



**Requirements for Contracts with
Education Service Providers**

Indiana Code (“IC”) 20-24-1-6.1 defines an “education service provider” (“ESP”) as “a for profit education management organization, nonprofit charter management organization, school design provider, or any other partner entity with which a charter school intends to contract for educational design, implementation, or comprehensive management.” All organizers must comply with IC 20-24-3-2.5 and with these Requirements for Contracts with Education Service Providers when entering into a contract or making any modifications or amendments to an existing contract with an ESP for the management, operation, or provision of a significant portion of the managerial or instructional staff to a charter school authorized by the Indiana Charter School Board (“ICSB”).

1. Negotiation of a Service Contract. The organizer's governing board must be structurally independent of the ESP. The terms of any contract must be reached by the organizer and the ESP through arms-length negotiations in which the organizer is represented by separate legal counsel who may not also represent the ESP. Any existing or potential conflicts of interest between the organizer and the proposed ESP or any affiliated business entities must be disclosed to ICSB’s Executive Director prior to execution of the contract.
2. Approval of a Service Contract. The organizer must submit a written request for approval to the Executive Director before executing; canceling; terminating; or materially amending, modifying, or supplementing any contract entered into with an ESP. The Executive Director may approve or reject a proposed contract, amendment, modification, or supplement, in whole, or in part. If the Executive Director determines that the proposed contract does not comply with (a) this document, (b) the Charter, (c) applicable law, or is otherwise against public policy, the Executive Director shall notify the organizer within twenty (20) business days of receipt, stating the bases for objecting to the contract. In such event, the organizer shall not enter into the contract unless and until the deficiencies noted by the Executive Director have been addressed to the Executive Director's satisfaction. The governing board of the organizer must approve the final contract as approved by the Executive Director.
3. Required Terms of Service Contract. The contract shall include, in substance, the following terms:
 - a. The contract shall be subject to, and shall incorporate by reference, the terms and conditions of the charter and no provision of the contract may interfere with the organizer's ability to perform its obligations under the charter. The organizer shall at all times remain legally responsible to ICSB for the operations and management of the charter school and for ensuring that the terms and conditions of the charter are satisfied. The ESP must comply with all applicable law and the terms and conditions of the charter. The contract must, in its entirety, be consistent with the organizer's status as a nonprofit and tax-exempt entity under the Internal Revenue Code or applicable state law, including but not limited to any applicable provisions prohibiting or restricting private benefit or private inurement.
 - b. The contract must define the services that the ESP will provide to the organizer and shall clearly delineate the respective roles and responsibilities of the organizer, the school staff, and the ESP in the management and operation of the charter school including whether individuals who work at the charter school are employees of the organizer or the ESP. The organizer's governing board must set and approve school policies, such as, but not limited

to, the budget, curriculum, student conduct, school calendars, and dispute resolution procedures.

- c. The contract must specify a reasonable fixed term, not to exceed the term of the charter, inclusive of renewals.
- d. The organizer is the recipient of all public funds that are disbursed to fund the operations of the charter school and all other funds to which the charter school or the organizer is entitled. The contract must specify the methodology for calculating the ESP's compensation, including all amounts to be paid to the ESP by the organizer, whether as contract payments, lease payments, management fees, administrative fees, licensing fees, expenses, claims on residual revenues, or any other amounts payable to the ESP. The total amount to be paid to the ESP by the organizer and/or any third party, including students, parents, or other organizations, under the contract shall be reasonable, market rate, and commensurate with the services provided by the ESP. Compensation arrangements that grant the ESP the charter school's annual operating surplus, give the ESP a percentage of all the charter school's revenues, or include bonuses or incentives, must be designed in accordance with any applicable law and Internal Revenue Service guidance.
- e. The contract must identify the procedures that the organizer shall use to monitor and oversee the ESP. The contract must require the ESP to be held accountable for the performance criteria outlined in ICSB's Accountability System and shall set forth the manner and timelines under which the ESP shall be evaluated for its performance.
- f. The contract must be terminable (i) at any time by the mutual written agreement of the organizer and the ESP; (ii) by the organizer upon any material breach of the contract by the ESP; (iii) by the organizer if the contract or its implementation would serve as grounds for revocation under the Charter, would jeopardize the tax exempt or not-for-profit status of the organizer, would create adverse tax consequences for the organizer, or would cause the Organizer to be in violation of applicable law; (iv) by the organizer should the ESP fail to meet the performance criteria outlined in the Accountability Plan; or (v) by the organizer or ESP upon such other grounds as are specified by the contract. The contract must contain appropriate wind-down provisions delineating the rights and responsibilities of both parties upon termination.
- g. The contract must provide that that the organizer and ICSB are entitled to any data directly related to the operation or management of the school, such as financial data, enrollment data, demographic data, performance data, and student data, in the possession of the ESP other than any proprietary, intellectual property, or similarly protected data of the ESP.