

Article 2
Administration
BP 2121

Superintendent's Contract

01 ***Note: The following optional policy should be modified to reflect district
02 practice. ***
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05 The Governing Board believes that the Superintendent's employment contract
06 should outline the framework through which the Board and Superintendent are
07 to work together to achieve district goals and objectives. When approving the
08 Superintendent's employment contract, the Board shall consider the need for
09 stability in district administration and shall ensure the best use of district
10 resources.
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13 (cf. 0200 - Goals for the School District)
14 (cf. 2120 - Superintendent Recruitment and Selection)
15 (cf. 4312.1 - Contracts)
16 (cf. 9000 - Role of the Board)
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19 ***Note: The following list of contract components is consistent with a template
20 for Superintendent contracts developed by CSBA. The annotated template
21 contract with additional context and suggestions is available by contacting
22 legal@csba.org. ***
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25 The contract shall be reviewed by the district's legal counsel and may include
26 the following:
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29 1. Term of the contract, which shall be for no more than four years
30 pursuant to Education Code 35031
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33 2. Length of the work year and hours of work
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35 3. Salary, health and welfare benefits, and other compensation for the
36 position
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39 (cf. 4154/4254/4354 - Health and Welfare Benefits)
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41 4. Reimbursement of work-related expenses, including mileage
42 reimbursement, consistent with Board policies, regulations, and guidelines
43 applicable to other professional administrative staff
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46 (cf. 3350 - Travel Expenses)
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49 The contract may also address payment for professional dues and activities,
50 the district's provision of cell phones or other technological devices, and the
51 Superintendent's use of his/her personal vehicle.
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54 (cf. 4040 - Employee Use of Technology)
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56 5. Vacation, illness and injury leave, and personal leaves
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59 (cf. 4161/4261/4361 - Leaves)

60 (cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

61 (cf. 4161.2/4261.2/4361.2 - Personal Leaves)

62 (cf. 4161.5/4261.5/4361.5 - Military Leave)

63 (cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)
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66 6. General duties and responsibilities of the position
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69 (cf. 2110 - Superintendent Responsibilities and Duties)
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71 7. Criteria, process, and procedure for annual evaluation of the
72 Superintendent
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75 (cf. 2140 - Evaluation of the Superintendent)
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77 8. A statement that any subsequent increase in the Superintendent's
78 salary shall be at the sole discretion of the Board
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81 9. A statement that there shall be no automatic renewal or extension of the
82 contract, although the Board can enter into a new contract with the
83 Superintendent prior to the expiration of the existing contract
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86 ***Note: Pursuant to Education Code 35031, if the Governing Board decides
87 not to reemploy the Superintendent, it must notify him/her at least 45 days
88 before the contract expires. If the Board fails to provide the required prior
89 written notice, the Superintendent shall be deemed reemployed for a term of
90 the same length as the one completed, under the same terms and conditions,
91 and with the same compensation. ***
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94 10. Timeline for providing written notice to the Superintendent if the Board
95 does not wish to enter into a new contract, which shall be at least 45 calendar
96 days in advance of the expiration of the term of the contract pursuant to
97 Education Code 35031, and the responsibility of the Superintendent to remind
98 the Board in writing and in a timely manner of the requirement to give notice
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100 (cf. 4112.9/4212.9/4312.9 - Employee Notifications)
101

102 11. Conditions and process for termination of the contract, including the
103 maximum cash settlement that the Superintendent may receive if the contract
104 is terminated prior to its expiration date
105

106 12. Matters related to liability and indemnification against demands, claims,
107 suits, actions, and legal proceedings brought against the Superintendent in
108 his/her official capacity in the performance of duties related to his/her
109 employment
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111 ***Note: Pursuant to Government Code 54957, personnel matters related to
112 the appointment or employment of an employee may be discussed in closed
113 session under the "personnel exception." However, Government Code 54957
114 prohibits the use of closed session for discussion or action on any proposed
115 change in compensation other than a reduction of compensation that results
116 from the imposition of discipline. In San Diego Union v. City Council, a
117 California Court of Appeal held that the "personnel exception" provided in
118 Government Code 54957 does not extend to discussions of salary and
119 compensation. ***
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121 ***Note: Notwithstanding Government Code 54957, the Board is authorized
122 pursuant to Government Code 54957.6, the "labor exception," to hold closed
123 sessions with the district's designated representatives regarding the salaries,
124 salary schedules, or compensation paid in the form of fringe benefits to its
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133 represented and unrepresented employees, including the Superintendent. The
134 Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a
135 board may only meet in closed session for such purposes with a designated
136 representative who is involved with the "bona fide" negotiations with
137 represented and/or unrepresented employees. The Attorney General's
138 publication The Brown Act: Open Meetings for Local Legislative Bodies, also
139 states that the "labor exception" applies to meeting in closed session to instruct
140 its representatives concerning negotiations with prospective employees.
141 Boards wishing to discuss the Superintendent's salary in closed session under
142 the "labor exception" are encouraged to consult legal counsel before doing so.

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146 ***Note: In addition, pursuant to Government Code 54956, the Board is
147 prohibited from deliberating on the salary or other compensation of the
148 Superintendent at a special meeting. See BB 9320 - Meetings and Notices
149 and BB 9321 - Closed Session Purposes and Agendas. ***

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152 ***Note: The following paragraph should be revised to reflect district practice.

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156 The Board may deliberate about terms of the contract in closed session at a
157 regular meeting. However, discussions regarding the salary, salary schedule,
158 or other compensation may occur in the closed session of a regular meeting
159 only between the Board and its designated representative(s), as permitted
160 under Government Code 54957.6 (the "labor exception"), for the purpose of
161 reviewing the Board's position and/or instructing the designated
162 representative(s) prior to or during bona fide negotiations with the current or
163 prospective Superintendent. Such deliberations shall not be held during a
164 special meeting. (Government Code 54956, 54957, 54957.6)

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167 The Board may consult with district legal counsel prior to holding a closed
168 session with the designated representative(s) to discuss compensation to be
169 paid to the current or prospective Superintendent.

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172 (cf. 9320 - Meetings and Notices)

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175 (cf. 9321 - Closed Session Purposes and Agendas)

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180 Terms of the contract shall remain confidential until the ratification process
181 commences.

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184 (cf. 9011 - Disclosure of Confidential/Privileged Information)

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186 ***Note: Pursuant to Government Code 54953, as amended by SB 1436 (Ch.
187 175, Statutes of 2016), the Board must, in open session, orally report a
188 summary of the recommendation for final action on the Superintendent's salary
189 or benefits and must make related records available to the public in
190 accordance with the California Public Records Act. Thus, Government Code
191 54953 limits the Board's ability to approve changes to salary or benefits as part
192 of a consent calendar and instead requires such approval to be a separate
193 agenda item. For identical requirements regarding final action on the salary or
194 benefits or other district executives, see BP 4312.1 - Contracts. ***

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196 The Board shall take final action on the Superintendent's contract during an
197 open session of a regularly scheduled Board meeting, and that action shall be
198 reflected in the Board's minutes. At that meeting, prior to taking action, the
199 Board shall orally report a summary of the recommendation for the final action
200 on the Superintendent's salary or compensation in the form of fringe benefits.
201 (Government Code 3511.1, 53262, 54953)

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203 Copies of the contract and other public records created or received in the
204 process of developing the recommendation related to the Superintendent's
205 salary, benefits, and other compensation shall be available to the public upon
206 request. (Government Code 53262, 54953, 54957.6)

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208 (cf. 1340 - Access to District Records)

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210 (cf. 3580 - District Records)

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Termination of Contract

***Note: Pursuant to Government Code 53260, every employee contract must
include a provision limiting the maximum cash settlement the employee may
receive upon termination of the contract to an amount equal to his/her monthly
salary multiplied by the number of months left on the contract. For a
Superintendent contract executed prior to January 1, 2016, if the unexpired
term is greater than 18 months, this maximum is equal to the monthly salary

227 multiplied by 18. For a Superintendent contract executed on or after January 1,
228 2016, Government Code 53260 provides that the maximum cash settlement is
229 the monthly salary multiplied by 12. Cash settlements may be less than these
230 maximums. The district must make termination agreements available to the
231 public upon request. See AR 4117.5/4217.5/4317.5 - Termination Agreements.

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Prior to the expiration of the contract, the Board may terminate the Superintendent's employment contract in accordance with law and applicable contract provisions.

(cf. 4117.5/4217.5/4317.5 - Termination Agreements)

In such an event, any cash settlement that the Superintendent may receive upon termination of the contract shall not exceed his/her monthly salary multiplied by the number of months left on the contract or, if the unexpired term of the contract is more than 18 months and the contract was executed prior to January 1, 2016, no greater than the Superintendent's monthly salary multiplied by 18. For any contract executed on or after January 1, 2016, any cash settlement shall not exceed the Superintendent's monthly salary multiplied by 12. (Government Code 53260)

The cash settlement shall not include any noncash items other than health benefits, which may be continued for the same duration of time as covered in the settlement or until the Superintendent finds other employment, whichever occurs first. (Government Code 53260, 53261)

However, when the termination of the Superintendent's contract is based upon the Board's belief and subsequent confirmation through an independent audit that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, no cash or noncash settlement of any amount shall be provided. (Government Code 53260)

In addition, if the Superintendent is convicted of a crime involving an abuse of his/her office or position, he/she shall reimburse the district for payments he/she receives as paid leave salary pending investigation or as cash settlement upon his/her termination, and for any funds expended by the district

276 in his/her defense against a crime involving his/her office or position.
277 (Government Code 53243-53243.4, 53260)

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281 Legal Reference:

282 EDUCATION CODE

283 35031 Term of employment

284 41325-41329.3 Conditions of emergency apportionment

285 GOVERNMENT CODE

286 3511.1-3511.2 Local agency executives

287 6250-6270 California Public Records Act

288 53243-53243.4 Abuse of office

289 53260-53264 Employment contracts

290 54953 Oral summary of recommended salary and benefits of superintendent

291 54954 Time and place of regular meetings

292 54956 Special meetings

293 54957 Closed session personnel matters

294 54957.1 Closed session, public report of action taken

295 54957.6 Closed sessions regarding employee matters

296 UNITED STATES CODE, TITLE 26

297 105 Self-insured medical reimbursement plan; definition of highly compensated individual

298 UNITED STATES CODE, TITLE 42

299 300gg-16 Group health plan; nondiscrimination in favor of highly compensated individuals

300 CODE OF FEDERAL REGULATIONS

301 1.105-11 Self-insured medical reimbursement plan

302 COURT DECISIONS

303 San Diego Union v. City Council, (1983) 146 Cal.App.3d 947

304 ATTORNEY GENERAL OPINIONS

305 57 Ops. Cal. Atty. Gen. 209 (1974)

306

307 Management Resources:

308 CSBA PUBLICATIONS

309 Superintendent Contract Template, 2015

310 ATTORNEY GENERAL PUBLICATIONS

311 The Brown Act: Open Meetings for Local Legislative Bodies, 2003

312 WEB SITES

313 CSBA: <http://www.csba.org>

314 Association of California School Administrators: <http://www.acsa.org>

315 California Office of the Attorney General: <http://oag.ca.gov>

316 CSBA: (12/15 6/16) 5/17

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318 Adopted:

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