Improving District Stability and Board Governance through the Superintendent Contract
About TCG

TCG Group Holdings is the parent company to TCG Administrators, TCG Advisors, and TCG Consulting, all of which provide interlocking and complementary services to public entities. From providing recordkeeping and administration for retirement plans to serving your company with best-in-class investment management and consulting, TCG is dedicated to making financial decisions as easy as possible for both plan sponsors and employees.
About Adams, Lynch, Loftin

• General Counsel for the Texas Association of School Administrators since 1987.

• Represent 200-250 Superintendents a year.

• State-wide and national education law practice including Superintendents, Presidents, and other administrators in public and private schools and institutes of higher education and learning.

• 20+ year relationship with TCG.
Hiring and Keeping the Right Superintendent

The most important decision a Board makes
• The Board’s one employee
• The Superintendent’s contract is unique in nature

Critical Member of the Team of 8
• Will be the Board’s partner in focusing on student outcomes and implementing Board policy
• The right hire allows the Board and Superintendent to focus on their respective roles
• Contract should further define those roles and the relationship

Impact of Superintendent and Board Stability
• Studies have shown a link between leadership stability and student performance

Fit as an X-Factor
• The right fit can be hard to replace
• Understands the culture of the District
• Has the trust of the community
Current Trends in Superintendent Contracts
Trends in **Superintendent** Contracts

**Salaries are rising**
- Making it hard for boards to adjust

**“Baby boomer” superintendents retiring rapidly**
- Supply of experienced superintendents declining

**More high level school administrators getting larger districts as first time superintendents**
- Need mentoring – chances of failure are higher due to inexperience
- Compensation negotiation is tough – often must take step down in pay to get first superintendent job
Trends in **Superintendent Contracts**

**More complex, longer contracts**
- Reaction by boards and attorneys to past issues; new laws and regulations
- Their complex nature can make them confusing for new Board members or trustees unfamiliar with executive compensation.
- Important communications tool that can be tailored to meet the District’s and Superintendent’s needs.
- Language is critical for both compensation and governance provisions

**Use of supplemental retirement / deferred compensation plans increasing**
- Need help with complex tax rules. Most school attorneys do not have expertise in this area
- IRS is increasing examinations of school districts; in any audit they review the employment agreements of the top 10 paid officials carefully
Trends in **Superintendent Contracts**

More “creative compensation,” particularly as a superintendent stays longer in a district
- Salary is always a “lightening rod”
- To attract/retain an experienced, successful superintendent the board must use other types of compensation

More resistance to high cost of relocation
- Negotiation about post retirement healthcare costs is getting more important as superintendents retire earlier – with very high medical costs or even difficulty obtaining coverage before Medicare age 65
External and Internal Factors

Districts are Beginning to Look Internally for Superintendents
• Harder to compete with other Districts for experienced talent
• Going with what they know
• Hiring for the position that they are entering, not the job they had
• Mentoring within culture
• Less costly than a search

External Candidates are able to be more Selective
• The salary gap is becoming tighter between mid-sized suburban districts and larger districts
• Quality of life has become a major factor
• Caps on pensions mean going to a larger district may not actually result in a larger retirement
Texas Teacher Retirement and Why it Matters
## Typical Retirement Formula

Years of Service \( \times \) State Factor \( \times \) Average Income = Maximum Benefit

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>State Multiplier</th>
<th>Average Income</th>
<th>Maximum Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>69%</td>
<td>$120,000</td>
<td>$82,800</td>
</tr>
</tbody>
</table>

**Example:**

- Begin Working: $120,000
- Retire at Age 60: $82,800

31% net loss of gross income

Remember all investing involves risk.
Inflation Impact

- Many Pensions does not have Cost of Living Adjustments (COLA)
- Inflation (2.5%) vs. No COLA (0%)
Why Contract Structure Matters
Their Life Ties to the **Contract**

- Term
- Duties
- Goal Setting and Evaluation
- Other Non-Financial Provisions
- Criticisms And Complaints
- Indemnification
- Board Meetings
- Termination
- Reassignment

**Contract Wellness** (Governance)

*Remember all investing involves risk.*
Their Life Ties to the **Contract**

- Knowing Your Pension
- Strategic Investments
- Financial Wellness
- A Contract Structured Around Your Needs
- Estate and Tax Planning
- Emergency Fund
- Purposeful Insurance Policies
- Knowledgeable of Law Changes
- Appropriate Cash Flows

Remember all investing involves risk.
Addressing Compensation

The above graph is a hypothetical example representing how the market value of a superintendent’s job could be worth more than the current salary. Creative compensation is the way to make up the difference between the two in a less controversial manner.
Impact of Creditable Compensation

- The Superintendent gets to keep $0.69 of every $1.00 for the rest of their life (assuming 30 years of service.)

<table>
<thead>
<tr>
<th>Amount</th>
<th>Years of Service</th>
<th>Impact on Pension</th>
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<tbody>
<tr>
<td>$ 10,000.00</td>
<td>30</td>
<td>$ 6,900.00</td>
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<tr>
<td>$ 10,000.00</td>
<td>31</td>
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<td>32</td>
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<tr>
<td>$ 10,000.00</td>
<td>34</td>
<td>$ 7,820.00</td>
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### Contract Item

<table>
<thead>
<tr>
<th></th>
<th>Superintendent A</th>
<th>Superintendent B</th>
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<tbody>
<tr>
<td>Base Salary</td>
<td>$200,000</td>
<td>$185,000</td>
</tr>
<tr>
<td>Car Allowance</td>
<td>$6,000</td>
<td>$0</td>
</tr>
<tr>
<td>Business Expenses</td>
<td>Provided</td>
<td>Provided</td>
</tr>
<tr>
<td>Technology Allowance</td>
<td>$2,400</td>
<td>$0</td>
</tr>
<tr>
<td>Employer Paid Retirement Plan</td>
<td>$20,000</td>
<td>$0</td>
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<td>Longevity Pay</td>
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Base Pay
Base Salary

• The salary is the most visible figure and will receive the greatest amount of scrutiny.

• It is important that both the Superintendent and the School Board are comfortable with the amount and can sufficiently articulate why the salary is justified.

• Salary Factors Should Include:
  o Community expectations,
  o Student demographics,
  o Cost of living in the area,
  o Stage of career/Experience, and
  o Length of service.
Base Salary

Pros

• Simple

• Counts as creditable compensation

• Transparent

Cons

• Creates one large compensation item

• The Superintendent may have other needs besides salary

• Not consistent with current market trends
Other Compensation and Benefits
Pension System Contribution Reimbursements

Retirement Plan Contribution Assistance ("Golden Handcuffs" or Reimbursement)

Purchase of Service Credits (1 year for each year of completion)

Cash Flow Enhancers (auto allowance, technology allowance, association dues, etc.)

Purchase of or additional vacation days

Creative Compensation Ideas
A Review of Compensation Ideas

- Performance Bonus
- Payment of family medical plan premiums
- Payment for unused vacation/sick days (be sure contract covers calculation of daily rate of pay)
- Longevity Bonus
- Employer paid supplemental retirement plan
- Advanced Degree Stipend
- Auto allowance or leased automobile
- Physical Examination
- Life Insurance Supplement
- Disability Insurance Supplement
- Reimbursement Allowance for Cell Phone
- Technology Allowance
- Association Dues
- Payment of FICA and/or Medicare tax

- Extra Personal/Vacation/Consulting Days Paid at Daily Rate
- Purchase of service with state retirement system
- Reimbursement of state retirement system member contribution
- Guaranteed Salary Increase Percentage
- Salary Increases Tied to Teachers and Other Staff
- Post-Retirement Health Care
- Civic Expense Allowance
- Long-Term Care Insurance
- Post-Employment Medical Benefits
- Reimbursement for tax-deductible Charitable/Civic Contributions to Local Organizations
- Professional Literature Allowance
- Personal protection benefit
- Expense allowance

Remember all investing involves risk.
Other Compensation and Benefits

Pros

• Can address true needs of the Superintendent

• If done properly, some can count for creditable compensation

• Creates a broader package than just salary and avoids a single large item in the contract

• Provisions can be easily expanded overtime rather than explaining new compensation each year

Cons

• Items may not count as creditable compensation

• Increases the overall length and complexity of the contract

• Can create confusion at the Board level
Vacation and Sick Leave

• It is important that Superintendents have time throughout the year to rest, refresh and, if needed, take care of themselves or a family member while ill.

• However, due to the time demands of the position, it is equally important that they have the opportunity to be compensated for that time if they are unable to take days off.

• Factored into base salary

• Important in a severance discussion

• Option 1: Either pay as cash or as a non-elective contribution to a retirement account ANNUALLY and not wait for the end of the contract or retirement. Not creditable for TRS.

• Option 2: Predetermine the amount of days that may accrue year over year and are eligible to be paid. Not creditable for TRS.
Supplemental Retirement Plans
Supplemental Retirement Plans

Supplemental retirement plan contributions are a compensation tool that can provide a long-term incentive for the Superintendent to remain in the District.

A supplemental retirement plan can provide inflation and income protection for Superintendent since TRS does not provide a cost of living adjustment.

Plans can include a 403(b), 457(b), and a 401(a).
Avoid nonqualified deferred compensation

457(f) Plans – AVOID
• Usually occurs when using an attorney with mostly corporate experience

Treated as taxable when constructively received
• Cannot be rolled over to IRA or another retirement plan
• Reported as income
• Usually not necessary—used by those who do not understand retirement governmental plans
Annuities and Supplemental Benefits

Employer Payments to 403(b) and 457(b) Plans

- Not creditable in most states
- Higher limits 403(b)
- Can attach “vesting”

Employee Payments to 403(b) and 457(b) Plans

- Creditable
- Lower limits, coordinated with member deferrals
- Cannot attach “vesting” under tax rules
- Can be paid by Board with very careful wording
  - In Texas, this may be creditable for TRS if worded properly

A combination of the two provides a long-term incentive and creates stability within the Team of 8.
Annuity Pitfalls Employer Paid

Plan Documents – A must-have if employer paid
• No plan documents means that, if audited, the IRS isn’t sure whose money it is and you likely get stuck with a tax bill

Specific Account Name
• DO NOT let it be set aside in a non-retirement district account. If audited, the IRS isn’t sure whose money it is and you likely get stuck with a tax bill

Comingling of Employee and Employer Contributions
• Best to keep separate to avoid confusion on whose dollars are whose. Especially if invested.

Comingling of Employee and Employer Contributions
• The employee should not have the option to take the contribution as cash. Should be a non-elective deferral.
Supplemental Retirement Plans

Pros

• Helps plan for retirement and long-term financial needs

• If done properly, some can count for creditable compensation

• Lots of flexibility to meet the needs of the Superintendent and School Board

• Can be included by using words, not numbers

• Excellent tool for maintaining a quality superintendent

Cons

• May not count as creditable compensation

• Can be complex and require detailed work by staff

• If not set up properly, they can create significant liabilities to the Superintendent

Remember all investing involves risk.
Getting the Contract
Retirement Ready
A “Retirement Ready” Contract

• The timeline of getting the contract “retirement ready” is important. Boards should not take it as an indicator of imminent retirement.

• Should be specifically tailored to the District and Superintendent.

• Process should begin early in order to comply with TRS rules and avoid certain items not being included as creditable compensation.

• Spiking – Texas has rules that do not allow a certain amount increase/conversion in the final years of service. Beware. Applies even if change districts.

• Can act as a “handcuff” if trying to hold on to a good Superintendent.
The Next Negotiation
Things that can **Hurt** the Negotiation Process

• A Compensation Questionnaire

• Being a Team of 9 instead of a Team of 8

• Not being knowledgeable of the current market value

• Lack of a timeline or one that is not realistic

• Pressure to sign or pressure to act
Use of an Intermediary/Attorney

- Reduces stress of negotiating
- If anything goes wrong, animosity directed toward the intermediary
- Access to experts who do this regularly
- Provides detailed comparison of peer and aspirational districts
- Critical to review legal, other non-financial and governance provisions

Remember all investing involves risk.
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Thank you.

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