



DATE: January 22, 2021

TO: Cheryl Ford, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202-5970

FROM: The National Coalition for Public School Options (PSO)

RE: Comments of the National Coalition For Public School Options on the Proposed Charter School Program Dissemination Grant Rules

The National Coalition for Public School Options (PSO) is a national alliance of parents that supports and defends parents' rights to access the best public school options for their children. The coalition supports the creation of public school options, including charter schools, online schools, magnet schools, open enrollment policies, and other innovative education programs. Additionally, we advocate for free and equal access without restrictions to these public schools for all children, regardless of zip code.

PSO advocates at the national, state, and local levels for public school options that best serve individual students' learning needs. PSO informs lawmakers, policymakers and the public about the benefits of public school options through capitol day rallies, legislative meetings, committee hearing testimony, comments on proposed rules, and more.

We strongly believe that access barriers that prevent parents from choosing the best public school option for their child must be removed so that all students have equal access to a great education and can realize their full potential.

PSO is pleased to provide the below parent-based comment on Docket ED-2020-OESE-0172, the "Proposed Priorities, Requirements, and Definitions-Expanding Opportunity Through Quality Charter Schools Program (CSP)-National Dissemination Grants."

Our comments will focus on proposed "Priority 1-Stengthening Charter School Authorizing and Oversight," because we have serious concerns with how funds disbursed under this priority in the past have been utilized in manners that ultimately limit parent access and options, including extremely troubling recent research that suggests that those limits and barriers are disproportionately falling on communities of color.

Effective, collaborative authorizing is critical to the establishment and growth of a vibrant charter school sector in any state or locality. Unfortunately, some CSP dissemination funds under the "authorizer priority" have been misused to advance authorizing approaches that run counter to the founding principles of chartering, stifling the charter sector and parent options. Specifically, CSP funds under the proposed criteria have been utilized to:

- Counsel a statewide charter authorizer to engage in charter school closures in direct violation of state law. Fortunately, legal counsel for that authorizer rejected the suggestion.¹

¹ See the report here, specifically stating it was funded in part by USDOE:
<https://chartercommission.idaho.gov/meetings/archive/2019/04-11-19/Tab-B-PCSC->



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- Create new authorizing procedures and environments that have led to wrongful charter application denials and closures, needing to be reversed either by state courts or state boards of education.²
- Encourage authorizers to seek exemptions from state administrative procedure act requirements in decision-making **with the explicit and stated purpose** of making decisions without transparency or oversight and excluding parents from decision-making.³
- Adopt pre-screening and other application overly cumbersome procedures that have led to a precipitous drop in charter applications – the frequently discussed “pipeline” problem that has recently emerged as one of the major challenges facing the charter sector.⁴

Further, recent published research entitled, “*Charter School Regulation as a Disproportionate Barrier to Entry*,” strongly suggests that the authorizer policies being advanced and advocated for by some utilizing CSP grants have a severe and measurable disparate impact. Ian Kingsbury, at the time of the research a postdoctoral fellow at the Johns Hopkins Institute for Education Policy and now with the Empire Center for Public Policy, and Robert Maranto, the 21st Century Chair in Leadership in the Department of Education Reform at the University of Arkansas, reached the following key conclusion in their important paper on authorizing practices and the impact on charter applications:

“Regulation imposes significant barriers to entry for standalone applicants, African Americans, and Hispanics aspiring to open a charter school.... Barriers for minority applicants, however, are a policy concern regardless of what one thinks about the proper level of regulation.”

The report⁵ specifically linked adoption of the authorizing policies advanced by the National Association of Charter School Authorizers (NACSA) with the found disparate racial impacts. Such research cannot be ignored under any circumstances, but the fact that these potentially discriminatory policies were being

Education.pdf?cache=1611240248583 The staff conclusion that CSP funds had been utilized to recommend charter closures in violation of state law can be found at page 7 of Exhibit 1.

² See increasing reversals in TN from Memphis and Nashville, both working with NACSA and CSP associated “Leadership Program,” at: <https://www.tn.gov/sbe/charter-schools/charter-school-new-start-appeals.html>. See a recent court decision overturning an attempted unlawful closure by a NACSA assisted authorizer at: <https://www.8newsnow.com/news/local-news/judge-rules-in-favor-of-nevada-connections-academy-public-charter-school-authority-must-hold-hearing-on-schools-renewal-application/><https://www.8newsnow.com/news/local-news/judge-rules-in-favor-of-nevada-connections-academy-public-charter-school-authority-must-hold-hearing-on-schools-renewal-application/>

³ See pages 9 and 10 at:

https://charterschools.nv.gov/uploadedFiles/CharterSchoolsnvgov/content/News/NACSA_SPCSA_final-organizational-structure-and-capacity-report.pdf. See related discussion with authorizer staff referring to parents as presenting “sad pathetic stories that tug at peoples heartstrings!” on charter school issues at: <http://www.charternewswire.com/a-self-appointed-czar-for-nevadas-public-charter-schools/>

⁴ See the most recent example by a NACSA related authorizer at: and

<https://www.hawaiinewsnow.com/2020/11/11/charter-school-commission-criticized-erroneous-rejections-new-applicants/> The full decision reviewing the wrongful authorizing policies can be found at: http://boe.hawaii.gov/About/Documents/Charter%20Schools/Appeal_No_20-01_LNCA_v_Commission.pdf

⁵ Researcher commentary and the full report can be found at: <https://www.educationnext.org/charter-school-regulations-harm-minority-school-operators/>



advanced by NACSA through a CSP Dissemination Grant from the USDOE calls for an even deeper review.

In addition to the use of CSP funds to advocate for authorizing policies that are now proving destructive to parental options and the entire charter sector, NACSA further engages in the highly questionable practice of placing state public officials on personal “consulting” retainers while simultaneously seeking vendor contracts with those same individuals and attempting to influence the policy decisions of those public officials. While it would be difficult to know exactly what the source of funds was and is for these personal “consulting” contracts with state and local public officials, NACSA’s program of personal payments to these officials is directly tied to the CSP Dissemination activities. A report by the Office of the Inspector General in Georgia determined that NACSA’s payments in that state had violated the three separate provisions, including rules regarding outside employment and ethics reporting laws.⁶ A report by the Office of Inspector General in South Carolina found that while the personal payment to the public official may not have directly violated the ethics law, the handling of the NACSA payment did violate outside employment rules, and the procurement code was also violated.⁷ In Nevada, public records law was violated when the authorizer wrongfully refused to produce records about NACSA’s relationships with the authorizer’s staff. A Nevada Court found that those NACSA-related public records were destroyed before ever being produced.⁸

PSO strongly objects to the use of CSP funds to disseminate policies that are proving to be severely damaging to parental options and the entire charter sector, and now research is bearing out policies that lead to discriminatory impacts within communities of color. PSO also believes it is completely inappropriate for an entity to personally retain as “consultants” or provide anything of value to the very state and local public officials that it seeks to do business with and to influence -- all done in close conjunction with the expenditure of federal CSP funds. Moreover, as the stated purpose of the CSP funds is to create best practices, it is inappropriate for a grantee to use the CSP to lobby federal or state officials.

To address these issues, we suggest the following changes and additions should be made to Proposed Priority One:

- Paragraph (a) should be amended to add, “in a non-discriminatory manner and with the purpose of helping develop new charter school options for families, particularly those that lack access to such options.”
- Paragraph (d) should be amended to add, “including evaluating the impact of policies and procedures on new applications, existing schools, and the overall availability and access of parents to charter school options.”
- Paragraph (c) should be amended to add, “as well as the effectiveness of public charter agencies in involving parents and communities in all charter policy and decision making.”

⁶ See Exhibit 2 for the conclusions of several violation by the GA OIG.

⁷ See Exhibit 3 for the conclusions of several violations by the SC OIG. (Refer to page 4 for a list of the 3 rules with a “noncompliance” finding.)

⁸ See Exhibit 4, Decision in Nevada First Judicial District, Case No. 19C000501B, Conclusions of Law at Page 7.



- Paragraph (g) should be amended to read, “Developing collaborative methods for authorizers to assist underperforming charter schools to improve and continue operations and to close persistently underperforming schools where the authorizer has solicited and gathered public input and evidence supports closure as the best option for the families, teachers, and community impacted, with special attention focused on students of color and traditionally underserved students.”
- A new paragraph (h) should be added stating, “Evaluating why the pipeline of new charter schools has considerably slowed and disseminating corrective actions that should be taken in authorizing policies to encourage new charter applications, including the provision of technical assistance and measures to remove barriers to entry for new charter schools.”
- A new paragraph (i) should be added stating, “Improving and disseminating best practices for authorizers to increase access to charter school options where families lack such public school options, and to increase the involvement of parents and communities in all authorizer policy and decision making.”

Finally, in the “Proposed funding restrictions,” the following should be added, “Grantees or subgrantees may not use funds to lobby or provide anything of value to any state, local, or school district official or employee, in their official or personal capacity, and may not be used for activities that are directly linked to any lobbying or provision of anything of value to any state, local, or school district official or employee, in their official or personal capacity.”

The CSP has been an incredible source to help create more public school options for families across the country in many ways. We wish to emphasize that the vast majority of CSP funds, and the rules that govern them, have been utilized effectively to create and enhance public school options for families across the nation. Any person or entity who would misuse these comments to in any manner question the importance of the overall CSP is no friend of parent options and choices. However, in the specific instance of the “authorizer priority” in the dissemination grants, unfortunately the impact has in some ways been the opposite, and it is now coming to light in a manner possibly resulting in severe disparate impacts on communities of color and other underserved communities that need charter options the most.

PSO’s suggestions are made in an attempt to bring the “authorizer priority” portion of this important program back to being about empowering parents and communities to choose the best educational option for their children regardless of zip code. We thank you for your consideration.

The National Coalition for Public School Options

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