



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 26, 2020

Alan Bruer
Director
Charter Schools Division
New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

Re: Expanding Opportunity Through Quality Charter Schools Program (CSP) – Grants to State Entities (SEs); Request for Waivers and Application Amendments

Dear Director Bruer:

I am writing in response to New Mexico Public Education Department (New Mexico)'s request for waivers of specific statutory and regulatory requirements applicable to your State's grant under the United States Department of Education's (Department's) CSP – Grants to State Entities (CSP SE) program (Grant Award No. U282A170031). The waivers, which were originally requested on May 4, 2020, would allow New Mexico to award remote learning subgrants to charter schools in the State that do not currently have CSP startup subgrants to enable them to meet the immediate educational needs of students impacted by the COVID-19 crisis. Specifically, New Mexico requests approval for charter schools to implement remote learning programs, which may include purchasing hardware, software, and licenses through the 2020-21 school year necessary for remote learning, training of staff on effective implementation of remote and/or socially-distanced learning, and offsetting one-time costs related to the novel coronavirus 2019 (COVID-19) pandemic for increased social work, education counseling, and/or family engagement services responding to student and staff needs. In addition, the remote learning subgrants may be used to assist charter schools in transitioning from remote learning back to in-person instruction this fall, or as soon as practicable and safe to do so based on the guidance of State and local health officials.

As you may know, the CSP SE program is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. §§ 7221-7221j). The specific statutory and regulatory provisions for which New Mexico requests waivers are as follows:

- Section 4303(b)(1)(A) of the ESEA (20 U.S.C. § 7221b(b)(1)(A)) – requires subgrant funds to be used to open and prepare for the operation of new charter schools.
- Section 4303(d)(2) of the ESEA (20 U.S.C. § 7221b(d)(2)) – requires SEs to use a peer review process to review subgrant applications.

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- Section 4303(e)(2) (20 U.S.C. § 7221b(e)(2)) – prohibits an eligible applicant from receiving more than one subgrant for an individual charter school within a five-year period, unless the eligible applicant demonstrates to the SE that such individual charter school has at least three years of improved educational results for students enrolled in the charter school with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.
- Section 4303(f)(1)(C) of the ESEA (20 U.S.C. § 7221b(f)(1)(C)) – requires the SE’s application to include descriptions of how the SE will award subgrants on a competitive basis, the subgrant application, and how the SE will review subgrant applications; and prescribes the specific information that must be included in each subgrant application.
- 2 CFR 200.308(d)(1) – requires grantees to obtain prior approval from the Department to use funds for pre-award costs.

After a careful review and analysis of New Mexico’s submission, and consideration of the weight and impact of the COVID-19 national emergency on charter schools in New Mexico, the Department grants New Mexico’s waiver request, subject to a few exceptions and the specific conditions described below. The Department approves New Mexico providing pre-award costs to subgrant recipients for up to 90 days from **March 27, 2020** (i.e., the date the Governor declared a state-of-emergency in New Mexico).

Further, approval of these waivers is contingent upon New Mexico ensuring that charter schools receiving remote learning subgrants meet the CSP definition of “charter school,” demonstrate financial need, have never provided remote learning as part of their educational program, and have a plan for reopening and transitioning from remote learning back to full-time, or part-time, in-person instruction this fall, or as soon as practicable and safe to do so based on the guidance of State and local health officials. In addition, in light of the Department’s determination that New Mexico is not making substantial progress toward meeting the objectives of the project, within 10 days of the date of this waiver approval letter, New Mexico must develop and submit to the Department a written plan for ensuring that New Mexico will meet the goals and objectives of the grant, including awarding the projected number of subgrants, during the current performance period and in future years. New Mexico must refrain from awarding any additional expansion subgrants under its current approved CSP SE application pending submission, and the Department’s approval, of its proposed plan and any corresponding application amendments.

As you know, approval of New Mexico’s waiver request constitutes approval of corresponding amendments to New Mexico’s approved CSP SE application. Our understanding is that New Mexico is not requesting a waiver to permit charter school operators that currently have CSP startup subgrants to amend their approved subgrant applications and budgets to implement remote learning programs in response to the COVID-19 national emergency. Likewise, the Department has determined that such a waiver and corresponding amendment to New Mexico’s approved CSP SE application are unnecessary because the proposed costs for remote learning under New Mexico’s waiver request already are allowable uses of funds. Please note, however, that charter schools with current CSP startup subgrants under New Mexico’s approved CSP SE grant are required to obtain approval from New Mexico to amend their approved subgrant applications and budgets in order to implement remote learning programs in response to COVID-

19. To this end, New Mexico may notify its existing charter school subgrantees that they may request budget modifications and corresponding amendments to their approved subgrant applications for the limited purpose of using CSP funds to implement remote learning programs on a temporary basis in response to the COVID-19 national emergency. Although New Mexico is not required to amend its approved CSP SE application for this purpose, it is required to employ a formal subgrant application amendment process that documents the specific changes to the subgrant, how the changes align to the overall scope and objectives of the approved project, and that all costs are allowable under section 5204(f)(3) of the ESEA (20 U.S.C. § 7221c(f)(3)) and the cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 C.F.R. part 200. In addition, as a direct grantee, New Mexico must ensure that subgrantees comply with all statutory and regulatory requirements governing the CSP SE program, including reporting and recordkeeping requirements; that subgrant funds are spent properly; and that appropriate safeguards, including specific conditions, are in place to mitigate against the risk of subgrant funds being misspent.

Except for New Mexico's request to waive the requirements in sections 4303(f)(1)(C)(i)(V) and 4303(f)(1)(C)(ii) of the ESEA (20 U.S.C. §§ 20 U.S.C. 7221b(f)(1)(C)(i)(V) and 20 U.S.C. 7221b (f)(1)(C)(ii)), the Department approves all waivers and corresponding application amendments requested by New Mexico (and inferred by the Department) to allow New Mexico to award remote learning subgrants to new and established charter schools that **do not** have current startup subgrants under New Mexico's approved CSP SE grant to assist them in meeting the immediate educational needs of students impacted by the COVID-19 national emergency.

Unless specifically waived by the Department, New Mexico must comply with all statutory and regulatory requirements applicable to the grant, including any specific conditions placed on the grant. The Department's approval of these waivers is subject to the following specific conditions:

1. Approval of these waiver requests is contingent upon New Mexico continuing to meet all statutory and regulatory requirements applicable to the grant, including making substantial progress towards meeting the goals and objectives in its original approved application.
1. Any remote learning subgrants awarded to charter schools by New Mexico must be for the specific and limited purpose of meeting the immediate educational needs of charter school students impacted by the COVID-19 national emergency and may not exceed a period of 12 months.
2. Applicants for a CSP subgrant for the specific purpose of implementing a high-quality remote learning program must have satisfactorily completed all activities under any previous CSP grants or subgrants, including complying with all State and Federal reporting and recordkeeping requirements. Current CSP subgrantees may not receive remote learning subgrants concurrently.
3. A charter school receiving a CSP subgrant for the specific purpose of implementing a high-quality remote learning program shall not use funds to carry out the same project or activities from a previous CSP grant or subgrant (*i.e.*, any activities funded under the school's previous CSP grant or subgrant may not be funded under the remote learning

subgrant), including CSP grants or subgrants awarded under the CSP SE, CSP SEA (CFDA No. 84.282A), CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CFDA No. 84.282M), and CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (CFDA Nos. 84.282B and 84.282E programs).

4. New Mexico must ensure that subgrant funding, including funding for pre-award costs, is used only to support the initial implementation of remote learning programs and/or the transition from remote learning back to in-person instruction in charter schools that meet the CSP definition of “charter school,” demonstrate financial need for such resources, and have never provided remote learning as part of their educational model. The Grantee may reimburse subgrant recipients for pre-award costs incurred from the date on which each Grantee’s schools were closed due to the COVID-19 crisis OR March 13, 2020 (the date a national emergency was declared), whichever date is later, through the date the subgrant award is made, not to exceed a period of 90 days.
5. At least 5 days before issuing its Request for Applications (RFA), New Mexico must provide to the Department a copy of its RFA demonstrating adherence to all program requirements that the Department has not waived, including all reporting and recordkeeping requirements and the application requirements in section 4303(f)(1)(C)(i)(V) and 4303(f)(1)(C)(ii) of the ESEA (20 U.S.C. §§ 7221b(f)(1)(C)(i)(V) and 7221b(f)(1)(C)(ii)).
6. A charter school receiving a remote learning subgrant must support ALL students in the school, demonstrate how it will hold ALL students accountable for meeting academic performance requirements, and provide written plans for transitioning from the remote learning program back to the school’s original, in-person academic program after the COVID-19 national emergency has ended and back to its remote learning program, if necessary.
7. Within 10 days of receiving notice that these waivers have been approved, New Mexico must submit to the Department a written plan describing (a) how it will make substantial progress toward meeting the goals and objectives of its approved project during the current performance year and in future years, including any proposed amendments to its approved application; and (b) how it will monitor subgrant recipients to ensure that they are actually providing high-quality remote learning services to ALL students, administering their subgrants in accordance with statutory and regulatory requirements governing the CSP, and holding ALL students accountable for meeting academic performance requirements. New Mexico may not award any additional expansion subgrants under its current approved CSP SE application without prior written approval from the Department.
8. New Mexico must post on its website quarterly performance reports (January 1, April 1, July 1, and October 1 of each year for the duration of the grant). The Grantee will provide the link to each report to the Department and keep the report on the website until several years after the end of the projects or after audits are completed and resolved. The

performance reports shall describe all remote learning subgrants awarded (capturing activity through the last day of the prior month), including the following information:

- a. a listing of the specific charter schools receiving remote learning subgrants, including the name of the authorizer and the amount of funds provided to each school;
- a. the budget of expenses for that period;
- b. a description of the services provided under the waiver, including the number of students served by each school through remote learning;
- c. the average teacher instructional time per day through remote learning;
- d. the average percentage of student participation in classes each day (and the range) for the period;
- e. the average results on performance-based tests (when available);
- f. any information or signs demonstrating effectiveness or progress in overcoming challenges faced;
- g. other information that the Department may determine is necessary to ensure accountability regarding remote learning subgrants under the Grantee's CSP SE grant; and
- h. any other information the Grantee wants to post in this report that demonstrates the quality of its remote learning services to ALL students.

If you have further questions, please reach out to your CSP SE project officer, Ashley.Gardner@ed.gov, or to Jennifer.Todd@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Frank T. Brogan". The signature is written in a cursive style with a large, looping initial "F".

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education