



The Role of an Interim or Acting Superintendent

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An extended period of time often exists between the departure of the previous superintendent and the arrival of the new one. A commonly asked question is whether the board must designate an interim or acting superintendent during this period. These frequently asked questions will help navigate the sometimes confusing process of selecting someone to perform the duties of a superintendent during the transition period.

Q: Are we required to hire an interim or acting superintendent?

A: The Texas Education Code does not expressly require a district to have a superintendent. The requirement may, however, be implied. Law and policy frequently require the superintendent of a district to perform certain tasks or give the superintendent exclusive authority in certain areas.¹ Someone in the district must be designated to perform these tasks or exercise the authority.

Q: What is the process for hiring an interim or acting superintendent?

A: Little legal guidance exists as to the terms of employment for the person performing the duties of the superintendent during the transition period. As developed through custom and practice, boards usually use one of two methods for temporarily filling a superintendent's shoes: (1) retention of a temporary superintendent from outside the district—typically called the “interim superintendent”; or (2) temporary assignment of the superintendent's duties to an existing employee—typically called the “acting superintendent”.

Q: How do we contract with an interim superintendent?

A: Because the interim superintendent is a temporary, substitute position, the contract does not fall within the requirements of Texas Education Code chapter 21. TASB Legal Services advises boards to document the parties' understanding of the interim services by entering into a written contract not governed by Chapter 21. A sample Interim Superintendent Contract is located in the *TASB Legal Services' Guide to Superintendent Contracts*.

Q: How do we contract on extra duties for an acting superintendent?

¹ See, e.g., Tex. Educ. Code §§ 11.1513(a)(2) (the superintendent has sole authority to recommend personnel), 21.006(c) (the superintendent must report educator misconduct to SBEC), 21.409(b) (a request for temporary disability leave must be made to the superintendent); Tex. Code. Crim. Proc. art. 15.27(a) (the superintendent shall notify instructional personnel of reports from law enforcement).

A: The second method of designating a temporary superintendent—temporary assignment of the duties to an existing employee—is less complicated. A stipend agreement and payment is acceptable to cover the extra duties as an acting superintendent. The board may decide to divide the superintendent’s duties among several employees. In such case, one of the employees should be designated as the official acting superintendent. A form for a Supplemental Duty Agreement for an acting superintendent is included in the *TASB Legal Services’ Guide to Superintendent Contracts* book.

Q: *Can an interim superintendent be a candidate for permanent superintendency?*

A: Yes. If the interim or acting superintendent is an internal candidate for the permanent position, the board and internal candidate should take care to preserve that person’s status as a candidate. To the extent possible, the internal candidate should not seek nor should board members provide greater access to information about the search than would be available to other candidates. Moreover, the internal candidate may choose to distance him or herself from the search firm selection process in order to interact with the selected firm like any other candidate. Having an internal candidate present during meetings with the search firm may give the impression that he or she has an unfair advantage, which can spoil the process and even cause the internal candidate unnecessary difficulty.

Q: *Can the interim superintendent participate in the search process for a permanent superintendent if he or she is not a candidate for the superintendency?*

A: Yes, he or she may take an active role in assisting the board in the search process. For example, if the board is considering hiring a professional search firm to assist in the search process, an interim or acting superintendent who is not a candidate may be actively involved in communicating with potential search firms, organizing interviews with potential firms, and providing information to a firm once selected.

For more information on the superintendent hiring process and interim, acting or final superintendent sample contracts, see *TASB Legal Services’ Guide to Superintendent Contracts*. Board members, superintendents, superintendent administrative assistants, and CSA members may access the Guide on-line and download it for free using their myTASB password.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/role-of-interim-or-acting-supt.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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