



EDUCATIONAL SERVICE PROVIDER GUIDELINES

March 1, 2024 (“Effective Date”)

Pursuant to the Terms and Conditions of the Contract (“Contract”) issued by the Saginaw Valley State University Board of Control (“University Board”), these Educational Service Provider Guidelines (“ESP Guidelines”) are adopted by the Saginaw Valley State University School/University Partnership Office (“University”). As of the Effective Date, the ESP Guidelines are part of the Contract and apply to all public school academies authorized by the University Board, including new public school academies. A public school academy board of directors (“Academy Board”) must comply with the ESP Guidelines in addition to other Contract provisions that apply to an Academy contracting with an Educational Management Company (“ESP”). For purposes of these ESP Guidelines, University President means the President of Saginaw Valley State University or their authorized designee.

The Revised School Code, MCL 380.1 et seq. (“Code”) requires that a public school academy authorizer must review and may disapprove any ESP Agreement before it is executed and if the ESP Agreement is contrary to the Contract and applicable law. These Policies are to be incorporated into all ESP Agreements entered into by a public school academy (“Academy”) authorized by the University Board.

Academy Board Due Diligence

Prior to executing an agreement with an ESP, the Academy Board must perform sufficient due diligence to establish that the ESP and its key personnel have the appropriate financial resources, educational background, 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 SUPO with the completed “Educational Service Provider Due Diligence Questionnaire” containing the following information:

1. List of all ESP owner(s), directors and/or officers. This list shall disclose all existing conflicts of interest that any ESP owner, director and/or officer may have in regard to Academy Board members, administrators and employees associated with the Academy, as well as other vendors contracting with the Academy. Conflict of interests include, but are not limited to, familial and/or social relationships. (Academy Board members, Academy

Board employees, and their respective spouses and immediate family members¹ may not have any direct or indirect ownership, employment, contractual or management interest in any ESP that contracts with the Academy. The relationship between the Academy and the ESP shall be consistent with the conflicts of interest and prohibited familial relationship provisions set forth in the Contract.)

2. Type or form of entity (for-profit corporation, non-profit corporation, limited liability company, etc.).
3. Name ESP's primary banking institution.
4. Legal counsel for the ESP. Name, address, and telephone number of firm and name of contact person.
5. Accounting firm for the ESP. Name, address, and telephone number of firm and name of contact person.
6. A written statement regarding the ESP's experience in providing educational services, the types of educational service to be provided to the Academy.
7. A mission, vision, and values statement of the ESP.
8. List all persons or entities with whom the ESP plans to subcontract for services provided to the Academy, along with a disclosure of the ESP's ownership in any such subcontractor.
9. List any names under which the ESP or any affiliates operate. List all entities that are affiliated with the ESP (i.e., parent company, affiliates, and other entities wholly owned or partially owned by the ESP or the owner, officers, directors, managers or key employees of the ESP.)
10. List of the public school academies or other schools (public or private) to which the ESP provides services.
11. List of any lease, license, contract or other agreement between the ESP (or its affiliates) and the Academy.
12. Identification of any start-up funding being provided by the ESP.
13. List of any services the ESP plans to provide to the Academy with regard to cash flow borrowings, including any fees from such services.
14. List of any materials, equipment or supplies the Academy will purchase or lease from the ESP.

¹ 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.

15. Criminal history of the ESP's owners, officers, directors, managers, and employees. Has any owner, officer, director, manager, or employee of the ESP been convicted of a felony, a crime involving embezzlement, fraud, dishonesty, or the misuse of funds?
16. Has any principal or officer of the ESP, or the ESP (including any related organizations or organizations in which a principal or officer of the ESP served as a principal or officer) as a corporate entity, filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer?
17. Has the ESP had any contract for management services with a public school terminated or not renewed? If yes, please provide additional details.
18. Has the ESP or any owner, officer, director, manager or employee of the ESP sued or been sued by a public school that had or has a contract with the ESP? If the answer is "yes," please provide additional details.
19. Has the ESP or any owner, officer, director, manager or employee of the ESP been subject to a garnishment or had imposed upon them a federal or state tax lien? If the answer is "yes," please provide additional details.
20. The Academy Board shall not approve a Lease Agreement until all Academy Board members have been given the opportunity to review the proposed Lease Agreement with the Academy's legal counsel.

In accordance with the Contract, an Academy Board shall timely notify the SUPO of any proposed ESP Agreement between that Academy and an ESP before the proposed ESP Agreement becomes binding. If an Academy proposes to enter into a new or renewed ESP Agreement with an ESP, or to amend an existing ESP Agreement, the Academy shall, not later than ninety (90) days prior to the proposed date of execution of the ESP Agreement, submit the proposed ESP Agreement to the SUPO Director along with a detailed description of the methods by which the ESP will be held accountable to the Academy Board. The SUPO shall then review the proposed ESP Agreement to determine whether it complies with the Contract and Applicable Law. Unless the SUPO Director extends the review period, the SUPO Director shall notify the Academy if the proposed ESP Agreement is disapproved for violation of the Contract or applicable law at the end of the ninety (90) day review period. The SUPO Director has the discretion to determine whether an ESP Agreement is disapproved, and whether an ESP Agreement is in violation of the Contract or Applicable Law. If the proposed ESP Agreement is disapproved, such disapproval may, but shall not be required to, state one or more conditions which, if complied with by the Academy and the ESP, would cause such disapproval to be deemed withdrawn. No ESP Agreement described in these ESP Guidelines may be entered into if the ESP Agreement is disapproved by the SUPO Director. By not disapproving a proposed ESP Agreement, the SUPO Director is in no way giving approval of the ESP Agreement, the fee arrangement between the Academy and the ESP or any other provisions of the ESP Agreement.

The Academy Board must retain independent legal counsel to review and advise on the negotiation of the ESP Agreement. Legal counsel for the Academy shall not represent the ESP or an ESP owner, director, officer or employee. The ESP Agreement must be an arms-length, negotiated agreement between an informed Academy Board and the ESP. Prior to the Academy Board's approval of the ESP Agreement, the Academy Board must obtain an opinion from its legal counsel, which includes the representation that legal counsel has reviewed the proposed ESP Agreement, the ESP Guidelines and the Academy's Contract, and that in their opinion:

- A. The Academy Board has the power and authority to enter into the proposed ESP Agreement;
- B. Execution of the proposed ESP Agreement does not violate any term or provision of the Contract (including the ESP Guidelines) and applicable law; and
- C. Entering into the proposed ESP Agreement does not authorize or require an improper delegation by the Academy Board.

The Academy Board shall only approve an ESP Agreement with a formal vote at a public board meeting. Prior to an Academy Board's vote on the ESP Agreement, the Academy Board shall provide an opportunity for public comments on the proposed ESP Agreement.

Academy Board Administrative and Fiduciary Responsibilities

1. In negotiating the ESP Agreement, the Academy Board must budget adequate resources to fulfill its Contract requirements which may include, but are not limited to: oversight of the ESP, negotiation of the Contract and any Contracts amendments, payment of staff costs, insurance required under the Academy's lease, ESP Agreement and the Contract, annual financial audit, the Academy Board's legal counsel, consultants, recording secretary and any other such cost necessary for Academy Board operations.
2. The Academy Board shall be responsible for determining the budget reserve amount included as part of the Academy's annual budget. In addition, the Academy Board is responsible for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount.
3. 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. The foregoing presentations shall be in a form and format acceptable to the Academy Board and are to be provided to all Academy Board members not less than five (5) working days prior to the Academy Board meeting at which the information will be presented and discussed.
4. 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 at its next regularly scheduled meeting. No corporate costs or "central office" personnel costs of the ESP shall be charged to, or reimbursed by, the Academy, and such corporate costs or "central office" personnel costs shall be paid out of the management fee paid by the Academy.

5. The ESP Agreement shall contain the specific provisions that are incorporated into the Contract as required provisions for all ESP Agreements.
6. Pursuant to the Uniform Budget and Accounting Act, MCL 141.422b, the Academy Board is responsible for designating the Chief Administrative Officer for the Academy. If the Academy employs a superintendent, then the Academy Board may designate the superintendent as the Chief Administrative Officer of the Academy. If the Academy contracts with a superintendent, then the Academy Board shall designate an Academy Board member as the Chief Administrative Officer of the Academy. No ESP or ESP owner, officer, director, employee or agent shall be designated as the Chief Administrative Officer of the Academy, but an ESP employee may assist an Academy Board member who is the Chief Administrative Officer in carrying out their responsibilities.
7. 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.

ESP Agreement Provisions

1. The Academy Board must ensure that, at all times during the term of this Contract, any ESP employed by the Academy maintains comprehensive general liability and umbrella insurance coverage at levels satisfactory to the University President (see Article 13). The insurance coverage required of the ESP shall not be in lieu of the insurance coverage requirements applicable to the Academy. Any policy of insurance maintained by the ESP must include coverage for sexual molestation or abuse, must name the University as an additional, named insured, and shall not be changed, revoked or modified absent thirty (30) days' notice to the University President. The ESP Management Agreement shall also specify that, in the event the University President modifies the level, type, scope or other aspects of such coverage, then the ESP shall undertake like and similar modifications within 30 days of being notified of such change.
2. The Academy Board must ensure that, and the ESP Management Agreement shall provide that, any ESP performing services at the Academy shall comply with the requirements under this Contract to the extent such ESP is performing services on behalf of the PSA.

3. No provision of the ESP Management Agreement shall interfere with the Academy Board's duties under the Contract, and the Academy's duties under the Contract shall not be limited or rendered impossible by action or inaction of the ESP.
4. No provision of the ESP Agreement shall predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.
5. The ESP Management Agreement shall state that all financial, educational, and student records pertaining to the Academy are Academy property and that such records are subject to the provisions of Michigan's Freedom of Information Act, except for some data which may be contained in such records, which may be redacted or withheld as permitted by applicable law, which shall be specifically cited in the event of withholding or redaction. All such records must be stored, in physical form, on-site at the Academy's facility or be directly accessible at the Academy facility. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook shall be maintained physically on site or directly accessible at the Academy facility.
6. The ESP Agreement shall state that all of the Academy's financial and other ESP-related records will be made available to the Academy's independent auditor and that the ESP staff will cooperate with said auditor, and that the ESP shall not select or retain the Academy's auditor.
7. The ESP Agreement must certify that there shall be no markup of costs for supplies, materials, or equipment procured by the ESP on the Academy's behalf and that the Academy and that all supplies, materials, and equipment procured for the Academy by the ESP shall be inventoried by an acceptable method of inventory and further that an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to the Academy.
8. The ESP Agreement shall contain a provision that states upon termination, the ESP shall work for a specified period of time to transition to a new ESP. There may be a fee set forth for this service.
9. The ESP Agreement shall contain a provision that states upon termination the ESP shall, without charge (i) close the books on the then-current fiscal quarter; (ii) organize and prepare the Academy's records for transition to the new ESP; (iii) organize and prepare student records for transition to the new ESP; and (iv) provide for the orderly transition of employee compensation and benefits to the new ESP without disruption to staffing.
10. The ESP Agreement shall prohibit the ESP from executing contracts with its staff assigned to the Academy (including by way of example and not limitation, teachers, administrators, counselors and the like) that contain noncompete and/or nonsolicitation agreements of any nature.
11. The Academy Board and the ESP may not substantially amend the management contract without notifying the University President. No amendment shall be contrary to this section

and shall be accompanied by a Legal Opinion. Whether or not substantial, the Academy shall submit to the University President Designee all amendments to the management contract within 10 days after such amendment.

12. The ESP Agreement shall contain the following provision:
“Indemnification of Saginaw Valley State University. The parties acknowledge and agree that the Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Saginaw Valley State University, which arise out of or are in any manner connected with Saginaw Valley State University Board’s approval of the Public School Academy application, the University Board’s consideration of or issuance of a Contract, the Academy’s preparation for and operation of a public school, or which are incurred as a result of the reliance by Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives upon information supplied by the Academy or the Educational Management Organization, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Saginaw Valley State University Board of Control. The parties expressly acknowledge and agree that Saginaw Valley State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.”
13. The ESP Agreement shall require all ESP employees to undergo criminal background and unprofessional conduct checks required by applicable law in the matter presented therein.
14. The ESP Agreement shall contain a provision requiring the educational service provider to make information available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under Section 7.4 of this Contract and also at least the information that a school district is required to be disclosed under MCLA 388.1618 for the most recent fiscal year for which that information is available. The ESP Agreement shall contain a provision requiring the educational service provider to make information available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under Section 7.4 of this Contract and also at least the information that a school district is required to be disclosed under MCLA 388.1618 for the most recent fiscal year for which that information is available.
15. No ESP employee shall be designated as the Chief Administrative Officer of the Academy, although such employee may be a designee of the Chief Administrative Officer for certain purposes enumerated by Board action.

16. The ESP shall notify the Academy Board if any principal or officer of the ESP, or the ESP (including any related organizations or organizations in which a principal or officer of the ESP served as a principal or officer) as a corporate entity, has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.
17. The ESP Agreement must contain a provision providing for the early termination or amendment of the ESP Agreement, with no cost or penalty to the Academy, and no recourse to the University or any third party affiliated with or engaged by the University, by the ESP or any subcontracted person or entity of the ESP, in the event the University determines to exercise its prerogative under MCLA 380.507(7) and Section 9.3 hereof to reconstitute the Academy by requiring the termination or amendment of the ESP Agreement.
18. The ESP Agreement shall contain a provision requiring that it make available to the Authorizer and to the public the information required under MCL 380.503.
19. The ESP Agreement shall contain a provision requiring it to adopt, implement and maintain a performance evaluation system for all required personnel as required by applicable law.
20. No ESP Agreement or Amendment may become effective until and unless the Director of SUPO notifies the Academy in writing that it has reviewed and does not disapprove of the ESP Agreement or Amendment thereto.
21. The ESP Agreement may not be assigned or assignable to any third party.
22. The ESP Agreement shall not exceed the length of the Contract.