



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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Interim Commissioner of Education  
President of the University of the State of New York  
89 Washington Avenue, Room 111  
Albany, New York 12234

E-mail: [commissioner@nysed.gov](mailto:commissioner@nysed.gov)  
Twitter: @NYSEDNews  
Tel: (518) 474-5844  
Fax: (518) 473-4909

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THE HONORABLE FRANK T. BROGAN  
Assistant Secretary for Elementary and Secondary Education  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202  
[frank.brogan@ed.gov](mailto:frank.brogan@ed.gov)

**Re:** Waiver from CSP SE Grant Award #U282A180019

Dear Mr. Brogan:

The New York State Education Department (NYSED) requests a waiver from its FY18 CSP State Entity (SE) grant award that would allow NYSED to:

- Award subgrants to eligible applicants so that eligible applicants may now include existing high-quality charter schools that need funding to start up newly-designed instruction as a result of the current COVID-19 emergency (FEMA-4480-DR-NY) under a waiver of Section 4303(b)(1) of the Elementary and Secondary Education Act (ESEA).
- Allow subgrantees more than 18 months, but not more than 30 months, for planning and program design due to the inability to carry out grant objectives during the COVID-19 emergency under a waiver of Section 4303(d)(1)(B) of ESEA.
- Employ NYSED staff, in lieu of a peer review process, to evaluate and process application requests under this waiver, pursuant to the methodology outlined below under a waiver of Section 4303(d)(2) of ESEA.
- Supersede the requirement that “[a]n eligible applicant may not receive more than 1 subgrant under this section for each individual charter school for a 5-year period” under a waiver of Section 4303(e)(2) of ESEA.
- Delay the requirement that “[e]ach State entity receiving a grant under this section shall submit to the Secretary, at the end of the third year of the 5-year grant period (or at the end of the second year of the grant period if the grant is less than 5 years), and at the end of such grant period, a report...” may be delayed by one calendar year due to the human capital efforts of NYSED needed to address the COVID-19 emergency under a waiver of Section 4303(i) of ESEA.

NYSED is simultaneously seeking an amendment to its FY18 CSP SE grant that would allow it to award CSP subgrants to established charter schools that would provide them with funds to train teachers in new instructional methodology as well as purchasing the hardware and software necessary to equip enrolled students with the tools necessary to access curriculum and lessons uninterrupted as a result of the current COVID-19 emergency.

## **I. Reasons for Seeking Amendment and Waiver**

Given the current COVID-19 crisis, existing charter schools across the country, and in New York State, are in need of start-up funds as they begin to implement educational continuity plans and transition from brick-and-mortar schools to remote instruction. With remote instruction previously not permitted in New York State, making this transition, and the costs associated with it, are something schools in New York have not previously encountered or had to prepare for. Therefore, the funds disbursed to sub-grantees under this waiver would go towards supporting start-up activities that were not covered through previous or existing funding sources. The great majority of students being served by New York State charter schools are at-risk and close to 80% are economically disadvantaged.<sup>1</sup> These students therefore have fewer resources to assist in the transition with existing resources or equipment that they might already have at home. In response to this need, NYSED is requesting this waiver and amendment to support the general purpose of the CSP grant insofar as start-up and implementation costs for charter schools during the COVID-19 crisis mirror the start-up and implementations costs that the CSP program was enacted to support. In the current emergency, schools transitioning to remote instruction are implementing new programs that were not previously supported by CSP funds.

Given the unprecedented impact of the COVID-19 crisis on public education, the CSP grant is ideally suited to quickly provide relief, resources, flexibility and innovation to the charter sector. All public schools will continue to move into uncharted territory over the next several months but charter schools, especially those that operate independently of a charter management organization, lack the centralized support enjoyed by school districts, and their students arguably face some of the greatest disruption. Perhaps the most significant emergency plan for which charter schools must prepare is how to keep the instructional momentum going during these uncertain times. The CSP grant can provide support and relief to schools that do not have the resources available to provide this continuity of instruction.

The CSP grant—as currently governed by statute—provides one-time, start-up support to new schools (or at least those in their first three to five years of operation). Charter schools that have been in operation for up to 20 years do not necessarily possess any greater capacity to successfully deliver an education program in the current crisis environment than those in their first years of operation. In order for NYSED to provide this relief, we require a waiver from the U.S. Department of Education under Section 5204(e) of ESEA, which has broad discretion to “waive any statutory or regulatory requirement over which the Secretary exercises administrative authority.” By exercising this authority, the Secretary would enable NYSED to help provide the resources necessary to advance the academic achievement of our most disadvantaged students during this time of crisis.

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<sup>1</sup> [https://credo.stanford.edu/sites/g/files/sbiybj6481/f/ny\\_state\\_report\\_2017\\_06\\_01\\_final.pdf](https://credo.stanford.edu/sites/g/files/sbiybj6481/f/ny_state_report_2017_06_01_final.pdf)

## **II. How the Waiving of Such Requirements will Advance Student Academic Achievement**

With the flexibility sought by NYSED in this proposed waiver and amendment, in addition to the exemplars and effective practices being shared with charter schools by NYSED,<sup>2</sup> the following can be accomplished:

- Allow subgrantees the ability to purchase computers, printers, and other peripherals for their students, in particular low-income students who may not have access to these materials at home.
- Enable schools to provide students with the software and internet access necessary to access educational programs during this time of crisis.
- Support professional development, planning, hardware, and software costs associated with implementing and overseeing changes in instructional practices during the COVID-19 crisis.
- Provide education to at-risk students towards achieving proficiency in academic core content areas as well as closing the achievement gap.
- As was demonstrated by Stanford University's Center for Research on Education Outcomes (CREDO) third-party evaluation of New York's 2011 NCLB CSP project, increase strong outcomes for at-risk students enrolled in New York's charter schools by maintaining or even increasing the number of instructional hours provided.<sup>3</sup> Ensure that charter schools in New York State are able to continue to provide this instruction will allow them to continue advance academic achievement despite school buildings being closed.

As described above, allowable activities approved for the subgrants awarded under this waiver and amendment will only be for those as such activities enumerated in § 4303(h) of ESEA that are related to start-up costs, albeit for existing charter schools, that are associated with the implementation of the schools educational continuity plans. Funds awarded under this waiver would only supplement any federal funds already available for addressing the COVID-19 crisis. Subgrant applicants will need to demonstrate that available federal funds do not meet the needs to successfully start up remote instruction pursuant to the applicant's continuity plan.

## **III. Description of Methods: (a) *How the SEA will Monitor and Evaluate the Effectiveness of Plan Implementation* and (b) *How Schools will Continue to Provide Assistance to the Same Populations Served by Programs for which Waivers are Requested***

### *a. How the SEA will Monitor and Evaluate the Effectiveness of Plan Implementation*

Should the waiver and amendment be approved, NYSED will continue to implement the strong grants management and fiscal monitoring protocols currently in place. Subgrants administered through the proposed waiver and amendment will be available only to those charter schools that are in good standing as determined by the charter school's authorizer, and NYSED will continue to assess fiscal risk using NYSED's fiscal monitoring dashboard and composite score risk assessment tools.

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<sup>2</sup> Exemplars and resources for the implementation of educational continuity plans can be found on the NYSED website at <http://www.p12.nysed.gov/psc/aboutcharterschools/COVID-19ForEducators.html>.

<sup>3</sup> The full study can be found at <https://credo.stanford.edu/publications/charter-school-performance-new-york>.

NYSED will continue to work closely with NYSED's Office of Audit Services as well as the New York State Comptroller's Office to conduct audits of those potential sub-grantees who may pose a greater than average fiscal risk.<sup>4</sup>

b. *How Schools will Continue to Provide Assistance to the Same Populations Served by Programs for which Waivers are Requested*

While NYSED aims to target all charter schools that need the support described above, the subgrant budget from NYSED's 2018 CSP \$95.5 million project is finite (after all obligations to other subgrants are accounted for). NYSED would seek to reallocate 15 percent of the \$67.5 million, or approximately \$10.13 million, earmarked for planning and implementation funds to fund charter schools for COVID-19 related expenses, including pre-award expenses from the date of the state's declaration of emergency by Governor Cuomo pursuant to Executive Order 202.<sup>5</sup> The subgrants would be limited to no more than \$150 per enrolled student to a maximum of \$49,999 per charter school education corporation that meets the federal definition of charter schools in § 4310 of ESEA pursuant to the following preferences:

- Priority Group 1: NYSED would prioritize all eligible independent charter schools (those entities that operate no more than one charter) outside of New York City as there are already several philanthropic relief efforts to support charter schools in New York City.<sup>6</sup>
- Priority Group 2: If available funds remain, funds would be allocated to those eligible charter schools that operate more than one charter school outside of New York City.
- Priority Group 3: If available funds remain, funds would be allocated to eligible independent charter schools in New York City that are not located in New York City Department of Education facilities, as those charter schools have significantly greater fixed operational costs.
- Priority Group 4: If available funds remain, all other eligible charter schools would be allocated funds.
- Overall Priority: All eligible applicants in each priority group will be prioritized by the percentage of economically disadvantaged students enrolled in the school as reported in the most recent publicly available NYSED Basic Educational Data System report.
- Disqualification: Charter schools that are not in fiscal good standing pursuant to the requirements of the school's authorizer or are on probation are not eligible for subgrants under this proposed waiver and amendment.
- Note: Applications received after the application deadline will not be considered by NYSED.

Should the waiver and amendment be approved, NYSED will require eligible subgrantees to submit an application that describes why start-up funds for needed to implement educational continuity plans, the activities to be supported by the subgrant funds, and the goods and services

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<sup>4</sup> Charter school audits conducted through NYSED's OAS can be found at [http://www.oms.nysed.gov/oas/Audit\\_Report/](http://www.oms.nysed.gov/oas/Audit_Report/). Audits conducted by the NYS Comptroller can be found at <https://www.osc.state.ny.us/audits/>.

<sup>5</sup> <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>

<sup>6</sup> A list of external funding resources to address the current COVID-19 crisis have been disseminated to all New York State charters through the NYSED website at <http://www.p12.nysed.gov/psc/aboutcharterschools/COVID-19ForEducators.html>.

to be purchased with the subgrant funds so that NYSED staff can ensure that the proposal will advance student academic achievement.

NYSED will continue to implement the strong grants management and fiscal monitoring protocols currently in place. Subgrants administered through the proposed waiver and amendment will be available only to those charter schools that are in good standing with their authorizer.

#### **IV. Background on New York’s Current 2018 CSP Project**

NYSED will continue system-wide improvements to one of the most significant charter school landscapes of any state as begun under prior CSP awards. As detailed in our approved 2018 CSP application, NYSED is working to implement many of the projects aimed designed to ensure that all students—regardless of income or ZIP code—have access to high-quality, public school education.

NYSED has \$67.5 million available for planning and implementation subgrants from its \$95.5 million 2018 CSP project grant. Of that \$67.5 million, \$30.35 million has been obligated or is slated to be obligated in the near future, leaving \$37.15 million that could be awarded as planning and implementation subgrants through the end of the grant period in 2023. NYSED proposes to reserve an amount equivalent to 15 percent of the \$67.5 million available for planning and implementation subgrants, or \$10.125 million, to accommodate the need for the charter schools included in this waiver and amendment request. This leaves sufficient funding to make additional \$1.25 million planning and implementation subgrant awards to up to 21 newly-authorized charter schools through the end of the grant period. The financial status of New York State’s 2018 CSP award is detailed in Chart 1 below.

**Chart 1. Financial Status New York State’s 2018 CSP Award**

<b>Total Grant Award</b>	<b>\$95,555,556</b>
Less: Administrative/Technical Assistance Set-asides	\$9,555,556
<b>Total Available for Subgrants</b>	<b>\$86,000,000</b>
Less: Reserved for Expansion Subgrants	\$18,500,000
<b>Total Available for Planning and Implementation (PI) Subgrants</b>	<b>\$67,500,000</b>
Less: PI Subgrants Obligated	\$1,600,000
Less: PI Subgrants Due to be Obligated	\$18,750,000
Less: PI Subgrants Projected for 7/1/20 Obligation	\$10,000,000
<b>Total Available for Future PI Subgrants</b>	<b>\$37,150,000</b>
Less: Proposed Use of Funds for COVID-19 Subgrants	\$10,125,000
<b>Revised Total Available for Future PI Subgrants</b>	<b>\$27,025,000</b>

NYSED's vision is to benefit those charter schools that have the least access to resources and serve a disproportionate number of educationally disadvantaged students who lack the access to the tools necessary to fully participate in the continuity of education during the COVID-19 crisis.

Granting this waiver and amendment will not result in students who may have been served by CSP planning implementation funds losing opportunity, as only 15 percent of CSP funds budgeted for planning and implementation subgrants will be allocated to subgrants under this proposal. Should CSP subgrant funds available for newly-authorized charter schools planning and implementation subgrants fall short, it is our hope, as always, that CSP grant opportunities will become available from the U.S. Department of Education in the near future.

Thank you in advance for your consideration of NYSED's requests. If you have any questions or require additional information, please do not hesitate to contact David Frank, Executive Director of the Charter School Office, at [david.frank@nysed.gov](mailto:david.frank@nysed.gov), or (518) 925-5053

Sincerely,



Shannon L. Tahoe  
Interim Commissioner

**Cc:** Kathryn Meeley, *USDOE, Charter Schools Program, Office of Innovation and Improvement*  
Ariel Jacobs, *USDOE, Charter Schools Program, Office of Innovation and Improvement*  
John D'Agati, *NYSED*  
David M. Frank, *NYSED*  
Valerie Kowalski, *NYSED*