

McGUIREWOODS

# MAXIMIZING YOUR CONTRACT

R. Craig Wood  
Virginia Association of School Superintendents  
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# The Devil is in the Details



# Your are defining a relationship



# Things are great for a while – maybe years

- The great relationship bears fruit and prospers





# Then it gets tense and conflict arises



# Then the divorce occurs



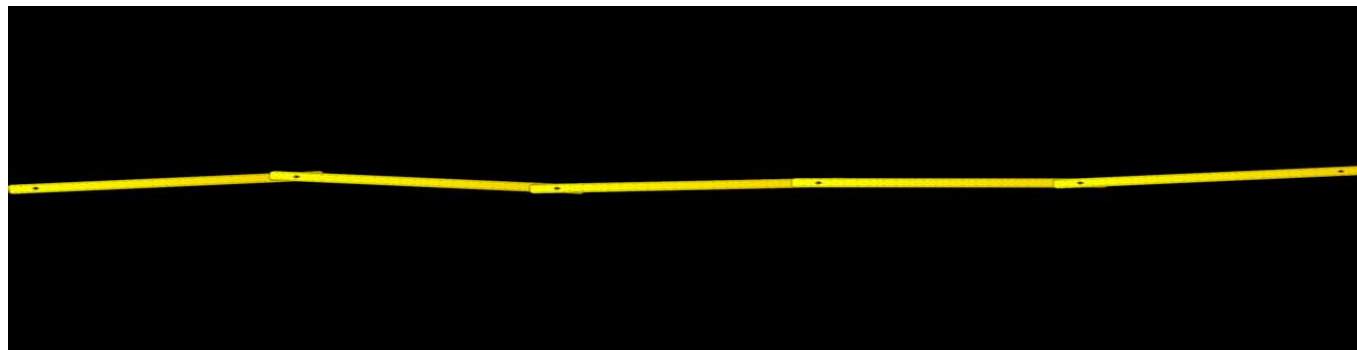
# Your contract is your only protection

- Your compensation
- Your health insurance
- Your other benefits
- Your protection against later claims or suits
- None of these things are guaranteed unless you have a firm contractual promise



# How long does the contract last?

- Virginia law
- Initial contract 2 – 4 years, and must end on June 30
- Renewal contracts 1 – 4 years, and must end on June 30
- No “automatic extensions” – would cause contract to run more than 4 years total
- Practice pointer – push for the longest contract possible





# Compensation

- Base salary
  - Automatic escalator?
  - “The average increase awarded to professional employees”
- Deferred compensation
  - Annuities or 403(b) plans
- Rollover of unused annual or sick leave
  - Annual buyback?
  - End of contract buyback?
  - Cash, or add to deferred compensation?

# Benefits

- Health insurance
  - Individual or family plan premiums?
  - Life, dental, vision, disability?
  - Car, or car allowance?
  - Technology and service plan?
  - Annual leave
  - Sick leave
  - Reimbursement?
  - Memberships?
    - VASS
    - Local club or service organization



# Customized benefits

- Reimbursement or time off for courses
- Consulting, writing, speaking revenue
- Sabbatical or extended leave



# Statement of authority

- Ability to assign administrators
- Ability to build your own leadership team
  - “The Superintendent shall have charge of the administration of the ABC County Public Schools under the direction of the Board. She shall be the chief executive officer for the Board; shall select, organize and assign all personnel, as best serves the ABC County Public Schools...”
- Don’t let Board sneak out of its obligations
  - “The Board, both individually and collectively, will promptly refer all criticisms, complaints, and suggestions concerning the ABC County Public Schools or its employees to the Superintendent or the Superintendent’s designee for investigation, study, review and recommendation.”

# Be aware of the “other employment” trap

- Virginia law states that if you accept other employment, you have “abandoned” the position of superintendent
- Could apply to any paid consulting or speaking engagement
- Put in contract that Board Chair can approve, and always get approval
- Put in contract anything you already know you would do on a regular basis, like teach a course





# Evaluation

- The Superintendent and the Board shall adopt a mutually agreed upon instrument to evaluate the Superintendent.
- Using such instrument, the Board shall evaluate annually the Superintendent.
- 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 to conduct the Superintendent's evaluation and discuss the working relationship between the Superintendent and the Board.
- All aspects of such discussions shall be treated confidentially by the School Board and the Superintendent.

# Termination – All good things must come to an end!



# Take the money and run!

- Termination without cause
- Termination by resignation
- Termination by retirement
- Termination for disability
- Termination by reaching end of term
- Termination for cause
- Not all terminations are created equal



# 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
- Don't get greedy – asking for 2+ years could result in the Board trumping up cause so they would pay you nothing
- Indemnity clause becomes important so you are protected from lawsuits after you leave employment

# Retirement

- Generally no severance pay or benefits (unless new deal is negotiated at the end)
- May involve payout of unused leave under Board policy
- Board generally wants notice of 90 days (standard VSBA) as in voluntary resignation – if they ask for more than that you need to push back





# Resignation

- In the event the Superintendent voluntarily resigns, all salary and benefits such as unused vacation and sick leave provisions shall cease as of the effective date of such resignation.
- The Superintendent agrees to give the Board ninety (90) days written notice of such resignation.
- The Board may, in its sole discretion, waive any or all of this ninety (90) day notice requirement (but you still choose the date of resignation – if they waive the notice, but you want to stay, they must pay you).

# Disability

- Many contracts today include disability provisions
- If you are disabled from work for more than a defined period (they may ask for 60 days as in FMLA – bargain for 6 months) then the contract ends
- If the Board asks for this kind of provision, ask them to balance it by providing a supplemental disability insurance policy so you have income protection



# Reaching end of term

- A four year contract (or shorter term) may simply run out.
- At that point, the Board owes you nothing
- But you may be eligible for full VRS retirement if you have 20 years service credit
- Standard contract includes provision that each side must give the other 6 months notice of intent

# Termination for cause

- “Cause” is a high bar
  - material breach of this Agreement,
  - 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

- Board must serve written charges
- You are entitled to a hearing and to have legal representation
- You may appeal to a circuit court
- If terminated for cause:
  - All salary and benefits cease (no severance pay)
  - No right to leave reimbursement
  - Indemnity provision continues to protect you



# Indemnity

- 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.
- Insurance coverage will survive after the Superintendent leaves the division for any proceedings brought against the Superintendent for any action or activity arising out of the scope of her duties during her tenure as Superintendent.

# Questions or Comments?

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