



**LAKE SUPERIOR STATE UNIVERSITY
CHARTER SCHOOLS OFFICE
REAL PROPERTY LEASE POLICY**

December 1, 2015 (“Effective Date”)

Pursuant to the Terms and Conditions of the Contract (“Contract”) issued by the Lake Superior State University Board of Trustees (“University Board”), this Real Property Lease Policy (“Lease Policy”) is adopted by the Lake Superior State University Charter Schools Office (“CSO”).

As of the Effective Date, the Lease Policy is part of the Contract and apply to all public school academies authorized by the University Board, including new public school academies. A public school academy board of directors (“Academy Board”) must comply with the Lease Policy in addition to other Contract provisions that apply to an Academy Board entering into an agreement to lease real property for use as the Academy’s physical plant.

The University Board does not intend to become a party to real property lease agreements or to negotiate real property lease agreements on an Academy Board’s behalf. Instead, these guidelines are intended to be a resource that will assist Academy Boards in the process of conducting due diligence and negotiating lease agreements so that Academy Board members can fulfill their fiduciary duties in evaluating lease agreements prior to approval.

A. Academy Board Due Diligence

1. Before an Academy Board votes to approve an agreement to lease real property, the Academy Board must perform sufficient due diligence to establish that the lessor of the facility (“Lessor”) and the facility are suitable for the Academy. Prior to executing an agreement to lease real property (“Lease Agreement”), the Academy Board must obtain sufficient information to conclude that the Lease 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 the Lease Agreement, the Academy Board shall provide the CSO with the completed form (See Attachment A) containing the following information:
 - a. Identify the current party holding the leasable interest (whether through fee title ownership or leasehold interest) in the real property that the Academy Board proposes to lease. If the Lessor is not an individual, identify all individual owners, shareholders, members, etc., as well as the Lessor’s directors, officers and management level employees. This list shall disclose any familial, business, or other relationships between Academy Board members, Academy employees, and owners and employees of the Academy’s Educational Service Provider (“ESP”), if any.
 - b. Identify whether the Lease Agreement transaction involves a related party. Related parties include the ESP, ESP owners, ESP employees, family members of ESP owners and employees, parent, subsidiary or affiliates of the ESP, as well as with

Academy Board members, Academy employees and family members of Academy Board members and Academy employees. Academy Board members, Academy employees, entities owned by Academy Board members, Academy employees, and family members of Academy Board members and Academy employees are prohibited from having any ownership, contractual or monetary interest in the Lessor.

- c. Identify all known conflicts of interest that the Lessor's owners, directors, officers or employees may have in regard to Academy Board members, Academy employees, as well as other vendors contracting with the Academy. Conflict of interests include, but are not limited to, familial and/or business relationships.
 - d. Identify whether the Lessor is an individual or an entity and, if an entity, the type or form of entity that owns the property (for-profit corporation, non-profit corporation, limited liability company, special purpose entity, etc.).
 - e. If the Lessor is a church, parochial school, or other religious institution, the Academy must complete the CSO's Church-State Questionnaire. See Attachment B.
 - f. Identify the Lessor's legal counsel who is involved in negotiating the Lease Agreement: name, address, and telephone number of firm and name of contact person.
 - g. Identify the Academy's anticipated total costs during the term of the proposed Lease Agreement, including:
 - i. Rent
 - ii. Fixture costs
 - iii. Taxes
 - iv. Utilities and Assessments
 - v. Interest
 - vi. Insurance
 - vii. Renovation, Repair and Maintenance
 - viii. Transaction fees
 - ix. Broker fees
 - x. Other fees or costs (please identify)
 - h. Identify whether the Lease is classified as a capital or operating lease and the cost per square foot for the physical plant.
2. Before an Academy Board votes to approve a Lease Agreement, the Academy Board must:
- a. Aside from public utility easements, determine whether other individuals and entities will have an ongoing right to use or occupy the Academy's physical plant. If so, the Academy Board should identify those other individuals and entities and determine whether their relationship to the Lessor, the ESP, Academy Board members or

- employees would create a conflict of interest prohibited by the Contract or the Leasing Policy.
- b. Identify who presented the proposed site to the Academy Board. In other words, was the site identified by a real estate agent, the Academy's Educational Service Provider, an Academy Board member, the Lessor, or any other person.
 - c. Confirm that the Academy Board undertook, or retained a third party to undertake, a process to identify and select the proposed site that is the subject of the Lease Agreement that included a site analysis to determine factors such as the school age population in the area surrounding the facility, adequacy of transportation options, number of other schools nearby, and any other factors considered by the Academy Board in selecting the site. If the Academy Board retained an ESP to undertake the process described in this paragraph, confirm that the information compiled by the ESP was presented to the Academy Board at a public meeting before the Lease Agreement was approved.
 - d. Confirm that the Academy Board determined that the proposed Lease Agreement provides for a fair market value for the Academy. Specifically, confirm that the Academy used one of the following market indicators in its fair market value determination (the Academy may use more than one or a different indicator for determining fair market value):
 - Colliers International Market Report
 - Area chamber of commerce reports
 - CB Richard Ellis Market Index
 - Charter School Facilities Report from a National Survey of Charter Schools, prepared by Charter Friends National Network
 - Independent appraisal
 - Market analysis by independent real estate professional
 - Analysis of comparable properties by independent real estate professional
 - Comparison of other similar public school academies using the Michigan Department of Education's Bulletin 1014
 - e. Confirm that the Academy retained a real estate, architect, or other professional to advise the Academy Board regarding the decision to lease the property, identify that professional. If the Academy Board did not engage such experts, explain why not. If the Academy retained its ESP to engage such professionals, confirm that the ESP explained to the Academy Board at a public meeting prior to the Academy Board approving the Lease Agreement the process utilized to reach its recommendation regarding the property.
 - f. Confirm the Academy Board considered other properties prior to agreeing to terms of a Lease Agreement. If so, explain what factor(s) compelled the Academy Board to

- select the site? If not, explain why not? If the Academy retained its ESP to evaluate property options, confirm that the ESP explained to the Academy Board at a public meeting, prior to the Academy Board approving the Lease Agreement, the process utilized to identify the site selected.
- g. Confirm that the Academy considered purchasing the proposed site and, if so, why the Academy Board ultimately decided to lease instead of pursuing the purchase of the facility. Analyze whether the Academy's cost to acquire, construct, renovate, or occupy the building during the lease term exceed the amount for which the Academy could expect to purchase the building. If the lease term is one year, the Academy should use the annual lease cost contemplated in the Lease Agreement multiplied by the years remaining under the Contract. If the Academy is renewing an existing lease, the Academy should analyze whether the amount the Academy has paid under the expiring lease, together with the amount the Academy will pay under the new lease, exceeds the amount for which the Academy could expect to purchase the building.
 - h. Confirm that the Academy Board has inspected the proposed physical plant and that the use and condition of the proposed physical plant, including the interior and exterior walls, restrooms, technology infrastructure, roof, HVAC, and other structures is sufficient for the intended use.
 - i. Confirm the total square footage of the building and the number acres at the physical plant. Is there adequate space and acreage for subsequent expansion of the building, if necessary?
 - j. Confirm whether the Lessor owns or leases the building. If the Lessor leases the building, obtain a copy of the underlying Lease Agreement and review with Academy legal counsel to ensure the parties understand all obligations thereunder that may be assumed pursuant to the sublease.
 3. Confirm that Academy Board members, Academy Board employees, and their respective spouses and immediate family members do not have any direct or indirect ownership, employment, contractual, management, or other monetary interest in any Lessor that leases to the Academy. The relationship between the Academy and the Lessor shall be consistent with the conflicts of interest and prohibited familial relationship provisions set forth in the Contract and the Leasing Policy.
 4. In accordance with the Contract, an Academy Board shall timely notify the CSO of any proposed Lease Agreement before the proposed Lease Agreement becomes effective. If an Academy proposes to enter into a new or renewed Lease Agreement, or to amend an existing Lease Agreement, the Academy shall, not later than thirty (30) days prior to the proposed date of execution of the Lease Agreement, submit the proposed Lease Agreement to the CSO Director along with a detailed description of the process the Academy Board used to identify the site. The CSO shall then review the proposed Lease

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 Lease Agreement is disapproved for violation of the Contract or Applicable Law at the end of the thirty (30) day review period. The CSO Director has the discretion to determine whether a Lease Agreement is disapproved, and whether an Lease Agreement is in violation of the Contract or Applicable Law. If the proposed Lease Agreement is disapproved, such disapproval may, provide one or more conditions which, if complied with by the Academy and the Lessor, may warrant the disapproval to be withdrawn. No Lease Agreement described in the Lease Policy may be entered into if the Lease Agreement is disapproved by the CSO Director. If a Lease Agreement is disapproved, the CSO Director will not sign a Contract Amendment incorporating the proposed Lease Agreement into the Contract. By not disapproving a proposed Lease Agreement, the CSO Director is in no way giving approval of the Lease Agreement, or any of the terms or conditions of the Lease Agreement.

5. The Academy Board must retain independent legal counsel to review and advise on the negotiation of the Lease Agreement. Legal counsel for the Academy shall not represent the Lessor or the Lessor's owners, directors, officers, or employees. The Lease Agreement must be an arms-length, negotiated agreement between an informed Academy Board and the Lessor. Prior to the Academy Board's approval of the Lease Agreement, the Academy Board must obtain a legal opinion from its legal counsel, which includes the representation that legal counsel has reviewed the proposed Lease Agreement, the Lease Policy and the Academy's Contract, and that in their opinion:
 - a. The Academy Board has the power and authority to enter into the proposed Lease Agreement;
 - b. Execution of the proposed Lease Agreement does not violate any term or provision of the Contract (including the Lease Policy) and applicable law; and
 - c. Entering into the proposed Lease Agreement does not authorize or require an improper delegation by the Academy Board.
6. The Academy Board shall not approve an Lease Agreement until all Academy Board members have been given the opportunity to review the proposed Lease Agreement with the Academy's legal counsel.
7. The Academy Board shall only approve a Lease Agreement with a formal vote at a public board meeting. Prior to an Academy Board's vote on the Lease Agreement, the Academy Board shall provide an opportunity for public comment on the proposed Lease Agreement.

B. Academy Board Administrative and Fiduciary Responsibilities

1. In negotiating the Lease Agreement, the Academy Board must budget adequate resources to fulfill its Contract requirements which may include, but are not limited to: oversight of

any ESP, negotiation of the Contract and any Contracts amendments, payment of staff costs, insurance required under the Lease Agreement, 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. In undertaking this analysis, the Academy Board should consider the total costs of the building identified in Section A(1)(g) above.

2. The Academy Board shall be responsible for ensuring that the budget reserve amount included as part of the Academy's annual budget is adequate for any anticipated facility improvements required under the Lease Agreement.
3. The Lease Agreement shall contain the specific provisions, if any, that are incorporated into the Contract as required provisions for all Lease Agreements.

C. Lease Agreement Provisions

1. The Lease Agreement must clearly state the length or term of the Lease. A Lease Agreement cannot exceed the term of the Academy's Contract. A Lease Agreement may be concurrent with the term of Academy's Contract provided that the last day of the Contract term shall be the last day of the Lease Agreement term. The Lease Agreement shall provide that, in the event the Contract is revoked, suspended, terminated, or expires by its terms, the Lease Agreement and all obligations thereunder shall immediately terminate.
2. The Lease Agreement shall clearly explain the disposition of pre-paid rent and security deposits upon termination of the Lease Agreement.
3. The Lease Agreement shall clearly state the total amount the Academy must pay to the Lessor each month.
4. The Lease Agreement shall clearly state which parties are responsible for utilities, taxes, maintenance, snow removal, repairs, and any other costs associated with the building.
5. If the Lease Agreement provides for a security deposit to be paid by the Academy, the Lease Agreement must make clear whether the Lessor must repay that security deposit to the Academy at the end of the Lease Agreement term.
6. The Lease Agreement shall provide that the Academy has no liability or obligation to investigate, clean, remove, remediate, or otherwise deal with hazardous material present at the site prior to the Academy occupying the site. Such liabilities should be the responsibility of the Landlord and the Lease Agreement must explicitly delineate the Lessor's responsibility.

7. The Lease Agreement shall provide that no party other than the Academy shall have an ongoing right to occupy the building, site, or physical plant without providing written notice to the CSO Director 30-days prior to such occupancy. If another school will occupy the Academy's building, site, or physical plant, the Academy must provide to the CSO a written analysis regarding any potential implications of such occupancy, including potential security, school safety, and church-state issues.
8. No provision of a Lease 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 a Lease 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.
9. Lease 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.
10. The Lease Agreement may not provide for an automatic increase in rental amount unless the rent escalator is fair and reasonable for the market at the time the Lease Agreement is executed.
11. A Lease Agreement must contain a provision that all lease and physical plant records of the Lessor related to the Academy will be made available to the Academy's independent auditor and the CSO.
12. The Lease Agreement must provide that any amendments to the Lease Agreement must be reviewed by the CSO before execution, however, for certain types of non-substantive amendments to the Lease Agreement, the CSO Director may decide to waive in writing the Lease Policy.
13. The Lease Agreement must provide that fixtures purchased with the Academy's funds are owned by the Academy.
14. If the Lessor procures equipment, materials and supplies at the request of or on behalf of the Academy, the Lease Agreement shall contain a provision requiring the Lessor to follow applicable competitive bidding laws and prohibiting the Lessor from including any added fees or charges with the cost of equipment, materials and supplies purchased from third parties (except that the Lessor may assess actual costs, such as taxes, shipping, permits, installation, or other similar expenses).
15. The Lease Agreement must provide that the Lessor will indemnify the Academy Board for damages or litigation caused by the condition of the physical plant, if those damages or litigation are caused by the Lessor's use or prior use of hazardous material at the physical plant.

16. The Lease Agreement may include an option for the Academy to purchase the physical plant or a right of first refusal to purchase the physical plant and shall establish a process for determining fair market value with regard to purchasing the property.
17. A Lease Agreement must contain a provision outlining the insurance coverage and amounts the parties are required to procure. The Lessor's insurance is separate from and in addition to the insurance the Academy Board is required to obtain under the Contract.
18. If the Lessor and the ESP are related parties, the Lease Agreement shall not include a cross-default provision that allows the Lessor to terminate the Academy's Lease Agreement upon termination of the ESP Agreement.
19. Any arbitration clause(s) contained with the Lease Agreement shall require a cause opinion (written explanation) as to the final decision. The cause opinion shall be made available to the University Board or CSO upon request.
20. If the Academy makes improvements to the facility, the Lease Agreement shall allow the Academy to recoup those investments if the Lease is terminated by Lessor without cause prior to the conclusion of the Lease term.