

NEGOTIATING YOUR CONTRACT

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WILLIAMS MULLEN

KEY TERMS OF THE CONTRACT



- > Term of employment
- > Compensation
- > Health insurance and other benefits
- > Leave
- > Other work activities
- > Discharge

HOW LONG DOES THE CONTRACT LAST?



- > Initial contract
 - Virginia law: 2 – 4 years, and must end on June 30
- > Renewal contracts
 - Virginia law: 1 – 4 years, and must end on June 30
- > No “automatic extensions” – would cause contract to run more than 4 years total

HOW LONG DOES THE CONTRACT LAST?



- > Practice pointer – push for the longest contract possible
 - You don't know when things will turn sour
 - You don't know what the next board members will be like
- > Some superintendents like to renegotiate their contracts every two years, so they always have at least two years' of runway ahead of them



> Base salary

- Automatic escalator?
- Capable of decrease?
- Should at least receive the same salary increases as instructional personnel
- Compare to other divisions in the region

> Deferred compensation

- Payment now, that you cannot access for a few years (e.g., 403(b))
- A way to earn more without it looking like the division is paying you more
- Make sure it includes magic words for creditable compensation:

“The parties agree that the contribution is not conditional, the contribution would have otherwise been included in the Employee’s taxable income, and the Employee acknowledges that the Employee has elected the deferral. Finally, the parties acknowledge that they are responsible for ensuring adherence to the applicable contribution limits for the deferred compensation plan or plans to which the contribution is made.”

LEAVE



- > Usually two different buckets of leave
 - Sick
 - “Annual” or “personal” (i.e., vacation)
- > You can negotiate for more of each than is included in the School Board policies for other employees



> Rollover

- Both sick and vacation leave can be rolled-over from one year to the next, but don't have to be – so negotiate for it
- Can be “capped”



> Pay Out

- Both sick and vacation leave can be paid out at the end of the year, or end of the term, but don't have to be – so negotiate for it
- Can be paid into deferred compensation at end of year
- Some contracts allow for payout if separation due to retirement, but not because of resignation or cause termination

BENEFITS



May follow School Board rules for other employees, or be distinct for the Superintendent:

- Health insurance (issue if pays your premiums)
- Life, dental, vision, disability
- Car, stipend, or access to School Board car?
- Cell phone
- Memberships (VASS, AASA, professional and civic organizations)



EVALUATION



- > Virginia law requires annual evaluation of superintendents
- > “The Superintendent and the Board shall adopt a mutually agreed upon instrument for this purpose.”
- > Such evaluation must be completed at least 6 months before the end of each fiscal year.
- > The Board shall devote at least a portion of a scheduled Board meeting (in closed session) to conduct the Superintendent’s evaluation and discuss the working relationship between the Superintendent and the Board.

THE “OTHER EMPLOYMENT” TRAP



- > Virginia law states that if you accept other employment without Board approval, you have “abandoned” the position of superintendent
- > Could apply to any paid consulting or speaking engagement
- > Put in contract that Board Chair can approve the other work – and always get approval prior to starting engagement
- > Put in contract anything you already know you want do on a regular basis, like teach a course



- > “The Board hereby indemnifies and holds harmless the Superintendent and/or her estate from any and all demands, claims, damages, suits, actions, and legal proceedings brought against the Superintendent...
 - for any incident or activity arising out of and within the scope of her duties as Superintendent...
 - undertaken in good faith, *in accordance with the law*, and within the scope of her official authority.”

INDEMNITY



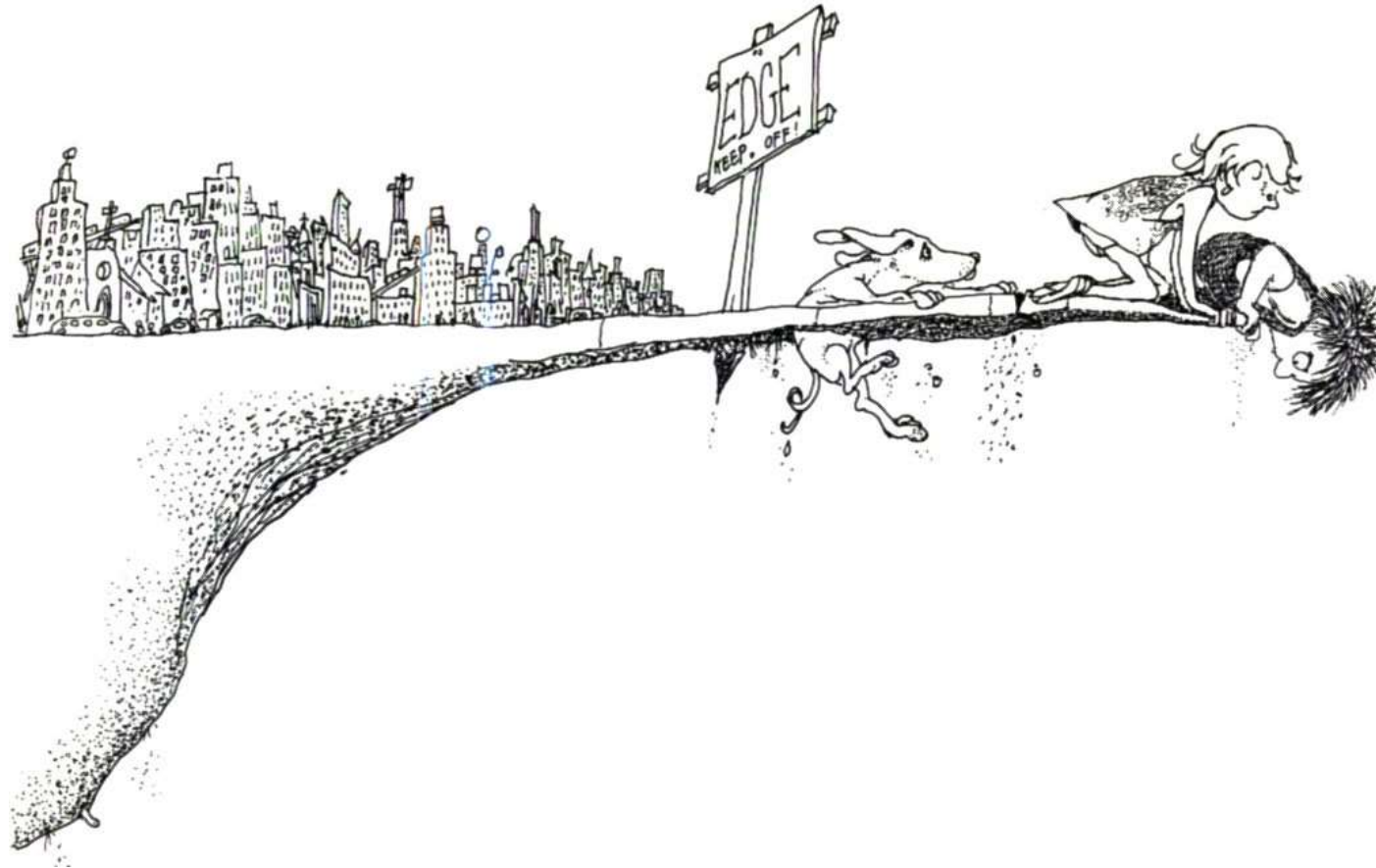
- > Translation – the Board will pay your legal fees if you are sued because of your work as superintendent (and will pay for damages if you lose the lawsuit)
 - Applies even if lawsuit arrives after your term ends
 - Does not apply if you acted in bath faith or purposely broke the law



- > Does not necessarily mean you will get a lawyer other than the Board's attorney
 - You may have to share counsel with the Board
 - You may not get to pick your own lawyer

- > Arguable whether it applies to criminal proceedings

TERMINATION – ALL GOOD THINGS MUST COME TO AN END



TYPES OF TERMINATION



- Termination without cause
- Termination with cause
- Resignation
- Retirement
- Disability
- End of term

TERMINATION WITHOUT CAUSE



- > Most important issue is salary continuation
- > Benefit continuation is nice, but not essential, because you can still get health insurance under COBRA
- > Fight hard to get at least one year salary as severance pay
 - This could be your only income for many months
 - But don't ask for too much – asking for 2+ years could result in the Board trumping up “cause” so they can pay you nothing

RESIGNATION



- > You can always resign
- > But, you usually have to agree to give the Board 90 days' written notice before resigning (shouldn't be necessary to give more)

RETIREMENT



- > Generally no severance pay or benefits (unless new deal is negotiated at the end)
- > Again, you will probably have to give at least 90 days' notice
- > Payout of unused leave is typical



DISABILITY



- > Common term: if you are incapable of working for more than a defined period then the contract ends (no severance)
- > If the Board asks for this kind of provision, ask for:
 - At least a six-month term
 - Disability insurance



REACHING END OF TERM



- > Contracts may simply run out
 - This is not a termination with or without cause

- > At that point, the Board owes you nothing

- > Standard contract includes provision that each side must give the other 6 months' notice of intent prior to end of contract term, to avoid unexpected results (i.e., you should know the conclusion of contract is coming)
 - But term is not binding
 - Consider asking for one year

TERMINATION FOR CAUSE



- > “Cause” is a high bar
 - material breach of the contract
 - forfeiture of office
 - immorality
 - non-compliance with school laws and regulations
 - willful non-compliance with Board policies and regulations
 - conviction of a felony or a misdemeanor as set forth in Va. Code § 22.1-296.1 (barrier crimes)

TERMINATION FOR CAUSE



- > To be fired for cause
 - Board must serve written charges
 - You are entitled to a hearing with your own lawyer (paid by you)
 - You may appeal to a circuit court

- > If terminated for cause:
 - No severance
 - No right to leave reimbursement
 - COBRA available
 - Indemnity provision continues to protect you

QUESTIONS OR COMMENTS?



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