



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

June 28, 2019

Honorable Raul M. Grijalva  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Grijalva:

I appreciate your interest in the U.S. Department of Education's (Department) Charter Schools Program (CSP) and your duty to provide oversight of the administration of this program. When Congress reauthorized CSP in 2015 with strong bipartisan support, it set the ambitious purpose to "improve the United States education system and education opportunities for all people in the United States by supporting innovation in public education in public school settings that prepare students to compete and contribute to the global economy and a stronger Nation."<sup>1</sup> Ensuring CSP meets this charge is critical if we are to rethink school for the 21<sup>st</sup> century and provide all students with an education that prepares them for success.

Responsible stewardship of taxpayer funds is a fundamental duty of the Department. We share your concern regarding any allegations of waste, such as the allegations cited in your letter from a report published by the Network for Public Education, "Asleep at the Wheel: How the Federal Charter Schools Program Takes Taxpayers and Students for a Ride."

However, I am cautious when the source of such allegations is an organization such as the Network for Public Education, which has an obvious agenda. Look no further than a recent opinion piece entitled "Charter Schools Damage Public Education" written by its president Diane Ravitch to understand how the Network for Public Education views public charter schools: "Charter schools drain resources and the students they want from public schools. When students leave for charters, the public schools must fire teachers, reduce offerings and increase class sizes. Some districts teeter on the edge of financial ruin because public funds have been diverted to charters."<sup>2</sup> Quite simply, the Network for Public Education is anti-reform, anti-charter and anti-choice; accordingly, its report represents nothing more than a political attack.

The reality is that the CSP is accomplishing what was intended by its bipartisan coalition of supporters in Congress. Whereas the Network for Public Education alleges widespread waste, in fact more than 96 percent of all CSP funds awarded to help create new charter schools or to help expand existing high-quality charter schools have resulted in the successful opening of a new charter school or expansion of a high-quality charter school. Whereas the Network for Public Education alleges many of these grantees close shortly after opening their doors, in fact only 1.7 percent of all CSP-funded charter schools close before their second year of operation. Those are the facts.

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<sup>1</sup> See Section 4303(1) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA)

<sup>2</sup> Ravitch, Diane. "Charter Schools Damage Public Education." *The Washington Post*, June 22, 2018.

Unfortunately, several of your colleagues appear to have embraced this report without a careful examination of it. This rush to judgment risks fracturing the longstanding bipartisan support for public charter schools, which so many American families have come to rely upon as the only alternative to failing public schools. It also detracts from having an honest conversation about what is—and what is not—working in American education.

Therefore, this letter will respond to the allegations made by the report and after which I hope we can once again elevate the discussion to how to best serve the interests of students in an effective, bipartisan way.

First, the report's claim of "around \$1 billion" in potential waste is inaccurate. The authors of the report appear to have reviewed about eight years of the CSP program, from 2006 to 2014. They identify grantees whose charter schools had not yet opened, had opened but then closed, or had never opened, and assigned each of those schools an estimated average award amount, regardless of the actual award made. Although they plainly acknowledge that some of these charter schools are "prospective"—in other words, are in the process of opening—they count awards made to these schools and any others as "losses," in an estimated amount of more than \$500 million. Further, since their estimate represents about a third of the charter schools awarded funding over the eight-year period, the authors apparently assume that one-third of *all* CSP funds ever awarded must also be "losses." This leads the authors to conclude the program has lost \$1 billion or more in Federal taxpayer funds. That is not rigorous analysis. It considers charter schools that are in the process of opening "closed" and its questionable methods overstate both the number of closed charter schools and the amount those charter schools received.

Contrary to the assumptions in the report, when an entity is awarded a multi-year CSP grant or subgrant, the total amount of funding is not provided in its entirety upfront. Instead, funds are distributed over the life of the award period, contingent on the grantee demonstrating substantial progress. This is true of all Department discretionary grants. Additionally, CSP grant funds generally function as reimbursements for allowable costs the grantee incurs. Funds remain in the Department's grant management system until they are released to the grantee for the actual outlay on allowable costs. Unspent funds never leave the Department and are returned to the United States Treasury. Grantees that are unable to make substantial progress toward the project objectives do not receive additional funds.

Since 2001, of the 5,265 charter schools that have received funding through a State entity or directly from the Department, 634 did not open and are unlikely to open in the future. As the developers of these schools received only CSP "planning" funds, which serve the specific purpose of enabling a charter school developer to explore the feasibility of opening a new charter school, the average award size for these schools was significantly lower than the average award size for CSP "implementation" grants and subgrants. In total, the funds awarded comprise less than 3.5 percent of the more than \$2 billion in total awards made to public charter schools during the same period. Thus, more than 96 percent of all CSP funds awarded to help create new charter schools or to help expand existing high-quality charter schools resulted in the successful opening of a new charter school or expansion of a high-quality charter school.

Additionally, the report suggests that many CSP-funded charter schools close shortly after opening. The Department's data indicates only 1.7 percent of CSP-funded charter schools close before their second year of operation, the vast majority of which were funded prior to 2013. The start-up success rate for charter schools receiving CSP funds has steadily improved over recent years, likely due in part to the Department's enhanced oversight, as well as ongoing efforts to improve authorizing practices, including as a result of statutory changes in ESSA. State educational agencies (SEAs) and State entities also have become more selective in the subgrant award process, resulting in the creation and success of more high-quality charter schools.

Congress created this program with the intention to make start-up investments. As someone with experience in the start-up world, I can attest not every start-up will succeed. What motivates the best entrepreneurs is that the potential of the new enterprise is so important and necessary that it is worth the risk of failure. That is acutely true for new public charter schools, which so often represent the only alternative to broken traditional public schools. Therefore, the question is not whether every single investment succeeded, but how many did in fact succeed and what were the results?

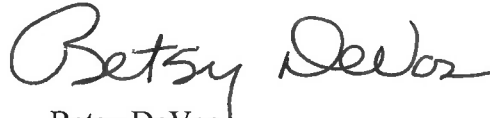
In that regard, the evidence is clear. Charter schools achieve positive results for students. Stanford University's Center for Research on Education Outcomes has shown that charter school students outperform their peers in traditional public schools. The impact is most pronounced for African American students enrolled in charter schools, who were shown to gain an additional 59 days of learning in math and 44 days of learning in reading each year compared with district school peers. Amid growing research that students benefit from being taught by one or more teachers of the same race over the course of their education, a recent study found that African American students in charter schools are about 50 percent more likely to have an African American teacher than their peers in traditional public schools.

So, while I welcome debate as to how the Federal government can most effectively make start-up investments in charter schools, we must bear in mind that currently the vast majority of grantees open and stay open, consistent with the program's intent, and that, as a whole, public charter schools are producing positive results for kids. Further, one might presume that such debate was largely settled when Congress reauthorized the program in 2015 with broad bipartisan support. Lastly, I would be remiss not to point out that nearly all traditional public schools receive continuous funding, year after year after year, regardless of performance or outcomes.

What isn't debatable is that the Network for Public Education had a purpose when it published its report: to smear public charter schools, the CSP program and its grantees under the guise of research. It makes sweeping conclusions without supporting data or methodological rigor. It is an obvious attempt by an agenda-driven organization to score political points at the expense of the millions of American families who send their children to high-quality public charter schools and to drive a wedge between the longstanding bipartisan coalition that supports public charter schools.

I hope the following responses enhance your understanding of the program's administration, so we can work to continually strengthen CSP and provide every student with access to an excellent education. Please note that we are sending an identical response to the other signatories of your letter.

Sincerely,



Betsy DeVos

Enclosure

**1) How is your Department monitoring CSP grant funding to grantees that never open, open and close within the same academic school year, or fail to open for a second academic school year?**

Under the CSP, the Department awards competitive grants to State entities, and State entities, in turn, award competitive subgrants to charter school developers to enable them to open and prepare for the operation of new charter schools, to replicate high-quality charter schools, and to expand high-quality charter schools. The Department awards direct CSP grants to charter school developers for these same purposes on a competitive basis only in states that do not have a State entity with an active CSP grant.

As stated above, very few CSP-funded charter schools close before their second year. State entities bear primary responsibility for monitoring their CSP subgrants and ensuring that they meet statutory and regulatory requirements. The Department monitors CSP State entity grantees (and other direct grantees) to ensure compliance with applicable program statutes and regulations, as well as progress toward achieving the program objectives. The CSP monitoring protocol requires quarterly monitoring activities with each individual grantee and on-site monitoring visits at least once during the project period, in which the operational status of the school is central to the evaluation of the overall performance of the grant. Additionally, CSP staff monitor draw-downs of grant funds and the Department's grants management system flags large draw-down activity as well as a lack of draw activity, allowing for early identification and outreach in situations where a compliance issue may exist. The Department provides support to charter school grantees that close in order to assist them in the grant closeout process, including the proper disposition of assets.

**2) How do you receive information from the states that informs the Department of grantees that have not opened, closed or that are under investigation?**

CSP State entity grantees report on each subgrant award made during the project period using the *CSP Data Collection Form*. The data is updated annually to add new subgrant awards and reflect the current status of existing subgrantees, including operational status. CSP staff utilize the data to monitor the status and performance of State entity grantees and to inform decisions regarding any corrective actions that may be necessary for the remainder of the grant period.

In addition, the Uniform Guidance at 2 CFR 200.331 prescribes requirements regarding subrecipient monitoring (i.e., state monitoring responsibilities for each charter school subgrant project funded under the CSP grant). When monitoring subgrantees under the CSP, States must evaluate each subgrantee's risk of noncompliance with Federal statutes and regulations and the terms and conditions of the subgrant to develop appropriate monitoring procedures (§200.331(b)). States must monitor all subgrantees to ensure that each subgrant is used for authorized purposes, in compliance with Federal statutes and regulations and the terms and conditions of the subgrant, and that performance goals are achieved.

Finally, the Department engages in quarterly monitoring activities with each State entity grantee, where the grantee is responsible for flagging any issues with their subgrantees, including school closures and ongoing investigations.

In September 2015, the Department issued a Dear Colleague Letter that described the necessity of strong monitoring and oversight practices for all public schools, including public charter schools (*See* Dear Colleague Letter from Assistant Deputy Secretary for Innovation and Improvement, *et al.*, September 28, 2015, <https://www2.ed.gov/programs/charter/finalsignedcsp.pdf>). In addition, in August 2016, the CSP Director sent a letter to State CSP Project Directors specifically reminding them of the requirement that all subgrantees be monitored to ensure that each subgrant is used for authorized purposes, in compliance with Federal statutes, regulations and the terms and conditions of the subgrant, and that performance goals are achieved; as well as of the availability of technical assistance from the Department to that end. (*See* Letter to CSP SEA Project Directors from the Director of CSP, August 4, 2016, <https://innovation.ed.gov/files/2016/08/CSP-Letter-to-SEA-on-Uniform-Guidance-FINAL-08.04.2016.pdf>).

**3) If a charter school receives funding and does not open, or, closes after grant money is disbursed, what is the process for the return of federal funds?**

As stated above, the CSP statute authorizes the Department and State entities to award CSP funds to eligible charter school developers to assist them in planning and designing the program of a new charter school. Although not common, a developer may determine it is unable to open the charter school for legitimate reasons, such as the inability to identify a suitable facility. In such cases, so long as the funds were spent properly, the grantee or subgrantee is not required to return them to the Department. During the grant period, funding awarded to a charter school developer or charter school remains in the Department's grant management system, G5, until the grantee draws down funding to pay for allowable expenses. Consistent with the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 C.F.R. Part 200, grantees generally draw down funds as they incur obligations and may not draw down funds without spending them. Grant funds that are awarded but not spent by the grantee remain in the G5 system and are returned to Treasury. When funds are spent on allowable activities in accordance with ESEA section 4303(h), which may include up to 18 months for planning and program design, there is no violation of the terms of the award and no recovery of funds is appropriate.

If the Department determines that funds were spent on unallowable activities, then the Department may initiate an administrative proceeding to recover the misspent funds. Recovered funds are returned to Treasury.

State entity grantees are responsible for fiscal oversight of their subgrantees. The Department encourages States to develop written procedures and guidelines to assist all charter schools that close in addressing various issues, including the transfer of student records, protection of personal information, placement of students in other public schools, and appropriate disposition of the charter school's assets. Further, the Uniform Guidance at 2 CFR 200.313 and 200.314 describes requirements for the disposition of equipment and supplies under a Federal grant or subgrant including ensuring that Federal funds are used for authorized activities and that assets purchased with Federal funds under the Department's grant programs are used and disposed of properly. (*See also* Letter to CSP SEA Project Directors from the Director of CSP, August 4,

2016, <https://innovation.ed.gov/files/2016/08/CSP-Letter-to-SEA-on-Uniform-Guidance-FINAL-08.04.2016.pdf>).

**4) How is your Department ensuring that CSP grant grantees are following federal civil rights guidelines and are not engaging in discriminatory admissions practices?**

As public schools and recipients of Federal funds, CSP grantees must comply with all applicable civil rights laws and are subject to the same monitoring and enforcement by the Department's Office for Civil Rights as other public schools. Further, to be eligible to receive CSP funds, a charter school that is oversubscribed must admit students by lottery. Charter schools may use a weighted lottery to give slightly better chances for admission to educationally disadvantaged students if permissible under their state law, as well as exempt certain categories of students from lottery admissions.

Grantees that receive CSP funds directly from the Department are required to submit their admissions policies to ensure that their admissions practices are compliant with the law. State entity grantees are required to review the admissions policies of their subgrantees and ensure compliance, and the Department monitors these policies as part of established monitoring protocols.

**5) How do you ensure that the state programs only award federal money to charter schools that comply with federal guidelines and have sound fiscal plans for opening and for continuance?**

Charter schools have strict requirements on financial disclosures, which have been continually strengthened in recent years. Since 2010, all SEA grantees have been required to demonstrate that charter school in the State conducts annual, timely, and independent audits of financial statements that are filed with the authorized public chartering agency. In addition, every recipient of Federal funds, including charter schools, must have a financial management system that enables the recording and reporting of grant expenditures to ensure that funds have been used in accordance with statutory and regulatory requirements and the terms of the grant.

When awarding subgrants, State entities must require eligible entities to submit an application that includes a description of the planned activities and expenditures, how the applicant will maintain financial sustainability after the subgrant period, and a description of the quality controls agreed to between the applicant and their charter authorizer. The Department provides technical assistance to support State entity grantees in developing a comprehensive application and reviews each State entity's documentation prior to its first subgrant competition.

State entity grantees must monitor all subgrantees for compliance with all applicable Federal guidelines. The Department ensures each State entity awardee is conducting oversight of its subgrantees through the onsite State entity monitoring visit protocol. (*See Letter to CSP SEA Project Directors from the Director of CSP, August 4, 2016, <https://innovation.ed.gov/files/2016/08/CSP-Letter-to-SEA-on-Uniform-Guidance-FINAL-08.04.2016.pdf>*).

**6) Do you require that the applicant provide an impact statement that provides information regarding the number of charter and public schools that already exist in the catchment area?**

Applicants for CSP are not required to provide information on the number of public schools that currently exist in the area, as there is no statutory basis to consider this as a factor in determining the award of funds. Were there to be any concerns regarding potential impact of opening, expansion or replication of a charter school relative to other public schools, it is most appropriately addressed at the State or local level during the charter authorizing process or as part of ongoing authorization/reauthorization and oversight activities. It would be impractical and of questionable value for the Federal government to attempt to evaluate local impact after a charter has been authorized consistent with State statute or after the appropriate state entity has authorized its expansion. Further, in accordance with ESEA section 4303(f)(1)(A)(vii), State entities are required to describe how they will support charter schools in local educational agencies (LEAs) with a significant number of schools identified for comprehensive support and improvement, suggesting the presence of other schools by itself does not foreclose, and may enhance, the need for additional high-quality options for students.

**7) How does your Department verify that the information presented in CSP grant applications is accurate?**

During the application review process, CSP staff review the applications, including all written certifications and assurances, to verify that the applicant is eligible to receive funding under the program and the proposed budget is comprised of allowable and appropriate costs. Additionally, the Department's Office of Grants Administration conducts an Entity Risk Review to verify the financial viability of the applicant and its satisfactory performance under other Federal programs. In accordance with 18 U.S.C. section 1001, all applicants submit a signed statement by the authorizing official certifying the "statements herein are true, complete and accurate to the best of [their] knowledge" and "that they are aware that any false, fictitious, or fraudulent statements or claims may subject them to criminal, civil, or administrative penalties."

**8) How is your Department reviewing and implementing recommendations from the Office of Inspector General?**

Consistent with OMB Circular A-50, the Department aims to resolve all audit recommendations within six months of the issuance of a final audit report by the Office of Inspector General. For internal audits, a resolution occurs when there is agreement between the principal office and the OIG on the corrective actions that will be taken to address all recommendations cited in the audit. The principal office will review the fact pattern on which the findings are based to verify the accuracy of the assertions and recommendations cited in the audit report and decide the course of action needed to correct any deficiencies, which then must be agreed upon with the OIG. An internal audit is completed when the principal office indicates all corrective actions have been implemented. Audits are closed when the principal office has certified that all corrective actions have been implemented and the Office of the Finance and Operations has verified supporting documentation for corrective actions and issued a closure memo, which has been accepted by the OIG.



**9) What progress has been made in your Department's corrective action plans following the OIG's audits over the last five years?**

The OIG has issued three internal audits regarding CSP during the past decade. Below is the progress the Department has made over the last five years in addressing the recommendations made in the OIG audits.

The OIG's audit of SEA oversight of charter schools was resolved on March 29, 2017. Completed corrective actions include the issuance of a letter in 2016 regarding monitoring and oversight responsibilities of CSP subgrantees and charter school authorizers, and the provision of technical assistance to all SEA grantees on subgrantee and authorizer monitoring. (See Letter to CSP SEA Project Directors from the Director of CSP, August 4, 2016, <https://innovation.ed.gov/files/2016/08/CSP-Letter-to-SEA-on-Uniform-Guidance-FINAL-08.04.2016.pdf>)

The OIG's audit of charter management organizations and education management organizations was resolved on January 10, 2017. The Office of Elementary and Secondary Education (OESE) has completed four of the five recommended actions and is in the process of implementing the final recommendation.

The OIG's nationwide audit of oversight of closed charter schools was resolved on December 7, 2018. OESE is in the process of implementing all corrective actions.

**10) Why has there been a lapse in updates to the CSP award database of all charter schools that have been awarded federal SEA, non-SEA, CMO, or other program grant money since 2015 and what steps will your Department take to ensure the public record is updated annually?**

As a general practice, the Department posts its direct grant awards to its website in a timely manner consistent with best practices for government transparency and in meeting the public interest. Accordingly, the Department posts all awards on the CSP website within a few days of the award announcement. All CSP awards made to date, including through the State Entity, Developer, and Replication and Expansion of High-Quality Charter Schools programs, are public record and available on the CSP website at <https://innovation.ed.gov/what-we-do/charter-schools/>. Historically, the Department has made available State subgrant data when possible, including the release of the 2015 dataset.