

# EDUCATIONAL SERVICE PROVIDER POLICIES

Effective: July 15, 1999 | Amended: June 1, 2012

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Pursuant to the Terms and Conditions of the Contract (“Contract”) issued by the Central Michigan University Board of Trustees (“University Board”), these Policies for Public School Academy Agreements with Educational Service Providers (“Policies”) have been prepared by The Governor John Engler Center for Charter Schools (“Center”). They now become part of the Contract and apply to all schools issued a Contract by the University Board, and to any existing school that enters into, or amends, an ESP Agreement<sup>1</sup> with an Educational Service Provider (“ESP”)<sup>2</sup> on or after the date set forth above. Failure by the Academy Board to comply with these Policies may result in the non-issuance of a Contract, or for existing academies, the initiation of revocation proceedings under the Contract.

## A. Academy Board Due Diligence

1. Prior to executing an ESP Agreement with an ESP, the Academy Board must perform sufficient due diligence to establish that the ESP has the appropriate financial resources, educational services and managerial experience to provide the contracted services. Prior to contracting with an ESP, the Academy Board must obtain sufficient information to conclude that the ESP agreement, on the terms to be approved, is in the best financial and educational interest of the Academy. At a minimum, and prior to the execution of an ESP agreement, the Academy Board shall provide the following information to the Center:
  - List of all ESP owner(s), directors and officers.
  - Type or form of entity (for-profit corporation, non-profit corporation, limited liability company, etc.).
  - Name of ESP's primary banking institution.
  - Legal counsel for the ESP: Name, address and telephone number of firm and contact person.
  - Accounting or auditing firm for the ESP: Name, address and telephone number of firm and contact person.
  - A written statement regarding the ESP's experience in providing services and the types of service(s) to be provided to the Academy.
2. Academy Board members, employees and their respective spouses or immediate family members<sup>3</sup> shall not have any direct or indirect ownership, employment, contractual or management interest in any ESP that contracts with the Academy. The Center may formally waive this condition for persons who have an ownership interest in an ESP that contracts with the Academy if it concludes that the ownership interest is minimal.
3. The Academy Board shall retain independent legal counsel to review and negotiate the ESP Agreement. Legal counsel for the Academy must not represent the ESP or principals thereof. The ESP Agreement must be an arm's-length, negotiated agreement between an informed Academy Board and the ESP.
4. Any proposed ESP Agreement shall be submitted to the Center in a form or manner as prescribed by the Center and not later than thirty (30) days prior to the proposed date of execution. Earlier submission is strongly encouraged and may accelerate the review process. The ESP Agreement shall include a completed ESP Information Sheet (see Exhibit B). In addition, the Academy Board shall submit a draft legal opinion (see Exhibit A) from the Academy Board's legal counsel, certifying to the University that the Academy Board has fulfilled its obligations described in the Policies. Unless the Center Director extends the review period within thirty (30) days of receiving the proposed ESP agreement, the Center shall notify the Academy if the agreement is disapproved. The Center reserves the right to disapprove an ESP Agreement if the Academy Board submits an ESP Agreement that does not comply with the Contract, Applicable Law and University Policies. By not disapproving an ESP Agreement, the Center is in no way giving approval of the ESP, the fee arrangement or any other provisions contained in the ESP Agreement.
5. The Academy Board shall not approve an ESP Agreement until all board members have been given the opportunity to review the proposed ESP Agreement with the Academy's legal counsel.
6. The Academy Board shall approve the final ESP Agreement with a formal vote at a public board meeting. Prior to Academy Board's vote on the ESP Agreement, the Academy Board shall provide an opportunity for public comment on the proposed ESP Agreement. A sample resolution is available on the Center's website.

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<sup>1</sup> "ESP Agreement" or "Management Agreement" is an agreement to provide comprehensive educational, administrative, management or instructional services or staff to a Public School Academy, as defined by the Revised School Code ("Code").

<sup>2</sup> "Educational Service Provider" or "ESP" or "Educational Management Organization" means an entity that enters into a Management Agreement with a Public School Academy, as defined by the Code.

<sup>3</sup> Family members include: mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, daughter-in-law, sister, sister-in-law, brother, brother-in-law, spouse or same-sex domestic partner.

## B. Academy Board Administrative and Fiduciary Responsibilities

1. In negotiating the ESP Agreement, the Academy Board shall budget adequate resources to fulfill its Contract requirements, which may include, but are not limited to: oversight of the ESP Agreement, negotiation and fulfillment of the Contract and any amendments, Academy Board personnel expenditures, Academy insurance, annual financial audit, the Academy Board's legal counsel, consultants and any other such cost necessary for Academy Board operations.
2. The Academy Board shall be responsible for determining the budget reserve included in the Academy's annual budget and any budget amendments. In addition, the Academy Board is responsible for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount(s).

## C. ESP Agreement Provisions

1. No provision of the ESP Agreement shall interfere with the Academy Board's constitutional duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. No provision of the ESP Agreement shall prohibit the Academy Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act.
2. No provision of the ESP Agreement shall restrict an Academy Board from waiving its governmental immunity or require an Academy Board to assert, waive or not waive its governmental immunity.
3. No provision of an ESP Agreement shall alter the Academy Board treasurer's legal obligation to direct that the deposit of all funds received by the Academy be placed in the Academy's depository account as required by law. The signatories on the Academy Board accounts shall solely be Academy Board members or properly designated Academy Board employee(s). Interest income earned on Academy accounts shall accrue to the Academy.
4. If the ESP Agreement includes financial reporting services provided by the ESP, then the ESP Agreement shall require the ESP to provide the Academy Board monthly financial statements that (at a minimum) include: a balance sheet, an object-level detailed statement of revenues, expenditures and changes in fund balance that includes a comparison of budget-to-actual information and an explanation of variances.
5. ESP Agreements shall contain at least one of the following methods for paying fees or expenses: (i) the Academy Board may either pay or reimburse the ESP for approved fees or expenses upon properly presented documentation and approval by the Academy Board; or (ii) the Academy Board may advance funds to the ESP for the fees or expenses associated with the Academy's operation provided that documentation for the fees and expenses are provided for Academy Board ratification. No corporate costs of the ESP shall be charged to, or reimbursed by, the Academy.
6. ESP Agreements shall provide that the financial, educational and student records pertaining to the Academy are Academy property, and that such records are subject to the provisions of the Michigan Freedom of Information Act. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. Except as permitted under the Contract and Applicable Law, no ESP Agreement shall restrict the University's or the public's access to the Academy's records.
7. ESP Agreements shall contain a provision that all finance and other records of the ESP related to the Academy will be made available to the Academy and the Academy's independent auditor.
8. ESP Agreements shall not permit the ESP to select and retain an independent auditor for the Academy.
9. If an ESP purchases equipment, materials and supplies on behalf of or as the agent of the Academy, the ESP Agreement shall provide that such equipment, materials and supplies shall be and remain the property of the Academy. The ESP shall comply with the Revised School Code (including, but not limited to, sections 1267 and 1274) as if the Academy were making these purchases directly from a third party supplier.

## C. ESP Agreement Provisions (Cont.)

10. ESP Agreements shall contain a provision that if the ESP procures equipment, materials and supplies at the request of or on behalf of the Academy, the ESP shall not include any added fees or charges with the cost of equipment, materials and supplies purchased from third parties.
11. ESP Agreements shall contain a provision that clearly allocates the respective proprietary rights of the Academy Board and the ESP to curriculum or educational materials. At a minimum, ESP Agreements shall provide that the Academy owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the Academy; or (ii) were developed by the ESP at the direction of the Academy Board with Academy funds. ESP Agreements may also include a provision that restricts the Academy's proprietary rights over curriculum or educational materials previously developed or copyrighted by the ESP, or curriculum or educational materials that are developed by the ESP from funds from the Academy paid to the ESP as part of the ESP's fee for services. All ESP Agreements shall recognize that the ESP's educational materials and teaching techniques used by the Academy are subject to disclosure under the Revised School Code and the Freedom of Information Act.
12. ESP Agreements involving employees shall be clear about which persons or positions are employees of the ESP and which persons or positions are employees of the Academy. If the ESP leases employees to the Academy, the ESP Agreement must provide that the leasing company accepts full liability for benefits, salaries, worker's compensation, unemployment compensation and liability insurance for its employees leased to the Academy or working on Academy operations. If the Academy is staffed through an employee leasing agreement, legal confirmation shall be provided to the Academy Board that the employment structure qualifies as employee leasing.
13. ESP Agreements shall contain a provision that the Academy designates the employees of the ESP as agents of the Academy having legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. Section 1232g, the Family Educational Rights and Privacy Act ("FERPA").
14. ESP Agreements shall contain the following language:
  - a. "Indemnification of Central Michigan University. The parties acknowledge and agree that Central Michigan University, its Board of Trustees, and its members, officers, employees, agents or representatives (collectively "University") are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the [ESP] hereby promises to indemnify, defend and hold harmless the University from and against all demands, claims, actions, suits, causes of action, losses, judgments, liabilities, damages, fines, penalties, demands, forfeitures, or any other liabilities or losses of any kind whatsoever, including costs and expenses (not limited to reasonable attorney fees, expert and other professional fees), of settlement and prosecution imposed upon or incurred by the University, and not caused by the sole negligence of the University, which arise out of or are in any manner connected with the University Board's approval of the Academy's application, the University Board's consideration of or issuance of a Contract, the [ESP's] preparation for or operation of the Academy, or which are incurred as a result of the reliance by the University upon information supplied by the [ESP], or which arise out of the [ESP's] failure to comply with the Contract or applicable law. The parties expressly acknowledge and agree that the University may commence legal action against the [ESP] to enforce its rights as set forth in this section of the Agreement."
  - b. "Revocation or Termination of Contract. If the Academy's Charter Contract issued by the Central Michigan University Board of Trustees is revoked, terminated or a new charter contract is not issued to the Academy after expiration of the Academy's Contract, this Agreement shall automatically terminate on the same date as the Academy's Contract is revoked, terminated or expires without further action of the parties."

- c. “Compliance with Academy’s Contract. The [ESP] agrees to perform its duties and responsibilities under this ESP Agreement in a manner that is consistent with the Academy’s obligations under the Academy’s Charter Contract issued by the Central Michigan University Board of Trustees. The provisions of the Academy’s Charter Contract shall supersede any competing or conflicting provisions contained in this ESP Agreement.”
  - d. “Any action or inaction by [ESP] that is not cured within 60 days of notice thereof which causes the Charter Contract to be revoked, terminated, suspended or which causes the Charter Contract to be put in jeopardy of revocation, termination or suspension by Central Michigan University is a material breach.”
15. ESP Agreements shall contain an insurance provision outlining the coverage the ESP is required to maintain. The insurance provision shall state that the ESP shall maintain such policies of insurance as required by the Contract and the Michigan Universities Self-Insurance Corporation (“M.U.S.I.C.”), and that in the event the University or M.U.S.I.C. requests any change in coverage by ESPs, the ESP agrees to comply with any change in the type of or amount of coverage, as requested, within thirty (30) days after notice of the insurance coverage change. The ESP’s insurance is separate from and in addition to the insurance the Academy Board is required to obtain under the Contract.
  16. Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program and shall not include any costs for the marketing and development of the ESP.
  17. The maximum term of an ESP Agreement shall not exceed the length of the Charter Contract.
  18. Any mediation or arbitration clause(s) contained within the ESP Agreement shall require a cause opinion (written explanation) as to the final decision. The Center shall be notified of said decision and, upon the Center’s request, the cause opinion shall be made available.
  19. The ESP Agreement shall not be assignable without prior notification to the Center. Any assignable party shall be considered an ESP, as defined by these ESP Policies. As such, any assignable party shall follow the requirements set forth in these ESP Policies.

## D. Lease and Loan Agreement Provisions

1. If the Academy intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with the ESP, then such agreements must be separately documented and shall not be a part of or incorporated into the ESP Agreement.

## E. Amendments

1. In the event the ESP Agreement is amended, the submission requirements outlined in Section A apply. ESP amendments will be added to the Academy’s Charter Contract through the Charter Contract amendment process identified in the Charter Contract Terms and Conditions.

**Disclaimer:** *These Policies are not intended to be a checklist of items for inclusion in an ESP Agreement. Provisions not specifically addressed in these ESP Policies may be required by the Contract and/or applicable law. The Center strongly encourages the Academy Board and its legal counsel to review any proposed ESP Agreement to ensure that all provisions specific to the Academy Board have been adequately and appropriately addressed.*

Educational Service Provider (ESP) Legal Opinion Template  
Exhibit A  
[Date]

Central Michigan University Board of Trustees  
Mt. Pleasant, Michigan

[Name of Public School Academy]  
[Name of City], Michigan

Re: [Name of Public School Academy] Educational Service Provider (ESP) Agreement with [Name of ESP]

Ladies & Gentlemen:

In my capacity as legal counsel to [Name of Public School Academy] (the “Academy”), I have represented the Academy in connection with the proposed Educational Service Provider (ESP) Agreement between the Academy and [Name of ESP]. As Academy legal counsel, I have reviewed copies of the following documents:

1. The Educational Service Provider Agreement, dated as of [Month, Day, Year], (the “Agreement”), between the Academy and [Name of ESP].
2. The Central Michigan University Educational Service Provider Policies (“Policies”).
3. The Contract to Charter a Public School Academy and Related Documents, dated [Month, Day, Year], (the “Contract”), issued by the Central Michigan University Board of Trustees to the Academy.

I have also reviewed other documents, instruments and Academy Board minutes related to the Provider of the Academy, which are required or have been requested by the University Board prior to the issuance of the Contract. I have also reviewed the articles of incorporation and bylaws of the Academy, and originals and copies of such other documents, records and statements of facts as I deemed relevant, and I have made such other investigations and inquiries, as I have determined necessary, for the purpose of rendering the opinions set forth herein. Based upon the foregoing, I am of the opinion that:

1. The Academy is a Michigan nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has full power and authority to enter into the Agreement.
2. The Academy’s execution, delivery and performance of the Agreement does not violate any term or provision in the Policies and, to the best of my knowledge after due inquiry, the Academy Board has complied with all terms and provisions in the Policies.
3. The Academy’s execution, delivery and performance of the Agreement does not permit or require an improper delegation of the Academy Board’s:
  - (a) statutory and fiduciary responsibilities under applicable law; or
  - (b) obligations and duties under the Contract.

In addition, the Agreement does not conflict with any of the provisions of the Contract.

Very truly yours,  
[Name of Academy Legal Counsel]

———— THE GOVERNOR JOHN ENGLER ————  
**CENTER FOR CHARTER SCHOOLS**  
———— CENTRAL MICHIGAN UNIVERSITY ————

**Educational Service Provider Information Sheet  
Exhibit B**

Pursuant to Section A, Academy Board Due Diligence, of the Educational Service Provider (“ESP”) Policies established by The Governor John Engler Center for Charter Schools (“Center”) at Central Michigan University, prior to executing an agreement with an ESP, the Academy Board shall perform sufficient due diligence to establish that the ESP has the appropriate financial resources, educational services and managerial experience to provide the contracted services. Prior to contracting with an ESP, the Academy Board shall obtain sufficient information to conclude that the ESP Agreement is in the best financial and educational interest of the Academy. At a minimum, and prior to the execution of an ESP Agreement, the Academy Board shall provide the following information to the Center:

ESP Name: \_\_\_\_\_

ESP Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ City, State Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

In the spaces below (or on a separate sheet), please list the names of all ESP owners, shareholders, directors and or officers.

Name	Phone Number	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Indicate the organizational structure of the ESP:

For Profit

Non-Profit

Limited Liability Corporation

Other: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Has the ESP obtained authorization to do business in Michigan?  Yes  No

In the space below, provide the following information on the ESP’s primary banking institution:

Bank Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

In the space below, provide the following information on the ESP’s legal counsel:

Firm Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

In the space below, provide the following information on the firm providing accounting or auditing services to the ESP:

Firm Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

*Attach a copy of the Academy Board’s draft legal opinion (according to Exhibit A), certifying to the University that the Academy Board has fulfilled all obligations as required in the ESP Policies.*



———— THE GOVERNOR JOHN ENGLER ————  
**CENTER FOR CHARTER SCHOOLS**  
———— CENTRAL MICHIGAN UNIVERSITY ————

The Governor John Engler Center for Charter Schools  
Central Michigan University | Mount Pleasant, MI 48859  
(989) 774-2100 | [www.TheCenterForCharters.org](http://www.TheCenterForCharters.org)

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THAT FOSTERS ACADEMIC EXCELLENCE FOR ALL CHILDREN.”

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