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April 13, 2022

SUBMITTED VIA REGULATIONS.GOV

Ruth E. Ryder
Deputy Assistant Secretary for Policy and Programs
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Re: Docket Number: ED-2022-OESE-0006, 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)

Dear Ms. Ryder:

On behalf of the more than 3 million members of the National Education Association (NEA), we submit the following response to the Department of Education's request for comments related to the proposed priorities, requirements, definitions, and selection criteria of the Charter Schools Program (CSP). **The NEA commends the Department for proposing an end to the support of corporate charter schools by banning for-profit schools from applying for grants and receiving funds to open charters. We also believe this is an opportunity to update the CSP to address loopholes and flaws within the program that have resulted in waste, fraud, and abuse.**

The CSP is a statutorily established grant program to expand high-quality charter schools across the country. The NEA maintains that public charter schools—like all public schools—must provide students with a free, accessible, non-sectarian, quality education that is delivered subject to the same basic safeguards and standards as every other public school, namely, in compliance with open meetings and public records laws; prohibitions against for-profit operation or profiteering as enforced by conflict of interest, financial disclosure, and auditing requirements; and the same civil rights, including federal and state laws and protections for students with disabilities, employment, health, labor, safety, staff qualification, and certification requirements as other public schools. Furthermore, we believe that charter schools must be classroom-based entities. Remote or virtual charter schools repeatedly show no improvement in student achievement, and they have demonstrated little financial accountability to the public.

Bringing an End to For-Profit Charter Schools

The NEA strongly supports the Department's attempt to ensure that charter schools operated by for-profit corporations do not receive CSP grants. As stated in the notice, charter schools were originally envisioned to drive the creation of innovative approaches to teaching and learning for all students while being held

accountable for academic performance.¹ We know this is not the case; many charter schools are not held to the same accountability standards as traditional public schools, and many have been accused of not serving all students. Additionally, charter schools were supposed to be shaped by educators and offer opportunities for developing and sharing new instructional methods and resources to address the needs of students and families within a given community. Unfortunately, due to the proliferation of corporate-run, for-profit charter schools, educators have not been instrumental in the shaping of charter schools, and the needs of students and communities have often been overlooked. These proposed priorities provide us with an opportunity to require charter schools to fulfill their intended purpose and stop corporations from taking advantage of communities in need.

The NEA commends the Department for taking the necessary steps to protect students and communities from the predatory practices of corporate-run charter schools. Following the judgment of the Ninth Circuit Court of Appeals in *Arizona State Board for Charter Schools v. U.S Dept of Education in 2006*,² former for-profit entities have created nonprofit facades that allow for-profit organizations—and their related entities—to run and profit from charter schools. We must bring an end to this, and these proposed priorities provide us with the space to do so, but we recommend the Department take additional steps to safeguard the CSP.

The NEA recommends that the Department add the phrase “and its related entities” wherever references to a for-profit organization appear throughout the application requirements. 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. By including the phrase “and its related entities,” the Department can provide coverage for potential loopholes within the system.

Addressing Waste, Fraud, and Abuse

There are other concerns of waste, fraud, and abuse related to the CSP as it currently operates that must be resolved. According to data provided by former Secretary Betsy DeVos in a letter to Congress, 12 percent of the charter schools that had active CSP grants from 2006 to 2015 never opened.³ In addition to the schools funded by a CSP grant that never opened, more than one in four grantees in the CSP published database have closed.⁴ The Department must take the necessary steps to ensure that federal dollars are not wasted in the hands of those who do not serve the best interests of the public. In order to do this, the NEA recommends that prior to authorization, a school may only receive partial funds limited to \$10,000 for planning purposes. Upon authorization, the remainder of the CSP grant funds may be released.

In addition to waste, fraud, and abuse, there are also flaws in the application process. Since 2001, the program has allowed applicants whose schools have not been authorized by a charter school authorizer. In one recent case, a soccer club secured more than \$1.2 million in funding even though there was a lack of local community support and the school application for authorization was denied.⁵ The process also does not allow for the verification of claims made in an application. In 2017, the Freedom and Democracy School Foundation received a \$1.5 million grant to replicate their schools. However, they provided false information regarding test scores and suspensions in their application, and the Baltimore School District

¹ Kahlenberg, R.D. and Potter, H. (2014). “Restoring Shanker’s Vision for Charter Schools.” American Federation of Teachers. Retrieved from aft.org/ae/winter2014-2015/kahlenberg_potter.

² *Arizona State Board for Charter Schools v. U.S Dept of Education in 2006*. Retrieved from casetext.com/case/arizona-state-bd-v-us-dept-of-educ.

³ Network for Public Education. (2020). “Still Asleep at the Wheel: How the Federal Charter Schools Program Results in a Pileup of Fraud and Waste.” Retrieved from networkforpubliceducation.org/wp-content/uploads/2020/02/Still-Asleep-at-the-Wheel.pdf.

⁴ *Ibid*.

⁵ Strauss, V. (December 3, 2020). “How a Soccer Club Won a \$1.2 million Grant from DeVos’s Education Department to Open a Charter School.” *The Washington Post*. Retrieved from washingtonpost.com/education/2020/12/03/how-soccer-club-won-126-million-grant-devoss-education-department-open-charter-school/.

subsequently shut down the school.⁶ Finally, although for-profit entities are not allowed to apply for CSP grants, they have indirectly benefited by applying through their schools or charter management organizations (CMOs). The for-profit charter industry has significantly benefited by submitting applications from their nonprofit schools to the states. For example, at least 404 awards were made to charter schools managed by for-profit entities between 2006 and 2017.⁷

To eliminate the waste, fraud, and abuse of charter school programs—especially from for-profit entities—the CSP grant priorities should reflect the following guiding principles: traditional public schools will not be undermined by any charter school expansion; charter schools, charter school authorizers, and CMOs not authorized or operated by local school districts will not receive federal funding; and charter schools, charter school authorizers, and CMOs are required to abide by the same laws and regulations applicable to traditional public schools. The Department should require a forensic audit for any charter school applying for CSP consideration. Furthermore, any charter school that does not operate as a classroom-based entity or is operated by a for-profit entity must be barred from being awarded grant money under the CSP.

The NEA strongly supports all State Entities (SE) sub-grant review requirements because they work toward addressing waste, fraud, and abuse from the beginning. We also believe these requirements can be strengthened by requiring review teams to include at least one reviewer representative from the district public school community, that a minimum point threshold be established for an award, that applications be checked for factual accuracy, and that applications be posted and easily accessible for public review and comment for a period of no less than 45 days before awarding decisions.

In addition, the NEA recommends that the Department retain funds from the CSP to conduct audits of all Developer, CMO, and SE subgrants to ensure that funds are being properly spent and that the conditions and aspirations as described in the applications are being met. This includes conducting annual audits of 5 percent of all active awardees in each of the programs, randomly chosen by the Department.

Meeting the Needs of All Students and Communities

The NEA has always advocated for additional transparency and accountability in the development of charter schools to ensure that the needs of all students and communities are met. We are pleased to see the inclusion of a community impact analysis in the Department’s proposed priorities as a step to ensure due diligence in the selection of grantees. As an organization committed to ensuring quality education for all students across race, place, ability, and background, we believe the information requested by the Department is reasonable and will help reviewers make sound decisions. However, we believe there are additional components the Department can add to strengthen the community impact analysis proposal.

First, we recommend that the community impact analysis includes a profile of students with disabilities and English language learners in the community along with an assurance that the applicant will provide the full range of services to meet the needs of students with disabilities and English language learners. Second, we recommend that applicants include a signed affidavit provided by a district or state education department official attesting to the accuracy of the information provided. Third, we recommend that the Department require applicants to provide a fiscal impact report. The proposed community impact analysis lists many important elements, such as student and educator demographics, demand for the school, and need for seats; however, it does not require an estimate of the fiscal impact. The financial drain on already-under-resourced public schools is a crucial and recurring problem that has been exacerbated by the COVID-19 pandemic. Therefore, we should itemize the kinds of costs that should be considered in such an impact analysis—for example, fixed and overhead costs, transportation costs, existing pension obligations, etc. Itemizing these costs will help guide the analysis and ensure transparency in financial disclosures.

⁶ Papst, C. (May 6, 2019). “Baltimore School Shut Down After Winning \$1.5M Federal Grant. *Fox 45 Baltimore*. Retrieved from [fox45.com/news/project-baltimore/baltimore-school-shut-down-after-winning-15m-federal-grant](https://www.fox45.com/news/project-baltimore/baltimore-school-shut-down-after-winning-15m-federal-grant).

⁷ Network for Public Education. (2020). “Still Asleep at the Wheel: How the Federal Charter Schools Program Results in a Pileup of Fraud and Waste.” Retrieved from networkforpubliceducation.org/wp-content/uploads/2020/02/Still-Asleep-at-the-Wheel.pdf.

We strongly support the proposed requirement that the applicant must provide “evidence that demonstrates 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 their fifth year.⁸ A primary reason for both public school and charter school closures is low enrollment; such closures disrupt the lives of children, families, and communities. Last month, Oakland proposed numerous school closures; this proposal was initiated because the high number of schools in the district made it difficult to adequately staff and maintain school facilities.⁹ In New Orleans, school closures have resulted in children being forced to attend multiple schools during their elementary school years, often requiring them to travel long distances. Between 1999 and 2017, nearly 1 million children were displaced due to school closures, yet only nine states have significant caps to regulate charter growth.¹⁰

Increasing Transparency and Accountability

Part C of Title IV of the Every Student Succeeds Act (ESSA) (20 U.S.C. § 7721 et. seq.) establishes a federal funding program for charter schools. It states that the purpose of the program includes: “... 7) support efforts to strengthen the charter authorizing process to improve performance management including transparency, oversight, and monitoring (including financial audits), and evaluation of such schools” and further “8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including state educational agencies, local educational agencies, and other authorizing agencies.” 20 U.S.C. § 7721(7). Therefore, the Secretary of Education has authority to issue regulations to effectively implement this provision of the statute. To the extent the federal government continues to fund this program, we encourage efforts to ensure adequate transparency in the operation of charter schools.

Across the country, many charter schools operate in the shadows and claim they are not covered by Freedom of Information or Open Meetings laws. This lack of transparency not only runs counter to the principles of public education and the purpose of the federal charter funding program. Both unionized and non-unionized charter school employees are disadvantaged when rules that apply to traditional public schools do not apply to charter schools. Therefore, the Department should issue regulations that require all federally funded charter schools—and charter school authorizers—to comply with state Freedom of Information and Open Meetings laws.

Licensure Requirements

Extensive research has documented that highly qualified educators improve student achievement. Yet, teachers in charter schools across the country do not have appropriate state teaching licenses or credentials. Part C of Title IV of ESSA also states that the purpose of the program includes: “... 3) increase[ing] the number of high-quality charter schools available to students across the country.” 20 U.S.C. § 7721(3). Pursuant to that authority, the Secretary has the authority to issue regulations to effectively implement this provision of the statute.

The NEA respectfully submits the above comments for consideration and urges the U.S. Department of Education to amend the proposed priorities, regulations, and definitions of the Charter Schools Program to ensure that the funds are used in a way that will benefit students and not profiteers. Please do not hesitate to contact me or Bianca Singh at bsingh@nea.org should you have any questions.

⁸ Network for Public Education. (2020). “Broken Promises: An Analysis of Charter School Closures from 1999–2017.” Retrieved from networkforpubliceducation.org/brokenpromises/.

⁹ McBride, A. (February 9, 2022). “Oakland School Board Votes to Close Seven Schools Over the Next Two Years.” *The Oaklandside*. Retrieved from oaklandside.org/2022/02/09/oakland-school-board-votes-to-close-seven-schools-over-the-next-two-years/.

¹⁰ Network for Public Education. (2020). “Broken Promises: An Analysis of Charter School Closures from 1999–2017.” Retrieved from networkforpubliceducation.org/brokenpromises/.

Sincerely,

A handwritten signature in black ink, reading "Daaiyah Bilal-Threats". The signature is written in a cursive style with a long horizontal line extending to the right.

Daaiyah Bilal-Threats
Senior Director, Education Policy and Implementation Center
National Education Association