



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

MEMORANDUM

TO: **Interested Parties**
FROM: **Penn Hill Group**
DATE: **July 8, 2022**
SUBJECT: **Notice of Final Priorities, Requirements, Definitions, and Selection Criteria, as well as two Notices Inviting Applications, for the Charter Schools Program**

Introduction

On July 6, the U.S. Department of Education (ED or the Department) published a [Notice of Final Priorities, Requirements, Definitions, and Selection Criteria](#) (NFP) for three components of the 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).

Issuance of the NFP followed the March 14 publication of a Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria (NPP). In the NFP, the Department responded to public comments on the NPP and made adjustments to the proposed rules in response to those comments.

Also on July 6, ED published Notices Inviting Applications (NIAs) for [SE Grants](#) and [Developer Grants](#). Applications for fiscal year 2022 grants under those two programs are due on August 5. These two notices incorporate priorities, requirements, definitions, and selection criteria from the NFP. The Department will publish an NIA for the CMO program at a later date.

The purpose of this memorandum is to summarize the NFP, including by providing information (*in italics*) on how the final rules differ from those put forward in the NPP. The memo also flags key places where the new provision's rules are incorporated into the Developer Grants NIA.

Overview

The CSP statutory language, as reauthorized by the Every Student Succeeds Act (ESSA), includes a number of required application descriptions, application assurances, funding priorities, and criteria that ED must use in selecting grantees, and other requirements applicable to the CSP programs. These statutory provisions are augmented by additional requirements that ED created through regulation in 2018 and 2019.

The provisions included in the NFP will augment the statutory priorities, requirements, definitions, and selection criteria, and the provisions included in those previous regulations.

Across the three programs, the final rules focus 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 a charter school first completes an analysis demonstrating the need for the school, including how the school would serve the interests and meet the needs of the students and communities to be served; (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 competitions 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 an analysis describing how the proposed schools will serve the interests and meet the needs of the communities to be served (see additional information below).
- Requirement that subgrant applications include certain information on contracts with for-profit providers (see additional information below).
- Requirements 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.

These requirements are largely unchanged from the language of the NPP, except that an application must now include information on how the State entity will work with authorized public chartering agencies to share information from monitoring, for the purpose of reducing the reporting burden on charter schools.

- Requirement that a State entity give priority in awarding subgrants to developers that will create, replicate or expand a high-quality charter school that is developed with meaningful and ongoing engagement of current and former teachers and other educators and using a community-centered approach. A State entity application must describe how the entity will meet this requirement, including a timeline for key milestones.

State entities must also encourage, but may not require, eligible subgrant applicants to propose projects that include collaboration with at least one district or district-operated school. A State entity must certify that it will ask each applicant proposing such a collaboration to provide certain information in its application and to provide certain information once the collaboration has started.

These requirements replaced language in the NPP requiring 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 (see additional information below).
- 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. *This language is largely unchanged from the NPP.*
- Requirement that a subgrantee hold or participate in a public hearing on the potential impact of a school on its community, including on how the school would increase the availability of public school options for underserved students, promote racial and socio-economic diversity (or have a mission to primarily serve underserved students), and not increase racial or socio-economic segregation or isolation.

The NPP called for the public hearing to include discussion of the steps taken to ensure that the proposed charter school does not impede desegregation, but it did not call for the hearing to discuss how the project will promote diversity or create schools that have a mission of serving underserved students.

- Requirement that a subgrantee will not use "implementation funds" for a planned school until the school has a charter and a facility.

The NFP clarifies, as the NPP did not, that, prior to obtaining a charter or facility, a subgrantee may use "planning funds" for such activities as hiring, compensating, and training staff and for other planning activities.

- Requirement that the State entity, within 120 days of making subgrant awards, post certain information on those awards.

The NPP would have required that information to be posted within 30 days.

- 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. *This is unchanged from the NPP.*

For CMO and Developer Grants

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



- Application requirement for a community needs analysis (see additional information below).
- Application requirement for certain information on contracts with for-profit providers (see additional information below).
- Application requirement for provision of certain information on the public chartering agency that has issued the applicant's approved charter status and on the proposed budget.

This replaces a requirement in the NPP that applied only to applicants that have not yet received a charter approval.

- 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 (see additional information below).
- Application assurance (*largely unchanged from the NPP*) 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.
- As under SE Grants, a requirement that a subgrantee hold or participate in a public hearing on the potential impact of a school on its community, including on how the school would increase the availability of public school options for underserved students, promote racial and socio-economic diversity (or have a mission to primarily serve underserved students), and not increase racial or socio-economic segregation or isolation.

The NPP called for the public hearing to include discussion of the steps taken to ensure that the proposed charter school does not impede desegregation, but it did not call for the hearing to discuss how the project will promote diversity or create schools that have a mission of serving underserved students.

- As under SE Grants, a requirement that a subgrantee will not use "implementation funds" for a planned school until the school has a charter and a facility.

The NFP clarifies, as the NPP did not, that, prior to obtaining a charter or facility, a subgrantee may use "planning funds" for such activities as hiring, compensating, and training staff and for other planning activities.

- As under SE Grants, a requirement that the State entity, within 120 days of making subgrant awards, post certain information on those awards.

The NPP would have required that information to be posted within 30 days.



- As under SE Grants, 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. *This is unchanged from the NPP.*

The notice also includes definitions of certain terms (e.g., disconnected youth, underserved student) used in the proposed priorities, requirements, and selection criteria. *These definitions are largely unchanged from the NPP.*

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

Community Needs Analysis

As noted above, the NFP would require that an application for a Developer Grant or CMO Grant, or for a subgrant under the SE Grants program, include an analysis of the need for the proposed project, including on how it would serve the interests and meet the needs of the community proposed to be served. *The NFP clarifies that this analysis may consist of information previously submitted to an authorized public chartering agency.* The analysis would include some six distinct elements, such as:

- Descriptions of community support and other evidence of demand demonstrating a strong likelihood that a school will meet its enrollment projections, such as information on school waiting lists and on access to seats in high-quality public schools in the area.

The NPP would have required information on over-enrollment of existing public schools or other information demonstrating demand. In the NPP, the Department states that over-enrollment of schools in the districts that an applicant proposes to serve is not a requirement of the program. The NFP includes some examples of information that might be included in this part of the analysis; these were not in the NPP.

- Analysis of a proposed school's projected student demographics and of how the applicant plans to maintain racially and socioeconomically diverse student body. *However, an applicant that is unlikely to maintain a diverse student body due to the demographics of the community would describe why it is unlikely to do so, how the makeup of the school's student body would provide high-quality educational opportunities (such as through a specialized educational program or mission), and the anticipated impact of the school on the diversity of local public schools.*

The NPP would also have required applicants to describe a proposed school's targeted staff demographics and its plan for maintaining a diverse staff.

- 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 ensures the input of 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 (*only minor changes from the NPP*); and

- A description of the steps the applicant will take to ensure that a proposed charter school does not negatively affect local desegregation efforts and does not increase racial or socio-economic segregation or isolation in the schools from which students would be drawn (*only minor changes*).

Note that the NPP would also have required applicants to provide: (1) analyses of publicly available information on academic achievement, demographics, and enrollment trends in the public schools and districts from which a proposed charter school would draw students; and (2) evidence demonstrating that the number of charter schools proposed to be opened, replicated, or expanded does not exceed the number of public schools needed to accommodate demand in the community.

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 management organizations. In the NPP, ED asserted 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. (*Note that, as in the NPP, the final rules do not define the terms "management organization" and "substantial."*) The information to be provided, regarding any existing or proposed contracts, includes, among other things:

- A copy of the existing contract (or a description of the contract), including: (1) the name of and contact information for the for-profit organization; (2) the contract's cost, percentage of a school's funding (and of the grant or subgrant) accounted for, duration, and roles and responsibilities of the contractor; and (3) steps that the applicant will take to ensure that it pays fair market value for any services and that it maintains all programmatic decisions and maintains control over all CSP funds.

The NPP called for largely the same information but would not have specifically required inclusion of the contract (or a description of the contract) in the application.

- A description of any business relationship between the charter school developer and the contractor (*no change from the NPP*).
- A description of any actual or perceived conflicts of interest, and steps being taken to resolve those conflicts (*no change from the NPP*).
- A description of how the applicant will ensure that members of the school's governing board are not selected, removed, or controlled by the management organization and that the

school's legal, accounting, and auditing services will be procured independently. *This was not in the NPP.*

- 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 (*no change from the NPP*).

The NPP clarifies that the above information may be information that a developer had previously submitted to an authorized chartering agency.

Further, each applicant for an SE Grant, CMO grant, or Developer Grant must assure that it (or, in the case of an SE or CMO, each charter school that it funds) will 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 (*no significant change from the NPP*).

Finally, all applicants will be required to assure that any management contract between a funded charter school and a for-profit management organization will guarantee that:

- The school will maintain control over all CSP funds, make all programmatic decisions, and directly administer the grant or subgrant.
- The management organization will not exercise full or substantial administrative control over the school (and therefore the CSP grant).
- The charter school's governing board has access to financial and other data pertaining to the school, the EMO, and related entities.
- 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.

These provisions are substantially the same as in the NPP. The NFP clarifies, that the language on “full or substantial administrative control” does not limit the ability of a charter school to enter into contracts (such as for food or payroll services) that do not provide for full or substantial control by the for-profit organization.

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

As noted above, the NFP adds, 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. A State entity will be required to use the same priority in its subgrant competitions.

Under the NPP, a State entity would have given a 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 will qualify for this priority if it proposes to open, replicate, or expand a charter school:

- With meaningful and ongoing engagement of current and former teachers and other educators.

The NPP would have required the engagement of educators specifically in the founding, board governance, school-level decision related to curriculum and instruction, and day-to-day operations of the school.

- 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 (*no change from the NPP*).

We note further that the newly announced competition for Developer Grants adopts this priority as a 5-point “competitive preference priority,” meaning that an application meeting the priority will receive up to 5 competitive points, on top of the up to 100 points that an application will receive, through the peer-review process, under the regular selection criteria (quality of the management plan, need for the project, etc.). More specifically, an application will receive 1 extra point if the project would provide for meaningful and ongoing engagement with current and former educators, up to 2 points for using a community-centered approach, and up to 2 points for having a high-quality plan for implementing the priority.

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

As noted above, the NFP adds, 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.

A State entity conducting a subgrant competition will be required to encourage, but may not require, applications that propose to create a new collaboration, or the continuation of a current collaboration, with at least one district or district-operated school.

Again, under the NPP, a State entity would have had to give a 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, both.

Briefly, a CMO or Developer applicant will qualify for this priority if it proposes a collaboration (new or continued) with at least one traditional public school or traditional school district. This collaboration must be designed to lead to increased educational opportunities for students served by at least one member of the collaboration.



Under the NPP, the collaboration would have to be designed to benefit students and families served by each member of the collaboration and also designed to lead to increased educational opportunities and improved student outcomes.

In addition, a collaboration must include one or more of the following: (1) co-developed or shared curricular and instructional resources or academic course offerings; (2) professional development opportunities for teachers and other educators; (3) evidence-based practices to improve academic performance for underserved students; (4) policies and practices to create safe, supportive, and inclusive learning environments; (5) transparent enrollment and retention practices; (6) a shared transportation plan and system that reduces participants' transportation costs; (7) a shared special education collaborative; (8) a shared English learner collaborative; or; (9) other collaborations designed to address shared challenges.

Under the NPP, a collaboration would have had to include at least one collaborative service or activity (from items (1) through (4) above) plus at least one collaborative initiative (from items (5), (6), and (9) above).

A Developer or CMO Grant applicant seeking this priority must include, in its application, a description of the collaboration, including such information on its purpose and the roles and responsibilities of collaboration members. Further, within 120 days of receiving a grant (or 120 days of the beginning of the collaboration), a grantee receiving the priority must provide evidence of the collaboration.

The NPP would have required applications to include a letter from each partnering public school or district demonstrating its commitment to the collaboration. In place of the 120-day requirement described above, it would have required grantees to submit to ED a written agreement signed by each member of the partnership and including a variety of information.

We further note that the current competition for Developer Grants adopts this priority only as an "invitational priority," meaning that applications that address it will not receive any additional competitive points or other preference over applications that do not.