

## Model Agreement Overview and Instructions

This document provides instructions and context for school districts using the Model Agreement Template when contracting with a third-party provider for an online school program.

### When to use the template

The template assumes that the program will meet the definition of an [online school program](#). But, the template could be used when purchasing a school program for use with either provider-supplied teachers or district-supplied teachers, although some provisions may need to be adjusted if the district, not the provider, supplies the instruction.

Districts contracting for individual online courses, and not an entire program, may want to consider some elements contained in the template, but the template was not designed for that case.

### How to use the template

School districts may use the template when contracting with third-party providers. It was designed to be modified as needed to accommodate specific circumstances.

The template includes instructions in italics. These are for informational purposes, and should be removed prior to finalizing the contract.

In many cases, the template also includes a number of options for suggested language on a specific point. Those are highlighted with italicized instructions.

Some areas of the contract will be specific to the agreement negotiated between the district and provider, and therefore the template provides little or no pre-existing language. However, this document defines the issues that should be addressed in these sections. These sections include:

- “Responsibilities”
- “Management”
- “Finances”
- “Special Education” section under “Students”

Note: **Districts should seek legal counsel before entering into any contract.** The instructions and template provided by OSPI are designed to provide districts with guidance about important aspects of contracting with a third-party provider for instruction, but districts are ultimately responsible for creating a contractual structure that works best for their circumstances.

### Agreement Sections

The sections listed below correspond with sections in the contract template. Note that not all sections have corresponding instructions, and that many sections include additional instructional information embedded in the template.

## Parties

This section defines the parties covered in the agreement, namely:

- District – the school district contracting for services.
- Provider – the third-party provider providing the online school program.
- Program – the online school program covered by the contract.

## Term, duration and renewal

The contract should specify the duration. Three- to five-year terms are standard with online school programs, as longer terms give both parties an investment and encourage continuity for students (ie, the program won't change after a year).

Renewal allows both parties to carry the agreement beyond the initial end date. Either party can decide to not renew the contract, but written notice must be given well in advance of the contract's expiration. This allows the district adequate time to prepare for the continued instruction of students enrolled in the program.

## Responsibilities

This section details exactly what each party will bring to the partnership. Because these descriptions tend to be lengthy, consider including them as an exhibit to the contract.

Although each contract will differ depending on the services provided by each provider, key items to consider include:

- Curriculum and materials
- Instruction
- Learning management systems
- Personnel management
- Business/financial management
- Marketing
- Admissions and intake, including facilitation of interdistrict transfers.
- Computers and other technology tools
- Records management
- Family services
- Technology services
  - Program website
  - Program course platform
  - Integration with district systems (eg, Student Information Systems, Financial Systems) in consultation with district

With regard to teachers, the contract should specify the party (District or Provider) that will:

- Hire the teachers. Note that the model agreement assumes the provider will hire and manage the teachers.

- Pay the teachers. This includes wages, benefits, employment taxes, and other related costs. Again, the model agreement assumes the provider will pay the teacher salary and benefits.
- Pay for teacher travel and professional development expenses.
- Supervise, manage, evaluate, and, discipline the teachers.
- Pay for learning improvement days (see [WAC 392-140-955](#)).
- Train teachers, including both learning to use the provider's systems and learning how to effectively teach online.
- Clarify teachers' status with regard to the district's collective bargaining unit, if the teachers are employed by the district.
- Clarify what role the district has in the hiring process, including the ability to pre-approve hires, when the teachers are employed by the provider. Mandate that teachers, regardless of employer, must have:
  - Background checks.
  - Washington state teacher certification.

Some specific student services, if not detailed earlier, should be included. Common items include:

- Written student learning plans. The contract should specify who writes the student learning plans.
- Provision of computing resources. Which party, if any, is responsible for providing student technology?
- Fees. Clearly state and define if students are responsible for fees (e.g., lab fees or materials fees).

With regard to the state assessments, the district is ultimately responsible for administering the state assessments to all students, including online students, enrolled in the district. However, in the contract, the district could assign responsibility for conducting assessments to the provider.

### Management

The district needs to decide how the program will be structured within the school district, and these decisions around structure, oversight, and communications should be spelled out in the contract. The goal is to set up clarity around communications and roles so there is a robust communication structure should any issues arise during the development and operation of the program.

Questions to consider include:

- Where will the program be located in the district's structure? Will it be a stand-alone entity, or will it be housed within an existing school? Creating the program as a stand-alone school, with a unique OSPI building number, can make reporting and accounting more straightforward. But, if staff are shared between the program and an existing school, it may be better to associate the program with that school.
- Are normal district oversight structures going to be used or will there be an alternative structure for this school?

- Who, at the district, will be responsible for the program?
- Will the district supply a principal (or other administrator) or will this role be filled by the provider? If the provider supplies a principal will this person have a Washington state principal certificate? Who, at the district, does the principal report to?
- Can the provider recommend policy changes to the district? How should these changes be communicated to the district?
- How will decisions regarding the program be made? When designing a management structure, keep in mind that a clearly defined agreement around District-Provider communication can help ensure the smooth operation of the program.

There will doubtless be issues that arise that aren't explicitly handled in the contract, and clear lines of communication can help both parties work through these inevitable issues. Communication structures include:

- Defining contract administrators for both the district and the provider to ensure that there are clear lines of authority and communication.
- Creating a series of regular meetings with key district and provider personnel to deal with any outstanding issues. Possible representatives include district staff representing human resources, the business/fiscal office, student services and special education, bilingual/ESL, and curriculum and instruction. Especially when starting a program, meeting face-to-face to deal with issues can be a valuable approach; although regular phone calls are valuable as well.

Regardless of the structures defined in this section, the district maintains the ultimately authority and responsibility for the operation of the program.

### Compliance

Online school programs are subject to a number of policies, rules, laws, and regulations, at the district, state, and federal level.

As a school in the district, the program should follow all existing district policies and procedures. If there are any specific areas where the program will differ from district policies, they should be clearly spelled out in the contract.

The program needs to be operated in compliance with relevant federal and state laws.

There are two sets of contracting rules that districts and providers must follow:

- [RCW 28A.320.035](#) grants school boards the power to contract out to implement the board's powers and duties. Two key provisions of this statute are:
  - "When a school district board of directors contracts for educational, instructional, or specialized services, the purpose of the contract must be to improve student learning or achievement."
  - "A contract...may not be made with a religious or sectarian organization or school where the contract would violate the state or federal Constitution."

- [WAC 392-121-188](#) covers instruction provided under contract. This applies only to agreements with private contractors. There are nineteen requirements that must be met in order for the instruction to be counted as a “course of study” and claimed for state funding. Many of these items are covered elsewhere in the model agreement.

The program needs to comply with the federal No Child Left Behind provisions.

The program needs to comply with the student attendance and admission rules, as well as the compulsory course work and activities.

Online school program students must be claimed under the [Alternative Learning Experience](#) (ALE) funding rules, and both parties need to agree to operate the program in compliance with the ALE rules.

Districts are required (by [WAC 180-16-200](#)) to maintain a district-wide annual average of 1,000 instructional hours per year. The program should be structured in a way that does not adversely affect the district’s average.

Districts are required to maintain a certificated instructional staff (CIS) ratio of 46 CIS per 1000 FTE students ([WAC 392-127](#)). Districts should ensure that the program’s staffing ratio does not affect the district’s staff ratio to the point where it falls below 46:1000.

If the provider or program is considered a “multi-district online provider”, it must be approved by OSPI prior to the execution date of the contract.

### **Exclusivity**

Although not required, most contracts will not be exclusive. In other words, the provider will be free to contract with other school districts in Washington, and the district will be free to contract with other providers.

### **Termination**

Given the serious nature of termination, extra care must be given to ensure that students are not harmed in the process.

### **Pricing, Invoices, and Payment**

This section covers both the pricing (for example, how state funding will be shared between the parties) and the mechanics of invoicing and payment, as well as other details about payment and pricing.

There are a number of models that districts and providers can use when agreeing on a cost and revenue structure:

- A flat fee per student (or, per course enrollment). For example, a provider could charge \$5,000 per student for the year.
- The provider could be paid a percentage of the student revenue, with the district keeping the remainder. In this case, revenue must be carefully defined, and the district should ensure that their portion will cover the anticipated expenses incurred while operating the program.

- The district could specify itemized expenses that the districts will pay for with revenue, and then a percentage of the remaining revenue would go to provider. For example, a provider might get 97% of revenue, less district expenses. Again, clarity on both revenue and expenses is vital.

This list is not exhaustive, and districts and providers may use other models.

Depending on the approach chosen, the contract should address a number of questions, including:

- How is revenue defined? Does it include only state basic education apportionment, or are other programs (I-728, Title 1, etc) included? Are levies included in the contract?
- How will the program budget be set? Who is involved in setting the budget?
- Are there any district oversight or administrative fees?
- Are there minimum payments?
- How is the fiscal year defined: July 1 to June 30 or Sept 1 to August 31?

In doing due diligence, districts should consider the following questions:

- What will the overall impact of the program be on district funding? Will it affect small schools funding? Will it impact the levy base?
- Will the district incur any additional costs in carrying out the contract? Payroll? Audits? Technology? Are those accounted for in the contract?
- Will the program affect the district's overall rate of students eligible for Free and Reduced-Price Meals? USDA Child Nutrition program guidelines do not allow for the collection of Free and Reduced-Price Meals eligibility information from students who do not have access to the program, such as online students. If the district will be serving a large number of online students, the overall rate for the district could be affected, and this could affect funding streams that rely on this rate, such as Title I or various grant programs.
- For any of the items in the responsibilities section that fall on the district, have the costs to deliver those services been accounted for in the finance section of the contract? For example, if the district is responsible for administering the state assessment, has that cost been factored into the financial model?

The invoice and payment section specifies invoicing instructions. For example, the district may require use of specific invoicing procedure, including how often invoices may be submitted. Payment may also be based upon satisfactory acceptance of each deliverable, payment after the completion of each major part of the agreement, payment at the end of the agreement, etc. Regardless of the form, the contract should ensure that the invoice contains sufficient detail and documentation.

### Contacts

Each party should identify the key contact person for questions relating to the contract.

### Assignment

Assignment can occur for several reasons—for example, when one company buys another and the new company takes over responsibility for performing contractual duties. This section describes the

conditions for either district or provider to assign the agreement. The provider may not assign or transfer its rights, duties, or obligations without written notification to the district and receipt of district's written consent. The district may assign it to another entity within Washington.

### Students

The contract should specify exactly who the program will or will not serve, along with details around student services.

Who will the program serve? Will the program accept students transferring from out-of-district, or will it only serve students who reside within the geographic boundaries of the district? This decision can help determine if the program will qualify as a "multi-district online provider", and thus be subject to the OSPI approval process. Programs that accept more than 10% (annual average headcount) non-resident students may qualify as multidistrict online providers. Learn more about the OSPI approval process: <http://digitalllearning.k12.wa.us/approval/process/> Specifying the intended audience also clarifies the contract.

The contract also needs to be aligned with the district policy/procedures around accepting interdistrict transfers. In other words, if the intent of the contract is in conflict with existing district policies and procedures, the policies and procedures may need to be adjusted.

Washington districts cannot claim state funding for students residing outside of Washington state.

If the provider is responsible for recruitment and admission, it must follow the law.

Transportation is generally not provided for online programs, but there may be times when students need to be transported to field trips or other events. The contract should specify responsibility for transportation costs.

Students enrolled in the program should be subject to existing district policies.

Students cannot be charged for courses claimed for state funding or for courses that are a part of the 1,000 annual instructional hours.

Transitional bilingual students should be served by the program based on the guidelines in [RCW 28A.180](#) and [WAC 392-160](#).

All children with disabilities must have the opportunity for an appropriate education at public expense. (See [RCW 28A.155](#) and [WAC 392-172A](#).) Districts must comply with WAC [392-172A-04085](#) and [392-172A-04090](#), which specify district responsibilities when placing students eligible for special education with another organization. In particular, the district must develop a written contract or agreement specific to the student(s) and meet several other criteria. The provider must be approved by OSPI in order for the district to contract with the provider for special education services.

The district should also consider how special education students will be served. The contract needs to clarify how special education services will be delivered. Which party (district or provider) is responsible for providing what services? Which party will be responsible for writing and maintaining the individual

education plan (IEP)? Who will provide services to students needing additional support? How will the provider communicate with the district about issues with students needing special education services?

### **School Records and Reporting**

There are several laws pertaining to student and school records that must be followed, including FERPA. State and district records management procedures must also be followed.

Student records need to be maintained on the district's student information system (SIS) or regularly transferred to the SIS to ensure proper integration with state systems (eg, CEDARS).

The district must report certificated instructional staff (CIS) from the provider on the S-275, if the program, at any time during the school year, serves more than 25 students which equals more than one quarter of one percent (.0025) of the district's annual average full-time equivalent enrollment claimed for basic education funding. (See [WAC 392-121-188](#) (11))

There is a good deal of data that needs to flow between the district and the provider, including student records and staff data. The contract should specify exactly what needs to be reported, in what format, and when it should be delivered. This could be included as an exhibit in the contract as well.

### **General Provisions**

#### ***Insurance***

Insurance – Businesses that provide services to the State must carry liability insurance to protect the State's interests. Contractual insurance in a commercial general liability policy provides coverage to protect the State from risks assumed by the provider, whether oral or written.

Insurance is required only when necessary for the type of purchase being made. The district determines the categories to include and their minimum limits based upon the particular agreement and upon the assessed risk to the district. The amounts specified here are illustrative only. For more specific information on insurance requirements, call the Office of Financial Management, Division of Risk Management, (360) 902-7311 or visit their web site at <http://www.ofm.wa.gov/rmd/forms.htm>

#### ***Compliance with Civil Rights Laws***

Compliance with Civil Rights Laws – This section requires the provider not to discriminate against any person for reason of age, sex, race, creed, color, national origin, or disability. Noncompliance or refusal to comply with the nondiscrimination laws, regulations, or policies may result in rescission, cancellation or termination of the agreement.

#### ***Treatment of Assets***

Treatment of Assets – This section provides that title to all property furnished by the district and/or purchased by the provider as a reimbursable item under the agreement remains with the district. The provider is responsible for loss of or damage to any such property and shall surrender the property upon Agreement completion.



***Provider's Proprietary Information***

Provider's Proprietary Information – This section sets forth the district's obligation to protect the provider's rights and interests in provider's proprietary information to the extent consistent with law. It is provider's responsibility to identify provider's proprietary information. The district is obligated to take reasonable steps not to inadvertently or intentionally disclose provider's proprietary information; however, the district may be required to disclose such information pursuant to a public records request. The provider may claim proprietary rights in various forms of information that it provides to the district in performance of the agreement, such as software, data, technical information, etc., but ultimately a court – not the parties involved – will determine whether provider's proprietary information is protected from public disclosure pursuant to chapter [42.56 RCW](#) or other applicable laws.