

**Updated Guidance Concerning the Applicability of
the Education Jobs Fund Program to
Charter Schools**

**U.S. Department of Education
October 15, 2010**

Introductory Note

On September 1, 2010, the U.S. Department of Education (Department) issued guidance on the applicability of the Ed Jobs Fund (Ed Jobs) program to charter schools. In response to questions that we received about that guidance, we are providing updated guidance on the applicability of the Ed Jobs program to charter schools. This updated guidance provides revised answers to Questions 3 and 6 and supersedes the September 1, 2010 guidance.

1. May a charter school that is a local educational agency (LEA) receive Ed Jobs funds?

Yes. A charter school that is an LEA receives Ed Jobs funds on the same basis as other LEAs in the State. State law determines whether a charter school is an LEA or a school within an LEA.

2. How may a charter school that is an LEA use its Ed Jobs funds?

Like other LEAs, a charter school that is an LEA must use its Ed Jobs funds only for compensation and benefits and other expenses, such as support services, necessary to retain, recall, rehire or hire employees to provide early childhood, elementary, or secondary educational and related services.

3. May a charter school that is an LEA use Ed Jobs funds to pay the compensation and benefits of individuals who provide school-level services but are not employees of the charter school or another LEA?

No. A charter school that is an LEA may not use Ed Jobs funds to pay for contractual school-level services provided by individuals who are not employees of the charter school or another LEA. Thus, a charter school LEA generally may not use Ed Jobs funds to pay for the compensation and benefits of employees of a charter management organization or an educational management organization who provide school-level educational and related services in the charter school.

There may be limited circumstances, however, where a charter school maintains a sufficient level of control over a contract employee that the individual would be considered an “employee” of the charter school under a common-law agency test. This determination would have to be

made based on the specific facts and circumstances of the relationship of the contract employee to the charter school. The courts have relied on a number of factors in determining whether an individual is an employee under a common-law agency test, including: (1) authority to hire and fire employees, promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours; (2) day-to-day supervision of employees, including employee discipline; and (3) control of employee records, such as payroll, insurance and taxes. If a charter school LEA determines that a contract employee is an employee of the charter school under a common-law agency test and uses Ed Jobs funds to support that individual, the Department recommends that the charter school LEA document clearly the basis for that determination, including obtaining a certification from the school's attorney that the common-law agency test has been met.

4. Must a State distribute funds to a charter school that is an LEA but currently does not have employees?

As noted above, a State must award Ed Jobs funds to a charter school that is an LEA on the same basis as it awards such funds to other LEAs in the State. This includes a charter school that is an LEA but does not have any employees. If such a charter school is precluded from hiring employees and is unable to obtain and exercise the authority to hire on a timely basis, the State should reallocate the charter school's Ed Jobs funds to other eligible LEAs in the State.

5. If a charter school that is an LEA does not have any employees, how may it use its allocation of Ed Jobs funds?

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

6. May Ed Jobs funds be used to support the compensation and benefits of individuals who are employees of a charter school that is not an LEA, but is a school within an LEA?

Yes. An LEA may use Ed Jobs funds to pay the salaries and benefits of individuals who provide school-level services and are employees of the charter school, even if those individuals are not considered to be employees of the LEA for other purposes. As noted earlier, an LEA generally may not use Ed Jobs funds to pay for school-level educational and related services that are provided by employees of a charter management organization or an educational management organization. There may be limited circumstances, however, where an LEA or charter school maintains a sufficient level of control over a contract employee that the individual would be considered an "employee" of the LEA or charter school under a common-law agency test. (*See* Question 3 above.)