

Head of School Contracts

Independent schools are becoming more sophisticated and careful in the process of contracting with school heads, given the exigencies of the job and the need to protect both the school and the head. The goals of any contract with the school head should be enter into a professional relationship which defines the terms and legal basis for that relationship. The school lawyer should review the contract to insure that it meets with the wishes of the board and complies with all local, state, and federal laws. The head should employ his/her own lawyer to make sure that it meets his/her particular needs. ISACS recommends, however, that the terms of the contract be determined directly between the board and the head or head-elect; the lawyers should advise and supply the correct wording.

Typically, the following components appear in a contract for a head of school:

1. **Title and Responsibilities:** A listing of the major areas of responsibilities is appropriate, such as...

- Overseeing day-to-day operations (finances, plant, student life, admissions /marketing, program/curriculum, instruction, etc.)
- Long-range planning
- Faculty and staff hiring & firing/development/evaluation
- External relations (development/alumni/parent & public relations)
- Other duties as assigned by the board.

This section can refer to the job description used when the head was recruited. See separate ISACS monograph, "Head of School/President Job Description," for a sample. Most boards will want to use wording such as "responsibilities will consist of but not be limited to...."

2. **Salary and Benefits:** Note that ISACS can provide compensation and perquisite statistics on key administrators for schools of similar size and location.

- **Salary:** Salary should be specified for the first year, and, if a multi-year contract, may be spelled out for additional years, or the process for setting it specified. Heads with multi-year contracts may want a clause stating that it will be no less than the previous year's salary. A common practice is to base the salary on a defined CPI and add a given percentage or amount based on performance. Another is to base the salary on the average granted to all employees and add a given percentage or amount based on performance.
- **Benefits:** School-provided life, health, and disability insurance, vision, dental. Any benefits not given to all employees must be looked at by a human relations lawyer for legal and tax implications.
- **Vacation:** Standard in the industry is a 12-month term with 6 weeks of vacation, typically four weeks in the summer and two weeks scattered over school vacation periods during the year.
- **Tuition remission:** Again, anything given beyond what all employees receive, including tuition remission at other schools or college, is probably taxable and should be reviewed by a lawyer. Taxable remission can be grossed up to cover the taxes as part of the contract.
- **Housing:** 43% of NAIS school heads receive housing, and an additional 13% receive housing assistance. If the school provides housing, the contract should require the head use it to avoid taxation under current law.
- **Pension:** Anything in addition to a 403(b) plan given all employees must be looked at by the lawyers for compliance and tax purposes.
- **Deferred compensation:** Deferred compensation is usually limited to long-standing heads, and definitely must be drawn up by lawyers, as many IRS plans and regulations pertain.
- Additional perquisites often include a school-provided vehicle, club membership, split premium life insurance, etc. Any spousal travel paid by the board to accompany the head at conferences, for example, is taxable.

3. **Length of Term and Automatic Renewal:** Some schools still contract with the head on an annual basis, but most heads and schools are now moving towards a multiple year contract,

typically for three years, with a minimum of eight or nine months' notice by either party to terminate without cause. Many schools then go to a "rolling" contract, which automatically renews the original contract by a specified date for another year. A simple letter reaffirms the original contract, makes any needed changes, and updates salary and benefits for the additional year(s) as appropriate. Some schools who are satisfied with their heads offer contracts longer than three years, often with incentives such as a bonus for completion of the contract.

4. **Goals and Evaluation:** Contracts should specify annual goal-setting and evaluation exercises. Heads have the right to an annual performance review, and evaluation of the head is a major part of the board's supervisory duties towards their one employee. See separate ISACS monograph, "Evaluation of the Head of School," for suggested procedures and a sample evaluation instrument.

5. **Termination and Notice:** To protect both the institution and its key leader and to avoid abrupt departures or terminations that inevitably are disruptive and destructive, ISACS recommends that separation arrangements be carefully stipulated in the head's contract. The ISACS recommendation is a "hold-harmless" separation clause (with no need for cause to be stipulated by either party), with a minimum eight-month notice by either party: i.e., no later than November 1 each year, either party could indicate that the coming year would be the last. This clause is commonly called Termination Without Cause. Generally, head contracts will also spell out Termination With Cause, Termination Due to Death/Disability, and Termination by Mutual Consent. A word about each:
 - a. **Termination With Cause:** Pertains to the head of school and involves breach of law, fraud, unethical conduct, willful disobedience of a board directive, dishonesty, immorality, etc. A right to a hearing followed by immediate termination with no further notice if the board so votes is common.
 - b. **Termination Without Cause:** Pertains to either the board or the head of school, who may terminate the contract without giving a reason if given notice at least nine months (or 12, or whatever is agreed upon) prior to June 30. The head will receive full salary and benefits until June 30 whether or not the board removes him/her from office. Termination without cause after October 1 will result in an additional year's salary and benefits whether or not the board removes him/her from office.
 - c. **Termination by Mutual Consent:** If both parties agree, the contract can be voided at any time.
 - d. **Termination by Death:** Some statement as to how long, if at all, salary and benefits, will be paid to the head's heirs or estate is usually included. If a home is provided, it may be stipulated how long the family has to move out.
 - e. **Termination by Disability:** Timing of full-pay is normally coordinated with the school's long-term disability policy. Wording is often included about procedures should disability be disputed.

6. **Other:** Contracts should spell which state laws govern the agreement. They may also include additional clauses regarding conflicts of interest, confidentiality, limiting the head's services to the school, non-disparagement, use of alternative dispute resolution in the case of disagreement, etc.

ISACS staff is available for consultations on these matters. Again, lawyers for both the head and the board should review any contract.

See also Head of School Contract: Sample

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