

DRAFTING A SUPERINTENDENT'S CONTRACT

While Indiana law prescribes the basic terms of a superintendent's employment, school boards frequently supplement those terms in a written contract. A well-written, well-reasoned contract can get board-superintendent relations off to a good start and can lessen future employment surprises and squabbles.

The following provisions apply only to a contract with a superintendent who holds a license under IC 20-28-5 and entered into or renewed after July 1, 2017.

1. Must a school board give a written employment contract to a superintendent?

Yes. Indiana law requires all superintendents to be employed on a regular teacher's contract. This contract form is established by the state superintendent and is to be used statewide without amendment. While not required, a written addendum to the contract is commonly used to cover additional employment terms.

2. Who drafts the superintendent's contract addendum?

Generally, the school board attorney should draft a proposed addendum while the board begins its search for a new superintendent. Local counsel should insure that the proposed addendum meets the needs of the school board. The final candidate should be given the proposed draft. The school board may consider the final candidate's additional proposals.

3. What should be in a superintendent's contract addendum?

Specific inclusions will vary depending upon the needs of the parties. Common to all contract addendums are provisions addressing the term of the contract, additional benefits given to the superintendent and the termination of the contract. A provision wherein the superintendent agrees to perform at a professional level of competency as required by contract, state law, and the policies of the school board may also be included in the addendum.

4. What is the minimum term for a superintendent's contract?

A superintendent's contract must be for a term of at least one (1) year and not more than three (3) years. (IC 20-28-8-6(b)) Indiana law limits the number of years a contract may be extended to no more than an additional five (5) years of the original contract. (IC 20-28-8-6(b)(1))

5. Is a superintendent also a teacher?

Yes. IC 20-18-2-22 defines "Teacher" and includes a superintendent. If a superintendent is properly notified of contract non-renewal, the superintendent on a

regular teacher's contract has the right to remain with the school corporation in another certificated position.

6. By law, when does a superintendent's contract terminate?

A superintendent's contract terminates on the following dates and under the following conditions:(IC 20-28-8-7)

- a. On any date, if the school board and the superintendent mutually consent.
- b. Before the expiration date of the contract if the school board terminates the contract for cause provided by statute stipulating cause for dismissal of teachers; however, the school board must give the superintendent proper notice and, if the superintendent requests a hearing at least ten days before the termination, must grant the superintendent a hearing before the school board in an official meeting;
- c. On the expiration date set in the contract, if the school board before or on January 1 of the year in which the contract is to expire, gives notice to the superintendent in writing and delivered in person or by registered mail; or
- d. On the expiration date set in the contract, if the superintendent before or on January 1 of the year in which the contract is to expire gives proper notice in writing to the school board.

7. Does Indiana law provide a superintendent with employment benefits?

Yes, state law provides minimum benefits. Those benefits include:

Sick Days. A superintendent is granted 10 paid sick days the first year and 7 days in each succeeding year. The unused sick days accumulate up to a total of 90 days. If a superintendent had accumulated sick days in another school corporation, there must be added to his/her sick days for his/her second year and each succeeding year up to three sick days until the accumulated days are exhausted.

Bereavement Leave. A superintendent may be absent from work with pay for death in his/her immediate family for a period exceeding not more than 5 days beyond the death.

Personal Days. A superintendent may have at least 2 days each year for the transaction of personal business or the conduct of personal or civic affairs.

Leave of Absence. A school board may grant a superintendent a leave of absence, for at most one year, for a sabbatical or for disability or sick leave. A superintendent who is pregnant shall be granted a leave of absence anytime between the commencement of

the pregnancy and one year following the birth of her child if she gives notice at least 30 days before the date on which she wishes to begin her leave.

8. Can a superintendent's employment benefits be increased in the contract addendum?

Yes. The General School Powers Act, IC 20-26-5-4(a)(8), allows the school board "[t]o fix and pay the salaries and compensation" of its employees, including superintendents. Additionally, the Home Rule Law, IC 20-26-3, grants a school board wide authority to do any necessary or desirable act through a written policy describing the specific manner for exercising the power. Benefit packages should be generally acceptable to the community and in line with those benefits applicable to other administrators.

Benefits found in addendums include:

Vacation, such as "_____ days annually to be used within twelve months of the year in which they are earned."

Insurance. This can be accomplished by reference to the benefits accorded other professional employees or by delineating specific insurance plans.

Retirement and Severance, including payment of the employee contribution to the Teachers Retirement Fund.

Annuity and Deferred Compensation Plan.

Sick days, if increasing the number of sick days provided by statute.

Attendance at Professional Meetings, including paying expenses, provided the board grants prior approval.

Moving Expenses.

9. What should the salary provision include?

The school board should consider a provision in the contract addendum allowing it the right to increase the salary. Any provision addressing a salary raise in the addendum must comply with the compensation model under IC 20-28-9-1.5.

10. Can the school board provide a car?

Yes. A school board may provide a car and permit the superintendent's personal use of it. Alternatively, the board may provide a monthly allowance toward maintenance and operational costs of the superintendent's personal vehicle.

11. Should evaluation procedures be specified in the contract addendum?

IC 20-28-11.5 requires the board to develop an evaluation plan for the superintendent and to evaluate the superintendent annually. If the board desires to put an evaluation provision in the addendum, it should state the superintendent will be evaluated in accordance with state law.

12. Should indemnification and protection from civil liability be specified?

The Indiana General School Powers Act, IC 20-26-5-4(a)(17), already allows the school board “[t]o defend ... any employee ... in any suit arising out of the performance of ... the employee’s duties for or employment with, the school corporation, if the governing body by resolution determined that the action was taken in good faith. To save any ... employee harmless from any liability, cost, or damage in connection with the performance, including the payment of legal fees, except where the liability, cost, or damage is predicated on or arises out of the bad faith of the ... employee, or is a claim or judgment based on ... the employee’s malfeasance in ... employment.”

If additional indemnification and protection from liability is necessary, the board should require that the indemnification and protection cover only acts occurring within the scope of employment taken in good faith. Additionally, punitive damages should be specifically removed from the indemnification and protection clause.

Finally, the board should avoid language in which it agrees to employ counsel to defend the superintendent in any proceeding in which the superintendent and board are on opposite sides.

13. Can the addendum require the superintendent to submit to medical examinations?

Yes. A confidential statement certifying the physical competency of the superintendent could be a contractual requirement. The cost should be borne by the board and the contractual provision should specify which party selects the physician.

14. What is a “roll-over” provision and should one be included in the superintendent’s contract addendum?

A roll-over clause requires the contract to continue unless the board takes affirmative action to prevent it. The language might specify that the “failure to notify the superintendent by (date) each year will automatically result in a one year extension.” This is a benefit for superintendents as it supplies job security. Before agreeing to a roll-over provision, the school board should consider its implications and whether the corporation will be served by granting such extended job security. A roll-over provision should require the superintendent to annually remind the board in writing of the deadline for preventing the roll-over.

15. What is a “golden parachute” clause and should one be included in the superintendent’s contract addendum?

A “golden parachute” provision allows the school board to unilaterally terminate the contract by paying the superintendent a specified amount. Under Indiana law this amount is limited to the lesser of one year of salary under the contract or \$250,000. (IC 20-28-8-6(b)(2)) The board may have a difficult time justifying this payment to local taxpayers should it want to exercise such a power. Additionally, a “golden parachute” provision must be very carefully worded so that the triggering event entitling the superintendent to the money is very clear. Otherwise, the board is vulnerable to litigating the issue of whether such a provision was triggered.

16. Can the board require the superintendent to reside within the school corporation?

No. State law specifically precludes such a requirement. (IC 20-28-10-13)

17. Does the public have a right to review the content of the superintendent’s contract?

Yes, in fact the Board has the duty to hold a public meeting to provide for public comments on any proposed contract with the superintendent. The notice for this public meeting must include the date, time and place of the meeting and the actual monetary value of all benefits provided in the contract for each year of the contract. Additionally, the board is required to post the superintendent’s contract on the school corporation’s website. (IC 20-26-5-4.3)

18. What happens if one provision of the superintendent’s contract addendum is later determined to be illegal?

If one provision is adjudged to be illegal, the entire addendum is vulnerable to being voided. In order to avoid such a result, a severability clause should be included in the superintendent’s contract addendum. In addition to a severability clause, the board should consider language that state law will take precedence over the contract. The following accomplishes both objectives: “This addendum is governed by the laws of the State of Indiana, and shall be subject to the provisions of any applicable state law concerning the terms and conditions of an employment contract between a public school corporation and its superintendent. If, during the term of this Addendum, any specific clause or provision thereof is determined to be illegal or in conflict with state or federal law, the illegal or conflicting provision shall be deemed void. The remainder of the Addendum shall not be affected and shall remain in full force and affect.”

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