

**BAY MILLS COMMUNITY COLLEGE
CHARTER SCHOOLS OFFICE
EDUCATIONAL SERVICE PROVIDER POLICIES**

Effective: March 28, 2012 / Amended: July 25, 2022 (“Effective Date”)

Pursuant to the Charter Contract (“Contract”) issued by the Bay Mills Community College Board of Regents (“College Board”), these Educational Service Provider Policies (“ESP Policies”) are adopted by the Bay Mills Community College Charter Schools Office (“CSO”). As of the Effective Date, the amended ESP Policies are part of the Contract and apply to all public school academies authorized by the College Board, including new public school academies. A public school academy board of directors (“Academy Board”) must comply with the ESP Policies in addition to other Contract provisions that apply to an Academy contracting with an educational management organization (“ESP”)¹. Failure by the Academy Board to comply with the ESP Policies may result in a violation of the Contract.

Background

The Revised School Code, MCL 380.1 et seq. (“Code”) requires that a public school academy authorizing body review and may disapprove any Management Agreement² before it is executed if the ESP Agreement is contrary to the Contract and applicable law. These ESP Policies are to be incorporated into all ESP Agreements entered into by a public school academy (“Academy”) authorized by the College Board.

A. Academy Board Due Diligence

1. Prior to approving an ESP 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 obtain the following information from the ESP:
 - 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.

¹ As defined by the Code, the term “Educational Management Organization” means an entity that enters into a management agreement with a public school academy. The term “ESP” is used interchangeably with “Educational Management Organization” in these ESP Policies.

² As defined by the Code, the term “Management Agreement” means an agreement to provide comprehensive educational, administrative, management, or instructional services or staff to a public school academy. The term “ESP Agreement” is used interchangeably with “Management Agreement” in these ESP Policies.

Conflicts of interest include, but are not limited to, familial and/or social relationships.

- 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 name of contact person.
 - Accounting firm for the ESP. Name, address, and telephone number of firm and name of contact person.
 - A written statement regarding the ESP's experience in providing educational services, and the types of educational service to be provided to the Academy.
 - A mission, vision, and values statement of the ESP.
 - List of 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.
 - List of the public school academies or other schools (public or private) to which the ESP provides services.
 - List of any lease, license, contract or other agreement between the ESP (or its affiliates) and the Academy.
 - Identification of any start-up funding being provided by the ESP.
 - List of any services the ESP plans to provide to the Academy with regard to cash flow borrowings, including any fees from such services.
 - List of any materials, equipment or supplies the Academy will purchase or lease from the ESP.
 - Criminal history of the ESP's owners, officers, directors, managers, and employees.
2. Academy Board members, Academy Board employees, and their respective spouses and immediate family members³ 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.
3. In accordance with the Contract, an Academy Board shall timely notify the CSO 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 thirty (30) days prior to the proposed date of execution of the ESP Agreement, submit the proposed ESP Agreement to the CSO Director along with a detailed description of the methods by which the ESP will be held accountable to the Academy Board. The CSO shall then review the proposed ESP Agreement to determine whether it complies with the Contract and Applicable Law. Unless the CSO Director extends the review period, the CSO Director shall notify the Academy if the proposed ESP Agreement is disapproved for violation of the Contract or applicable law at the end

³ 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, aunt, uncle, niece, or nephew.

of the thirty (30) day review period. The CSO 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 Policies may be entered into if the ESP Agreement is disapproved by the CSO Director. By not disapproving a proposed ESP Agreement, the CSO 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.

4. 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 Policies, 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 Policies) and applicable law; and
 - C. Entering into the proposed ESP Agreement does not authorize or require an improper delegation by the Academy Board.
5. The Academy Board shall not approve an ESP Agreement until all Academy Board members have been given the opportunity to review the proposed ESP Agreement with the Academy's legal counsel.
6. The Academy Board shall only approve an ESP Agreement with a formal vote at a public board meeting. Prior to the Academy Board's vote on the ESP Agreement, the Academy Board shall provide an opportunity for public comment on the proposed ESP Agreement.

B. 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 Contract 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; (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; or (iii) the Academy Board may pay fees or expenses by other methods not otherwise disapproved by the CSO. No corporate costs or "central office" personnel costs of the ESP shall be charged to, or reimbursed 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 College's or the public's access to the Academy's records.

C. ESP Agreement Provisions

1. An ESP Agreement under which an ESP provides personnel to perform work at the Academy **may not contain a non-competition, no-hire, or similar provision** prohibiting or restricting the Academy from hiring instructional staff that perform work at the Academy.
2. An ESP Agreement under which an ESP provides or assigns persons to perform work at the Academy shall contain a provision requiring the ESP to make information concerning the operation and management of the Academy, including but not limited to, information in the Contract, including all exhibits, schedules, and the like, available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under the Contract. Except as permitted under the Contract and Applicable Law, no ESP Agreement shall restrict the the College Board's, the CSO's or the public's access to the Academy's records.
3. No provision of an ESP Agreement shall interfere with the Academy Board's exercise of its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. No provision of an 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.
4. An ESP Agreement shall not restrict an Academy Board from waiving its governmental immunity or require an Academy Board to assert, waive or not waive its governmental immunity.
5. 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 applicable law. The signatories on the depository account shall only be Academy Board members properly designated annually by Academy Board resolution. Interest income earned on Academy depository accounts shall accrue to the Academy.
6. An ESP Agreement must contain a provision that all finance and other records of the ESP related to the Academy will be made available to the Academy, to the Academy's independent auditor or the CSO upon request.
7. An ESP Agreement must not permit the ESP to select, retain, evaluate or replace the independent auditor for the Academy.
8. 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 will comply with section 1274 of the Code as if the Academy were making these purchases directly from a third party supplier.

9. An ESP Agreement 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.
10. An ESP Agreement must 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 dedicated for the specific purpose of developing such curriculum or materials. 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 using funds from the Academy that are not dedicated for the specific purpose of developing Academy curriculum or educational materials. 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.
11. An ESP Agreement under which an ESP provides persons to perform work at the Academy must 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 ESP 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. The ESP Agreement must provide that the ESP is responsible for paying employees leased to the Academy or working on Academy operations irrespective of whether the ESP receives an advancement of its costs or the payment of services from the Academy. If the Academy is staffed through an employee leasing agreement, legal confirmation must be provided to the Academy Board that the employment structure qualifies as employee leasing. An employee leasing agreement shall provide that the employee leasing company is responsible for paying individuals leased to the Academy or working on Academy operations irrespective of whether the employee leasing company receives an advancement of its costs or the payment for services from the Academy.
12. An ESP Agreement must contain a provision outlining the insurance coverages and amounts the ESP is required to procure. The ESP's insurance is separate from and in addition to the insurance the Academy Board is required to obtain under the Contract. The ESP's cost of procuring insurance coverage under the ESP Agreement is a corporate cost to be paid by the ESP.
13. 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.

14. An ESP Agreement shall contain a provision that the Academy designates the ESP and the ESP employees 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”).
15. Any arbitration clause(s) contained with the ESP Agreement shall require a cause opinion (written explanation) as to the final decision. The cause opinion shall be made available to the College Board or CSO upon request.
16. The maximum term of an ESP Agreement shall not exceed the term of the Academy’s Contract.
17. Consistent with the Academy’s data breach response plan, an ESP Agreement shall contain a provision addressing how the Academy and ESP will handle a data breach of personally identifiable information (PII) from Academy education records or other information not suitable for public release.
18. The ESP Agreement shall contain language that any termination of the ESP Agreement for cause or without cause shall not take effect until the earlier of (i) an approved agreement by the Academy with another ESP (or self-management) is in effect; or (ii) the end of the current school year in which the termination is invoked. A change in ESP (or a decision to self-manage) in mid school year is strongly discouraged and will be disapproved by the CSO absent compelling circumstances and a clear demonstration that the new ESP (or transition to self-management) can seamlessly assume management and operations of the school without disrupting the school’s operations.
19. 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, files for bankruptcy protection or, at the time the ESP Agreement is executed, has filed for bankruptcy protection within the last five (5) years.
20. The ESP Agreement shall contain a provision that states upon termination or expiration of the ESP Agreement, or when the ESP Agreement is terminated due to a Contract revocation, reconstitution, termination or non-renewal, the ESP shall, without charge: (i) close the books on the then-current school fiscal year; (ii) organize and prepare the Academy’s records for transition to the new ESP, self-management or dissolution; (iii) provide the Academy with an updated fixed asset schedule showing all property owned by the Academy; (iv) provide an updated list of outstanding vendor invoices with total amount owed (including the total outstanding owed by the Academy to the ESP, if any; (v) the amount owed by the ESP to the Academy, if any; (vi) organize and prepare student records for transition to the new ESP, self-management or in the case of a school closure, transfer to a student’s new school as designated by the student’s parent / legal guardian or to a person or entity authorized to hold such records; (vii) ensure the closeout of existing grants and the transfer of grant funded property to Academy, if applicable; and (viii) provide for the orderly transition of employee compensation and benefits to the new ESP or self-management without disruption to staffing, or in the case of school closure, final payment of all employee compensation, benefit and tax obligations related

to services provided by the ESP to the Academy.

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, separately approved, and not be a part of or incorporated into the ESP Agreement. All such agreements must comply with the Charter Contract, as well as any applicable College Board and CSO policies and guidelines.

E. Amendments

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

***Disclaimer:** These ESP 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 CSO 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.*

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