

Topic:	Third Party Agreements
References:	HDSB Policies: Third Party Agreements; Code of Ethics; Privacy and Information Management; HDSB Administrative Procedures: Procurement, Donations and Charitable Receipts, School Fundraising. Education Act, RSO 1990 c E.2 Part IX, Broader Public Sector Accountability Act, SO 2010 c 25, Parts IV.1 and V; Municipal Freedom of Information and Protection of Privacy Act; Provision of Services by Regulated Health Professionals, Regulated Social Service Professionals, and Paraprofessionals
Effective:	January 2020
Revision Date:	January 2020
Review Date:	December 2022
Responsibility:	Superintendent of Business Services

INTENDED PURPOSE:

This Administrative Procedure is made pursuant to the Halton District School Board's Third Party Agreements Policy.

This Administrative Procedure provides direction to school administrators and other Board staff who are contemplating an agreement with a third party to purchase goods or services, or to jointly deliver a program or service.

DEFINITIONS

Contract: A contract is a legally enforceable agreement, usually but not always in writing, between two or more legal entities who intend for the terms to be legally binding and enforceable. In order for a contract to be legally binding, there must be an offer and acceptance of the offer, mutual understanding and agreement of the terms, and the exchange of something of value ("consideration").

Memorandum of Understanding ("MOU"): An MOU is an agreement between two or more parties, but unlike a contract, a MOU should not contain legally enforceable promises. An MOU is a useful means of outlining mutual expectations and responsibilities without creating legal obligations, and without giving rise to a legal remedy for non-performance.

Partnership: A partnership is a mutually beneficial and long-term relationship between two legal entities based on similar ethical and philosophical goals. The partnership is essentially a cooperative exchange of human, intellectual or material resources, which is formally acknowledged.

Sponsorship: A formal and clearly defined monetary relationship that is established for a specific program or service. This relationship is essentially an agreement that is written, time specific and consistent with the goals of the Halton District School Board. It may also include the exchange of goods and/or services where there is a price reduction in return for advertising or other benefits

PROCEDURES**Types of Agreement**

The Board's Third Party Agreement Policy distinguishes between a contract and a Memorandum of Understanding.

A contractual agreement with a third party will include payment in exchange for goods and/or services. An MOU will involve mutual obligations and responsibilities, but will be morally rather than legally binding. In either case, the understanding of each party's rights and responsibilities must be in writing, and the agreement must be approved and executed as outlined in this Procedure.

In determining whether an agreement is intended to outline the parties' mutual understanding, or for creating a legally binding and enforceable contract, it is important to consider the nature and

substance of the agreement, and not just how it is described. A document entitled "MOU" but containing the essential elements of a contract could be found to be a legally enforceable contract. A document entitled "MOU" but containing exchange of monetary value could be found to be a legally enforceable contract.

It is common to refer to other service providers as community "partners". A community partnership is distinguishable from a legal partnership. A legal partnership can be found to exist where two or more persons carry on a business in common with a view to making a profit. Because legal partners can be held liable for the actions of one another, it is important for the Board to clarify the terms of its third party relationships in a written agreement, whether by contract or MOU.

Contracts

Schools and Board departments are not legal entities, and therefore lack the ability to enter into a contract. Only the Halton District School Board can enter into a contract, and so the signatory to any contract must be a signing officer of the Halton District School Board, or a person to whom signing authority has been delegated by a signing officer.

Any proposed contract with an external third party must be submitted to the Superintendent of Business Services, Director of Education or delegate for approval.

Attached as *Appendix A* to this Procedure is a list of considerations which must be addressed before a contract will be approved.

Exception:

Notwithstanding the foregoing requirement for approval, and provided that a contract adequately addresses the considerations outlined at Appendix A, a Principal is authorized to enter into a contract under the following circumstances:

1. on behalf of a student organization, where the value of the Board's commitment does not exceed \$1,000; and
2. on behalf of their school, where the value of the Board's commitment does not exceed \$10,000.

MOUs

MOUs must be submitted for approval to the Superintendent responsible for the program or service, and where appropriate to the Superintendent responsible for the affected school(s). Only a Superintendent can execute an MOU. A new MOU should be presented to School Operations and/or Business Operations for input, prior to finalizing and signing.

Attached as *Appendix B* to this Procedure is a list of considerations which must be addressed before an MOU will be approved. Unless otherwise approved, an MOU shall be for a term of one year or less, and under no circumstances will be for a term of more than three years.

An MOU may include an option to renew upon expiration of the term, but a renewal must be approved by the appropriate Superintendent. A request to renew must be submitted by no later than August 31 of each year, along with a rationale for the request, a summary of the objectives achieved in the previous year, and the anticipated benefits of a renewal.

Registry

Executed contractual agreements, including terms and conditions will reside with the appropriate Superintendent, and a copy of the executed agreements will be provided to Purchasing Services.

A copy of all executed MOU's shall be provided to the Superintendent of Business, and a registry will be maintained by Purchasing Services.

Exceptions:

1. School level contracts authorized by the Principal remain at the school location and a copy does not need to be provided to Purchasing Services.
2. Agreements regarding Policy/Program Memorandum No. 149 (PPM 149) will be maintained by the Superintendent, Student Services and a copy does not need to be provided to Purchasing Services.

APPENDIX A – Contract Checklist**Parties**

- are the parties accurately described
- is the relationship between the parties characterized so as to make clear that the contract does not give rise to a legal partnership or agency relationship (prohibiting either party from representing or binding the other)
- is it clear that the agreement cannot be assigned to another party

Promises

- does the contract identify representations or warranties on which either party is relying
- are the goods and/or services to be provided described accurately and in sufficient detail

Price

- is the consideration precisely stated
- are terms of payment clear
- what is the consequence of non-payment

Term and Termination

- is the term of the agreement clear (date the agreement takes effect, and when it expires)
- does the contract state whether and under what circumstances one or both parties has the right to terminate the agreement before the term of the contract expires
- are there special circumstances that would give rise to the right to unilaterally and immediately terminate (“events of default”).
- can the contract be amended, and if so under what terms
- can the contract be renewed, and if so what notice of intent to renew will be required

Insurance/Indemnification

- is insurance by one or both parties required
- is there an indemnification clause (seek legal advice before entering into any agreement in which HDSB indemnifies a third party against loss)

Confidentiality/Personal Information

- are the obligations with respect to confidential and/or personal information consistent with the *Education Act*, the *Broader Public Sector Accountability Act*, and the *Municipal Freedom of Information and Protection of Privacy Act*, other applicable statutes, and related HDSB policies and procedures
- is a confidentiality or non-disclosure clause required

Communications

- who is responsible for developing and approving external communications
- has the board protected the use of its intellectual property (eg. HDSB logo)

Other

- is access to Board premises contemplated, and if so under what circumstances (consider Reg. 521/01 and the need for criminal reference checks)
- are there issues related to student safety
- should there be a dispute resolution mechanism
- does either party have a reporting obligation to the other

APPENDIX B – Memoranda of Understanding Checklist**General**

- is the agreement in substance an MOU or a contract

Parties

- are the parties properly identified
- is the relationship and the overall intent of the parties accurately described (the MOU must state that it does not give rise to a partnership or agency relationship, so neither party can represent or bind the other)
- does the MOU identify key contact(s) and decision-makers for both parties
- is there a reporting relationship that should be defined.

Term and Termination

- is the term of the MOU clear (date the agreement takes effect, and when it expires)
- does the MOU state whether and under what circumstances one or both parties has the right to terminate the agreement before the term expires
- can the MOU be renewed, and if so what notice of intent to renew will be required

Responsibilities

- are the responsibilities of both parties clearly outlined
- can the MOU be amended by mutual agreement of the parties

Confidentiality/Personal Information

- are the Board's obligations consistent with the *Education Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, other applicable statutes, and related HDSB policies and procedures

Communications

- how will intra-party communications take place
- who is responsible for developing and approving external communications
- has the board protected the use of its intellectual property (eg. use of logo)

Insurance/Indemnification

- is additional insurance by one or both parties required
- is there an indemnification clause (seek legal advice before entering into any agreement in which HDSB indemnifies a third party for their loss)

Other

- does the MOU contravene any provision of a collective agreement or employment contract
- is access to Board premises contemplated, and if so under what circumstances (consider Reg. 521/01 and the need for criminal reference checks)
- should there be a dispute resolution mechanism