



UTAH STATE BOARD OF EDUCATION

Internal Audit Department

Audit Brief

Educational Service Providers (21-02)

Scope, Objective, and Methodology

On October 1, 2020, the Utah State Board of Education (Board), approved an audit of educational service providers (ESPs). The objective of the audit is to consider local education agency (LEA) use of ESPs, including procurement and provision of services given current laws and rules. Where appropriate and available, LEA and ESP data from school year 2017 to 2021 was collected and examined to achieve the stated objective.

To ensure consistency in the application of the term ESP throughout the audit, ESP was defined as: *A third-party contracted by an LEA to provide courses or services similar to public school courses and classes which are required or regulated under public education code and rule.*

In March of 2021, a letter was sent to all LEAs requesting their participation in a survey and submission of preliminary data; results were collected and analyzed. A second survey was administered to a sample of LEAs in the summer of 2021 to obtain additional details related to their use of ESPs. Collected data and survey results were analyzed and the results are included in this report. See **III. Data Reliability** in the report for assumptions and limitations related to the use of data in the report.

ESPs in Utah Public Education

Utilizing the methodologies described above, the following observations related to the use of ESPs were identified.

Many ESPs are being used by LEAs within Utah and the numbers are growing. Between SFY2017 to SFY2021, the number of ESPs used increased 54% and the amount spent contracting ESPs increased 66%, growing annually from \$24 million to approximately \$46 million. In total approximately \$159 million was spent on ESPs during this 5-year period. Although some LEAs reported a reduction in ESP expenditures, the average ESP expenditure growth was 1,315% over the past five years. While many ESPs exist, the top five ESPs accounted for approximately 80% of the documented expenditures in the period reviewed.

The top advantage cited by LEAs for using an ESP is more choices and opportunities. In addition to more choices, ESPs provide many services including curriculum, grading, educators, and more. When LEAs used ESPs, 63% of ESPs provided more than just one service.

ESPs were used to provide services to both district resident and district non-resident students; however, as sampled, the majority of students enrolled in ESPs were district non-resident students. Although the majority of students were district non-residents, four of seven (57%) districts reviewed, served only district resident students. This may be the reason, nine of nine (100%) LEAs surveyed believed that if they do not use an ESP, students may transfer to an LEA who does.

Student-teacher ratios were higher for ESPs than non-ESPs. The average student-teacher ratio for elementary schools was 168:1 for ESPs, compared to 32:1 for non-ESPs. For secondary schools, the average student-teacher ratio for ESPs was 101 students higher per teacher than for non-ESPs.

Average participation rates between ESP and Non-ESP students by demographic (e.g., gender, ethnicity) identified minor differences within socio-economic status, Special Education, and two ethnicities. However, there were larger differences among student demographic participation rates on an ESP-by-ESP.

To provide services, LEAs provided and/or contracted teachers, tutors, and aides. 90% of personnel used to offer ESP courses held active licenses. However, 9% of the personnel reviewed did not have evidence of a required background check.

Finally, LEAs are required to ensure ESP compliance with state law and Board rules; however, varying levels of ESP oversight are provided by LEAs.

Causes: LEAs are considering alternative methods, such as ESPs, to provide additional opportunities to meet increasing demands. Although funds are limited, funds are substantial, therefore for-profits, non-profits, and governmental entities (e.g., school districts and charter schools) alike are competing to identify new ways to attract parents and students.

Effect: As public education evolves and as education options and student enrollments change, funding will fluctuate. Changes in funding may result in the closure of district schools or LEAs.

Recommendation: The USBE, in collaboration with LEAs, should consider ways to monitor ESP involvement at the student, LEA, and state levels.

Findings of Noncompliance

LEA Internal Controls: LEAs lack established and/or adequate processes to provide reasonable assurances that compliance objectives will be met, resulting in non-compliance in multiple areas: contracts, monitoring and supervision, educator licensing, background checks, and credit recovery. To remedy the non-compliance, LEAs should ensure all components of their internal control systems are effectively designed and operating. The USBE should review identified non-compliance and require corrective action as necessary.

USBE Background Checks: The USBE continues to monitor background status for 1% of educators even though an authorizing relationship no longer exists. Although the ongoing monitoring may be short-lived, and at times may result in minor cost savings to educators who re-enroll, the USBE should review current monitoring practices to ensure alignment with statutory regulations.

USBE Non-licensed Community Partners: The CACTUS system currently allows LEAs to assign students to an ID that is not tied to a specific name, license level, license area, and that has no background status. The practice potentially undermines the purpose of the system and may create unnecessary liability for both the USBE and LEAs given requirements for background checks and qualifications for educators is unchecked. The USBE, in collaboration with LEAs, should create a process to ensure the licensing system achieves its objectives.

Management Response

USBE management concurs with the audit findings, causes, effects and recommendations.



Utah State Board of Education
Internal Audit Department

Educational Service Provider Audit
21-02

Report No. 21-02

Educational Service Providers

May 5, 2022

Audit Performed by:

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May 5, 2022

Chair Mark Huntsman
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 84111

Dear Chair Huntsman,

On October 1, 2020, in accordance with The Bylaws of the Utah State Board of Education (Board), the Board authorized the Internal Audit Department (IA) to perform an audit of educational service provider use within the Utah public education system. On November 5, 2020, the Board reprioritized the list of audits in the Audit Plan, making the Educational Service Provider audit the top priority. In December of 2020, IA started allocating resources to the audit as they became available.

To conduct the audit, IA performed the following procedures:

1. Gained an understanding, through research and inquiry, of applicable laws and regulations.
2. Established criteria to identify educational service providers for purposes of this audit.
3. Collected information and data from local education agencies, government websites, and the Utah State Board of Education (USB E)
4. Reviewed and analyzed the collected information and data and developed conclusions.

We have identified the procedures performed during the audit; the conclusions from those procedures are included in this report. When feasible, suggestions for improvement are provided.

Internal audits are conducted in conformance with the current International Standards for the Professional Practice of Internal Auditing, consistent with Utah Code Annotated and Utah Administrative Code.

By its nature, this report focuses on exceptions, weaknesses, and non-compliance. This focus should not be understood to mean the programs and/or processes reviewed during this audit do not demonstrate various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the staff of the LEAs and the USB E during the audit. A response to the audit was provided by the USB E and is included within the report.

This report is intended solely for the information and use of the Board, the USB E, and local education agencies. However, pursuant to Utah Code 63G-2 Government Records Access Management Act, this report is a public record, and its distribution is not limited. If you have any questions, please contact me at (801) 538-7639.

Chair Huntsman

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May 5, 2022

Sincerely,

A handwritten signature in black ink that reads "Deborah Davis". The signature is written in a cursive style with a large initial "D".

Deborah Davis, CPA

Chief Audit Executive, Utah State Board of Education

cc: Members of the Utah State Board of Education (USBE)
Sydnee Dickson, State Superintendent of Public Instruction, USBE
Patty Norman, Deputy Superintendent of Student Achievement, USBE
Angie Stallings, Deputy Superintendent of Policy, USBE
Scott Jones, Deputy Superintendent of Operations, USBE

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I. Scope and Objective

On October 1, 2020, the Utah State Board of Education (Board), approved an audit of educational service providers (ESPs). The purpose of the audit is to consider local education agency (LEA) use of ESPs, including procurement and provision of services in consideration of current laws and rules. Where appropriate and available, LEA and ESP data from school year 2017 to 2021 was collected and examined to achieve the stated objective.

II. Audit Methodology

During the planning phase of the audit, it became apparent that the definition of an ESP was not settled; the term was understood differently by different people. Therefore, to ensure consistency in the application of the term throughout the audit, it was necessary to define ESP. Based on a review of regulations, the following definition was established:

A third-party contracted by an LEA to provide courses or services similar to public school courses and classes which are required or regulated under public education code and rule.

To ensure alignment with the objective of the audit, the definition was presented to the Board's Audit Committee on February 11, 2021, and was subsequently approved.

In February of 2021, Internal Audit (IA) developed a survey to collect LEA input and data regarding the prevalence and use of ESPs. In March of 2021, a letter was sent to all LEAs requesting participation in the survey and provision of preliminary data; results were collected and analyzed. A second survey was administered to a sample of 16 LEAs in the summer of 2021 to obtain additional details related to their use of ESPs. Based on the results of the second survey, four of the 16 (25%) LEAs concluded that they did not contract with ESPs. Collected data and survey results from the remaining 12 LEAs were analyzed and the results are included in this report. See **III. Data Reliability** for assumptions and limitations related to the use of data in the report.

III. Data Reliability

During this audit, several problems arose in both identifying and collecting relevant and reliable data.

1. Given ESP use is a less-known area of public education, many data points that would have been beneficial for the audit analysis are not currently, or officially, required to be tracked and/or maintained.
2. When data was maintained, the data was often retained in formats that were not machine-readable, making collection and analysis of data difficult or financially impractical.
3. In multiple cases, data provided from one system or entity did not reconcile with data from another system or entity.

4. Consistency in application of the term ESP was attempted; however, due to multi-tiered governance of public education that allows for local control of systems and data, absolute consistency cannot be guaranteed. Therefore, the audit ultimately relied on the judgment of LEAs and IA to interpret and apply the definition of ESP. In several cases, third-party vendors identified and verified by one LEA as an ESP were subjectively eliminated by another LEA. Given differences in contracts and services offered, these differences were identified, analyzed, and accepted as determined appropriate.

Many measures were taken to ensure the data used in the analyses found within the report were based on the most reliable data available. In many cases this means samples used were smaller than anticipated or they varied based on applicability; this increased the associated sampling risk. Although some risk may exist, it is the opinion of IA that the results found within the report are sufficiently reliable to meet the objective of the audit.

IV. Observations and Findings

Observations and findings are included in this report. Observations are presented in two sections, 1) ESPs in Utah Public Education and 2) Cause, Effect, and Recommendation.

Findings are presented in a section titled Compliance and are specific to LEAs' use of ESPs and USBE's oversight of LEAs in accordance with selected regulatory provisions. All findings are presented using the following five elements:

1. **Criteria:** What should happen (e.g., code, statute, best practices)?
2. **Condition:** What is happening?
3. **Cause:** Why did the Condition happen?
4. **Effect:** What is the impact? Why should you care?
5. **Recommendation:** What action could be considered to resolve the Cause?

1. ESPs in Utah Public Education

A. ESP Identification

The first challenge in achieving the objective of the audit was to identify third-party providers contracted by an LEA to provide courses or services similar to public school courses and classes (ESPs). To identify and quantify ESP use in public education, a survey was administered to 156 LEAs. The survey requested LEAs review the definition of an ESP, erring on the side of overreporting ESPs as opposed to underreporting. As LEAs posed questions, feedback was provided to promote consistency in reporting.

Based on the survey responses, a list of potential ESPs was generated. The list was normalized, per auditor judgment, to ensure ESPs identified by LEAs met the pre-established definition of an ESP. Where possible, entities identified as a state online education provider (SOEP) or a concurrent enrollment provider were eliminated, given data on both is currently tracked and readily available. Other entities

who offered services outside of the established definition (e.g., physical therapy, speech-language pathology) were also removed. Overall, 79 distinct ESPs were identified.

Although an extensive effort was made to try and accurately identify ESPs, the process relied on some subjectivity. For example, in a second survey that sampled 16 LEAs, nine (56%) modified their list from the first survey to generate a final ESP list. As noted in **II. Methodology**, four of the 16 (25%) ultimately dropped all previously identified entities from their list of ESPs, reducing the audit sample size to 12 LEAs. Eight of 42 (19%) entities identified by the 16 LEAs, were identified as both meeting and not meeting the definition of an ESP. Confusion centered around distinguishing between when an entity provided classroom materials (i.e., curriculum only) as opposed to providing the actual course or class itself. Given the same entity may be an ESP for one LEA and yet act as a vendor for another, LEAs were allowed the final determination on whether or not they considered an entity an ESP.

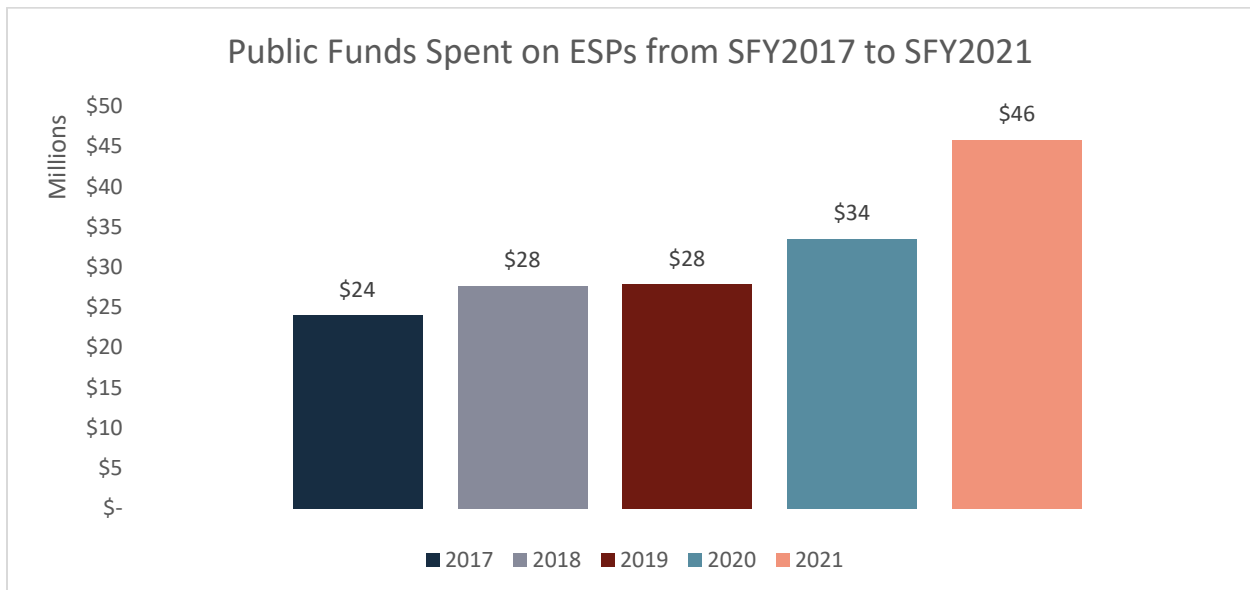
B. LEA Expenditures on ESPs

Using the prepared list of 79 ESPs, Transparent Utah (<https://transparent.utah.gov/>)—a website maintained by the Office of the State Auditor—was used to identify LEA and ESP payment information. The objective was to identify if additional LEAs, aside from the initial LEAs that reported using an ESP, also used those same ESPs to provide instructional services.

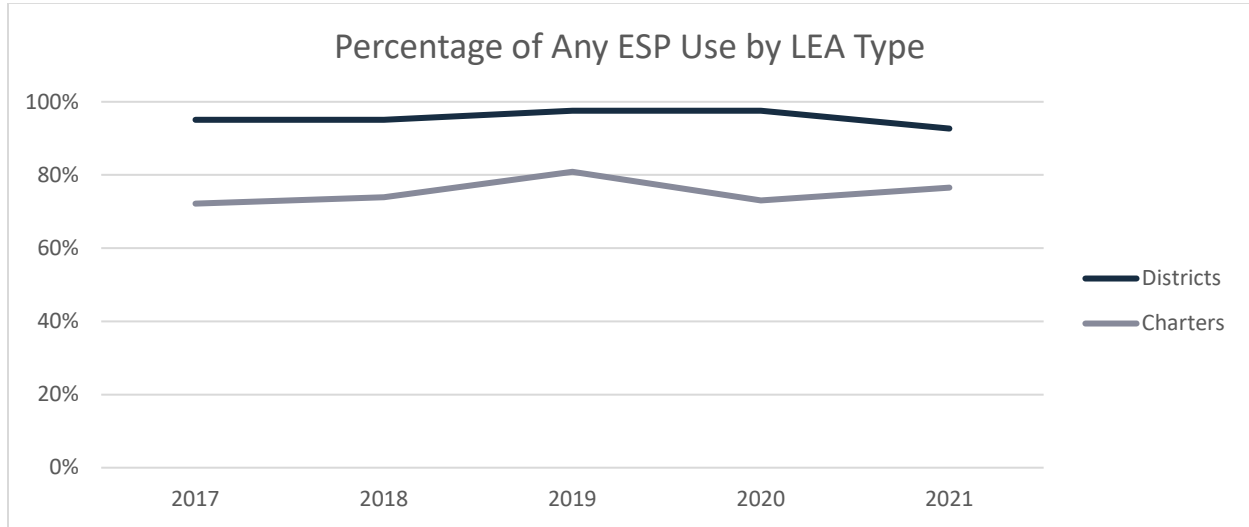
75 of the 79 (95%) ESPs had payment information reported on the website. From SFY2017 to SFY2021, 151 of 156 (97%) of LEAs had used at least one of the listed ESPs. Only five (3%) LEAs did not show any expenditures associated with an identified ESP between SFY2017 to 2021.

Between the five-year span from SFY2017 to SFY2021, the number of ESPs used increased 54%. According to Transparent Utah, in SFY2017, LEAs paid 46 ESPs. By SFY2021, the number of ESPs paid by LEAs increased to 71.

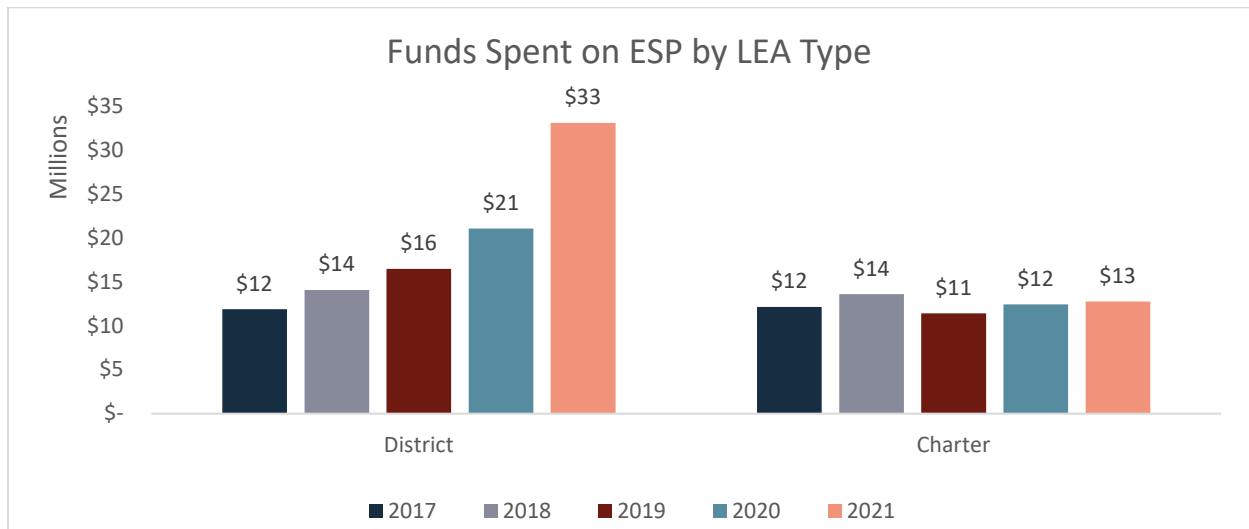
Not only did the number of ESPs increase but the amount of funds LEAs spent on ESPs increased. As illustrated below, from SFY2017 to May 2021, expenditures related to ESPs increased 66%, from \$24 million to \$46 million, totaling approximately \$159 million.



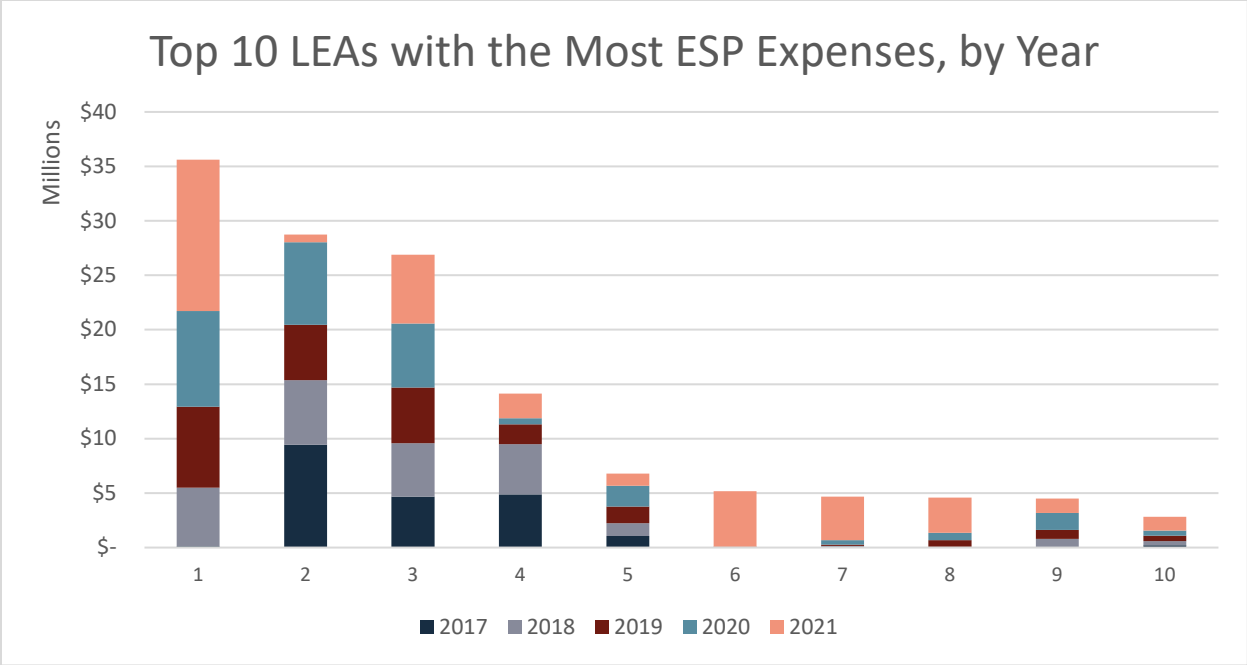
Although most LEAs appear to use ESPs, not all LEAs used ESPs equally. When initially surveyed, 31 of 41 (76%) districts were able to identify using ESPs; only 27 of 115 (23%) of charters were able to identify using ESPs. However, as illustrated in the chart below, when considering Transparent Utah data, in SFY2021 38 (93%) districts used ESPs compared to 88 (77%) charters.



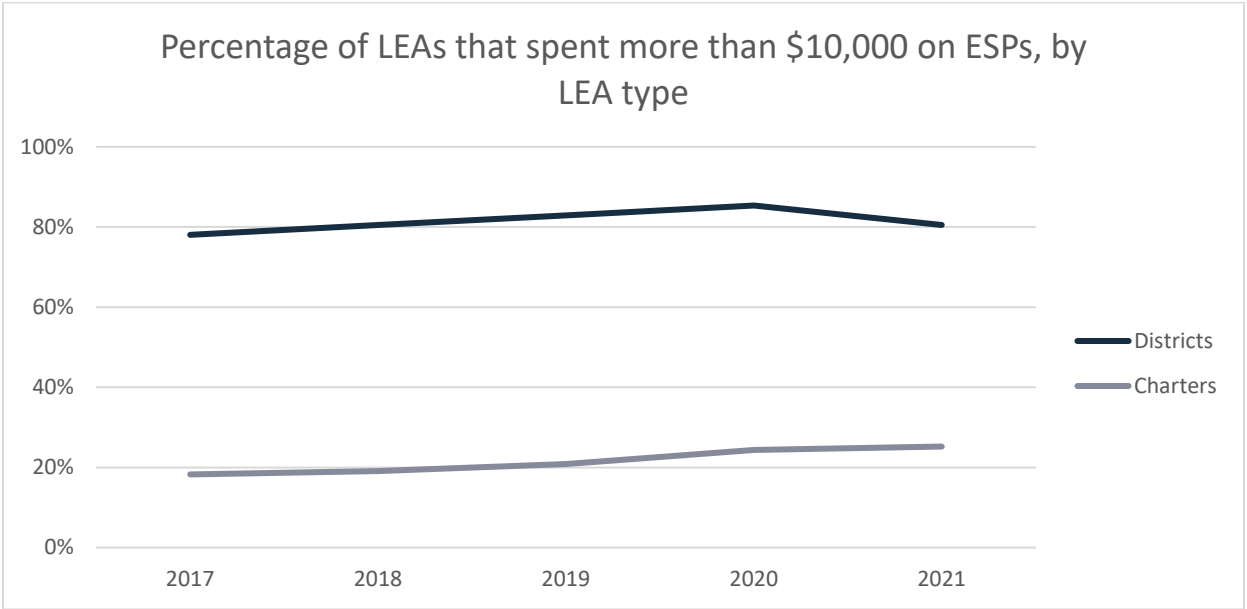
And, as the graph below shows, district spending on ESPs has steadily increased, while charter spending on ESPs has remained relatively constant.



Individual LEA expenditures for ESP services also varies. From SFY2017 to SFY2021, several LEAs reported a reduction in the amount of funds expended on ESPs, while some LEAs experienced significant growth. For the three LEAs who experienced the greatest growth, the LEAs went from spending thousands on ESPs annually to spending millions (e.g., \$6 thousand in SFY2017 to over \$14 million in SFY2021). The table below shows the top ten LEAs with the most ESP expenditures between SFY2017 to SFY2021.

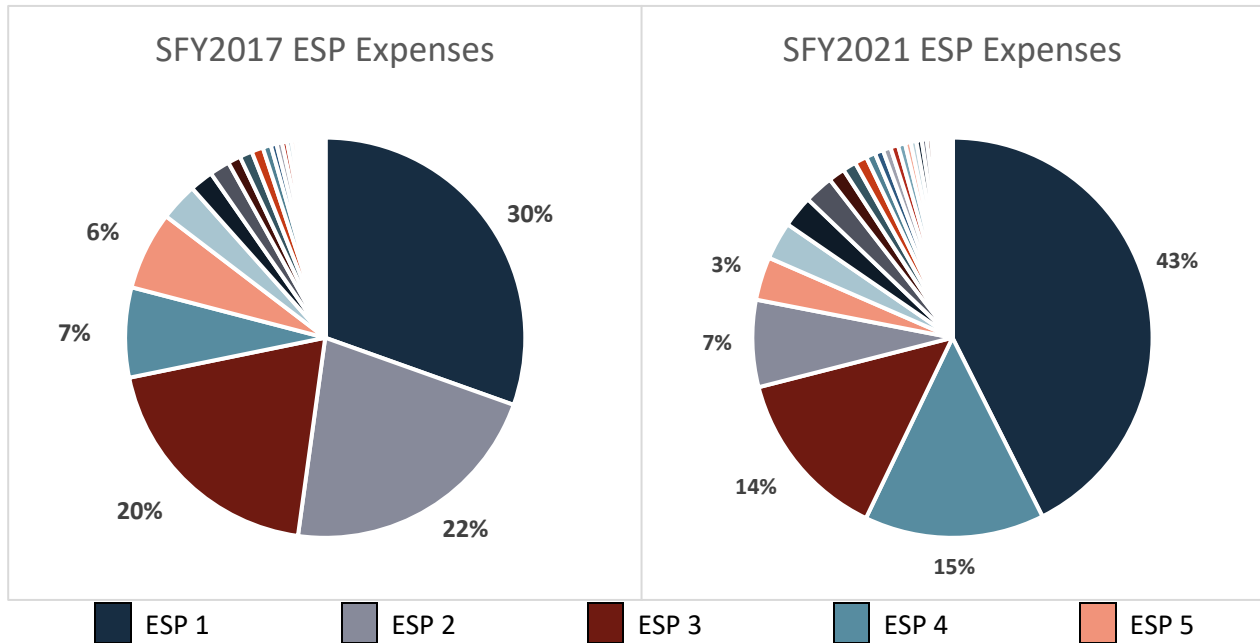


Overall, LEAs averaged ESP expenditure growth of 1,315% over the past 5 years. 24% of charter schools spent more than \$10,000 on ESPs, while 80% of districts spent more than \$10,000 on ESPs.



In reviewing Transparent Utah data, from SFY2017 to May 2021, the top five ESPs represented \$127 million dollars, or approximately 80%, of the total \$159 million of public funds spent on ESPs. During this five-year period 39% of all LEA ESP expenditures were made to one ESP, totaling approximately \$62 million dollars.

The top five ESPs accounted for 85% of all expenditures in SFY2017, decreasing to 82% by SFY2021.



In comparing SFY2017 to SFY2021, the top ESP went from 30% of all expenditures in SFY2017 to 43% of all expenditures by SFY2021. In SFY2017, the second highest grossing ESP in SFY2017 went from 22% of total expenditures spent on ESPs, to fourth overall in SFY2021 with 7% of total expenditures.

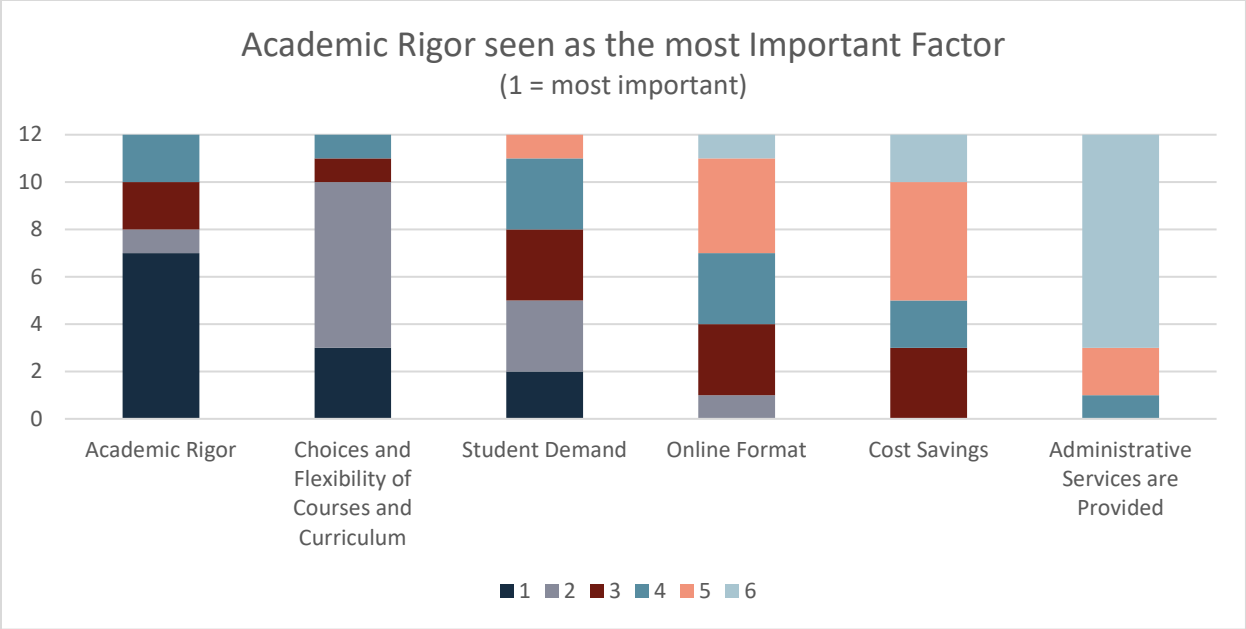
C. ESP Selection

Understanding which LEAs and how often LEAs contract with ESPs is important; however, equally important is understanding why LEAs contract with an ESP. To understand the advantages and disadvantages of potentially contracting with an ESP, 156 LEAs were surveyed—whether the LEA currently contracts with an ESP or not—using open-ended questions. The top reason cited for using an ESP is more choices and opportunities for students. The survey also provided opinions on the most common disadvantages with using an ESP. The table below shows the advantages and disadvantages in ranked order.

	Advantages	Challenges
Rank 1	Increased student choice and opportunity	None
Rank 2	Administration and teacher assistance	Student motivation
Rank 3	Credit recovery	ESP/LEA Integration (districts) Non-LEA staff (charters) Cost (both)

To better understand an LEAs motivation for selecting an ESP, a sample of 12 LEAs—confirmed as utilizing ESPs—were surveyed and asked to rank six factors from most important to least important.

As illustrated in the chart below, academic rigor is noted as the most important factor; administrative services provided to the LEA is the least important factor.



The 12 LEAs sampled were then asked whether the ESPs provide services that their LEA cannot reasonably offer otherwise; ten (83%) LEAs agreed. Regardless, six (50%) of the LEAs indicated they plan on developing their own online program rather than use an ESP long term.

D. ESP Student Enrollment and Residency Status

To understand how ESPs potentially impact student enrollment, all student residency records from the Utah Transcript Records Exchange (UTREx) for SFY2017 to SFY2021 for the seven districts in the sample were reviewed. Of the seven districts reviewed, the average percentage of students identified as district residents was 97%.

% Residency for All District Students		
District	% District Resident Students	% District Non-Resident Students
District 1	91%	9%
District 2	98%	2%
District 3	100%	0%
District 4	100%	0%
District 5	99%	1%
District 6	100%	0%
District 7	87%	13%
Average	97%	3%

The average district resident student growth rate during the period in review was 11%. Of the seven districts, only four reported district non-resident student enrollments. For the same period the growth rate of district non-resident students for these four districts was 395%, a difference of 384%. The

difference in growth is notable given all seven districts served district residents, while only four districts served district non-resident students as shown in the table below.

Residency Growth for All District Students			
District	District Resident Growth	District Non-Resident Growth	Difference in Percentage
District 1	2%	33%	31%
District 2	9%	-68%	-59%
District 3	-2%	*	*
District 4	8%	*	*
District 5	15%	2,426%	2409%
District 6	2%	*	*
District 7	20%	678,800%	678,780%
Sample Total	11%	395%	384%

**Districts did not report any District Non-Resident Students*

Individual districts student growth (district resident and district non-resident) varied significantly. One district reported only one district non-resident student in 2017 but reported 6,789 district non-resident students by 2021, an increase of 678,780%. During the same period, the district only experienced 20% district resident growth. In comparison, another district experienced a 68% reduction of district non-resident students (i.e., a loss of 943 students) while experiencing a 9% increase of district resident students (i.e., an increase of 5,340 students).

To understand if district non-resident growth was related to the use of ESPs, 15,651 unique ESP students from SFY2017 to SFY2021 for the same seven districts were reviewed. The 15,651 unique ESP students enrolled 24,117 times during the period in question (i.e., if a student enrolled multiple years, the student was counted multiple times). Of the 24,117 enrollments, 58% were district non-resident students and 42% were district resident students. The 58% or 14,048 district non-resident student enrollments are associated with two ESPs; however, 97% of these students participated in just one of the ESPs; this ESP being the top ESP identified and discussed in **IV.1.B LEA Expenditures on ESPs**

Although 58% of ESP students were district non-resident students, the dispersion was not equal. Out of the sample of seven districts, four (57%) districts did not serve any district non-resident ESP students. Of the three who did, two served more district non-resident ESP students than district resident ESP students.

% Residency for ESP Students		
District	% of ESP Students Identified as District Non-Resident	% of ESP Students Identified as District Resident
District 1	9%	91%
District 2	*	100%
District 3	*	100%
District 4	*	100%
District 5	58%	42%
District 6	*	100%
District 7	81%	19%

**Districts did not report any District Non-Resident ESP Students*

Using an online ESP has the potential to draw in students across the state (i.e., district non-resident students). For example, a review of LEA board meeting minutes revealed that one LEA discussed how using a specific ESP could draw more than a thousand students, which would increase the LEA’s funding. In the survey, eight of nine (89%) LEAs agreed that they use ESPs to provide online course options.

100% (nine) of LEAs surveyed believed that if they do not use an ESP, students may transfer to an LEA who does. Furthermore, 67% (six) of LEAs surveyed agreed that students enroll in their LEA to participate in an ESP. This is consistent with previous observations, given 58% of ESP students at seven districts sampled were district non-resident students.

E. Student Demographics

Residency status was not the only student characteristic considered. To determine if other student demographics (i.e., gender, ethnicity, economic status, and disability status) affect ESP student populations, student trends of non-ESP students (i.e., all students other than ESP students at the LEA) versus ESP students (i.e., students who participated in at least one ESP course) at ten LEAs were considered.

Regarding student gender for the ten LEAs considered, there was less than a 1% difference in female and male participation rates between non-ESP students and ESP students. All other gender categories showed no difference.

Gender	ESP Student %	Non-ESP Student %	Difference in Percentage
Female	48%	49%	1%
Male	52%	51%	1%
Other	0%	0%	0%

Although there was no noticeable difference overall in the table above, there were differences in female and male populations on an LEA-by-LEA basis. For example, one LEA showed a 10.14% difference in populations of female and male students between non-ESP students and ESP students.

Regarding student ethnicity for the ten LEAs considered, five of the seven (71%) ethnicities experienced a difference of 1% or less in participation rates when non-ESP students were compared to ESP students. However, ESPs at the ten LEAs averaged a 10% higher participation rate within the white ethnic population and an 8% lower participation rate of students in the Hispanic/Latino ethnic population compared to non-ESP students.

Ethnicity	ESP Percentage	Non-ESP Percentage	Difference in Percentage
African American/Black	1%	1%	0%
American Indian	3%	2%	1%
Asian	1%	1%	0%
Hispanic/Latino	8%	16%	8%
Multiple Races	2%	3%	1%
Pacific Islander	0%	1%	1%
White	86%	76%	10%

Regarding students' socio-economic status (SES) for the ten LEAs considered, students identified as low-income had a 10% lower participation rate when compared to non-ESP students.

Socio-Economic Status	ESP Percentage	Non-ESP Percentage	Difference in Percentage
Not Low Income	78%	68%	10%
Low income	22%	32%	10%

Differences among participation rates on an ESP-by-ESP basis were even more noticeable. The ESPs for two LEAs had an approximately 24% lower participation rate when compared to non-ESP students. For non-ESP students in our sample of ten LEAs, approximately one-third of students in traditional courses were categorized as low-income. However, students with low-income status in ESP programs varied from participation rates as high as 100% to as low as 8%.

Finally, regarding disability status for the ten LEAs considered, ESPs on average reported a 7% lower student participation rate when compared to non-ESP students. One LEA reported its ESPs serving no students with disabilities. Additionally, while reviewing ESP contracts, two LEAs had an LEA-ESP contract that stated the ESP is not responsible for providing special education services.

Special Education	ESP Percentage	Non-ESP Percentage	Difference in Percentage
Not Special Education	93%	86%	7%
Special Education	7%	14%	7%

F. ESP Personnel and Background Checks

Equally important to understanding who is participating in ESP courses is understanding who is involved in offering the courses and classes. To gain an understanding of who is involved with students at the ESP courses, several steps were taken.

First, LEA-submitted Annual Financial Reports (AFR) from SFY2017 to SFY2020 were reviewed to identify what percentage of general funds were spent on purchased (i.e., ESP) course instruction. Overall, during the four-year period, LEAs spent on average only 4% on purchased course instruction. However, nine of 161 LEAs spent over 20% for purchased course instruction at least one of the four years and two of the nine LEAs spent over 70% on purchased course instruction for three of the four years, indicating some LEAs may be outsourcing a majority of their instructional services. See **IV.1.B LEA Expenditures on ESPs** for additional information.

Second, a sample of 12 LEAs participated in a survey and submitted records of ESP educators. Based on the survey results, LEAs indicated the following:

- 92% agreed that ESP courses are being led by licensed educators.
- 17% agreed that their LEA issues LEA-Specific licenses to ESP employees.
- 67% believed ESP educators hold the same skills as LEA educators.
- 100% agreed that when students participating in an ESP are struggling to understand a concept, they should contact their teacher of record for help.
- 83% of LEAs stated teachers of record for ESP courses interact weekly with students participating in ESPs.

- 75% agreed that being the teacher of record for an ESP course does not require additional work by the educator.
- 58% believed they maintained a list of all ESP employees who interact with their students.

Third, upon request, 12 LEAs provided lists of ESP personnel totaling 1,558. 33% (four) of LEAs acknowledged not maintaining records of all ESP personnel; therefore, the true number of ESP personnel in the LEA sample is unknown. After normalizing the data, 1,518 records remained. In reviewing the 1,518 ESP personnel, the following was noted:

- 93% (31,407) hold a CACTUS ID.
- 90% (1,368) had active licenses during the time they were involved in the ESP course.
- 1% (21) held expired licenses during the time they participated in the ESP course or with ESP students, one of which had a revoked license. The level of interaction and responsibility of these educators was not evaluated. See **IV.4 Compliance LEA Internal Controls** for additional details.
- 4% of ESP personnel are directly tied to institutions of higher education, at least 42% of which do not have a CACTUS ID.

In addition to questions regarding licensure, 12 LEAs were surveyed regarding ESP educator background checks. Three (25%) of the LEAs stated that the LEA does not require a background check for ESP employees. After requesting a list of all ESP personnel for the surveyed LEAs and reviewing for background checks, several individuals (approximately 9%) without background checks were identified. Given five (42%) of LEAs acknowledged not maintaining lists of the ESP personnel interacting with students, the figure may be underreported. See **IV.4 Compliance LEA Internal Controls** for additional details.

G. ESP Student-Teacher Ratios

With a better understanding of who was working with students, the question became, how many students are ESP teachers working with on average. Using a sample of 12 LEAs, both ESP and non-ESP student to teacher ratios were calculated. From SFY2017 to SFY2021, elementary courses instructed using an ESP had a 168:1 student-teacher ratio compared to a 32:1 student-teacher ratio for non-ESP instructed courses. The difference between secondary ESP courses and non-ESP courses was much lower, but still represented an increase of 101 students per teacher. As shown in the table below, ESP courses had wide ranges (e.g., elementary from 2244:1 to 1:1) whereas non-ESP courses had much smaller ranges (e.g., 69:1 to 20:1).

	ESP Student-Teacher Ratios	Non-ESP Student-Teacher Ratios
Elementary Mean	168:1	32:1
Elementary Maximum	2244:1	69:1
Elementary Minimum	1:1	20:1
Secondary Mean	246:1	145:1
Secondary Maximum	1025:1	168:1
Secondary Minimum	60:1	77:1

H. ESP Services

Additional work was done to identify ESP service areas utilized by LEAs. After surveying 156 LEAs in the state and asking what types of services their ESPs provide, the self-reported information in the table below was provided.

Service	ESPs Only	
	LEA Count	Percentage
Courses/Classes	100	79%
Curriculum	95	75%
Student grades	44	35%
Educator(s)	43	34%
Attendance logs	32	25%
Student personally identifiable information (e.g., name, date of birth, home address)	27	21%
Other, please specify	15	12%

Given ESPs were defined as a third-party provider that offers courses and classes, the first response was not surprising. Specific examples of the “Other” category included student clubs, testing administration, office personnel, marketing and student recruitment, and field trips.

Additionally, 63% of contracted ESPs, as reported by the LEAs, were used for more than one service. Charter schools reported being 8% more likely than districts to use an ESP for courses/classes, and districts reported being 8% more likely than charters to use ESPs for curriculum. All other services were reportedly used at a similar rate, as shown in the table below.

LEA Type	Educators	Curriculum	Courses/ Classes	Student Grades	Student PII	Attendance	Other	Grand Total
Charters	12%	23%	32%	11%	8%	10%	4%	100%
Districts	12%	30%	24%	14%	7%	8%	4%	100%
Difference	0%	8%	8%	3%	1%	3%	0%	

Finally, 67% of 12 LEAs surveyed agreed that ESPs provide the best route for credit recovery; 75% of LEAs agreed that ESP services have the same academic rigor as those the LEA provides.

I. ESP Oversight

Next, the relationship and oversight role of LEAs and ESPs was considered. Several regulations exist allowing curricula and providers to generally be decided by the LEA. However, there are some specific requirements that apply when contracting with an ESP. Specifically, the local school board must review the scope of contracts with entities providing student services.

Despite 11 of 12 (92%) LEAs surveyed assuring that the local governing board is in control of the procurement and curriculum taught by ESPs, a review of LEA-provided documentation revealed that six (50%) boards did not review the scope for at least one of their ESP contracts prior to contracting with the ESP. See **IV.4 Compliance LEA Internal Controls** for additional details.

For example, one LEA indicated they used emergency procurement policies to bypass the board review and approval process to meet the need for online educational services due to COVID-19. The board was not notified of the procurement of education services until approximately four months later. While regulations permit procurement processes to be modified in the event of an emergency (such as a pandemic), the intent of the provisions are specific to mitigating the emergency by providing an immediate and short-term solution, not circumventing all other rules in favor of the most convenient course of action. See **IV.4 Compliance LEA Internal Controls** for additional details.

Additionally, 12 of 12 (100%) LEA administrators agreed that ESP curriculum is tailored to Utah Standards. However, four (33%) LEA administrators stated their LEA does not review all ESP curriculum prior to contracting with an ESP. Given zero of 26 (0%) ESPs reviewed appear in the Recommended Instructional Materials System (RIMS) database maintained by the USBE, LEA oversight is even more critical.

Local board involvement in the contracting process of ESPs is required. Depending on the relationship formed, special obligations may also apply. Under Federal regulations in 2 CFR §200.331, non-federal entities receiving a subaward are classified as either a subrecipient or a contractor, where subrecipients are subject to increased monitoring requirements. The table below summarizes the characteristics of a subrecipient compared with a contractor.

Subrecipient	Contractor
Determines eligibility	Provides goods or services
Measures performance to the subaward	Provides to many different purchasers
Makes programmatic decisions	Operates in a competitive environment
Adheres to program requirements	Provisions are ancillary to operation of the program
Uses funds to carry out a program	Not subject to program requirements

In a review of 26 contracts associated with 12 LEAs, 16 (62%) contracts included characteristics that indicate the ESP is likely more of a subrecipient than a contractor. The remaining 38% of contracts include characteristics that indicate the ESP is a contractor. However, given the nature of services provided by ESPs, as defined for purposes of this audit, ESPs are most likely subrecipients. If ESPs receive federal funding, and only 62% of ESPs are treated as a subrecipient, there may be ramifications. While the federal government recognizes subrecipients as having increased risk and thus has required additional accountability, state regulations are less developed.

As an example of a subrecipient relationship, in the sample of 12 LEAs, one (8%) LEA contracted with a private school to provide education to public education students. The LEA relied on the private school to provide all instruction, maintain all records, and ensure compliance with applicable requirements, rationalizing that since the private school is a fully accredited, diploma-awarding institution, the LEA does not need to maintain an oversight structure. In this case, the private school has the characteristics of a subrecipient. Whether a subrecipient or not, an LEA should still provide oversight sufficient to ensure public funds are used to achieve public education objectives.

In multiple cases, LEA reliance on an ESP extended beyond courses and classes. During the audit, two (17%) LEAs allowed ESPs access to the audit survey, enabling the ESP to provide feedback and specific guidance on how to respond to survey questions. For these two LEAs, 85% of multiple-choice questions

had identical responses and 69% of open-ended text responses were similar. Both LEAs stated the ESP was consulted on the survey, yet maintained the LEA had the final say on what was submitted.

While LEAs have the responsibility to ensure ESP compliance with state law and Board rule, some LEAs appear to rely on ESPs to meet LEA regulatory requirements. In response to survey questions, one LEA wrote that “The leadership team at [the LEA’s ESP] has extensive experience with helping LEAs fully comply with all related laws, board rules, and USBE policies.” As noted in **IV.4 Compliance, LEA Internal Controls**, LEAs are responsible to maintain an effective internal control system. Risk persists given three (25%) LEA administrators reported their local board does not receive reports on ESP performance.

J. Application of R277-417 to ESPs

Not only does the relationship between the LEA and the ESP matter, but the type of funds used to pay the ESP is also important. Public funds may only be spent on public activities and come with certain restrictions (for example, public funds cannot be used to provide incentives for enrollment in an ESP). Private funds, on the other hand, are not regulated by the USBE. Whether funds paid to ESPs are public or private is largely a matter of payment timing. Payments made prior to ESPs completing their service are considered public funds, payments made subsequent to ESPs completing their service in full may be considered private.

Of the 12 sampled LEAs, which collectively use 26 ESPs, LEAs provided detailed payment information for 15 ESPs. Upon reviewing the payment information for these ESPs, all 15 (100%) demonstrated that ESPs are being paid prior to service being wholly rendered; therefore, the funds retained their publicness and could not be used contrary to R277-417. Considering specific uses of ESP funds to test whether any public funds were used inconsistent to Board rule was not reviewed in this audit.

The type of funds is particularly important when it comes to how an ESP attracts students to participate in the ESP. In a survey to 12 LEAs, 5 (42%) stated their ESP(s) actively recruits new students; 2 (17%) stated they do not monitor how their ESPs incentivize student enrollment. Every surveyed LEA stated their ESPs do not offer rewards for students to enroll, yet recent concerns submitted to the Utah Public Education Hotline suggest that ESPs may be providing funds directly to parents to use on technology or local educational attractions (e.g., zoos, museums, etc.). In response to the survey question, two LEAs stated that the question on incentives should have included a response for “not applicable” because Utah law prohibits incentives for enrollment or participation; however, because the law exists, every LEA has the responsibility to monitor their ESPs’ enrollment practices to ensure compliance.

K. ESPs and Student Privacy Law

LEAs are responsible for protecting student data. When contracting with an ESP, these requirements remain in place. When asked about ESP compliance with privacy law, 12 of 12 (100%) LEA administrators believe ESPs follow student privacy law. However, a review of documentation provided by these 12 LEAs for 26 ESPs show that 17 (65%) did not include provisions related to FERPA, and 22 (85%) did not include provisions that the ESP will notify the LEA of a data breach.

2. Causes, Effect, and Recommendations

Causes: The observations noted above have various potential causes, some of which are summarized below.

Evolution of Public Education: Historically, public education's academic focus was limited to subjects like reading, writing, and arithmetic. Today, public education includes hundreds of niche curricular and extracurricular opportunities, which shows the increasing desire for parent and student choice in education and the regulatory requirements to provide more opportunities. To meet the increasing demands for school choice with current resources, LEAs are considering and moving towards alternative methods. For example, 67% (8 of 12) of LEAs agree that ESPs provide the best route for credit recovery. Public education opportunities have increased, as have the ways in which public education can be offered, which is why 89% (Eight out of nine) of LEAs agree that they use ESPs to provide online course options.

Competitive Markets: With increases in demand comes opportunities to supply the demand. Competition in the education sector has long existed; however, competition within the public education sector is changing. What once was a service primarily supplied by governmental entities has since evolved into a much more complex system of educational services. The current supply of educational services is made up of individuals, for-profit, non-profit, and governmental entities all competing for limited, but substantial, public education funds. 100% (nine out of nine) of districts surveyed agreed that if they do not use an ESP, students may transfer to a different LEA for a service. 67% (six out of nine) of districts agree that students enroll in their LEA to participate in an ESP.

Innovation: Not all ESPs are necessarily trying to replace the traditional school experience, but they are trying to offer supplemental opportunities that are new and unique. Instead of providing the same services to everyone, ESPs are identifying new ways to cater to specific demographics by offering courses that may interest, or be more accessible to, one demographic more than another (e.g., gymnastics vs. Taekwondo or credit recovery vs. accelerated courses). For example, one ESP had significant anomalies in multiple student demographics reviewed. The ESP reported a higher-than-average participation rate of students identified as White, a lower-than-average participation rate of students identified as low-income, and a lower-than-average participation rate of students with disabilities. However, many ESPs reported higher- or lower-than-average participation rates in one student demographic or another, potentially supporting the notion that ESPs tailor their services, or their services appeal, to one demographic over another.

Effect: Education will continue to evolve. As an example, and as previously mentioned, 50% of LEAs are planning on developing their own online program rather than use an ESP long-term. However, there may be several potential effects related to the evolution of education. For example, significant change in the Utah public education system may be highly unlikely in the near future, but significant change at the LEA level, especially among smaller districts or charters, is not unlikely. As providers of public education are being redefined from districts and charters to private institutions, from district residents to state-wide participants, annual changes in LEA-allocated funding may be significant. As noted above, in recent years some LEAs experienced significant growth in enrollment while others experienced a decrease due to ESP enrollments. These changes may result in the closure of district schools or LEAs operating as middlemen that rely on ESP online students to fund current operations.

Recommendation: Given the increased use of ESPs, and the many unknowns associated with their current use, the USBE in collaboration with LEAs, should consider ways to monitor ESP involvement at the student, LEA, and state level. Although additional policy may be needed to regulate the use of ESPs, the USBE and LEAs should first consider identifying and monitoring financial and performance data and metrics, thereby establishing benchmarks. Future analysis of these metrics can then aid in prudent and appropriate policy-making decisions.

3. Compliance

A. LEA Internal Control

Criteria: Utah Admin. Code R277-113-2 Definitions. (Last Substantive Amendment: November 8, 2021)
(10) "Internal controls" means a process, implemented by an entity's governing body, administration, or other personnel, designed to:

(a) provide reasonable assurance regarding the achievement of objectives in the following categories:

- (i) effectiveness and efficiency of operations;
- (ii) reliability of reporting for internal and external use; and
- (iii) compliance with applicable laws and regulations;

Utah Admin. Code R277-113-6 LEA Governing Board Fiscal Responsibilities. (Last Substantive Amendment: November 8, 2021)

(1) An LEA governing board shall have the following responsibilities:

(b) ensure, considering guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission, that LEA administration establish, document, and maintain an effective internal control system for the LEA;

(c) develop a process to regularly discuss and review LEA:

(v) systems and software applications for compliance with financial and student privacy laws;

(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:

- (i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and
- (ii) receiving reports regarding the compliance and performance of entities with contracts or subawards;

In addition, see the following sections of **Appendix A:**

A. Utah Administrative Code

1. *R277-113-4 LEA Responsibilities. (Effective October 9, 2014 – October 10, 2017)*
2. *R277-113-4 LEA Fiscal Responsibilities. (Effective October 10, 2017 – April 12, 2018; and effective June 22, 2018 – August 11, 2020)*

3. *R277-113-6 LEA Fiscal and Auditing Policies. (Effective November 10, 2020 – November 8, 2021)*
4. *R277-115-3 Third Party Provider Provision of Services. (Date of Enactment or Last Substantive Amendment: May 23, 2019)*
5. *R277-309-3 Required Licensing. (Effective June 23, 2020 – August 12, 2021)*
6. *R277-520-3 Required Licensing. (Date of Enactment or Last Substantive Amendment: August 7, 2017)*
7. *R277-520-8 Required Licensing. (Date of Enactment or Last Substantive Amendment: August 7, 2017)*
8. *R277-606-4 Reporting Requirements and Audits. (Effective September 24, 2020 – November 26, 2021)*
9. *R33-8-401 Emergency Procurement. (Effective June 21, 2017 – January 22, 2021)*

B. Utah Code Annotated

1. *53E-6-201 Board licensure. (Effective January 24, 2018. Superseded May 8, 2018)*
2. *53E-6-201 Board licensure. (Effective May 8, 2018. Superseded May 14, 2019; and effective May 14, 2019. Superseded May 12, 2020)*
3. *53E-6-201 State board licensure. (Amended by Chapter 408, 2020 General Session)*
4. *53E-9-309 Third-party contractors. (Amended by Chapter 388, 2020 General Session)*
5. *53G-11-401 Definitions. (Amended by Chapter 293, 2019 General Session)*
6. *53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members. (Effective January 1, 2018. Superseded May 12, 2020)*
7. *53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members. (Amended by Chapter 374, 2020 General Session)*
8. *63G-6a-803 Emergency procurement. (Effective March 28, 2016. Superseded May 12, 2020)*

Condition: LEA administration and governing bodies lack established and/or adequate processes (e.g., risk assessment, control activities, monitoring) that provide reasonable assurance that public education objectives will be met. Examples of inadequate control activities include,

1. Four of 12 (33%) LEAs did not include contract employees in their policy on background checks.
2. Six of 12 (50%) LEAs' policies did not include provisions that contract employees are subject to ongoing monitoring as a condition for employment or appointment.
3. Two of 12 (17%) LEAs' policies were not comprehensive enough, omitting important timelines or definitions.

Cause: Internal control systems lack the discipline and structure (i.e., control environment) necessary to ensure all other components of an internal control system are effectively designed, implemented, and operating, and operating together in an integrated manner.

LEAs have also chosen to engage ESPs to provide services; however, instead of retaining responsibility for the performance of processes assigned to ESPs, they have delegated it to the ESP and then provided limited supervision.

Effect: When the five components of an internal control system are not effectively designed, implemented, and operating effectively, there is a heightened risk of non-compliance, ineffective and/or inefficient operations and unreliable data.

Data reliability questions arose throughout the audit (see **III. Data Reliability**). In many instances, LEAs submitted several versions of documentation for the same request, which highlights concerns of both data reliability and operational efficiency and effectiveness. Questions related to compliance were identified in multiple areas, including; contracts, monitoring and supervision, educator licensing, background checks, and credit recovery. Specifics include:

i. Contracts:

1. 20 out of 58 (34%) LEAs, for 42 of the 127 (33%) ESPs identified, did not provide a contract, MOU, or terms of service between the LEA and the ESP. Instead, for these 42 ESPs, LEAs either provided a purchase order or request, or did not provide any documentation at all (see **Appendix A: B.4 & A.4**). Documentation provided by LEAs is as follows:
 - 68 (54%) Contracts
 - 11 (9%) MOUs
 - 6 (5%) Terms of Service
 - 22 (17%) Purchase orders or requests
 - 20 (16%) No documentation
2. 68 contracts and 11 MOUs between LEAs and ESPs were reviewed, 19 of the 68 (28%) contracts and six of the 11 (55%) MOUs were not signed by both parties.
3. Six of 12 (50%) LEAs did not have their boards review the scope and objective of at least one of their contracts with ESPs prior to contracting with them (see **Appendix A: A.1-3**).
4. 68 of 85 (80%) of contracts, MOUs, or terms of service reviewed did not require that the third-party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with Code and Rule (see **Appendix A: A.4**).
5. 85 of the 85 (100%) contracts, MOUs, or terms of service reviewed were missing at least one of the five Student Data Protection provisions required for third-party contractors, in this case ESPs. 59 of the 85 (69%) had none of the required provisions. Of the 59 that had none of the required provisions, none of them had a privacy agreement either (see **Appendix A: B.4**). However, of the 85 ESPs with contracts reviewed, four (5%) of the ESPs also had privacy agreements on the Utah Student Privacy Alliance (USPA) website. As these privacy agreements are designed to cover all points of compliance, using an USPA privacy template potentially mitigates risk for these four contracts, leaving 81 (95%) contracts reviewed with outstanding concerns (see **Appendix A: B.4**).
6. One of 12 (8%) LEAs cited emergency procurement as a justifiable reason to contract for ESP services without local board oversight. While the regulation at the time was not as strict as it is today, the intent behind the regulation is to mitigate an emergency, not circumvent all other rules (see **Appendix A: B.8; A.2; A.9**).

ii. Monitoring and Supervision

1. Five of 12 (42%) LEAs did not have a written monitoring plan to supervise the educational good or service provided by the third-party provider (see **Appendix A: A.4**).
2. 11 of 12 (92%) LEAs did not provide documentation of supervisory activities over the ESPs. For the one LEA that demonstrated supervision, the supervision activities did not align with their stated monitoring plan (see **Appendix A: A.4**).
3. One of two (50%) LEAs that provided LEA-maintained background checks for review did not use the Bureau of Criminal Identification for background checks and ongoing monitoring; instead, the LEA chose to use a different vendor (see **Appendix A: B.5; B.7**).
4. For 57 of 1518 (4%) ESP personnel reviewed for licensure and background checks, the LEA relied on the institutions of higher education (through the ESP) to verify that educators were licensed, and background checked without verifying the results. Of the 57 ESP personnel reviewed, 30 (53%) were not licensed, 12 (21%) held expired licenses, and 15 (26%) held active licenses.

iii. Educator Licensing (See Appendix A: B.1; B.3; A.5)

1. Four of 12 (33%) sampled LEAs did not keep records of all ESP personnel, so the true number of unlicensed personnel serving in an educator position is unknown.
2. Three personnel without an educator license were assigned as the teacher of record for at least one student.

iv. Background Checks (See Appendix A: B.5; B.7; A.6; A.7)

1. Six of 12 (50%) LEAs had at least one personnel without a background check.
2. 137 out of 1518 (9%) ESP personnel did not have evidence of a background check; however, as noted above, this number may underrepresent the reality given that 33% of LEAs do not maintain a list of their contracted ESP personnel and therefore cannot quantify or validate the number of personnel with or without a background check.
3. 80 of 1518 (5%) ESP personnel did not have a background check on file with the USBE in CACTUS and/or on file with the LEA.

v. Credit Recovery (See Appendix A: A.8)

1. For school year 2021, 50 of 101 (50%) LEAs did not submit the required report on their dropout prevention and recovery services to the USBE. Of the 12 LEAs in the sample population, six (50%) did not submit their required report. Additionally, one of the six that did not submit a report expressly stated it uses an ESP to provide credit recovery services. Therefore, LEAs that are using third-party providers to provide recovery services are not all providing the USBE with required information.

Recommendations: LEA administrations, with oversight from local governing boards, should ensure all components of their internal control system are effectively designed, implemented, and operating, and operating together in an integrated manner. When choosing to use an ESP, the LEA should understand the ESP's internal control system and when necessary, design and implement complementary controls to ensure public education objectives are met.

Specific examples could include:

- Update contracts to ensure compliance with applicable regulations and provide better oversight of vendors. Several resources are available to help LEAs, including, the Education Procurement Advisory Council (EdPac), State Purchasing (i.e., Statewide Best-Value Cooperative Contracts), and USBE's Purchasing department.
- Update LEA monitoring plans of ESPs, supervise ESPs, and document supervision efforts.
- Develop control activities (i.e., policies and procedures and related tools) to ensure all ESP educators are appropriately licensed and highly qualified.
- Update policies to require contract employees submit to a nationwide criminal background check and ongoing monitoring as appropriate.
- Design control activities to ensure credit recovery reporting requirements are met and the information provided therein is reliable.

Finally, the USBE should review the non-compliance identified above and determine if corrective action pursuant to R277-114 is necessary.

B. USBE Background Checks

Criteria: Utah Code Ann. 53G-11-403 Background checks for licensed educators. (Amended by Chapter 293, 2019 General Session)

The state board shall:

- (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the state board only receives notifications for individuals with whom the state board maintains an authorizing relationship.

Condition: 21 of 1518 (1%) educators hold expired licenses but the USBE continues to monitor their background status.

Cause: The USBE does not have a formal control activity to provide reasonable assurance that the statutory objective of not receiving notifications for unlicensed individuals will be met. Instead, the USBE relies on educators to request to be removed from the background checks or waits until the five-year background check agreement expires (i.e., the background checks naturally expire). In part, this appears to be due to that fact that an educators may let their license lapse for a year and then wish to renew their license. To save time and money, the USBE does not remove them from the background check system. If the educator later chooses to renew their license, and the USBE is still actively monitoring their background status, the educator and the USBE would not need to re-enroll them back into the background check system.

Another reason may be founded in the fact that the educator originally gave permission for the USBE to monitor the educator's background for five years. Therefore, the perception is that the educator has provided permission and is aware of the ongoing monitoring.

Effect: Although the educator originally allowed the USBE to monitor background status via ongoing checks, the permission was granted due to the licensee and licensor relationship. Any continued monitoring after the termination of the relationship, even if the relationship will potentially be renewed, may constitute an invasion of the educator's privacy. Additionally, the continued monitoring may also

create an unnecessary liability to the USBE given the statutory requirement to discontinue monitoring would potentially outweigh any agreement to continue the practice.

Recommendation: The USBE should review existing background monitoring practices for compliance with applicable regulations. Where appropriate, control activities should be established to ensure the USBE only receives notifications where an authorizing relationship exists.

C. USBE Non-licensed Community Partners

Criteria: Utah Code Ann. 53G-11-401 Definitions. (Amended by Chapter 293, 2019 General Session)

(3) "Contract employee" means an employee of a staffing service or other entity who works at a public or private school under a contract.

Utah Code Ann. 53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members. (Amended by Chapter 374, 2020 General Session)

(1) An LEA or qualifying private school shall:

(a) require each of the following individuals who is 18 years old or older to submit to a nationwide criminal background check and ongoing monitoring as a condition for employment or appointment:

(i) a non-licensed employee;

(ii) a contract employee;

(iii) except for an officer or employee of a cooperating employer under an internship safety agreement under Section 53G-7-904, a volunteer who will be given significant unsupervised access to a student in connection with the volunteer's assignment

Condition: Four CACTUS IDs were identified that lack a name, license level, license area, and have no background status reported in the system dossier. The CACTUS IDs are unofficially tied to unspecified individuals allegedly known only by the LEAs. The CACTUS IDs are assigned as the "teachers of record" to thousands of Utah students, even though the individuals represented by the CACTUS IDs may not be licensed, or background checked.

Cause: The practice appears to be a holdover from an outdated process to accommodate working professionals in law enforcement, fire science, health science, and cosmetology. Supposedly, the IDs are tied to people qualified to teach the course based on experience but do not have teaching licenses and are typically only doing it for a short time period.

Effect: The practice appears to undermine the currently established systems of educating students based on qualifications (e.g., APT, ARL) and the requirements to be an educator based on the subject matter. Additionally, the use of a CACTUS ID (unique ID) assigned to an entity rather than an individual is a questionable data practice and may create unnecessary liability for the USBE and LEAs given requirements for background checks and qualifications for educators.

Recommendation: LEAs and the USBE should collaborate to create a process to ensure any educator, including working professionals in the fields of law enforcement, fire science, health science, and

cosmetology, are highly qualified and receive a background check, regardless of the length of time they teach a course. If these individuals are a guest lecturer, substitute teacher, paraprofessional or something else, they should be documented as such. Reliable data should be maintained to support monitoring of an established policy and process.

V. Appendices

Appendix A – Internal Controls Criteria

A. Utah Administrative Code

1. *R277-113-4 LEA Responsibilities. (Effective October 9, 2014 – October 10, 2017)*

C. Each LEA board shall designate board members to serve on an audit or finance committee, consistent with Section 53A-30-102(1). The LEA audit or finance committee has the following responsibilities:

(8) determine the appropriate scope of contracts with management companies that provide business services and student services, manage the procurement process in compliance with Section 63G-6a, make recommendations to the LEA board on the results of the procurement process, assess the performance of management companies, and ensure management implements sufficient internal controls over the functions of the management company;

2. *R277-113-4 LEA Fiscal Responsibilities. (Effective October 10, 2017 – April 12, 2018; and June 22, 2018 – August 11, 2020)*

(7) An LEA governing board shall have the following responsibilities:

(d) monitor LEA contract services by:

- (i) determining the appropriate scope of contracts with management companies that provide business services and student services;
- (ii) managing the procurement process in compliance with Title 63G, Chapter 6a.

3. *R277-113-6 LEA Fiscal and Auditing Policies. (Effective November 10, 2020 – November 8, 2021)*

(1) An LEA governing board shall have the following responsibilities:

(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:

- (i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and

4. *R277-115-3 Third Party Provider Provision of Services. (Date of Enactment or Last Substantive Amendment: May 23, 2019)*

(1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:

(a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

- (i) Titles 53E, 53F, and 53G; and
- (ii) Board rule;

- (b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule;
- (c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;
- (e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA; and
- (f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

5. *R277-309-3 Required Licensing. (Effective June 23, 2020 – August 12, 2021)*

- (1) All teachers in public schools shall hold a current educator license along with appropriate license areas of concentration and endorsements that is not suspended or revoked by the Board under Section 53E-6-604.
- (3) An LEA shall only hire a teacher who:
 - (a) holds a current educator license; or
 - (b) is in the process of becoming fully licensed and endorsed.
- (4) In accordance with Section 53E-3-401, if an LEA hires an educator without appropriate licensure, the Superintendent may recommend that the Board withhold the following until the LEA's educators are appropriately licensed:
 - (a) LEA salary supplement funds under Section 53F-2-405 and Rule R277-110; and
 - (b) Educator quality funds under Subsection 53F-2-305(2) and Rule R277-486.

6. *R277-520-3 Required Licensing. (Date of Enactment or Last Substantive Amendment: August 7, 2017)*

- (1) All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.
- (3) An LEA is expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed.

7. *R277-520-8 Required Licensing. (Date of Enactment or Last Substantive Amendment: August 7, 2017)*

- (2) If an LEA does not appropriately employ and assign teachers consistent with this R277-520, the LEA may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula, pursuant to the Board's authority under Section 53E-3-401.

8. *R277-606-4 Reporting Requirements and Audits. (Effective September 24, 2020 – November 26, 2021)*

- (1)(a) An LEA shall submit an annual report to the Superintendent on the LEA's dropout prevention and recovery services by October 30.
 - (b) The report described in Subsection (1)(a) shall include:

- (i) the information described in Section 53G-9-802;
- (ii) the total number of designated students in the LEA; and
- (iii) if applicable, the name of a third party the LEA is contracting with to provide dropout prevention and recovery services.

9. *R33-8-401 Emergency Procurement. (Effective June 21, 2017 – January 22, 2021)*

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(iv) epidemics

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

B. Utah Code Annotated

1. *53E-6-201 Board licensure. (Effective January 24, 2018. Superseded May 8, 2018)*

(1)(a) The board may issue licenses for educators.

(b) A person employed in a position that requires licensure by the board shall hold the appropriate license.

(2)(a) The board may by rule rank, endorse, or otherwise classify licenses and establish the criteria for obtaining and retaining licenses.

2. *53E-6-201 Board licensure. (Effective May 8, 2018. Superseded May 14, 2019; and effective May 14, 2019. Superseded May 12, 2020)*

(2) An individual employed in a position that requires licensure by the board shall hold the license that is appropriate to the position.

(3)(a) The board may by rule rank, endorse, or otherwise classify licenses and establish the criteria for obtaining, retaining, and reinstating licenses.

3. *53E-6-201 State board licensure. (Amended by Chapter 408, 2020 General Session)*

(2) An individual employed in a position that requires licensure by the state board shall hold the license that is appropriate to the position.

(3)(a) The state board may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rank, endorse, or otherwise classify licenses and establish the criteria for obtaining, retaining, and reinstating licenses.

4. *53E-9-309 Third-party contractors. (Amended by Chapter 388, 2020 General Session)*

(2) When contracting with a third-party contractor, an education entity, or a government agency contracting on behalf of an education entity, shall require the following provisions in the contract:

- (a) requirements and restrictions related to the collection, use, storage, or sharing of student data by the third-party contractor that are necessary for the education entity to ensure compliance with the provisions of this part and state board rule;
- (b) a description of a person, or type of person, including an affiliate of the third-party contractor, with whom the third-party contractor may share student data;
- (c) provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;
- (d) except as provided in Subsection (4) and if required by the education entity, provisions that prohibit the secondary use of personally identifiable student data by the third-party contractor; and
- (e) an agreement by the third-party contractor that, at the request of the education entity that is a party to the contract, the education entity or the education entity's designee may audit the third-party contractor to verify compliance with the contract.

5. *53G-11-401 Definitions. (Amended by Chapter 293, 2019 General Session)*

(2) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety created in Section 53-10-201.

(3) "Contract employee" means an employee of a staffing service or other entity who works at a public or private school under a contract.

6. *53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members. (Effective January 1, 2018. Superseded May 12, 2020)*

(1) An LEA or qualifying private school shall:

- (a) require the following individuals to submit to a nationwide criminal background check and ongoing monitoring as a condition for employment or appointment:
 - (i) a non-licensed employee;
 - (ii) a contract employee;

7. *53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members. (Amended by Chapter 374, 2020 General Session)*

(1) An LEA or qualifying private school shall:

- (a) require each of the following individuals who is 18 years old or older to submit to a nationwide criminal background check and ongoing monitoring as a condition for employment or appointment:
 - (i) a non-licensed employee;
 - (ii) a contract employee;
 - (iii) except for an officer or employee of a cooperating employer under an internship safety agreement under Section 53G-7-904, a volunteer who will be

given significant unsupervised access to a student in connection with the volunteer's assignment

- (c) submit the individual's personal identifying information to the bureau for:
 - (i) an initial fingerprint-based background check by the FBI and the bureau; and
 - (ii) ongoing monitoring through registration with the systems described in Section 53G-11-404 if the results of the initial background check do not contain disqualifying criminal history information as determined by the LEA or qualifying private school in accordance with Section 53G-11-405.

8. *63G-6a-803 Emergency procurement. (Effective March 28, 2016. Superseded May 12, 2020)*

(1) Notwithstanding any other provision of this chapter, the chief procurement officer or the head of a procurement unit with independent procurement authority may authorize a procurement unit to engage in an emergency procurement without using a standard procurement process if the procurement is necessary to:

- (a) avoid a lapse in a critical government service;
- (b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; or
- (c) protect the legal interests of a public entity.

(2) A procurement unit conducting an emergency procurement under Subsection (1) shall:

- (a) ensure that the procurement is made with as much competition as reasonably practicable while:
 - (i) avoiding a lapse in a critical government service;
 - (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
 - (iii) protecting the legal interests of a public entity; and
- (b) after the emergency has abated, prepare a written document explaining the emergency condition that necessitated the emergency procurement under Subsection (1).

Appendix B – USBE Management Response

The response begins on the next page.



UTAH STATE BOARD OF EDUCATION

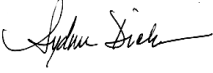
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Sydnee Dickson, State Superintendent of Public Instruction
Cybil Child, Secretary to the Board

MEMORANDUM

TO: Chief Audit Executive Debbie Davis, CPA

FROM: Sydnee Dickson, Ed.D. 
State Superintendent of Public Instruction

CC: Mark Huntsman, Board Chair
Laura Belnap, Board Vice Chair
Cindy Davis, Board Vice Chair
Scott Jones, Deputy Superintendent of Operations
Angie Stallings, Deputy Superintendent of Policy
Patty Norman, Deputy Superintendent of Student Achievement
Sarah Young, Chief of Staff
Deborah Jacobson, Assistant Superintendent of Operations
Kevin John, Deputy Audit Executive

DATE: March 28, 2022

SUBJECT: USBE Management Response to Education Services Providers (ESPs) Audit

Utah State Board of Education (USBE) Management appreciates the Education Services Providers (ESPs) Audit conducted by USBE Internal Audit and the opportunity to respond. We concur with the audit findings, causes, effects, and recommendations.