



STATE PUBLIC CHARTER SCHOOL AUTHORITY

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BRIEFING MEMORANDUM

TO: SPCSA Board
FROM: Patrick Gavin
SUBJECT: Agenda Item 4—Consent Agenda—Founders Academy Amendment Request
DATE: August 26, 2016

Background:

[NRS 388A.030](#) defines an educational management organization as a for-profit corporation, business, organization or other entity that provides services relating to the operation and management of charter schools and achievement charter schools. Additionally, [NRS 388A.393 expands](#) on the definition to include several other kinds of entities and service providers who provide services to charter schools:

““...[C]ontractor” or “educational management organization” means a corporation, business, organization or other entity, whether or not conducted for profit, with whom a committee to form a charter school or the governing body of a charter school, as applicable, contracts to assist with the operation, management or provision and implementation of educational services and programs of the charter school or proposed charter school. The term includes a corporation, business, organization or other entity that directly employs and provides personnel to a charter school or proposed charter school.”

Based on guidance from counsel, a broad range of vendors may be considered as educational management organizations, including but not limited to LLCs formed by retired educators to contract with schools for the provision of administrative services, providers of back office financial management services, and non-profits affiliated with a school which provide services on either a fee or reimbursement basis.

[NAC 386.400 et seq.](#) outlines a number of requirements related to charter schools contracting with educational management organizations, including sponsor approval of such contracts and amendment of the written charter or charter contract.

Founders Academy has identified two contractual relationships which require review and approval by the Authority and the granting of amendments to their charter contract:

1. Contract with Charter School Management Corporation (CSMC): CSMC is a national provider of back office financial management services to charter schools. CSMC does not provide educational services such as curriculum or the leasing of instructional staff, but it does provide operational services in the form of financial management and reporting, payroll, and other back office functions. It also has employees assigned to provide allocated, part-time financial management services to the school. While the form of the contract and the structure of the organization may differ, CSMC's relationship to the school and the services it provides are similar to many non-educational service vendors, including service providers such as Academica Nevada LLC which currently contract with Authority authorized schools.
2. Founders Education Legacy Inc. (FEL): FEL is a 501c3 entity formed to serve as a fundraising arm for Founders Academy. At some point, the school began leasing retired public employees, including licensed educators, through FEL. This leasing of employees constitutes the provision of personnel to the charter school and results in FEL functioning as an EMO for Founders Academy.

From a national perspective, it is not unusual for a school to have multiple contractual relationships with service providers which merit sponsor approval. For example, DC law requires that charter schools obtain authorizer approval for any contract over \$25,000. Many authorizers, including Central Michigan University, require schools to request charter contract amendments in order to enter into agreements with service providers for the provision of a broad range of services. These subcontracts are tracked separately by the sponsors and are incorporated into and subordinate to the charter contract with the sponsor. In Nevada, [NAC 386.400\(2\)](#) requires charter schools to submit all contracts with any vendors and contractors to their sponsors within 30 days of execution. This requirement has been in effect since April 2002, when the Legislative Commission approved [R193-01A](#). The state's first regulations related to educational management organizations were adopted at the same time, including the requirements which singled out the entrance into contracts with EMOs as an action which required both sponsor approval and the amendment of the written charter (and subsequently the charter contract). While these provisions have been amended several times, the expectation that schools would need sponsor approval to enter into such contracts has remained a constant.

The Agency is in receipt of a [letter](#) on school letterhead from Founders Board Chair, Richard Moreno requesting approval of contractual amendments to contract with these two organizations. Mr. Moreno has also furnished the Agency with a copy of the draft [board minutes](#) from the July 13, 2016 Founders Academy governing body meeting. Copies of the letter of transmission, the board minutes, and both the [CSMC contract](#) and the [FEL contract](#) were included in the July board materials.

During their commentary at the July Authority meeting, members of the Founders governing body raised several concerns regarding the Authority's determination that these two vendors were functioning as educational management organizations under Nevada law. The Agency finds that these arguments are without merit. Nevada law does not distinguish between a management organization which provides comprehensive management services to a school and a vendor which provides a subset of core services—e.g. financial management, instruction, compliance reporting, etc. In some states, both types of vendors would be classified by the more innocuous term "education services provider." For whatever reason, the Legislature chose to use the term more closely associated with a comprehensive management services provider versus a contractor with a more defined scope of work. Notwithstanding the arguments of members of the schools' governing body, both contractors not only fall within the broad definition of educational management organization under Nevada law, they also clearly serve roles at the nexus of the school's

accountability to the public and to the Authority. CSMC is not simply an outsourced payroll provider; it is a critical partner in the school's financial management and planning and it provides services that are critical to the school's achievement of the performance targets of the Authority's financial framework. Similarly, the outsourcing of teacher employment to Founders Legacy, Inc. involves the delegation of instruction—an inherent function of a charter school—to a third party. Regardless of the intent behind either transaction, both entities clearly meet both the letter and the spirit of the provisions of [NRS 388A.393](#).

Recommendation:

The Agency recommends approval of both contracts and the issuance of a charter contract amendment. It is important to note that Founders Academy and Founders Education Legacy formerly had overlapping board members. Approval is recommended to be contingent upon a legal review by staff and counsel that the contracts are compliant with the requirements of NRS 388A.393 and relevant NAC provisions. The school has agreed to eliminate overlap between the governing body of the school and the Board of Founders Legacy as a condition of approval of the contract based on feedback from Agency staff and in anticipation of the adoption of regulations with language similar to that proposed by the Department of Education in [Section 12 of R131-16I](#). Based on discussion with the school's Board Chair, Agency staff also recommends that approval be contingent upon the school amending its bylaws to forbid membership on the governing body of any officer, director, or employee of any contractor, including but not limited to a non-profit entity which enters into a contractual relationship with the school. This condition should also be memorialized in the charter contract.

The Authority should be aware that both of these contractual relationships pre-date today's meeting. The Agency would note that Founders and CSMC identified this issue in conversations with staff and have worked proactively with Agency staff to address these issues and has sought guidance on how to come into compliance with the statute. This area of law and regulation has evolved rapidly since 2013 and Agency staff suspects that there may be other instances of non-compliance which schools will need to remedy. Agency staff request that the Authority not impose any consequence or make any compliance finding related to this matter. Based on this experience, Agency staff intends to contact all Authority schools and request that they review their contracts and determine if any of them require sponsor approval and a written charter or charter contract amendment. Depending on the volume of possible approvals, it is likely that staff will develop a process and materials to assist schools in coming into compliance with the statute. In the event that the Authority members wish to authorize Agency staff to grant such amendments going forward pursuant to [NAC 386.326](#), staff will place an agenda item on the September board agenda to provide the Authority with the opportunity to make that determination.