

Comments from The Network for Public Education Regarding Proposed Priorities, Requirements, Definitions, and Selection Criteria-Expanding Opportunity Through Quality Charter Schools Program (CSP)-Grants

Docket ID Number: ED-2022-OESE-0006

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The Network for Public Education (NPE) writes in response to the invitation to submit comments regarding “Proposed Priorities, Requirements, Definitions, and Selection Criteria-Expanding Opportunity Through Quality Charter Schools Program (CSP)-Grants to State Entities (SE Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants).

NPE is a national non-profit organization with 350,000 subscribers. We network nearly 200 national, state, and local organizations all committed to the same mission—to preserve, strengthen and support our democratically governed public school system. For the past several years, we have been deeply concerned by what we view as endemic corruption and waste in the Federal Charter Schools Program.

The U.S. Department of Education (USED) must update its priorities and its requirements to address loopholes and flaws in the program that have resulted in for-profit run schools receiving grants, 12% of all CSP grants going to charter schools that never open, grants received by schools and charter management organizations that provide false and misleading information, and sub-grants issued to charter schools with a history of exacerbating racial segregation and that exclude, by policy or practice, students with disabilities and students who are English Language Learners.

The Award of CSP Grants Charter Schools Operated by For-Profit Organizations

We strongly support the Department’s attempt to ensure that charter schools operated by for-profit management corporations do not receive CSP grants, specifically this language:

- (a) Each charter school receiving CSP funding must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a non-profit management organization operated by or on behalf of a for-profit entity, under which the management organization exercises full or substantial administrative control over the charter school and, thereby, the CSP project.*

The federal definition of a public school under IDEA and ESEA is “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” 20 U. S.C. §§ 1401(6) (IDEA), 7801(18) (ESEA) Similarly, the statutes define a “secondary school” as “a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law.” 20 U.S.C. §§ 1401(27) (IDEA), 7801(38) (ESEA).

Former for-profit entities have created non-profit facades that allow the for-profit and its related organizations to run and profit from the charter school, following the judgment of the Ninth Circuit Court of Appeals in *Arizona State Bd. For Charter Schools v. U.S. Dept. of Educ.* in 2006 (464 F.3d 1003).¹

Ineffective provisions undermine the present regulations against the disbursement of funds from the federal Charter Schools Program (CSP) to charter schools operated by for-profit entities. We identified over 440 charter schools operated for profit that received grants totaling approximately \$158 million between 2006 and 2017, including CSP grants to schools managed with for-profit sweeps contracts.²

We offer as examples the recent CSP grants awarded to Torchlight Academy Charter School of North Carolina³ and Capital Collegiate Preparatory Academy of Ohio.⁴ We also bring your attention to the audit of a charter school run by National Heritage Academies in New York.⁵ The State Comptroller specifically chides the charter board for the fees taken by a for-profit that played the role of applying for and managing grants. National Heritage Academies schools have frequently received CSP grants and operate under sweeps contracts.

The relationship between a for-profit management organization is quite different from the relationship between a vendor who provides a single service. A school can sever a bus contract and still have a building, desks, curriculum, and teachers. However, in cases where charter schools have attempted to fire the for-profit operator, they find it impossible to do without destroying the schools in the process.

Recommendations:

Many for-profit organizations operate by steering business to their for-profit-related entities. They are often located at the same address, and the owner of the management company or a member of the immediate family is the owner of the related entity. Therefore, it is recommended that wherever references to for-profit organizations appear, the phrase “and its related entities” is added.

- (a) *Each charter school receiving CSP funding must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a non-profit management organization operated by or on behalf of a for-profit entity, under which the management organization **and its related entities** exercise(s) full or substantial administrative control over the charter school and, thereby, the CSP project.*

Quality Control of Awards and the Importance of Impact Analysis

We strongly support the proposed regulations that seek to bring greater transparency and better judgment to the process of awarding CSP grants. We especially support the inclusion of a community impact analysis.

We are pleased that “the community impact analysis must describe how the plan for the proposed charter school take into account the student demographics of the schools from which students are,

or would be, drawn to attend the charter school,” and provide “evidence that demonstrates that the number of charter schools proposed to be opened, replicated, or expanded under the grant does not exceed the number of public schools needed to accommodate the demand in the community.”

More than one in four charter schools close by the end of year five.⁶ A foremost reason for both public school and charter closure and the disruption such closures bring to the lives of children is low enrollment, as seen this past month in Oakland.⁷ In New Orleans, school closures have resulted in children being forced to attend multiple schools during their elementary school years, often traveling long distances. Between 1999 and 2017, nearly one million children were displaced due to the closure of their schools, yet only nine states have significant caps to regulate charter growth.⁸

We applaud language that states, “The community impact analysis must also describe the steps the charter school has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn or in which the charter school is or would be located, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools...”

In some states, charter schools have been magnets for white flight from integrated schools.⁹ Other charter schools have attracted high achieving students while discouraging students with special needs from attending.¹⁰ And, as you know from the letter you received in June of 2021 from 67 public education advocacy and civil rights groups, the North Carolina SE CSP sub-grants were awarded to charter schools that actively exacerbated segregation, serving in some cases, as white flight academies¹¹ The information requested by the Department is reasonable and will help reviewers make sound decisions.

In addition to our support for the proposed regulations, we have two additional recommendations to strengthen the impact analysis proposal.

Recommendations: (1) That impact analysis requirements include a profile of the students with disabilities and English Language Learners in the community along with an assurance that the applicant will provide the full range of services that meet the needs of students with disabilities and English Language Learners. (2) That applicants include a signed affidavit provided by district or state education department officials attesting to the accuracy of the information provided.

Regarding proposed rules regarding transparency, we note that in the past, schools were awarded grants without providing even one letter of support¹², or provided false information indicating support that did not exist.¹³

We also strongly support the requirement state entities provide additional supervision of grants. Some will argue that they do not receive sufficient funding to provide supervision. We believe that funding is more than sufficient and we offer the following example as evidence.

In 2020, the Pennsylvania Coalition of Public Charter Schools (PCPCS) received a SE grant of \$30 million to open 18 new or expanded charters in the Commonwealth within five years. ESSA allows state entities to retain 10% of all grant funding with 3% dedicated for grant administration. That means that this small state entity would have access to nearly \$1 million dollars to supervise the

CSP grant spending of eighteen schools. Given that it is a five-year grant, PCPCS would therefore be allowed to spend from CSP funding \$200,000 a year to review applications and keep track of grant spending.

To date, three schools have been awarded grants according to the two co-directors hired to administer the program.¹⁴

We strongly support all SE sub-grant review requirements. These include: (a) how peer reviewers will be recruited and selected, and (b) efforts the applicant must make to recruit peer reviewers from diverse backgrounds and underrepresented groups. We applaud the requirement for a review team. In some states, including New York, CSP sub-grants are routinely distributed as part of the charter authorization process.

To those proposals we suggest adding the following:

Recommendations: (1) That review teams must include at least one reviewer representative of the district public school community. (2) that a minimum point threshold be established for an award, (3) that applications be checked for factual accuracy, and (4) that applications be posted for public review and comment for a period of no less than 45 days before award decisions.

We also recommend that the Department retain funds from the Charter Schools Program to conduct audits of all Developer, CMO and SE subgrants to ensure the funds are being properly spent and that the conditions and aspirations as described in the applications are being met. Annual audits of 5% of all active awardees in each of the programs, randomly chosen by the Department should be conducted each year.

Priorities One and Two

We strongly support the proposed priorities, which we believe will help return the charter school movement back to its original purpose and benefit the children who attend charter schools. Priority one builds off the successful community schools' movement. Priority two encourages cooperative activities between district and charter schools. We believe that these priorities should be absolute priorities.

Unfortunately, in many cases charter schools' employee handbooks commonly require teachers to sign nondisclosure agreements that threaten legal action if they reveal the schools "trade secrets" including such things as "curriculum systems, instructional programs, curriculum solutions ... new materials research, pending projects and proposals, proprietary production processes, research and development strategies, technological data, and technological prototypes."

Recommendation

That the Department disallows grants or sub-grants to any schools that apply under priority two if the school or the CMO considers educational material confidential and proprietary and/or does not make publicly available financial, personal or contracting information.

Planning Grants to Unauthorized Charter Schools

According to a 2019 response to Representative Raul Grijalva by then-Secretary of Education Betsy DeVos, 12% of all CSP grants between 2001 and 2019 were awarded to schools that never opened and were not expected to open.¹⁵ In most cases, these schools had never achieved authorization. Whether unauthorized schools can receive funding for planning purposes and how much can be awarded has been left up to the states. This has resulted in large amounts of federal CSP money in the pockets of people who provided no service to the public.

It has also resulted in egregious abuse, especially in Michigan, where charter schools have received more than \$100,000 in awards before their authorization was approved. An in-depth review of such planning grants by Michigan State Board of Education President Cassandra Ulbrich revealed questionable submissions, including invoices that would-be charter operators paid themselves and excessive technology purchases.¹⁶

Recommendation: A school's planning amount before an authorization is limited to \$10,000. If justifiable expenses exceed that amount, they should only be compensated following authorization.

Proposed Selection Criterion for CMO Grants

ESSA places the following restriction on grants awarded to State Entities: *No State entity may receive a grant under this section for use in a State in which a State entity is currently using a grant received under this section.* However, ESSA is silent regarding the awarding of grants to CMOs. This has resulted in CMOs having several active grants at the same time, with new grants being issued without proper inspection of the efficacy of former grants. For example, it has resulted in the IDEA charter CMO receiving six grants in a ten-year period totaling nearly \$300 million.¹⁷ These grants occurred under a leadership structure that engaged in questionable practices, including the attempted yearly lease of a private jet,¹⁸ related-party transactions, and the rental of a luxury box at San Antonio Spurs games.¹⁹

IDEA received two awards, in 2019 and 2020, totaling more than \$188 million even as the 2019 audit of the Inspector General found that IDEA submitted incomplete and inaccurate reports on three prior grants. The IG report also looked at a randomly selected sample of expenses and found that IDEA's charges to the grants did not always include only allowable and adequately documented non-personnel expenses.

Recommendations:

That department regulations disallow the awarding of grants to any CMO currently using a grant received under the CMO program and that for any grant exceeding \$25 million, the Department's OIG conducts an audit before an additional grant is awarded.

ENDNOTES

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- ¹¹ Letter to Secretary Cardona from 67 education and civil rights advocacy organizations. (2021, June 16). Retrieved on March 23, 2022, from https://networkforpubliceducation.org/wp-content/uploads/2021/07/Letter-to-Secretary-Cardona-re_-North-Carolina-grant-6.16.pdf
- ¹² Strauss, Valerie. (2020, December 3), How a soccer club won a 126 million dollar grant from Betsy DeVos's education department to open a charter school. *The Washington Post*. Retrieved March 23, 2022, from <https://www.washingtonpost.com/education/2020/12/03/how-soccer-club-won-126-million-grant-devoss-education-department-open-charter-school/>
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