On January 29, 2012, School Board Member, Jenny Prior Brown, asked the following questions:

QUESTIONS:

I understand there is a new Florida statute that limits severance pay to 20-weeks' pay. If that is the case, what is the statute and what does it provide? What is the impact of that new law on the options available for the termination clause of the contract? Does that mean that whether we enter into a 1, 5, or 10 year contract with the new Superintendent, if the board at any time terminates his/her contract with or without cause, the most we would have to pay him/her in severance is 20 weeks' salary?

With respect to both the term and termination clauses of the contract, I would like to know what is considered best practice as well as what is the norm. Could you please provide us with information related to the term and termination provisions of 5 or so recent Superintendent contracts from some of the largest 25 districts in the country? Also, what is the typical (if there is a norm) contract term in Florida? When I ask about termination provisions, I'm interested in both simple majority vs. super majority vote and severance packages.

RESPONSES:

Q: What is the statute and what does it provide?

A: The new Florida Statute governing severance pay is Florida Statute 215.425. This statute was substantively revised during the 2011 Legislative Session, including the addition of all of the language appearing under subsections (4) and (5). A copy of the statute is attached for your review. While Florida Statute §215.425 does apply to school board employees generally, there is a more specific provision contained in Florida Statute §1001.50(2) that explicitly addresses the employment contracts of district school superintendents, and following the rules of statutory interpretation, the more specific provision governs in the event of a conflict between the statutory provisions.

Florida Statute §1001.50 provides “that the district school board may not enter into an employment contract that requires the district to pay from state funds a superintendent an amount in excess of 1 year of the superintendent’s annual salary for termination, buyout, or any other type of contract settlement.” [Emphasis added]

Severance pay is defined in subsection (4)(d) of Florida Statute 215.425. For employment contracts entered into after July 1, 2011, the statute limits severance pay to a maximum of 20 weeks pay, if such a severance provisions is included in the contract (See subsection (4)(a)(1)) and to a maximum of 6 weeks pay if there is no severance pay provision in the contract (See subsection (4)(b)). Subsection (4)(a)(2) also contains
a provision that severance pay is prohibited when the employee has been fired for misconduct as defined in Florida Statute 443.036(29).

Q: What is the impact of that new law on the options available for the termination clause of the contract?

A: The impact of the statute is that the new superintendent’s contract cannot contain a provision requiring the Board to pay more than 20 weeks severance in the event that the superintendent is terminated without cause. The 20 week severance pay limit in the new statute does not apply to an appointed superintendent’s contract. The maximum severance for a superintendent that can be paid from state funds under Florida Statute §1001.50 is 1 year’s salary.

Q: Does that mean that whether we enter into a 1, 5, or 10 year contract with the new Superintendent, if the board at any time terminates his/her contract with or without cause, the most we would have to pay him/her in severance is 20 weeks’ salary?

A: Regardless of the term of the contract, the most severance the Board can agree to pay is 20 weeks’ salary in the event of a termination without cause. Regardless of the term of the contract, the most severance that the Board can agree to pay from state funds is 1 year’s salary. If there is a termination with cause for misconduct as defined in Florida Statute §215.425, then the Board cannot pay any severance salary.

Florida Statute §1001.50 does limit the use of “state funds” for salary and severance payments to $225,000. “State funds” in this context has been interpreted to exclude ad valorem property taxes collected by the County Tax Collector, making any payment in excess of $225,000 an internal accounting issue that must be tracked.

Q: With respect to both the term and termination clauses of the contract, I would like to know what is considered best practice as well as what is the norm. Could you please provide us with information related to the term and termination provisions of 5 or so recent Superintendent contracts from some of the largest 25 districts in the country? Also, what is the typical (if there is a norm) contract term in Florida? When I ask about termination provisions, I’m interested in both simple majority vs. super majority vote and severance packages.

A: Attached to this response is a matrix compiled by Human Resources that addresses the term and termination provisions in the Superintendent contracts that we have been able to obtain to date.