April 13, 2022

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Cardona,

I am writing to strongly oppose the Department of Education’s proposed new rules for the Charter Schools Program (CSP). These requirements would not only stand in the way of our ability to support the creation of innovative new public charter schools in Colorado, but they would also hamper the ability of our state Department of Education to carry out critical technical assistance activities that are clearly articulated in the enacting legislation—which I helped author when I served in Congress—that help improve objectives related to school quality, authorizing quality, and educational equity. Ultimately, the proposed rules would cause great harm to CSP and undermine the congressional intent behind it.

Educating students over the past two years has been more challenging than at any other time in recent history. At every stage of the pandemic, and facing previously unimaginable and ever-shifting circumstances, we have been focused on ensuring our students can learn. Families consistently voiced their strong desire for flexibility and have rightly demanded we do whatever possible to meet the needs of their children, as so many of them have fallen further and further behind.

Along the way, the federal government has been a helpful partner by providing new and flexible funding that can be deployed where needed most. Keeping administrative burdens to a minimum has been a cornerstone of federal education programs in recent years (in ESSA generally, but also ESSER and GEER). This flexibility allowed schools to upgrade their ventilation systems, quickly hire additional instructional support, and add extra technology – all to get and keep students safely in their school buildings and better connected with their teachers.

It is therefore confounding and deeply disturbing that The Department of Education would even want to consider making the opening of high-quality charter schools considerably more difficult than ever before. Our students need more public school options, and high-quality charter schools play a critical role in providing that access. Public charter schools are an important part of Colorado’s public school landscape, with about 15% of kids enrolled in public schools attending a charter school. And over time, we have learned a great deal about how to authorize and oversee charter schools, including when to close low-quality ones that are not serving students or their community well. Especially now, we do not need to add significant burdens on each applicant to make the case for charter schools when elected officials at all levels of government have already strongly voiced their favor by enacting laws, acting as chartering authorities, and providing funding for high-quality charter schools.

The CSP was designed to provide critical resources to expand access to high-quality charter schools, but instead of providing more resources and opportunities to open these unique public schools, ED’s proposed rule...
changes would create additional barriers to qualify for funding and therefore make it harder for the communities most in need to serve their students.

Given that these rules would upturn years of established federal charter school policy with little time to consider input before awarding grants, and that there was no stakeholder engagement in developing the regulations—including from governors and state chiefs responsible for administering the program—the proposed regulations should be indefinitely put on hold and The Department of Education should proceed with the most recent grant guidelines from the last competition for FY22 awards. I certainly was given no heads up that this was coming and was shocked when I saw it. If the Department wants to start a new process about improving the program to produce even better student results, I will be happy to help however I can.

Specifically, I would like to highlight the following major issues with the proposed rules:

1. The regulations should not create a new federal standard for measuring whether a charter school has enough community support to open. Using vague standards, the “community impact analysis” would give anonymous grant reviewers in Washington the power to veto parent, community, and state efforts to open a new school with an approved charter. Community support is already considered a part of the authorization process in Colorado and takes many different forms, and should not be second-judged by Washington, DC bureaucrats.

2. The community impact rules should also be removed because they would make it difficult for schools that serve a high concentration of students of color to receive support, especially those schools that identify as culturally affirming. Schools that exist to protect indigenous cultures and native languages are also at risk because of the proposed rules’ strident commitment to opening “diverse” schools. For instance, the Robert F. Smith STEAM Academy in Denver is modeled after historically black colleges and universities and, as founding principal Shakira Abney-Wisom put it, “I understand the impact of being in an unapologetically Black space complete with rigorous academic experiences, rich traditions, caring intergenerational relationships, strong community, and an incredible sense of pride… Overwhelmingly, the response from our kids is the excitement around being in a space where their identity is mirrored in the curriculum; what they’re learning, recognizes Black history, Black contributions within not just our country, but across the world.” Another public charter school in Towaoc, CO, Kwiyagat Community Academy, was founded by the Ute Mountain Ute Tribe and helps students continue their spoken language by teaching a new generation of tribal members a language that had been infamously repressed by previous generations of schools run by the Department of Indian Affairs.

In Colorado, some of the highest performing public schools are charter schools, and many of them serve a population that reflects the racial make-up of the community where the school is located. With the rules as written, such schools would be forced to tell many families that the U.S. Department of Education finds their school unworthy of replication due to the racial make-up of the students.

3. The regulations would require states to give priority to applicants that can find a school district to “partner” with them. Therefore, if a large district refuses to partner with charter schools, the district would succeed in placing the proposed charter school at a disadvantage for funding. The focus of this proposal is on bureaucratic inputs, rather than what is best for families. In fact, charter schools are often even more needed in districts that are not actively engaged in meaningful partnerships and high-quality options for their parents. Proposed Priority 2 is unnecessary and should be removed.

4. These regulations would create many new compliance, documentation, and follow-up monitoring requirements, making it especially burdensome for under-resourced communities and single-site charter school founders to apply for CSP grants. Some of the requirements would be almost punitive, such as the requirement for a school to have a facility before it can receive funds for the planning phase. It is during the planning phase that a school works to secure an adequate facility. Whether the
school pursues financing to secure a lease or purchase, or if the school is able to partner with the local district to use an existing facility, it is highly unlikely that a lessor, lender, or school district would sign a lease or provide a loan to a school a year in advance of the school opening. In addition, school districts need time to have open dialogue about the use of vacant properties with the community and school founders need time to compare options and make the best possible decision. Requiring CSP applicants to secure a facility before receiving funds would only serve privileged applicants with the greatest access to outside sources of planning support.

5. If adopted, these regulations would also put a significant financial burden on our state Department of Education by both increasing administrative responsibilities (requiring new protocols for establishing subgrant eligibility and creating new monitoring protocols for subgrantee compliance) and reducing the funding available to administer the program (far fewer applicants would be able to qualify for the funding, and fewer grants would mean less funding available for the administrative unit at the state that oversees the subgrant work).

6. By scaling back funding to state entities, the proposed regulations would have the opposite effect as intended by reducing the capacity of states to engage in training and promising practice dissemination activities across the state. Again, by increasing barriers to access CSP funding for new applicants, the number of recipients will go down and thereby reduce the amount of funding available to state entities for carrying out statutorily defined technical assistance activities that focus on the objectives laid out in Section 4303 (f)(1)(A) of ESSA. This would create a negative ripple effect not only across CSP recipients, but would also impact support to all charter schools, as well as broader best practice dissemination activities to all schools and districts across the state.

Given that this proposal would create a much more burdensome and worse application process with almost no discussion with the impacted community, the Department should pause or withdraw these proposed rules and instead focus on implementing current program requirements and ensuring that grantees are well-supported in spending grants.

Around the country, public charter schools are making a difference in students’ lives: during the 2020-21 school year, nearly 240,000 new students enrolled in charter schools across the country, representing 7% growth in one school year—the largest increase in half a decade. In Colorado, charter school enrollment grew by 5,268 students during this same timeframe, while non-charter school enrollment fell by 29,778 students. The CSP is the only source of dedicated federal funding to support the growth of charter schools to meet this need and the clear demand from families that these schools serve. It’s more important than ever to ensure the CSP is able to meet its intended purpose of expanding the number of high-quality charter schools available to students, not essentially gutting the program as these poorly-written rules would do.

Sincerely,

Jared Polis
Governor
State of Colorado