


What is an Outside Entity?



Types of Outside Entities

- Other public entities—other Districts, community colleges, ESD, parks, cities, counties, etc.
- Non-profits—Booster clubs, PTAs
- Religious Groups—Good News Club, Satanic Temple
- Club Athletics
- Service Providers—Transportation, Food Services, Janitorial, Maintenance



Contracting with Outside Organizations



Who has authority to Contract?

- The Board unless otherwise delegated by the Board.
- If an employee enters into a contract without Board authority, the individual may be personally liable.
- OSBA Model Board Policy BBAA.



Who has authority to Contract? (cont'd)

- Authority given to District employees can be found in District policy or by a quorum vote of the board.
- OSBA Model Board Policies DJ and DJCA allow the superintendent or designee to enter into some contracts.
- Policy may set dollar limit.



Contracts that the Board may not delegate

- CBAs.
- Labor contracts (ex. custodial services, food services, transportation contracts).
- Contracts subject to the public contracting laws that require board action.



Ethics Issues Relating to Contracting

- A Superintendent, President or other school employee should not enter into a contract for the school that will result in a financial benefit to the employee or the employee's family members.



Examples of conduct prohibited by the Oregon Government Ethics Laws

- Superintendent signing a contract with a local plumbing company owned by the Superintendent or the Superintendent's family.



Examples of conduct prohibited by the Oregon Government Ethics Laws (Cont'd)

- Business Manager signing a contract with Office Depot for office equipment when Business Manager's spouse is the sales consultant for the school and will receive a commission off of the purchase.



Public Contracting Laws

- OSBA Model Board Policy FEF/FEFB Construction Contracts—Bidding and Awards.
- OSBA Model Board Policy DJ Bidding Requirements.
- OSBA Model Board Policy DJ-AR Special Procurements and Exemptions from Competitive Bidding.



Key Contract Elements

- Clearly define expectations.
- Basis of claim if not completed.
- Identifies specific goods or services expected to be performed.
- Timelines, Responsibilities.
- Termination Provision.



Governing Law

- Be aware of choice of governing law provisions:
 - Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
 - Each of the parties hereto irrevocably and unconditionally confirms and agrees that it is and shall continue to be subject to the jurisdiction of the state courts of the State of (SOME STATE THAT IS NOT OREGON).
 - Choose Oregon when possible!



Liability/Indemnification Clauses

- What are they?
 - Identifies who will be responsible in case of an injury/loss/contract breach
 - Shared liability/indemnification?
 - One party solely responsible?
- Purpose
 - Protects you from the unanticipated
 - Prevents being caught of guard



Have Adequate Insurance

- Talk to your local agent they should have knowledge of what types of insurance policies you have.
- Talk to PACE underwriting.
- Talk to workers' compensation provider.
- PACE Preloss cannot tell you how much you need for insurance purposes.



Know the PACE Coverage Documents and Exclusions

- Some student activities may be excluded-- trampolines.
- PACE Preloss cannot advise on what is covered and not covered—call SDAO/PACE claims or underwriting for coverage information.



Fingerprinting and Criminal Background Checks

PACE
SAFETY SERVICE SAVINGS

Who needs to be fingerprinted and subjected to a criminal background check?

- All District staff.
- **NEW** applies to volunteers now too!
- Any person employed as or by a contractor into a position having direct, unsupervised contact with students.

PACE
SAFETY SERVICE SAVINGS

Who needs to be fingerprinted and subjected to a criminal background check? (Cont'd)

- "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision.
- When in doubt, do or require the background check!

PACE
SAFETY SERVICE SAVINGS

Who needs to be fingerprinted and subjected to a criminal background check? (Cont'd)

- OSBA Model Board Policy GCDA/GDDA.
- Have this in your contract with contractors!
- PACE Preloss has sample language we can share.



Sample Contract Language

- Contractor agrees that all of its employees, volunteers and agents having direct, unsupervised contact with students will undergo a Fingerprint-Based Criminal History Verification in addition to a Nationwide Criminal History Verification.
- Contractor agrees that all other employees, volunteers, and agents who will be working on site with students will successfully complete a Nationwide Criminal History Verification.




Sample Contract Language (Cont'd)

- The District will process the background checks and provide contractor personnel with photo id badges.
- Contractor shall pay all fees assessed by the Oregon Department of Education for processing the background check. The District may deduct the cost of such fees from a progress or final payment to the Contractor under this Contract, unless the Contractor elects to pay such fees directly.




Sexual Conduct/Child Abuse Reporting Laws and Required Training



Best Practice

- Oregon's child abuse and sexual conduct laws require that all school employees receive annual training regarding child abuse, sexual conduct and reporting obligations.
- Law does not apply to contractors or employees of contractors, but it is highly recommended.
- Make part of your contract with the contractor!



Special Issues Relating to Field Trips



Permission Form/Waivers

- District should have its own permission form/waiver separate from waiver provided by outside organization.
- PACE preloss has a model field trip permission slip/waiver.
- Waiver should be reviewed by legal counsel after blanks filled in.



Permission Form/Waivers (Cont'd)

- What should be included:
 - Trip itinerary/specifics
 - Chaperones, level of supervision
 - Behavior expectations
 - Cost
 - Medical treatment authorization
 - Make sure this goes with staff on the trip!
 - Safe, confidential location
 - Parent/Guardian signature and date



Permission Form/Waiver—Problems

- Dangerousness of activity is underplayed, risks are not fully explained.
- Doesn't emphasize voluntary nature of activity/field trip
- Doesn't fully waive all claims.



Agreements Between District and Field Trip Location

- Attorney review advised.
- Who will be responsible for student injuries and property damage?
- The laws of which State will apply, Oregon or some other state?



Facility Use



Facility Use Policies

- Have contracts with entities using your facilities.
- Make sure you have policies and procedures in place before an issue arises.
- OSBA Model Board Policy KG Community Use of District Facilities.
- OSBA Model Board Policy KG-AR Community Use of District Facilities (Procedure and Fee Schedule).



Common Concerns with Facility Use

- First Amendment Freedom of Speech
 - Cannot discriminate based on protected speech
- First Amendment Freedom of Religion
 - Cannot endorse or advocate religion
 - Cannot discriminate on basis of religion



Common Problems with Specific Outside Organizations



Satanic Temple

- Satanic Temple <https://thesatanictemple.com/>

“The mission of the Satanic Temple is to encourage benevolence and empathy among all people. In addition, we embrace practical common sense and justice.”



“After School Satan” one of their campaigns

“It’s important that children be given an opportunity to realize that the evangelical materials now creeping into their schools are representative of but one religious opinion amongst many. While the Good News Clubs focus on indoctrination, instilling them with a fear of Hell and God’s wrath, After School Satan Clubs will focus on free inquiry and rationalism, the scientific basis for which we know what we know about the world around us. We prefer to give children an appreciation of the natural wonders surrounding them, not a fear of everlasting other-worldly horrors.”



Satanic Temple

- Portland Public Schools
http://www.oregonlive.com/trending/2016/09/satanic_temple_brings_after-sc.html
- “With after school daycare and sitters so expensive, this might be a good way to keep the lil’ devils busy till I’m home from work.”
- Must allow this group if you allow other non-profit groups.



Good News Club

“Good News Club is a ministry of Child Evangelism Fellowship in which trained teachers meet with groups of children in schools, homes, community centers, churches, apartment complexes, just about anywhere the children can easily and safely meet with their parent’s permission.”



Good News Club (cont'd)

- “The purpose of Good News Club is to evangelize boys and girls with the Gospel of the Lord Jesus Christ and establish (disciple) them in the Word of God and in a local church for Christian living.”
- Cannot deny this group if you also allow other non-profit organizations to use your facilities.



Good News Club, Satanic Temple and other student groups

- Permission slip for leaving school or attend during school with statement that District has no control over staff of religious group or what occurs while student is off-campus or in meeting with the group.
- Agreement with group that group is responsible for complying with all criminal background checks and training regarding sexual conduct and child abuse reporting.
- Must apply to all groups meeting with students.



Booster Clubs/PTAs

- Separate Entity--501(3)(c).
- Finances should not be kept in District bank account (if they are, they are District funds and should be treated as such for auditing and accounting purposes).
- Theft of funds.



Booster Clubs/PTAs (Cont'd)

- Title IX—are fundraised dollars being used equitably between genders?
- Football and baseball are common problem sports in this regard.



Athletic Clubs

- Do parents and students understand that it is a club and not a school sponsored sport?
 - Advertised in the school?
 - Do they use the school logo/mascot?
 - Do they identify themselves as the District's team?
- Require club to follow facility use procedures like any other outside group.



Athletic Clubs (cont'd)

- Consider a contract with the club that addresses insurance, liability and indemnification, criminal background checks, sexual conduct and child abuse reporting.



Study Abroad Programs

- Do parents understand that it is not school sponsored?
- Similar to athletic clubs.
- Contract with organization for use of logo, facilities, etc.?



PACE Preloss




PACE Preloss Services

- Preloss legal assistance – available for issues that may lead to a claim under PACE coverage documents.
- Legal assistance, up to approximately five hours per issue, is already paid for as part of premiums.
- If a member consults an OSBA attorney for preloss assistance before terminating an employee (includes non-renewal), the \$20,000 deductible is waived on a claim arising from that termination.



PACE Preloss Services

- Call 503-485-4800 or email pacepreloss@osba.org
- Advice is privileged



Questions





We're here to help

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