APPENDIX A

Federal Charter School Program Requirements

NCLB, Title V, Part B, Subpart 1, Sec. 5210. DEFINITIONS Criteria

1. In accordance with s. 118.40 Wis. Stats., authorizing the granting of charters to schools, is exempt from significant state or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements below.

2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction.

3. Operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized public chartering agency.

4. Provides a program of elementary or secondary education, or both.

5. Is nonsectarian in its program, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution.

6. Does not charge tuition.


8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated.

9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived by state statutes or rules.

10. Meets all applicable federal, state, and local health and safety requirements.

11. Operates in accordance with State law.
12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to state assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Lottery Admission Requirements

A lottery must be used if grade levels within a school are over subscribed and if the school receives or has received federal funds. The following lottery process is suggested:

1. Establish a maximum enrollment per grade.

2. Determine a date on which the school will conduct a lottery if any grade level is over subscribed.

3. Conduct marketing program.

4. Collect enrollment applications.

5. Place applicants who have siblings already enrolled in the school or who are children of faculty and staff members.

6. On the date selected, determine by grade if there is an over subscription.

7. If one or more grades are over subscribed, hold a lottery for each of those grade levels.

8. Begin the lottery as a specific grade, for example the lowest grade in the school, and select the number of student needed.

9. Review the selection at that grade and admit any siblings of selected students to other grades where openings exist.

10. Conduct the lottery in the next higher grade where opening originally existed and continues to exist after the enrollment of siblings from step number 9.

11. Continue until all grades are filled or applicant pool for each grade with openings is depleted.

12. Create a waiting list, in order drawn by lot, for each over-subscribed grade in the event that space subsequently becomes available at that grade level.
Federal Law
Part B — Public Charter Schools

SEC. 5201. PURPOSE.
It is the purpose of this subpart to increase national understanding of the charter schools model by —

(1) providing financial assistance for the planning, program design, and initial implementation of charter schools;
(2) evaluating the effects of such schools, including the effects on students, student academic achievement, staff, and parents;
(3) expanding the number of high-quality charter schools available to students across the Nation; and
(4) encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.

SEC. 5202. PROGRAM AUTHORIZED.
(a) IN GENERAL - The Secretary may award grants to State educational agencies having applications approved pursuant to section 5203 to enable such agencies to conduct a charter school grant program in accordance with this subpart.
(b) SPECIAL RULE - If a State educational agency elects not to participate in the program authorized by this subpart or does not have an application approved under section 5203, the Secretary may award a grant to an eligible applicant that serves such State and has an application approved pursuant to section 5203(c).
(c) PROGRAM PERIODS -

(1) GRANTS TO STATES - Grants awarded to State educational agencies under this subpart shall be for a period of not more than 3 years.
(2) GRANTS TO ELIGIBLE APPLICANTS - Grants awarded by the Secretary to eligible applicants or subgrants awarded by State educational agencies to eligible applicants under this subpart shall be for a period of not more than 3 years, of which the eligible applicant may use —

(A) not more than 18 months for planning and program design;
(B) not more than 2 years for the initial implementation of a charter school; and
(C) not more than 2 years to carry out dissemination activities described in section 5204(f)(6)(B).

(d) LIMITATION - A charter school may not receive —

(1) more than one grant for activities described in subparagraphs (A) and (B) of subsection (c)(2); or
(2) more than one grant for activities under subparagraph (C) of subsection (c)(2).
(e) PRIORITY TREATMENT-

(1) IN GENERAL- In awarding grants under this subpart for fiscal year 2002 or any succeeding fiscal year from any funds appropriated under section 5211 (other than funds reserved to carry out section 5205(b)), the Secretary shall give priority to States to the extent that the States meet the criteria described in paragraph (2) and one or more of the criteria described in subparagraph (A), (B), or (C) of paragraph (3).

(2) REVIEW AND EVALUATION PRIORITY CRITERIA- The criteria referred to in paragraph (1) are that the State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or the school's charter.

(3) PRIORITY CRITERIA- The criteria referred to in paragraph (1) are the following:

(A) The State has demonstrated progress, in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this subpart.

(B) The State —

(i) provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(ii) in the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(C) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(f) AMOUNT CRITERIA- In determining the amount of a grant to be awarded under this subpart to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating, or are approved to open, in the State.

SEC. 5203. APPLICATIONS.

(a) APPLICATIONS FROM STATE AGENCIES- Each State educational agency desiring a grant from the Secretary under this subpart shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require.

(b) CONTENTS OF A STATE EDUCATIONAL AGENCY APPLICATION-

Each application submitted pursuant to subsection (a) shall —

(1) describe the objectives of the State educational agency's charter school grant program and a description of how such objectives will be fulfilled,
including steps taken by the State educational agency to inform teachers, parents, and communities of the State educational agency's charter school grant program; and
(2) describe how the State educational agency —
   (A) will inform each charter school in the State regarding —
      (i) Federal funds that the charter school is eligible to receive; and
      (ii) Federal programs in which the charter school may participate;
   (B) will ensure that each charter school in the State receives the charter school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the charter school; and
   (C) will disseminate best or promising practices of charter schools to each local educational agency in the State; and
(3) contain assurances that the State educational agency will require each eligible applicant desiring to receive a subgrant to submit an application to the State educational agency containing —
   (A) a description of the educational program to be implemented by the proposed charter school, including —
      (i) how the program will enable all students to meet challenging State student academic achievement standards;
      (ii) the grade levels or ages of children to be served; and
      (iii) the curriculum and instructional practices to be used;
   (B) a description of how the charter school will be managed;
   (C) a description of —
      (i) the objectives of the charter school; and
      (ii) the methods by which the charter school will determine its progress toward achieving those objectives;
   (D) a description of the administrative relationship between the charter school and the authorized public chartering agency;
   (E) a description of how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;
   (F) a description of how the authorized public chartering agency will provide for continued operation of the school once the Federal grant has expired, if such agency determines that the school has met the objectives described in subparagraph (C)(i);
   (G) a request and justification for waivers of any Federal statutory or regulatory provisions that the eligible applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;
   (H) a description of how the subgrant funds or grant funds, as appropriate, will be used, including a description of how such funds will be used in conjunction with other Federal programs administered by the Secretary;
(I) a description of how students in the community will be —
   (i) informed about the charter school; and
   (ii) given an equal opportunity to attend the charter school;
(J) an assurance that the eligible applicant will annually provide
    the Secretary and the State educational agency such information as
    may be required to determine if the charter school is making
    satisfactory progress toward achieving the objectives described in
    subparagraph (C)(i);
(K) an assurance that the eligible applicant will cooperate with the
    Secretary and the State educational agency in evaluating the
    program assisted under this subpart;
(L) a description of how a charter school that is considered a local
    educational agency under State law, or a local educational agency
    in which a charter school is located, will comply with sections
    613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities
    Education Act;
(M) if the eligible applicant desires to use subgrant funds for
    dissemination activities under section 5202(c)(2)(C), a description
    of those activities and how those activities will involve charter
    schools and other public schools, local educational agencies,
    developers, and potential developers; and
(N) such other information and assurances as the Secretary and the
    State educational agency may require.

(c) ELIGIBLE APPLICANT APPLICATION- Each eligible applicant desiring a
    grant pursuant to section 5202(b) shall submit an application to the Secretary at
    such time, in such manner, and accompanied by such information as the Secretary
    may reasonably require.

(d) CONTENTS OF ELIGIBLE APPLICANT APPLICATION- Each application
    submitted pursuant to subsection (c) shall contain —
    (1) the information and assurances described in subparagraphs (A) through
        (N) of subsection (b)(3), except that for purposes of this subsection
        subparagraphs (J), (K), and (N) of such subsection shall be applied by
        striking and the State educational agency' each place such term appears;
    (2) assurances that the State educational agency —
        (A) will grant, or will obtain, waivers of State statutory or
            regulatory requirements; and
        (B) will assist each subgrantee in the State in receiving a waiver
            under section 5204(c); and
    (3) assurances that the eligible applicant has provided its authorized public
        chartering authority timely notice, and a copy, of the application, except
        that the State educational agency (or the Secretary, in the case of an
        application submitted to the Secretary) may waive the requirement of this
        paragraph in the case of an application for a precharter planning grant or
        subgrant if the authorized public chartering authority to which a charter
        school proposal will be submitted has not been determined at the time the
        grant or subgrant application is submitted.
SEC. 5204. ADMINISTRATION.

(a) SELECTION CRITERIA FOR STATE EDUCATIONAL AGENCIES - The Secretary shall award grants to State educational agencies under this subpart on the basis of the quality of the applications submitted under section 5203(b), after taking into consideration such factors as —

(1) the contribution that the charter schools grant program will make to assisting educationally disadvantaged and other students in meeting State academic content standards and State student academic achievement standards;
(2) the degree of flexibility afforded by the State educational agency to charter schools under the State's charter schools law;
(3) the ambitiousness of the objectives for the State charter school grant program;
(4) the quality of the strategy for assessing achievement of those objectives;
(5) the likelihood that the charter school grant program will meet those objectives and improve educational results for students;
(6) the number of high-quality charter schools created under this subpart in the State; and
(7) in the case of State educational agencies that propose to use grant funds to support dissemination activities under subsection (f)(6)(B), the quality of those activities and the likelihood that those activities will improve student academic achievement.

(b) SELECTION CRITERIA FOR ELIGIBLE APPLICANTS - The Secretary shall award grants to eligible applicants under this subpart on the basis of the quality of the applications submitted under section 5203(c), after taking into consideration such factors as —

(1) the quality of the proposed curriculum and instructional practices;
(2) the degree of flexibility afforded by the State educational agency and, if applicable, the local educational agency to the charter school;
(3) the extent of community support for the application;
(4) the ambitiousness of the objectives for the charter school;
(5) the quality of the strategy for assessing achievement of those objectives;
(6) the likelihood that the charter school will meet those objectives and improve educational results for students; and
(7) in the case of an eligible applicant that proposes to use grant funds to support dissemination activities under subsection (f)(6)(B), the quality of those activities and the likelihood that those activities will improve student achievement.

(c) PEER REVIEW - The Secretary, and each State educational agency receiving a grant under this subpart, shall use a peer review process to review applications for assistance under this subpart.

(d) DIVERSITY OF PROJECTS - The Secretary and each State educational agency receiving a grant under this subpart, shall award grants and subgrants under this subpart in a manner that, to the extent possible, ensures that such grants and subgrants —
(1) are distributed throughout different areas of the Nation and each State, including urban and rural areas; and
(2) will assist charter schools representing a variety of educational approaches, such as approaches designed to reduce school size.

(e) WAIVERS- The Secretary may waive any statutory or regulatory requirement over which the Secretary exercises administrative authority except any such requirement relating to the elements of a charter school described in section 5210(1), if—

(1) the waiver is requested in an approved application under this subpart; and
(2) the Secretary determines that granting such a waiver will promote the purpose of this subpart.

(f) USE OF FUNDS-

(1) STATE EDUCATIONAL AGENCIES- Each State educational agency receiving a grant under this subpart shall use such grant funds to award subgrants to one or more eligible applicants in the State to enable such applicant to plan and implement a charter school in accordance with this subpart, except that the State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities described in paragraph (6).

(2) ELIGIBLE APPLICANTS- Each eligible applicant receiving funds from the Secretary or a State educational agency shall use such funds to plan and implement a charter school, or to disseminate information about the charter school and successful practices in the charter school, in accordance with this subpart.

(3) ALLOWABLE ACTIVITIES- An eligible applicant receiving a grant or subgrant under this subpart may use the grant or subgrant funds only for—

(A) post-award planning and design of the educational program, which may include—

(i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and
(ii) professional development of teachers and other staff who will work in the charter school; and

(B) initial implementation of the charter school, which may include—

(i) informing the community about the school;
(ii) acquiring necessary equipment and educational materials and supplies;
(iii) acquiring or developing curriculum materials; and
(iv) other initial operational costs that cannot be met from State or local sources.

(4) ADMINISTRATIVE EXPENSES-

(A) STATE EDUCATIONAL AGENCY ADMINISTRATIVE EXPENSES- Each State educational agency receiving a grant pursuant to this subpart may reserve not more than 5 percent of
such grant funds for administrative expenses associated with the charter school grant program assisted under this subpart.

(B) LOCAL ADMINISTRATIVE EXPENSES- A local educational agency may not deduct funds for administrative fees or expenses from a subgrant awarded to an eligible applicant, unless the eligible applicant enters voluntarily into a mutually agreed upon arrangement for administrative services with the relevant local educational agency. Absent such approval, the local educational agency shall distribute all such subgrant funds to the eligible applicant without delay.

(5) REVOLVING LOAN FUNDS- Each State educational agency receiving a grant pursuant to this subpart may reserve not more than 10 percent of the grant funds for the establishment of a revolving loan fund. Such fund may be used to make loans to eligible applicants that have received a subgrant under this subpart, under such terms as may be determined by the State educational agency, for the initial operation of the charter school grant program of the eligible applicant until such time as the recipient begins receiving ongoing operational support from State or local financing sources.

(6) DISSEMINATION-

(A) IN GENERAL- A charter school may apply for funds under this subpart, whether or not the charter school has applied for or received funds under this subpart for planning, program design, or implementation, to carry out the activities described in subparagraph (B) if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including—

(i) substantial progress in improving student academic achievement;
(ii) high levels of parent satisfaction; and
(iii) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(B) ACTIVITIES- A charter school described in subparagraph (A) may use funds reserved under paragraph (1) to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(i) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;
(ii) developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;
(iii) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and
(iv) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

(g) TRIBALLY CONTROLLED SCHOOLS- Each State that receives a grant under this subpart and designates a tribally controlled school as a charter school shall not consider payments to a school under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2507) in determining—
(1) the eligibility of the school to receive any other Federal, State, or local aid; or
(2) the amount of such aid.

SEC. 5205. NATIONAL ACTIVITIES.
(a) IN GENERAL- The Secretary shall reserve for each fiscal year the greater of 5 percent or $5,000,000 of the amount appropriated to carry out this subpart, except that in no fiscal year shall the total amount so reserved exceed $8,000,000, to carry out the following activities:
(1) To provide charter schools, either directly or through State educational agencies, with —
(A) information regarding —
(i) Federal funds that charter schools are eligible to receive; and
(ii) other Federal programs in which charter schools may participate;
(B) assistance in applying for Federal education funds that are allocated by formula, including assistance with filing deadlines and submission of applications.
(2) To provide for other evaluations or studies that include the evaluation of the impact of charter schools on student academic achievement, including information regarding —
(A) students attending charter schools reported on the basis of race, age, disability, gender, limited English proficiency, and previous enrollment in public school; and
(B) the professional qualifications of teachers within a charter school and the turnover of the teaching force.
(3) To provide —
(A) information to applicants for assistance under this subpart;
(B) assistance to applicants for assistance under this subpart with the preparation of applications under section 5203;
(C) assistance in the planning and startup of charter schools;
(D) training and technical assistance to existing charter schools; and
(E) for the dissemination to other public schools of best or promising practices in charter schools.
(4) To provide (including through the use of one or more contracts that use a competitive bidding process) for the collection of information regarding the financial resources available to charter schools, including access to private capital, and to widely disseminate to charter schools any such relevant information and model descriptions of successful programs.

(5) To carry out evaluations of, technical assistance for, and information dissemination regarding, the per-pupil facilities aid programs. In carrying out the evaluations, the Secretary may carry out one or more evaluations of State programs assisted under this subsection, which shall, at a minimum, address —

(A) how, and the extent to which, the programs promote educational equity and excellence; and
(B) the extent to which charter schools supported through the programs are —

(i) held accountable to the public;
(ii) effective in improving public education; and
(iii) open and accessible to all students.

(b) PER-PUPIL FACILITIES AID PROGRAMS-

(1) DEFINITION OF PER-PUPIL FACILITIES AID PROGRAM- In this subsection, the term per-pupil facilities aid program means a program in which a State makes payments, on a per-pupil basis, to charter schools to provide the schools with financing —

(A) that is dedicated solely for funding charter school facilities; or
(B) a portion of which is dedicated for funding charter school facilities.

(2) GRANTS-

(A) IN GENERAL- From the amount made available to carry out this subsection under paragraphs (2) and (3)(B) of section 5211(b) for any fiscal year, the Secretary shall make grants, on a competitive basis, to States to pay for the Federal share of the cost of establishing or enhancing, and administering per-pupil facilities aid programs.

(B) PERIOD- The Secretary shall award grants under this subsection for periods of not more than 5 years.

(C) FEDERAL SHARE- The Federal share of the cost described in subparagraph (A) for a per-pupil facilities aid program shall be not more than —

(i) 90 percent of the cost, for the first fiscal year for which the program receives assistance under this subsection;
(ii) 80 percent in the second such year;
(iii) 60 percent in the third such year;
(iv) 40 percent in the fourth such year; and
(v) 20 percent in the fifth such year.

(3) USE OF FUNDS-

(A) IN GENERAL- A State that receives a grant under this subsection shall use the funds made available through the grant to establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State.
(B) EVALUATIONS; TECHNICAL ASSISTANCE; DISSEMINATION- From the amount made available to a State through a grant under this subsection for a fiscal year, the State may reserve not more than 5 percent to carry out evaluations, to provide technical assistance, and to disseminate information.

(C) SUPPLEMENT, NOT SUPPLANT- Funds made available under this subsection shall be used to supplement, and not supplant, State and local public funds expended to provide per pupil facilities aid programs, operations financing programs, or other programs, for charter schools.

(4) REQUIREMENTS-

(A) VOLUNTARY PARTICIPATION- No State may be required to participate in a program carried out under this subsection.

(B) STATE LAW- To be eligible to receive a grant under this subsection, a State shall establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State, that

(i) is specified in State law; and
(ii) provides annual financing, on a per-pupil basis, for charter school facilities.

(5) APPLICATIONS- To be eligible to receive a grant under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(6) PRIORITIES- In making grants under this subsection, the Secretary shall give priority to States that meet the criteria described in paragraph (2), and subparagraphs (A), (B), and (C) of paragraph (3), of section 5202(e).

(c) RULE OF CONSTRUCTION- Nothing in this section shall be construed to require charter schools to collect any data described in subsection (a).

SEC. 5206. FEDERAL FORMULA ALLOCATION DURING FIRST YEAR AND FOR SUCCESSIVE ENROLLMENT EXPANSIONS.

(a) IN GENERAL- For purposes of the allocation to schools by the States or their agencies of funds under part A of title I, and any other Federal funds which the Secretary allocates to States on a formula basis, the Secretary and each State educational agency shall take such measures as are necessary to ensure that every charter school receives the Federal funding for which the charter school is eligible not later than 5 months after the charter school first opens, notwithstanding the fact that the identity and characteristics of the students enrolling in that charter school are not fully and completely determined until that charter school actually opens. The measures similarly shall ensure that every charter school expanding its enrollment in any subsequent year of operation receives the Federal funding for which the charter school is eligible not later than 5 months after such expansion.

(b) ADJUSTMENT AND LATE OPENINGS-

(1) IN GENERAL- The measures described in subsection (a) shall include provision for appropriate adjustments, through recovery of funds or reduction of payments for the succeeding year, in cases where payments made to a charter school on the basis of estimated or projected enrollment
data exceed the amounts that the school is eligible to receive on the basis of actual or final enrollment data.

(2) RULE- For charter schools that first open after November 1 of any academic year, the State, in accordance with guidance provided by the Secretary and applicable Federal statutes and regulations, shall ensure that such charter schools that are eligible for the funds described in subsection (a) for such academic year have a full and fair opportunity to receive those funds during the charter schools' first year of operation.

SEC. 5207. SOLICITATION OF INPUT FROM CHARTER SCHOOL OPERATORS.
To the extent practicable, the Secretary shall ensure that administrators, teachers, and other individuals directly involved in the operation of charter schools are consulted in the development of any rules or regulations required to implement this subpart, as well as in the development of any rules or regulations relevant to charter schools that are required to implement part A of title I, the Individuals with Disabilities Education Act, or any other program administered by the Secretary that provides education funds to charter schools or regulates the activities of charter schools.

SEC. 5208. RECORDS TRANSFER.
State educational agencies and local educational agencies, to the extent practicable, shall ensure that a student's records and, if applicable, a student's individualized education program as defined in section 602(11) of the Individuals with Disabilities Education Act, are transferred to a charter school upon the transfer of the student to the charter school, and to another public school upon the transfer of the student from a charter school to another public school, in accordance with applicable State law.

SEC. 5209. PAPERWORK REDUCTION.
To the extent practicable, the Secretary and each authorized public chartering agency shall ensure that implementation of this subpart results in a minimum of paperwork for any eligible applicant or charter school.

SEC. 5210. DEFINITIONS.
In this subpart:

(1) CHARTER SCHOOL- The term charter school' means a public school that —

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
(D) provides a program of elementary or secondary education, or both;
(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; 
(F) does not charge tuition; 
(G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act; 
(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated; 
(I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program; 
(J) meets all applicable Federal, State, and local health and safety requirements; 
(K) operates in accordance with State law; and 
(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(2) DEVELOPER- The term developer' means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. 

(3) ELIGIBLE APPLICANT- The term eligible applicant' means a developer that has — 
(A) applied to an authorized public chartering authority to operate a charter school; and 
(B) provided adequate and timely notice to that authority under section 5203(d)(3). 

(4) AUTHORIZED PUBLIC CHARTERING AGENCY- The term authorized public chartering agency' means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school.

SEC. 5211. AUTHORIZATION OF APPROPRIATIONS. 
(a) IN GENERAL- There are authorized to be appropriated to carry out this subpart $300,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years. 
(b) RESERVATION- From the amount appropriated under subsection (a) for each fiscal year, the Secretary shall reserve — 
(1) $200,000,000 to carry out this subpart, other than section 5205(b); and
(2) any funds in excess of $200,000,000, that do not exceed $300,000,000, to carry out section 5205(b); and
(3)(A) 50 percent of any funds in excess of $300,000,000 to carry out this subpart, other than section 5205(b); and
(B) 50 percent of any funds in excess of $300,000,000 to carry out section 5205(b).
The Impact of the New Title I Requirements on Charter Schools

Non-Regulatory Guidance

July, 2004
The Impact of the New Title I Requirements on Charter Schools

Summary of Major Changes .................................................................5

A. Charter Schools and Accountability Requirements in NCLB......................6

A-1. Are charter schools subject to the “adequate yearly progress” (AYP) and other accountability requirements of No Child Left Behind?

A-2. Which entity in a State is responsible for determining whether charter schools make AYP and and ensuring that they comply with other accountability provisions in Title I, Part A?

A-3. Is a charter school that is its own LEA covered by the NCLB requirements applicable to schools in need of improvement or by the requirements applicable to LEAs in need of improvement?

A-4. Which entity is responsible for carrying out the LEA’s duties, under Section 1116 of Title I, when a charter school that is also an LEA is identified for improvement?

A-5. What are an LEA’s responsibilities with respect to schools within its jurisdiction that are identified for improvement? (In other words, what are the responsibilities that authorized public chartering authorities, or other entities designated under State law, must assume when a charter school is identified for improvement?)

A-6. What resources are available to support the Title I accountability responsibilities of charter authorizers (or other entities designated under State law as responsible for charter school accountability)?

A-7. Must charter school authorizers insert State plans for meeting AYP into individual charter contracts?

A-8. Are charter authors now responsible for allocating Title I and other Federal formula funds to their charter schools?

A-9. Should State Title I accountability plans specifically address charter schools and reflect input from charter authorizers and operators?

A-10. What if a charter school fails to make AYP but meets its contractual requirements with its authorizer?

A-11. Does NCLB prohibit more rigorous accountability requirements than the requirements of a State’s Title I accountability plan in an existing charter contract or a future charter contract?
B. Charter Schools and the Title I Public School Choice Provisions…………………11

B-1. May an eligible charter school that is part of an LEA be listed as a choice option for parents who wish to transfer their child to a higher-performing school?

B-2. If a charter school is its own LEA but falls within the boundaries of a larger LEA, should eligible students from the larger LEA be able to transfer to it?

B-3. Do charter schools that admit students using a lottery have to give priority to eligible students transferring under the public school choice provisions of NCLB?

B-4. Must parents be notified if a charter school is identified as in need of improvement, corrective action, or restructuring?

B-5. Are charter schools that are parts of LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in the LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

B-6. Are charter schools that are their own LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in another LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

B-7. Are there Department resources one can use to find more information on NCLB’s public school choice provisions?

C. Charter Schools and Supplemental Educational Services …………..13

C-1. May charter schools apply for State approval to provide supplemental educational services to students enrolled in low-performing Title I schools?

C-2. Are students from low-income families who attend charter schools that are parts of LEAs under State law eligible for supplemental educational services?

C-3. Are students from low-income families who attend charter schools that are their own LEAs under State law eligible for supplemental educational services?

C-4. How much must an LEA pay for supplemental educational services?

C-5. Are there Department resources one can use to find more information on the Title I supplemental educational services provisions?
D. Charter Schools and Corrective Action

D-1. Does NCLB give either States or authorizers the authority to reorganize a charter school’s management and enforce other corrective actions?

D-2. Under the “corrective action” provisions, NCLB allows LEAs to convert low-performing Title I schools into charter schools. How might a State explain the manner in which this provision would be implemented?

E. Qualifications of Teachers and Paraprofessionals

E-1. In general, what are the “highly qualified teacher” requirements under NCLB?

E-2. What qualifications do teachers in charter schools have to meet under NCLB?

E-4. What qualifications do charter school paraprofessionals have to meet?

E-4. When must paraprofessionals meet these requirements?

E-5. If a charter school does not accept Title I funds, must it comply with these requirements for paraprofessionals?

E-6. Must charter school LEAs reserve a portion of their Title I funds for professional development if they currently meet the “highly qualified” requirements for charter school teachers and the new requirements for paraprofessionals?

E-7. Which entity is responsible for ensuring that charter schools comply with NCLB’s charter school teacher quality requirements?
Summary of Major Changes

This updated version of the nonregulatory guidance in the impact of Title I requirements (under the No Child Left Behind Act) on charter schools responds to inquiries that the Department has received since issuing the original guidance on these issues in August, 2003. The new version addresses issues relating to charter school accountability and charter school lotteries. Significant changes are as follows.

- Item A-3 discusses whether a charter school that is its own LEA is treated as a school, or as a local educational agency, in need of improvement under the Title I Section 1116 requirements.

- Item A-5 describes the accountability-related responsibilities that the authorized public chartering authority, or another entity designated under State law, must carry out when a charter school has been identified as in need of improvement under Title I.

- Item A-6 describes the resources that may be available to support the authorized public chartering authority (or other entity) in carrying out those responsibilities.

- Item B-3, as revised, clarifies that a charter school that receives assistance under the Department’s Charter Schools Program may use an admissions lottery that gives extra weight to students seeking to change schools under the Title I public school choice requirements.

The other changes made in this version of the guidance are primarily editorial, and seek to clarify statements made in the previous version.
The Impact of the New Title I Requirements on Charter Schools

A. Charter Schools and Accountability Requirements in NCLB

A-1. Are charter schools subject to the “adequate yearly progress” (AYP) and other accountability requirements of No Child Left Behind?

Yes, Title I of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act (NCLB) of 2001, requires each State, as a condition of receiving funds under the Title I program, to implement a “single, statewide State accountability system” applicable to all its public schools, including charter schools [Section 1111(a)(2)(A)]. A component of that system is a definition of “adequate yearly progress” that measures the extent to which schools succeed in educating all students to proficiency in at least reading (or language arts) and mathematics. In addition, a charter school that receives Title I funds is covered by the school improvement provisions under section 1116 of Title I.

A-2. Which entity in a State is responsible for determining whether charter schools make AYP and ensuring that they comply with other accountability provisions in Title I, Part A?

Section 1111(b)(2)(K) of the amended ESEA requires accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State’s charter school law determines the entity within the State that bears responsibility for applying the Title I, Part A accountability provisions, including AYP, to charter schools. This generally means that the charter authorizer is primarily responsible for holding charter schools accountable under the Title I, Part A provisions unless State law specifically gives the State educational agency (SEA) direct responsibility for charter school accountability. We do not expect the local educational agency (LEA) in which the charter school is located to be this entity, unless it is also the charter authorizer.

In most States, the SEA has taken on the role of determining whether individual schools make AYP, based on student assessment results, the student participation rate on assessments, and the other academic indicators included in the State’s AYP definition. Charter authorizers (or the other entities designated under State law as responsible for charter school accountability) will, thus, want to maintain close contact with the SEA in order to receive current and accurate information on whether charter schools have made AYP and whether individual schools have been identified as in need of improvement.

A-3. Is a charter school that is its own LEA covered by the NCLB requirements applicable to schools in need of improvement or by the requirements applicable to LEAs in need of improvement?

A charter school that is its own LEA and that is identified as in need of improvement is subject to the provisions of Title I that apply to schools in need of improvement.
improvement. This is the same policy that applies to all single-school LEAs receiving Title I funds.

**A-4. Which entity is responsible for carrying out the LEA’s duties, under Section 1116 of Title I, when a charter school that is also an LEA is identified for improvement?**

As indicated in Item A-2, a State’s charter school law determines the entity within the State that is responsible for carrying out Title I accountability provisions with respect to charter schools. Typically, this is the authorized public chartering authority, unless State law gives the SEA responsibility for charter school accountability.

**A-5. What are the responsibilities of an LEA (or in the case of charter schools, of the entity designated under State law as responsible for charter school accountability) when a school within its jurisdiction is identified for improvement?**

The responsibilities that an LEA (or, in the case of charter schools, the entity designated under State law) must assume when a school has been identified as in need of improvement include the following:

- Promptly providing information to the parents of each child enrolled in the school explaining what the identification means, the reasons for the school being identified, what the school is doing to improve, what help the school is getting, and how parents can become involved in addressing the academic issues that led to the identification [Section 1116(b)(6)].

- Ensuring that the identified school receives technical assistance, both during the development or revision of its improvement plan and throughout the plan’s implementation [Section 1116(b)(4)].

- Reviewing, through a peer-review process, the school’s improvement plan, working with the school to make necessary revisions in the plan, and approving the plan once it meets the requirements of the statute [Section 1116(b)(3)(E)].

In implementing these requirements, States, charter school authorizers, and charter schools should attempt to align them, as much as possible, with State law requirements related to charter school accountability.

**A-6. What resources are available to support the Title I accountability responsibilities of charter authorizers (or the other entities designated under State law as responsible for charter school accountability)?**

Title I provides resources to SEAs and LEAs for carrying out the accountability-related responsibilities set forth in the statute. For example:
• The statute permits the SEA to retain up to one percent of the State’s Title I allocation (and a slightly larger percentage, in the case of the smallest States) for administration of Title I programs in the State. The SEA may make available some of these funds to charter authorizers (or the other designated entities) to carry out the functions described in item A-5.

• The statute requires the SEA to reserve four percent of the State’s Title I allocation, beginning in fiscal year 2004, specifically for the purpose of carrying out the State and local accountability-related responsibilities, including activities to assist schools identified for improvement. The SEA must allocate at least 95 percent of this amount to LEAs that have schools identified for improvement, corrective action, or restructuring, except that the SEA may serve those schools directly if it has the approval of the LEA. In allocating these funds, the State must give priority to LEAs that serve the lowest-achieving schools, demonstrate the greatest need, and demonstrate the strongest commitment to ensuring that their lowest-performing schools meet the goals outlined in their improvement plans [Sections 1003(a), (b), and (c)].

An SEA may use the five percent of this reservation that is not required to be allocated to LEAs to provide support for the efforts of charter school authorizers (or other designated entities) to carry out the accountability requirements of the statute. In addition, with the approval of appropriate LEAs in the State, such as the LEAs that have charter schools in improvement status within their jurisdiction, an SEA could use some of the remaining 95 percent of the set-aside to serve those charter schools, such as by providing funds to charter school authorizers for that purpose. Further, an SEA might provide funds from the 95 percent reservation directly to charter school LEAs, and condition that receipt of funds on a requirement that those LEAs provide a portion of the money to the authorizers or other entities that are responsible for the accountability of those schools. Finally, a State might require other (non-charter) LEAs that receive funds from the 95 percent reservation to ensure that charter schools under their jurisdiction are served; for instance, they might make it a requirement that an LEA provide some of its allocation to charter school authorizers responsible for the accountability of charter schools in the area.

A-7. **Must charter school authorizers insert State plans for meeting AYP into individual charter contracts?**

NCLB holds charter schools, like other public schools, accountable for making AYP. If authorizers wish, they may choose to incorporate the AYP definition into charter contracts, especially for new schools, but NCLB does not explicitly require this step.

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1 The amount was two percent in the two previous years.
A-8. Are charter authorizers now responsible for allocating Title I and other Federal formula funds to their charter schools?

No. If a charter school is authorized by an entity other than a traditional (school-district) LEA, the SEA will still be responsible for allocating Title I funds directly to the charter school, pursuant to Federal and State laws. In allocating these funds, SEAs will still comply with Section 5206 of ESEA and ensure that funds are allocated in a timely and efficient manner for new and expanding charter schools. If a charter school is, under State law, part of an LEA, the LEA will allocate Federal funds to the charter school on the same basis as it provides funds to its other schools.

A-9. Should State Title I accountability plans specifically address charter schools and reflect input from charter authorizers and operators?

Yes. Charter schools are public schools subject to the accountability requirements of NCLB. In accordance with congressional intent, Title I State accountability plans must be consistent with State charter school law and may not "replace or duplicate the role of authorized chartering agencies," or other designated entities, in overseeing accountability requirements for charter schools [Conference report on the No Child Left Behind Act; note #77 on Title I, Part A]. State Title I accountability plans should respect the unique nature of charter schools and should reflect input from charter operators and authorizers. In addition, State accountability plans should reflect the fact that the SEA is ultimately responsible for implementation of, and compliance with, the Title I requirements by all public schools in the State that receive Title I funds, including both traditional public schools and charter schools.

A-10. What if a charter school fails to make AYP but meets its contractual requirements with its authorizer?

If a charter school fails to make AYP, then the charter school authorizer or other designated entity must take the actions required by the statute. See item A-5.

A-11. Does NCLB prohibit more rigorous accountability requirements than the requirements of a State’s Title I accountability plan in an existing charter contract or a future charter contract?

No. Nothing in NCLB prohibits the continuation of existing charter contractor prohibitions the development of future contracts that meet or exceed Title I accountability requirements. If a charter school’s contract with its authorizer imposes more immediate consequences than a State’s Title I accountability plan, the authorizer should take appropriate steps to ensure that the school abides by the charter contract as specified in the State’s charter school law, notwithstanding the fact that the charter school may have made AYP.
B. Charter Schools and the Title I Public School Choice Provisions

B-1. May an eligible charter school that is part of an LEA be listed as a choice option for parents who wish to transfer their child to a higher-performing school?

Yes. LEAs may list charter schools under their jurisdiction that have not been identified for improvement, corrective action, or restructuring as choice options.

B-2. If a charter school is its own LEA but falls within the boundaries of a larger LEA, may eligible students from the larger LEA be able to transfer to it?

Yes. An LEA should work with charter school LEAs within its geographic boundaries to reach agreements allowing students to transfer to these schools. However, allowing eligible students to transfer to a charter school LEA within its boundaries does not lift the requirement that the LEA give affected students the option to transfer to schools that it operates.

B-3. May charter schools that admit students using a lottery give priority to eligible students seeking to transfer under the public school choice provisions of NCLB?

A charter school that receives funding under the Department’s Charter School Program (CSP) must use a random selection (lottery) process if more students apply for admission than can be admitted. A school that receives CSP funds generally may use a weighted lottery (that is, a lottery that gives preference to one set of students over another) only when necessary to comply with applicable civil rights laws. (See item C-3 of the Department’s CSP guidance, available at http://www.ed.gov/policy/elsec/guid/cspguidance03.doc.) However, a charter school may weight its lottery in favor of students seeking to change schools under the public school choice provision of Title I, for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school could provide each student seeking a transfer under Title I with two or more chances to win the lottery, while all other students would receive only one chance to win.

B-4. Must parents be notified if a charter school is identified as in need of improvement, corrective action, or restructuring?

Yes. If a charter school is identified for improvement, parents of students enrolled at the school must be notified of its status before the beginning of the school year following identification, just as parents of students enrolled in other public schools are notified. If a charter school is part of an LEA, then the LEA should notify parents of their options. If the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school’s status and their options, including returning children to their “home” public school.

B-5. Are charter schools that are parts of LEAs under State law required to provide choice options and offer transportation for students to other higher-
performing schools in the LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

Yes, consistent with the statute, LEAs that authorize charter schools must provide choice options and offer transportation to other public schools of choice within the LEA, even if a State’s charter law does not require that transportation funds be made available for charter schools.

B-6. Are charter schools that are their own LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in another LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

As noted in Item B-4, if the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school’s status and their options, including returning children to their “home” public school.

In addition, according to Section 200.44(h)(1) of the Title I regulations (67 Fed. Reg. 71710, 71725, to be codified at 34 C.F.R. pt. 200), if all public schools to which a student may transfer within an LEA (including charter school LEAs) are identified for school improvement, corrective action, or restructuring, the LEA must, to the extent practicable, establish a cooperative agreement with one or more other LEAs in the area. Therefore, a charter school LEA must, if it is practicable, establish such agreements with other LEAs.

Also, according to Section 200.44(h)(2) of the final Title I regulations, LEAs (including charter school LEAs) that have no eligible schools to which qualifying students may transfer are allowed to offer supplemental educational services to parents of eligible students in the first year of school improvement.

B-7. Are there Department resources one can use to find more information on NCLB’s public school choice provisions?


C. Charter Schools and Supplemental Educational Services

C-1. May charter schools apply for State approval to provide supplemental educational services to students enrolled in low-performing Title I schools?

Yes, charter schools that are not identified for improvement are eligible to become supplemental educational service providers pursuant to the Title I requirements.
C-2. **Are students from low-income families who attend charter schools that are parts of LEAs under State law eligible for supplemental educational services?**

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then students from low-income families who are enrolled in the school are eligible to receive supplemental educational services. The LEA must pay for such services on the same basis as it would pay for supplemental services for eligible students in any other school.

C-3. **Are students from low-income families who attend charter schools that are their own LEAs under State law eligible for supplemental educational services?**

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then students from low-income families who are enrolled in the school are eligible to receive supplemental educational services. A charter school that is its own LEA must pay for such services on the same basis as any other LEA. Also, charter school LEAs that are identified for improvement but are unable to enter into cooperative agreements with other LEAs to accept transferring students may make supplemental services available in the first year of school improvement to eligible students.

C-4. **How much must an LEA pay for supplemental educational services?**

The law establishes a combined funding requirement for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

1. Choice-related transportation;
2. Supplemental educational services; or
3. A combination of (1) and (2).

These funds may come from Title I, other federal programs such as Title V, Part A of ESEA, funds moved into these programs under the “transferability” authorization, or State or local sources. This flexible funding approach means that the amount of funding that an LEA must devote to supplemental educational services depends in part on how much it spends on choice-related transportation.

If the cost of satisfying all requests for supplemental educational services exceeds an amount equal to 5 percent of an LEA’s Title I, Part A allocation, the LEA may not spend less than that amount on those services. An LEA may also spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services.
C-5. Are there Department resources one can use to find more information on the Title I supplemental educational services provisions?


D. Charter Schools and Corrective Action

D-1. Does NCLB give either States or authorizers the authority to reorganize a charter school’s management and enforce other corrective actions?

Yes. As with other public schools, charter schools that are unable to make AYP by the end of the second full school year after identification are placed under corrective action according to Section 1116(b)(7)(C) of ESEA. NCLB gives the appropriate entity under state law (see A-2) the responsibility to reorganize a charter school’s management or take other corrective actions, consistent with State charter law and the State’s accountability plan for its charter schools. State charter law would determine if this requires the charter school to modify its charter contract.

D-2. Under the “corrective action” provisions, NCLB allows LEAs to convert low-performing Title I schools into charter schools. How might a State explain the manner in which this provision would be implemented?

If a State’s charter school law allows public schools to convert to charter status, a State’s Title I accountability plan may explain how the process of converting schools identified for corrective action to charter schools would work. The accountability plan might also identify the entities that will be expected to authorize such charters and explain whether these entities have discretion in extending the contracts for these charter schools.

E. Qualifications of Teachers and Paraprofessionals

E-1. In general, what are the “highly qualified teacher” requirements under NCLB?

Sections 1119(a) and 9101(23) of ESEA, as reauthorized by NCLB, establish requirements for the qualifications of teachers who teach a “core academic subject.” In general, in order to be considered “highly qualified,” a teacher must:

2 The core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.
• Have obtained full State certification as a teacher or passed the State teacher licensing examination and hold a license to teach in the State, and may not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis:

• Hold a bachelor’s degree; and

• Have demonstrated subject matter competency in each of the academic subjects in which the teacher teaches, in a manner determined by the State.

Under the law, all teachers hired after the first day of the 2002-2003 school year to teach core academic subjects in a program supported with Title I, Part A funds must be highly qualified. In addition, as a condition of receiving Title I, Part A funds, each State must ensure that all elementary and secondary school teachers of core academic subjects in the public schools of the State are highly qualified by the end of the 2005-2006 school year.

For more information on these requirements, see Section C of the Department’s nonregulatory guidance on the Improving Teacher Quality State Grants program (Title II, Part A), available at http://www.ed.gov/programs/teacherqual/guidance.doc, and information on additional flexibility available to schools and local educational agencies in meeting these provisions, which is available at http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html

E-2. What qualifications do teachers in charter schools have to meet under NCLB?

The law provides that a teacher who teaches core academic subjects in a charter school meets the certification requirement if he or she meets the requirements set forth in a State’s charter school law regarding certification or licensure [Section 9101(23)(A)(i)]. Thus, a teacher in a charter school does not have to be licensed or certified by the State if the State’s charter law does not require such licensure or certification. All other elements of the “highly qualified teacher” requirement apply to charter school teachers in the same way, and on the same timeline, that they apply to teachers in traditional public schools.

E-3. What qualifications do charter school paraprofessionals have to meet?

Paraprofessional aides hired to work in programs supported with Title I, Part A funds must have a high school diploma or its recognized equivalent. Except for paraprofessionals who act as translators or conduct parent involvement activities, they must also have completed at least two years of study at an institution of higher education, possess at least an associate’s degree, or demonstrate subject-matter competence through a formal State or local assessment [Section 1119(c)-(e)]. Note that this requirement applies only to paid paraprofessionals and not to parents or other volunteers. In addition, the Department’s regulations clarify that
the term “paraprofessional” applies only to individuals who provide instructional support and not to school staff who have only non-instructional duties (e.g., providing technical support for computers, providing personal care services to students, carrying out clerical functions) \[34 \text{C.F.R. Section 200.58(a)(2)}\].

These provisions of the law apply to charter schools in the same manner that they apply to traditional public schools.

**E-4. When must paraprofessionals meet these requirements?**

The paraprofessional qualifications requirements apply immediately to all paraprofessionals hired to work in Title I programs after the enactment of NCLB (January 8, 2002). Paraprofessionals hired prior to the enactment of NCLB must meet the requirements by January 8, 2006.

For additional information on the paraprofessional requirements, see the Department’s non-regulatory guidance at http://www.ed.gov/policy/elsec/guid/paraguidance.doc.

**E-5. If a charter school does not accept Title I funds, must it comply with these requirements for paraprofessionals?**

No, these requirements are applicable only to paraprofessionals working in Title I programs.

**E-6. Must charter school LEAs reserve a portion of their Title I funds for professional development if they currently meet the “highly qualified” requirements for charter school teachers and the new requirements for paraprofessionals?**

No. Section 1119(l) of ESEA requires all LEAs, including charter school LEAs, to spend between 5 and 10 percent of their Title I allocations on professional development to help all teachers meet the new requirements by the end of the 2005-06 school year. If all teachers and paraprofessionals in a charter school LEA have met these requirements, the funds do not need to be reserved for professional development.

**E-7. Which entity is responsible for ensuring that charter schools comply with NCLB’s charter school teacher quality requirements?**

As discussed in Item A-2 of this guidance, Section 1111(b)(2)(K) of ESEA requires that responsibility for charter school accountability be determined by individual State charter laws. This generally means that the charter authorizer bears primary responsibility for holding charter schools accountable for Title I, Part A provisions (including the teacher quality requirements) unless State law specifically gives the SEA direct responsibility for charter school accountability. We do not expect the LEA in which the charter school is located to be this entity, unless it is also the charter authorizer.
Charter Schools Program

Title V, Part B

Non-Regulatory Guidance

July, 2004
Non-Regulatory Guidance

Title V, Part B
Charter Schools Program

The Charter Schools Program (CSP) was authorized in October 1994, under Title X, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, 20 U.S.C. 8061-8067. The program was amended in October 1998 by the Charter School Expansion Act of 1998 and in January 2001 by the No Child Left Behind Act of 2001. The program, which provides support for the planning, program design, and initial implementation of charter schools, is intended to enhance parent and student choices among public schools and give more students the opportunity to learn to challenging standards. Enhancement of parent and student choices will result in higher student achievement, however, only if sufficiently diverse and high-quality choices, and genuine opportunities to take advantage of those choices, are available to all students. Every student should have an equal opportunity to attend a charter school.

The non-regulatory guidance addresses questions the Department has received regarding various provisions of the CSP statute, including those related to student admissions to charter schools, the use of lotteries, private school conversions, and the involvement of for-profit organizations in charter schools. The non-regulatory guidance also addresses how businesses, faith-based communities and other community-based organizations and individuals associated with them can be involved in the development and operation of charter schools. These guidelines do not contain all of the information you will need to comply with CSP requirements, but are intended to provide guidance on the CSP and examples of ways to implement it. For additional information about the CSP, please contact the Charter Schools Program office, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E116, Washington, D.C. 20202-5961. Telephone: (202) 260-1882.
Title V, Part B: Guidance
Charter School Program

Introduction .........................................................................................................................2

Summary of Major Changes ..............................................................................................5

A. General Provisions of the Charter Schools Program (CSP) ..................6

A-1. What is the purpose of the CSP?
A-2. How does the statute define a charter school?
A-3. What new provisions enacted by NCLB affect the operation of the CSP?
A-4. In addition to the provisions of Title V, Part B, Subpart 1 of ESEA, what other significant Federal statutory and regulatory authorities apply to the CSP?

B. Eligibility and Use of Funds ...............................................................................8

B-1. Which SEAs are eligible to apply for a CSP grant?
B-2. What if a State elects not to participate or does not have an application approved?
B-3. May the Secretary or the SEA waive any eligibility or application requirements?
B-4. How may CSP grant funds be used?
B-5. What are dissemination grants?
B-6. Who is eligible to apply for a dissemination grant?
B-7. What are some limitations on the use of dissemination funds?
B-8. Is a private school eligible to receive CSP funds?
B-9. Is a private school that converts to charter status eligible to receive CSP funds?
B-10. Is a for-profit entity that holds a legal charter eligible to apply for a grant or subgrant?

C. Lottery, Recruitment, and Admissions ..............................................................11

C-1. What is a lottery for purposes of the CSP?
C-2. Under what circumstances must a charter school use a lottery?
C-3. Are weighted lotteries permissible?
C-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?
C-5. May a charter school create separate lottery pools for girls and boys, in order to ensure that it has a reasonable gender balance?
C-6. May a tuition-based private preschool that becomes a public charter
school at the kindergarten level permit children enrolled in the preschool program to continue in the elementary school program without going through a lottery process?

C-7. May a charter school receiving its final year of CSP funds select students for the next school year (when the school will not be receiving program funds) without using a lottery?

C-8. In addition to Title V, Part B, Subpart 1 of the ESEA, what other statutory or regulatory authorities should a charter school consider when developing its admissions policies?

C-9. What are a charter school’s responsibilities with regard to outreach and recruitment?

C-10. May a charter school receiving CSP funds set minimum eligibility criteria for admission to the charter school?

D. Involvement of Religious and Community-Based Organizations With Charter Schools .................................................................12

D-1. May a charter school be religious in nature?
D-2. May charter schools use public funds to support religious programs or activities?
D-3. May charter schools enter into partnerships with religious organizations to provide secular services?
D-4. May charter schools use the facilities of a religious organization?
D-5. May charter schools conduct outreach activities in churches or through religious organizations?
D-6. Can community-based organizations and business entities play a role in charter schools?

E. Administrative and Fiscal Responsibilities ............................14

E-1. What are the administrative and fiscal responsibilities of a charter school grantee under the CSP?
E-2. What are the rules governing “conflicts of interest” in the administration of CSP grants?
E-3. What procedures must a CSP grantee follow in order to avoid a “conflict of interest” when purchasing equipment or services?
Summary of Major Changes

This updated version of the Charter School Program draft non-regulatory guidance responds to additional issues that the Department has resolved, regarding charter school lotteries, since releasing the previous version of the CSP guidance on August 31, 2003. More specifically, the new guidance addresses the issues of whether:

- A charter school that receives funds under the CSP program may weight its lottery in favor of students seeking to change schools under the Title I public school choice provisions. Item C-3 clarifies that this is permitted.

- A charter school may create separate lottery pools for girls and boys, in order to ensure that it has a reasonably equal gender balance Item C-5 clarifies that such an action is not permitted. A school seeking to achieve greater gender balance should do so by targeting additional recruitment efforts toward male or female students.

- A tuition-based private preschool that becomes a public charter school at the kindergarten level may permit children enrolled in the preschool program to continue in the elementary school program without going through a lottery process. Item I-6 clarifies that this action is not permitted. However, a school in this situation might hold its lottery a few years early, giving students who will enroll in the preschool program and those who will not an equal chance of receiving the opportunity to enroll in the charter school (elementary) program.

- A charter school receiving its final year of CSP funds may select students for the next school year (when the school will not be receiving program funds) without using a lottery. Item C-7 describes the circumstances in which this action is permitted.

The new version includes no other significant changes.
Charter Schools Program Guidance

A. General Provisions of the Charter Schools Program (CSP)

A-1. What is the purpose of the CSP?

The primary purpose of the CSP (Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB)), is to expand the number of high-quality charter schools available to students across the Nation by providing Federal financial assistance for charter school program design, initial implementation, and planning; and to evaluate the effects of charter schools, including their effects on students (in particular, on student academic achievement), staff, and parents. The program also encourages, through the use of funding priorities, the creation of strong charter school laws, in the States, that are designed to provide for the establishment of high-quality charter schools. An additional purpose (embodied in the “Per-Pupil Facilities Aid” portion of the program, which has not yet received funding) is to encourage States to provide support to charter schools for facilities financing in amounts commensurate with the amounts they have typically provided for traditional public schools.

A-2. How does the statute define a charter school?

Charter schools are established according to individual State charter school laws. The enactment of State charter school laws is solely a State prerogative, and the definition of a “charter school” under State law is a matter of State policy. However, in order to receive CSP funds, a charter school must meet the definition in Section 5210(1) of ESEA, which is as follows:

“The term ‘charter school’ means a public school that:

1. In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [the paragraph that sets forth the Federal definition];
2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
3. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
4. Provides a program of elementary or secondary education, or both;
5. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
6. Does not charge tuition;
8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the PSCP];
10. Meets all applicable Federal, State, and local health and safety requirements;
11. Operates in accordance with State law; and
12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.”

A-3. What new provisions enacted by NCLB affect the operation of the CSP?

NCLB amended the CSP in two key ways:

- NCLB amended the definition of “eligible applicant” under the CSP to eliminate the requirement that a charter school developer enter into a partnership with an authorized public chartering agency in order to qualify for a CSP start-up grant. Under the new legislation, an eligible applicant that is not a State Educational Agency (SEA) must (a) apply to an authorized public chartering agency for a charter; and (b) notify that agency of its application for CSP funds. The Secretary or the SEA may waive these requirements in cases where the eligible applicant is applying for a pre-charter planning grant or subgrant (ESEA § 5210(3); 20 U.S.C. 7221i(3)).
NCLB amended the CSP by adding a specific provision prohibiting local educational agencies (LEAs) from deducting funds for administrative fees or expenses from a subgrant awarded to an eligible applicant, unless the eligible applicant voluntarily enters into a mutually agreed upon arrangement for administrative services with the LEA (ESEA § 5204(f)(4)(B); 20 U.S.C. 7221c(f)(4)(B)). This provision puts into law, the Department’s interpretation of the Office of Management and Budget’s cost principles.

A-4. In addition to the provisions of Title V, Part B, Subpart 1 of ESEA, what other significant Federal statutory and regulatory authorities apply to the CSP?

Recipients of funds under this program should be aware of the following significant statutory requirements in addition to those in Title V, Part B, Subpart 1 (formerly Title X, Part C) of the ESEA: (a) the definitions set out in Title IX of ESEA, which establishes general provisions for all programs authorized under ESEA; (b) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin; (c) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; (d) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; (e) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; (f) Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive Federal financial assistance; and (g) Part B of the Individuals with Disabilities Education Act, which requires States to make available a free appropriate public education to children with disabilities. The Education Department General Administrative Regulations (EDGAR), Parts 75, 76, 77, 79, 80, 81, 82, 85, and 86 also apply to this program.

B. Eligibility and Use of Funds

B-1. Which SEAs are eligible to apply for a CSP grant?

SEAs in States with a specific State statute authorizing the establishment of charter schools are eligible to apply for CSP grants. An “eligible applicant” (defined as a charter school developer that has applied for a charter and notified the charter granting entity of its application for CSP funds) in such States may apply to the SEA for a subgrant.
B-2. What if a State elects not to participate or does not have an application approved?

If a State elects not to participate in the CSP or is denied funding, an eligible applicant may apply directly to the Department for a grant. Charter schools located in States that have not enacted charter school legislation do not qualify as eligible applicants (ESEA § 5210(1)(A), 5202(a) and (b); 20 U.S.C. 7221i(1)(A)).

B-3. May the Secretary or the SEA waive any eligibility or application requirements?

Although the statute permits a charter school to apply for and receive (from the Secretary or the SEA, as the case may be) waivers of statutory and regulatory requirements, it prohibits waivers of any requirement relating to the elements of a “charter school,” as defined in section 5210(1) of ESEA. As stated in A-3 above, however, in the case of an application for a pre-charter planning grant, the Secretary or the SEA may waive the requirements that an eligible applicant (a) apply for a charter; and (b) notify the charter granting entity of its CSP application. In accordance with section 5204(e), the eligible applicant must request the waiver in its CSP application.

B-4. How may CSP grant funds be used?

SEAs may use CSP funds to award subgrants to charter schools in the State, and charter schools may use the funds only for post-award planning and design of the educational program, and for initial implementation of a charter school. Planning and implementation grants may be awarded for a period of up to three years, with no more than 18 months used for planning and program design, and no more than two years used for initial implementation of the charter school. SEAs may also reserve up to 5 percent of CSP grant funds for administrative expenses related to operating the charter school grant program, and up to 10 percent of their CSP grant funds to support dissemination activities. These dissemination activities are carried out through separate dissemination grants to charter schools and may be awarded for a period of up to two years.

B-5. What are dissemination grants?

Dissemination grants are awarded to charter schools to support activities that help open new public schools (including public charter schools) or share the lessons learned by charter schools with other public schools. The
following activities may qualify as dissemination activities: (a) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and its developers and that agree to be held to at least as high a level of accountability as the assisting charter school; (b) developing partnerships with other public schools designed to improve student performance; (c) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (d) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

B-6. Who is eligible to apply for a dissemination grant?

A charter school may apply for a dissemination grant, regardless of whether it has applied for or received a planning or implementation grant under the CSP, if the charter school has been in operation for at least three (3) consecutive years and has demonstrated overall success, including the following: (a) substantial progress in improving student achievement; (b) high levels of parent satisfaction; and (c) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. For more information about dissemination grants, see section 5204(f)(6) of ESEA, 20 U.S.C. 7221c(f)(6).

B-7. What are some limitations on the use of dissemination funds?

Like all Federal grants, CSP dissemination grants must be used in accordance with statutory and regulatory requirements. A charter school may not use dissemination grant funds, either directly or through a contractor, for marketing or recruitment activities designed to promote itself or the programs offered by it or by a contractor to parents or the community. In particular, grant funds may be used to develop materials documenting successful practices of the charter school for the educational purpose of assisting other public schools in improving student achievement, but not for the purpose of recruiting students or promoting the program of the school or its contractor. Any charter school receiving a dissemination grant should provide thorough and high-quality information that meets the needs of other schools trying to learn from the charter school’s experience.

B-8. Is a private school eligible to receive CSP funds?

No, only charter schools that meet the definition of a “charter school” under ESEA are eligible to receive CSP funds. Section 5210(1) defines a charter school as, among other things, a “public school” that is created by a developer as a public school, or adapted by a developer from an existing
public school, and operated under public supervision and direction (§ 5210(1)(B) of ESEA).

B-9. **Is a private school that converts to charter status eligible to receive CSP funds?**

As stated in B-8 above, the statute defines a charter school as a newly created public school or one adapted from an existing public school. There is no provision or mechanism in the law that recognizes conversions of private schools into public charter schools. On the other hand, the statute does not prevent a newly created public school from using resources previously used by a closed private school or from involving the parents and teachers who may have been involved in the closed private school.

It should be noted, however, that any newly created public school must be just that; it cannot be a continuation of a private school under a different guise. The public charter school must be separate and apart from any private school. It must be established as a public school, and comply with applicable State and Federal laws regarding public schools. In its creation, development, and operation, the charter school must not have any affiliation “with a sectarian school or religious institution” (§ 5210(1)(E) of ESEA).

Because a newly created public school would not have any "previously enrolled" students, all students would need to apply for admission and would have to be selected by lottery if there are more applicants than spaces available. Similarly, the charter school must inform the community of its public school status and have a fair and open admissions process.

B-10. **Is a for-profit entity that holds a legal charter eligible to apply for a grant or subgrant?**

A for-profit entity does not qualify as an eligible applicant for purposes of the CSP. A charter school receiving CSP funds may, however, enter into a contract with a for-profit entity to have the for-profit entity manage the charter school on a day-to-day basis. The charter school also must supervise the administration of the CSP grant and is directly responsible for ensuring that grant funds are used in accordance with statutory and regulatory requirements. (See EDGAR, Part 75, Subpart F.)

C. **Lottery, Recruitment, and Admissions**

C-1. **What is a lottery for purposes of the CSP?**

A lottery is a random selection process by which applicants are admitted to the charter school.

C-2. **Under what circumstances must a charter school use a lottery?**
A charter school receiving CSP funds must use a lottery if more students apply for admission to the charter school than can be admitted. A charter school with fewer applicants than spaces available does not need to conduct a lottery.

C-3. Are weighted lotteries permissible?

Weighted lotteries (lotteries that give preference to one set of students over another) are permitted only when they are necessary to comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Equal Protection Clause of the Constitution, or applicable State law.

In addition, a charter school may weight its lottery in favor of students seeking to change schools under the public school choice provisions of ESEA Title I, for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school could provide each student seeking a transfer under Title I with two or more chances to win the lottery, while all other students would have only one chance to win.

C-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply.

Specifically, the following categories of applicants may be exempted from the lottery on this basis: (a) students who are enrolled in a public school at the time it is converted into a public charter school; (b) siblings of students already admitted to or attending the same charter school; (c) children of a charter school's founders (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and (d) children of employees in a work-site charter school (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment). When recruiting students, charter schools should target all segments of the parent community. The charter school must recruit in a manner that does not discriminate against students of a particular race, color, national origin, religion, or sex, or against students with disabilities; but the charter school may target additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs. Once a student has been admitted to the charter school through an appropriate process, he or she may remain in attendance through subsequent grades. A new applicant for admission to the charter school, however, would be
subject to the lottery if, as of the application closing date, the total number of applicants exceeds the number of spaces available at the charter school.

C-5. May a charter school create separate lottery pools for girls and boys, in order to ensure that it has a reasonably equal gender balance?

No, the legislation requires a charter school receiving CSP funds to hold one lottery that provides qualified students with an equal opportunity to attend the school. Therefore, a charter school receiving funds under the program is precluded from holding separate lotteries for boys and girls. Nor may a school weight its lottery in favor of one gender over another. A school seeking to avoid gender imbalance should do so by targeting additional recruitment efforts toward male or female students.

C-6. May a tuition-based private preschool program that becomes a public charter school at the kindergarten level permit children enrolled in the preschool program to continue in the elementary program without going through a lottery process?

No, because the preschool program is private, charges tuition, and most likely does not admit all students, allowing its students to gain admission to the elementary program without going through a lottery process would violate the statute. Therefore, all applicants to the charter school (the elementary program) would have to be selected by lottery if there are more applicants than there are spaces available.

However, the statute does not preclude an elementary charter school in this type of situation from holding its lottery a few years early – e.g., when students are ready to enroll in the preschool. Under this approach, the charter school would have an affirmative responsibility to inform prospective applicants that winning the lottery would not require them to enroll in the private preschool. Thus, any child selected through the lottery would be guaranteed a slot in kindergarten, a few years later, whether or not she or she enrolls in the preschool program.

Additionally, given the high mobility of children and families, schools that choose to exercise this option should ensure that families new to the area or who were not aware of the previous lottery are given the opportunity to apply for admission. Such actions must meet the admissions requirements of the CSP and might include holding a second lottery to fill vacancies created by normal attrition or failure of early lottery winners to enroll in the charter school.

C-7. May a charter school receiving its final year of CSP funds select students for the next school year (when the school will not be receiving program funds) without using a lottery?
A charter school receiving its final year of CSP funds may select students for the upcoming school year without using a lottery, provided that the school obligates all funds under its CSP grant before those students actually enroll in the school. If the school has carry-over funds or extends its grant period, then it must continue to meet all program requirements, including the requirement to hold a lottery if it receives more applications for enrollment than it can accommodate for the upcoming school year.

C-8 In addition to Title V, Part B, Subpart 1 of the ESEA, what other statutory or regulatory authorities should a charter school consider when developing its admissions policies?

To be eligible for Federal start-up grants, a charter school’s admissions practices must comply with State law and applicable Federal laws. Exemptions from enrollment lotteries are permissible only to the extent that they are consistent with the State’s charter school law, other applicable State law, the school’s charter, and any applicable Title VI desegregation plans or court orders requiring desegregation. A charter school’s admissions practices must also comply with Part B of the Individuals with Disabilities Education Act and Federal civil rights laws, including, but not limited to, Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, as applicable.

C-9. What are a charter school’s responsibilities with regard to outreach and recruitment?

Section 5203(b)(3)(I) of ESEA requires CSP applicants to inform students in the community about the charter school and to give each student “an equal opportunity to attend the charter school” (20 U.S.C. 7221b(b)(3)(I)). Further, section 5203(b)(3)(E) requires charter schools receiving CSP grants or subgrants to involve parents and other members of the community in the planning, program design, and implementation of the charter school. 20 U.S.C. 7221b(b)(3)(E).

C-10. May a charter school receiving CSP funds set minimum eligibility criteria for admission to the charter school?

The ESEA does not specifically prohibit charter schools from setting minimum qualifications for determining who is eligible to enroll in a charter school and, thus, to be included in the lottery. As stated above, however, charter schools receiving CSP funds must inform students in the community about the charter school and give them an “equal opportunity to attend the charter school.”

Thus, a charter school funded under the CSP may set minimum qualifications for admission only to the extent that such qualifications are: (a) consistent with the statutory purposes of the CSP; (b) reasonably
necessary to achieve the educational mission of the charter school; and (c) consistent with civil rights laws and Part B of the Individuals with Disabilities Education Act. CSP grantees should consider using program funds to assist “educationally disadvantaged” and other students to achieve to challenging State content and performance standards.

D. Involvement of Religious and Community-Based Organizations With Charter Schools

D-1. May a charter school be religious in nature?

No. As public schools, charter schools must be non-religious in their programs, admissions policies, governance, employment practices and all other operations, and the charter school’s curriculum must be completely secular. As with other public schools, charter schools may not provide religious instruction, but they may teach about religion from a secular perspective. And though charter schools must be neutral with respect to religion, they may play an active role in teaching civic values. The fact that some of these values are also held by religions does not make it unlawful to teach them in a charter school. Furthermore, as discussed below, faith-based and religious organizations can be involved with charter schools in many ways, and religious expression by students is allowed in charter schools to the same extent as in other public schools. See also the Department’s guidance on Constitutionally protected prayer in public elementary and secondary schools of ESEA, available at: http://www.ed.gov/policy/gen/guid/religionandschools/index.html.

D-2. May charter schools use public funds to support religious programs or activities?

No. All activities of a charter school must be non-religious, as is the case for all public schools. Public funds may not be used for religious purposes or to encourage religious activity. In addition, even if funded by non-public sources, religious activity may not be conducted, promoted, or encouraged during charter school activities by charter school employees or by other persons working with charter schools. However, to the extent that their involvement promotes academic learning and the mission of the charter school, religious organizations and their members may partner with and be involved with charter schools so long as the charter school’s decision to partner with the religious organization is made without regard to the religious character or affiliation of the organization and is not otherwise reasonably perceived as an endorsement of religion.

D-3. May charter schools enter into partnerships with religious organizations to provide secular services?
Yes. Like other public schools, charter schools may enter into partnerships with community groups for secular purposes, such as tutoring or recreational activities. Religious groups may be partners for these types of activities so long as charter schools select partners without regard to their religious affiliation, ensure that no public funds are used for religious purposes, and do not engage in or encourage religious activity. Charter schools may not limit participation in the partnership to religious groups or certain religious groups, and they may not select students or encourage or discourage student participation with particular partners based on the religious or secular nature of the organization.

D-4. May charter schools use the facilities of a religious organization?

Yes. A charter school may use the facilities of a religious organization to the same extent that other public schools may use these facilities. Generally, this means that a charter school may lease space from a religious organization so long as the charter school remains non-religious in all its programs and operations. Most importantly, a landlord affiliated with a religion may not exercise any control over what is taught in the charter school.

D-5. May charter schools conduct outreach activities in churches or through religious organizations?

Yes. A charter school’s outreach and recruitment activities should be designed to reach all segments of the parent community. Thus, a charter school may conduct outreach or recruitment activities in churches or through religious organizations as part of a broad-based and balanced effort to inform parents in the community about the charter school and to recruit a diverse student body.

D-6. Can community-based organizations and business entities play a role in charter schools?

Yes. Community-based organizations and businesses can play a positive role in creating and supporting charter schools. Examples of ways in which non-religious organizations can get involved in charter schools include helping to plan or design a new school, developing curriculum and assessment strategies, serving on governing boards, participating in the day-to-day management of charter schools, establishing partnerships with charter schools, and even creating work-site charter schools. A broad range of community-based organizations and businesses are currently involved with charter schools, including plastics and automobile manufacturers; hospitals, museums, and homeless shelters; and courts and social service agencies. Like all charter schools, charter schools operated by or affiliated with community-based organizations or business entities must be public schools of choice, must be non-religious, and must operate in a nondiscriminatory manner.
E. Administrative and Fiscal Responsibilities

E-1. What are the administrative and fiscal responsibilities of a charter school grantee under the CSP?

Charter schools receiving CSP grants must comply with applicable statutes, regulations, and approved applications; and must use Federal funds in accordance with those statutes, regulations, and applications. Grantees must directly administer or supervise the administration of the project, and must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds. 34 CFR 75.700-75.702.

E-2. What are the rules governing “conflicts of interest” in the administration of CSP grants?

CSP grantees must avoid apparent and actual conflicts of interest when administering grants. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family member; and (b) the person is a public official or has a family or business relationship with the grantee. Section 75.525(b) provides further that a person may not participate in a project to use his or her position for a purpose that is – or gives the appearance of being – motivated by a desire for a private or financial gain for that person or for others. 34 CFR 75.525.

E-3. What procedures must a CSP grantee follow in order to avoid a “conflict of interest” when purchasing equipment or services?

When using Federal funds to enter into a contract for equipment or services, a charter school must comply with the procurement standards set forth in the Department’s regulations at 34 CFR 74.40-74.48. Those standards require Federal grant recipients to develop written procurement procedures and to conduct all procurement transactions in a manner to provide, to the maximum extent possible, open and free competition. No employee, officer, or agent of the charter school may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists. 34 CFR 74.42-74.44.