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DEPARTMENT OF EDUCATION

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Assistant Secretary Frank Brogan
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

April 7, 2020

**RE: Charter School Program Waiver Request
Section 5204 of the Elementary and Secondary Education Act**

Assistant Secretary Brogan:

The Tennessee Department of Education (TDOE) is seeking waivers under its Charter School Program (CSP) Award No. U282A160021, as the State continues to address the impact of both the COVID-19 pandemic and recent tornadoes on our schools and students. Specifically, TDOE is seeking waivers to allow for the following:

1. an extension of the total period of availability for the use of all remaining CSP grant funds to September 30, 2021;
2. the deployment of CSP funds to *all* charter schools meeting the federal definition of a charter school (not limited to startups); and
3. expansion of the definition of "Allowable Activities" to include the provision of devices, technology, supplies and resources to ensure continuity of instruction during school closures.

Background of the Need for These Waivers

Tennessee counties experienced seven EF3 and EF4 tornadoes on March 2 and 3 which destroyed numerous homes, schools, and lives—the second deadliest tornado outbreak in Tennessee history. We are continuing to support our district and school leaders in recovering from this natural disaster, but the impact on communities has been significant. On March 3, Governor Bill Lee declared a state of emergency for this natural disaster.

While in this state of emergency, the number of confirmed cases of COVID-19 and associated deaths in the State of Tennessee have increased daily. Governor Lee announced on March 24 that all public schools in Tennessee would close through April 24, at a minimum. On April 2, he issued a "Stay-At-Home" executive order for the entire state. Districts and charter entities are working to develop and implement continuity of instruction plans; however, our largest urban and suburban districts serve most of the state's highest poverty schools. Many of their students do not have access to technology in their homes, making instructional continuity more challenging. All 115 of Tennessee's charter schools are located within one of the state's four largest urban counties.

Though nominally functioning under the supervisory auspices of a local LEA, our charter schools operate largely as independent entities with limited access to shared resources. The majority of them do not belong to a larger CMO, and even the largest CMO in the state solely consists of seven campuses. In this uniquely challenging context, it will be critical for charter schools to obtain and share resources and systems across geographic boundaries that will allow for continued provision of academic and support services to students and families.

Under Section 5204(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary has broad discretion to “waive any statutory or regulatory requirement over which the Secretary exercises administrative authority” (except for the definition of a charter school) “if (1) the waiver is requested in an approved application under this subpart, and (ii) the Secretary determines that granting such a waiver will promote the purpose of this subpart.” Expanding the number of high-quality charter schools available to students across the nation is one of the primary purposes of this subpart. These waivers would help Tennessee do exactly that under its approved CSP grant.

Tennessee is seeking these waivers because the CSP grant is ideally suited to quickly provide relief, resources, flexibility and innovation in the charter sector. We are all reeling from the double impact of the tornadoes and pandemic, and are trying to address the myriad issues facing our schools and students to the best of our abilities. Granting an extension of the time period within which our charter schools must use the CSP funds would allow schools time and flexibility to reset and reevaluate how best to support students following the current crises.

The CSP, as it is currently governed by statute, provides one-time start-up funds to support new schools (or at least those in their first three to five years of operation). We are requesting a waiver so that all schools that meet the federal definition of a charter school may have access to relief. By exercising this authority, the Secretary would enable Tennessee to help provide the resources necessary to continue the education of our most disadvantaged students during this time of crisis.

Moreover, this request falls squarely within the goals and construct of the program. Specifically, Tennessee’s three objectives under the CSP are:

1. Increase the number of high-quality charter schools;
2. Decrease the number of academically poor performing charter schools; and
3. Support improvement in all schools with emphasis on economically disadvantaged students.

By permitting CSP funds to be used by all charter schools to provide continuity of instruction to their students, we would be furthering each of these objectives. Our students will be missing a minimum of a month-and-a-half of in-person instruction, and they may not return to school this fiscal year. Without funds to address the immediate needs of remote learning, students at Tennessee’s many high-quality charter schools and high-growth charter schools could regress. Permitting the requested flexibility of CSP fund usage would support their continued growth, prevent the backslide and reduce the number of academically poor performing schools. This is most critical for those schools with a high percentage of economically disadvantaged students, who are the least likely to have access to the technology that would permit online instruction while we are social distancing.

Along that line, we are requesting a third waiver regarding the definition of “Allowable Activities” as specified in Section 5204(f)(3) of the ESEA to allow TDOE to employ grant funds not just for planning

and implementation, but also for ongoing instructional purposes. To ensure that Tennessee charter school students retain continued access to academic instruction throughout this period, permissible expenditures of CSP funds could include technology to be deployed directly to students, supplemental shared curricular resources, software platforms that would allow for distance learning across multiple charter schools, supplies associated with preparation of instructional materials, and associated expenses.

The waivers that we are requesting also reflect the driving purpose of the CSP dissemination grants, which focus on collaborating, developing partnerships and sharing best practices. Given the appropriate tools and technology, there is the potential to share the curricular resources of our high quality charter schools more widely than ever, especially now that everyone in the State is required to stay at home.

Funds Available in Tennessee's 2016 CSP project

Tennessee has **\$ 8,023,835.00** remaining from its CSP grant of \$19,574,626. Our breakdown of sub-grants awarded to date reads as follows:

CSP Grant Summary					
				Total CSP Award	\$ 19,574,626.00
				Less: Total Sub-Grant Obligations (Funds Awarded)	(\$ 12,514,865.00)
				Add: Funds recouped to be reallocated	\$1,938,700.47
				Less: Administrative Expenses*	(\$ 974,626.00)
				Total Remaining Funds Available to Award	\$8,023,835.47
CSP Sub-Grants					
Cohort	Number of Schools	Status	(Total Awarded) + Funds Recouped = Net Awarded		
FY18 P&I	12	Completed/Active	Awarded	\$ 7,414,865.00	
			Recouped	\$ 1,646,000.05	
FY19 Dissemination	2	Completed	Awarded	\$ 300,000.00	
			Recouped	\$ 100,000.00	
FY19 P&I	8	Completed/Active	Awarded	\$ 4,800,000.00	
			Recouped	\$ 192,700.42	

*\$566,320.08 expended to date. Remaining 408,305.92 to be expended for administrative expenses through 9/30/21.

Approximately \$1.9 million of awarded sub-grants have been recouped and returned to the amount of available funds as a result of charter school closures. Due to significant staff turnover at all levels (Governor, Commissioner and TDOE) and the associated loss of institutional knowledge and experience, Tennessee acknowledges that it has awarded a limited number of dissemination sub-grants over the grant period. This situation has recently been rectified by creating a new division at TDOE for School Models and Programs, including a fully dedicated new Director of Charter Schools.

This team is focused on creating a rigorous competition for, and supporting the implementation of, all CSP grants.

Tennessee believes that the approximately \$8 million of available funds will accommodate both the requested need for continuity of instruction for all charter schools pursuant to this waiver and another competition for charter school start-ups and dissemination grants later this spring or summer. It is our intent to reserve \$3 million for sub-grants for new charter schools planning to open in FY21 and FY22, and \$500,000 for dissemination grants. We feel that this is more than adequate, as only 3 charter schools are opening their doors this August, and applications for charters opening in FY22 are uncertain (and some have been withdrawn) due to the pandemic. That would leave approximately \$4.5 million for allocation of funds to all charter schools to assist with continuity of instruction during this unprecedented time.

Sub-Grant Awards

Sub-grants would be competitive, and awards would be based on need and merit. As each sub-grant would require a budget narrative, TDOE would review all applications for items that are allowable, reasonable and necessary. Our scoring rubric would award points based on the following:

- Percent of students on free-and-reduced lunch
- Percent of students with special needs
- Percent of English language learners
- Number of students with no access to a computer or laptop
- A narrative that explains:
 - the need for resources to continue instruction
 - how funds would address the need, particularly with regards to special populations
 - how new resources could be shared or assist in collaboration amongst charter schools
- Current and projected financial statements

It is likely that sub-grant awards under this waiver would range from \$100,000 to \$150,000. Budget and performance periods would run 12 months from the time of sub-grant activation. Funds would be approved and administered through Tennessee's ePlan system.

Additional waivers

To make use of the CSP funds as requested would require 2 additional waivers for implementation:

1. *Waiving the competitive nature of the CSP:* Sub-grant applications would not be externally reviewed, for the sake of expediency, but would instead be evaluated based on the criteria identified above. Schools must include a budget narrative that itemizes their technological and distance-learning needs.

2. *Waiving the requirement that sub-grantees cannot have previously received a CSP award:* We anticipate that all of our charter schools could use additional funds for continuity of instruction at this time. Our most recent startups may have been awarded planning and implementation grants under this funding cycle. We would not want their relatively "new" status to prevent them from receiving additional funds to address these crises. Similarly, the 2 schools that received dissemination grants could surely benefit from continuity of instruction funds. Additionally, as discussed above, this will be a competitive grant and awards will be based on merit and need.

Thank you for consideration of these requests. These waivers align with the scope and purpose of the CSP and will ensure that the TDOE is equipped to serve our charter schools in recovering from these crises.

Please feel free to contact Judy Spencer, by telephone at 615-253-5493 or at judy.spencer@tn.gov if there are questions regarding this request or if additional information is needed.

Best,

A handwritten signature in cursive script, appearing to read "Penny Schwinn".

Dr. Penny Schwinn, Ph.D.
Commissioner

CC: Eve Carney, Chief Districts and Schools Officer
Drew Harpool, Chief Financial Officer
Robert Lundin, Assistant Commissioner of School Models & Programs
Judy Spencer, Director of Charter Schools