



777 6th Street NW
Suite 610
Washington DC 20001
Tel: (202) 618-3900
Fax: (202) 478-1804
www.pennhillgroup.com

MEMORANDUM

TO: **National Alliance for Public Charter Schools**
FROM: **Penn Hill Group**
DATE: **March 15, 2022**
SUBJECT: **Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria on Charter Schools Programs**

On March 14 the U.S. Department of Education (ED or the Department) issued a [Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria](#) (NPP) for three components of the ED 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).

The deadline for comments on the proposals is **April 13**.

The purpose of this memo is to summarize this notice.

Overview

The CSP statutory language, as reauthorized by the Every Student Succeeds Act, includes, for the SE Grants program, some six funding priorities, 30 or so required application descriptions, several required application assurances, and five criteria that ED must use in selecting grantees. A number of the descriptions address the requirements that the State entity will impose on subgrantees and subgrant applicants. The priorities, descriptions, assurances, and selection criteria will all factor differently into how ED selects grantees, as well as serve different purposes in that process.¹ Most of the SE Grants application requirements apply as well to the Developers Grants program. For CMO Grants, the statute includes four priorities, some 12 application requirements, and three selection criteria. For Developer Grants and CMO Grants,

¹In this context, “funding priorities” refers to the priorities that ED uses in awarding grants under the program. For example, by statute ED must give priority to SE Grant applications from States that provide equitable and timely financing to their charter schools. This NPP includes two new proposed priorities listed at the end of this memo. An “application description” is a description that an eligible State entity must include in its application for a grant. For example, an SE Grants application must include a description of how the entity will work to share best and promising practices between charter schools and other public schools. An “application assurance” refers to a provision requiring that an applicant assure (generally by checking a box on an application form) that it will meet a certain requirement as a condition of receiving the grant. As an example, an SE Grants applicant must assure that the entity will support charter schools in meeting the educational needs of their students. “Selection criteria” refers to the criteria that peer reviewers, and then ED, must use in evaluating grant applications. For example, one of the SE Grants criteria is the ambitiousness of the entity’s objectives for the State’s charter school program.

these statutory provisions are augmented by additional requirements ED created through regulation in 2018 and 2019.

The proposed priorities, requirements, definitions, and selection criteria would build on those existing statutory and regulatory provisions. Across the three program, the proposed language focuses on several common objectives: (1) promoting the creation and expansion of educator- and community-centered charter schools; (2) stronger charter-school collaboration with school districts and district public schools; (3) ensuring that a developer seeking to create, replicate, or expand charter schools first completes a “community impact analysis” to assess the demand for charter schools in the community and ensure that the community’s needs are met; (4) greater transparency regarding (and a narrower limitation on) charter school contracts with for-profit providers of management services; (5) greater transparency regarding funds going to developers that have not yet received a charter; (6) greater specificity regarding State entities’ conduct of subgrant applications and their monitoring of subgrants; (7) greater transparency regarding certain other practices.

These objectives are addressed under the three programs in the following manner:

For SE Grants

- Requirement that applications for subgrants include a community impact analysis
- Requirement that subgrant applications include certain information on contracts with for-profit providers
- Requirement that State applications include certain information on how the State entity will award subgrants, will calculate subgrant amounts, and will monitor and report on subgrant performance
- Requirement that State entities give priority in awarding subgrants to developers that propose to create schools that reflect a community-centered approach or that involve collaboration with at least one district or district-operated school
- Application assurance that no charter school funded under the grant will enter into a contract that gives the contractor full or substantial control over the school, as well as certain other assurances related to contracts
- Application assurance that any charter school receiving funding will, as part of the enrollment process, inform families of any policies or requirements (e.g., costs of uniforms, family participation requirements) that could affect a family’s ability to enroll or remain enrolled
- Requirement that a subgrantee hold or participate in a public hearing on the potential impact of a school on its community, including on desegregation efforts
- Requirement that a subgrantee will not use subgrant funds for a planned school until the school has a charter and a facility
- A new selection criterion on quality of the project design, including on the extent to which the proposed project is supported by demand and need

For SE Grants and CMO Grants

- Funding priority for applicants that propose to create high-quality educator- and community-centered charter schools so as to support underserved students
- Funding priority for applicants that propose collaboration of charter schools with districts or district schools that benefits students and families

- Application requirement for a community impact analysis
- Application requirement for certain information on contracts with for-profit providers
- Application requirement for provision of certain information from any entity that has not yet received a charter
- Application assurance that no charter school funded under the grant will enter into a contract that gives the contractor full or substantial control over the school, as well as certain other assurances related to contracts
- Application assurance that any charter school receiving funding will, as part of the enrollment process, inform families of any policies or requirements (e.g., costs of uniforms, family participation requirements) that could affect a family's ability to enroll or remain enrolled
- Assurance that the grantee will hold or participate in a public hearing on the potential impact of a school on its community, including on desegregation efforts
- Assurance that a grantee will not use grant funds for a planned school until the school has a charter and a facility
- Assurance that a grantee will post certain information on its website
- New selection criteria on quality of the applicant's community impact analysis and quality of the management plan

The notice also includes proposed definitions of certain terms (e.g., disconnected youth, underserved student) used in the proposed priorities, requirements, and selection criteria.

Below we provide greater detail on certain elements of the proposed priorities, requirements, definitions, and selection criteria that cut across the three programs.

Community Impact Analysis

As noted above, the NPP would require that an application for a Developer Grant or CMO Grant, or for a subgrant under the SE Grants program, include a community impact analysis. Such an analysis would demonstrate that there is sufficient demand for a proposed charter school and that the school would serve the interests and meet the needs of students and families in the community. Toward that end, the analysis would include some eight distinct elements, such as:

- Descriptions of community support and unmet need for the 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;
- 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; and

- A description of the steps the applicant will take to ensure that a proposed charter school does not negatively affect local desegregation efforts.

Contracts with For-Profit Providers

As noted above, the NPP would require that Developer Grant and CMO Grant applicants, as well as applicants for SE Grant subgrants, include certain information on the applicant's planned or current contracts with for-profit entities. In announcing these proposed requirements, ED asserts that arrangements under which a for-profit education management organization exercises full or substantial administrative control over a charter school or over programmatic decisions are not permissible because, under Department regulations, grantees and subgrantees must directly administer or supervise the administration of their projects.

The information proposed to be provided, regarding any existing or proposed contracts, includes, among other things:

- The name of and contact information for the for-profit organization;
- The terms of the contract, including, among other things, cost, percentage of a school's funding (and of the grant or subgrant) accounted for, duration, and roles and responsibilities of the contractor;
- A description of any business relationship between the charter school developer and the contractor;
- A list of all individuals who have a financial interest in the for-profit organization;
- Detailed descriptions of any actual or perceived conflicts of interest, and steps being taken to resolve those conflicts; and
- An explanation of how any management contract will be "severable," meaning, among other things, that severing the contract will not cause the school to close.

Further, each SE or CMO that has provided funding to a charter school, and each charter school that has received CSP funding, would be required to post on its website a copy of any management contract between the school and a for-profit entity, and to report annually to ED (or in the case of a subgrantee, to the SE) on essentially the same items described above.

Finally, any charter school receiving funding under any of the three programs would be required to assure, among other things, that:

- It will not enter into a contract with an EMO (including a non-profit organization operated by or on behalf of a for-profit entity) under which the organization exercises full or substantial administrative control over the school (and therefore the CSP grant):
- Any contract will guarantee that the school maintains full control over all CSP funds, makes all programmatic decisions, and directly administers or oversees the administration of the grant or subgrant:
- The charter school's governing board has access to financial and other data pertaining to the school, the EMO, and related entities; and
- The school will be in compliance with all conflict-of-interest laws and regulations, and there are no actual or perceived conflicts of interest between the school and the EMO.

Priority for Promotion of High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students

As noted above, the NPP would add, under Developer and CMO Grants, a new funding priority for applicants that propose to create high-quality educator- and community-centered charter schools so as to support underserved students. (Similarly, a State entity conducting a subgrant competition would be required to give priority to an applicant proposing to adopt a community-centered approach, as described in the second bullet below, or that would collaborate with “traditional” public schools or districts, as described in the next section of this memo, or both.) Briefly, an applicant would qualify for this priority if it proposed to open, replicate, or expand a charter school:

- With meaningful and ongoing engagement of current and former educators, including in the founding, governance, decision-making, and day-to-day operations of the school; and
- Using a community-centered approach that includes an assessment of community assets, informs the development of the school, and includes protocols and practices designed to ensure that the school uses and interacts with community assets on an ongoing basis.

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

As noted above, the NPP would add, under Developer and CMO Grants, a new funding priority for applicants that propose collaboration of charter schools with districts or district schools that benefits students and families. (Again, a State entity conducting a subgrant competition would be required to give priority to an applicant proposing to adopt a community-centered approach, as described above, or that would collaborate with “traditional” public schools or districts, as described here, or both.) Briefly, an applicant would qualify for this priority if it proposes to collaborate with at least one traditional public school or traditional school district on an activity that is designed to benefit students and families served by each member of the collaboration, designed to lead to increased educational opportunities and improved student outcomes, and includes:

- One or more of the following services and resources: curricular and instructional resources or academic course offerings; professional development opportunities; evidence-based practices to improve academic performance for underserved students; and policies and practices to create safe, supportive, and inclusive learning environments; and
- One or more of the following initiatives: transparent enrollment and retention practices; a shared transportation plan and system that reduces participants’ transportation costs; and other collaborations designed to address shared challenges.

A Developer or CMO Grant applicant seeking this priority would also include, in its application, a letter from each participating traditional school or district, demonstrating its commitment to the collaboration. Further, within 45 days of receiving a grant, a grantee receiving the priority would submit to ED a written agreement, signed by each member of the collaboration, that provides certain information on the collaboration.