



MAGNOLIA PUBLIC SCHOOLS

Board Of Directors

Board Agenda Item #	II F
Date:	February 11, 2016
To:	Board of Directors
From:	Caprice Young, Ed.D., CEO & Superintendent
Staff Lead:	Terri Boatman, Director of Human Resources
RE:	Approval of Changes to the Employment Contracts

Proposed Board Recommendation

I move that the Board approve the changes to the employment contracts:

- Move from At-Will Agreements to Fixed Term Agreements with 1, 3, or 5 year provisions.

Background

Magnolia Public Schools currently uses At-Will Agreements to retain staff. The At-Will agreements give both MPS and the employee the opportunity to cancel the agreement at any time. Furthermore, the current MPS process is to not extend the At-Will agreements until April or May.

Feedback from teachers and staff on the At-Will Agreements and current process are as follows:

1. Staff does not feel comfortable in their futures with MPS.
2. They aren't notified until the last minute if they are able to return, by then, people have already started looking at other positions.
3. There is no accountability for staff to return and they resign without giving us the opportunity to backfill.

The belief is that At-Will agreements give the organization the ability to make employment decisions without the need to produce reasons for the separation. This is not the case, as we still have to show sufficient cause as to why we aren't renewing agreements or why we are separating someone from Magnolia.

The recommendation is to move from At-Will Agreements to Fixed Term Agreements. The move will give us the following advantages:

1. It will give our current workforce the guarantee that they will continue to have a position with MPS provided they continue to perform at a high standard. Fixed term agreements will be issued for five (5), three (3), or one (1) year terms which will help us preserve our high performing employees. This will aid in retention.



MAGNOLIA PUBLIC SCHOOLS

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2. It will give us the opportunity to hold employees accountable to their commitments to MPS. If employees resign without proper notice, we can notify the CTC and have that reported on their credential. Furthermore, we could ask employees to remain with MPS until a backfill has been identified. This will reduce our need to have substitute teachers in the classroom.
3. It will require us to be more focused on performance as we will need to have sufficient reason to cancel contracts. As such, we can actually have more discussions about performance and documentation.

Instead of extending contracts in April/May, it is our goal to extend contracts in early March. All contracts will be extended contingent upon successful completion of the school year. If an employee fails to perform for the remainder of the 2nd semester, their contract will be voided. We will ask employees to commit, and with the understanding that they can rescind their acceptance of the contract by May 1, 2016. Any resignations which occur after May 1, 2016, will result in our contacting the CTC.

In order to prevent liability associated with terminations, HR will work with the Academics Team and Principals to set goals and establish performance metrics. In addition, HR will make sure that Principals are trained on documentation, addressing discipline issues, and building a case to support termination.

Terminations will need to be approved by the Regional Director, and HR Director to make sure that the appropriate steps have been taken to separate the employee.

Budget Implications

If we are eliminating a fixed term agreement for any reason other than for cause, we may be required to pay a portion of the contract. However, the financial costs will be offset by the following:

- Reduction of substitute usage in classrooms if an employee chooses to resign.
- Reduction in contract elimination costs by offering a transfer to a school in a role with similar compensation in the event of a position is eliminated.
- Reduction in legal costs and settlements by building cases for terminations versus using At-Will agreements as our reason for separating.
- Reduction in hiring costs as we are proactively retaining our workforce.

Name of Staff Originator:

Terri F. Boatman, Director of Human Resource

Attachments

Sample Fixed Term Agreements

FIXED TERM EMPLOYMENT AGREEMENT
Between
MAGNOLIA PUBLIC SCHOOLS & [INSERT EMPLOYEE NAME]

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the above named employee (“Employee”) and the Board of Directors (“Board”) of the Magnolia Education & Research Foundation dba Magnolia Public Schools (“MPS”), a non-profit public benefit corporation that operates public charter schools in the State of California. The Board desires to hire employees who will assist MPS in achieving the goals and meeting the requirements of the School’s charter. The parties recognize that MPS schools are not governed by the provisions of the California Education Code, except as expressly set forth in the Charter Schools Act of 1992. The Board desires to engage the services of the Employee for purposes of assisting MPS in implementing its purposes, policies, and procedures.

WHEREAS, MPS and Employee wish to enter into an employment relationship under the conditions set forth herein, the parties hereby agree as follows:

A. STATUTORY PROVISIONS RELATING TO CHARTER SCHOOL EMPLOYMENT

1. MPS schools have been established and operate pursuant to the Charter Schools Act of 1992, Education Code section 47600, *et seq.* MPS schools have been duly approved by the granting agency, according to the laws of the State of California.
2. Pursuant to Education Code section 47604, MPS has elected to be formed and to operate as a non-profit public benefit corporation pursuant to the Non-profit Public Benefit Corporation Law of California (Part 2, commencing with section 5110 *et seq.* of the Corporations Code). As such, MPS is considered a separate legal entity from the agency that granted the charter. The granting agency shall not be liable for any debts and obligations of MPS, and the employee signing below expressly recognizes that he/she is being employed by MPS and not the granting agency.
3. Pursuant to Education Code section 47610, MPS schools must comply with all of the provisions set forth in its charter, but are otherwise exempt from the laws governing school districts except as specified in Education Code section 47610.
4. MPS shall be deemed the exclusive public school employer of the employees at MPS for purposes of Government Code section 3540.1.

B. EMPLOYMENT TERMS AND CONDITIONS

1. **Duties**

The Employee shall work in the position of [INSERT]. Employee will perform such duties as MPS may reasonably assign and Employee will abide by all School policies and procedures as adopted and amended from time to time. Employee further agrees to abide by the provisions of the School’s charter.

A copy of the job description for the above position is attached hereto and incorporated by reference herein. These duties may be amended from time to time in the sole discretion of MPS.

2. **Term and Work Schedule**

Subject to Section C, "Termination of Agreement" herein, MPS hereby employs Employee for a term of [FILL IN] years commencing on [INSERT DATE] and ending [INSERT DATE]. Workdays for the Employee shall be consistent with the applicable calendar of workdays for this position. The current year schedule is attached and incorporated by reference herein.

Employee will not render services in person or by electronic means, paid or otherwise, for any other person or entity during contracted work hours with MPS.

3. **Compensation**

Employee will receive a base salary of \$[INSERT] paid [monthly, bi-weekly, weekly] from which the Board shall withhold all statutory and other authorized deductions. The Employee's compensation may be prorated depending on whether the Employee remains employed, or in active work status, for the entire year. As an exempt employee, Employee shall not be eligible to earn overtime.

Comment [PC1]: If there are any employees whose compensation is hourly rather than annual salary, please replace the paragraph below with the following:

"The hourly pay for this position is \$[INSERT AMOUNT] per hour. The Employee shall be paid [monthly/biweekly/weekly] from which the Board shall withhold all statutory and other authorized deductions."

Comment [PC2]: Please take this sentence out if the employee is a non-exempt employee.

4. **Employee Benefits**

Employee shall be entitled to participate in designated employee benefit programs and plans established by MPS (subject to program and eligibility requirements) for the benefit of its employees, which from time to time may be amended and modified by MPS in its sole discretion.

5. **Performance Evaluation**

Employee shall receive periodic performance reviews conducted by his/her supervisor. At a minimum, performance evaluations will be conducted annually. The frequency of performance evaluations may vary depending upon length of service, job position, past performance, changes in job duties, or recurring performance problems. Failure to evaluate Employee shall not prevent MPS from disciplining or releasing Employee in accordance with this Agreement.

6. **Employee Rights**

Employment rights and benefits for employment at MPS shall only be as specified in this Employment Agreement, MPS School's charter, the Charter Schools Act and MPS's Employee Handbook, which from time to time may be amended and modified by MPS. Employment rights and benefits may be affected by other applicable agreements or directives or advisories from the California Department of Education or State Board of Education. During the term of this Agreement, Employee shall not acquire or accrue tenure, or any employment rights with MPS.

7. **Licensure**

Employee understands that employment is contingent upon verification and maintenance of any applicable licensure and/or credentials.

8. **Child Abuse and Neglect Reporting**

California Penal Code section 11166 requires any child care custodian who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within thirty-six (36) hours of receiving the information concerning the incident.

By executing this Agreement, the Employee acknowledges he or she is a child care custodian and is certifying that he or she has knowledge of California Penal Code section 11166 and will comply with its provisions.

9. **Fingerprinting/TB Clearance**

Fingerprint clearance for Employee will be acquired through submitting the Employee's fingerprints to the California Department of Justice. Employee will be required to assume the cost of all fees related to the fingerprinting process. Employee will be required to submit evidence from a licensed physician that he/she was found to be free from active tuberculosis. Both clearances need to be in place prior to the first day of service.

10. **Conflicts of Interest**

Employee understands that, while employed at the School, he or she will have access to confidential and proprietary information. Employee therefore shall not maintain employment or contracts for employment, or engage in any consultant or independent contractor relationship, with any other agency or school that will in any way conflict with his/her employment with MPS.

11. **Outside Professional Activities**

Upon obtaining prior written approval of the Executive Director, the Employee may undertake for consideration outside professional activities, including consulting, speaking, and writing. The outside activities shall not occur during regular work hours. MPS shall in no way be responsible for any expenses attendant to the performance of such outside activities.

C. **TERMINATION OF AGREEMENT**

This Agreement may be terminated by any of the following:

- a. **Termination For Cause:** Employee may be terminated by the Board at any time for cause. In addition, Employee may be disciplined (e.g. reprimand, suspension without pay) for cause during the term of this Agreement. "Cause" shall include,

but is not limited to, breach of this Agreement, any ground enumerated in the Personnel Policies, or Employee's failure to perform his/her duties as set forth in this Agreement, as defined by law, or as specified in the above-mentioned and incorporated by reference job specification.

The Board shall not terminate this Agreement pursuant to this paragraph until a written statement of the grounds of termination has first been served upon Employee. Employee shall have the right to a representative of his/her choice at a conference with the Board. Such conference shall be Employee's exclusive right to any hearing otherwise required by law. Any decision regarding termination shall be final.

- b. **Early Termination without Cause:** The Board may unilaterally, and with or without cause or advance notice, terminate this Agreement. In consideration of the Board's right to terminate this Agreement without cause, the Board shall pay to Employee the remainder of his/her salary (based upon any remaining calendared work days) for the term of this Agreement or for a period of one (1) calendar month following the effective date of termination, whichever is less.
- c. **Revocation/Nonrenewal of Charter:** In the event that the School's charter with the granting agency is either revoked or nonrenewed, this Agreement shall terminate immediately upon the effective date of the revocation/nonrenewal of the charter, and without the need for the process outlined in Sections (a) or (b) above.
- d. **Death or Incapacitation of Employee:** The death of Employee shall terminate this Agreement and all rights provided under this Agreement. In the event that Employee becomes incapacitated to the extent that, in the judgment of the Board, Employee may no longer perform the essential functions of his/her job with or without reasonable accommodation, as set forth in the job specifications, the Board may terminate this Agreement.

Comment [PC3]: MPS may decide what amount it wants to offer as severance for early termination. However, we recommend one (1) month as a maximum amount.

D. NON-RENEWAL/EXPIRATION OF TERM. The Board may elect not to offer future employment agreements to Employee at its sole discretion, without cause, and this Agreement will lapse by its own terms.

E. GENERAL PROVISIONS

1. **Waiver of Breach**

The waiver by either party, or the failure of either party to claim a breach of any provision of this Agreement, will not operate or be construed as a waiver of any subsequent breach.

2. **Assignment**

The rights and obligations of the respective parties under the Agreement will inure to the benefit of and will be binding upon the heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that this Agreement will not be assignable by either party without prior written consent of the other party.

3. **Governing Law**

This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of California.

4. **Partial Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable by any court, the remaining provisions herein will remain in effect unless such partial invalidity or unenforceability would defeat an essential business purpose of the Agreement.

F. ACCEPTANCE OF EMPLOYMENT

By signing below, the Employee declares as follows:

1. I have read this Agreement and accept employment with MPS on the terms specified herein.
2. All information I have provided to MPS related to my employment is true and accurate.
3. A copy of the job description is attached hereto.
4. This is the entire agreement between MPS and me regarding the terms and conditions of my employment. This is a final and complete agreement and there are no other agreements, oral or written, express or implied, concerning the subject matter of this Agreement.

Employee Signature: _____ Date: _____

Address: _____

Telephone: _____

MPS Approval:

Date: _____

[NAME], [TITLE]
Magnolia Public Schools

*This Employment Agreement is subject to ratification
and approval by the Governing Board of MPS.*