

April 12, 2022



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

RE: U.S. Department of Education Proposed Priorities, Requirements, Definitions, and Selection Criteria for CSP SE Grants, CMO Grants, and Developer Grants - Docket ID ED-2022-OESE-0006

To Whom It May Concern:

I am Jeanne Allen, Founder and CEO of The Center for Education Reform. Our team has had expertise authoring more than half of the nation's charter school laws, and has intensively reviewed, researched and analyzed the behavior of participants, opponents and political actors engaged in school reform for nearly thirty years. As such, I am submitting comments in response to the U.S. Department of Education's [proposed regulations](#) for the federal public charter school sector, and the grant programs included in the proposed rule published 3/14/2022, Docket ID ED-2022-OESE-0006, document # 2022-05463.

These proposals would bring to a screeching halt the growth of existing charters and the creation of new charter schools, even in states where the schools currently do not have to obtain local district approval to open. Indeed, this damning effect appears to be the purpose, given the historical evidence of what occurs when charter schools must rely only on school districts to open. The support for the proposed rule from the leadership of the heads of the two largest teachers unions and the National School Boards Association, who with their organizations oppose any charter school laws that do not vest sole authority for entity approval in the hands of school districts, underscores the fact that these proposed regs are not about quality or equity, but instead about reducing their size, scope and impact. Regardless of the fact that the federal funds involved in the CSP are still a small portion of the overall funds expended for public charter schools at all levels, federal dollars have an oversized impact on behavior of state and local education agencies.

Since their inception, charter schools have relied on a very simple premise to operate – that being open without regard to a zip code or zoning system that determines school assignment, students and families can find options that fit any number of diverse learning needs a student might have that the parent does not believe, feel or know to be available in the public school assignment available to them.

Traditional public school districts have argued since the first charter schools that they should have the first right of refusal if a new charter school wants to open up. They also have argued that the impact of charters on their districts should be studied before they can be approved by their respective authorizers. Such impact, which is the main subject of the proposed [regulations](#), is about one thing and one thing only – money. Districts subscribe to the ideology that public education funds are theirs alone, and that if they do not have complete control over the entire budget for every student who receives an education in their

district, the impact to their day-to-day operations, and moreover their existence, is affected negatively. Year after year, [studies](#) such as those done by the Center on Reinventing Public Education (CPRE) at the University of Washington have proven this is not the case.

Public education funding is by law supposed to support students at the school they attend. Traditional public school districts argue the funds are “theirs,” that charters adversely impact their bottom line. Thus individually and through the National School Boards Association (NSBA) they and their state school boards associations have advised policymakers that they should only support charter school legislation where 1) districts are the sole authorizer and 2) where an “impact” study of a charter school on a school district’s budget and enrollment is neutral only. In these cases, the school districts also typically write into the proposed laws that a school should not be approved if the impact is deemed to be negative. The NSBA [opposes charter schools](#) not approved by the local school board precisely because of this flawed ideology.

This is the same policy endorsed by all of the education labor and special interest groups. In cases where they succeed at legislative proposals that meet their criteria - as they have in states like Iowa, Kansas and Virginia, the result is few charter schools with autonomy are able to open. Those that do open are unable to provide innovative, non-district sanctioned programs, hire subject matter experts from non-education fields, or provide different approaches to classroom learning.

If a school district (the administration with the local school board) does not like the potential impact of a charter school, they will ensure it does not open. There are 30 years of history to prove this is the case. For them, it’s about preservation of the traditional school assignments and boundaries, making the existence of any public school choice the decision of the district that the charter would compete with for students.

Districts have failed in all but a few states to secure such provisions. That is why they are turning to the federal government to use its power of the purse to force states to do what they have not been inclined to do in 39 of the 50 operating charter school laws.

States with requirements that force partnerships among charter schools and school districts, vest control in opening charter schools with school boards or require community input have the fewest charter schools. Among the 11 states where school districts are the only authorizer and charter schools must prove “demand,” there are approximately 300 charter schools - fewer than 5% of all charter schools open today.

The other 33 states or jurisdictions with charter schools that permit anywhere from one or more authorizers to approve charter schools requiring school districts to sign off on their existence have the remaining 7,500 plus charter schools, where demand is not only high but waiting lists often far exceed the supply.

This is because charter schools challenge school district power. In writing about why districts resist change as far back as 1990, Minnesota education professor and researcher Ted Kolderie’s words helped set the modern day charter school movement in motion. They were fighting words, for districts, that is.

“Legally schools do not exist: Districts exist. The district is defined by its boundaries. These create an area in which there is one and only one organization offering public education, to whose schools the kids who live in that area are assigned. Public education is organized as a pattern of territorial exclusive franchises.”

“That exclusive franchise is the heart of the problem.”

Charter schools changed that. Charter schools became the first non-district public schools to operate outside of the exclusive franchise.

The demand for a return to giving districts an exclusive franchise is apparent in all of the *Proposed Priorities*, but the following two new areas are illustrative of the intentionality of the effort by influential system leaders to limit the ability of charter schools to open, or expand:

Proposed Priority 1 mandates, in brief, that charter schools consult with and involve former and existing educators in the community and analyze the “assets” to show how it would integrate into what already exists, with federally-supervised timetables and milestones.

The most successful and majority of charters are educator-run, and the original charter idea was in fact brought toward the mainstream by former educators. Every state’s charter law requires a governing board to be defined, their expertise provided in detail, as a requirement of the application. Every charter school organizer - be it a group of educators, a Boys and Girls Club, a parent-led or a charter management organization - has had to understand the community and its needs in order to submit a quality application. What is proposed as Priority 1 happens by nature of the interests, intent and focus of the charter applicant. But that is not what this priority is about. Priority 1 seeks to involve those who are vested in the current system to influence the creation of the charter, to mold it in the same manner as the traditional school community has intended. The slope to confining potential charter schools to the vision of the traditional system becomes steep quickly, as the relationships of that system are enmeshed with their ties and near-mandatory involvement with the teachers union, whose stated goal is to ensure charter schools if they exist are unionized. The most successful charters, where regulations are set only as safeguards for misconduct, naturally include educators of all stripes, and a symbiotic relationship forms with the community even before doors open, where those who need to be included, are in fact a part of the schools’ running.

Proposed Priority 2 mandates collaboration with local district policies and programs. In reality, it mandates compliance. “(b) In its application, an applicant must provide a letter from each partnering traditional public school or school district demonstrating a commitment to participate... ..signed by officials authorized to sign on behalf of the charter school and each partnering traditional public school...”

While collaboration between traditional public and charter schools was an original intent of the chartering idea, and while collaboration can create positive outcomes, it only does so when parties are voluntarily interested and engaged in a similar mission and vision for students. Indeed, charter schools are much more collaborative entities than traditional systems. Charter leaders have created their own organizations in their communities, states and nationwide. They freely visit one another, invite one another to partner, support

one another with professional guidance, curriculum and all manner of programming. Mandating that they commit to sharing resources, submitting to the will of districts on everything from transportation to enrollment and retention (which are actually specified in law) is forcing compliance, not collaboration. This kind of proposal is only intended to hamstring the ability of charter schools to freely do what they believe in and have the parents' support to do. Requiring a partnership - in any facet of education - stifles innovation.

“Nobody should wonder why in public education,” Kolderie says, “the cards are stacked against innovation. An organization with that kind of exclusive franchise feels no need to change. [David K. Cohen](#), [an educational theorist who worked with the NAACP], put it gently when he wrote in 1986 that education contains ‘weak incentives for the introduction of innovations that would 3 cause internal stress.’ And proposals for radical change surely do cause internal stress.”

“Change disrupts settled routines. It upsets people. It causes controversy. It threatens the real interests of powerful organizations.”

So powerful that they could convince a sitting president, through his Domestic Policy Council, to dismiss the commitment of every prior president since charters schools began - including those of his own party - and reject a powerful innovation in public education that to date has served well over 20 million students, employed millions of education staff and transformed education not only for those attending charter schools but tens of millions more throughout the entire system where their impact has had a proven ripple.

The traditional public education infrastructure's exclusive franchise was violated when charter schools came to be. Despite their success, the demand, their tri-partisan and grassroots appeal, despite the fact that they not only do better for the students that attend them than their assigned school but have created ripple effects on districts making some more innovative, traditional school districts, teachers unions and other opponents are working to remove the choice parents have to send their students to a charter school and put the districts back in charge of where families may send their children.

That is how the current *Proposed Priorities* would impact charter schools - inserting the control of districts in deciding how and when charter schools may open, expand or how they serve students. It is backwards, malicious and bad policy. It will have a disastrous effect on educational equity in the U.S.

I urge you, on behalf of the millions of students, families, community members and educators supporting, sustaining and working in and on behalf of charter schools to withdraw these proposals in full.

Sincerely,



Jeanne Allen
Founder and CEO