



MEMORANDUM

TO: Andes Central School District Board of Education

FROM: EFPR Group, LLP/Jim Marasco

DATE: April 20, 2023

SUBJECT: Review of Former Superintendent's Contract and Benefits

As requested by the Interim Superintendent and Board of Education of the Andes Central School District ("Andes" or the "District"), EFPR was engaged to review the former Superintendent's contract and benefit structure and how it was applied to his compensation from July 2010 to the present. The following represents the procedures applied, the information reviewed and the results of our review.

While onsite, we obtained copies of the former Superintendent's contract, subsequent amendments/renewals, board meeting minutes, paid time off ("PTO") documentation and employee earnings reports from BOCES. Using this information, we reviewed the terms and conditions of the former Superintendent's contract and whether they aligned to how he was compensated during the scope period identified above.

We have highlighted the following noteworthy observations:

- The former Superintendent's base salary started at \$105,000 in 2009 and grew to \$170,000 by June 2022. In mid-2015, his duties and salary were jointly shared with the Margaretville Central School District and his base salary increased from \$112,000 to \$139,900. However, no clause was added to his contract regarding a decrease in salary if his duties were no longer needed at Margaretville. In fact, the former Superintendent's original contract stipulated that his annual salary could not decrease. Therefore, when the Margaretville CSD subsequently dropped his contract, Andes was contractually prohibited from decreasing his salary.
- In August 2010, an amendment was made to the former Superintendent's contract that authorized the District to contribute \$4,000 a year as a non-elective direct employer contribution to a tax deferred annuity for his benefit. Each year this annual benefit increases by \$4,000 up to the legal limit allowed. By 2022, we observed this amount totaling \$44,000.
- In 2011, the former Superintendent negotiated into his contract an insurance buyout in which he would receive cash compensation equal to 92% of the family health coverage for declining the District's health coverage. This benefit started at \$12,000 and grew to over \$26,000 in 2022.
- In July 2016, an amendment to his employment agreement extended the insurance buyout benefit after retirement, separation or resignation from the District. This benefit also applied to dental coverage and Medicare payments once this became applicable.
- In July 2014, the former Superintendent negotiated into his contract a benefit that would provide a lump sum cash benefit in August of each year equal to 1.85% of his gross salary to use "at his discretion to underwrite the premium cost of purchasing life insurance/disability insurance." This benefit grew from \$2,072 in 2014 to \$6,268 by 2022.
- In July 2019, the former Superintendent negotiated into his contract a benefit that would provide a longevity bonus. "Upon the commencement of 12 years of service as Superintendent/Principal in the



Andes CSD, the Superintendent/Principal shall receive a longevity increment of \$3,500 each year to his base salary. The yearly longevity shall be cumulative and shall be added to his base salary for the purposes of calculating his final average salary as per the Teacher's Retirement System."

- The original contract in 2009 allowed the former Superintendent 20 days of vacation annually with 10 of them allowed to be deferred for up to 12 months. Once severing employment, he could be paid for up to 30 days at an agreed upon rate. These days are in addition to the sick leave (15 days annually), personal days (3 days annually) and bereavement leave (5 days annually) that were outlined, but not eligible for any cash payouts. In August of 2010, a contract amendment allowed sick days to accumulate from year to year, up to 200 days. Furthermore, it now allowed the former Superintendent to be paid for any unused and accumulated sick days at the time his employment with the District terminates and his vacation days increased to 25 annually at the 4 year mark increasing to 30 days once he reached his 6th year of service.

In July 2013, through an amendment to his Employment Agreement, a clause was included that allowed the 10 unused vacation days to be cashed out at June 30th of each year and be included in payroll for purposes of computing retirement entitlements for the retirement system. By the end of that fiscal year (June 2014), the former Superintendent began claiming the full benefit for these "unused" vacation days netting \$5,090 of additional compensation for the first year.

In July 2015, another amendment to the Employment Agreement was created that now allowed the former Superintendent to exchange his annual allotted sick and personal days for compensation "at his current contractual rate at his discretion." At the end of fiscal 2015, the former Superintendent exchanged 10 vacation, 5 sick and 3 personal days for a total of \$11,446.38. We observed this practice to continue during his tenure with the amounts increasing as his base salary increased. Even after he was put on paid leave in February 2022, he continued to receive his payout of vacation, personal and sick days.

- The former Superintendent's original employment contract covered a three year period of July 1, 2009 – June 30, 2012. However, in August 2010, an amendment was created that extended his term of employment commencing July 2012 – June 30, 2015, even though two years remained on his current contract. The following year (July 2011) included another amendment in which his term was extended from June 2015 to June 2016. This unusual pattern continued through July 2021 in which an amendment was observed extending the term of employment from July 1, 2021 – June 30, 2026, even though a July 2020 amendment had extended his term of employment through 2025.

As a result of the observations noted above, we have the following comments:

- The former Superintendent's compensation was observed to be especially generous as his duties only included one district near the end of his tenure and the Andes district enrollment numbered less than 100 students. Even as the Margaretville District stopped using the former Superintendent's services and reimbursing for his salary, his compensation was unaffected, as the District was contractually bound not to adjust it downward.
- The tax deferred annuity benefit was found to be extremely generous, increasing by amounts equal to 100% at the onset. Since this benefit is tax deferred, the actual benefit to the former Superintendent is actually 30% or more greater than the face value of the funds being advanced. At the end of 2022, the amount paid (\$44,000) was observed to be just under the maximum legal amount allowed of \$45,000.
- The healthcare benefit offered to the former Superintendent was ill-advised and egregious in that upon separation from the District, the benefit continued indefinitely and was uncapped since it was based on a percentage of the District's annual healthcare plan costs, which historically increase annually.
- We found the longevity payment unusual in that these stipends are usually non-cumulative. In this instance, the former Superintendent's longevity stipend was annual and cumulative in nature.



- While the former Superintendent's initial PTO bank and structure seemed reasonable, it quickly grew more unreasonable. Since he was being paid on seemingly "unused" paid time off, it would be extremely important for the District to properly monitor the former Superintendent's daily activities and recordkeeping. However, we noted that an inherent conflict existed in that he was also serving as District Clerk and directly supervised the personnel overseeing his timekeeping. We recalculated the amounts he was receiving each year and found them to be in accordance with his amendments, predicated on the accuracy of the District's timekeeping. However, NYS *does not* allow unused sick leave or "any payments made for time not worked" in the inclusion of final average salary for purposes of an employees' retirement earnings calculation.
- The observed practice of extending the former Superintendent's Employment Agreement on an annual basis even when the current contract was a couple years from expiration is unusual and extraordinary. This practice seemed exceptionally one-sided in favor of the former Superintendent.
- Overall, we found the salary package and benefits extended to the former Superintendent as extremely generous and in some cases, egregious in nature subjecting the Andes Central School District to significant financial risk and exposure. From our observations, it appears as if the former Superintendent initiated most of the changes enumerated above. However, for each of the amendments, we observed that at least one member of the Board of Education consented to these modifications.

The following recommendations are being made for your consideration:

- The District should refrain from offering future benefits tied to a percentage of tomorrow's dollars with no current defined limit. For example, the healthcare benefit offered to the former Superintendent was limitless in that it would continue to grow into the future as healthcare costs increased.
- Longevity stipends are usually granted upon reaching certain milestones and aren't typically cumulative in nature.
- A stronger system of checks and balances or segregation of duties needs to be considered for the future. In the past, the former Superintendent was also serving as the District Clerk and at times was maintaining his own timekeeping which subjected the District to financial exposure for unused PTO.
- The District should review with the ONC shared Business Office the historical amounts reported to New York State for the former Superintendent's "cash-outs" for unused PTO and insurance reimbursement to ensure they are in compliance with state statutory requirements.
- The Board of Education should consult with legal counsel involving the amounts previously paid to the former Superintendent concerning unused PTO while he was placed on paid leave from February 2022 – June 2022, prior to his separation agreement, to determine whether the District was legally required to make those payments.
- For the future, we recommend that the Board of Education consult legal counsel to develop or amend any contractual superintendent contracts and refrain from extending contracts until their scheduled term approaches.
- The Board of Education should review and sign only full contracts and not amendments to contracts.

If you have any questions, please do not hesitate to call us at [REDACTED]

EFPR GROUP, LLP

