



## Vendor Contracts: Be Careful Before You Sign On The Dotted Line

Insights

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It's the first week back to school and you receive the following three phone calls in quick succession:

- A parent advises you that she does not want to buy expensive apparel from a certain sportswear company for her eighth-grader to play on the school's basketball team. When you inquire further, you find out the coach signed a sponsorship agreement obligating the players to wear apparel from that company exclusively.
- A software company informs you that your school owes several thousand dollars for annual services rendered, though you recently penned a deal with a new tech company. After doing some digging, you learn your former IT director entered into a long-term contract for IT and software services, unbeknownst to anyone else.
- The chair of the Parent-Teacher Organization wants to order pizza through a popular local shop for the annual back-to-school meeting with parents. But he has discovered a contract in the PTO binder that says all food brought onto campus must be ordered through a specific food service vendor.

### Awareness Is The First Step

There is no question that entering into vendor contracts is an everyday necessity for independent schools across the nation. Examples of some of the more common contracts include those for food services, maintenance, after-school programs, multimedia content, curriculum resources, and marketing. The first step to ensuring your school enters into fair and equitable contracts is simply to be aware of them. Your administration must be informed of the contract's existence before execution so you have the opportunity to negotiate beneficial terms and the agreement can be vetted by legal counsel, if necessary.

While this may seem obvious, every school administrator can probably relate to one of the examples set forth above. Therefore, your school should create a policy designating a short list of personnel authorized to negotiate, review, and execute contracts that create obligations or confer benefits on the school. Your list should include individuals with high-level knowledge of your school's operations, insurance coverage, and financial standing. Your policy should also detail the

circumstances under which the designated personnel must seek Board authorization; for example, to delineate a monetary or term length threshold.

### **Education Is Key**

Once developed, it is critical to take affirmative steps to disseminate and implement your policy. First and foremost, it is imperative to train your administrators and employees regarding the parameters for entering into contracts on behalf of the school. Aside from formal training, the policy should be distributed and communicated throughout the year via handbook, bulletins, and meetings. Further, vendors should be put on notice as to who is authorized to bind the school, and that any contracts entered into by unauthorized personnel will be immediately disavowed. Finally, you should caution your employees that they may be personally liable for unauthorized contracts.

### **A Master List Is Essential**

Another useful tool to keep a handle on your obligations is a master list of vendor agreements. It should include vendors' contact information, services to be rendered, critical dates and deadlines, proof of insurance and license, and the person within the school designated to ensure compliance. This allows your administration to understand all of your contractual obligations by viewing one document. All original contracts should be maintained by one assigned person, such as the Chief Financial Officer or Business Manager.

### **Negotiation Points**

Just as important to the process is ensuring the terms are equitable and beneficial to your school. Some provisions that should raise a red flag include:

- **Exclusivity:** You may not want to enter into a food services contract, for example, that obligates the school to use the cafeteria vendor for all food services, including off-campus catering events.
- **Automatic Renewal:** These may obligate your school for years to come unless you cancel by a specified date. If your school has already entered into a contract with such a provision, it is critical to include the termination notice date on the master list of vendor agreements so you are prepared to cut the cord in time.
- **Punitive Cancellation Fees:** Be wary of any agreement that seemingly punishes you financially in a manner not tied to value of the contract.
- **Vague Standards Of Services:** It is imperative that specific performance criteria are included in the contract so you have recourse in the event services are not adequately rendered.
- **One-Sided Indemnification:** Avoid provisions that force you to defend and be liable for damages caused by the vendor's conduct.
- **Inconvenient Choice Of Law:** While typical with national vendors that are headquartered out of state, you should be wary of agreements that require you to litigate outside of your home state if a problem develops between your school and the vendor.

### **Conclusion**

Contracts are serious documents with broad legal and financial implications. Therefore, it is important to ensure that your school is properly equipped to proactively navigate the process. Adopt a policy, aggressively implement it, negotiate sound terms, keep good records, and know when you are in over your head.

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