



Porscheoy Brice
U.S. Department of Education
400 Maryland Avenue, SW
Room 3E209
Washington, DC 20202-5970

Re: Docket ED-2022-OESE-0006

Dear Ms. Brice:

As a charter school parent and advocate, I am writing to provide the views of the Florida Charter School Alliance regarding the Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria (NPP) for the Charter Schools Program (CSP), as published by the U.S. Department of Education (ED or the Department) in the March 14 Federal Register. The Florida Charter School Alliance (FCSA) is a non-profit advocacy and support organization that works with more than 670 public charter schools. For more than 25 years, charter schools have been a vital component of our state's system of public K-12 education. Today, our member schools serve more than 341,000 students. Those students -- and the thousands of alumni before them -- have directly benefitted from the CSP.

Before providing our comments on specific provisions of the NPP, I must state that **FCSA and, I believe, the entire charter school community nationally is strongly opposed to the package of proposals enumerated in the NPP, taken as a whole.** The proposed rules would greatly complicate and confuse administration of a program that is already one of the Department's most complex competitive grant programs in terms of its requirements and accountability structures.¹ They would distort the mission and operation of federally supported charter schools, as framed in the authorizing legislation. The sheer volume of the proposed changes and the burden entailed would likely dissuade State entities (SEs), charter school developers, and charter management organizations (CMOs) from applying for aid.

Moreover, the proposals have been put out for public comment very late in the fiscal year (with ED already well behind the normal schedule for CSP grantmaking), making it highly uncertain that the Department's understaffed charter schools office will be able to respond to the comments, make final decisions on the rules, launch competitions with at least 45 days to apply, manage the peer reviews, and make final decisions on the SE and Developer Grants before the end of the fiscal year. (Over the period in which grants have been awarded under the requirements established by the *Every Student Succeeds Act*, the Department has published notices inviting applications by the end of March, with awards not being completed until the very end of the fiscal year.)

¹ [Clearing the Air: An Analysis of the Federal Charter Schools Program](#) found that there's at least as much if not more reporting and accountability in place for CSP funds compared to other ED programs, even programs responsible for allocating significantly more resources (p. 31).

For those reasons, **we call on the Department to defer putting in place, until at least fiscal year 2023, any new priorities, requirements, definitions, or selection criteria for the three affected programs (SE Grants, Developer Grants, and CMO Grants)** and to hold all fiscal year 2022 competitions under the current statutory and regulatory requirements. ED should use the intervening time to engage in meaningful discussions with the community, including the charter school community, about new regulatory provisions, including the purposes of any changes in the program, the goals to be attained, and how those goals can most effectively and efficiently be met. Our member school leaders and we at the FCSA stand ready to participate actively in those discussions.

In addition, we offer the following comments on specific provisions of the NPP:

1. Community Impact Analysis (Application requirement 1 for all competitions and selection criterion

The NPP would require that an application for a Developer or CMO Grant, or for a subgrant under the SE Grants program, include a “community impact analysis.” This analysis would include, among eight distinct elements:

- Descriptions of community support and unmet need for the proposed charter school, including information on over-enrollment of existing public schools and on such phenomena as demand for specialized instructional approaches;
- Descriptions of the applicant’s targeted student and staff demographics and of how the applicant plans to maintain socioeconomically diverse student and staff populations;
- Evidence that the number of charter schools proposed to be opened, replicated, or expanded does not exceed the number of public schools needed to meet demand in the community; and
- A robust family and community engagement plan, covering, among other things, information on how families and community members are and were engaged in the vision and design for the school, on how the school will foster a collaborative culture that involves the families of all students in decision-making, and on how the school will hold enrollment and recruitment events on weekends or other non-work hours.

The notice would also make the quality of the community analysis a selection criterion under the Developer Grants and CMO Grants programs.

The FCSA has many concerns about these requirements, which would subject charter schools to several new conditions to which “traditional” public schools are not held accountable. Program requirement 1(e) in particular implies that charter schools should open only in districts whose schools are over-crowded (which has never been a condition of their creation), requiring evidence that the number of charter schools proposed to be opened “does not exceed the number of public schools needed to accommodate the demand in the community.” (1)(a) references “over-enrollment” of district schools. Neither of these requirements take into consideration:

- the number of seats in high-quality schools accessible to all students;
- possible shifts of students from private schools into charter schools;
- availability of enrollment data. Detailed enrollment data can be challenging to gain access to, especially in districts that do not have open-enrollment policies; or

- hiring a firm to conduct an impact analysis can cost a small operator \$15,000 or more, funds it wouldn't have access to prior to receiving a grant or subgrant.

Charter schools have frequently succeeded in communities whose schools were not achieving acceptable student outcomes and thus were losing enrollments, with families seeking better choices for their children. The CSP has always supported the creation of additional high-quality educational options for children in families in all communities that need them, not just in districts with over-crowded schools; this must continue. The program should particularly encourage the opening of charter schools in communities where children attend low-performing schools and do not have other high-quality options, whether or not a district is operating at capacity.

Further, the language in 1(b) would hold charter schools responsible for maintaining diverse student populations (without defining “diverse”), even in communities that are not diverse, such as those affected by historical neighborhood red-lining. The language would thus make it difficult to open schools in rural areas, on Native American lands, and in heavily Black or Hispanic urban neighborhoods. Similarly, charter schools would be required to maintain diverse staff populations, even if the surrounding communities are not diverse and even if neighboring public schools do not have diverse staffs. The rules would make it particularly difficult to fund the creation of culturally affirming schools that target underserved demographic groups. The following are examples of such schools:

- The Tsalagi Tsunadeloquasdi Cherokee Language Charter School is specifically designed to help keep the Cherokee Language spoken in Tahlequah, Oklahoma, the seat of the Cherokee Nation, and the newly opened Comanche Charter School in Lawton, Oklahoma provides high-quality education for students with an emphasis on indigenous culture. Most Oklahoma charter schools are designed to support specific marginalized communities, such as the racially segregated North Tulsa and East Tulsa, South Oklahoma City's Hispanic communities, and Oklahoma's 39 Native American Tribes within their historic reservation boundaries. Forcing these schools to take action to attract more affluent white students in the name of diversity would be offensive and would actually force them to bring students from other communities into their schools.
- In the neighborhoods where Green Dot schools are located, such as East Los Angeles or South Memphis, the demographic breakdowns are frequently 90 percent or more of one race or ethnicity. Not only have many of the neighborhoods Green Dot serves been historical victims of outright segregation and discrimination, but today gentrification threatens many of these same communities with displacement and erasure.

In addition, the language would allow only one model of a charter school – one in which family and community members are heavily involved in the design of the school and in its day-to-day operations – ignoring the many other varieties of charter schools that have achieved successful results. Again, this is not a requirement that traditional public schools must meet.

Provision (1)(b), which requires student and staff diversity, does not acknowledge that charter schools are open-enrollment schools, and as such have enrollment driven by parent choices and geographic location, which might not make it possible to ensure student diversity. It also states that diversity efforts must be undertaken “consistent with applicable legal requirements”. Some state legal

requirements, such as those in New York, actually contradict this stated intention and have enrollment set-asides that must be met. Who will resolve these inconsistencies for applicants? The peer reviewers? Will ED provide applicants with timely guidance on how to reconcile meeting this application requirement while also complying with state law?

Further, the community impact requirement potentially conflicts with the CSP authorizing statute, which requires State Entity applicants to provide a “description of how the State entity will support diverse charter school models, including models that serve rural communities.” How will applicants meet this statutory requirement and support culturally affirming models, while at the same time not being penalized by peer reviewers?

We note further that the CSP statutory and regulatory language already places considerable emphasis on family and community involvement² and thus question why a plethora of new requirements would be needed. Finally, we note that the new requirements would likely be particularly unworkable in the CMO Grants program, because applicants for those grants typically receive multi-year awards and have not yet identified, at the time they submit their applications, all of the specific communities they will serve over the life of the grant,

For these reasons, we believe the new requirements for an additional community impact analysis are completely unnecessary and call on the Department to remove them from the package. As a lesser alternative, ED might require a community impact analysis but allow grant and subgrant applicants to decide what that analysis includes. (ED might make suggest, through “such as” language, that an analysis include such items as information on charter school waiting lists in the local area or data on the educational outcomes for traditional public schools in the community.) Anything more prescriptive would be damaging to the program and, thus, unacceptable.

2. Contracts with For-Profit Providers

The NPP would require that Developer Grant and CMO Grant applications, as well as applications for SE Grant subgrants, include extensive information on the applicant’s existing and proposed contracts with for-profit entities. Developer and CMO grantees, as well as individual schools receiving CSP funding,

² As examples: (1) ESEA Section 4303(f)(1)(C)(i)(IV) requires that SE Grants subgrant applications include a description of how the applicant will solicit and consider input from parents and members of the community on the implementation and operation of each charter school that will receive funds; (2) ESEA Section 4303(f)(1)(C)(i)(VI) requires that SE Grants subgrant applications include a description of how the applicant will support the use of effective parent, family, and community engagement strategies in operating each charter school that will receive funds; (3) ESEA Section 4303(g)(1) requires ED to consider, when awarding SE Grants, the State entity’s plan for soliciting and considering input from parents and other members of the community on the implementation and operation of charter schools in the State; (4) ESEA Section 4303(h)(5) authorizes SE Grant subgrantees to use subgrant funds to carry out community engagement activities; and (5) the Final Priorities, Requirements, Definitions, and Selection Criteria for the CMOs program, issued by the Department on November 30, 2018, require (as requirement (f) applicants to describe how they will solicit and consider input from parents and other members of the community on the implementation and operation of each replicated or expanded charter school, including in the area of school governance;

would be required to post essentially the same information on their websites. Further, a charter school receiving funding under any of the three programs would be required to provide certain assurances regarding its contracts. The notice also specifies that no CSP-supported school may enter into a contract that gives the contractor full or substantial administrative control over the school or over its programmatic decisions.

The FCSA agrees that greater transparency is needed regarding contracts between charter schools and outside entities. Some of the requirements in the notice are consistent with recommendations previously put forward by the National Alliance for Public Charter Schools. However, for several reasons, described below, the package of requirements, taken as a whole, is unclear and confusing and thus is unlikely to bring about the intended benefits to the program.

For one thing, the requirements would govern charter schools' contracts with "for-profit management organizations," a term that is not defined in the notice and that has no clear meaning. If a school contracts with an entity for delivery of food service, or back-office business operations, or special education-related therapies, and thus has the entity "manage" those functions in the school, does that mean that the entity is a management organization? We have no idea.

Secondly, the notice would require applicants to provide information on any current or *proposed* contracts with for-profit management organizations. If a grantee or subgrantee enters into a contract at some point during the life of its grant or subgrant that it did not describe in its application (because it did not have a firm proposal for that contract at the time of the application), would that be acceptable?

Finally, the language on contracts that give a provider full or substantial administrative control over a school is problematic because: (1) the term "substantial" is undefined and unclear; and (2) the rules regarding the acceptability of those contracts are inconsistent. In some places, the notice calls for information on contracts with providers whether or not a contract gives a provider full or substantial control, implying that such contracts are allowable. In other places the notice clearly states that they are not allowable.

In sum, the provisions on contracts with private entities, while well-intentioned, will be confusing to implement and will be unlikely to produce the desired results. We call on ED to withdraw them (along with the rest of the notice) and to engage with us in the coming year on how to address this important issue.

3. Priority for Collaboration of Charter Schools with Districts and District-Operated Schools

The NPP would add, under Developer Grants and CMO Grants, a new funding priority for applicants that propose collaboration of charter schools with school districts or district-operated schools. An applicant seeking this priority would be required to include, in its application, a letter from each participating district or school, demonstrating its commitment to the collaboration. Similarly, State entities, when conducting subgrant competitions, would be required to give priority either to applicants that propose collaboration with districts or district-funded schools, or that propose community-centered charter schools, or both.

The FCSA strongly supports and encourages the collaboration of charter schools with the traditional schools and districts in their communities and the sharing of best practices. In Florida, last year we launched the District/Charter Collaborative in partnership with the Florida Department of Education. The goal was to bring together charter and district leaders to share best practices. The CSP authorization includes considerable language encouraging such collaboration;³ the FCSA has supported that language and has worked with members of the community on identification of best practices for coordination. However, the proposed language would essentially give school districts a veto over creation of charter schools, depending on whether ED (and State entities, for subgrant competitions) implements the priority as an absolute priority or as a competitive preference priority that is given a significant number of competitive points.

The Department must understand that collaboration goes both ways and that a failure of charter schools and their local traditional schools or districts to collaborate will frequently stem from the district or traditional school officials' unwillingness to do so, not the other way around. District and traditional school officials often see charter schools as competitors or interlopers, even when traditional schools are not performing well and even if local families want what the charter schools have to offer. Districts and traditional schools are thus likely to see the new priority language as a mechanism for blocking the creation of new charter schools in their communities and to withhold participation in collaborative agreements, even when the traditional schools are not succeeding and when charter schools would provide families with new, high-quality choices.

In addition, the priority only envisions one type of partnership – one that is codified in a memorandum of understanding (MOU). Sometimes partnerships between charter schools and districts are implemented by willing partners that may not have the political capital to push through a formal MOU (which they have found is not necessary to carry out the planned collaborative activity). Moreover, the process required to develop and have the district sign an MOU can be labor-intensive, involve legal costs, and take at least six months from inception of the collaboration idea. In addition, the administration of the next CMO Grants competition in this coming December and January would likely come after this year's district board elections, so any MOU that is signed could be revoked by a newly elected board

This priority, because it would do little to foster true partnerships and has great potential to block applicant funding, would thus undermine one of the major objectives of the charter school movement (and the CSP) over the course of its history: giving new, high-quality choices to students and families who are not being well-served by the traditional system. We therefore ask ED to withdraw this priority language.

4. Prohibition on Providing Implementation Funds to Charter Schools that Have Not Yet Obtained a Facility

³ See, for example, ESEA Sections 4303(f)(1)(A)(iv), 4303(f)(1)(A)(vii)(II), 4303(f)(1)(A)(ix), 4303(f)(1)(A)(xiii)(B)(iii), 4303(f)(2)(F), and 4305(b)(5)(B).

The NPP would require each applicant for an SE Grant or subgrant, a CMO Grant, or a Developer Grant to provide an assurance that it will not use or provide “implementation funds” until after the school has received a charter and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate.

We find this new requirement acceptable but ask ED to clarify that funds for planning and program design could still be provided to and used by a charter school that does not yet have a facility. Further, the Department should clarify that planning and program design include such important activities as curriculum development, hiring and training staff (and compensating them during the planning period); carrying out community engagement activities, and purchasing books, other materials, supplies, and equipment for the school. It is important to recognize that the acquisition with facilities often takes a great deal of time, particularly when it involves negotiation with the local school district over the use of excess classroom space, and frequently is not completed until shortly before a school opens its doors. It would be unfortunate if this new assurance language were misinterpreted as prohibiting the use of funds for important preparatory activities by schools that do not yet have facilities.

In addition to presenting these points we are providing, as an addendum to this letter, several questions to which we request the Department respond, on record in the notice of final priorities, requirements, definitions, and selection criteria (if ED elects to publish one) regarding any of the referenced provisions that is retained in the final notice.

5. Peer reviewers second-guessing authorizing decisions

One of the fundamental flaws of the proposed regulations is that they empower federal and state peer reviewers to second-guess decisions that are central to the charter school authorizing process, such as whether there is “sufficient” demand for a school to be financially viable. The community impact analysis (application requirement and selection criterion), in particular, will require federal and state reviewers to examine evidence justifying whether a school should open in the manner envisioned by these regulations, not state charter school law. Moreover, charter school authorizers are better positioned to calibrate the evidence required to meet state law and the burden that should be placed on an individual applicant to obtain data from multiple school districts and conduct required analyses. Peer reviewers are also in the position of reviewing contractual relationships – an expertise that isn’t necessarily typical of reviewers, especially if they lack specific definitions and guidance from Department staff.

Authorizing looks at qualitative and quantitative evidence and requires local context – context that cannot be recreated through the narrow lens prescribed as “impact” in these regulations, that, in some cases, conflicts with state law when it comes to prioritizing schools that represent local communities and their needs. For this reason, the proposed regulations’ underlying structure of providing for peer review assessment of the need for an individual school is effectively requiring a re-chartering of each school, not using state charter school law but instead non-statutory federal regulatory criteria. They come very close to narrowing the Elementary and Secondary Education Act (section 4310) definition of a charter school and changing the type of school that is deemed eligible for funding by this program.

If a school has been authorized under state law, the presumption should be that demand was considered as part of the authorizing process. While not every authorizer makes perfect determinations,

there are other statutory provisions intended to build authorizer quality. The solution is to not set up peer reviewers as “backup” authorizers that are far removed from local context and likely lack technical expertise on the issues that authorizers typically take into consideration.

Thank you for the opportunity to comment on these proposals. Because they would have such a major and detrimental impact on charter schools nationally, we would welcome the opportunity to engage on them further with ED officials. Again, we call on the Department not to go forward with these proposals at this time and instead to convene discussions with the charter school community about potential changes in the operation of the CSP.

Sincerely,

Lynn Norman-Teck
Executive Director (and charter school parent)
Florida Charter School Alliance
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Addendum – Questions on the Notice

1. **Requirement that the community impact analysis include a description of how a charter school will establish and maintain a diverse student population:** Under the community impact analysis, how would peer-reviewers evaluate diversity without a definition? How would they evaluate whether there enough schools needed to accommodate “demand in the community”? Is the Department planning to check on whether each school meets it diversity goals and, when they are not met, to take away funds? How will peer-reviewers (and ED staff) account for factors that can complicate diversity efforts, such as local enrollment policies and weighted lotteries, when deciding if a school will be sufficiently diverse? Given that charter schools are open enrollment and subject to parent choice, how will ED monitors decide when a charter school has enrolled the “wrong” demographics?
2. **Contracts with for-profit organizations:** Applicants and schools would be required to submit and report information on their current and planned contracts with for-profit private management organizations. What is a management organization? If a developer or CMO doesn't discuss a contract in the application (because it doesn't have a fully developed proposal for it), could the entity enter into that contract later on?

The notice also states that a charter school may not enter into a contract that gives a for-profit organization full or substantial administrative control over the school or over programmatic decisions. What is the definition of “substantial”? What standard will ED use in determining whether a grantee has met this new standard?

3. **SE subgrant priorities:** Under the statute, a recipient of an SE Grant must, in making subgrants, ensure that subgrants are distributed throughout different areas (including suburban, and rural areas) and that they assist charter schools representing a variety of educational approaches. The NPP would require that SEs also give priority to applicants proposing a community-centered approach or to those proposing a collaboration with districts or district-operated schools, or both.
4. **Information to be included in CMO applications:** As we have noted in this letter, the NPP would require CMO and Developer Grant applications, and SE Grant subgrant applications, to include, as part of the community impact analysis, considerable information on the specific communities in which the applicant will operate schools (e.g., descriptions of community support and unmet demand, community demographics and enrollment trends). Yet CMOs typically have not identified, at the time of the application, all the communities in which they will open schools over the life of a multi-year grant. Will this traditional way of growing, which has worked well, continue, or will CMOs now be required to identify all their intended school sites (and complete a community impact analysis for each one) up front?

5. **Fostering a collaborate culture with the community:** The regulation would require applicants to describe how the planned charter schools will foster a collaborative culture that involves families in school decision-making on an ongoing basis. Does the Department also have plans to require all public schools to maintain such a culture, such as through the parent and family engagement provisions in Section 1116 of Title I?

6. **Requirements that the community impact analysis include descriptions of unmet demand for a charter school and information on the number of schools needed to accommodate demand in the community:** How does ED intend that applicants meet those requirements, and how will peer-reviewers make judgments on these elements of the analysis? What evidence is ED looking for?

7. **Requirement that the community impact analysis include evidence that creation of a charter school will not impede local desegregation efforts:** How will peer reviewers be instructed to evaluate the information provided in this area?