

SUPERINTENDENT
SUSPENSION/TERMINATION DURING CONTRACT

BJCE
(LEGAL)

Suspension Without Pay	<p>A board may, for good cause as determined by the board, suspend a superintendent without pay pending discharge or in lieu of termination. The suspension may not extend beyond the end of the school year. <i>Education Code 21.201(1), .211(b)</i></p> <p>The procedures for hearings before a hearing examiner apply if a superintendent requests a hearing after receiving notice of a proposed decision to suspend the superintendent without pay. <i>Education Code 21.251(a)(3)</i></p>
Back Pay	<p>A superintendent who is not discharged after being suspended without pay pending discharge is entitled to back pay for the period of suspension. <i>Education Code 21.211(c)</i></p>
Contract Termination	<p>The board may terminate a term contract and discharge the superintendent at any time for good cause as determined by the board. <i>Education Code 21.211(a), .212(d)</i></p>
Due Process	<p>Before dismissal for good cause, a superintendent shall be given notice of the charges against him or her, an explanation of the district's evidence, and an opportunity to respond. <u><i>Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985)</i></u></p>
Hearing	<p>If a superintendent desires a hearing before an independent hearing examiner on a proposed decision to terminate the superintendent's term contract, the superintendent must file a written request for such a hearing with the commissioner of education not later than the 15th day after the date the superintendent receives written notice of the proposed action. The superintendent must provide the district with a copy of the request. The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. <i>Education Code 21.251, .253 [See DFD]</i></p>
Severance Payments	<p>A board that makes a severance payment to a superintendent shall report the terms of the payment to the commissioner.</p>
Duty to Report	<p>A district that makes a payment of any kind to a departing superintendent must file with TEA a Superintendent Payment Disclosure Form. No form is required to be filed for payments already earned and payable under the terms of a terminated employment contract, such as a payment for accrued vacation.</p> <p>The interim superintendent, new superintendent, or board president is responsible for timely filing the Superintendent Payment Disclosure Form. The form must be filed by the 60th day after the district executes the agreement to make the payment or the 60th day after any payment under such an agreement, whichever is sooner. Filing of the disclosure form is required regardless of whether a district considers a payment to be a severance payment as that term is defined below. Compliance with the reporting re-</p>

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quirement is part of the district's compliance with required financial accounting practices under Education Code 39.057. Failure to comply may result in sanctions.

Required
Documentation

A district must enclose with the submitted Superintendent Payment Disclosure Form a copy of the superintendent employment contract and a copy of the termination or severance agreement. A district must provide the commissioner with any information or documentation that the commissioner requests under 19 Administrative Code 105.1021(b)(4) in order to determine if a payment is a severance payment.

Reduction of State
Funds

The commissioner shall reduce a district's Foundation School Program (FSP) funds by any amount that the severance payment exceeds one year's salary and benefits under the superintendent's terminated contract. The commissioner will reduce the district's FSP funding for the school year following the school year in which the first payment requiring an FSP reduction is made to the former superintendent. The commissioner also will reduce the district's FSP funds in the school year following each school year that any additional payment requiring an FSP reduction is made to the former superintendent. If a district's liability to the state exceeds the total of the district's estimated payments of FSP funding for the remainder of the school year, the district is subject to reductions in its FSP funding for subsequent school years until the liability has been fully liquidated.

A reduction in FSP funding under these provisions does not affect a district's obligation to comply with all provisions of Education Code Chapter 42, including its obligation to provide educational services to special populations.

Definition

"Severance payment" means any amount paid by a board to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of early termination of the contract. "Severance payment" includes any payment for actual or threatened litigation involving or related to the employment contract.

Payments to a former superintendent who remains employed by a district in another capacity or contracts with a district for services may be severance payments in whole or in part, if the payments are compensation for the early termination of a prior employment agreement.

Education Code 11.201(c); 19 TAC 105.1021