

Performance-Based Contracts: Nearly Five Years Later

[By Marcilene Dutton](#)

The famous House Bill 452 (P.A. 90-548), the so-called "school reform law of 1997," made many changes impacting schools. In the area of employment of administrators, the law allowed school boards to hire school administrators for a multiple year period of up to five years. At the same time, the law imposed that multiple year agreements must be "performance-based linked to student performance and academic improvement of schools within the district." Further, the law now requires that "each performance-based contract shall include the goals and indicators of student performance and academic improvement determined and used by the local school board to measure the performance and effectiveness of the superintendent and such other information as the local school board may determine."

Incorporating the Language

There are two basic approaches used to incorporate the performance-based goals or indicators into the employment agreement. The first method is to simply state the goals, whether contained in a paragraph or two or contained within a page or two, within the body of the contract. An example:

Academic Improvement and Student Performance Goals – This Agreement is a performance-based contract. The Superintendent shall meet the following student performance and academic improvement goals during the term of this Agreement, which the parties agree, are goals, which are linked to student performance and academic improvement within the schools of the District:

Goal A: To provide the resources to insure that the use of technological equipment and knowledge to utilize recent software is available to all students.

This Superintendent shall have a state approved technology plan on file. Subject to the Board providing the necessary financial resources, the district will have at least two computer labs and three to six networked computers in all classrooms.

Goal B: To provide services in cooperation with parents, community, staff and faculty that insure increased contact between all homes and staff resulting in support of children's social and emotional needs so that these problems do not impede student learning.

The Superintendent shall see that building principals, parent liaisons, guidance counselors, school social workers, and school nurses, as well as classroom teachers have contact with parents/guardians on a regular basis.

A second approach is to attach as an addendum or exhibit to the contract language that contains the specific goals. If this approach is used, text within the contract should reference the attachment. A simple paragraph that does the same could read:

Goals and indicators related to student performance and academic improvement of the schools within the district must be included in all multiple-year superintendent contracts. The parties have mutually agreed upon goals and indicators as well as the measurement of the same which are attached to this contract as addendum A.

A less frequently used, but just as effective method, is to include the goals in the annual evaluation instrument. If this method is used, the evaluation instrument should be made part of the contract. Somewhere, either in the contract or in a board motion referencing the completion of the evaluation, the parties should affirmatively state the evaluation contains the goals and that the parties "agree the goals and indicators contained in the evaluation are linked to student performance and academic improvement of the schools within the district."

There is no "right" or "wrong way" to reference the goals nor is there a required form the goals should take. However, the goals should be carefully crafted taking into account such intangible factors as: relevance/connection to the school's strategic plan or board goals; the amount of support the board has for the specific goal in question; and whether or not any changes in laws, rules, regulations or changes in employment relations or other unforeseen changes would hamper your attainment of the goals.

Note: A Concern: Make sure the contract contains goals that will support the entirety of the contract. A five-year contract with specific short-term goals that will all be accomplished in the first year could very well be construed to be a single year contract. Don't put yourself in a position to have the sanctity of your contract attacked. Likewise, setting out specific activities to be attained in each year of the agreement may put the board in a position of feeling like it is constrained from extending your contract until each goal is achieved.

A suggested approach is to be "date specific" with goals that can or need to be achieved by a certain date. At the same time, include at least one goal that can be achieved annually so your contract is supported by goals throughout its entirety. A two-part example illustrates this suggestion:

Goal #1: Present bonding options to the board designed to direct the board in setting the 2002 levies on the respective bonds.

Goal #2: Provide leadership for the annual development and modification of the school district school improvement plan.

If the board would like date specific goals, remind the board members that the contract can be amended in the future (when they extend your agreement next year) and/or the place to set out short-term goals is in the evaluation instrument.

Trends

I've been asked to define "trends" I'm seeing in the goals development area. It would be hard, if not impossible, to try to quantify the thinking of over 800 boards of education across the state. However, I have observed a few areas that seem to be popular currently.

Facilities: More and more goals are addressing "facilities concerns" facing districts. Consider the following examples:

Example 1: The Superintendent shall evaluate the buildings in the district to assess needed repairs or improvements. Subject to the Board's funding of repairs, actions shall be taken to ensure the safety of students and staff and to ensure compliance with prioritized needs addressed in the district's most recent 10 year Health and Life Safety Resurvey.

Indicators:

A. The Superintendent will meet with the head maintenance person, grounds person, and engineering consultant during the school year to develop plans for compliance with the most recent Health and Life Safety Resurvey.

B. A list will be developed documenting items in priority order. This list will be dependent on safety for students and staff, health and life safety money available, and the time length of the projects.

Measurement:

Annually, in the month of May the Superintendent will present a report to the board outlining those projects due to be completed the following summer or school year. During the months of August and September the Superintendent will submit a written report to the board outlining the status of health and life safety projects due to be completed during the summer just ending.

Example 2:

The Superintendent shall work with the District's architect to provide the Board with a comprehensive recommendation for facility improvements including bringing the District into compliance with current health/life safety requirements and the Superintendent will make recommendations for sources of funding for the building improvements.

Example 3:

The Superintendent will develop a plan that will best use the district's facilities.

Indicators: The Superintendent will explore with architect the feasibility of adding classrooms and a gym at the _____ School and classrooms at School. The plan will be presented to the Board by the January Board meeting in the year 2000. The Superintendent, along with the board, will present a plan to the residents of the district once the board has considered the Superintendent's recommendations.

Instruction: Another trend reflects the concept the Superintendent *is* the instructional leader of the district. For example:

The Superintendent shall develop a comprehensive educational plan for the District which shall include short, medium and long-term goals. Annually the Superintendent shall provide the Board with a copy of the comprehensive plan, updates in the plan, and provide his written suggestions for the District's achievement of goals.

OR if you prefer something more specific:

The Superintendent will provide the leadership for the district to develop hands on science units in grades K-6 that align with the Illinois State Standards for Learning as published by the Illinois State Board of Education.

Indicators: To the extent that the school community and the Board of Education provides the resources and support necessary, the Superintendent will provide:

1. Summer training opportunities for K-6 science teachers to learn hands on activities that align with state standards and our curriculum.
2. The needed supplies, materials, and equipment necessary to design and implement the hands on units during the summer.
3. The needed supplies, materials, and equipment to integrate the hands on activities learned during the summer into the following year's science curriculum.
4. Stipends to teachers for their time and effort during the summer designing and developing the units and teaching them to volunteer Summer Science Camp students.
5. Salary schedule credit on the Teachers' salary schedule in an appropriate number of hours commensurate with student contact hours and time devoted to constructing the hands on units.

Technology: Predictably, technology and its implementation in the district is another popular goal area as illustrated below:

The Superintendent will provide the leadership for all students and teaching staff to become competent users of current technology.

Indicators: To the extent that the school community and the Board of Education provides the resources and support necessary, the Superintendent will provide, based upon the district's five year technology plan:

1. Curriculum improvements as recommended by the district's Technology Committee,
2. Training programs for teachers in the teaching and use of technology, and
3. An assessment of the technology program.

Measurement: Annually, the Superintendent will provide the Board of Education a report from the Technology Committee outlining progress made during the previous year and the plans for the next year.

Communication: Somewhat surprising to me, the area of communications, both in-district and with the public, is another fertile area. An example:

The Superintendent will provide the leadership for the district to better communicate with the general public those positive activities, programs, accomplishments, and district improvements to increase community awareness and understanding:

Indicators: To the extent the school community and the Board of Education provides the resources and support necessary, the Superintendent will implement the following activities:

1. The Superintendent will cause to have published a District Newsletter at the end of the first three-quarters of each school year.
2. The Superintendent will cause to have published a brochure explaining and outlining the district financial condition and publish this brochure in the community.
3. The Superintendent will cause to have created a videotape film of each school building describing the educational and extracurricular opportunities of that building.
4. The Superintendent will continue high visibility in the community by maintaining membership in local community and/or school organizations and attending school functions such as plays, ball games, and concerts.
5. To cause to be created a district scrapbook composed of newspaper articles relative to school activities throughout the district. This scrapbook is to be placed in a highly accessible location within the district office.

Measurement: Annually, the Superintendent will provide the Board of Education a report of the activities and written materials outlined by each of the above indicators.

While I expect the "trend area" to shift or change in the future, it is my prediction the goals themselves will continue to reflect the challenges facing Illinois public schools as

well as continue to reflect the concerns of individual school boards and the constituents they represent.

Other Thoughts

While I'm by no means an expert (although I'd like to think I'm close at least on *this* subject), I do see numerous contracts and try to give advice designed to help you side step landmines. Some of my random thoughts:

Keep it Simple: At first I was surprised when Boards requested that the performance-based contract language be kept as simple as possible. An explanation may be the fact that many boards have already engaged in strategic planning for their districts, many boards have well crafted policies guiding the district, and maybe, just maybe, boards ARE concerned with student achievement without the need for legislation making contract formation a little more complex. Whatever the reason, a sweet but simple clause could read as follows:

Academic Improvement and Student Performance Goals - This Agreement is a performance-based contract linked to student performance and academic improvement of the schools within the district. The Superintendent shall strive to meet the goals during the term of this Agreement. The parties agree the goals and indicators are linked to student performance and academic improvement of the schools within the district.

Annually, the Superintendent, with the assistance of his administrative team, shall (1) evaluate student performance, which shall include but not be limited to, student performance on standardized tests such as performance on the Illinois Goals and Assessment Program Tests, completion of the curriculum, attendance, and drop-out rates; (2) review the curriculum and instructional services; and (3) report to the school board on his findings as to (a) student performance and (b) recommendations, if any, for curriculum or instructional changes as a result of his evaluation of student performance.

The presentation of the report shall constitute the achievement of the goals and indicators of student performance and academic improvement as required by Section 10-23.8 of the Illinois School Code.

Additional examples of "simple" performance-based provisions are contained in Appendix 1.

Don't be afraid to include caveats: If the goal is one that could be derailed through no fault of your own and you recognize that fact up front, add an "out" for yourself. One example of a caveated goal reads as follows:

The Superintendent shall manage and otherwise oversee the successful transition of the district from a one campus school district to a two campus school

district provided the project suffers no work stoppage for any reason including litigation. (Note: the district had passed its referendum).

In one contract where the goal is to "improve student performance in the fundamental learning areas of reading, writing, and math," the following caveats were included by the parties: "1) change in IGAP testing that results in a change in the base score of the test thereby making comparison to the previous years' test scores invalid shall relieve the Superintendent from attainment of this goal; and 2) availability of resources needed to implement programs recommended by superintendent to improve instruction in reading, writing, and math shall be provided by the board."

The following goal also illustrates the caveat concept:

The Superintendent shall use the authority and resources provided by statute, state and local policy, and the Board to provide a safe facility and a wholesome educational environment for all students.

Stipulation Agreement:

It is agreed that the attainment of this Goal is subject to the Superintendent being empowered to exercise full control and authority as established by statute and District Policies without interference, intervention, and/or forced reversal.

It is agreed that it shall not be construed or interpreted as the Superintendent's failure to attain this Goal if the State Legislature, the Board and/or the voting public fail to approve and/or fund procedural, facility or environment changes recommended by the Superintendent in his attempt to achieve this Goal.

It is agreed that the actions (omission or commission) of a district employee in opposition or contrary to district policy or the Superintendent's guidance shall not be construed or interpreted as the Superintendent's failure to attain this Goal.

It is agreed that isolated and unexpected deviant behavior of students beyond the control of parents, staff, or the administration shall not be construed or interpreted as the failure of the Superintendent to attain this Goal.

As a caution, I advise against every goal containing caveats because should all caveats apply, a vexatious board (or attorney with a different opinion than mine) could argue the contract was not supported by valid goals and, accordingly, should be reformed to be a single year agreement (as opposed to the multiple year agreement you thought you had!).

Why reinvent the wheel?: As stated earlier, I believe a great number of school boards have already engaged in strategic planning for the district. At minimum, all districts should have in place a school improvement plan. Both these documents contain fertile ground for goals and indicators.

With respect to the district administrative team, ALL of the goals and indicators in each contract should be headed in the same direction – and that direction should be where the district is going in either its strategic plan or in the adopted school improvement plan.

Realize you can amend: While constant redrafting of the contract is not recommended, realize a board can change and/or change its mind. As with any other contract provision, the language can be amended, updated or changed if the parties mutually agree.

It is up to you: I realized early on in this adventure that I am not an educator nor do I know all that much about testing, brain development, etc. Guess what? Your board members are in the same boat I am – well meaning but no expert.

When the board is engaged in goal development, it is best for you to just drive the bus. For example, one board wished to emphasize fine arts. The astute Superintendent pointed out the potential pitfall of emphasizing fine arts over all other activities (including sports). In other words, you lead the board down the right path and not only will it benefit you, the district will benefit too.

At the same time, you have to recognize the futility of trying to push a boulder up a mountain. If the board (or a faction thereof) absolutely insists on a certain goal, make sure you can work to make the goal a reasonable and attainable one.

Consider the following goal and its potential pitfalls:

Adopt a strategic plan for the district. Address the areas of finance and improved student achievement.

Now look at the rewritten, redefined goal:

The Superintendent shall provide leadership designed to engage the district in strategic planning. Annually, the Superintendent shall schedule a strategic planning session for the Board; the agenda for the meeting shall be to establish District objectives for the ensuing school year. The Board's failure to adopt a strategic plan or attend the meeting shall not be construed as the Superintendent's failure to attain this goal.

See how you can make lemonade out of lemons? For more examples of redefined goals, see Appendix 2.

If you're new to the district: Administrators new to the district face the most undefined challenge of all – "what can I promise to achieve before I even know this district?" In one district the parties acknowledged that multiple-year contracts must be performance-based and they agreed to negotiate the performance goals and indicators before a stated date. In that agreement, the language read:

Performance Provisions: During the initial year of this Contract, July 1, 2001 through June 30, 2002, the Superintendent shall develop specific goals designed to enhance district-wide student performance and academic achievement as well as the indicators to measure same. The goals and indicators will be submitted to the Board not later April 1, 2002 for discussion and approval.

Once the Board approves the goals and indicators, the goals and their respective indicators will be implemented and measured, pursuant to a schedule mutually agreed upon by the Board and the Superintendent, over the remaining three (3) years of the contract. The goals, indicators, and schedule of implementation and measurement shall be reduced to writing and become an amendment to this Contract on or before July 1, 2002.

Out of an abundance of caution, I prefer for the parties include a simple goal and indicator (the simple annual report for example; see pg. 6) along with an acknowledgement that the parties will either meet during the term of the agreement to amend the goals and indicators as needed or set additional goals within the first year. A statement that: "no later than October 1 of the first year of this Agreement" the Superintendent will present additional goals and indicators to the Board should get the job done.

Thus far, the school district employers and law firms drafting the employment contracts for those employers have been very fair and have, apparently, recognized that an employee new to the district could not possibly bind himself or herself to specifics without a little more information than that contained in the job brochure or school district report card.

CONCLUSION

In conclusion, it all boils down to a few **practical** admonishments:

- don't sign anything without reading it very carefully;
- think about the measurements that will be used and project into the future to try to pinpoint what information may or may not be available at the time the Board will be doing its evaluation of attainment (do we need to specify which state test scores will be the ones considered, for example?);
- remember the law does **not require** that one be terminated for non-attainment of the goals and indicators so for goodness sake don't sign a contract that calls for the same;
- think carefully about any caveats that may be necessary to include in the contract; and

- don't put yourself in the position of hoping for a rollover or contract extension in the last three months of the employment term!

Finally, and most importantly of all, remember that no two school districts are exactly alike so do not blindly adopt another district's goals and indicators without consideration of your district's strategic plan and individual challenges.

Appendix 1: More "Simple" Goals

Example: The parties acknowledge that, pursuant to **The School Code** Section 10-23.8, this multi-year contract is subject to performance-based criteria. At a time convenient to the Board and the Superintendent, but at least annually the parties shall meet to review the progress towards the following goals and criteria. The Superintendent shall strive to improve student performance and promote academic improvement in the District by the following methods, including but not limited to:

- a. providing leadership to ensure that each school has effective rules and regulations regarding student conduct;
- b. providing leadership to ensure that the school lunch program, district transportation, and health services are provided consistent with state and federal laws and Board policies;
- c. involving the staff and community in a study and developing curriculum improvement; and
- d. directing the evaluation of textbooks and other instructional materials on a regular and systematic basis to ensure that all material is up-to-date and appropriate.

The parties agree the above goals and indicators are linked to student performance and academic improvement of the schools within the district.

Example: This Contract is a performance-based agreement with goals and indicators linked to student-performance and academic improvement of the schools with the district. The Superintendent shall evaluate long-range curriculum objectives in order to challenge the academic skills of all students in the district. This process shall require the Superintendent's interaction with all building administrators to identify the special and unique demands of students in all grade levels. A report articulating the Superintendent's findings shall be presented to the Board of Education by the end of the first year of the contract.

The Superintendent shall evaluate the buildings in the district to assess needed repairs or improvements. Subject to the Board's funding of repairs, actions shall be taken to ensure the safety of students and staff and to ensure compliance with prioritized needs addressed in the district's Health, Life, and Safety Study.

The Superintendent shall develop a maintenance program for the district to ensure continued compliance with Health, Life, and Safety recommendations within the scope of the budget.

Example: This Contract is a performance-based contract linked to student performance and academic improvement of the schools within the district. The Superintendent shall strive to meet the goals during the term of this Agreement. The parties agree the goals and indicators are linked to student performance and academic improvement of the schools within the district.

The Superintendent shall seek to promote academic improvement of the District=s schools by the following methods, including but not limited to:

- a. assessing and implementing methods to promote improvement in standardized, student test scores;
- b. studying and developing program and curriculum improvements in the District; and
- c. directing the evaluation of textbooks and other instructional materials on a regular and systematic basis to ensure that all materials are up-to-date and appropriate.

The Superintendent shall seek to promote improvement in student performance in the District=s schools by the following methods, including but not limited to:

- a. providing leadership to ensure that each school has effective rules and regulations regarding student conduct; and
- b. providing leadership to ensure that the school lunch program, district transportation and health services are provided consistent with state and federal laws and Board policies.

The Superintendent shall propose actions and policies, if applicable, consistent with the District=s goals and objectives which shall constitute attainment of goals and indicators of student performance and academic improvement of the schools within the district.

Appendix 2: "Rewritten" Goals

Example: *Improve communications within the district.*

The Superintendent shall suggest and employ methods designed to improve communications within the School District. Superintendent's attainment of this goal shall be evidenced by: the issuance of regular board updates; period building visits; and the publishing of an in-district newsletter.

Example: *Implement Meaningful Evaluation for District.*

The Superintendent shall analyze and make necessary recommendations for the improvement of the evaluation process employed by the district. Subject to any applicable collective bargaining constraints, board policy, or legal considerations, the Superintendent shall report to the board suggested improvements in the current certificated staff evaluation process.

Example: *Develop and implement a Teacher Mentoring Program.*

Make recommendations that would explore the advisability of implementing a teacher mentoring program. Make recommendations to the board designed to either implement or not implement a teacher-mentoring program consistent with board action, subject to any limitations or obligations imposed by law, or collective bargaining agreement or board policy.

Example: *Monitor student achievement and review effectiveness of math and writing curriculum*

Report to the board periodically on student achievement. Review effectiveness of math and writing curriculum as measured by the Illinois Learning Standards and student achievement on standardized or required state/local/national tests. The Superintendent shall report his findings to the board annually.

Example: *Continue long-range planning and monitor fiscal decisions that impact on the district budget.*

Continue long-range planning and monitor fiscal decisions that impact on the district budget. Provide biannual status reports to the board.

Example: *Continue aligning the district curriculum to the Illinois State Standards.*

Continue to make recommendations designed to align the district curriculum to the Illinois State Standards or standards measured by statewide tests as required by ISBE, state or federal law.

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