact needs. We urge you to contact us and allow us to provide counsel and guidance on the issues related to contracts.

For Additional Information, contact:

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**APPENDIX ON PENSIONS**

Special Considerations for Tier V and Tier VI Members

In 2010 and 2012, the legislature established two new pension tiers as part of the state’s pension reform efforts following the Great Recession. These pension tiers have significant impact for retirees as compared to members that retired in Tier IV. The chart below shows some of the key differences.

<table>
<thead>
<tr>
<th></th>
<th>Tier IV</th>
<th>Tier V</th>
<th>Tier VI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Vesting Period</strong></td>
<td>5 Years</td>
<td>10 Years</td>
<td>10 Years</td>
</tr>
<tr>
<td><strong>Employee Contribution</strong></td>
<td>3% of salary for 10 years, then 0%</td>
<td>3.5% of salary</td>
<td>3%-45K or less</td>
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<td></td>
<td>3.5%-45K to 55K</td>
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<td>4.5%-55K-75K</td>
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<td>5.75%-75K-100K</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6%-100K to 179K</td>
</tr>
<tr>
<td><strong>Final Average Salary (FAS)</strong></td>
<td>Highest 3 years (Yearly increase of greater than 10% of prior two years salaries excluded)</td>
<td>Highest 3 years (Yearly increase of greater than 10% of prior two years salaries excluded)</td>
<td>Highest 5 years (Yearly increase of greater than 10% of prior two years salaries excluded). FAS capped at $179K*</td>
</tr>
<tr>
<td><strong>Retirement Age w/o penalty</strong></td>
<td>55 after 30 years or 62</td>
<td>57 after 30 years or 62 (greater penalty than prior tiers if retire early)</td>
<td>63 regardless of years of service (greater penalty than prior tiers if retire early)</td>
</tr>
<tr>
<td><strong>Percent of FAS/year</strong></td>
<td>Less than 20 yrs=1.67% 20-30 years=2% 30+=60% plus 1.5% for each additional year</td>
<td>Less than 25 yrs=1.67% 25-30 years=2% 30+=60% plus 1.5% for each additional year</td>
<td>Less than 20 yrs=1.67% 20+=35% plus 2% for each additional year</td>
</tr>
<tr>
<td><strong>Cap on pensionable salary</strong></td>
<td>IRS law impacting members that entered pension system after 7/1/96, $275K for 2018 (COLA adjusted annually)</td>
<td>IRS law impacting members that entered pension system after 7/1/96, $275K for 2018 (COLA adjusted annually)</td>
<td>Governor’s salary. 179K as of 2018. May be increased by statute.</td>
</tr>
</tbody>
</table>

*Linked to Governor’s salary, $179K at time of publication.*
APPENDIX ON PENSIONS

Superintendents negotiating contracts and amendments in either Tier V or Tier VI should consider alternative means of compensation and other contractual provisions that will best optimize their financial future that may differ from those of Tier IV members.

These Superintendents may want to leverage health insurance in retirement in an alternative way since many will not be retiring until 62 or 63 thereby lessening the number of years they would be receiving health in retirement benefits.

Consideration should be given to alternative mechanisms of receiving compensations outside of base salary because of higher employee contribution amounts and pension caps.

A Tier VI member entering the Superintendency from out-of-state, should consult with a financial professional regarding opting-out of the defined benefit pension system, and accepting the defined contribution pension. Under the defined contribution pension, the vesting period is 366 days and the employee contributes 6% of salary and the employer contributes 8% and the pension is portable.

THE COUNCIL staff will work with individual Tier V and Tier VI members to provide as much financial equity for these Superintendents as Tier IV members.
The New York State Council of School Superintendents is a professional and advocacy organization with over a century of service to school superintendents in New York State. The Council provides its more than 875 members with numerous professional development opportunities, publications and personal services, while advocating for public education and the superintendency.

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