

Steve Sisolak
Governor

Jhone M. Ebert
Superintendent of
Public Instruction



Southern Nevada Office
2080 East Flamingo Rd,
Suite 210
Las Vegas, Nevada 89119-0811
(702) 486-6458
Fax: (702) 486-6450

STATE OF NEVADA
DEPARTMENT OF EDUCATION
700 E. Fifth Street | Carson City, Nevada 89701-5096
Phone: (775) 687-9200 | www.doe.nv.gov | Fax: (775) 687-9101

August 6, 2020

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

This letter is to request a waiver for the Nevada Department of Education (NDE) from certain regulations within Sections 4301 – 4311 under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) and an amendment to NDE's FY15 Charter School Program (CSP) State Entity grant award.

Section 8401(a)(3) of ESEA, as amended by ESSA, allows the Secretary of the U.S. Department of Education to waive any statutory or regulatory requirement of this Act for which a waiver request is submitted. All waiver requests are required to address a number of components, which are included below.

NDE is simultaneously seeking an amendment to its FY15 CSP State Entity grant that would allow it to award CSP subgrants to established charter schools to implement a virtual program for the first time as a result of COVID-19.

Background Information

In 2015, the NDE was awarded a three-year \$15 million grant with an extension until 2021, to support quality charter schools in Nevada. The main objectives of the grant are to:

- Support the growth of high-quality charter schools in Nevada, especially those focused on improving academic outcomes for educationally disadvantaged secondary students;
- Strengthen and improve authorizing quality and promote the adoption of best practices for all authorizers in Nevada; and
- Promote and support collaboration and sharing of best practices between high-quality charter schools and other schools in the state, especially those that experience difficulty in adequately serving educationally disadvantaged students.

The waiver requests described below align with the purposes of the CSP and fall within the scope and objectives of the NDE's approved application, as these flexibilities will enable the state to support the growth of high-quality charter schools, particularly those serving educationally disadvantaged students, through an incredibly challenging period. Additionally, these waiver requests will allow the NDE to continue to award subgrants and expend funds as projected in the No-Cost Extension.

Waiver Request Requirements

1. *Identify the federal programs affected by this waiver request.*

NDE is seeking this waiver pertaining to the state's CSP State Entity grant to allow for the deployment of CSP funds to assist charter schools in implementing distance learning and other initiatives related to responding to the COVID-19 pandemic. Flexibility under this waiver will allow for Nevada charter schools to better respond to the crisis as it evolves.

2. *Describe which federal statutory or regulatory requirements are to be waived.*

A waiver from the U.S. Department of Education is required to help NDE and Nevada charter schools respond to this challenging moment. NDE seeks to expand the eligibility of applicants, modify the application and application review process for subgrants, and allow schools that have previously received grant monies to receive additional funds to effectively respond to the COVID-19 pandemic.

NDE requests a waiver of §4303(b)(1)(A)(1) so that eligible applicants may also include existing charter schools that need funding to develop and implement newly designed instruction as a result of COVID-19.

NDE seeks a waiver to expand the type of school that may be eligible for an award to "open and prepare for the operation of a new charter school." Under this expanded definition, eligible applicants would include charter schools seeking to open and prepare for the operation of virtual education and/or hybrid learning models as an immediate response to COVID-19, regardless of how long they have been operating.

Allowable activities approved for the subgrants awarded under this waiver will only be for those activities in §4303(h) of ESEA that are related to initial costs associated with the implementation of a school's new instructional design and learning plans for virtual or hybrid learning associated with the inaccessibility of in-person learning and the closure of school buildings due to COVID-19. This may include:

- Purchasing of technology hardware and software for teachers and students, particularly students from economically disadvantaged backgrounds who do not have access to these technologies at home;
- Providing students with the internet access necessary to access educational programs from their homes;
- Supporting professional development and planning costs associated with implementing and overseeing virtual learning; and
- Supporting other one-time costs related to implementing changes in instructional practices during the COVID-19 crisis.

Only two Nevada charter schools are identified as virtual schools and three have a blended learning structure. For the remaining 50 of Nevada charter schools, virtual teaching and learning as the sole means of instructional delivery is a new medium. The 50 charter schools that previously implemented their academic programs in person did not have any substantial virtual learning plans in place prior to the onset of COVID-19 and, therefore, have start-up costs associated with implementing new programming that have not previously been supported by CSP funds. Generally, virtual charter schools that have experience with implementing distance learning will not be eligible for a subgrant under this waiver, unless they can demonstrate that their school has need to implement a new and different distance learning program in response to COVID-19.

This flexibility would help enable the NDE to expend subgrant funds as projected and would be consistent with the state's approved budget. It would also help ensure the NDE continues to spend funds within the parameters dictated by §4303(c)(1). NDE anticipates it may grant up to 30 additional subawards under this waiver. This will

depend on charter schools' interest, eligibility, and the quality of their plans.

NDE requests a waiver of §4303(f)(1)(C) and §43030(d)(2) so that NDE can award subgrants based on need and may do so in an expedited fashion, without a peer review process.

The majority of Nevada charter schools are in need of start-up funds as they transition to virtual instruction for the first time. These schools need resources to enable them to meet the logistical, fiscal, and pedagogical challenges associated with implementing virtual instruction for the first time. Thirty-five percent of students served by Nevada charter schools are economically disadvantaged and are likely to have fewer resources to assist in their transition to virtual learning, and these subgrant funds would enable their schools to better support their transition.

To facilitate the expedited nature of these subgrant awards, NDE requests permission to utilize NDE staff to evaluate and process application requests under this waiver through a noncompetitive process. NDE staff possess the skills and expertise needed to evaluate subgrant applications efficiently. Based on previous subgrant competitions, soliciting and training peer reviewers, scheduling and facilitating peer review discussions, and gathering peer review feedback is a process that can take months. Given the urgency of the situation, the NDE would like to use the most efficient review process possible.

The NDE will base their review on each school's need and the quality of the school's plan for utilizing funds. As noted in the next section, applications will include information about why start-up funds are needed to implement educational continuity plans, the activities to be supported by the subgrant funds, the school's plan for serving students through virtual or hybrid learning, and the purchases that will be made with the subgrant funds.

The subgrant period for subgrants awarded under this waiver would run from March 13, 2020, when an initial state of emergency was declared in response to the COVID-19, to December 31, 2020. Subgrants shall be limited to up to \$75,000 per charter school that meets the federal definition of a charter school in § 4310(2)(A)-(M) of ESEA. If the funding requested exceeds that which is available, eligible applicants will be prioritized by the percentage of economically disadvantaged students enrolled in the school as reported in the most recent publicly available data on the Nevada Accountability Portal.

Charter schools must have authorizer approval to be eligible for a subgrant under this proposed waiver and must submit an application by the deadline established by NDE.

NDE requests a waiver of § 4303(e)(2) so that a charter school may receive more than one subgrant under this section for each individual charter school for a five-year period, if the second subgrant is for the purposes of responding to COVID-19.

NDE seeks to waive the requirement that "[an] eligible application may not receive more than 1 subgrant under this section for each individual charter school for a 5-year period." Nevada charter schools that previously received CSP planning and implementation subgrants under the current State Entity grant or under previous State Entity grants are in need of additional start-up funds as they transition from in-person to virtual instruction. Previously, an exclusively virtual model has only been utilized by virtual charter schools in the state. As a result, the vast majority of charter schools were not prepared for the required transition to virtual or hybrid learning, so subgrant funds would support start-up activities that were not covered through previous funding sources. Established charter schools do not necessarily have any additional capacity to successfully shift to a virtual delivery model compared to those in their first years of operation.

3. Describe how the waiving of the requirements indicated above will advance student academic achievement and align with the objectives of the state's CSP grant.

An April 2020 study from the Nevada Digital Learning Collaborative revealed that “[t]he COVID-19 crisis threatens to exacerbate the ‘digital divide’ between students who have fast, reliable at-home internet access and those who do not.” Using WDPI’s 2019 Digital Learning Survey, the study identified that “nearly 82% of districts overall said their students do not have adequate internet access or devices.” The survey revealed over 9,700 charter school students need a device in order to access lessons and curriculum. Also, over 600 charter school teachers did not have an adequate device to deliver distance learning.

The Digital Learning Survey found access disparities to be higher in rural districts but a significant portion of students in large districts/charter schools of 2,000 or more students also experienced access disparities. The difficult economic circumstances caused by COVID-19, including furloughs and layoffs may make it harder for impacted families to pay for or maintain high-speed internet service.

With the benefit of the flexibility afforded to NDE by the Secretary of Education under a granted waiver, Nevada can accomplish the following:

- 1) Make additional financial resources available to charter schools in the state to adapt to distance-learning and virtual instruction;
- 2) Allow charter schools to purchase computers or smart tablets, computer programs, internet access, and other learning materials and services for their teachers and students, particularly those who do not have access to these materials at home;
- 3) Expedite the subgrant award process, allowing the state to make subgrant funds more immediately available to eligible charter schools as they combat the effects of the pandemic on education delivery and outcomes;
- 4) Enable schools to implement academic, social-emotional, and compensatory services virtually to remediate learning gaps resulting from mandated school closures connected to COVID-19;
- 5) Support all professional development and planning costs associated with implementing and overseeing remote instruction; and

Providing immediate state-wide support to charter schools will ensure continuity of education. Without the Secretary of Education granting the requested waivers, NDE’s ability to support charter schools will be affected by time constraints and restrictive eligibility requirements. The granting of this waiver will assist NDE in meeting the needs of charter schools in supporting student achievement.

Because this waiver will help support charter schools, and particularly those with educationally disadvantaged students, the flexibilities will enable NDE to continue to work toward its first grant objective and continue to support high-quality charter schools. Without these funds, charter schools in the state may struggle to continue to engage students in their existing high-quality programming, given the changes required by COVID-19.

4. Describe the methods that will be used to monitor and regularly evaluate the effectiveness of the implementation plan of this waiver request.

NDE will disperse one-year awards of up to \$75,000 per charter school. Applicants will be required to submit an application form with the schools plan as described above and the same budget form used by other Nevada CSP (NCSP) subgrant applicants. The plan and budget will then be reviewed by NDE staff and either approved or returned so that required changes can be made. The review by NDE staff helps ensure that costs are allowable, as well as reasonable, necessary, and allocable to the subgrant.

Quarterly, NDE and schools will have a monitoring meeting to determine if the funds are having the desired impact that is expressed in the submitted plan. At the end of the school’s year-long subgrant

period, the school will be required to submit a report summarizing the manner in which it utilized funds and the impact this had on the school's ability to serve students in the COVID-19 environment.

5. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

As currently written, only charter schools that are opening and charter schools that are high performing and seeking to replicate or expand can benefit from NDE's CSP State Entity grant funding. With the benefit of a waiver, all charter schools in the state of Nevada that meet certain requirements will have the opportunity to benefit from access to additional funding to address the impacts of the COVID-19 pandemic. If funding requested exceeds that which is available, the state will prioritize schools that serve primarily educationally disadvantaged students. This priority is aligned with NDE's grant objectives as currently written and continues the state's focus on serving at-risk students.

6. If the waiver relates to provisions of subsections (b) or (h) of section 1111 of ESEA, describe how the SEA requesting the waiver will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section III(b)(2)(B)(xi) of ESEA.

The waiver being requested is related to CSP-specific requirements and is not directly related to the statewide accountability system.

7. Describe how the public was informed of this waiver request and provided opportunity to provide public comment on the request.

The Nevada Department of Education informed the public with notice of and the opportunity to comment on its request for the waiver. Public comments on the application were accepted until 12 p.m. on August 6, 2020.

8. Attach or describe the public comments received regarding this waiver request.

Thank you in advance for your consideration of NDE's requests. If you have any questions or require additional information, please do not hesitate to contact Maria Sauter, NCSP project director, at msauter@doe.nv.gov, or (775) 687-9248.

Sincerely,

Dr. Jonathan Moore
Deputy Superintendent for Student Achievement Division
Nevada Department of Education