



**Requirements for Contracts with
Education Service Providers**

Indiana Code (“IC”) § 20-24-1-6.1 defines an “education service provider” 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 charter school organizers must comply with IC § 20-24-3-2.5 and with these Requirements for Contracts with Education Service Providers when executing or materially amending a service contract for the management, operation, or provision of a significant portion of the managerial or instructional staff to a charter school; a lease; or other agreement with an ESP.

1. Structural Independence; Conflicts of Interest. An organizer’s governing board must be structurally and operationally independent from the education service provider. Any existing or potential conflicts of interest between an organizer and the education service provider or any affiliated business entities of the education service provider must be disclosed to the Executive Director of the Indiana Charter School Board (“ICSB”) prior to execution of any service contract, lease, or other agreement with the education service provider or an affiliated business entity.

Members of the governing board and employees of the organizer or charter school, and their respective spouses or immediate family members, may not have any direct or indirect ownership, employment, contractual or management interest in any education service provider or affiliated business entity that contracts with the organizer or charter school. ICSB’s Executive Director may formally waive this requirement for persons who have an interest described above if the Executive Director concludes that the ownership interest is minimal and such waiver will not violate any applicable laws or regulations.

2. Contract Negotiation. The terms of any service contract, lease, or other agreement between an organizer and an ESP must be reached through arms-length negotiations in which the organizer is represented by separate legal counsel.
3. Contract Approval.
 - a. Before execution or material amendment of any service contract, lease, or other agreement with an education service provider, the organizer must submit the proposed service contract, lease, or other agreement to the Executive Director for review.
 - b. The Executive Director may approve or reject a proposed contract or amendment to a contract, in whole, or in part, if the Executive Director determines that the proposed contract or amendment does not comply with (a) this document, (b) the Charter, (c) applicable law, or (d) is otherwise against public policy.

- c. If the Executive Director rejects all or part of a proposed contract or amendment, the Executive Director shall notify the organizer within ten (10) business days, stating the reason for the objection. The organizer may not execute the proposed contract or amendment until the deficiencies noted by the Executive Director have been addressed to the Executive Director's satisfaction.
- d. Once approved by the Executive Director, the organizer's governing board must approve the final contract or amendment prior to execution.

4. Required Terms.

- a. The service contract shall be subject to, and shall incorporate by reference, the terms and conditions of the charter and no provision of the service contract may interfere with the organizer's ability to perform its obligations under the charter.
- b. The service contract, both in terms and in execution, must be consistent with the organizer's status as a nonprofit and tax-exempt entity under applicable state law and the Internal Revenue Code, including but not limited to any applicable provisions prohibiting or restricting private benefit or private inurement. The organizer should refer to the Internal Revenue Service [Charter School Reference Guide](#) for guidance as to how to avoid terms or arrangements that may impact tax-exempt status.
- c. The service contract must specifically define the services that the education service provider will provide to the organizer and delineate the respective roles and responsibilities of the organizer, the school staff, and the education service provider 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 education service provider.
- d. The service contract must require no less than quarterly reports on budgeted versus actual expenditures, the overall financial condition of the charter school, and the performance of the education service provider towards the educational goals set by the governing board. The governing board must set and approve an annual budget and any revised budgets for the school and shall set and approve school policies.
- e. The service contract must specify a reasonable fixed term, not to exceed the term of the charter, inclusive of renewals. The service contract may not renew automatically.
- f. The service contract must specify the methodology for calculating the education service provider's compensation, including all amounts to be paid to the education service provider by the organizer, regardless of form, including, but not limited to, service fees, lease payments, management fees, administrative fees, licensing fees, expenses, claims on residual

revenues, or any other amounts. The total amount to be paid to the education service provider by the organizer under the contract shall be reasonable, consistent with industry practices and market rates, and commensurate with the services provided by the education service provider. Compensation arrangements that grant the education service provider the charter school's annual operating surplus, give the education service provider a percentage of all the charter school's revenues, or include bonuses or incentives, must be in accordance with applicable law and Internal Revenue Service guidance.

- g. The contract must identify the procedures that the organizer shall use to monitor and oversee the education service provider. The contract must require the education service provider 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 education service provider will be evaluated by the organizer for the academic, financial, and operational performance of the charter school.
- h. The contract must be terminable (i) at any time by the mutual written agreement of the organizer and the education service provider; (ii) by the organizer upon any material breach of the contract by the education service provider; (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 education service provider fail to meet the performance criteria outlined in the Accountability System; or (v) by the organizer or education service provider 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.
- i. 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 education service provider other than any proprietary, intellectual property, or similarly protected data of the education service provider.
- j. The contract must acknowledge that any equipment, materials and supplies purchased on behalf of or for the use of the charter school with public funds shall be and remain the property of the charter school.
- k. The contract must contain a provision that delineates the respective proprietary rights of the organizer or charter school and the education service provider to curriculum or educational materials. At a minimum, the contract must provide that the organizer or charter school owns all proprietary rights to curriculum or educational materials that (i) are developed by

and paid for by the charter school; or (ii) were developed by the education service provider at the direction of the organizer or charter school with public funds dedicated for the specific purpose of developing such curriculum or materials. Notwithstanding the foregoing, the contract may include provisions that restrict the organizer or charter school's proprietary rights over curriculum or educational materials developed or copyrighted by the education service provider using its own funds.

1. The contract shall prohibit the education service provider from assigning the contract, in whole, or in part, and shall prohibit the education service provider from further subcontracting the management, oversight or operation of the teaching and instructional program without the consent of the organizer and ICSB. The organizer may not consent to such an assignment or subcontract if the education service provider does not provide evidence that the proposed assignee or subcontractor has the appropriate financial, educational, and/or managerial experience to provide the assigned or subcontracted services.

5. Accountability. As the charter holder and fiscal agent for the charter school, the organizer is solely responsible for: i) holding the education service provider accountable for the operations and management of the charter school, ii) ensuring the terms and conditions of the charter are satisfied, and iii) ensuring that the public (state and federal) funds are spent responsibly and in accordance with applicable law.