**Annual Administrator Contract Review**

**By: Attorney Malina Piontek**

With the first third of the school year rapidly coming to a close, it might be tempting to relax a bit and start to look forward to the lull that winter break promises. But this is exactly the right time of year for conscientious administrators to review administrator contracts, especially if there is any inkling that: 1) your contract may not be renewed; 2) you might be asked to assist your district administrator with other administrative personnel who are not working out as well as had been hoped; or 3) you play a dual role as principal/district administrator. Statutory notice requirements and even your own contractual language can prove to be traps for the unwary. So whether you are a brand new or experienced administrator, what do you need to know about the annual review of administrator contracts, and how can you be reassured that your own contract will not work against your best interests?

To answer these questions, new and experienced administrators alike are wise to review the basic statutory requirements and deadlines for renewal or non-renewal of administrator contracts. It is also a good idea to have a solid understanding of contract extensions/rollovers, which is a separate but related concept. Third, consider possible changes that might be made to your existing contract when it is time to negotiate a new contract. And finally, be mindful of a few practical considerations involving the board and the broader community. Each of these are addressed below.

**Be familiar with Wisconsin’s administrator contract renewal/non-renewal statute and its associated deadlines.** Wisconsin law requires school boards to contract with administrators, in writing, as well as to comply with specific contract non-renewal procedures and deadlines. <http://docs.legis.wisconsin.gov/statutes/statutes/118/24> In particular, employees who meet the statutory definition of “administrator,” must be given written notice prior to both preliminary and final notices of contract non-renewal. Preliminary notice and notice of non-renewal are concepts that come into play during the final year of an administrator’s contract. For more information about who is considered an administrator under the law, see <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/1> and <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/8>.

Preliminary notice that non-renewal of an administrator’s contract is being considered must be provided to an administrator, by *registered* *mail*, no less than **five months** prior to the expiration of the contract. <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/7> For example, for a contract ending on June 30, 2015, the school board must provide the administrator with the required preliminary written notice that his/her contract may be non-renewed by January 31, 2015.  A final notice of renewal or non-renewal of the contract must be issued at least **four months** prior to the contract’s expiration date or, in this example, February 28, 2015.

Remember that, should you be issued a preliminary non-renewal notice in a timely fashion, you have the right to request a public or private hearing before the board prior to being given final notice of refusal to renew the contract. You also have the right to request a statement of reasons for the proposed non-renewal, which must be provided to you prior to the hearing. If you want a statement of written reasons for the proposed non-renewal, you should request the statement as part of your hearing request. Be sure to specify whether you want a public or private hearing. The request must be made within seven days after receiving the preliminary non-renewal notice. <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/7> The statute does not specify whether the seven-day requirement is seven calendar days, or seven business days. To preserve your rights, it is wise to assume it is seven calendar days.

If the specific preliminary and final contract renewal deadlines are not met, the current contract continues in force for another *two years*, by operation of statute.   [http://docs.legis.wisconsin.gov/statutes/statutes/118/24/6](http://docs.legis.wisconsin.gov/statutes/statutes/118/24/6" \t "_blank)  This is true whether the underlying contract is for a one-year term, or atwo-year term.

Administrators who receive a notice of renewal of their contracts, *or who do not receive any notice*of renewal of, or refusal to renew, their contracts within the statutory deadlines are nonetheless required to accept or reject their contracts *in writing* on or before a date **three months** prior to the contract expiration. <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/6> This is a very important, although often ignored, step in the administrator contract renewal process. For a contract ending June 30, this letter of acceptance or rejection must be filed with the school district clerk on or before March 31. In contrast, for administrators with continuous or rolling contracts, this notice need not be filed until there is a definite ending date for the contract.

Here is a sample letter that may be used as a guide to accept a new two-year contract when no notice has been given:

Sample Letter

Contract Ending June 30, 2015

March 31, 2015

(Name and address of school district)

Attention: (School district clerk)

Dear\_\_\_\_\_\_\_:

My employment contract as (position title) expires on June 30, 2015.

Since I have not yet received a new contract, I am providing notice pursuant to section 118.24(6) of the Wisconsin Statutes that I accept an extension of my contract for an additional two years.

I would like to meet with the Board as soon as convenient to discuss the terms of my new contract as well as an adjustment of my compensation and benefits.

Thank you for your attention to this matter. I look forward to finalizing the terms of my new contract.

Sincerely yours,

(signature)

Is your analysis done once you meet the statutory renewal and non-renewal deadlines? The simple answer to this question is no. Contracts may very well contain provisions that *differ* from or *expand upon* the statutory renewal and non-renewal provisions. Those differences must be taken into account, and modified as appropriate through the negotiations or non-renewal process.

State law requires administrator contracts to be issued for a term not to exceed two years. One year contracts are permitted. Contracts for two years may provide for “one or more extensions of one year each.” <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/1> One-year extensions may be triggered, or not triggered, by an *affirmative* act of the board. For example, a contract might contain a provision stating that the contract will extend for a one-year period if the school board gives the administrator notice by a given date. If a board in fact takes affirmative steps to notify the administrator that it is permitting the contract to extend by the contractual deadline, then the contract will extend by its own terms for another year. Likewise, if a school board takes affirmative steps to notify the administrator that it will *not* allow the contract to extend by its own terms by the contractual deadline, the extension will not take effect. There is no just cause requirement for a decision not to extend an administrator contract. Morever, such a decision should not be considered to be a negative refection on the administrator’s job performance.

If the board votes not to permit a contract to extend, the board will have to separately comply with the statutory non-renewal requirements (and deadlines) for providing preliminary and final notices of contract non-renewal during the final year of the contract. If it fails to do so, then the contract will automatically extend for a period of two years. <http://docs.legis.wisconsin.gov/statutes/statutes/118/24/6>

The flip side to a board taking affirmative steps to extend or not extend a contract is the situation where a board simply *fails* to address the extension situation by the contractual deadline. In this example, a contract will automatically extend (or “roll over”) for one year if the board does not act to stop the roll over by the deadline contained in the administrative contract.

These considerations point out the importance of knowing the specific expiration dates of your contract, as well as the administrator contracts of any of your direct reports. While contracts typically expire on June 30, not all do. And while most school districts have consistent expiration dates for all administrators, that is not always the case either. Since the statutory renewal and non-renewal deadlines count backwards from the administrator contract’s expiration date, it is imperative that those deadlines be carefully and individually determined.

Look ahead to what changes your existing contracts might require so they better align with changes in the law, or changes that you would like to see going forward. In the near future, school districts may legitimately need to add language to administrator contracts due to requirements imposed by new laws like the Affordable Care Act (ACA). <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap157-subchapI-sec18001.htm> The ACA prohibits employers from offering insured and self-insured benefit plans that discriminate in favor of highly compensated employees, which typically would include administrators. Regulatory guidance has not yet been forthcoming from the federal government. Nevertheless, do not be surprised if current and new administrator contracts contain language permitting the district to change insurance plans during a contract term in order to comply with the ACA’s non-discrimination requirement.

A desire to modify a contract may be unrelated to changes in the law, like the ACA. The parties to an administrator contract may mutually agree to make modifications to the original contract for any number of reasons. During the renewal/non-renewal timeframe, for example, consider provisions that may need to be modified or renegotiated, such as compensation, professional development, attendance at conferences, job title and description, liquidated damages in the event of a contract breach, standards for dismissal (whether just cause, arbitrary and capricious or another standard), contract days, sick and personal leave days, and fringe benefits.

One item in particular that should be considered during the administrator renewal/non-renewal period is the administrator salary. Many administrator contracts set forth a specific salary for the first year of the contract, but then state that the salary for the second or subsequent year shall be determined by the board, but shall be no less than the salary paid in the first year. The salary for the second year is thus subject to negotiation with the board. That being said, the board may not unilaterally *decrease* the salary for the second year, given the plain language of the contract. Rather, the board must either reach mutual agreement with the administrator to reduce the salary, freeze the salary, or offer an increase for the second year.

Job location, description and title also bear mentioning. A Wisconsin court has held that, where an administrator contract does not contain a provision allowing for reassignment, a school board’s reassignment of an administrator to a school different from the one specified in the contract constituted an impermissible, unilateral modification of the contract. The logic behind this ruling is that an administrator cannot be bound to the terms of a contract to which he or she did not agree. <http://scholar.google.com/scholar_case?case=6568051472313697911&q=2004+WI+App+55&hl=en&as_sdt=4,50&as_vis=1> Thus, for example, a contract that specifies that you will be principal of Lincoln High School will be breached should your school board attempt to unilaterally reassign you to Hamilton High School, midway through the contract. Along the same line of reasoning, this concept may be extended to job descriptions and titles set forth in administrator contracts.

Practical Considerations. Aside from the very specific legal requirements identified above, a few practical considerations include the following:

* To ensure the district does not miss any non-renewal or renewal deadlines, work backwards from the individual administrator contract’s expiration date to determine the statutory preliminary and final non-renewal deadlines. The need to work backwards must also include factoring in time for scheduled board meetings and their associated notice posting deadlines and requirements.
* Especially in the wake of Post-Act 10 handbook development, review your administrator contract language to see if it is consistent with corresponding handbook provisions. The same applies to board policies. Where they are inconsistent, contractual provisions will control. However, if you have a question about the intent of your contract, it is still not a bad idea to point out inconsistencies and seek clarification about contractual intent at this time.
* Because principals are often the public face of the school if not the district, you may be approached by members of the public and/or board members if there is a particularly messy or public non-renewal. Keep your administrator in the loop about any such conversations, when possible, avoid engaging in such conversations, and refer the questioner up the chain of command as appropriate.
* If you anticipate non-renewal of a particularly popular administrator, expect public backlash and, possibly, the attention of the media. Work with your administrator to create a plan for dealing with public or media inquiries.
* Enlist the help of district legal counsel. The non-renewal of an administrator contract often includes complex legal issues, such as due process and free speech considerations, where it will be essential to rely on your counsel’s legal expertise.

Conclusion. Administrators should have a solid understanding of the specific rules and deadlines governing renewal and non-renewal of administrator contracts. Being familiar with administrative contract provisions, especially contract extension provisions and expiration dates, is paramount. Failure to have a solid understanding of these provisions may result in errors in the non-renewal or contract extension process that could void a planned non-renewal, or affect your own contractual rights. Finally, during your planning phase, consider practical implications for concluding the renewal or non-renewal of administrator contracts, such as those involving meetings with the board, the substance of board policies or handbooks, community and media response to the action, and developing a plan for dealing with the media.

*This article was prepared by Attorney Malina Piontek, AWSA’s new Level I Legal Services Provider. Ms. Piontek wishes to thank Attorney Mary Anne Oemichen for her generous contributions to this article. You may direct your Level I call-in questions to Malina at 608-497-3037. The views expressed herein are exclusively those of Ms. Piontek. This article was designed to provide you with general authoritative information and with commentary as a service to AWSA members. It should not be relied upon as legal advice. You are encouraged to contact your district legal counsel should you require legal advice regarding this topic.*