**Introductory Note**

On October 15, 2010, the U.S. Department of Education issued revised guidance (the “Guidance”) on the applicability of the Education Jobs Fund (Ed Jobs Fund) program to charter schools. Please [click here](#) to download this version of the federal guidance.

The Michigan legislature has appropriated a portion ($68.9 million) of the nearly $318 million to be distributed to eligible local school districts, public school academies (PSAs), and intermediate school districts. The remaining $246 million in Ed Jobs Funds will be available when appropriated by the legislature.

### 1. What administrative steps are necessary in order for a Public School Academy to be eligible to access these particular funds?

First, any newly-opened PSA, or one that has not yet submitted an ARRA Education Stabilization Fund grant application in the Michigan Electronic Grant System (MEGS), must do so in order to access Ed Jobs funds.

Second, all PSAs planning to utilize Ed Jobs Funds must submit the Ed Jobs Fund certification in MEGS, which assures that the PSA understands the acceptable use of these funds, understands there will be quarterly Section 1512 reporting on jobs created and retained, and must enter a Data Universal Numbering System (DUNS) number and Central Contractor Registration (CCR) information into the Education Entity Master (EEM). This certification must be submitted by a MEGS Authorized Official for the PSA.

### 2: Does submitting the certification described in the above two paragraphs require a PSA to use Ed Jobs Funds?

No. Submission of this certification does not require a PSA to use Ed Jobs funds.

### 3: When must a PSA submit the Ed Jobs Fund certification?

There is no formal deadline; however, this certification must be submitted before an individual grant award can be processed by the Michigan Department of Education (MDE). Grant awards will be processed starting October 22, 2010.

### 4: What is the deadline to use Ed Jobs Fund program funds?

The grant period for the grant will be August 10, 2010, through September 30, 2011. It is the intent that Ed Job funds be used during the 2010-2011 school year; however, if circumstances require, LEAs/PSAs will be able to request an extension to the grant end date. Details will be provided at a later date.

### 5: What are the options available to PSAs as it relates to Ed Jobs Funds?

PSAs have five different methods available for the use of the Ed Jobs funds.

a. Use Ed Jobs funds to pay current direct employees (e.g., staff for which the PSA/LEA is the employer).

b. Use Ed Jobs funds to hire and pay direct employees.

c. The Guidance recognizes that a PSA may exercise enough common control over staff jointly with a third party vendor (such as a charter/education management organization) that the staff passes the common-law agency test described in the Guidance. In this case, the PSA is deemed jointly the employer of staff with the third party vendor and the PSA may use Ed Jobs funds to pay this staff, provided it gives the requisite certifications called for in the Guidance.

d. Contract with another local education agency (LEA) to provide building level...
services. The PSA can pay for the compensation and benefits of these employees. The Federal definition of LEA includes ISDs, local school districts, and PSAs.

e. Choose not to use Ed Jobs Funds allocated on their behalf.

**PSAs are advised to seek advice from counsel experienced in the area of school labor law to familiarize themselves with the implications of each option above.**

**6: How may a PSA with direct employees use Ed Jobs Funds?**

A Public School Academy must use its Ed Jobs funds only for compensation and benefits and other expenses, such as support services, necessary to retain, recall, rehire or hire direct employees to provide early childhood, elementary, or secondary educational and related services. Eligible employees are those that fit the definition included in the federal guidance, which is:

> An LEA may use the funds to pay the salaries of teachers and other employees who provide school-level educational and related services. In addition to teachers, employees supported with program funds may include, among others, principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists, information technology personnel, nurses, athletic coaches, security officers, custodians, maintenance workers, bus drivers, and cafeteria workers.

**7. If a PSA does not have any employees, how may it use its Ed Jobs funds?**

If a PSA does not have any employees who provide school-level educational and related services, it may use the funds to hire employees to provide these services. It may also pay for the compensation and benefits of an employee of another LEA who provides such services to the PSA under a contract with the other LEA.

**8. What obligations are there for a PSA hiring direct employees?**

PSAs that choose to hire direct employees must have the capacity to perform all of the duties of a traditional “employer,” which includes the ability to administer payroll, taxes, social security, workers’ compensation, benefits and other required and regulated functions of an employer. As the employer of record, PSAs must enroll at least the employees in question in the Michigan Public School Employees Retirement System (MPSERS).

**9. Can Ed Jobs funds be used to pay compensation and benefits for staff providing school-level services who aren’t direct employees of the PSA?**

No. A PSA may not use Ed Jobs funds to pay for the compensation and benefits of employees of a charter/education management organization who provide school-level educational and related services in the school.

Under limited circumstances, however, a PSA may maintain a sufficient level of control over a contract employee that the individual would be considered an “employee” of the PSA under a common-law agency test, as that test is set forth in the Guidance. This determination would have to be made based on the specific facts and circumstances of the relationship of the contract employee to the PSA. For purposes of certifying allocation of the Ed Jobs funds, the Guidance relies on a number of factors in determining whether an individual is an employee under a common-law agency test, including: (1) who possesses the authority to hire and fire employees, promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours; (2) who engages in day-to-day supervision of employees, including employee discipline; and (3) who retains or possesses control of employee records, such as payroll, insurance and taxes. If a
PSA determines that a contract employee is an employee of the PSA under a common-law agency test and uses Ed Jobs funds to support that individual, the Department recommends that the PSA document clearly describe the basis for that determination, including obtaining a certification from the school’s attorney that the common-law agency test has been met.

10. What are the risks for a PSA being a joint employer?
PSAs who share control over staff provided by a third party may be deemed “joint employers” of such staff. In the event a PSA undertakes the requisite certifications described in paragraph 9, above, it will likely be deemed a joint employer with a charter/education management organization. Consequences of such circumstances lead to the need to enroll the affected employees, and possible all staff, in the Michigan Public School Employees Retirement System (MPSERS), as well as responsibility jointly with the charter/education management organization for other employment law issues. Conversion of staff from employment by a third party vendor to staff of the PSA or jointly employed staff of the PSA and the vendor carry risk of increased scrutiny, as well as the need to prove business-related reasons unrelated to the receipt of Ed Jobs funds for this undertaking. PSAs considering this option are urged to seek the counsel of attorneys experienced in the area of public sector labor law and school law.

11: What if I have additional questions about Ed Jobs Fund and PSAs?
Additional information on the Ed Jobs Fund can be found on the Michigan Department of Education website under Grants or by contacting Alyssa Sagolla at 517-335-9618 or sagollaa@michigan.gov.