



SUFFOLK PUBLIC SCHOOLS

Office of the School Board Attorney
100 North Main Street
P.O. Box 1549
Suffolk, Virginia 23439-1549

Wendell M. Waller
School Board Attorney

(757) 925-6752
Fax: (757) 925-6751

**SCHOOL BOARD WAIVED ATTORNEY/CLIENT PRIVILEGE &
AUTHORIZED PUBLIC RELEASE OF THIS OPINION ON
JUNE 11, 2020**

IOP # 1920-17

The Honorable Sherri D. Story
School Board Member

Dear Board Member Story:

You asked whether the School Board complied with the language found in the Superintendent's Contract when it approved a revised budget¹ that included a "salary adjustment" for the Superintendent.

THE CODE OF VIRGINIA

Virginia Code Section 22.1-92 (1950), as amended, provides, in part:

A. It shall be the duty of each division superintendent to prepare, with the approval of the school board, and submit to the governing body or bodies appropriating funds for the school division, by the date specified in § 15.2-2503, the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division. The estimate shall set up the amount of money deemed to be needed for each major classification prescribed by the Board of Education and such other headings or items as may be necessary.

Upon preparing the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division, each division superintendent shall also prepare and distribute, within a reasonable time as prescribed by the Board of Education, notification of the estimated average per pupil cost for public education in the school division for the coming school year in accordance with the budget estimates provided to the local governing body or bodies. Such notification shall also include actual per pupil state and local education expenditures for the previous school year. The notice may also include federal funds expended for public education in the school division.

¹ Although the term budget is often used, Virginia law also refers to this document as an estimate of expenditures.

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The notice shall be made available in a form provided by the Department of Education and shall be published on the school division's website or in hard copy upon request. To promote uniformity and allow for comparisons, the Department of Education shall develop a form for this notice and distribute such form to the school divisions for publication.

B. Before any school board gives final approval to its budget for submission to the governing body, the school board shall hold at least one public hearing to receive the views of citizens within the school division. A school board shall cause public notice to be given at least 10 days prior to any hearing by publication in a newspaper having a general circulation within the school division. The passage of the budget by the local government shall be conclusive evidence of compliance with the requirements of this section.

Virginia Code Section 22.1-115 (1950), as amended, provides:

The State Board, in conjunction with the Auditor of Public Accounts, shall establish and require of each school division a modern system of accounting for all school funds, state and local, and the treasurer or other fiscal agent of each school division shall render each month to the school board a statement of the funds in his hands available for school purposes. The Board shall prescribe the following major classifications for expenditures of school funds: (i) instruction, (ii) administration, attendance and health, (iii) pupil transportation, (iv) operation and maintenance, (v) school food services and other noninstructional operations, (vi) facilities, (vii) debt and fund transfers, (viii) technology, and (ix) contingency reserves.

Regulations promulgated by the Virginia Department of Education found at 8VAC20-210-10, provides:

The following major classification of expenditures is prescribed for use by local school boards when the division superintendent, with the approval of the school board, prepares the estimate of moneys needed for public schools.

1. Instruction;
2. Administration, attendance and health;
3. Pupil transportation;
4. Operation and maintenance;

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5. School food services and other noninstructional operations;
6. Facilities;
7. Debt and fund transfers; and
8. Contingency reserves.

CONTRACT LANGUAGE

5.1 Salary: The annual salary of the Superintendent for the fiscal year [July 1, 2019 through June 30, 2020] shall be \$180,000.00. The annual salary of the Superintendent will be paid in equal monthly installments in accordance with the standard policy of the Board governing payment of professional staff members in the Division and prorated if this Contract is initiated on a date other than July 1. The annual salary of the Superintendent may be adjusted or increased by amendment for any subsequent fiscal year during the term of this Contract. Annual salary increases for the Superintendent shall equal no less than the average increase approved by the Board for instructional personnel for the corresponding fiscal year, unless the Superintendent has received an unsatisfactory performance evaluation. In no event, however, shall the salary adjustment reduce the annual salary below the salary of the preceding fiscal year unless otherwise agreed to by the Superintendent and Board in writing. Any adjustments to the annual salary for subsequent years shall be in writing and shall be in the form of an amendment or addendum to this Contract.

5.2 Sick Leave, Vacation and Holiday: The Superintendent shall be entitled to all benefits made available to certified personnel, including annual sick leave days, vacation days and holidays.

DISCUSSION

Virginia Code Section 22.1-92 requires that the school superintendent prepare, with the approval of the school board, and submit to the governing body appropriating funds for the school division, by the date specified in § 15.2-2503, the "estimate" of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division. The estimate must include each major classification prescribed by the Board of Education and such other headings or items as may be necessary. *See* Virginia Code § 22.1-92 (1950), as amended.

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One of the major classifications required by the Board of Education are expenditures for "administration." The salary of the school superintendent would be listed as an administration expense when estimating the amount of money needed for the support of the public schools.

After voting to approve the estimate of expenditures as recommended by the school superintendent, the estimate of expenditures then becomes the approved budget of the school board. The budget, as approved by the school board, is then submitted to the governing body appropriating funds for the school division. *See Virginia Code § 22.1-92 (1950), as amended.*

In order for there to be an adjustment in the salary of the school superintendent, there must be a corresponding contractual agreement or addendum signed by the parties indicating a change in the superintendent's salary. The amount indicated in the approved budget is merely an indication of what his salary could be, but a signed contract is still required.

The superintendent's employment contract specifically provides:

Any adjustments to the annual salary for subsequent years shall be in writing and shall be in the form of an amendment or addendum to this Contract.

The adopted budget does not adjust the superintendent's salary, only an amendment or addendum to the contract will adjust his salary. The School Board must vote in an open meeting in order to adjust the salary of the school superintendent. Although the School Board can convene a closed meeting for the purpose of discussing the superintendent's salary, no vote on any such salary adjustment can take place unless there is a vote in a public meeting. Virginia Code Section 2.2-3712(H), provides:

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

City Council appropriates funds to the School Board by lump sum and not by major classifications. Therefore, even after adopting the budget, the School Board can transfer funds from one major classification to another. Similarly, the school superintendent can transfer funds from within a major classification, among employee benefits, and among grant line items, without first securing the approval of the School Board. Board Policy Section 4-2.1, provides:

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A. The superintendent shall be responsible for administering the budget for Suffolk Public Schools in accordance with School Board policies and applicable state and federal laws and regulations.

B. The superintendent or his/her designee shall use appropriate fiscal planning and management methods, consistent with the best accepted business practices and educational goals of the School Board.

C. Should City Council appropriate funds to the School Board by total amounts (also referred to as lump sums), funds may be transferred by the School Board from one major classification to another. If funds are appropriated to the School Board by major classifications, no funds shall be expended by the School Board except in accordance with such classifications without the consent of City Council.

D. The superintendent is hereby authorized to make line item transfers (i) within a major classification; and (ii) among employee benefits; and (iii) among grant line items, without first securing the approval of the School Board.

Therefore, should the School Board vote in a public meeting to adjust the superintendent's base salary in an amount greater than what was in the approved budget, this line item can be adjusted accordingly.

Inflation causes cost of living expenses to regularly increase. As the price of everyday items such as food, housing, gas, clothing, and utilities rises, employees spend more. To remain in a consistent financial situation, employee wages must go up as living expenses go up. This is an added benefit given to employees of Suffolk Public Schools, which is known as a Cost of Living Adjustment (COLA). Pursuant to Section 5.2 of the Superintendent's Contract, the superintendent is entitled to "all" benefits made available to certified personnel, which would also include a COLA.²

Under the terms of the Superintendent's Contract, a COLA is not an increase in the superintendent's base salary. It is a contractual benefit given to all employees of Suffolk Public Schools. Any adjustment to the superintendent's base salary must be because of job performance and will require a written addendum to his contract. Section 5.1 of the Superintendent's Contract provides, in pertinent part, the following:

² The School Board allocates raises each year based on available revenue. Some years the School Board will do only a step raise, others only a COLA, and in some budget years both a step and a COLA. In the adopted School Board Budget for 2020-2021 only a COLA was included for the school superintendent.

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Annual salary increases for the Superintendent shall equal no less than the average increase approved by the Board for instructional personnel for the corresponding fiscal year, unless the Superintendent has received an unsatisfactory performance evaluation. . . . Any adjustments to the annual salary for subsequent years shall be in writing and shall be in the form of an amendment or addendum to this Contract.
[Underscoring added for emphasis]

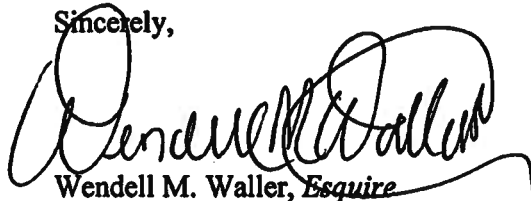
Therefore, if the Superintendent should only receive a COLA there is no need for an amendment in the superintendent's contract because an amendment is only required when there is a salary adjustment based on job performance.

CONCLUSION

The vote taken by the School Board to approve the revised budget did not violate the superintendent's contract because the vote to approve the revised budget did not alter the terms and conditions of the superintendent's contract of employment. The approved budget only allows for the superintendent to receive a COLA. Any adjustment to the superintendent's base salary above his receipt of a COLA must be in writing and in the form of an amendment or addendum, which must be approved by vote of the School Board at a public meeting.

I hope I have adequately addressed your question. Should there be any further questions or concerns, please do not hesitate to contact me.

Sincerely,



Wendell M. Waller, *Esquire*
School Board Attorney

xc: The Honorable Members of the Suffolk City School Board
Dr. John B. Gordon, III, School Superintendent