

Introduction to Contract Management:

Vendors, Employees, and Oversight

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Objectives

- Understand the importance of reviewing vendor contracts.
- Identify key provisions of vendor contracts.
- Learn how to protect your interest as a governing board and charter school.
- Identify key metrics for monitoring vendor and employee performance

Respective Roles



Vendor Selection - Due Diligence

- Research a vendor's performance with other entities.
 - Publicly available data
 - Reach out to other clients
- Do key individuals have a clean and clear professional history?
- Are there any affiliated relationships that may complicate your business relationship?

Key Principles for Negotiating a Vendor Contract

- Primacy of charter contract
- Board/school independence
- Clearly defined roles and responsibilities
- Common sense fiscal controls
- Protect the student and public interest

Primacy of Charter Contract

- The school's charter contract is its authorization to operate.
- Is the vendor a provider that requires SCSC approval of the contract prior to its execution?
- Does any aspect of the agreement contradict provisions in the school's charter contract?
- Is the proposed relationship consistent with the school's mission, vision, and innovative features as outlined in the charter contract?

Board and School Independence

- School autonomy is a central tenet of the charter school structure.
- Vendor contracts must appropriately reserve decision-making authority for the governing board.
 - Governing Boards must exercise substantive control over personnel, finances, curriculum and instruction, resource allocation, establishing and monitoring the achievement of school improvement goals, and school operations
- Vendors should have no authority in the selection of board members or its representatives.
- Vendors should not be able to carry out school functions contrary to governing board directives.
- Vendors should not be able to restrict a governing board's oversight of school operations.

Clearly Defined Roles and Responsibilities

- Ambiguity in contract scope leads to either:
 - Nothing getting done; or
 - Disagreement as to how/what things get done.
- Ensure that there is there a clear and detailed description of the services to be provided.
- Governing Board should retain final decision-making authority over school operations.

Common Sense Fiscal Controls

- Clear and transparent method of determining payment.
- Method of payment keeps finances under control of the Governing Board.
- Detailed delineation of goods or services provided for the fee as well as a distinct schedule or structure for additional services.
- Any financial arrangements, such as loans or advances, are supported by legally enforceable notes or contracts.
- The contract addresses the disposition of property in the event of default, contract termination, and/or school closure.

Protect Student and Public Interests

- Does the proposed relationship require business with an affiliated entity? Does the agreement contain references to any other entities?
- Is the board entering into any other agreements with affiliated entities (i.e., entities controlled by the same people that control the company)? Have these affiliations been disclosed?
- Do provisions of the contract conflict with requirements of law (open records, open meetings, etc)?

Essential Vendor Contract Provisions

■ Scope

- Should be clear with identifiable roles and responsibilities that reflect school autonomy.

■ Payment

- Should be transparent with amount commensurate with goods or services provided.

■ Term

- Should be for a definite term and, if applicable, renewals should require overt action by both parties.

■ Termination

- Should be balanced for both parties and must allow the school to operate following termination.

Prohibited Contractual Provisions

- Sweeps Contracts

- These contracts require the school to deposit all (or most) of the school's funding in an account under the control of, or accessible by, the vendor.

- Faculty and Staff Employed by Vendor

- Termination Provisions with Severe Penalties

- Provisions that Preclude the Governing Board from Oversight

- Provisions that Inhibit SCSC Oversight

- Provisions Contrary to the School's Charter Contract or Other Applicable Law

Employee Selection – Due Diligence

■ Professional Standards

- Adopt and adhere to your school's professional qualifications of employment.
- Understand certification obligations pursuant to GaPSC Rule 505-2-42 (Clearance Certificate)

■ Recruiting

- Utilize multiple methods (and websites) for recruitment.

■ Assess Skill

- Examine a teacher's ability to manage content (and the classroom)!

“At-Will” Employment

An employer may discharge an employee, and an employee may resign, with or without cause.

“At-Will” Employment

The presumption of at will employment is not absolute.

- Terms of employment contracts and, in some cases, offer letters can impact the application of the at will employment doctrine.
- The at will employment doctrine does not apply to employment decisions that violate federal and local employment laws and municipal ordinances.*
- Remain in compliance with Georgia laws impacting employment that are not subject to broad flexibility (i.e. Drug Free Workplace Act, Unemployment Compensation etc.)

Key Principles for Negotiating Employment Contracts

- Applicants may expect an employment contract based on industry standards.
- Although state charter schools are not subject to the Fair Dismissal Act, contract terms can still impact the presumption of at will employment.
 - Employment contracts with defined employment periods, but no early termination clauses, modify at will employment such that termination during the contract period must be for cause.
 - Employee Handbook terms do not impact at will employment.*

Documentation

Maintain appropriate records of:

- Hiring Process
- Policies
- Discipline
- Termination
- Exit Survey

Maintaining the presumption of “at will employment” is not the only consideration.

Vendor & Employment Contract Oversight

- What milestones/deliverables are in your contract?
- Are there specific measures in the contract for evaluation?
 - School performance
 - Audit Opinions
 - Deadlines
 - TKES/LKES
- To the greatest extent possible, align contracted performance to the SCSC Comprehensive Performance Framework.

Governing Board Role in Oversight

- Engagement is critical!
- Receive performance reports BEFORE the board meeting.
- ACTIVELY review performance reports.
- Engage leaders/vendors in performance evaluations.
- Take action when necessary.