

RE: Superintendent contract renewal

Spencer Lewis <slewis@osba.org>

Tue 2/11/2020 2:25 PM

To: Darren Vaughn <dkvaughn@live.com>

Good Afternoon Darren,

My understanding is that the current contract runs through June 2021. ORS 342.513 requires that notice be provided for the following year by March 15.

- March 15, 2020: since the contract includes next year, the superintendent should be reasonably assured that he will be employed by the district next year. Consequently, you do not need to provide notice (additionally, the punishment for not providing the notice is granting a contract for the following school year, which the superintendent already has). You can provide notice that the contract remains in effect through next school year, but I would be careful not to use "renew" or "extend" because they could be interpreted to lengthen the contract.
- March 15, 2021: if no extension, renewal or new contract is agreed upon, this contract will expire at the end of June 2021. Consequently, you must provide the superintendent with notice of whether or not he will have a job in the district for the following year by March 15, 2021. If he will, you will likely enter into a new contract. If he will not, you need to provide the superintendent with the material reason for that decision.

342.513 Renewal or nonrenewal of contracts for following year. (1) Each district school board shall give written notice of the renewal or nonrenewal of the contract for the following school year by March 15 of each year to all teachers and administrators in its employ who are not contract teachers as defined in ORS 342.815. In case the district school board does not renew the contract, the material reason therefor shall, at the request of the teacher or administrator, be included in the records of the school district, and the board shall furnish a statement of the reason for nonrenewal to the teacher or administrator. If any district school board fails to give such notice by March 15, the contract shall be considered renewed for the following school year at a salary not less than that being received at the time of renewal. The teacher or administrator may bring an action of mandamus to compel the district school board to issue such a contract for the following school year.

(2) This section is not effective unless teachers or administrators notify the board in writing on or before April 15 of acceptance or rejection of the position for the following school year. [Formerly 342.635; 1975 c.770 §47; 1979 c.714 §1; 1997 c.864 §24; 2005 c.22 §236]

Please let us know if you have any additional questions.

Spencer Lewis

(he/him/his)

Senior Assistant Legal Counsel

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From: Darren Vaughn <dkvaughn@live.com>**Sent:** Tuesday, February 11, 2020 11:13 AM**To:** Spencer Lewis <slewis@osba.org>**Cc:** dvaughn@rsd.k12.or.us**Subject:** RE: Superintendent contract renewal

Spencer,

I would call but do not have time this week due to long days in my day job.

I have a question about compliance with ORS 342.513, specifically the requirement to notify the superintendent of the boards intent to renew or not renew his/her contract by.

With respect to the history as outlined before (below) with the addition of a September 2019 request from the superintendent for contract revision to redate 17-20 contract to 2018-2021.

The question is since the contract is revised to 2018-2021 and we voted to not renew in March of 2019 (notification was provided), have we met the ORS requirement (notification by March 15 of the 1st year of the contract) by the March 2019 vote and notification of our intent?

Please feel free to comment as needed.

Darren Vaughn

208-631-4203

----- Original message -----

From: Spencer Lewis <slewis@osba.org>

Date: 11/12/19 1:36 PM (GMT-08:00)

To: Darren Vaughn <dkvaughn@live.com>

Cc: dvaughn@rsd.k12.or.us

Subject: RE: Superintendent contract renewal

Good Afternoon Darren,

Please find my responses below in red. Let us know if you have any additional questions.

Spencer Lewis
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From: Darren Vaughn <dkvaughn@live.com>
Sent: Tuesday, November 12, 2019 8:36 AM
To: Spencer Lewis <slewis@osba.org>
Cc: dvaughn@rsd.k12.or.us
Subject: Re: Superintendent contract renewal

Hi Spenser,

In continuing the discussion about how we handle superintendent contract, our board has developed some questions that we hope will help us with future actions on our contract with our superintendent. Below is a brief history of what has happened with our superintendent's contract as context for the questions:

- In 2014 our board approved and issued a 2014-17 contract with the RSD superintendent.
- In March of 2015 the staff renewal list was approved with the superintendent's name on it.
 - There was no subsequent request from the superintendent or the board to modify, revise or reissue the 2014-17 contract.
- In February of 2016 the staff renewal list was approved with the superintendent's name on it.
 - There was no subsequent request from the superintendent or the board to modify, revise or reissue the 2014-17 contract.
- In April of 2017 agenda item "Superintendent's Contract" was discussed and a committee was formed to review/negotiate the superintendent's contract.
 - The superintendent's 2014-17 contract was reviewed, negotiated, revised and presented to the board as a proposed 2017-2020 contract.
 - In June of 2017, the superintendent's 2017-2020 contract was approved at a regular meeting.
- In March of 2018 the staff renewal list was approved with the superintendent's name on it.
 - There was no subsequent request from the superintendent or the board to modify, revise or reissue the 2017-20 contract.
- In March of 2019 the board removed the superintendent's name from the staff renewal list for separate vote.
 - The superintendent's was not renewed by a 4-2 vote.

As you can see, past district practice has not been the revision or issuance of a new contract after approval of a renewal list with the superintendent's name on it.

The questions from our board are:

1. What effect does it have on a superintendent's contract when his/her name is on a staff renewal list that is approved by the board?

This may depend on the specific language used and the intent of the parties, but I would say that a renewal resets the contract to the beginning of the term of the contract (when done in the first year of a contract, essentially adds one year to the contract). When we talk about licensed teachers, a renewal places them back in the first year of a two-year contract. Since the superintendent renewals were on the same list as the teacher renewals, there is a strong argument that the superintendent renewal similarly placed the superintendent in the first year of a three-year contract. Based on this information, I would consider that March 2018 renewal of the superintendent's contract to place the superintendent in the first year of a new three-year contract, a 2018 – 2021 contract. You could argue something else, but I think you would have a difficult time explaining what the March 2018 action did, if it did not extend the contract duration. One of those arguments would be that the renewal action by the board was an offer to the superintendent, and the superintendent must take some type of action in order for the offer to be accepted—I think this would be difficult to win on as his continued work may be acceptance and there is not a past practice of requiring superintendent action to keep the option available.

2. What is the effect of no contract action being asked for/taken after the renewal of the superintendent on the staff renewal list?

If a contract is renewed, there really should be an updated contract with signatures, however, the law doesn't necessarily require that. If a contract is renewed, it alters the termination date of the contract. If no contract action is taken after the renewal, the terms of the renewed contract would continue on for the duration of the contract.

3. What effect did it have on the superintendent's contract in March of 2019 when the board chose to NOT renew him?

I believe that the renewal of the contract in March 2018 reset the contract to the first year of a three-year contract or essentially created a new contract (2018-2021). When the board chose not to renew the superintendent in March 2019, the board did not terminate the contract, rather chose not to change any of its terms (or extend it in any way). That 2018-2021 contract remains in effect under the terms established in March 2018 (since no new terms were discussed, I would say that all terms of the contract remained the same, with the exception of the beginning and ending dates).

I have attached a copy of the superintendent's 2017-20 contract for reference. The 2017-20 contract is the latest executed contract that exists. We are looking for the proper path forward to clean this up and establish an amicable/correct way of handing this contract. Your answers to these three questions will help us move forward to address our superintendent's request for a 2018-21 contract to be issued based on the 2018 renewal list approval.

Thank you in advance,

Darren Vaughn

RSD #13 School Board Chair

208-631-4203

From: Spencer Lewis <slewis@osba.org>
Sent: Tuesday, February 12, 2019 12:22 PM
To: dkvaughn@live.com <dkvaughn@live.com>
Subject: Superintendent contract renewal

Good Afternoon Darren,

Thanks for the call this morning. This is why I believe that ORS 342.845 does not apply to superintendents, and why ORS 342.513 does:

ORS 342.815 defines administrators to "include[] any teacher the majority of whose employed time is devoted to service as a supervisor, principal, vice principal or director of a department... but shall not include the superintendent..." These definitions apply to ORS 342.805 to 342.937. Additionally, a teacher is defined as "any person who holds a teaching license or registration as provided in ORS 342.125 or 342.144 or who is otherwise authorized to teach in the public schools of this state and who is employed half-time or more as an instructor or administrator." A "contract teacher" is also defined, and requires that you meet the definition of a teacher.

Since ORS 342.845 applies to contract teachers and administrators and is within ORS 342.805-.937, these definitions apply. Consequently, 342.845 does not apply to superintendents.

A different set of definitions applies to other parts of ORS 342. ORS 342.120 defines "administrator" as including superintendents. This definition applies to ORS 342.513, which requires that written notice of renewal or nonrenewal be provided to all teachers or administrators "for the following school year by March 15 of each year." Consequently, this requirement applies to administrators.

In addition to these laws, ORS 332 also discusses superintendent contracts and renewals:

332.505 Employment and compensation of personnel; written personnel policies. (1) As used in this section:

(a) "Instructional assistant" has the meaning given that term in ORS 342.120.

(b) "Intern teacher" means a regularly enrolled candidate of an approved educator preparation provider, as defined in ORS 342.120, who teaches under the supervision of the staff of the provider and of the employing district in order to acquire practical experience in teaching and for which the candidate receives both academic credit from the provider and financial compensation from the school district or education service district.

(2) A district school board may:

(a) Employ a superintendent of schools and necessary assistant superintendents for the district and fix the terms and conditions of employment and the compensation. The district school board shall not contract with a superintendent for more than a period of three years at a time. The contract shall automatically expire at the end of its term. However, the district school board may elect to issue a subsequent contract for an additional three years at any time.

I would also be careful with executive sessions for the superintendent's contract. I do not know what was discussed in your executive session, you just mentioned that you had one for superintendent contract negotiations (I may have misheard). There is no executive session provision that allows superintendent contracts to be reviewed, discussed or negotiated in executive session. If the board is considering terminating the superintendent, that can be done in executive session, but requires advanced notice (24 hours or one business day, whichever is greater, ORS 1920660(2)(b)) to the superintendent ahead of time. The board can also use executive session to evaluate the superintendent, subject to the same notice requirements (ORS 192.660(2)(i)). However, neither of these authorizes contract negotiations to be done executive session. Again, I am not saying that you did anything wrong, I wasn't there and don't know what was discussed, just a word of caution.

Please let us know if you have any additional questions.

Spencer Lewis
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