

LEADERSHIP Insider

PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

A Membership Benefit of NSBA National Affiliates

The school board's most important task

For most school boards, no single decision is more critical than the hiring of a new superintendent for the school district. The importance of this ultimate exercise in delegation has only increased as the governance role of school boards has continued to shift to one primarily of direction-setting and oversight.

For some unfortunate boards, a more thankless task is to dismiss the current superintendent. In this situation, the contract terms the board negotiated during the hiring process—understandably a moment of confidence and optimism—will have implications for the operations of the district and the cost to taxpayers.

In a survey of 1,328 superintendents published in August by the American Association of School Administrators (AASA), 90 percent of respondents reported they were “very satisfied” or “satisfied” with their working conditions over-

all, while 83 percent said they were “very satisfied” or “satisfied” with their compensation package.

Nonetheless, many observers voice concern about a shortage of qualified candidates, especially for some districts.

This issue of *Leadership Insider* provides an overview of legal and practical considerations for school boards that have a hiring decision in their future. Holly Claghorn of the Texas Association of School Boards—which, like many state school boards associations, provides professional search services—starts out with an overview of legal concerns during the recruiting and hiring process.

More details about what the board should know about a superintendent contract, along with tips on negotiating one, are provided in the next article, by veteran South Carolina school attorney Ken Childs. Supplementing this article is a checklist (found on page 10) from NSBA

Staff Attorney Cullen Casey, who with this issue also embarks on editing responsibilities for *Leadership Insider*.

Ron Wilson of the Oregon School Boards Association next focuses on what, in this era of accountability, has become an increasingly common feature of superintendent packages: incentive-pay provisions. Twenty percent of superintendents in the AASA survey reported having performance-based contracts of some kind. Curiously, however, 93 percent indicated their contracts were not tied specifically to student achievement. Wilson provides a detailed example of one that does.

All of these authors stress the need for communication with the public during the hiring process. Where criticism has been leveled against school boards over superintendent hiring, it often does seem to come back to a question of communications:

• If the realities of the “superintendent market” dictate generous compensation, a

board might want to explain these realities to constituents up front.

• State law and board practice that deal with respecting a candidate’s confidentiality during the recruiting stage should be explained, and the candidate’s needs and the public’s concerns about transparency in the process should be acknowledged.

• If school board members are able to explain all of the superintendent’s contract terms, they will be less vulnerable to later accusations that they failed to think these things through.

Finally, another result from the AASA survey seems especially noteworthy. Almost 10 percent of responding superintendents indicated that they were hired primarily for their “experience as a change agent.” In these times of educational transition, that may be one statistic worth watching. ■

—Thomas Hutton, Co-Editor

Legal issues in recruiting and hiring a superintendent

By Holly Claghorn

Before a board enters into a contract with a new superintendent, it must find the right person for the job. Even if your board has no immediate plans to change district leadership, there’s value in knowing more about the legal and practical considerations involved in the recruiting, hiring, and contracting process.

Naming an interim superintendent

There is often an extended period of time between the departure of a district’s superintendent and the arrival of a new one. A frequent question that arises is whether the board must designate an interim or acting superintendent during this period.

State law might expressly require a school district to have a superintendent. State and federal laws often specifically require the superintendent of a district to perform certain tasks or give the superintendent exclusive authority in certain areas.

For example, in Texas, the superintendent has sole authority to recommend personnel to the board for hiring, is required to report an educator’s misconduct to the state certification board, receives certain leave requests, and notifies instructional personnel of reports from law enforcement. If a district does not have a superintendent, there is no one authorized to perform these tasks.

Even if state law does not have provisions like these, a district still might find it difficult or impossible to operate without a person designated to perform the superintendent’s duties.

There are generally two methods for temporarily filling a superintendent’s shoes: (1) A board can appoint a temporary (interim) superintendent from outside the district; or (2) A board can temporarily assign the superintendent’s duties to an existing employee.

Retaining an interim superintendent often generates questions about procedure. Some states provide guidance on the terms of such employees, and some don’t. In many states, the position of interim superintendent has arisen through custom and practice, rather than through any statutory mandate.

If the board decides to designate an interim superintendent, the board should document the services this person will provide. The board might have to determine whether the contract will be an educator contract or a standard employment contract.

Again, this is an issue of state law. In some states, an educator contract is not required because the interim superintendent is a temporary, substitute position.

The second method of designating a temporary superintendent—temporary assignment of the duties to an existing employee—is less complicated. In most cases, a stipend agreement and payment is acceptable to cover the extra duties. The board also might decide to divide the superintendent’s duties among several employees. In that case, one of these employees should be designated as the official acting superintendent.

Hiring a search firm

Hiring the district’s chief administrative officer can be a daunting task. In most matters relating to district operations, the board is guided by recommendations from

the superintendent. If the superintendent’s position is vacant, however, the board might want to turn to a professional search firm for assistance. Many state school boards associations provide this service.

A board that opts to use a search firm should make sure to:

- work with its legal counsel to make sure it is complying with applicable bidding and procurement requirements in retaining a professional search firm;
- ensure that the contract with the search firm clearly describes the services to be provided, how and when the firm will be paid, and the firm’s obligations in the event of an unsuccessful search; and
- understand how open meetings laws apply to third-party consultants—state law may require the board to conduct its deliberations on the selection of the search firm and the terms of the consultant contract in open session.

Some districts opt not to use a professional search firm, particularly if the board expects to promote from within. As a general rule, a broader search—beyond the district’s existing staff—is preferable to ensure that the board has identified the best available candidate for the job. If the district chooses to conduct its own search, the board should consider appointing one person or a small committee to perform the search and negotiate the contract with appropriate legal advice.

Respecting confidentiality

One issue that often presents difficulties for school boards in the recruiting and hiring of a superintendent is confidentiality. Those who apply for superintendent positions are often employed by other school districts as superintendents or in other high-level administrative capacities, and they might not want their interest in the position to be made public.

Public records laws, however, might require disclosure of personnel records,

including employment applications.

In Texas, a specific exception exists for records of applicants for the position of superintendent. Thus, boards in Texas are not required to disclose the names of persons who have applied for the position of superintendent or other information that would identify those persons. Not all states have such a provision, however.

But most states’ open meetings laws do permit boards to meet in closed session to discuss individual applicants and employees, either at the request of the board or the employee.

The board usually can discuss an individual applicant and interview that person in closed session. Discussions of a vacant position in general, or of a group of applicants or employees, must occur in an open session. Boards should also conduct the final vote on the superintendent position during an open session.

A related issue is whether a board member can voluntarily disclose the identity of applicants. This issue typically arises when a board member wishes to obtain a reference from an employee or board member in the district where the candidate is employed.

There are two main reasons why board members should not take it upon themselves to check candidate references: Protecting the identity of applicants usually leads to a better applicant pool for the board, and board members generally are not in the best position to conduct background checks. That function is better left to a search firm or professional background check firm.

Negotiating the contract

The contract negotiation process can be the hardest part of hiring a superintendent. Most people do not regularly negotiate contract provisions in their daily lives and might find the process somewhat confrontational. Negotiations with a future employee of executive rank can be

especially difficult because of the need to preserve collegiality while discussing such sensitive issues as compensation and contract termination.

Kenneth Childs discusses this in more detail in his article below, but here are some steps board members can take to make the process easier:

- Solicit advice from people who are familiar with the process. Start with board members who have been through the process before, asking what procedures they followed, what they liked about the process, and what they would do differently next time.
- If your relationship with the outgoing superintendent is good, ask him or her for input on the process. Current administrators know the district, the board, and the community, and their assistance can be invaluable.

- Consider using a qualified search firm, which will be experienced with the process and can provide a wealth of information.
- Consult your attorney for suggestions regarding the process based on his or her experience with superintendent hiring.
- Educate yourselves about the compensation of superintendents in comparable school districts. The state school board association, the state education agency, and public information databases are good sources for this information.
- Go into the negotiations with a draft contract prepared by your attorney. This helps the board focus on the proposed compensation package and allows the board to guide the negotiation process.
- Designate one person to be responsible for negotiations—either a board member, the search firm, or attorney. This per-

son limits confusion regarding who has the authority to speak for the district.

- After the candidate and the board have reached an agreement in principle, ask your attorney to prepare a final draft of the contract. Both the candidate and the district must sign the contract before it becomes binding for either party.
- Before a person may sign the contract on behalf of the district, authorize that person to do so by board vote. Most boards vote to give this authority to the board president.

Publishing the contract

Once the hiring process is completed, the board can expect requests to view the contract, including requests from the media. State law determines whether the contract, including compensation amounts, is a public document. In Texas,

for example, state regulations require a district to publish the superintendent's contract in an annual financial management report or on the district's website.

Regardless of whether the contract is a public document, the district should make it a practice to provide a copy to every board member. New board members also should be given a copy with their orientation materials.

Every board member should read and know the terms of the contract, including any addenda or attachments. Throughout the employment relationship, the board should work with its attorney if any issues arise on the interpretation and application of the contract terms. n

Holly Claghorn is a senior attorney with the Texas Association of School Boards in Austin.

Negotiating a superintendent contract: Simple tips

By Kenneth L. Childs



In 1979, the National School Boards Association and the American Association of School Administrators published *The Superintendent's Contract*, which included a sample superintendent's contract.

This document has withstood the test of time and, in some form or another, is still widely used throughout the United States and certainly by most South Carolina school districts. [The sample contract is available on the National Affiliate section of NSBA's website. See the "For More Information" box below.]

The sample contract includes in its preamble a statement about its purpose: "The board desires to provide the superintendent with a written contract in order to enhance administrative stability and continuity within the schools, which the board believes generally improves the quality of its overall education program."

The preamble also says, "The board and superintendent believe a written contract is necessary to describe specifically their relationship and to serve as the basis for effective communications between them as they fulfill their respective duties and responsibilities in the operation of the schools."

Basic assumptions

Any discussion of a superintendent's contract must begin with a few basic assumptions about the importance of the superintendency, the marketplace in which a school board hires a superintendent, and the function of a good employment contract, which involves balancing of the interests and protection of both parties.

Based upon 30 years of experience working with South Carolina school districts, I believe the selection and employment of the superintendent is the board's most important function. It is almost impossible to have a good school district or an excellent school system without effective, capable, and experienced leadership at the top. Obviously, the superintendent's contract is integral to achieving this objective.

Today's school board operates in a "superintendent's market" in which the number of people who are able and willing to take on this increasingly challenging job is shrinking. Good superintendents are in a position to be rather demanding. Meeting at least some of their demands, if properly bal-

anced in the contract, will help the school district function at a higher level. In addition, a good employment contract must offer both—the board and superintendent—security, protection, and direction.

While talking about basic assumptions, we should also remind ourselves that a contract is a legal document governed by the principles of contract law. Accordingly, the board and the superintendent should consult early and thoughtfully in the superintendent search process, preferably with an experienced school attorney.

A good relationship between the board and its attorney will certainly facilitate the process of negotiating the contract.

Begin discussions early

Often the time between the board's announcement of who it plans to appoint as superintendent and the actual appointment and contractual agreement is short, hectic, and carried out in the public eye.

This practical reality argues for starting early. Do not wait until announcing the superintendent you wish to employ to begin contractual discussions among board members and the board's attorney.

A simple approach to this issue of timeliness is to have the board's attorney circulate a copy of the district's contract with its current superintendent, along with a short memorandum identifying the major issues at play in negotiating the contract for a new superintendent.

The AASA/NSBA sample contract includes these basic contractual provisions: the contract's terms, certification and responsibilities of the superintendent, compensation, benefits, expenses, car allowance, professional liability, medical examination, evaluation, renewal, and termination.

While each of these provisions has special meaning and value, the most important elements are the compensation package, evaluation procedures, and termination provisions.

Compensation

The compensation provisions are driven by the following concerns: the size and resources of the district, the experience and qualifications of the superintendent, the district's history, and the district's current needs.

The board would be wise to facilitate

the negotiation by educating its community in advance about the nature of the superintendent marketplace. Some advance publicity concerning the cost of an effective superintendent search and information about compensation packages in the region or state would be most helpful.

As discussed in further depth by Ron Wilson, some superintendent contracts today contain a provision offering to link future compensation with the achievement of measurable goals, particularly in the area of student achievement.

It is often difficult, if not impossible, to work out the details of this kind of arrangement in the short time between the announcement of the desired appointee and the actual contractual agreement.

One alternative approach would be to include a provision in the contract that simply states that the board would welcome proposals from the superintendent on ways to link future compensation with the achievement of mutually agreed goals for the school system.

Evaluation procedures

The sample contract calls for an annual evaluation, annual review of the contract, identification of goals and objectives for the district, and involvement of other key administrators. It places an emphasis on the district's performance, rather than just addressing the superintendent's individual characteristics.

The sample contract allows the superintendent, who has the time, resources, and experience, to propose or outline an evaluation process for the school board's consideration. The superintendent has the contractual duty as a professional to propose a fair and reasonable process based on research and experience.

The board has an obligation to consider the superintendent's proposal in good faith and to try to reach mutual agreement on an evaluation process. But the final decision should be reserved for the board. After all, it is the board's job to evaluate the superintendent, discuss the results, and act upon them.

Termination provisions

Although sometimes a contentious issue, it is important for school boards to understand the termination provisions of a superintendent contract.

One of the key termination provisions in the NSBA/AASA sample contract is the statement that allows for termination by "mutual agreement of the parties."

In my experience, any good employment contract, and certainly a superintendent's contract, must contain a unilateral

termination provision with a reasonable severance package. In our law firm, we also include language stating that this option will be exercised only after reasonable good-faith efforts to terminate by mutual agreement of the parties have been exhausted.

Negotiations

An experienced school board attorney—who should already be involved early in the process—should facilitate the discussion with the board by circulating certain background materials to board members. This material should include the current superintendent's contract and compensation information for the state, region, and nation, along with a short memorandum that explains the basic terms of a superintendent contract.

Once the board makes a decision on who it wants to appoint, it should authorize its attorney to send a draft contract to the candidate for review.

The board should not enter contract negotiations with a take-it-or-leave-it approach. The draft contract should be transmitted with a cover letter stating that the attached draft is generally acceptable to the board, inviting the applicant to review it, and directing any questions to the board attorney.

The applicant should be advised to have his or her own attorney review the document and discuss it directly with the board's legal counsel. The board should anticipate negotiations over the contract terms to be carried out by the board's attorney and the new superintendent's attorney.

Obviously, the more professional and thorough the superintendent search process has been, the simpler and easier the contract negotiations will be. Once the contract is signed, the real work begins. n

Kenneth L. Childs is a shareholder in the law firm of Childs & Halligan PA. in Columbia, S.C., and is a member of NSBA's Council of School Attorneys.

Additional resources on superintendent hiring are available online:

1. Log on to the National Affiliate website, www.nsba.org/na.
2. Click on the "Leadership Insider" link.
3. Click on "Additional Resources" for the November 2007 issue.

What school boards should know about superintendent performance-incentive programs

By Ron Wilson



Blanket annual percentage raises for all employees seem to be disappearing from the private sector. Employers today want salaries tied directly to the accomplishment of specific goals. The 2007-08 U.S. Compensation Planning Survey from Mercer HR Consulting found that 86 percent of companies now offer short-term incentives to at least one employee group.

What is becoming a reality for CEOs in the private sector might be heading in the same direction for school district superintendents. School board members are bringing this goal-oriented way of thinking about remuneration into superintendent-employment contract negotiations. Today's focus on improving student performance outcomes, especially in the shadow of the No Child Left Behind Act, appears to be contributing to this trend.

Aligning superintendent compensation with student achievement and organizational performance goals can be seen by board members as a linchpin of organizational accountability. After all, it fits squarely into the primary role of school boards: creating and sustaining mechanisms for accountability, continuous improvement, effective resource allocation, and aligning the organization to achieve high levels of student performance.

Performance-based compensation programs at the top of an organization—the superintendency—seem like the logical

next step on the path to organizational alignment and accountability. Implementing employee performance-pay programs, though, can be a difficult long-term process. As with most things, the secret to success lies in the details.

Know the territory

First of all, as Harold Hill said in "The Music Man": "You gotta know the territory." Performance-incentive programs and performance-pay programs are not the same. While both offer increased compensation to motivate employees to perform at high levels, they differ in the timing of the payment and its effect on employees' base pay.

Performance pay is a reward for outstanding past job performance, typically based on an extensive evaluation or assessment process. The decision to award performance pay and the amount of money available to fund these pay increases is usually not known far in advance. Performance pay is usually added to base pay, permanently increasing it. Successful performance-pay programs require careful planning and are often characterized by:

- adequate and stable funding for increases;
- employee buy-in to the program;
- an excellent performance-evaluation system;
- a compensation-disbursement process

widely perceived as fair;

- leadership that supports and sustains the program;
- clear performance measures; and
- ongoing training and professional development.

If you read that list thoughtfully, you can see why implementation of these programs is an ambitious, long-term prospect. For example, the Denver school system's ProComp performance-pay program was *seven years* in development.

Performance-incentive programs, in contrast, are offered to employees before actual performance and are usually one-time cash payments that do not permanently affect base salaries.

Such incentives are tied directly to employee, building, or district performance goals. Incentive programs can be short or long-term. In my experience, superintendent employment contracts that incorporate a performance-compensation component are usually incentive-pay programs, not performance-pay programs. An incentive-pay program can be a good starting point for school boards considering performance-based compensation programs for their districts.

Avoid the pitfalls

Besides knowing the territory, learning from the experience of others is key to success. Here are my suggestions to boards for avoiding common mistakes in developing performance-incentive pay programs for superintendents:

• Decide on a definite start and end to the program.

Short-term programs—usually one year—focus on targeted workplace outcomes that can be measured in terms of improvements on state student assessment scores; SAT or ACT scores; graduation

rates; student participation in activities; and student, parent, and community, satisfaction surveys; or operational issues, such as submitting quarterly financial reports and correcting deficiencies in the audit recommendations.

The possibilities are endless. See the examples below. Long-term incentives tend to be focused on organizational improvement goals where progress seems to be based more on the intent or impressions of the participants rather than on actual specific progress. Because measurement of such factors tends to be subjective, long-term incentive are more difficult and sometimes can be problematic.

• Create clear measures for superintendent or organizational performance.

Specific objectives for the performance-incentive program must be tailored to your district. The board and superintendent should collaborate on setting specific objectives. To motivate sustained performance, it is important for both par-

Sample goals and objectives for a superintendent incentive-pay program

1. Student achievement: progress toward meeting standards:

- On statewide assessments, the district will increase the percent of 10th-grade students meeting or exceeding mathematics standards from ___% in 2006-07 to ___% percent in 2007-08.
- On statewide assessments, the district will increase the percent of 10th-grade students meeting or exceeding reading standards from ___% in 2006-07 to ___% in 2007-08.
- The number of students districtwide taking the statewide assessments for 2007-08 will increase by ___% over the number of students tested in 2006-07.

2. Student attendance:

- The 2007-08 student dropout rate will be decreased by ___% over the calculated 2006-07 dropout rate as reported to the [State] Department of Education.
- The student attendance rate will be increased by ___% over the calculated 2006-07 attendance rate as reported to the [State] Department of Education.

3. District report card:

- No school within the district shall receive a "low performance" or "unacceptable performance" rating from the [State] Department of Education for 2007-08. There will be no payout if any school is given any of the above ratings.

4. Student achievement: student activities

- The number of students participating in activities (organized sports; clubs such as drama, debate, chorale; extracurricular academic programs) will be increased by ___ percent in 2007-08 over the percent of students participating for 2006-07.
- The number of students completing advanced placement courses will be increased by ___ percent in 2007-08 over students completing courses in 2006-07.

5. Student safety:

- No "major incidents" (as defined in the student handbook) will occur during the 2007-08 school year. There will be no payout if major incidents occur.
- There will be a ___% reduction in the number of incidents that results in student suspension or expulsion in 2007-08 over the number of suspensions and expulsions in 2006-07.

6. Evaluation [Note: Although performance-incentive programs generally target objective measures, some districts also provide for a subjective incentive bonus that may be awarded at the sole discretion of the board. This type of goal links an exceptional rating on the superintendent's annual performance evaluation to a performance incentive payout.]

- At the sole discretion and in the subjective judgment of the board, a bonus payout may be given if the superintendent is rated "exceptional" in the superintendent's 2007-08 annual performance evaluation by the board.

7. Satisfaction surveys:

- The percentage of all district stakeholders (students, parents, employees, and community) indicating a high level of satisfaction in district customer-satisfaction surveys will be increased by ___% in 2007-08 over the number of district stakeholders expressing a high level of satisfaction in 2006-07 customer-satisfaction surveys.

8. Financial Management:

- The board will receive financial reports at least quarterly showing the following data:
 1. Actual year-to-date revenue and expenditures.
 2. Forecasts indicating expected revenue and expenditures through the end of the year.
 3. Forecasts anticipating fund balance at year end.
 4. State School Fund estimates that track to current student membership.
- Expenditures are within appropriations adopted by the board as confirmed through the audit.
- Auditor's suggestions/comments in their "letter to management" are resolved within 90 days of receipt of the auditor's letter.

LEADERSHIP Insider

PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

Leadership Insider is published six times annually by NSBA's National Education Policy Network and the NSBA Council of School Attorneys in cooperation with the National Affiliate Program.

Opinions expressed in and by *Insider* do not necessarily reflect positions of the National School Boards Association.

Copyright 2007,
National School Boards Association.

President **Norman Wooten**
Executive Director **Anne L. Bryant**

Co-Editor
Thomas Hutton
Senior Staff Attorney

Co-Editor
Cullen Casey
Staff Attorney

Director of Publications
Glenn Cook
Managing Editor, National Affiliate Publications
Ellie Ashford

Director, National Affiliate Program
Gene Broderson
Production Manager
Carrie E. Carroll
Production Assistant
Donna J. Ernst

Leadership Insider is printed and assembled by the NSBA Office Services Printshop

About NSBA

The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards and the school boards of the District of Columbia, Hawai'i, and the U.S. Virgin Islands.

About the National Affiliate Program

The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards associations.

About the Council of School Attorneys

The Council of School Attorneys provides information and practical assistance to attorneys who represent public school districts. It offers legal education, specialized publications, and a forum for exchange of information, and it supports the legal advocacy efforts of the National School Boards Association.

ties, particularly in the early years of the program, to review the results of the goal-setting process. Board members should receive ongoing in-service training on the goal-setting process, as well as the workings of the performance-incentive program.

A performance-incentive program is a binding legal contract with some flexibility built in for yearly goal review and renewal. The board and the superintendent must anticipate and respond appropriately to the effect of outside forces on incentive measures. Goals and objectives could change with new legislation, changes in revenues, student population shifts, or other developments.

• Don't set the bar too low—or too high.

For the program to succeed, its goals must be ambitious yet realistic. Take care when setting your objectives.

For example, when setting an objective on student achievement based on the percentage of students meeting or exceeding standards, examine the history of grade performance in the various subject areas. One way to set the objective is to do a simple trend analysis and set the goal slightly higher.

Another method of ensuring the bar will be set at the right height is to require a minimum achievement level for any objective and a maximum payout. In the sample payout calculation below, if the objective is a 10 percent increase in students meeting or exceeding standards, at least a 7.5 percent increase would be required for the superintendent to qualify for 75 percent of the bonus. An increase of

less than 7.5 percent would not yield any bonus payout.

On the other hand, if the superintendent were responsible for an increase of 12 percent or more, his or her maximum bonus would be capped at 120 percent.

• Do not sidetrack superintendent performance evaluations.

An incentive program should not be a substitute for a comprehensive performance evaluation system for superintendents.

Superintendent performance expectations and standards encompass many domains: leadership and district culture; district policy and governance; communications and community relations; organizational management; curriculum planning and development; instructional leadership; human resources management; values and ethics in leadership; and labor relations. A comprehensive performance evaluation system addresses performance in all of these areas. An effective incentive-pay program targets only specific, measurable high-priority goals and accomplishments.

• Incentive size is critical.

Typical performance incentives in the public sector are set at 10 to 15 percent of base salary and sometimes as much as 20 percent. Historically, goals tied to less than 5 percent have not been effective.

Specific, measurable goals are established, and a dollar amount or weighting is assigned for each goal. The parameters of the goals are important; they should reflect district and building improvement planning and annual goals.

• Be clear about how the incentive is structured.

The board must determine which of

two general options for developing a performance-incentive program it will use: The incentive could be a bonus program offering a one-time payment in addition to base salary or a pay-at-risk program that incorporates a portion of the base salary into the incentive program.

For example, a pay-at-risk program might start at 95 percent of the base salary with a maximum performance incentive of 120 percent of base salary. Thus 5 percent of the person's salary is "at risk" if targeted work outcomes are not met. This system allows for a bonus payment when the objective is exceeded. For newcomers to performance-based pay programs, I recommend the bonus format for its simplicity.

• Make payout determinations clear and based on actual performance.

Performance incentive systems usually set 10 to 20 percent of base salary as the performance incentive. Once specific, measurable goals are established, a dollar amount or a specific weight can be assigned to each goal or objective. Again, the weighting of the goals should reflect the district's priorities.

Assigning an amount to each objective establishes the payout weighting (\$5,000, for example). With a 75 percent minimum and 120 percent maximum, the range of the bonus payments would be \$3,750 to \$6,000 per objective.

Give a particularly important objective more weighting—\$5,000 to \$7,500 for a primary objective and \$3,750 to \$6,000 for others.

• Decide how to deal with base pay.

Incentive-pay programs do not adjust the individual's base pay. The relative market position of the superintendent's base salary remains critical to the recruitment, retention, and engagement of a high-performing professional. It has been my experience that incentive-pay programs do not make up for base-pay levels that traditionally lag behind the market.

The board must factor in a cost-of-living adjustment (COLA) to the superintendent's salary, as well. Generally, a COLA does not drive behavior or motivate performance.

From my observations, incentive-pay programs of 15 to 20 percent are large enough that they tend to replace annual COLAs. A package with smaller incentive-pay programs, say 5 to 7 percent, tends to retain a COLA in addition to the incentive-pay provisions. Most private-sector programs fold what would have been a COLA into the performance incentive program, but they pay executives higher bonuses (30 percent to as much as 60 percent or more, according to the Mercer 2007-08 survey).

One thing that incentive-pay and performance-pay programs have in common is that their success depends on some form of long-term stable and adequate funding. A school board's biggest issue might be deciding whether or not it has the financial resources to sustain a performance-compensation program over the long term.

• Keep it simple.

The program should be simple and easy to understand. One reason that incentive programs fail is that they are not clearly understood. That's why I suggest districts adopt no more than three to five objectives. That will help keep the focus on the issues that matter most to the district and its students. Actual objectives should be seen by the board and the superintendent as attainable and measurable. ■

Ron Wilson is director of special projects for the Oregon School Boards Association and is executive director of the North American Association of Educational Negotiators.

MORE CONTRACT QUESTIONS AND CONSIDERATIONS

School boards should consult with their attorney to determine the exact terms and conditions of the superintendent's contract and to discuss state-specific laws that might have an impact on contract negotiations.

School boards across the country have faced heavy criticism for agreeing to generous contract terms without fully understanding the potential legal and political consequences of their decisions. While the "superintendent market" might dictate a generous package of salary and benefits, school boards should consider each contract term and agree to it with the full knowledge of its implications.

Here are a few topics and questions that should be considered before signing on the dotted line:

- Whenever possible, contracts should avoid "legalese" and be written in plain English.
- Does the contract automatically renew or "roll over"?
- Does the contract provide a deadline for notice of non-renewal or termination? If so, consult with your attorney early and often as these issues arise.
- Should a liquidated damage clause be included in the event of early termination by the superintendent or the board? Although not often used, this clause allows both parties to set the amount of damages if either party prematurely terminates the contract.
- Are all compensation and benefit terms clearly defined?
- If a severance package is included, are the terms and amounts reasonable and clearly defined?
- Does your district have a "use it or lose it" policy for vacation and sick days? Superintendents very frequently do not use all of their leave and might be entitled to a large payout when they retire or the contract is terminated.
- Will the superintendent be entitled to benefits offered to other employees, such as early-retirement incentives, sabbatical leave, or holiday leave? School boards have been criticized for agreeing to contracts that include a generous severance package, only to have that pay supplemented with early-retirement incentives, annuity payments, and sick leave and vacation leave payouts that apply to other district employees.
- How do state tenure laws affect the contract terms and conditions? Can the superintendent acquire tenure in an administrative or classroom position? Can the board reassign the superintendent to another administrative position?
- Does the contract or board policy clearly define the categories and amounts of job-related expenses that are reimbursable? Generally, school boards should only reimburse superintendents for actual and necessary costs submitted with original receipts.
- Does state law have any residency requirements?
- Should the board consider alternative dispute resolution for contract disputes?
- Should the board consider paying moving expenses or adding other inducements to attract candidates?

—Cullen Casey, Co-Editor

Sample calculation of incentive payout

Objective #1: On statewide assessments, the district will increase the percentage of 10th-grade students meeting or exceeding mathematics standards from 32.2% in 2006-07 to 42.2% in 2007-08.

Objective #2: The percentage of students participating in activities (e.g., organized sports; clubs such as drama, debate, chorale; extracurricular academic programs) will be increased by 10% in 2007-08 over the percentage of students participating in 2006-07 (40%).

Objective #3: On statewide assessments, the district will increase the percent of 10th-grade students meeting or exceeding reading standards from 38.3% in 2006-07 to 45% in 2007-08.

Base salary: \$125,000

Payout per objective: \$5,000

Range of goal payout: \$3,750 to \$6,000 per goal

Minimum achievement level: 75% of goal:

Goal #1: A 75% increase is the minimum for payout, i.e., an increase from 32.2% to 39.7%
(Distance to goal = 10%; Calculation: 10 x .75, plus 32.2).

Goal #2: A 75% increase is the minimum for payout, i.e., an increase from 40% to 47.5%
(Distance to goal = 10%; Calculation: 10 x .75, plus 40).

Goal #3: A 75% increase is the minimum for payout, i.e., an increase from 38.3% to 43.3%
(Distance to goal = 6.7%; Calculation: 6.7 x .75, plus 38.3).

Maximum achievement level: 120% of goal

Goal #1: The maximum payout will be 120% of the goal, i.e., an increase from 32.2% to 44.2%
(Distance to goal = 10%; Calculation: 10 x 1.2, plus 32.2).

Goal #2: The maximum payout will be 120% of the goal, i.e., an increase from 40% to 52%
(Distance to goal = 10%; Calculation: 10 x 1.2, plus 40).

Goal #3: The maximum payout will be 120% of the goal, i.e., an increase from 38.3% to 46.3%
(Distance to goal = 6.7%; Calculation: 6.7 x 1.2, plus 38.3).

Sample performance:

Goal #1: 40% of 10th-grade students met or exceeded mathematics standards.

Goal #2: 53% of students participated in activities.

Goal #3: 41% of 10th-grade students met or exceeded reading standards.

Goal payout based on sample performance:

Goal #1: \$ 1,560 (Calculation: 40%-32.2% = 7.8%; 7.8/10 = 78%;
.78 x \$5,000 = \$1,560)

Goal #2: \$6,000 (Calculation: 53% > maximum payout of 52%;
1.2 x \$5,000 = \$6,000)

Goal #3: \$ 0 (Calculation: 41% < minimum payout of 43.3%; no payout)
\$ 7,560 Performance-incentive program total payout
\$125,000 Base salary
\$132,560 Total annual salary