

Getting Your Legal Ducks in a Row: Best Practices for Management of Your Library Director

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**GETTING YOUR LEGAL DUCKS IN A ROW:
BEST PRACTICES FOR TRUSTEES' MANAGEMENT OF YOUR
LIBRARY DIRECTOR**

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I. Introduction

The Library Director is charged with administrating, supervising, and managing the library. The elected or appointed Trustees, on the other hand, are responsible for, among other things, supervising the Director. This supervisory responsibility is, in some ways, the most difficult task assigned to the Trustees. Effective management of the Library Director starts at the beginning of the relationship when the Trustees set the terms of the relationship – either by contract or policy – and then must continue with appropriate focus and documentation during the term of the Director’s employment. Part of the effective management of the Director is an understanding of the requirements and protections offered by RSA 202-A:17. As such, in this program, we will provide an overview of RSA 202-A:17, employment contracts, and best practices for the effective supervision and management of the Library Director. We will close with a discussion of discipline and performance management.

II. RSA 202-A:17

a. Overview

Under the New Hampshire Public Library Law (RSA 202-A:17), all public library employees, including the Library Director, are granted specific protections related to removal and discharge.

b. Removal / Discharge under RSA 202-A:17

When removing or discharging a Library Director, the Trustees must adhere to the following rules and procedures:

1. *Cause for Discharge or Removal:* Public library employees can only be discharged or removed from office by the Trustees for: malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform the employee’s duties.
2. *Notice:* Before discharge or removal, the library Trustees must provide notice to the Director by:
 - Preparing a statement of the grounds and reasons for discharge or removal, signed by the majority of the Board of Trustees; and
 - Providing the statement to the Director (as notice) no less than fifteen (15) days and no more than thirty (30) days prior to the effective date of removal or discharge.
3. *Right to a Public Hearing:* After receiving notice, employees have thirty (30) days to request a public hearing.

- If a hearing is requested, the library Trustees must hold the public hearing not more than thirty (30) days after receipt of the request for the hearing. If the Trustees, following the hearing, find good cause for discharge or removal of the Director, they can order the discharge or removal.
 - If the Trustees do not find good cause for discharge or removal of the Director following the hearing, they cannot move forward with discharge or removal.
- While this process is pending, the Trustees cannot change the salary of the Director until the final effective date of the order for discharge or removal.

The rules and procedures established by RSA 202-A:17 apply to the employees of any public library *except* in a case where the city or town has personnel rules and regulations that apply to library employees and that provides the right to a public hearing prior to discharge or removal.

III. Employment Contracts

a. Overview

When should Trustees use an employment contract for the Library Director? As supervisors and managers, the terms of employment for the Director may differ from the general terms provided in the employment handbook. Therefore, while not required by law, an employment contract is appropriate for most, if not all, Library Directors. When entering into an employment contract with the Director, the Trustees must consider what laws apply to the contract and what terms should be included in the contract.

Additionally, because Library Directors, once appointed, are entitled to keep their jobs unless there is specific cause to remove them (per RSA 202-A:17), term-limited employment contracts can provide Trustees with additional opportunities to consider whether the Director is a good fit for the library. Courts have held that, even employees with a “for cause” protection, can be hired on a limited-duration term basis and that their employers can then later opt not to renew their contract, without specific cause and without violating their statutory “for cause” protection.

b. Terms of the Employment Contract

In an employment contract, the Trustees should aim to cover the important and unique aspects of the Director’s employment, without too much “extra.” The longer and more complex the contract is, the more likely you are to lose clarity and foster misunderstanding.

Provisions that are generally included in any employment contract include, in no particular order:

- Opening / Identifying Paragraph (identifying the parties, etc.);
- Preamble / Whereas Clauses (describing the reasons for the contract and general purpose);
- Term;
- Duties;
- Compensation and Benefits (outlining the employee’s status, wages, bonuses, particular benefits, etc.);
- License requirements, if any;
- Confidentiality;
- Termination;
- Remedies and Dispute Resolution; and
- Other miscellaneous legal provisions (severability, governing law, amendments, entire agreement, signatures, etc.).

Below is an expansion on some of these provisions:

1. **Term**

The *Term* section sets forth the expected duration of the contract. At a minimum, this section should specify the date upon which employment is set to begin and end. As noted above, it is recommended that all Library Director’s are hired for a specific term.

The contract should, nonetheless, state the ways that either party can end the contract early. Usually, this is set out in a “termination” section, as further outlined below.

Additionally, the contract should also specify whether the contract has a pre-determined process for either or both parties to renew or extend the contract. Generally, given the value of keeping a Library Director under a term-limited contract, we recommend that Trustees consider including a provision in their contract that automatically rolls the contract into successive one-year terms, unless either party opts to non-renew or renegotiate the agreement.

2. **Duties**

The *Duties* section may vary depending on how much information the Trustees want to include in the duties section of the Director’s specific contract. At a minimum, this section often contains a brief description of job duties, supervisory expectations, or describes the nature of the position. This section may also incorporate the job description by reference or attachment for clarity.

Additionally, it is also important for this section to clearly reserve some discretion to the Trustees to modify the Director’s job duties during the life of the contract. Otherwise, the Trustees run the risk that the Director’s agreement would need to be obtained before modifying their role or assigning them new additional / alternative duties, which can be administratively difficult.

Finally, this section is often used to clearly define who will serve as the Director’s supervisor(s) or who should serve as the Director’s first point of contact.

3. Termination

As noted above, the *Termination* section should outline when and how the parties have agreed that they can end the relationship before the contract expires. Specifically, this provision should include that either party needs to give a certain amount of notice to terminate and the specific method by which notice must be given.

Library Directors, as discussed further below, can only be terminated for cause. As more fully outlined below, this section should be used to further clarify and expand on that concept to ensure that both the Trustees and the Director understand what conduct constitutes cause, who has the authority to make that determination, and the procedural process that must be followed to effectuate the termination.

Finally, if there is a guaranteed separation or severance payment, this should be specified in the *termination* section. Consider whether the payments of severance will be conditioned on the employee providing the employer with a release of claims at the time of separation. If this is the intention, then the contract must specifically state that condition.

c. Just Cause

A contract that simply states that employment can be terminated “for cause” is deficient because “cause” has many meanings. When drafting “cause” language, it is important to consider and properly include the requirements under RSA 202-A:17. It should be made clear that “cause” under the Director’s contract refers to:

Malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform the employee’s duties.

Additionally, however, the contract should clarify what *conduct* the parties agree will trigger this standard. For example, the contract may want to specify the library’s important conduct rules, or incorporate its handbook section by reference, to ensure that the contract clearly indicates that those behaviors will

constitute misfeasance/malfeasance, as appropriate. Further, the contract should clearly outline whether it is sufficient for the Trustees to determine that violative conduct has occurred or whether some other level of proof is required.

Recall that, per RSA 202-A:17, the Trustees must prepare a statement of the grounds and reasons for discharge or removal, signed by the majority of the Board. Assuming the contract clearly provides the Trustees with discretion to determine if violative conduct has occurred, how should the Trustees determine that the conduct occurred and that it constitutes “good cause” to remove or terminate? We recommend that Trustees use the following as a roadmap:

1. *Reasonable Rules and Orders*

- Was the rule, policy, or expectation reasonable?

2. *Notice*

- Did the Director have notice of the rule or policy alleged to have been violated? Was the rule or expectation outlined in the employment contract or the employee handbook?
- Did the Director have notice of the consequences of violating the rule, policy, or expectation?
- Has the rule or policy been consistently enforced? Typically, public libraries only have one Library Director. While employers would normally compare similarly situated employees to answer this question, consider whether the rule, policy, or expectation has been consistently enforced for *this* and *recent* Directors.

3. *Fair Investigation Process*

- Did the Trustees conduct an investigation into the alleged infraction?
- Did the Trustees give the Director “due process” by providing the Director with the opportunity to respond to the alleged infraction *before* deciding that the alleged infraction occurred?
- Did the Trustees use good investigative techniques?
- Was the investigator trained in performing investigations?

4. *Sufficient Evidence*

- Did the investigation show sufficient evidence to show that the Trustees had a reasonable, good faith basis for believing that the Director violated the rule, policy, or expectation?
- What evidence exists to support the discipline of the Director?

5. *Equal Treatment*

- Has the rule, policy, or expectation been enforced against other employees?

- Have other employees been disciplined for the same or similar infractions?

6. *Penalty*

- Is the discipline imposed proportionate to the nature of the infraction?
- Have other employees been disciplined in the same manner for the same or a similar infraction?
- Has the Director previously been disciplined for a violation of a rule, policy, or expectation?

7. *Other Circumstances*

- Are there any mitigating circumstances that support making an exception from the standard disciplinary process?

IV. **Effective Supervision**

a. Overview

The Library Director has a critical role in managing and supervising the library. The Director is the face and voice of the employer and employees will look to the Director to explain management decisions. The Director is relied on to help the organization run smoothly. As the Director's supervisors, the Board of Trustees play a critical role in the success of the public library. It is the Trustees' responsibility to manage and supervise the Director and ensure that he or she is efficient and productive.

In general, effective Trustees should:

- Establish and maintain appropriate boundaries between themselves and the Director;
- Understand when they have the authority to act;
- Know the standards, expectations, and rules for the Director and the Director's performance and conduct, and help the Director *prioritize* those expectations;
- Communicate prioritized expectations to the Director clearly;
- Model those expectations, as practicable;
- Consistently and fairly measure whether the Director is meeting performance expectations;
- Promptly, proportionately, and consistently address conduct violations or poor performance, and recognize good conduct and performance;
- Establish credibility by being fair, respectful, and empathetic; and,
- Communicate with other leadership or outside counsel about personnel questions or issues of concern when necessary.

b. Initiating and Maintaining Supervisory Relationship

Effective communication is the cornerstone of effective supervision, which can and should begin at the inception of the employment relationship. As indicated above, establishing certain expectations, policies, and rules in the employment contract is a good way to initiate the supervisory relationship.

To initiate and maintain a productive supervisory relationship with the Director, Trustees should: (1) clearly establish performance expectations; (2) consistently and fairly prioritize and maintain those expectations; and (3) promptly and consistently address conduct violations. By being clear and consistent, the Trustees can establish credibility and mutual respect, which will foster a meaningful supervisory relationship between the Trustees and the Director.

Beyond establishing the expectations for the Director, Trustees should explain the Trustees' role in the Director's employment. This includes evaluations, disciplines, and expectations of the Trustees including fair implementation of rules and policies and clear, consistent communication.

Of course, part of the Trustees' role is to *supervise* the Director. Reduced to their fundamentals, both employee evaluations and employee discipline are simply common mechanisms by which employers communicate an employee's successes and failures in the workplace. These are tools by which employers and successfully manage employees. As such, Trustees should consider using evaluations and discipline, fairly and effectively, to supervise the Director.

c. Performance Management and Discipline

1. Evaluations

While managing the Director's performance can be challenging, it is an important part of the Trustees' ongoing role as supervisors. Periodic evaluations are part of the performance management process. Effective evaluations come in all shapes and sizes. Forms, evaluation protocols, and evaluators themselves differ by employer. Regardless of form or protocol, however, all effective evaluations should be designed not simply to document the Director's current performance, but also to assist the Director in improving that performance over time. Unfortunately, it is not uncommon to see performance evaluations failing to meet this fundamental goal. For example, performance expectations are often unclear and/or undocumented, or, even if a performance deficiency is identified, the evaluation often does not provide useful suggestions for improvement or a realistic timeline for improvement. Furthermore, and equally as detrimental to the process, in many cases there is little supervisory follow-through. Therefore, evaluations can seem like

isolated “snapshots” of performance without a thread of continuity that would provide the Director with an overall sense of whether or not their performance is meeting expectations.

Part of the evaluation process is to determine who will serve as the evaluator and when the evaluation will take place. At the beginning of employment, Trustees should communicate to the Director the expectations surrounding evaluations. Ideally, Directors would be formally evaluated on a yearly basis. However, the Trustees can choose to implement a more detailed process with informal check-ins and formal evaluations. Whatever the Trustees determine is the best fit for the library, this should be communicated to the Director early in their employment. It is important to communicate this information to the Director to promote transparency in the process and enhance the validity of the process, which can encourage the Directors “buy-in” and cooperation.

The following is a checklist that should assist Trustees in improving the Director’s performance or, if necessary, support the separation of the Director from the library as evidence of *good cause*.

1. ***Establish reasonable performance standards, and provide clear notice of the standards.*** In many cases, performance expectations were never made clear to an employee in past evaluations. In order for an evaluation to be effective, the Trustees must outline the performance standards, in advance, so the Director can understand and attempt to achieve those expectations. Be sure to document the ways in which you will communicate ongoing or new performance standards to the Director, even if that communication takes place outside of a formal evaluation.
2. ***Apply the standards equally (as appropriate) and consistently.*** The easiest way to undermine the validity of an evaluation is to suggest that a different standard is being applied to the Director and that there is no business reason for the difference. While there is only one Director and, as such, the standards may be different between the Director and other employees, Trustees should ensure that different standards are only applied when there is a business reason – i.e., a reason tied to the Director’s unique position within the organization – to do so. Otherwise, the Director will be confused and, likely, feel undermined if they are criticized for something that has gone unnoticed during their other evaluations. If the standards are going to change, which would impact the next evaluation, be sure to clearly communicate those changes.

3. ***Provide clear directions / suggestions on how to improve performance and enough time to do so.*** Remember that the most important function of an evaluation is to improve performance. Generally, improvement takes time and assistance. Therefore, an action plan with a reasonable timetable is critical to this process. While the best action plans are created with employee involvement and buy-in, the plan should ultimately be written by the evaluator to ensure that it addresses the key performance issues in a manner that can be effectively monitored.
4. ***Provide clear notice of the consequences.*** It is vital that an employee understands from the outset what the employment consequences will be if they do not meet the goals or expectations laid out in the action plan. Communication of these consequences should be in writing, so that there is no question about either the employer's expectations or the employee's understanding of the seriousness of the matter.
5. ***Follow through and follow-up.*** Time and time again an evaluation will be done of an employee and then, even though a set of performance expectations is developed and a plan is put together, nothing further happens. "False starts" like this are unfair to a Director, and make the work of future evaluators even more difficult.
6. ***Be fair, objective, and thorough.*** Often, it is extremely helpful to get a second opinion from another evaluator. If the Trustees have determined that the Chair will be the evaluator, it may be a good idea to establish a second evaluator to participate where necessary. The Trustees may also consider mixing which Trustee will stop by the library to observe the Director, either announced or unannounced, as a strategy to allow the evaluator(s) to see the Director on multiple days and in varied settings. Finally, beware of the inclination to document only the positive aspects of an employee's performance, while ignoring other ongoing issues of concern, or vice versa. In all fairness to the Director, both the areas of concern and the areas of good performance should be included. In other words, evaluations should be honest and should include not only the Director's accomplishments, but also his or her weaknesses and deficiencies.
7. ***Be compassionate, yet firm.*** Trustees should always respect and consider the feelings of the Director, because how they feel about the way they are treated during this process is an important aspect of achieving their buy-in. However, Trustees should nonetheless remember that their first priority is to the library and that goal should ultimately motivate the discussions.

8. ***If standards have changed, start slowly; don't use a sledgehammer.*** As discussed above – standards might change! Remember that the Director has received prior evaluations that do not take into account these new expectations. In all fairness to the Director, Trustees should give them time and support to adjust to the new expectations.
9. ***Never write an evaluation in a vacuum.*** Always review the Director's file and prior evaluations before writing a new performance evaluation. This allows an evaluator to continue and/or develop an ongoing and contextual record of a Director's performance.

2. Discipline

Generally, discipline is simply another form of communication with the Director. Recall that Director's can only be terminated with *cause* for one of the permissible reasons included in RSA 202-A:17. However, the Trustees have the authority to discipline the Director for other behaviors that are inconsistent with rules, policies, and expectations. Before making the final decision to discipline or discharge the Director, the Trustees should review the facts and circumstances surrounding the decision by reviewing performance evaluations, considering the just cause standard and RSA 202-A:17 as discussed above, and reviewing prior documentation, as discussed below.

d. Documentation

Documentation is the key to surviving any review (by an agency or court) of a decision to discipline or discharge an employee. Therefore, it is important for the Trustees to document all disciplinary actions and maintain them in the employee's personnel file. It is equally important to draft such documents with care, as they could be (and will be) used as exhibits.

When drafting documents, consider the following points:

1. **Review any applicable policies and contracts.** Be on the lookout for provisions requiring that the Trustees provide the Director with notice before certain meetings, governing how complaints will be processed, or limiting what documentation can be included in the Director's personnel file. These requirements should be referenced in your documentation to show that you satisfied them. Additionally, if you are stating that a Director violated a particular workplace rule, it is helpful to state the particular rule in the documentation.

2. **Review the Director's personnel file** so that your documentation can reference prior discipline / evaluations where appropriate and place particular conduct into context.
3. **Consider the ultimate reader.** Disciplinary documentation must clearly communicate with the Director, future Trustees, and, potentially, a reviewing court or agency.
4. **Document all conversations with the Director regarding performance or conduct concerns,** provide them with copies, and require that they sign the documentation to acknowledge that they have read the document.
5. **Complaints by employees or members of the public regarding the Director should be documented** by the complainant, or the person doing the complaint intake, in writing. Details concerning who made the complaint, when and where it was received, and the substance of the complaint should also be in writing. Thereafter, the group of or individual Trustee tasked with determining whether a complaint is founded should document what fact finding was performed (i.e., what documentation was reviewed, who was spoken to, accused employee's response to the allegation, etc.) and ultimately whether they determined that the complained-of conduct occurred. Before finalizing the documentation, get a second opinion on the results of an investigation to ensure that it is reasonable, fair, and complete.

V. Conclusion

It can be extraordinarily challenging to effectively manage and supervise Directors. It is the goal of this program to provide Trustees with a framework for approaching some of those challenges – including drafting appropriate employment contracts, understanding the requirements under RSA 202-A:17, and effectively managing and disciplining the Directors.