



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

September 10, 2020

State Program Director Bill Kottenstette
Colorado Department of Education
201 East Colfax Ave.
Denver, Colorado 80203

Re: Charter Schools Program (CSP) – Grants to State Educational Agencies; Request for Waivers and Application Amendments for Grant Award No. U282A160018

Dear Mr. Kottenstette:

I am writing in response to the Colorado Department of Education's (Colorado's) request for waivers of specific statutory and regulatory requirements applicable to the State's grant under the CSP – Grants to State Educational Agencies (CSP SEA) program. The waivers, which were originally requested on May 7, 2020, would allow Colorado 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, Colorado 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 COVID-19 for increased social work, education counseling, and/or family engagement services responding to student and staff needs. In addition, as confirmed during your telephone call with Anna Hinton, Director of the CSP, on August 5, 2020, the remote learning subgrants would 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.

The specific provisions for which Colorado requests waivers are the following:

- The regulation at 34 C.F.R. 75.261(c)(3)¹ – limitations on extensions of the project period;
- Section 5202(c)(2)(B) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) – limitation on the time period for initial implementation of a charter school;
- Section 5202(d)(1) of the ESEA – limitation on the number of subgrants a charter school may receive for planning and implementation of a charter school;
- Section 5203(b)(3) of the ESEA – contents of a State educational agency application and assurances for subgrants;

¹ Although Colorado requests a waiver of 34 C.F.R. 75.262(c)(3), the Department believes this is a typographical error and is interpreting Colorado's request as seeking a waiver of section 75.261(c)(3).

- Section 5204(c) of the ESEA – administration of the competition through a peer review;
- Section 5204(f)(3)(B) of the ESEA – CSP subgrant funds may be used “only for . . . initial implementation of the charter school”;
- Section 5203(d)(3) of the ESEA – eligible applicant must provide notice to its authorized public chartering agency;
- Section 5207 of the ESEA – Secretary must solicit input from charter school operators;
- Section 5210(1)(H) of the ESEA – charter schools that are oversubscribed must admit students by lottery; and
- The regulation at 2 C.F.R. § 200.308(d)(1) – prior approval for pre-award costs.

While Colorado has not specifically requested a waiver of section 5204(f)(3)(B) of the ESEA (use of funds only for initial implementation of the charter school), the Department has interpreted Colorado’s waiver request to include a request to waive this requirement, since such a waiver is necessary for Colorado to implement its proposal.

After a careful analysis of Colorado’s submission and consideration of the weight and impact of the COVID-19 national emergency on charter schools in Colorado, the Department grants Colorado’s waiver request, subject to a few exceptions and the specific conditions described below. Although Colorado has requested approval to provide pre-award costs to subgrant recipients for up to 90 days from March 11, 2020 (i.e., the date the Governor declared a state-of-emergency in Colorado), the Department approves such costs for up to 90 days from **March 13, 2020** (i.e., the date a national emergency was declared).

Further, approval of these waivers is contingent upon Colorado 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.

As you know, approval of Colorado’s waiver request constitutes approval of corresponding amendments to Colorado’s approved CSP SEA application. Colorado 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 Colorado’s approved CSP SEA application are unnecessary because the proposed costs for remote learning under Colorado’s waiver request already are allowable uses of funds. Please note, however, that charter schools with current CSP startup subgrants under Colorado’s approved CSP SEA grant are required to obtain approval from Colorado to amend their approved subgrant applications and budgets in order to implement remote learning programs in response to COVID-19. To this end, Colorado 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 Colorado is not required to amend its approved CSP SEA 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, Colorado must ensure that subgrantees comply with all statutory and regulatory requirements governing the CSP SEA 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 Colorado's request to waive the requirements in sections 5203(b)(3)(J) and (K), 5203(d)(3), 5207, and 5210(1)(H) of the ESEA (20 U.S.C. §§ 7221b(b)(3)(J) and (K), 7221b(d)(3), and 7221i(1)(H)), the Department approves all waivers and corresponding application amendments requested by Colorado (and inferred by the Department) to allow Colorado to award remote learning subgrants to new and established charter schools that **do not** have current startup subgrants under Colorado's approved CSP SEA grant to assist them in meeting the immediate educational needs of students impacted by the COVID-19 national emergency.

The Department's approval of these waivers is subject to the following specific conditions:

1. Colorado will 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.
2. Colorado will award remote learning subgrants to charter schools for the specific and limited purpose of meeting the immediate educational needs of charter school students impacted by the COVID-19 national emergency and limit the project period to not more than 12 months.
3. Colorado will ensure that all CSP remote learning subgrant recipients have satisfactorily completed all activities under any previous CSP grants or subgrants, including complying with all State and Federal reporting and recordkeeping requirements. Active CSP subgrantees may not receive remote learning subgrants concurrently.
4. Colorado will ensure that a charter school receiving a CSP remote learning subgrant will 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 SEA, CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CFDA No. 84.282M), 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), and CSP Grants to State Entities program (CFDA No. 84.282A) programs.
5. Colorado will ensure that subgrant funding, including funding for pre-award costs, is used only to support the initial implementation of remote learning programs in charter

schools that demonstrate financial need for such resources and have never provided remote learning as part of their educational model.

6. At least 5 days before issuing its Request for Applications (RFA), Colorado will 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 5203(b)(3) of the ESEA (20 U.S.C. § 7221b(b)(3)).
7. Colorado will ensure that a charter school receiving a remote learning subgrant will support ALL students in the school, demonstrate that it will hold ALL students accountable for meeting academic performance requirements, and provide a written 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.
8. Within 10 days of receiving notice that these waivers have been approved, Colorado will submit to the Department a written plan describing 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.
9. Colorado will post on its website quarterly performance reports (October 1, January 1, April 1, and July 1 of each year for the duration of the grant). Colorado 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;
 - b. the budget of expenses for that period;
 - c. a description of the services provided under the waiver, including the number of students served by each school through remote learning;
 - d. the average teacher instructional time per day through remote learning;
 - e. the average percentage of student participation in classes each day (and the range) for the period;
 - f. the average results on performance-based tests (when available);
 - g. any information or signs demonstrating effectiveness or progress in overcoming challenges faced;

- h. other information that the Department may determine is necessary to ensure accountability regarding remote learning subgrants under Colorado’s CSP SEA grant; and
- i. any other information that Colorado 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 SEA 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 fluid and cursive, with a large loop at the end of the last name.

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education