

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

FEB 13 2008

Dear State Charter Directors:

This past summer, the Department issued non-regulatory guidance addressing the circumstances under which a State educational agency (SEA) may provide Charter Schools Program (CSP) start-up funds to multiple charter schools established under a single charter. The new guidance, issued in response to questions raised by State grantees concerning these issues, amends the Department's July 2004 non-regulatory guidance. A copy of the July 2007 non-regulatory guidance has been included with this letter for your convenience.

The July 2004 non-regulatory guidance does not specifically address the issue of whether an SEA may award CSP start-up subgrants to multiple charter schools established under a single charter. The new guidance states that 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 true even for charter schools established under separate charters if, in fact, they are operated as one charter school. On the other hand, the new guidance states that an SEA may award CSP start-up subgrants to multiple charter schools established under a single charter where the charter schools meet the CSP definition of "charter school" and truly are separate and distinct from each other.

An SEA with an existing CSP grant that is interested in providing planning and implementation funds to multiple charter schools established under a single charter should submit to the Department a written request to amend its approved application. Any post-award changes to an approved grant must be consistent with the project objectives and approved budget and may not result in a substantial change in the scope or objectives of the approved grant. After receiving a written request to amend the approved application, the CSP program staff may contact grantees directly for clarification or additional information as needed.

Requests to amend approved applications should include the following:

1. A description of the specific changes the grantee proposes to make to the project;
2. An explanation of why the proposed amendment will not result in a substantial change in the scope and objectives of the approved application;
3. An analysis of the key factors the SEA will consider to ensure that multiple charter schools created under a single charter are separate and distinct from each other; and
4. A copy of the relevant provision in the State charter schools law supporting the creation of multiple charter schools established under a single charter.

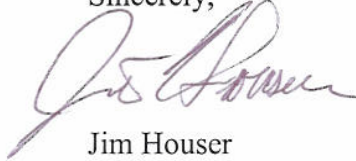
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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

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We look forward to working with states to expand high-quality charter schools. Please feel free to contact Dean Kern, (202) 260-1882 or dean.kern@ed.gov, directly if you have questions or need additional assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Houser". The signature is fluid and cursive, with a large initial "J" and "H".

Jim Houser
Acting Director
Parental Options and Information

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) siblings of students already admitted to or attending the same charter school; and (c) children of a charter school's teachers and founders (so long as the total number of students allowed under this exemption (c) 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, religion, or sex, or against students with disabilities, but may target 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.

To be eligible for Federal start-up grants, a charter school's admissions practices must comply with State law and applicable Federal laws. Accordingly, the exemptions discussed above are permissible only to the extent that they are consistent with the State's charter school law, State law regarding desegregation, 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.

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 in pertinent part 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 things, "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 true for charter schools established under separate charters if, in fact, they are operated as one charter school. On the other hand, 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: (1) the terms of the charter; (2) whether the charter schools were established and are recognized as separate schools under state law; and (3) whether the charter schools have separate performance agreements with an authorized public chartering agency. In addition to considering these factors, the SEA should verify that the charter schools are, in fact, operating as separate schools by considering such factors as whether the schools have separate facilities, staffs, student bodies, and governing boards; and whether their 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, operating as a single charter school.