



April 11, 2022

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

re: **Docket ID Number: ED-2022-OESE-0006**

Dear Ms. Brice,

The American Federation of Teachers welcomes the opportunity to comment on the U.S. Department of Education's proposed regulations to the Charter Schools Program grant programs. These proposed regulations represent a positive development for America's children, and if fully implemented, these improvements to the Charter Schools Program grant applications will not only advance equity, but also move to restore charter schools to their original purpose by integrating them into the broader education community.

We applaud the department's proposed regulations, which seek to improve community integration of charter schools. We also applaud the department for taking steps to prevent for-profit charter schools—which studies have shown underperform, compared with both public schools and their nonprofit counterparts—from receiving charter school grants. These steps will undoubtedly improve educational outcomes for children in both charter and traditional public schools. As a union of 1.7 million educators, healthcare workers and public service workers, including educators at more than 250 charter schools, we appreciate that the department is seeking to increase collaboration between charters schools and traditional public schools

The AFT strongly supports the department's collaboration priority:

We appreciate that the department is recognizing the need for collaboration between charter schools and district schools. Charter schools were originally intended to be vehicles for experimentation and collaboration, not walled gardens within our education system, and these proposed regulations reflect that the charter industry has strayed from that original intent. As a union of education professionals, we have concerns over the pervasiveness of noncompete and nondisclosure agreement practices in charter schools and the chilling effect that such agreements are already having on charter-district collaboration. We recommend that the Charter Schools

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Nurses and Health
Professionals

555 New Jersey Ave. N.W.
Washington, DC 20001
202-879-4400
www.aft.org

Randi Weingarten
PRESIDENT

Fedrick C. Ingram
SECRETARY-TREASURER

Evelyn DeJesus
EXECUTIVE VICE PRESIDENT

VICE PRESIDENTS

J. Philippe Abraham
Shelvy Y. Abrams
Frederick R. Albert
Victor M. Bonilla Sánchez
Barbara Bowen
Vicky Rae Byrd
Zeph Capo
Larry J. Carter, Jr.
Kathy A. Chavez
Donna M. Chiera
Melissa Cropper
Amanda Curtis
Jolene T. DiBrango
GlenEva Dunham
Marietta A. English
Francis J. Flynn
Jeffery M. Freitas
Lisa J. Gourley
David Gray
Ron Gross
Anthony M. Harmon
David Hecker
Karla Hernandez-Mats
Jan Hochadel
Jerry T. Jordan
Frederick E. Kowal
Terrence Martin, Sr.
Daniel J. Montgomery
Michael Mulgrew
Andrew Pallotta
Donna Phillips, RN
Juan Ramirez
Jesse Sharkey
Andrew Spar
Denise Specht
Wayne Spence
Jessica J. Tang
Adam Urbanski
Debbie White, RN
Carl Williams



Program grant applications be modified to have applicants certify that they will void all such noncompete/nondisclosure provisions, if they exist, during the life of the grant. Noncompete clauses, which prevent charter teachers from taking jobs in traditional public schools for a set period of time (or within a geographic region proximate to the charter school), are obvious barriers to the department's proposed priority of fostering district-charter collaboration. For example, according to Donald Cohen and Allen Mikaelian's recently released book *The Privatization of Everything*, Summit Academy Schools of Ohio sued 50 teachers in three years for violating noncompete clauses.¹

There have been repeated suggestions that, beyond chilling collaboration, nondisclosure agreements prevented charter school teachers from blowing the whistle on fraud and malfeasance occurring at their schools.²

We would ask that, in support of this priority, the CSP grant application be modified to include a certification by applicants that they either 1) do not utilize nondisclosure agreements and/or noncompete agreements at their schools, or 2) will void all such agreements for the life of the grant.

Collaboration between district schools and charter schools would be enhanced by putting district schools and charters on the same footing with respect to enrollment requirements:

Practices at certain charter schools have the effect of filtering out some subpopulations of students, leading to the concentration of higher-needs students in district schools. This behavior includes the counseling out of special education students; the use of entrance barriers that disincentivize enrollments of English language learners, low-income students and students with disabilities; and a reluctance to backfill when students leave the charter school. Charter schools that create enrollment barriers for ELLs, students with disabilities and low-income students are often already doing so in violation of federal law, but other disparate policies are not currently unlawful. The interests of district-charter collaboration would be furthered by asking applicants to disclose whether they engage in discriminatory enrollment practices.

Practices that exclude certain students from charter schools create divisions between district and charter teachers and administrators. In our experience, the prevalence of these practices varies significantly across the country and is unfortunately common in some states. The ACLU examined charter school enrollment barriers statewide in both Arizona and California, finding that more than 20 percent of California charter schools and 50 percent of surveyed Arizona

¹ Peter Green, "School Choice Has a Transparency Problem," *Forbes*, Jan. 5, 2022, <https://www.forbes.com/sites/petergreene/2022/01/05/school-choice-has-a-transparency-problem/?sh=31c6be5e83cf>.

² Andy Chow, "ECOT Critics Say Non-Disclosure Agreements Is a Cover Up of Student Data Manipulation," WKSU, May 1, 2018, <https://www.wksu.org/education/2018-05-01/ecot-critics-say-non-disclosure-agreements-is-a-cover-up-of-student-data-manipulation>.

charter schools utilized exclusionary enrollment practices.³ These practices included denying applicants on the basis of prior academic performance, requiring application fees, capping special education enrollments, discouraging immigrant applicants and requiring parent volunteer hours.

While many exclusionary charter application practices amount to violations of the letter or spirit of the law (or both), charter schools are permitted under federal law to decline to backfill student vacancies created as a result of a student withdrawal or expulsion. When charter schools refuse to backfill vacancies, it both compounds existing student population disparities between district and charter schools and creates new ones. Student mobility is associated with lower student performance, so limiting midyear entrants gives charter schools an advantage that comes at the expense of the district schools that are required to accept all enrollments.⁴

To preserve the department's proposed priority of fostering district-charter collaboration, we suggest amending the proposed regulations to request that charter school applicants disclose information about their application, selection, turnover and backfilling practices. Specifically, applicants should certify that application materials are available in all languages spoken in the community; that they do not cap the number of students with a disability (or the type of students with a disability they accept); and that they do not charge a fee for applicants. If applicants currently operate charter schools, they should disclose annual student turnover figures for the past five years. The regulations should also be modified so that charter school applicants disclose whether they use admissions tests, consider past academic or behavioral issues during admissions, and backfill vacancies either midyear or between school years, and they should require applicants to disclose how they have recruited students from diverse populations across their catchment areas.

Unions can help facilitate a collaborative school atmosphere, and regulations should be modified to reward applicants who pledge to support their workers' right to organize:

Collaboration between district school and charter school teachers would be easier if both groups were on the same professional footing. Unfortunately charter school teachers are often underpaid, and turnover in the industry is alarmingly high. Some charter schools operate with

³ Griselda Zetino, "Schools Choosing Students," ACLU of Arizona, Dec. 2017, https://www.acluaz.org/sites/default/files/field_documents/schools_choosing_students_web.pdf; Victor Leung, Roxanne H. Alejandre, and Angelica Jongco, "Unequal Access: How Some California Charter Schools Illegally Restrict Enrollment," ACLU Foundation of Southern California and Public Advocates, Aug. 1, 2016, https://www.aclusocal.org/sites/default/files/field_documents/report-unequal-access-080116.pdf.

⁴ Russell W. Rumberger, "Student Mobility: Causes, Consequences, and Solutions," National Education Policy Center, June 2015, https://nepc.colorado.edu/sites/default/files/pb_rumberger-student-mobility.pdf; <https://www.stcloudstate.edu/tpi/initiative/documents/preparation/The%20Impact%20of%20Mobility%20.pdf>; Eric A. Hanushek, John F. Kain, and Steven G. Rivkin, "Disruption versus Tiebout Improvement: The Costs and Benefits of Switching Schools," *Journal of Public Economics* 88, no. 9 (Aug. 2004): 1722-1746, <http://hanushek.stanford.edu/sites/default/files/publications/Hanushek%2BKain%2BRivkin%202004%20JPubE%2088%289%29.pdf>.

teaching staffs that are largely uncredentialed. Many operators in the charter school industry seem to have abandoned any attempt at employee retention, choosing instead to focus on building recruitment “pipelines” to solve the rapid turnover of their teaching force. The department’s laudable goal of fostering collaboration between district and charter schools will be difficult in high-turnover conditions and where significant disparities exist between district school and charter school staff.

We have seen, however, how beneficial it can be when charter and district teachers belong to the same union. In Chicago, several charter schools in the city are organized with the Chicago Teachers Union, with charter and district teachers belonging to the same union. The Chicago Teachers Union QUEST Center brings together both charter and district teachers for professional development courses. Unions can be the space where collaboration across district schools and charter schools can occur—but when charter teachers want to organize a union, their school management often stands in the way. In furtherance of the department’s stated goal of district-charter collaboration, as envisioned within these proposed regulations, we submit that the proposed regulations should be modified to reward schools that pledge not to interfere with teachers who wish to exercise their rights to organize and bargain collectively.

The AFT respectfully requests that language be inserted into the grant application to allow applicants to make a good-faith certification that they will remain neutral in any union organizing effort for the term of the grant award.

We applaud the department on the introduction of a community impact analysis and recommend a few minor improvements:

The AFT supports provisions that would have applicants analyze the impact of charter expansion on the schools that the applicant is, or would be, drawing students from. The focus on preventing charter school expansion from undermining district desegregation efforts is a welcome metric, and we are pleased to see it included in the impact analysis. We would suggest that the regulations be expanded to include an analysis on the fiscal impact of proposed charter growth.

Charter school growth is universally understood to negatively affect the financial condition of the sending districts. Credit ratings agencies and academia have reached a consensus on this point. The ratings agency Moody’s has opined that charter school growth can drag down the finances of their host districts, writing that “charter schools can pull students and revenues away from districts faster than the districts can reduce their costs.”⁵ Districts, being unable to reduce costs as quickly as they lose funding for charter schools, are left with diminished resources for students in their public schools. That finding has been bolstered by academic research, which has endeavored to estimate the net fiscal impact of charter school growth on district finances.

⁵ Moody’s Investors Service, “Charter Schools Pose Greatest Credit Challenge to School Districts in Economically Weak Urban Areas,” Oct. 15, 2013, https://www.moody.com/research/moodys-charter-schools-pose-greatest-credit-challenge-to-school-districts--pr_284505.

While charter school proponents have suggested that charter competition will improve district resources, academic and credit rating agency opinion has coalesced around the opposite conclusion.

Moody's has said that "A city that begins to lose students to a charter school can be forced to weaken educational programs because funding is tighter, which then begins to encourage more students to leave which then results in additional losses." University of Michigan researcher David Arsen has conducted research in Michigan that supports this conclusion, noting that "contrary to expectations, Michigan school districts respond to charter competition by devoting a smaller share of their spending to instructional services."⁶ Faced with decreased revenues, which "decline more rapidly than costs in districts losing students to charter schools," school districts are simply unable to free up the resources needed to improve education for the students remaining in traditional public schools.

For far too long, the Charter Schools Programs grant programs have ignored the economic reality of charter school growth and its impact on the resources available to traditional public school students. When charter schools expand, traditional public school students are left with fewer resources. We urge the department to amend its community impact analysis guidelines to ask applicants whether a credit rating agency has identified charter school growth as a credit negative for the sending district(s) from which the proposed (or current) school intends to draw its students.

We appreciate the proposed regulations' increased attention to the problems of the for-profit charter school industry: The proposed regulations' focus on tightening disclosure regulations around education management organization contracts is well-warranted and consistent with ensuring that CSP funds are allocated to high-performing charter schools. The for-profit charter school industry is disgraceful, and charter operators should not be able to evade the eligibility requirements of the Charter Schools Program by utilizing complex organizational structures and service contracts.

Research shows that for-profit virtual charter schools—which comprise a significant portion of all for-profit schools—are poorly serving America's students.⁷ Additionally, a recent National Education Policy Center study found that for-profit virtual charter schools underperform

⁶ David Arsen and Yongmei Ni, "The Effects of Charter School Competition on School District Resource Allocation," *Educational Administration Quarterly* 48, no. 1 (Feb 1., 2012): 3-38, <https://journals.sagepub.com/doi/10.1177/0013161X11419654>.

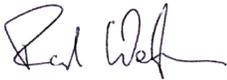
⁷ Meg Benner and Neil Campbell, "Profit Before Kids," Center for American Progress, Oct. 10, 2018, <https://www.americanprogress.org/issues/education-k-12/reports/2018/10/10/459041/profit-before-kids/>.

compared with their nonprofit and publicly run counterparts, suggesting that profit-seeking itself undermines educational success.⁸

We appreciate the department's proposed regulations:

We thank the Department of Education for these proposed regulations, which will significantly improve outcomes for students in both charter and traditional public schools. While this comment contains some minor suggestions we feel would make these proposed regulations more robust, the substance and spirit of the proposed regulations are a welcome indication that the department is serious about unifying a fractured education system and improving educational outcomes for all children, regardless of the type of public school they attend.

Sincerely,



Randi Weingarten
President, American Federation of Teachers

RW : emc opeiu #2 afl-cio

⁸ Alex Molnar et al., "Virtual Schools in the U.S. 2021," National Education Policy Center, May 2021, <https://nepc.colorado.edu/publication/virtual-schools-annual-2021>.