

**ORANGE COUNTY  
BOARD OF EDUCATION  
AGENDA ITEM ABSTRACT**

**Meeting Date:** September 9, 2013

**AGENDA**

**ITEM No.** 13-09-17

**ACTION ITEM: (Y/N)** Y

**SUBJECT:** Duke University Health System - Sports Medicine Services Agreement

**INFO. CONTACT:** Dr. Marcie Holland

**PHONE:** 919-732-8126

**ATTACHMENT:**

1. Sports Medicine Services Agreement between Duke University Health System, Inc. d/b/a Duke University Hospital and Orange County Schools
2. Exhibit A: Athletic Participation/Permission Form
3. Exhibit B: Authorization for Release of Protected Health Information for Athletes Participating in Orange County School Athletics
4. Cover letter provided to parents regarding Exhibit B that explains the release of information.

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**PURPOSE:** The purpose of this item is to provide the Board of Education the opportunity to hear about and discuss the agreement between the school system and Duke University Health System, Inc. for the purposes of providing Physical Therapist and certified Athletic Trainer interns to work with student athletes at Cedar Ridge High School and Orange High School.

**BACKGROUND:** Since 2002, Orange County Schools has had an agreement with Duke University Health System that allows the medical trainees to work with school system programs, specifically with student athletes. The original agreement incorporates Training Letters of Agreement with individual departments, which have been approved in the past. One example is the agreement with Duke Orthopaedics approved by the Board during its October 22, 2012 meeting.

In addition to the medical trainees, Orange High School has been receiving additional support from the Physical Therapist and Athletic Trainer Program through Duke University Health System, Inc. Because these individuals must work under the supervision of a certified athletic trainer, they had only been able to serve at Orange High prior to the 2012-2013 school year when we staffed both high schools with a certified athletic trainer. Now that both high schools are able to take advantage of this service, the Service Agreement is being presented for Board approval.

The Service Agreement includes two exhibits. The first exhibit, Exhibit A, is the participation/permission form used by our student athletic programs. The second, Exhibit B, is an authorization and release form for parents to sign that allows the physical therapists and athletic trainers on site from Duke University to treat students and provide treatment information to our staff if necessary. This is explained in the cover letter prepared by our attorneys to be provided to all parents and/or guardians of student athletes. As both documents note, parents/guardians may revoke the consent at any time.

The agreement and additional documents have been reviewed by counsel.

**FINANCIAL IMPACT:** None

**RECOMMENDATION:** The Superintendent recommends the Board of Education approve the Sports Medicine Services Agreement with Duke University Health System.

**SPORTS MEDICINE SERVICES AGREEMENT  
BETWEEN  
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a DUKE UNIVERSITY HOSPITAL  
AND  
ORANGE COUNTY SCHOOLS**

This Agreement is made effective the 15th day of September, 2013 (the "Effective Date") between Duke University Health System, Inc. d/b/a Duke University Hospital ("DUHS"), located in Durham, North Carolina, and Orange County Schools, a public school system located in Orange County, North Carolina.

WHEREAS, Orange County Schools operates various athletic practices and events, and is in need of sports medicine services for its student athletes ("Students") participating in such events;

WHEREAS, DUHS is willing to provide the services of one or more employed physical therapists from its staff, who are duly-licensed in accordance with North Carolina law, to provide sports medicine physical therapy services at certain Orange County Schools' athletic practices and events; and

WHEREAS, Orange County Schools and DUHS believe that such a collaborative relationship is of mutual interest and benefit to the parties.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements undertaken below, the parties hereto agree as follows:

1. Responsibilities of DUHS.

1.1 According to a schedule mutually agreed upon by the parties in writing, DUHS shall make reasonable efforts to make available one or more duly-licensed athletic trainers or physical therapists with athletic trainer certification ("DUHS Trainers") to provide sports medicine services to the extent permitted within and consistent with such person's or persons' professional license and scope of practice without physician supervision, for Students at Orange County Schools sponsored athletic practices and events. The provision of sports medicine services by DUHS is contingent upon the availability of DUHS Trainers as solely determined by DUHS.

1.2 DUHS Trainers may provide the following sports medicine services to the extent permitted within and consistent with such person's or persons' professional license and scope of practice without physician supervision:

- i) On-site athletic injury triage and non-emergency management; and
- ii) Training room coverage.

Sports medicine services provided by DUHS Trainers shall provide back-up coverage to any athletic trainers employed by Orange County Schools. Local emergency services will be called and utilized in emergent situations.

1.3 DUHS will provide a person to regularly communicate with Orange County Public Schools regarding scheduling of sports medicine services and all other details necessary for DUHS to perform services hereunder.

1.4 DUHS shall ensure that any DUHS Trainers providing services hereunder are licensed in accordance with North Carolina law.

1.5 DUHS shall conduct criminal background checks as set forth herein on all of their respective individual employees anticipated to interact directly with Orange County

Schools students under this Agreement. Such criminal background checks shall include both felonies and misdemeanors for the past seven (7) years within any state and county in which such individuals have resided during the past seven (7) years. In addition, such checks shall include an initial and annual check on such individuals in the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. DUHS shall not assign any individual to interact directly with Orange County Schools students pursuant to this Agreement if the individual appears on any such registries.

2. Responsibilities of Orange County Schools.

- 2.1 Orange County Schools will retain full authority, responsibility, and accountability for its Students and athletic programs. Orange County Schools agrees to staff, equip, and operate its athletic programs in a manner designed to provide safe athletic opportunities for its Students.
- 2.2 Orange County Schools shall utilize local emergency medical services (EMS) in emergent situations.
- 2.3 Orange County Schools agrees to provide the necessary facilities, space, medical equipment, supplies, materials, translation services, utilities, and such qualified janitorial and other non-clinical support personnel, as may be reasonably requested by DUHS from time to time in order to establish and maintain quality services. All personnel provided hereunder shall at all times remain agents and employees of Orange County Schools.
- 2.4 Orange County Schools will provide a person to regularly communicate with DUHS regarding scheduling of sports medicine services to be provided under this Agreement.
- 2.5 Prior to any Student being treated by DUHS Trainers at an Orange County Schools sponsored athletic practice or event, Orange County Schools must obtain and have on file for that student an Athletic Participation/Permission Form (each a "Participation Form") using a form substantially similar to **Exhibit A**, attached hereto and incorporated herein by reference, and an Authorization for Release of Protected Health Information (each an "Authorization Form"), attached hereto as **Exhibit B** and incorporated by reference herein. Each Participation Form and Authorization Form must be signed by either the Student's parent, guardian, or other legally authorized person or the Student if over 18 years old. Orange County Schools shall provide a copy of valid authorization forms to DUHS upon request. DUHS reserves the right to refuse treatment by its Physical Therapists to any OCS student who does not have valid authorization forms on file.

3. Financial Arrangements.

There are no financial arrangements for services provided by DUHS under this Agreement.

4. Term and Termination.

- 4.1 This Agreement shall be effective as of the Effective Date and shall remain in full force and effect for a term of one (1) year, unless terminated as set forth below. Thereafter, this Agreement shall automatically renew for successive one (1) year periods on the anniversary date of this Agreement, unless terminated earlier as set forth herein.
- 4.2 Any party may terminate this Agreement at any time for any reason by providing the other party with thirty (30) days' prior written notice.

4.3 Either party may immediately terminate this Agreement for illegal or wrongful conduct, fraud, or material breach of this Agreement by the other party.

5. Insurance.

5.1 DUHS shall provide professional liability insurance coverage in an amount not less than \$2,000,000 per occurrence/\$5,000,000 annual aggregate for its DUHS Trainers who perform services pursuant to this Agreement.

5.2 Orange County Schools shall provide School Leaders Errors and Omissions insurance coverage in an amount of \$5,000,000 annual aggregate (inclusive of defense costs, charges and expenses) for its employees.

5.3 Each party shall provide the others with proof of the foregoing insurance coverage upon request.

6. Limitation of Liability.

Each party shall be solely responsible for its own acts or omissions and the acts or omissions of its employees, students or directors in connection with this Agreement. Neither party shall be responsible for acts or omissions of the other parties' employees, students and directors.

7. Use of Parties' Names.

7.1 Orange County Schools agrees not to use the names, symbols, trademarks, or service marks (currently existing or subsequently established) of Duke University or DUHS, or any of its or their parents, affiliates or subsidiaries, without the prior written consent of DUHS.

7.2 DUHS agrees not to use the name, symbols, trademarks, or service marks (currently existing or subsequently established) of Orange County Schools without the prior written consent of Orange County Schools.

8. Independent Contractors.

The relationship of the parties under this Agreement shall be that of independent contractors, and no party shall be construed to be an agent, partner, employee, or joint venturer of the other. Each party shall control the hiring and firing of its own employees, and shall cover all taxes, insurance coverages, and other changes incident to its own employees. No party shall exercise control over the manner in which the other party performs its duties hereunder.

9. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed given as of the date it is (a) delivered by hand; (b) mailed, postage prepaid return receipt requested, to the parties at the addresses listed below or later specified in writing; or (c) sent, shipping prepaid by a national courier service, to the parties at the addresses listed below:

As to DUHS: Kevin Sowers, RN, MSN  
President  
Duke University Hospital  
2301 Erwin Rd  
Durham, North Carolina 27710

*With Copy to:* Paul Lindia  
Associate Vice President - Network Services  
Duke University Health System, Inc.  
3100 Tower Blvd, Suite 600  
Durham, North Carolina 27707

As to Orange  
County Schools: Marcie Holland, Ph.D.  
Assistant Superintendent for Human Resources & District Title IX Coordinator  
Orange County Schools  
200 East King Street  
Hillsborough, North Carolina 27278

10. Assignment.

Neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties.

11. Entire Agreement.

This Agreement, including any schedules or other attachments which are incorporated herein by reference, contains the entire agreement among the parties as to its subject matter. This Agreement merges all prior discussions among the parties; and no party shall be bound by conditions, definitions, warranties, understandings, or representations concerning such subject matter, except as provided in this Agreement or as may be specified later in writing and signed by properly authorized representatives of the parties.

12. Waiver.

The failure of a party in any instance to insist upon the strict performance of the terms of this Agreement shall not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the party's failure to insist upon strict performance or at any time in the future, and such term or terms shall continue in full force and effect.

13. Governing Law.

The construction and performance of this Agreement shall be governed by and construed pursuant to the laws of the State of North Carolina.

14. Severability.

Each clause of this Agreement is a distinct and severable clause; and if any clause is deemed illegal, void or unenforceable, the validity, legality and/or enforceability of the remaining clauses or portion of this Agreement shall not be affected thereby.

15. No Requirement to Refer; Compliance with Laws.

Nothing in this Agreement, whether written or oral, nor any consideration in connection herewith, contemplates or requires a party to this Agreement to refer any patients to, or order any goods or services from any other party to this Agreement. Each party and their respective providers shall

not receive compensation or remuneration for referrals they make, if any, to the other party. The parties specifically do not intend to violate any federal or any state fraud or abuse laws or regulations, some of which are codified at 42 U.S.C. Section 1320a-7b(b), N.C. Gen. Stat, §90-405 et seq., and 42 U.S.C. Section 1395nn. Each party shall use its best efforts to comply with all applicable laws and regulations in performing its obligations under this Agreement. If any provision of this Agreement shall reasonably be determined by a party to violate any applicable law or regulation, then the parties shall promptly and in good faith amend this Agreement as may be necessary or advisable to comply with such law or regulation. Any such amendment of this Agreement shall, to the extent practical, preserve for each party the economic and other benefits accorded such party in the original Agreement; provided, however, in the event the parties hereto cannot agree to amend this Agreement under the provisions of this Section within thirty (30) of the commencement of good faith negotiations, a party may terminate this Agreement upon fifteen (15) days prior written notice to the other parties.

16. Binding Obligations.

The rights and responsibilities of this Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

17. Medical Records.

All medical records for Students treated pursuant to this Agreement shall remain the exclusive property of the party providing sports medicine services. Each party shall be responsible for fulfilling its respective requirements imposed by applicable law and medical records procedures with respect to the confidentiality, preparation, maintenance, security, disclosure and retention of medical records for Students. The parties shall provide copies of medical records, films and reports to one another upon request to the extent appropriate consent of the patient has been obtained or authorized by law. Each party shall maintain the confidentiality of any and all records of the patients to which it may have access pursuant to the performance of its duties under this Agreement in accordance with applicable laws. Each party shall obtain, record, and preserve as required by relevant law, rule or regulation any and all specific consents as may be required for any procedures performed pursuant to or within the contemplation of this Agreement.

18. Dispute Settlement.

In accordance with the terms of the United States Arbitration Act, any disputes between the parties arising under or related to this Agreement, if not resolved through good faith negotiation between the parties within a reasonable period, shall be resolved exclusively through arbitration proceedings conducted in accordance with the commercial arbitration rules of the American Arbitration Association (AAA). The arbitration shall be conducted at Durham, North Carolina before a panel of three AAA arbitrators selected in accordance with the procedures of the AAA. The parties agree that the determination of the arbitrators is final and binding.

19. Interpretation.

Neither party shall be considered the drafter of this Agreement. No provision of this Agreement shall be interpreted for or against either party because that party or that party's legal representative drafted such provision.

20. Amendment.

Any amendment to this Agreement shall be in writing and duly executed by appropriate representatives of each of the parties.

21. No Third Party Beneficiaries

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Nothing in this Agreement is intended, nor shall be deemed, to confer any benefits on any third party, including, without limitation, any Student(s) or any person or entity claiming by, for or through any Student(s) nor shall such person or entity have any right to seek, enforce or recover any right or remedy with respect hereto.

*Signature page follows*

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be signed by the duly authorized officers.

**DUKE UNIVERSITY HEALTH SYSTEM, INC  
D/B/A DUKE UNIVERSITY HOSPITAL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William J. Fulkerson, Jr., M.D.  
Executive Vice President - DUHS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Sowers  
President, Duke University Hospital

**ORANGE COUNTY SCHOOLS**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dr. Del Burns  
Interim Superintendent



**EXHIBIT A**

**ATHLETIC PARTICIPATION/PERMISSION FORM**

This form is to be filled-out completely by Parent & Physician before the student can participate in the school athletic programs.

PRESENT DATE: \_\_\_\_\_

STUDENT'S NAME: \_\_\_\_\_ Male \_\_\_\_\_ Female \_\_\_\_\_

SCHOOL: \_\_\_\_\_ GRADE: \_\_\_\_\_

ADDRESS OF STUDENT: \_\_\_\_\_

HOME PHONE #: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

PARENT'S NAME: \_\_\_\_\_ Parent's Work Phone: (Mother) # \_\_\_\_\_

(Father) # \_\_\_\_\_

I, hereby, apply for Permission to Participate IN the following interscholastic SPORT(s): (EXAMPLE: Baseball, Tennis, XC, etc.) \_\_\_\_\_

\*I certify that the information in this application is correct, and I agree to abide by the eligibility rules & regulations governing athletics as set forth by the North Carolina State Board of Education & Association to which my school is a member.

Signature of Student \_\_\_\_\_

**MEDICAL HISTORY - (to be completed by Parents)**

STUDENT NAME: \_\_\_\_\_ AGE: \_\_\_\_\_ TODAY'S DATE: \_\_\_\_\_

\*Is there any known history of: \_\_\_\_\_ If "Yes" Explain: \_\_\_\_\_

- A. Birth deformities (one eye, one kidney, etc.) Yes \_\_\_\_\_ No \_\_\_\_\_
- B. Past illness of more than one week's duration? Yes \_\_\_\_\_ No \_\_\_\_\_
- C. Medical conditions currently under treatment? Yes \_\_\_\_\_ No \_\_\_\_\_
- D. Fractures or other disabling injuries? Yes \_\_\_\_\_ No \_\_\_\_\_
- E. Any permanent deformity or disability? Yes \_\_\_\_\_ No \_\_\_\_\_
- F. Allergy (drugs, food, clothing, etc.)? Yes \_\_\_\_\_ No \_\_\_\_\_
- G. Mental disorder or convulsions? Yes \_\_\_\_\_ No \_\_\_\_\_

If you need more room to explain any above questions answered "Yes:" \_\_\_\_\_

**PARENTAL PERMISSION - (to be completed by Parents)**

As Parent or Legal Guardian of: \_\_\_\_\_, I hereby give my consent for his/her practice & play in the athletic events/sports listed above.

I also grant permission for treatment deemed necessary for a condition arising during participation in these activities, including Medical or Surgical Treatment recommended by a Medical Doctor. I understand that every effort will be made to contact me prior to treatment. I agree to the need for a screening Medical Examination and certify that the medical history is accurate to the best of my knowledge.

If your child/student should need emergency care immediately please indicate which Physician & Hospital you wish for us to transport him/her to. We will also need the following Insurance and Emergency information:

Is your son/daughter presently covered by a Hospital Insurance policy? Yes \_\_\_\_\_ No \_\_\_\_\_  
(You will be required to purchase Insurance for your child if your answer is "NO" to the question above.)

Health Insurance Company Name: \_\_\_\_\_

Insurance Policy # \_\_\_\_\_

Indicate Hospital Preference: \_\_\_\_\_

Physician's Name & Office Phone #: \_\_\_\_\_

Signature of Parent or Legal Guardian: \_\_\_\_\_ Date \_\_\_\_\_

Parent's Emergency Phone #'s: \_\_\_\_\_

[Other person(s) you would like us to contact: \_\_\_\_\_ # \_\_\_\_\_

in the event you cannot be reached]: \_\_\_\_\_ # \_\_\_\_\_

**EXHIBIT B**

**PLEASE READ THE FOLLOWING FORM CAREFULLY  
AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION  
FOR ATHLETES PARTICIPATING IN ORANGE COUNTY SCHOOL ATHLETICS**

Once properly signed, this Authorization will allow for the release of protected health information to Orange County Schools ("OCS") by physicians and health care providers ("providers") rendering services to OCS athletes. The purpose of the release of the protected health information is to allow Duke University health care providers contract with OCS to communicate with OCS staff regarding medical information related to an athlete's participation in OCS athletics. For example, this form would allow a Dnke physical therapist serving as athletic trainer for a game to communicate with coaches about whether an athlete is injured and/or whether there are medical concerns that should prevent the athlete's returning to the field.

By signing this Authorization for my son, daughter, or other person for whom I have the legal authority to act (hereinafter referred to as "Athlete"), I hereby authorize health care providers and staff employed by Duke University, Duke University Health System, Inc., the Private Diagnostic Clinic, PLLC who are providing services to OCS athletics under contract with OCS to release to each other and to OCS oral and written medical information relating to the Athlete's medical or physical condition, illness or injury that may have a bearing upon participation in athletics of the OCS. The medical information should be used by the OCS for the purpose of determining the advisability of the Athlete's participation in OCS athletics and/or any limitations on the athlete's participation.

This Authorization is expressly bound by all the following conditions:

- i. This Authorization will automatically expire upon the Athlete's termination of participation or ineligibility in OCS athletics: except to the extent relied upon for disclosures made prior to the automatic expiration.
- ii. This Authorization may be revoked at any time, provided the **revocation is a properly executed written document and delivered to the Director of Athletics for OCS**. As soon as practicable, OCS shall inform each contracted health care provider of each Athlete's revocation. However, any such revocation shall not affect disclosures made by a health care provider prior to that health care provider's receipt of the revocation from OCS. In addition, such revocation shall not affect disclosures made prior to the receipt of the revocation to the extent that this Authorization was relied upon for such disclosures.
- iii. This Authorization is not intended to alter the Athlete's ability to receive medical care from any health care provider regardless of whether this Authorization is agreed to or refused.
- iv. The athlete and Parent / Guardian will receive a complete copy of the signed Authorization.
- v. A copy of this Authorization and any revocation of it will be kept by OCS.
- vi. Protected health information released by the health care providers to OCS is not protected by this Authorization from re-disclosure by the OCS.

DATE: \_\_\_\_\_

\_\_\_\_\_  
PARENT / GUARDIAN\* (signed)

/\_\_\_\_\_  
(Printed Name) / (Relationship to Athlete)

\_\_\_\_\_  
Athlete's Name (Printed)

\*This Authorization (and any revocation) must be signed by a parent, guardian, or other person acting in loco parentis who has the authority to act on the Athlete's behalf. **By signing this form, you as the parent, guardian, or a party acting in loco parentis warrant that you have the legal authority to act on the Athlete's behalf.** The signature may only be signed by the Athlete if the Athlete is over 18 years of age or a legally emancipated person.

Parents,

The Orange County Schools has arranged with the Duke University Hospital sports medicine program to provide qualified medical personnel (i.e. physical therapists, athletic trainers, orthopaedic trainees, etc.) on the sidelines at certain OCS athletic events. The Duke doctors assist in preventing and treating injuries during games, and from time to time may consult with the coaches regarding an athlete's readiness to participate or any limitations on the athlete's ability to play. The attached form provides authorization for the Duke sports medicine doctors to share information with the coaching staff in the event that they need to consult regarding your athlete's health or readiness to play. This consent is only intended to apply to the Duke personnel who are contracted by OCS to work with our athletes and only to information related to the athlete's ability to participate in athletics. As noted on the form, you may revoke this consent at any time.

If you have any questions, please contact \_\_\_\_\_.