

# Contract Deal Breakers: Retaining Your School's Authority with Vendors

November 28, 2017

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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.
- Learn how to leverage your position and SCSC expectations to negotiate better agreements.

# Respective Roles



# Due Diligence

- Research a vendor's performance with other schools.
  - Publicly available data regarding schools' academic, financial, and operational data.
  - Reach out to leadership of other schools.
- Do key individuals have a clean and clear professional history?
- Are there any affiliated companies that may complicate your business relationship?

# Key Principles

- 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 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.
- 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.
- Vendor contracts must appropriately reserve decision-making authority for the governing board.
- 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 things get done.
  - Understand what services are being provided
- 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)

# Specific Important 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

## Utilize SCSC Expectations

- The SCSC must approve contracts with educational service providers.
- There are some provisions the SCSC will not approve.
- Because the educational service provider has a financial interest in maintaining your business, utilizing SCSC expectations may increase the school's negotiating power.

# 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

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

# RED FLAGS! RED FLAGS!

- What Red Flags do you see?
- Why are these provisions problematic?
- How would you propose to improve them?