

## Memorandum

To: Faculty Senate Executive Board  
From: College of Education Council  
Date: November 12, 2015  
Re: Review of EMU's Interlocal Agreement with the School District of the City of Detroit

---

On December 5, 2014, the Eastern Michigan University (EMU) Board of Regents passed a motion to continue their Interlocal agreement with the School District of the City of Detroit, which is necessary for the existence of the Education Achievement Authority ("EAA") (see Exhibit 1). As part of the motion, the EMU Board of Regents gave 368 days' notice of their intent to give 180 days' notice to withdraw from the agreement, effective June 30, 2016, unless substantial progress was made in the following areas:

- A stronger partnership is forged between Eastern Michigan University and the EAA;
- Demonstrated student achievement and progress in EAA schools;
- Fiscal Accountability
- Complete transparency of all activities, including prompt and appropriate responses to requests made under the Freedom of Information Act

Following the approval of the Board of Regents' motion, Faculty Senate Leadership proposed that Eastern Michigan University's faculty provide their expertise to the Board of Regents in evaluating whether the EAA met the stipulations outlined in the December 2014 resolution detailed above; therefore, determining if it would be best to provide notice of EMU's intent to withdrawal from the agreement effective June 30, 2016. The following document identifies: the data that have been shared with faculty at EMU to date, relevant materials that are missing, an initial evaluation, and recommendations. The report is organized utilizing the four stipulations described above.

### **A stronger partnership is forged between Eastern Michigan University and the EAA**

We have limited documentation to evaluate whether or not there have been any changes to the strength of partnerships between EMU and the EAA. Earlier partnerships, such as Project Lead the Way and the Writing project, have ended over the past year or two. There is no evidence that the partnerships between EMU and the EAA have substantially strengthened in the intervening year. There appear to be other partnerships the EAA has entered into over the past year that are missed opportunities to strengthen the relationship between EMU and the EAA. One example is the agreement \$1.7 million between the EAA and the School Empowerment Network (SEN) focused on, "...teacher and principal coaching and leadership development" (see Exhibit 2). These types of trainings are often given by EMU faculty in the College of Education. The EAA's need for these trainings (as well as three additional trainings mentioned in the exhibit), along with the subsequent decision not to include EMU faculty, provides evidence that the partnership has not strengthened in the past year. The paucity of partnerships forged between EMU and the EAA demonstrate failure to meet the first criteria for improvement established by the EMU Board of Regents.

### **Demonstrated student achievement and progress in EAA schools**

At the request of Faculty Senate, the EAA provided several secured data files covering student test performance on the MEAP, MI-Access, and the MME 2012-2014, as well as College and Career Ready ACT (henceforth “ACT”) for Spring 2015. What is missing from the shared data are the 2015 M-Step data, which was released by the state at the beginning of November, 2015. One file that was included was entitled, “Spring 2015 College and Career Ready WorkKeys,” but it was a replication of the data file also included. Given the timeline and the fact that the previous achievement data were analyzed elsewhere (e.g., see Exhibit 3, pages 6, 8, and 12-28) we chose to focus on the one piece of data that is available, which tested students between December 2014 and December 2015. A *thorough* evaluation of this section would require EAA to send codebooks (which had been overlooked in their transfer of files), as well as the M-Step data from Spring, 2015.

The national and State of Michigan norms for the ACT in 2015 can be found in exhibit 4 (page 19), and we used these norms for the following analysis to compare EAA student proficiency to these norms as well as normative “readiness rating” for each student sub-population from page 6 of the exhibit. There were 744 EAA students who took the ACT in the spring of 2015, with more males ( $n = 411$ ) than females, primarily in 11<sup>th</sup> grade ( $n = 691$ ), who are almost exclusively African-American ( $n = 735$ ) (see Exhibit 5). It should be noted that this ethnicity presumption is based on a codebook for the M-Step from another urban school partner, not from information provided by the EAA. Given the preponderance of African American students in the sample the comparison of “percent of students College and Career Ready” we will also examine the percentage reported “ready,” nationally, for this subgroup (English = 29%; Reading = 14%; Math = 9%; and Science 9%, see Exhibit 4 page 7), and remove the remaining students ( $n = 9$ ) from the analysis.

Of the 744 EAA students described above, 728 have valid ACT scores that we can use for the analysis. The national and Michigan averages for the percentage of students deemed college and career ready in each of the subjects can be seen below (see Exhibit 4, page 4 and 7). On average, EAA students scored well below proficiency in all subject areas of the ACT (see Exhibit 6). The use of means, particularly low means, can hide students who are proficient, so we chose to utilize the proportion of students deemed “proficient” by the ACT described above. The table below indicates that EAA students score significantly below the national and state averages (see Table 1). The ACT report (Exhibit 4) provides a breakdown by ethnicity for the national sample, but does not break down Michigan scores into subgroups. Therefore only the national subgroup data were used from this comparison. Table 2 compares the national average for African-American students to performance of the African-American students in the EAA. Again, the data show EAA students perform significantly below the national peer-group averages. Finally, student mobility may explain the inexplicably low scores for EAA students due to limited exposure (only one year) to the EAA curriculum and pedagogy. A “mobility” variable was included in the data file, and we will assume (without codebooks to know for sure) that students who were coded “0” were the non-mobile subgroup. There were 650 African-American students with valid mobility and ACT proficiency scores of which 608 (93.5%) were deemed “non-mobile,” given the explanation above. Table 3 demonstrates there was no appreciable difference between students who were exposed to an EAA education for one year and those who received two or more years of teaching.

Table 1. Percent College and Career Ready

Subject area	Nationally	Michigan	EAA Students
English	64%	59%	6.4%
Reading	46%	40%	2.2%
Math	42%	34%	0.3%
Science	38%	34%	0.4%
Proficient in all four	28%	22%	0.1%

Table 2. Percent College and Career Ready for African-American Students

Subject area	Nationally	EAA Students
English	29%	6.3%
Reading	9%	2.2%
Math	14%	0.3%
Science	9%	0.4%

Table 3. Percent College and Career Ready for “Non-Mobile” African-American Students

Subject area	Nationally	EAA Students
English	29%	6.4%
Reading	9%	2.3%
Math	14%	0.2%
Science	9%	0.5%

The exceptionally low scores across all domains for EAA students prompted researchers to delve into 2014 and 2013 MME data (comparative 2012 data were not provided), a portion of which includes ACT sub scores to allow an apples-to-apples comparison to the data provided, in order to see if these low scores are a trend in EAA test Scores. Table 4 compares EAA student proficiency across time to the 2015 Average Proficiency numbers utilized above. EAA students declined in all subjects between 2014 and 2015, and at no time did EAA students meet or approach any proficiency average benchmarks.

Table 4. Percent Proficient on ACT Sub Scores by Year Compared to the Michigan 2015 Average

Subject area	2015 Average Proficiency			EAA Students Proficient		
	Nationally	Michigan	African-American	2015	2014	2013
English	64%	59%	29%	6.4%	6.6%	7.9%
Reading	46%	40%	9%	2.2%	3.1%	2.0%
Math	42%	34%	14%	0.3%	0.6%	0.6%
Science	38%	34%	9%	0.4%	1.1%	0.7%
Proficient in all four	28%	22%		0.1%	0.1%	0.0%

The second charge of the Board of Regents to the EAA to improve student achievement from 2014 to 2015 does not appear to be met. In fact EAA students declined in all ACT subject areas scores. The data demonstrate failure to meet the second criteria for improvement established by the EMU Board of Regents.

### **Fiscal Accountability**

The EAA has no taxing authority and relies almost exclusively on state support for its operations. The EAA is leasing the buildings from DPS at a rate of \$1 per year plus \$950 annually for each Detroit resident student attending an EAA school. The EAA assumes all responsibility to manage the assets leased. Money expended by the EAA for building improvements and/or additions are deducted from the leased payments. The EAA granted charters to three of the schools and acts as their fiscal agent accountable for providing oversight and compliance. EAA employees do not participate in the Michigan Public School Employees Retirement System (MPERS) defined benefits plan but are provided a defined contribution plan with an employee match up to 7.5 percent.

In addition, the EAA maintains related party transactions as a result of the interlocal agreement. The EAA contracts with DPS for IT management, security and other services for a cost of approximately 1.8 million dollars for the 2013-14 school year. DPS also operates the food service program in all EAA buildings.

The EAA also contracted with Eastern Michigan University during the 2013-14 fiscal year for professional development services contributing to the purpose of the Skillman Foundation Grant. The amount was \$45,000 with an additional \$90,000 accrued for the same school year.

### **EAA Funding Sources and Contracted Services**

As stated earlier, the EAA receives no local tax revenue and relies almost exclusively on state pupil membership and categorical aid. In the 2013-14 fiscal year, the EAA received \$46.41 million in state foundation allowance and \$11.76 million in grants from non-profit organizations. The 2014-15 budget anticipated 62.5 percent of revenue in state sources and 35 percent in federal sources with 2.5 percent other sources. One of the most important factors is student enrollment. Approximately 52 percent of the EAA General Fund revenue is from student enrollment (foundation allowance). Three fourths of Michigan school districts are experiencing enrollment decline as a result of Michigan birth rates below replacement levels, out-migration of families to other states, and most importantly schools of choice which allows students to leave their home districts and enroll in a charter school, or another school district within their intermediate school district. Urban districts are especially hit hard as parents “vote with their feet” and withdraw their child from their current district in search of other options. Detroit now has more Detroit children attending Detroit charter schools than DPS schools. The EAA had 8,683 students and 1,276 charter school students (9,959) in 2012-13. By 2014-15 EAA schools enrolled 6,586 students and 951 charter students (7,507) for a loss of nearly 2,500 students. The budget adopted for FY 2016 projects 7,015 students (6,015 in direct run schools). The 2015-16 foundation allowance per-pupil for EAA students is \$7,434, the same as DPS students. For each of the nearly 2,500 students lost to the EAA, \$7,434 per student was also lost which is not sustainable in the short term for the EAA as well as other districts similarly affected.

In addition to state aid and federal grant revenue, the EAA received in 2013-14 a substantial amount of funding from private sources. The significant private sources include: \$4,000,000 Kellogg Foundation; \$500,000 General Motors; \$1,000,000 Carnegie Corporation of New York, \$6,000,000 Robertson Foundation, and the Michigan Educational Excellence Foundation including the Skillman Foundation totaling \$5,622,795. Long term, foundation support at these levels are un-sustainable to support future operating costs.

### Audit Findings

Both the year end audit of the 2012 and 2013 fiscal years noted material internal control weaknesses. The start-up year (2011-12) noted failures to record and track financial information in a timely manner, grant proceeds not appropriately tracked and used in accordance with the grant agreement, and computers containing EAA data had no backup capacity. The initial lack of segregation of duties affected all EAA transactions recorded in the financial system. In the fiscal year 2013 audit of the Michigan Educational Choice Center (charter school), the audit noted material non-compliance by the Academy with the Michigan Uniform Budget and Accounting Act as well as material internal control weaknesses and lack of evidence of board oversight of fiscal and budget matters.

As of June 30, 2014 the EAA reported a deficit fund balance in the General Fund which is a violation of state law. The EAA is required to develop a deficit elimination plan which must be filed with the Michigan Department of Education for their approval. As we were not provided a copy of the 2014-15 deficit elimination plan against which the EAA is operating, no review can be made on that compliance or current financial status. EAA officials indicated that the deficit was caused in large part by the deferral of revenues not received within 60 days of the end of the year and the deficit was expected to be eliminated going forward. The 2014-15 adopted budget reflects a small year-end balance of \$92,000 although with no audit available this cannot be confirmed. The EAA is not unlike many Michigan school districts that are pushed into financial distress by school enrollment loss. It is hard to imagine large scale improvement in student achievement while millions of dollars annually are being stripped from schools that would have provided student support for learning and reduced class sizes. Since the governor's recently proposed bailout of the DPS system has not yet passed the legislature, it is conceivable that the EAA going forward could be eliminated and reconfigured into a new DPS system which would of course render the entire issue moot.

### Summary

It appears from a cursory examination that the EAA has experienced weak financial management over time, and has experienced material weaknesses in its internal controls. These weaknesses have led to difficulty in procurement, accountability and transparency and has resulted in fraudulent activity with some key employees currently under investigation by the FBI. Further, the EAA continues to lose enrollment as negative perceptions of EAA schools cause parents to seek other options for their child. The long term loss of student membership aid, coupled with the eventual end to large start-up grants will make future financial viability of EAA schools problematic.

### **Complete transparency of all activities, including prompt and appropriate responses to requests made under the Freedom of Information Act**

We have limited documentation to examine this element of the evaluation. If more time was provided then we would contact the EAA's attorney in charge of FOIAs at Clark and Hill Law Firm and ask for all FOIA requests since 2012 and the EAA's response to these requests. We did find information available in public discourse (see Exhibit 8.1) regarding an ongoing court case, Tolbert v. EAA FOIA, which may speak to the transparency and FOIA responses from the EAA over the past year. In February 2015, Mr. Tolbert requested information regarding the contractual relationship between the EAA and Futures Education of Michigan (Futures)—a subcontracting company hired to provide the Special Education Program for the EAA. The request focused on the following: the original contract, amendments to the contract, materials

pertaining to the evaluation of the quality of services provided by Futures, records on disputes between the EAA and Futures (e.g., services provided, non-payment of billed work, etc.), and material related to the decision to renew or terminate the agreement between the EAA and Futures (for more detail on the original request see appendix B in Exhibit 8.2). The details of the request are less pertinent than what transpired after the original filing. The EAA's response, through email exchanges available in appendixes C-G of exhibit 8.2, did not meet the response standard outlined in Michigan Law and resulted in the plaintiff filing a formal complaint to compel disclosure of public records in April 2015 (Exhibit 8.2). The lack of a formal response to this request led to a filing of a motion for entry of default judgment against the EAA in August 2015 and outlines the plaintiff's argument, detailing the complaint against the EAA and the lack of formal response to the original FOIA (Exhibit 8.3, see pages 4-6). Judge Popke issued an order entitled Freedom of Information Act Request and to Show Cause, compelling Chancellor Conforme and attorneys Gubkin and Crocket to appear in front of her court in October, 2015 (Exhibit 8.4). The judge's decision, October 23, 2015 (see Exhibit 8.5), ordered the EAA to produce a formal response (which was due five business days after the initial FOIA request on February 20<sup>th</sup>, or 10 business days under special circumstances) to the FOIA request and resolve the dispute (providing all public information requested of the FOIA) by the end of November, 2015.

The substantial length of time to respond to the FOIA request by Mr. Talbert (248 total days, or 171 business days) does not appear to meet the threshold of transparency and prompt and appropriate response to all FOIA requests by the EAA set forth in the EMU Board of Regents' motion of December 5, 2014. The case described above demonstrates failure of the EAA to meet the fourth criteria for improvement established by the EMU Board of Regents.

### **Conclusion and Recommendation**

We must once again note that there are limitations to our response given the timeline and materials provided by the EAA. That said, our analysis of the information provided as well as additional material within the public domain indicates that the Educational Achievement Authority has **FAILED TO MEET ALL CRITERIA** established in the Eastern Michigan Board of Regents motion passed on December 5, 2014, and therefore we recommend termination of the agreement between EMU and the EAA.

We also urge the EMU Board of Regents to **IMMEDIATELY WITHDRAW** from the agreement with the School District of the City of Detroit. The Authority has failed to fulfill obligations under several sections of the Interlocal Agreement: Section 7.05 (Freedom of Information Act) which demands adherence to requirements under FOIA; and Section 7.11 (Transparency) which requires that the "powers, duties, rights, obligations, functions, and responsibilities" of the Authority be administered in "a transparent and open manner that encourages public oversight, civic participation, and citizen engagement." Having failed to fulfill these obligations, the Authority is in breach of the contract. The Authority's failure to fulfill its contractual obligations has harmed the reputation of Eastern Michigan University. In addition, immediate withdrawal would serve to put an end to teacher unions' boycotts of student teachers from EMU that began in Fall of 2013. These boycotts have made placements of our students in classrooms increasingly difficult. Given the harm accruing from association with the EAA, the university should exercise its right under law to terminate the agreement immediately.