

# SUPERINTENDENT EVALUATION

*Developed by:*  
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## OPEN MEETING REQUIREMENTS: A LEGAL OPINION

In response to an inquiry concerning the process by which a superintendent is evaluated, MASC legal counsel, Stephen Finnegan responded with the following opinion. The issue at question was whether a superintendent can be evaluated in executive session, whether individual evaluations submitted by committee members in preparation of a composite evaluation are subject to public disclosure, and whether these individual evaluations need to be saved once the composite has been presented to the superintendent.

Mr. Finnegan's response:

The procedures utilized by school committees in evaluating superintendents are different from committee to committee. This comes about as a result of the policy making authority of school committees. This policy making authority of school committees is derived from Mass. Gen. L. c.71, s37 and is only limited by "the requirements of law and statewide goals and standards established by the Board of Education." Each school committee adopts policies which govern the operation of the committee. A policy adopted concerning the evaluation of a superintendent must be sure to comply with state law.

M.G.L. c. 39, s23B of the Open Meeting Law states:

"All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section." (emphasis added.)

A governmental body, as defined by M.G.L. c. 39, s23A, includes "a committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted." Therefore, school committee meetings, and any subcommittee thereof, would fall within the purview of the Open Meeting Law.

One exception to the general requirement that governmental bodies meet in open session is where the purpose of such a meeting is to discuss the "reputation, character, physical condition or mental health of an individual." M.G.L. c. 39, s23B(1). As a result, these are proper subjects of an executive session, provided however, that a meeting is first held in open session and a majority of the committee members have voted to go into the executive session. M.G.L. c. 39, s23B. Despite this explicit exception regarding the "reputation and character" of an individual, M.G.L. c. 39, s23B(1) goes on to provide that discussions of the "professional competence" of an individual should be held in open session.

M.G.L. c.39, s23B(3) also maintains that a governmental body may meet in executive session for the purposes of conducting contract negotiations. The evaluation of a superintendent is clearly subject to an open meeting, and the committee should be careful not to circumvent the law by loosely applying various statutory exceptions which would allow an executive session. For those areas of the evaluation which actually apply to contract negotiations, a committee may enter into executive session pursuant to a vote of the governmental body.

When the process used to derive a final evaluation of the superintendent is that each committee member submits their own individual evaluation to the chairperson, and that the chairperson then prepares a composite evaluation. This composite evaluation is then presented to the superintendent. Should a discussion of the superintendent's evaluation occur in public session, the underlying documentary materials (i.e. the **composite** evaluation) may be made available to the public, upon request. Since the composite evaluation is prepared by the chairperson alone, it is clear that there are no "deliberations" under the Open Meeting Law, since this requires a "verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction." M.G.L. c. 39, s23A. As a result, the individual evaluations considered by the chairperson would not become public information. It should be noted, however, that if these individual evaluations are later referenced and discussed in public session, perhaps in connection with the composite evaluation, then they too may become public information. Opinion of the Secretary of State, Commonwealth of Mass., February 27, 1989.

Stephen J. Finnegan, Esq.



## PUBLIC RECORDS REQUIREMENTS: AN ADVISORY OPINION

The following is a copy of the contents of a letter from James W. Igoe, Supervisor of Public Records for the Commonwealth of Massachusetts, dated February 27, 1989:

Pursuant to 950 C.M.R. 32.07, I am in receipt of your request for an advisory opinion. Specifically, you ask whether forms containing evaluations of the Superintendent of Schools made by members of the ( ) school committee are public records subject to mandatory disclosure provision of the Public Records Law. ( ) also initiated an appeal under G.L. c.66, s7 (26) (a-1) (1986 ed.). The statutory exemptions are strictly and narrowly construed. Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G.L. c. 66, s10(a) (1986 ed.); Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (none of the statutory exemptions provide a blanket exemption from disclosure).

You suggest in your December 20, 1988 letter that the requested evaluations are exempt by reason of the privacy exemption. It applies to:

. . . personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

General Laws, c. 4, s7 (26) (c) (1986 ed.)

The privacy exemption contains two distinct and independent clauses each requiring its own analysis. Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-334 (1983). Only the first clause is relevant to this determination.

The first clause of the privacy exemption requires an objective analysis. Personnel information which is of a "personal nature" and relates to a specifically named individual is absolutely exempt. Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987); Globe Newspaper Company, 388 Mass. at 438. The requested evaluation forms contain personnel information which relates to a specifically named individual. Therefore, the remaining inquiry is whether the requested information is of a "personal nature."

Information which is subjective or evaluative in nature constitutes "personal" information. Connolly v. Bromery, 15 Mass App. Ct. 661, 664 (1983). Even raw data appraising the job performance of individuals is personal and volatile. Id. Consequently, the evaluation forms prepared by the individual committee members which contain their personal evaluations of the superintendent's performance would ordinarily be exempt from mandatory disclosure as personnel information of a personal nature under the privacy exemption.

However, the fact that evaluation forms were the subject of an open meeting and are referred to in the minutes of that meeting is significant. See G.L. c. 39, s 23B (1986 ed.) (requirement that all meetings, with certain exceptions, be conducted in open sessions and a record kept of the proceedings). The legislation which codified the current statutory definition of "public records" and its exemptions contains a provision which prohibits the use of any of the current exemptions to withhold materials which were public records prior to the effective date of the Act. St. 1973, c. 1050, s 6. The intent of the General Court was to expand the disclosure of records and to ensure that governmental activities are open to public examination. Hasting & Sons Publishing Company, 374 Mass. at 816; see also Brandt, Public Records FIPA and CORI, 15 Suff. Law Rev. 23, 24 (1981). Prior to the effective date of the Act, the controlling law provided that all records referred to in the minutes were public records. St. 1969, c. 831, s 1, codified as G.L. c. 66, s 17B (f). This provision complements the requirements of the Open Meeting Law by ensuring that the public will have access to all documentary materials discussed in an open session. In the absence of such a requirement, the purpose served by the requirement that meetings be conducted in public could easily be subverted by discussions relating to documents which are characterized as "confidential." Meaningful public participation would be precluded. Accordingly, since the requested evaluations were the subject of an open meeting and are referred to in the meeting

minutes, you are hereby advised that they are public records in their entirety.

Therefore, you are hereby ordered to provide ( ) with copies of the requested evaluation forms prepared by Committee members within ten (10) days of the receipt of this determination. Failure to comply with this order may result in notification to the Department of the Attorney General for enforcement.

Very truly yours,

JAMES W. IGOE  
Supervisor of Public Records

## SAMPLE SUPERINTENDENT EVALUATION

The evaluation of the superintendent provides an opportunity for the school committee and the superintendent to review, on a regular basis, the status of the school system and the roles and responsibilities of the school committee and the superintendent. It serves to inform the superintendent of the committee's expectations. It promotes a dialogue that allows both the committee and the superintendent to assess performance and to identify areas needing improvement. It improves superintendent/school committee communication which helps build a better relationship. It improves planning.

The attached sample evaluation tool has been designed to offer the greatest opportunity for an objective evaluation of the superintendent and the school system. Each section contains a narrative, defining "general" expectations for the category. Its purpose is to assist the evaluator in better understanding the connection the superintendent may have to the goals that will be established. It also should help the committee and the superintendent to formulate the goals.

The goals need to be developed and agreed upon by both the superintendent and the school committee. During the process of developing the goals, the dialogue should focus on defining expectations and then determining the action necessary to meet those expectations. For instance, in the category: RELATIONSHIP WITH THE SCHOOL COMMITTEE, one issue may be that the school committee is concerned that they are not receiving information for agenda items on a timely basis. Past practice may have dictated the current schedule for distribution of agenda and meeting materials to the committee but, for whatever reason, this no longer meets the "expectations" of the current committee. The expectation then would be that the committee receive the information and material sooner.

A goal, dealing with this issue, and most often seen in an evaluation is: ***The superintendent will provide the agenda to school committee members on a timely basis.*** Would this be considered a "good" goal? We need to first look at what constitutes a "good" goal. Three questions should be asked before any goal is assigned to the evaluation.

1. **Does it address the need?** In this case it certainly does. If agenda material is not, in the opinion of committee members, getting to them in time to provide an opportunity for review and/or response, then it should be sent "on a timely basis".
2. **Is it attainable?** Again, in this case it is. It requires only that material go out sooner than before, and of course, that the superintendent is able to accommodate this request.
3. **Is it measurable?** No. Any goal that is measured by either individual standards or by some objective rather the subjective standard is not clearly enough defined. The possibility is great that "timely" would be defined differently by the superintendent and/or individual school committee members. ***The superintendent will insure that school committee members will receive the agenda and supporting materials at least 48 hours in advance of every regularly scheduled school committee meeting*** would be a more appropriate goal.

Superintendent evaluations provide an opportunity to assess the performance of the Superintendent but they should also do much more than that. They provide an opportunity to evaluate the condition and direction of the school district. School Committees should not assume that the Superintendent is solely responsible for the successes and failures of their school district. If the school committee accepts this fact, then they need to agree on the purpose of the superintendent evaluation. The evaluation should clarify the roles of the superintendent and the school committee and it should serve to inform the superintendent of the school committee's expectations.

If this sounds simple, it's not. The first roadblock to creating an effective evaluation is, as evidence suggests, that school committee members are not adequately trained for evaluating superintendents. The process most often used is one where the school committee adopts an evaluation instrument and then, once a year, fills in the blanks. It's usually an effortless, but not necessarily painless, endeavor. Without an opportunity to assess the expectations listed in an evaluation instrument and without an opportunity to discuss the expectations and measurements with the superintendent, the process becomes too subjective and "personality" driven.

We believe the attached sample evaluation instrument offers the best opportunity to complete an effective and worthwhile superintendent evaluation. In order for it to work, however, the process of developing and adopting the instrument needs to be understood.

#### **STEP ONE - ADOPTING THE INSTRUMENT**

The superintendent and the school committee need to meet and review the sample instrument. There are seven categories contained within the following sample. It is not our intent to imply that these are the only categories you may use. These are presented as categories we feel best cover the scope of the superintendent's area of responsibility. It is important that both parties agree that these categories fairly represent the areas the superintendent has influence over and that they merit consideration in an evaluation. Under each category heading is a narrative describing the expectations, in a general sense, for that area. The committee and the superintendent need to agree that this narrative reflects their understanding of the expectations in this area.

This is also the place to include performance standards. The Department of Education regulations dealing with performance standards (a copy of the regulations is included in this packet) may be enhanced by the addition of performance standards specific to the district. Both the superintendent and the school committee should agree upon them. It is important to keep in mind that we are still speaking in general terms. Performance standards and other expectations go into building the narrative or "mission statement" for each category. These will not be specifically rated.

## SAMPLE SUPERINTENDENT EVALUATION

### STEP TWO - GOAL SETTING

Setting the goals is critical to the effectiveness of the evaluation. Too often evaluations reflect the “feel good” or “feel bad” attitudes of the evaluator. In either case, this often fails to produce a fair assessment of the performance of the superintendent and almost never provides a true assessment of the school district. The greatest benefit to any superintendent evaluation may be the opportunity it provides for the school committee and the superintendent to assess what is happening in the district. The school committee needs to understand that they share the responsibility, along with the superintendent, for what happens within the school system.

The process of establishing goals provides an opportunity for both the superintendent and the school committee to articulate specific actions that they expect will lead towards a better educational system. It is important that every goal be specific enough so that no matter who is doing the evaluation, there should be no doubt about the measurement of performance against the goal. If the possibility of subjective measurement exists, then the goal was poorly constructed.

Consider ***“The superintendent will improve public awareness in the schools”***. This goal reflects an expectation based on the premise that the public needs to be better informed about what is happening in the schools. On the surface it seems to be important enough to include as an expectation of the superintendent and, therefore, should be included in an evaluation. There are, however, several problems with this. First of all the responsibility of improving public awareness in the schools is not the sole responsibility of the superintendent. More importantly, it is virtually impossible to measure the impact any individual might have in this area. The perceptions, expectations, and attitudes of individual evaluators play a bigger role in the rating of this goal than the efforts of the evaluatee. Does this mean that increasing public awareness should not be a “goal” of the superintendent and school committee? Certainly not.

The process of determining the goals needs to include the expectations of both the superintendent and the school committee. Improving public awareness may be a high priority of both. What needs to happen, then, is for the superintendent and school committee to agree on this expectation. At that point they need to determine what responsibility each may have in the accomplishment of this expectation and then agree on specific actions that may be taken to effect the desired outcome. The dialogue should focus on what action the superintendent will take to meet this “goal”. The superintendent may suggest, for instance, that he/she will send out a newsletter or a press release periodically. In order to meet the expectations of the school committee it may be necessary to have more than one goal dealing with this expectation. One example would be: ***“The superintendent will generate one press release quarterly dealing with positive stories about the school system and distribute it to the local media.”*** This action is one step towards improving public awareness. It also provides a “goal” that is measurable by anyone completing the evaluation. The school committee is able to see each press release and determine whether or not this goal has been accomplished. It is not subject to individual perceptions, expectations, or attitudes.

If goals are too general then the opportunity for subjective impressions is great. Discuss in detail what the expectations are and then formulate goals that you feel will work towards meeting those expectations. Use this simple test to determine if your goal is “good”.

**1. Does it address the need?**

**2. Is it attainable?**

**3. Is it measurable?**

### **STEP THREE - PERIODIC REVIEW**

The most serious shortcoming in many evaluation processes is the failure to periodically review and assess the status of the evaluation goals. A school district is not static. When the superintendent and the school committee establish the goals for the year, they do so based on what they perceive to be the needs at that point in time. As the year progresses, more information becomes available, conditions change, and priorities change. Keep in mind the stated purpose of the evaluation: “....to assess the performance of the superintendent” and to “...provide an opportunity to evaluate the condition and direction of the school district.”

The review process provides the best opportunity to enhance the performance of the superintendent, school committee, and the school district. It accomplishes this by promoting a dialog, on a regular basis, dealing with conditions and events affecting the school district. If conditions or priorities change, then goals may also change. As a school district is not static, neither should the goals that affect the district be static. It is critical to the process that, when conditions within the district cause the committee to modify its expectations or priorities, goals be reviewed. If any goals need to be modified, added or dropped, do not be afraid to do so. You should not be evaluating performance goals that are no longer relevant.

### **STEP FOUR - FORMAL EVALUATION**

The formal evaluation can only take place after all the preliminary steps have been completed. The superintendent and the school committee should have begun the process a year earlier by agreeing on the areas to be evaluated, developing specific goals to meet expected objectives, and to periodically have reviewed the progress and status of those goals. If all of that has been accomplished, it is time to put the results to the test.

The committee should begin the formal evaluation by reviewing the evaluation instrument at a regular meeting. The purpose of this is to insure that the entire committee is in agreement with the goals to be evaluated and clearly understands the expectations. Following that meeting, each member should record his/her ratings on their copy of the evaluation. It is important to remember that comments should accompany each rating. If there is the expectation that this instrument may be used for improving and/or maintaining excellence within the school district, then the rationale behind each observation is important in order to be able to react to them. When a school committee member has completed his/her evaluation, it should be forwarded to the committee chair.

The committee chair will compile the results of the individual evaluations and develop a “committee” evaluation. The chair will then review the results with the superintendent before presenting this “committee” evaluation to the full board at an open meeting. This step will allow the superintendent an opportunity to prepare his/her response to the evaluation. It is this “committee” evaluation that becomes the official superintendent evaluation. (See attached legal opinion.)

### **STEP FIVE - THE END AND THE BEGINNING**

Review the results of the formal evaluation, go back to STEP ONE, and begin all over again. Remember. The superintendent evaluation is a never-ending process.

## SAMPLE SUPERINTENDENT EVALUATION

### A. RELATIONSHIP WITH THE SCHOOL COMMITTEE

The School Committee relies on the Superintendent in order to make informed decisions that will affect the quality of education for the public school children in our community. In order to promote a climate of mutual respect and trust, a professional working relationship should be maintained. The Superintendent should establish clear direction for the School Committee meetings by providing agendas and support materials that allow for reasonable policy formation and informed decision making. It is expected that the Superintendent will support and implement School Committee policies and directives and effectively communicate these to the students, staff, and members of the community.

#### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

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2.

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4.

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5.

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#### RATING:

\_\_\_\_\_ Fails to Meet/ Meets/ Exceeds Expectations

**B. EDUCATIONAL LEADERSHIP**

The focus of decisions must address the needs of all students. In order to provide effective leadership, the Superintendent should keep abreast of the latest developments in the field of education. Curriculum evaluation and development, professional evaluation and development, and student assessment should all be considered in the formulation of short and long range goals and objectives.

**GOALS:**

Fails to Meet / Meets / Exceeds Expectations

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2.

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4.

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5.

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**RATING:**

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 Fails to Meet/ Meets/ Exceeds Expectations

## SAMPLE SUPERINTENDENT EVALUATION

### C. GENERAL MANAGEMENT

The Superintendent has the responsibility for the efficient operation of the school system. The response of those assigned the task of carrying out the activities necessary to the success of the system depend on having an awareness of the goals and objectives of the system. The Superintendent is expected to provide the leadership to the School Committee in the development of these goals and objectives. It is important that the Superintendent is familiar with and has a strong understanding of state and federal laws, Department of Education regulations, and School Committee policy.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

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2.

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### RATING:

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 Fails to Meet/ Meets/ Exceeds Expectations

**D. BUDGET MANAGEMENT**

The School Committee has the responsibility of approving the budget and the Superintendent has the responsibility to present that budget to the School Committee in a manner that promotes their full understanding. The budget should take into consideration the needs of the entire system based on a formal assessment process. The need to promote the school system and gather community support for school finances is an integral component of the budget process.

**GOALS:**

Fails to Meet / Meets / Exceeds Expectations

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5.

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**RATING:**

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 Fails to Meet/ Meets/ Exceeds Expectations

## SAMPLE SUPERINTENDENT EVALUATION

### E. PERSONNEL MANAGEMENT

The Superintendent is responsible, either directly or indirectly, for the hiring of all school personnel. Personnel decisions should be approached in a non-discriminatory and impartial manner. It is the Superintendent's responsibility to foster an environment conducive to good teaching. The Superintendent should be alert to issues that affect staff morale, should be actively concerned with a meaningful staff evaluation program, and should provide a balanced staff development program. The School Committee should be kept informed in appropriate matters of collective bargaining, performance standards, professional development, and grievances.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

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### RATING:

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Fails to Meet/ Meets/ Exceeds Expectations

**F. COMMUNICATIONS/PUBLIC RELATIONS**

Public awareness is the cornerstone for support of education in our community. The Superintendent should insure that staff, students, parents, and the community are kept informed of the mission and the accomplishments of the school system. A strong, positive posture is needed in building public support for the school system.

**GOALS:**

Fails to Meet / Meets / Exceeds Expectations

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**RATING:**

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 Fails to Meet/ Meets/ Exceeds Expectations

## SAMPLE SUPERINTENDENT EVALUATION

### G. PERSONAL QUALITIES AND CHARACTERISTICS

It is expected that the superintendent maintain high standards of ethics, honesty, and integrity in personal and professional matters and, at all times, represent the school system in a professional manner. The Superintendent should encourage open communication with staff, administrators, community representatives, and school committee members.

#### GOALS:

Fails to Meet / Meets / Exceeds Expectations

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4.

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5.

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#### RATING:

\_\_\_\_\_ Fails to Meet/ Meets/ Exceeds Expectations

