

Administrator Contracts



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Topics covered

- ▶ Who is covered by § 118.24 Wis. Stat.?
- ▶ Contract requirements and term.
- ▶ Renewal and nonrenewal of administrator contracts.
- ▶ Contract provisions to include and avoid
- ▶ Due process (time permitting)



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Who is covered by § 118.24?

- ▶ Covered in all instances: § 118.24 (1)
 - District administrator.
 - Business Manager.
 - School principals.
 - Assistants to such persons.
- ▶ If they are employed to perform administrative duties only, the following administrators are also covered: § 118.24 (8).
 - Personnel administrators and supervisors.
 - Curriculum administrators.
 - Assistants to such persons.

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Basic Contract Requirements

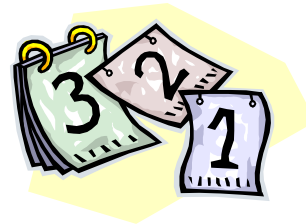
- ▶ Common law requirements for an employment contract:
 - Competent parties.
 - Legal subject matter.
 - A meeting of the minds of both parties.
 - Detailed provisions, including salary, duties, job security, and contract term.
 - Valid consideration.
- ▶ Administrator contracts must be in writing, approved by a majority vote of the full membership of the board, and filed with the school board clerk. 118.24(6).



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Administrator Contract Term

- ▶ The term may be for any period of time up to a maximum of two years. § 118.24 (1).
- ▶ A contract with a term of two years may provide for one or more extensions of one year each. § 118.24 (1).



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Administrator Contract Term

- ▶ What does it mean to “provide for one or more extensions of one year each?”
 - The statute does not indicate what must be done to provide for a one-year extension.
 - An “extension” should consist of adding one year to the administrator’s contract term unless the school board takes whatever action that is specified in the contract to prevent the extension.
- ▶ There is no statutory limit to the number of one-year extensions; however, it’s unlikely that a board could give more than one, one-year extension at a time.



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Administrator Contract Term

- ▶ Sample language:
 - *Automatic Extension: Unless the board decides on or before the 31st day of January of first year of the contract term that the term of this contract shall not be extended, the same will, without further action, be automatically extended for another year (that year being July 1-June 30) under the same terms and conditions thereof, subject to any salary or benefit adjustments, if any.*
 - *Notice not to extend this contract for an additional year shall be given in writing, personally delivered to Superintendent or mailed by certified mail, return receipt requested. Such notice must be personally delivered or mailed on or before the 15th day of February prior to the next year.*

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Administrator Contract Term

- ▶ Sample language (continued):
 - *The Board of Education in its sole discretion and with or without cause may decline to extend this contract for an additional year. Further, if requested by Superintendent, this contract shall not be extended. In either event, the contract shall continue only for the term applicable (that is, the remaining portion of the current year and, as appropriate, the remaining year of the term).*
 - *If the Superintendent fails to advise the Board of Education [of this provision relating to the extension of this contract during the preceding month of December], the contract shall not automatically extend for another year.*

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Administrator Contract Term

- ▶ May administrators be simultaneously given more than one two-year contract?
- ▶ Klaus v. Eau Claire Area School District, Federal District Court, Western District of Wisconsin, 6/18/10, 7/13/10.
 - The district simultaneously entered into two, two-year contracts, the second of which had a possible one-year extension.
 - The second of the two two-year contracts, which covered the 2007-11 school years, was void and unenforceable because it allowed a longer contract term than is provided for in § 118.24 (1) Wis. Stats.

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Administrator Contract Term

- ▶ May administrators be simultaneously given more than one two-year contract?
 - *[A] plain reading of section 118.24(1) limits a school administrator's employment contract to a single two-year term, with the possibility of rolling, one-year extensions. Stated another way, the statute's plain meaning prohibits employment contracts that explicitly or, as is the case here, implicitly lock-in an administrator to a term of employment of more than two years with the possibility of additional one-year extensions. Klaus v. Eau Claire Area Sch. Dist., Federal District Court, Western District of Wisconsin, 6/18/10.*



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Contract Term - Renewal

- ▶ A school board can renew an administrator contract by giving at least 4 months' notice (from the expiration date) in writing of the board's intent to renew the contract. § 118.24 (6).
- ▶ The school board may take no action, in which case the contract is automatically extended for two years. § 118.24 (6).
- ▶ In either case, the administrator shall accept or reject the renewal or automatic extension of his or her contract in writing at least 3 months prior to the contract expiration. § 118.24 (6).



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Contract Term - Nonrenewal

- ▶ Preliminary notice of contract nonrenewal:
 - The school board shall give preliminary notice in writing by registered mail at least 5 months prior to the expiration of the contract. § 118.24 (7).
 - The notice must state that the administrator has a right to request in writing a hearing before the board within 7 days of receiving the preliminary notice of nonrenewal. § 118.24 (7).
 - The notice must state that the administrator may request a public or private hearing, and that, if the administrator requests a hearing, he or she may also request that a statement of the board's reasons for considering nonrenewal be provided in writing before the hearing. § 118.24 (7).



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Contract Term - Nonrenewal

- ▶ The administrator may request a hearing with the school board.
 - The request must be made in writing within 7 days after receipt of the preliminary notice of nonrenewal.
 - The administrator may request a public or private hearing.
 - If the administrator requests a hearing, he or she may also request that the reasons upon which the school board is considering nonrenewal be provided in writing.
 - The school board is not required to make formal findings of facts and conclusions of law following the hearing, *see Holdridge v. Stevens Point Area Pub. Sch. Dist.*, Wis. Ct. App., 1987.

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Contract Term - Nonrenewal

- ▶ No administrator may be employed or dismissed except by a majority vote of the full membership of the school board. § 118.24 (6).
- ▶ The school board must give notice in writing of nonrenewal of the administrator's contract no less than 4 months prior to the expiration of the administrator's contract. § 118.24 (6).
- ▶ If no such notice is given, the contract then in force shall continue in force for 2 years. Any such person who receives notice of renewal or who does not receive notice of renewal or refusal to renew the person's contract at least 4 months before the contract expiration shall accept or reject the contract in writing on or before a date 3 months prior to the contract expiration. § 118.24 (6).

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Contract Term - Nonrenewal

- ▶ Example timeline:
- ▶ District administrator has a two-year contract with a term beginning 7/1/18 and expiring 6/30/20.
- ▶ The contract contained language providing for a one-year extension, but, pursuant to that language, the board notified the administrator in writing that it would not extend the contract in January 2019.
- ▶ The school board must take formal action and give preliminary notice in writing of nonrenewal of the administrator's contract, via registered mail, no less than 5 months prior to the expiration of the administrator's contract – in other words, no later than 1/31/20.

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Contract Term - Nonrenewal

- ▶ Example timeline (continued):
- ▶ If the administrator chooses to exercise the right to a hearing, the administrator, within 7 days of receiving preliminary notice of nonrenewal, must request that the board provide a hearing and written reasons for considering nonrenewal – in other words, if preliminary notice is received 1/31/20, on or before 2/7/20. The written request for a hearing shall include a statement requesting either a private hearing or a public hearing before the board.
- ▶ The board should provide the reasons for nonrenewal in writing prior to the hearing, hold the hearing, take action to renew or nonrenew the contract, and provide written notice of such renewal or nonrenewal of the administrator's contract no less than 4 months prior to the expiration of the administrator's contract – in other words, not later than 2/29/20.

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Contract Term - Nonrenewal

- ▶ Example timeline (continued):
- ▶ If no such notice is given, the contract then in force shall continue in force for 2 years.
- ▶ Any such person who receives notice of renewal or who does not receive notice of renewal or refusal to renew the person's contract at least 4 months before the contract expiration shall accept or reject the contract in writing on or before a date 3 months prior to the contract expiration – in other words, no later than 3/31/20.

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Contract Term - Mutual Modification

- ▶ Nothing in this section prevents the modification or termination of an employment contract by mutual agreement of the parties. § 118.24 (6).
- ▶ The offering of a new one-year contract to an administrator who has a two-year contract will require the board to act within the nonrenewal timelines to nonrenew the existing two-year agreement, if the administrator rejects the one-year contract and the board is unwilling to allow the agreement to automatically renew for two more years.

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Mutual Modification

- ▶ The same holds true if the board offers an administrator a contract with a lower salary than the administrator's current salary, the administrator rejects the proposed modification, and the board is unwilling to allow the current agreement (and salary contained therein) to renew for two more years.
- ▶ Going back to our previous example, if the board wants to propose a new one-year contract, or a contract with a lower salary, such a proposal should be given to the administrator no later than December 2019, so the administrator has time to consider the offer, and the board still has time to take action to give preliminary notice of nonrenewal if the administrator rejects the new contract offer.

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Mutual Modification/Nonrenewal

- ▶ *Moral of the story:*
- ▶ Nonrenewal and/or modification of an administrator's contract requires:
 - ▶ (1) a detailed understanding of the specific terms of the administrator's contract,
 - ▶ (2) a detailed understanding of the statutory nonrenewal timelines and procedures, and
 - ▶ (3) many months of detailed pre-planning by the school board.

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Grievance Procedure

- ▶ Are administrative nonrenewals considered “terminations” subject to the district’s statutorily mandated grievance procedure?
 - Although a district could argue that a nonrenewal is not a termination because the separation from employment is not immediate (i.e., the district is simply informing a teacher or administrator that it is going to let the existing contract expire at the end of its term), a recent Wisconsin Court of Appeals decision adopted the common dictionary meaning of “terminate,” which is to “[t]o discontinue the employment of; dismiss.” *See, Dodge County Professional Employees Local 1323-A v. Dodge County*, 2013AP535 (Wis. Ct. App. Dec. 5, 2013). *See also, Schneider v. Howard Suamico Sch. Dist.*, Case No. 2013-CV-397 (Jan. 22, 2014).
 - Given the holding in this case, a court could hold that a nonrenewal constitutes a dismissal or termination subject to the statutory grievance procedure, especially if the nonrenewal is for performance reasons (as opposed to budgetary reasons) or the administrator has just cause protection for nonrenewal. *But see, Marks v. Wis. Rapids Pub. Sch.*, Case No 14CV205 (May, 3 2016).

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SALARY PROVISIONS

- ▶ *Are administrator salaries subject to Act 10’s restrictions on increases to total base wages?*
- ▶ No, a municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a general municipal employee with respect to any of the following:
 - 111.70(4)(mb)1. Any factor or condition of employment *except wages*, which *includes only total base wages* and excludes any other compensation, which includes, but is not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

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SALARY PROVISIONS

- ▶ However, a board could still see groups of administrators join together to make group demands:
 - Prohibited “collective bargaining”?
 - Enforceable?
 - *Kabes v. Sch. Dist. of River Falls*, 2004 WI App 55
 - Such an “agreement,” which was entitled “Personnel Practices for Leadership Management Team” and that outlined administrators’ responsibilities, rights and employment benefits as well as the District’s rights and responsibilities, was enforceable only upon the administrators who actually signed it.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Should the contract identify the administrator’s specific assignment?
 - *Kabes v. Sch. Dist. of River Falls*, 2004 WI App 55
 - Individual contracts specifically named Kabes as the high school principal and Buchholz as its high school assistant principal.
 - During the spring semester, the District reassigned Kabes to one of its elementary schools and Buchholz to one of its middle schools.
 - The District did not change their duties or compensation, but the administrators’ filed suit and claimed that the district’s reassignments breached their individual contracts.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Should the contract identify the administrator's specific assignment?
 - *Kabes v. Sch. Dist. of River Falls*, 2004 WI App 55
 - The District argued that it retained its statutory right to assign and transfer its administrators, but the court held that the district abdicated those rights when it specifically contracted with the administrators to perform their duties *at the high school*.
 - Consequently, the court held that the district breached the contracts when it unilaterally transferred the administrators to different schools.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Should the contract identify the administrator's specific assignment?
 - Alternatives:
 - Make sure the contract states that the administrator is a District employee and that his/her assignment is not building- or location-specific.
 - Include a provision that the administrator's assignment is subject to change as educational needs dictate.
 - If the administrator's contract includes these provisions, the district will be able to unilaterally transfer or reassign the administrator provided the reassignment is not disciplinary or discriminatory and does not violate a handbook or policy provision.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Some administrator responsibilities are defined by statute, for example:
 - § 118.24 (2) School District Administrator shall:
 - (a) Under the direction of the employing school board, have general supervision and management of the professional work of the schools and the promotion of pupils.
 - (c) Make written recommendations to the board re: teachers, courses of study, discipline and other matters that require board attention and shall perform such other duties as the board requires.
 - (f) Disseminate information re: county drug/alcohol abuse services and establish procedures for student referrals.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Administrator responsibilities:
 - The contract should also reference those duties and responsibilities specified in the job description as well as any others contained in board policies or an employee handbook, but also note that the duties are subject to change as educational needs dictate.
 - Include a catch-all provision stating the district expects him or her to take part in/supervise extracurricular activities, group meetings, curriculum development, etc. and fulfill any other duties within the scope of his or her professional competence as assigned by the board.

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ASSIGNMENT & RESPONSIBILITIES

- ▶ Administrator responsibilities (continued):
 - Districts must clearly specify administrator responsibilities because, even if the contract does not specifically require the board to show that it has cause to terminate the administrator, the administrator still has a property right in the salary specified in the agreement and that property right cannot be taken away without due process.
 - Therefore, if a district terminates an administrator or non-renews an administrator with just cause protection, it still must be able to prove that it did so because the administrator failed to perform in accordance with duties and responsibilities contained in the individual contract.
 - Do economic reasons constitute cause to terminate a contract? *See Ploederer v. Osseo-Fairchild Sch. Dist.*, Case No. 05CV510 (Wis. Cir. Ct. 2008).

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LIQUIDATED DAMAGES

- ▶ Liquidated damages are not intended to be punitive, but rather to allow the district to recover the cost of finding a replacement administrator.
- ▶ Although a board may refuse to accept a resignation, a court would not likely order specific performance.

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LIQUIDATED DAMAGES

- ▶ 118.24 (6) . . . No such board may enter into a contract of employment with an administrator for any period of time as to which the administrator is then under a contract of employment with another board.
- ▶ Therefore, without a liquidated damages clause, a board would have to sue the administrator for breach of contract and/or the other district for tortious interference with a contract to recover any costs or damages.
- ▶ *See e.g., WASB's Legal Comment, Liquidated Damages in Teacher Contracts, (8/09).*

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OTHER PROVISIONS TO INCLUDE

- ▶ Savings clause
- ▶ Provision specifying that the contract is subject to the laws of the State of Wisconsin both in effect as of the date the contract is executed and enacted thereafter.
- ▶ Provision specifying that renewal & nonrenewal are governed by section 118.24, Wis. Stats.

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PROVISIONS TO AVOID

- ▶ Just cause for nonrenewal of an administrator's contract
- ▶ Waiver of statutory nonrenewal timelines & procedures
 - *Faust v. Ladysmith-Hawkins Sch. Systems*, 88 Wis. 2d 525 (1979)
- ▶ Individual layoff provisions
 - *Faust v. Ladysmith-Hawkins Sch. Systems*, 88 Wis. 2d 525 (1979)
 - "[E]ven had she known of her rights and had voluntarily acquiesced in her waiver, the waiver would be ineffective. Where a statutorily created private right serves a public policy purpose, the persons or entities protected by the statute cannot waive the right." *Von Uhl v. Trempealeau County Mut. Ins. Co.*, 33 Wis.2d 32, 146 N.W.2d 516 (1966); *Jones v. Preferred Accident Ins. Co.*, 226 Wis. 423, 425, 275 N.W. 897 (1938).

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PROVISIONS TO AVOID

- ▶ Contracts that proclaim administrators are at-will employees. For example:
 - A school board has the authority to dismiss a teacher before the expiration of the teacher's contract for **good and sufficient cause**. See *Curkeet v. Jt. Sch. Dist.*, 159 Wis. 149, 152, 153, 149 N. W. 708 (1914).
 - "Any inexcusable substantial violation by an employee of instructions, or neglect of duty of a substantial character, or any misconduct inconsistent with the relations of master and servant and which might injuriously affect the former's business, regardless of any express agreement on the subject, constitutes good ground for discharging the employee." *Millar v. Jt. Sch. Dist. No. 2*, 2 Wis. 2d 303, 313 (1957).
- ▶ Rolling or continuous two-year contracts.
- ▶ Health plan benefits that discriminate in favor of highly compensated employees such as administrators.
- ▶ Residency requirements

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Due Process

- ▶ The 14th Amendment to the U.S. Constitution prohibits the government (school boards included) from depriving any person of liberty or property without due process of law.
- ▶ Due process issues may arise when a board decision to nonrenew or terminate an administrator's contract raise property or liberty interests.



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Due Process

- ▶ Due process is a flexible concept – the process that is due varies with the significances of the individual and governmental rights involved.



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Due Process

- ▶ Administrators may have a property interest in completing the term of their contracts and the compensation contained therein.
 - Termination of employment before the end of a contract raises a property interest.
 - Nonrenewal of a contract does not by itself raise a property interest, unless the contract requires just cause for nonrenewal.
 - A suspension without pay probably raises a property interest, although “the Supreme Court has not had occasion to decide whether due process protections extend to discipline short of termination, Gilbert v. Homar, 520 U.S. 924, 929.” Klaus v. Eau Claire Area School District, Federal District Court, Western District of Wisconsin, 7/13/10.

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Due Process

- ▶ Administrators have a liberty interest in their good name and reputation. A liberty interest arises where an allegedly false charge is made against an administrator that:
 - Damages the administrator’s standing in the community (charges of dishonesty, treason or immorality); or
 - Limits the administrator’s freedom to take advantage of present or future employment opportunities.

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Due Process

- ▶ Due process requirements when property interests are involved:
 - Notice of charges.
 - Hearing prior to termination or nonrenewal.
 - An explanation of evidence used to support charges.
 - The administrator must be given an opportunity to state his or her case.
 - The board's decision must not be arbitrary or capricious, biased or discriminatory.
- ▶ If a liberty interest is at stake, due process requires that the administrator be given an opportunity prior to discharge or nonrenewal to clear his or her name.

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Notice Requirements for Termination or Dismissal

- ▶ s. 19.85(1)(b): (b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person . . . and the taking of formal action on any such matter; provided that the . . . public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken *and* of any meeting at which final action may be taken.
- ▶ The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

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QUESTIONS?

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