

# Charter Schools Program

Title V, Part B of the ESEA

Nonregulatory Guidance



**January 2014**

# Title V, Part B: Nonregulatory Guidance Charter Schools Program

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## **Introduction**

The Charter Schools Program (CSP) was originally authorized in October 1994, under title X, part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 8061-8067. The program statute was amended in October 1998 by the Charter School Expansion Act of 1998 and in January 2002 by the No Child Left Behind Act of 2001. The current program legislation (title V, part B of the ESEA; 20 U.S.C. 7221-7225g) is included at the end of this guidance.

The statutory purpose of the program is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools; and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The CSP provides start-up funding to eligible entities to support the planning, program design, and initial implementation of charter schools.

This nonregulatory guidance addresses questions the Department has received regarding various provisions of the CSP authorizing statute. These guidelines do not contain all of the information you will need to comply with CSP requirements and other requirements of Federal law (including civil rights obligations), but are intended to provide guidance on the CSP and examples of ways to implement it. This guidance provides the Department's interpretation of various statutory provisions and does not impose any requirements beyond those included in the CSP statute and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

For additional information about the CSP, please contact the Charter Schools Program office, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4W314A, Washington, D.C. 20202-5961. Telephone: (202) 401-8532.

If you are interested in commenting on this guidance, please email your comments to [charterschools@ed.gov](mailto:charterschools@ed.gov) and include CSP Guidance in the subject of your email, or write to us at the following address: Charter Schools Program, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

## **Summary of Major Changes**

This updated version of the CSP nonregulatory guidance addresses additional issues that have arisen under the program since the Department released previous versions of the CSP guidance in 2003, 2004, 2007, and 2011. Specifically, this document clarifies the circumstances under which charter schools receiving CSP funds may use weighted lotteries in admissions (Questions E-3 and E-3a) and provides guidance on how existing grantees may request permission to amend their applications to allow for the use of weighted lotteries.

The Department of Education continues to review this nonregulatory guidance and may publish clarifications or modifications of specific sections when appropriate. Any updates to

this nonregulatory guidance will be made available on the Department's Web site at <http://www2.ed.gov/programs/charter/legislation.html>.

# Charter Schools Program Guidance

## A. General Provisions of the Charter Schools Program (CSP)

### A-1. What is the purpose of the CSP?

The primary purpose of the CSP (title V, part B, subpart 1 of the ESEA) is to expand the number of high-quality charter schools available to students across the Nation by providing Federal financial assistance for charter school planning, program design, and initial implementation; and to evaluate the effects of charter schools, including their effects on students (in particular, on student academic achievement), staff, and parents. The program also encourages, through statutory funding priorities, the creation of strong State charter school laws that are designed to provide for the establishment of high-quality charter schools. An additional purpose is to encourage States to provide support to charter schools for facilities financing in amounts commensurate with the amounts they typically provide to regular public schools for that purpose. 20 U.S.C. 7221.

### A-2. How does the statute define a charter school?

Charter schools are authorized under individual State charter school laws. The enactment of State charter school laws is solely a State prerogative, and the definition of a “charter school” under State law is a matter of State policy. However, in order to receive CSP funds, a charter school must meet the definition in section 5210(1) of the ESEA, which is as follows:

The term “charter school” means a public school that:

- a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the requirements in paragraphs 1 through 12 of this definition;
- b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- c) Operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized public chartering agency;
- d) Provides a program of elementary or secondary education, or both;

- e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- f) Does not charge tuition;
- g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities Act of 1990, as amended, and part B of the Individuals with Disabilities Education Act;
- h) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
- i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;
- j) Meets all applicable Federal, State, and local health and safety requirements;
- k) Operates in accordance with State law; and
- l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school. 20 U.S.C. 7221i(1).

**A-3. In addition to the provisions of title V, part B, subpart 1 of the ESEA, what other significant Federal statutory and regulatory authorities apply to recipients of funds under the CSP?**

Recipients of funds under this program should be aware of the following significant statutory requirements in addition to those in title V, part B, subpart 1 of the ESEA:

- a) The definitions and other provisions set out in title IX of the ESEA, which establishes general provisions for all programs authorized under the ESEA;
- b) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;

- c) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- d) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- e) The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- f) Title II of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibits discrimination on the basis of disability by public entities, including public charter schools and local educational agencies, regardless of whether they receive Federal financial assistance;
- g) Part B of the Individuals with Disabilities Education Act, which requires States to make available a free appropriate public education to children with disabilities, as does section 504 of the Rehabilitation Act. (See 34 CFR 104.33 of the Department’s Regulations for Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance, which requires a recipient of Federal financial assistance that operates a public elementary or secondary educational program or activity to provide a free, appropriate public education [FAPE] to children with disabilities.);
- h) For eligible entities that received grants in fiscal year (FY) 2010 for the replication or expansion of high-quality charter schools, the provisions governing those grants that were included in the Consolidated Appropriations Act, 2010;
- i) The Education Department General Administrative Regulations (EDGAR), parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99;
- j) General definitions from the ESEA at 20 U.S.C. 7801; and
- k) The Consolidated Appropriations Act, 2010, division D, title III, Pub. L. 111-117.

## **B. Eligibility and Use of Funds**

### **B-1. Which State educational agencies (SEAs) are eligible to apply for a CSP grant?**

SEAs in States with a specific State statute authorizing the establishment of charter schools are eligible to apply for CSP grants. An “eligible applicant” (defined as a charter school developer that has applied for a charter and notified the charter granting entity of its application for CSP funds) in these States may apply to the SEA for a subgrant. 20 U.S.C. 7221i(1)(A) and (3).

**B-2. What if a State elects not to participate or does not have an application approved?**

If a State elects not to participate in the CSP or is denied funding, an eligible applicant may apply directly to the Department for a grant. Charter schools located in States that have not enacted charter school legislation do not qualify as eligible applicants. (See B-1.) 20 U.S.C. 7221a(b).

**B-3. May the Secretary waive any eligibility or application requirements?**

Yes, subject to certain limitations, the Secretary may waive any statutory or regulatory requirement over which the Secretary exercises administrative authority. However, the Secretary is precluded from waiving any requirement relating to the elements of a “charter school,” as that term is defined in section 5210(1) of the ESEA (See A-3.). 20 U.S.C 7221c(e).

**B-4. May an SEA waive any eligibility or application requirement?**

SEAs generally must request waivers of CSP statutory or regulatory requirements from the Secretary. However, either the SEA or the Secretary may waive the requirements in section 5203(d)(3) of the ESEA that requires the eligible applicant to provide its authorized public chartering agency with notice and a copy of its CSP application in the case of an application for a “pre-charter planning grant or subgrant,” if the authorized public chartering agency to which the charter school proposal will be submitted has not been determined at the time the CSP grant or subgrant application is submitted. 20 U.S.C. 7221b(d)(3).

**B-5. What are dissemination grants?**

The Department awards dissemination grants, and SEAs that have received CSP funds may also award dissemination subgrants, to successful charter schools to assist other schools in adapting the charter school’s program (or certain aspects of the charter school’s program) or to disseminate information about the charter school.

Dissemination activities may include such activities as: (a) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and its developers and that agree to be held to at least as high a level of accountability as the assisting charter school; (b) developing partnerships with other public schools designed to improve student academic achievement; (c) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (d) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools. 20 U.S.C. 7221c(f)(6).

**B-6. Who is eligible to apply for a dissemination grant?**

A charter school may apply for a dissemination grant or subgrant, regardless of whether it has applied for or received funds for planning, program design, or implementation under the CSP, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including the following: (a) substantial progress in improving student academic achievement; (b) high levels of parent satisfaction; and (c) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. 20 U.S.C. 7221c(f)(6)(A).

**B-7. What are some limitations on the use of dissemination funds?**

Like all Federal grants, CSP dissemination grants and subgrants must be used in accordance with statutory and regulatory requirements. A charter school may not use dissemination grant funds, either directly or through a contractor, for marketing or recruitment activities designed to promote itself or its programs to parents or the community. Grant funds may be used to develop materials documenting successful practices of the charter school for the educational purpose of assisting other public schools in adapting the charter school's program or improving student academic achievement. Any charter school receiving a dissemination grant or subgrant should provide thorough and high-quality information that meets the needs of other schools trying to learn from the charter school's experience. Absent a waiver, a charter school may receive only one dissemination grant. 20 U.S.C. 7221c(f)(6)(B) and 7221a(d)(2).

**B-8. Is a private school eligible to receive CSP funds?**

No, only charter schools that meet the definition of a "charter school" under the ESEA are eligible to receive CSP funds. Section 5210(1) of the ESEA defines a charter school as a "public school" that, in addition to meeting other criteria, is created by a developer as a public school, or adapted by a developer from an existing public school, and operated under public supervision and direction. 20 U.S.C. 7221i(1)(B).

**B-9. Could a private school convert to a public charter school and be eligible to receive CSP funds?**

No. For purposes of the CSP, a charter school must be newly created or adapted from an existing public school. There is no provision in the law that recognizes conversions of private schools into public charter schools. However, the statute does not prohibit a newly created charter school from using resources previously used by a closed private school, including hiring teachers or enrolling students from the closed private school.

It should be noted, however, that any newly created public charter school may not be a continuation of a private school under a different guise. A public charter school must be separate and apart from any private school. It must be

established as a public school and comply with applicable State and Federal laws regarding public schools. In its creation, development, and operation, a charter school must not have any affiliation “with a sectarian school or religious institution.” Because a newly created public charter school would not have any “previously enrolled” students, *all* students would need to apply for admission and would have to be selected by lottery if there are more applicants than spaces available. Similarly, the charter school must widely inform the community of its public school status and have a fair and *open* admissions process. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(E) and (H).

**B-10. May an organization that operates a private school apply for funds to open a charter school?**

An eligible applicant under the CSP is defined as “a developer that has applied to an authorized public chartering authority to operate a charter school; and provided adequate and timely notice to that authority under section 5203(d)(3) [of the ESEA].” A “developer” means “an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.” The statute does not specifically prohibit a developer from operating both a charter school and a private school. In such a case, the charter school would have to be operated separately from the private school. 20 U.S.C. 7221i(2) and (3).

**B-11. May a charter school share a facility with a private school?**

There are no specific statutory or regulatory prohibitions against funding a charter school that shares a facility or other resources with a private school, provided that the charter school truly is separate from the private school. In such a case, the grant or subgrant recipient may expend CSP funds only on goods and services used *exclusively* by the charter school. The grant or subgrant recipient may not use CSP funds to cover the cost of personnel, equipment, supplies, or other resources shared between the two schools. 34 CFR 75.700.

**B-12. Is a for-profit entity that holds a legal charter eligible to apply for a CSP grant or subgrant?**

No, a for-profit entity does not qualify as an eligible applicant for purposes of the CSP. Only non-profit entities may qualify as eligible applicants under the CSP. A non-profit charter school receiving CSP funds, however, may enter into a contract with a for-profit entity to have the for-profit entity manage the charter school on a day-to-day basis. In such a case, the non-profit entity receiving the CSP grant must directly administer or supervise the administration of the project. Likewise, the grant recipient is directly responsible for ensuring that CSP grant funds are used in accordance with statutory and regulatory requirements. 34 CFR 75.700-701 and 75.708(b).

**B-13. What factors does the Secretary consider in determining whether a charter school is independent of a for-profit charter management organization (CMO) or educational management organization (EMO) with which the charter school has contracted to manage its day-to-day operations?**

Although a charter school may enter into a contract with a for-profit entity to manage the day-to-day operations of the charter school, Federal regulations require the charter school grant recipient to “directly administer or supervise the administration of [the grant].” When administering or supervising the administration of the grant, the charter school that contracts with a CMO or EMO should ensure that it and its governing board are independent of the for-profit CMO or EMO. In determining whether a charter school grant recipient is independent from the for-profit CMO or EMO hired to manage the day-to-day operations of the charter school, the Secretary considers a number of factors, including, but not necessarily limited to, the following:

- a) Whether the charter school’s governing board is selected by, or includes members who are employees of, the for-profit CMO or EMO;
- b) Whether the charter school has an independent attorney, accountant, and audit firm that works for the charter school and not the for-profit CMO or EMO;
- c) Whether the contract between the charter school and the for-profit CMO or EMO was negotiated at “arms length,” clearly describes each party’s rights and responsibilities, and specifies reasonable and feasible terms under which either party may terminate the contract. (e.g. the charter school does not lose the right to use facilities);
- d) Whether the fee paid by the charter school to the for-profit CMO or EMO is reasonable for the type of management services provided; and
- e) Whether any other agreements (e.g., loans, leases, etc.) between the charter school and for-profit CMO or EMO are fair and reasonable, documented appropriately, align with market rates, and include terms that will not change if the management contract is terminated.

As a general matter, grantees must avoid apparent and actual conflicts of interest when administering grants. For additional information on conflicts of interest, please see section G of this nonregulatory guidance. 34 CFR 74.40-48, 75.524-525, and 80.36 (procurements).

## C. Multiple Charter Schools

### C-1. May an SEA award CSP start-up subgrants to multiple charter schools established under a single charter?

Section 5202(d)(1) of the ESEA provides that “[a] charter school may not receive... more than one grant for [planning and implementation activities].” For purposes of the CSP, a “charter school” is defined as, among other criteria, “a public school that... is created by a developer as a public school...; operates in accordance with State law...; and has a written performance contract with the authorized public chartering agency in the State...” Thus, the question of whether an SEA may award CSP start-up subgrants to multiple charter schools established under a single charter depends on: (a) whether the charter school at issue meets the definition of a charter school as set forth in section 5210(1) of the ESEA; and (b) whether the charter school has received a CSP start-up grant or subgrant previously.

An SEA may not award CSP start-up subgrants to multiple charter schools established under a single charter where the charter schools are merely extensions of each other (i.e., one charter school with multiple campuses). This is also true for charter schools established under separate charters if, in fact, they are operated as one charter school.

However, an SEA may award CSP start-up subgrants to multiple charter schools established under a single charter if each of the charter schools meets the CSP definition of “charter school” and the schools truly are separate and distinct from each other.

There are several key factors an SEA should consider when determining whether multiple charter schools created under a single charter are separate schools or parts of the same charter school:

- a) The terms of the charter;
- b) Whether the charter schools were established and are recognized as separate schools under the State’s charter school law;
- c) Whether the charter schools have separate performance agreements with their authorized public chartering agency(ies);
- d) Whether each school separately reports its academic performance for ESEA reporting purposes;
- e) Whether the schools have separate facilities;
- f) Whether the charter schools have separate staffs; and

- g) Whether the charter schools' day-to-day operations are carried out by different administrators.

The existence or non-existence of any one of these factors, by itself, does not determine whether a particular charter school is a separate school or part of a larger school. The existence or non-existence of several factors, however, may inform an SEA's determination of whether multiple charter schools created under a single charter are distinct entities or, for all practical purposes, are operating as a single charter school.

Consistent with the requirement that each school meet the definition of a charter school in section 5210(l) of the ESEA, in all cases each separate school must conduct an open enrollment process. Therefore, all students need to apply for admission to the charter school and must be selected by lottery if there are more applicants than spaces available. No preference may be given to students from an affiliated school. The charter school also must widely inform the community of its public school status and have a fair and open admissions process. 20 U.S.C. 7221a(d) and 7221i(1).

**C-2. May a new charter school receive CSP funds if it is located in the facility of a recently closed charter school that also received CSP funds?**

Yes, if the charter school is indeed "newly created" and has no affiliation with the closed school. SEAs should exercise particular caution, however, to ensure that the governing board and staff of the new school are considerably different from the governing board and staff of the closed school. 20 U.S.C. 7221a(d).

**C-3. May one governing board oversee multiple charter schools?**

The Department has no objection to one governing board overseeing multiple charter schools, provided that the board exercises appropriate oversight and monitoring of each school. 34 CFR 80.40.

## **D. Use of Grant Funds**

**D-1. How must CSP grant funds be used by SEAs?**

SEAs must use CSP funds to award subgrants to eligible applicants to enable them to plan and implement charter schools in the State. SEAs may reserve up to 5 percent of CSP grant funds for administrative expenses related to operating the State charter school grant program, and up to 10 percent of their CSP grant funds to support dissemination activities. 20 U.S.C. 7221a(a), 7221c(f)(1), and 7221c(f)(4)(A).

**D-2. How may charter schools use CSP start-up grants or subgrants?**

Charter schools may use CSP start-up grant or subgrant funds only for post-award planning and design of the educational program, and initial implementation of a charter school. Planning activities may include refinement of the desired educational results and the methods for measuring progress toward achieving those results and professional development of teachers and other staff who will work in the charter school. Initial implementation activities may include: (a) informing the community about the school; (b) acquiring necessary equipment and educational materials and supplies; (c) acquiring or developing curriculum materials; and (d) other initial operational costs that cannot be met from State or local sources. Planning and implementation grants generally may be awarded for a period of up to three years, with no more than 18 months used for planning and program design and no more than two years used for initial implementation of the charter school.

In addition, OMB Circular A-122 establishes principles for determining allowable costs for Federal grants to non-profit entities. As a general matter, costs must be reasonable, necessary, and allocable to meet the objectives of the grant. 20 U.S.C. 7221c(f)(3); 2 CFR 230 (cost principles for non-profit organizations).

**D-3. What types of costs other than those specified in D-2 of this guidance qualify as “other initial operational costs that cannot be met from State or local sources”?**

As stated in D-2, for purposes of the CSP, initial implementation activities may include: (a) informing the community about the school; (b) acquiring necessary equipment and educational materials and supplies; (c) acquiring or developing curriculum materials; and (d) other initial operational costs that cannot be met from State or local sources. As a general matter, these costs may include, but are not necessarily limited to, the following:

- a) Costs associated with creating and implementing office functions, such as accounting systems, attendance and registration systems, and human resources policies;
- b) Costs associated with the installation of computers, data systems, networks, and telephones;
- c) Personnel expenses incurred either before or after the school’s opening, provided that these expenses are associated with initial implementation activities (i.e., as opposed to ongoing operations), such as program and curriculum development and integration, and teacher and staff recruiting. (\*Note: If personnel split their time between ongoing operational activities and initial implementation activities, only that portion of the time associated with initial implementation of the charter school is allowable as an initial operational cost. The charter school must maintain accurate time

and effort records to document the amount of time each employee works on tasks related to the initial implementation of the charter school.); and

- d) Rental or occupancy costs for the school facility for a reasonable period of time in preparation for the school's opening.

All of the expenses described in (a)-(d) are allowable under the CSP only to the extent that they are related to the initial implementation of the charter school and cannot be met from State or local sources. A charter school that has received State or local funds would have to demonstrate that the State or local funds are unavailable to cover the expense at issue. If the charter school can show that the State or local funds it has received are necessary to meet expenses other than the one at issue, then the charter school has met its burden of showing that the "other initial operational cost" cannot be met from State or local sources and, therefore, is allowable under the CSP grant. 20 U.S.C. 7221c(f)(3)(B)(iv).

**D-4. May CSP funds be expended on construction?**

No, CSP funds may not be used for construction. CSP funds may be used for necessary maintenance, repair, or upkeep of buildings and equipment that neither add to the permanent value of the property nor appreciably prolong its life, but merely keep it in an efficient operating condition. OMB Circular A-122, Sec. 27 (rev. May 10, 2004); 2 CFR appendix B to part 230, section 27.

**D-5. What type of equipment is permitted?**

CSP funds may be used for costs associated with the initial implementation of a charter school. Initial implementation activities may include acquiring necessary equipment and educational materials and supplies. Thus, in accordance with OMB cost principles, to qualify as an allowable cost, the equipment must be necessary and reasonable for the proper and efficient performance and administration of the grant. In addition, the cost of the equipment must be included in the approved application and budget for the grant. Equipment necessary to implement a charter school may include, but is not necessarily limited to, desks, chairs, computers, equipment related to physical education and art, and playground equipment. 20 U.S.C. 7221c(f)(3)(B)(ii); OMB Circular A-122.

**E. Lottery, Recruitment, and Admissions**

**E-1. What is a lottery for purposes of the CSP?**

A lottery is a random selection process by which applicants are admitted to the charter school. 20 U.S.C. 7221i(1)(H).

**E-2. Under what circumstances must a charter school use a lottery?**

A charter school receiving CSP funds must use a lottery if more students apply for admission to the charter school than can be admitted. A charter school with fewer applicants than spaces available does not need to conduct a lottery. 20 U.S.C. 7221i(1)(H).

**E-3. Are weighted lotteries permissible?**

Weighted lotteries (i.e., lotteries that give additional weight to individual students who are identified as part of a specified set of students, but do not reserve or set aside seats for individual students or sets of students) are permitted only in certain circumstances.

First, weighted lotteries may be used when they are necessary to comply with title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; title II of the Americans with Disabilities Act of 1990, as applicable; the equal protection clause of the Constitution; or applicable State law.

Second, a charter school may weight its lottery to give a slightly better chance for admission to students seeking to change schools under the public school choice provisions of title I, part A of the ESEA for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school might provide each student seeking a transfer under title I with two or more chances to win the lottery, while all other students would have only one chance to win. 20 U.S.C. 7221i(1)(H).

Third, consistent with section 5204(a)(1) of the ESEA<sup>1</sup>, a charter school may weight its lottery to give slightly better chances for admission to all or a subset of educationally disadvantaged students if State law permits the use of weighted lotteries in favor of such students. Permission could be evidenced by the fact that weighted lotteries for such students are expressly permitted under the State charter school law, a State regulation, or a written State policy consistent with the State charter school law or regulation, or, in the absence of express authorization, confirmation from the State's Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students. Thus, if a State's charter school law permits charter schools to give additional weight to educationally disadvantaged students (or a subset thereof), a charter school in that State could weight its lottery in favor of such students or participate in a centralized lottery for multiple public schools that is weighted in favor of

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<sup>1</sup> Section 5204(a)(1) of the ESEA is the provision of the CSP statute regarding selection criteria for State educational agencies that focuses on the contribution that the CSP will make to assisting educationally disadvantaged and other students in meeting State academic content and achievement standards.

such students and remain eligible for CSP funding. For the purpose of this guidance, educationally disadvantaged students are students in the categories described in section 1115(b)(2) of the ESEA, which include students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.

Weighted lotteries may not be used for the purpose of creating schools exclusively to serve a particular subset of students. In addition, the Department strongly encourages charter schools that use weighted lotteries to do so as part of a broader strategy that includes fulfillment of their existing responsibilities related to outreach, recruitment, and retention for all students, including educationally disadvantaged students.

**E-3a. May existing grantees weight, or allow charter schools in the State to weight, their lotteries under the circumstances described in E-3?**

An existing grantee that wishes to use, or allow charter schools receiving CSP funds to use, weighted lotteries under the circumstances in E-3 must seek approval from the Department to do so by amending its grant application. Requests for approval to use weighted lotteries should be submitted to the Department and include the following:

- 1) Information concerning the circumstances in which a weighted lottery would be used, including the specific categories of students the weighted lottery would favor;
- 2) Evidence that –
  - a) When seeking approval to use weighted lotteries under the first circumstance in E-3, the use of weighted lotteries is necessary to comply with Federal or State law; or
  - b) When seeking approval to use weighted lotteries under the second or third circumstances in E-3, State law permits such use, which could be evidenced by the fact that weighted lotteries for such students are expressly permitted under the State charter school law, a State regulation, or a written State policy consistent with the State charter school law or regulation, or, in the absence of express authorization, confirmation from the State’s Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students;
- 3) Information concerning the mechanisms that exist (if any) for an oversight entity (e.g., the SEA or an authorized public chartering agency) to review, approve, or monitor specific lottery practices, including establishment of weight amounts if applicable;

4) Information concerning how the use of a weighted lottery for a permitted purpose is within the scope and objectives of the approved project; and

5) Information concerning the amount or range of lottery weights that will be employed or permitted and the rationale for these weights.

An applicant for future CSP competitions that wishes to use a weighted lottery should provide the pertinent information about its proposed lottery in its grant application.

**E-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?**

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply.

Specifically, the following categories of applicants may be exempted from the lottery on this basis:

- a) Students who are enrolled in a public school at the time it is converted into a public charter school;
- b) Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;
- c) Siblings of students already admitted to or attending the same charter school;
- d) Children of a charter school's founders, teachers, and staff (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and
- e) Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).

When recruiting students, charter schools should target all segments of the parent community. A charter school must recruit in a manner that does not discriminate against students of a particular race, color, national origin (including English language learners), religion, or sex, or against students with disabilities; in order to meet this goal, charter schools should consider additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs. Once a student has been admitted to the charter school through an appropriate process, he or she may remain in attendance through subsequent grades. A new applicant for

admission to the charter school, however, would be subject to the lottery if, as of the application closing date, the total number of applicants exceeds the number of spaces available at the charter school. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(E), (G), and (H).

**E-5. May a charter school create separate lottery pools for girls and boys, in order to ensure that it has a reasonably equal gender balance?**

No, a charter school receiving CSP funds must hold one lottery that provides qualified students with an equal opportunity to attend the school. Therefore, a charter school receiving funds under the program is precluded from holding separate lotteries for boys and girls. Nor may a school weight its lottery in favor of one gender over another. A school seeking to increase participation of one gender should do so by targeting additional recruitment efforts toward that gender. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(H).

**E-6. In addition to title V, part B, subpart 1 of the ESEA, what other statutory or regulatory authorities should a charter school receiving a CSP grant consider when developing its admissions policies?**

To be eligible for CSP start-up grants, a charter school's admissions practices must comply with applicable Federal and State laws. Exemptions from the lottery specified in E-4 above are permissible only to the extent that they are consistent with the State's charter school law, other applicable State laws, the school's charter, and any applicable title VI desegregation plans or court orders requiring desegregation. A charter school's admissions practices must also comply with part B of the Individuals with Disabilities Education Act and Federal civil rights laws, including, but not limited to, title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973; and title II of the Americans with Disabilities Act of 1990, as applicable. 20 U.S.C. 7221i(1)(E), (G), (H), and (K). See also A-3.

**E-7. What are a charter school's responsibilities with regard to outreach and recruitment?**

Section 5203(b)(3)(I) of the ESEA requires charter school grant and subgrant recipients to inform students in the community about the charter school and to give each student "an equal opportunity to attend the charter school". Further, section 5203(b)(3)(E) of the ESEA requires charter schools receiving CSP grants or subgrants to involve parents and other members of the community in the planning, program design, and implementation of the charter school.

As noted in E-4 above, charter schools may not discriminate in recruiting. Charter schools should reach out broadly to the community, including to English language learners and students with disabilities.

**E-8. May a tuition-based private preschool program that "feeds into" an elementary public charter school at the kindergarten level permit children**

**enrolled in the preschool program to continue in the elementary program without going through a lottery process?**

No. In order to qualify for funds under the CSP, a “charter school” must, in addition to meeting other requirements, be created as a public school and may not charge tuition. Therefore, the private preschool would not qualify as a charter school and would have to be operated separately from the elementary “charter school”. Accordingly, all applicants to the charter school, including students attending the private preschool, would have to be selected by lottery if there are more applicants than there are spaces available. See also B-10.

However, the statute does not preclude an elementary charter school in this type of situation from holding its lottery a few years early (e.g., when students are ready to enroll in the preschool). Under this approach, the charter school would have an affirmative responsibility to inform prospective applicants that winning the lottery does not require them to enroll in the private preschool. Thus, any child selected through the lottery would be guaranteed a slot in kindergarten a few years later, whether or not he or she enrolls in the preschool program.

Additionally, given the high mobility of children and families, schools that choose to exercise this option should ensure that families in the area, including those new to the area or that were not aware of the previous lottery are given the opportunity to apply for admission. Such admissions policies must meet the requirements of the CSP and might include holding a second lottery to fill vacancies created by normal attrition or the failure of early lottery winners to enroll in the charter school. 20 U.S.C. 7221b(b)(3)(E) and (b)(3)(I); and 7221i(1)(F) and (1)(H).

**F. Involvement of Religious and Community-Based Organizations with Charter Schools**

**F-1. May a charter school be religious in nature?**

No. As public schools, charter schools must be non-religious in their programs, admissions policies, governance, employment practices and all other operations, and the charter school’s curriculum must be completely secular. As with other public schools, charter schools may not provide religious instruction but may teach about religion from a secular perspective and play an active role in teaching civic values. Further, as discussed later in this document, faith-based and religious organizations can be involved with charter schools in many ways, and religious expression by students is allowed in charter schools to the same extent as in other public schools. 20 U.S.C. 7221i(1)(E).

**F-2. May charter schools use public funds to support religious programs or activities?**

No. All activities of a charter school must be non-religious, as is the case for all public schools. Public funds may not be used for religious purposes or to encourage religious activity. In addition, even if funded by non-public sources, religious activity may not be conducted, promoted, or encouraged during charter school activities by charter school employees or by other persons working with charter schools. 20 U.S.C. 7221i(1)(E). See also F-1.

**F-3. May charter schools enter into partnerships with religious organizations to provide secular services?**

Yes. Like other public schools, charter schools may enter into partnerships with community groups for secular purposes, such as tutoring or recreational activities. Religious groups may be partners for these types of activities, so long as charter schools select partners without regard to their religious affiliation, ensure that no public funds are used for religious purposes, do not engage in or encourage religious activity, and the partner organization does not engage in or encourage religious activity as part of the partnership activities. Charter schools may not limit participation in the partnership to religious groups or certain religious groups, and may not select students or encourage or discourage student participation with particular partners based on the religious or secular nature of the organization. 20 U.S.C. 7221i(1)(E).

**F-4. May charter schools use the facilities of a religious organization?**

Yes. A charter school may use the facilities of a religious organization to the same extent that other public schools may use these facilities. Generally, this means that a charter school may lease space from a religious organization so long as the charter school remains non-religious in all respects, including its programs, operations, and physical environment. Most importantly, a landlord affiliated with a religion may not exercise any control over what is taught or displayed in the charter school. 20 U.S.C. 7221i(1)(E).

**F-5. May charter schools conduct outreach activities in churches or through religious organizations?**

Yes. A charter school's outreach and recruitment activities should be designed to reach all segments of the parent community. Thus, a charter school may conduct outreach or recruitment activities in churches or through religious organizations as part of a broad-based and balanced effort to inform parents in the community about the charter school and to recruit a diverse student body, but may not favor or disfavor religion in general or any particular faith or house of worship. 20 U.S.C. 7221b(b)(3)(I).

**F-6. May community-based organizations and business entities play a role in charter schools?**

Yes. Community-based organizations and businesses can play a positive role in creating and supporting charter schools. Examples of ways in which non-religious organizations can get involved in charter schools include helping to plan or design a new school, developing curriculum and assessment strategies, serving on governing boards, participating in the day-to-day management of charter schools, establishing partnerships with charter schools, and even creating work-site charter schools. A broad range of community-based organizations and businesses are currently involved with charter schools, including major corporations, hospitals, museums, and homeless shelters, as well as courts and social service agencies. Like all charter schools, charter schools operated by or affiliated with community-based organizations or business entities must be non-religious, and must operate in a nondiscriminatory manner. 20 U.S.C. 7221i(1).

## **G. Administrative and Fiscal Responsibilities**

**G-1. What are the administrative and fiscal responsibilities of a charter school grantee under the CSP?**

Charter schools receiving CSP grants must comply with applicable statutes, regulations, and approved applications; and must use Federal funds in accordance with those statutes, regulations, and applications. Grantees must directly administer or supervise the administration of the project, and must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds.

As discussed in B-13, in cases where a charter school has contracted with a for-profit CMO or EMO to manage the day-to-day operations of the charter school, the charter school must exercise special care to ensure that the charter school directly administers or supervises the administration of the Federal grant and is independent of the for-profit CMO or EMO. 34 CFR 75.700-75.702 and 76.701.

**G-2. What are the rules governing “conflicts of interest” in the administration of CSP grants?**

CSP grantees must avoid apparent and actual conflicts of interest when administering grants. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if: (a) the decision is likely to benefit that person or his or her immediate family member; and (b) the person is a public official or has a family or business relationship with the grantee. Section 75.525(b) provides further that a person may not participate in a project to use his or her position for a purpose that is –

or gives the appearance of being – motivated by a desire for a private financial gain for that person or for others. 34 CFR 75.525.

**G-3. What procedures must CSP grantees follow when purchasing equipment or services?**

When using Federal funds to purchase equipment or services, a charter school must comply with the procurement standards set forth in the Department's regulations at 34 CFR 74.40-74.48. Those standards require Federal grant recipients to develop written procurement procedures and to conduct all procurement transactions in a manner to provide, to the maximum extent practical, open and free competition. No employee, officer, or agent of the charter school may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists. 34 CFR 74.42-74.44 and 80.36.