Required Elements of Contracts for Educational Services

- The contract must comply with all applicable laws and regulations. The contract’s choice of law provision, a standard provision in most contracts, must specify that Massachusetts law applies to any legal proceeding arising out of a dispute between the board of trustees and the education management organization (EMO).

- The contract must include a description of the specific services that the EMO will provide and the board of trustees’ responsibilities. Be sure to address those responsibilities required of the charter school by law, such as the development of an annual report.

- The contract must include a description of the relationship between the EMO and the board. For example, the contract should clarify how the parties will hire, evaluate, and dismiss the school leader.

- The board cannot abdicate its legal or fiduciary responsibilities as the entity holding the charter. For example, the contract must provide for sufficient board oversight of the EMO and the school cannot assign to the EMO the board’s responsibilities as defined in M.G.L. c. 71, Section 89.

- The contract must include a direct reference to the school’s Accountability Plan as approved by ESE, a commitment by the EMO to achieve the goals stated in the plan, and a description of how the board will evaluate the EMO’s progress toward achieving the plan’s goals.

- The contract must include a description of how the parties will develop, approve, and oversee the school’s budget and curriculum and how the board of trustees will monitor and oversee the EMO’s financial and management services.

- The contract should reflect that the board of trustees has the ultimate responsibility for establishing the school’s budget and determining its curriculum pursuant to M.G.L. c. 71, Section 89(w).

- The contract should include clear methods for determining the EMO’s compensation. Ideally, methods of compensation should create incentives for the EMO that parallel the board’s goals for the school. The method of compensation should indicate all contract payments, lease payments, management fees, administrative fees, licensing fees, expenses, and other amounts payable to the EMO and under what conditions these amounts are payable.

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1 Excerpted from Department’s Application for a Massachusetts Public Charter School published annually.
☐ The contract should indicate upon what sources of revenue the fee is based, especially if it is based upon a percentage of the school’s revenues.

☐ The contract should include a provision specifying that the board of trustees hires the school’s independent auditor pursuant to M.G.L. c. 71 Section 89(jj).

☐ The contract should require that the EMO furnish the charter school with all information deemed necessary by the school for the proper completion of the budget, financial reports and audits.

☐ Budgets prepared by the charter school should include all revenue anticipated and all actual expenses, as well as anticipated expenses and incidentals, associated with the operation and management of the charter school. The EMO must submit invoices and supporting documentation to justify expenses.

☐ The contract should indicate that all financial reports provided or prepared by the EMO will follow generally accepted auditing principles and will also comply with ESE’s prescribed format for charter school reporting.

☐ All loans to, or investments in, the charter school by the EMO must be evidenced by appropriate documentation. In the case of investments, such documentation must explain how the investment will be treated on the books of the charter school and clearly state the EMO’s expected return on equity.

☐ The contract must include provisions dealing with ownership of physical and intellectual property developed by the ESP or EMO or by the school’s employees. Keep in mind that the charter school has an obligation to disseminate information to other schools in the Commonwealth pursuant to M.G.L. c. 71, Section 89(dd). All contract provisions must conform to this requirement.

☐ Boards should pay special attention to the public records law, M.G.L. c. 66, which requires schools to provide access to certain records to any member of the public upon request.

☐ The term of the contract with the EMO may not exceed the term of the school’s charter or contain an automatic contract renewal provision.

☐ The contract must include provisions addressing termination of the contract by the board of trustees and termination of the contract by the EMO. The contract should protect the board of trustees from unwarranted termination by the EMO and give the board an opportunity to terminate the contract if the EMO fails to meet mutually agreed upon goals or standards.