



UNITED STATES DEPARTMENT OF EDUCATION
Office of Innovation and Improvement

September 14, 2016

Paolo DeMaria
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, OH 43215

Re: Charter Schools Program; PR Award No. U282A150023

Dear Mr. DeMaria:

I am writing to inform you that the U.S. Department of Education (Department) has completed its supplemental review of the application for funds submitted by the Ohio Department of Education (ODE) under the Fiscal Year (FY) 2015 Charter Schools Program (CSP) State Educational Agencies (SEAs) grant competition. Our review, among other things, focused on verifying the accuracy of the information presented in ODE's grant application and on assessing ODE's ability to administer its grant consistent with the high standards for quality, accountability, and transparency that are critical components of effective charter school program administration and oversight. In this letter, we summarize the results of our review and the next steps in the grant process.

As you know, on September 28, 2015, the Department approved ODE's grant in the amount of \$32,671,373 and attached special conditions to the grant. In a letter dated November 4, 2015 to Dr. Richard Ross, former Superintendent of Public Instruction, we requested that ODE refrain from drawing down any funds under the grant and informed ODE of our intent to place the grant on "route payment," requiring all payment requests to be routed to the program office for approval prior to funds being released. The November 4th letter also requested specific information from ODE to assist the Department in verifying the accuracy and completeness of ODE's grant application and assessing whether ODE would be able to carry out its proposed project in accordance with statutory and regulatory requirements and the terms of the approved application, including all of ODE's grant-related assurances.

In our review of ODE's application and the additional information submitted by ODE, the Department did not identify any significant inaccuracies in ODE's approved grant application. However, as a matter of due diligence and based on the significant concerns described in the November 4th letter and additional concerns identified during our supplemental review, we determined that there was a need for a higher level of public transparency, public accountability, and public engagement regarding ODE's oversight of Ohio's charter school sector. In light of these considerations, the Department is designating ODE's CSP SEA grant as "high-risk" in accordance with 2 CFR §§ 200.207 and 3474.10. As part of this "high-risk" designation, we are imposing certain High-Risk Special Conditions on ODE's CSP SEA grant that will help ODE and the Department more clearly determine ODE's ongoing compliance with applicable requirements and the terms of the approved grant application and help ensure that any challenges related to the administration of the grant are identified early and in a transparent manner so that they can be addressed expeditiously.

In making this determination and designation, the Department has taken into consideration a number of factors, including, but not limited to: the circumstances under which a key ODE staff member departed; concerns expressed by various state and congressional leaders from Ohio; information contained in various investigatory and audit reports involving findings related to Ohio's charter schools and ODE's performance and capacity in implementing Federal and state program oversight functions; and implementation issues related to ODE's Authorizer Quality Performance Review system that could have a direct impact on ODE's administration of the grant. The Department's determination also reflects our assessment that ODE must put into place additional mechanisms to help earn the public's confidence in its ability to act as a proper steward of its Federal grant funds on behalf of Ohio's families and students. These additional High-Risk Special Conditions (as well as the Special Conditions attached to the Grant Award Notification (GAN)) will remain in place for the duration of the grant or until ODE is able to successfully demonstrate the establishment of internal controls, and a level of enhanced accountability and transparency that ensure that ODE can adhere to the requirements of the CSP SEA grant to the Department's satisfaction. While we expect that ODE will comply with the High-Risk Special Conditions and the Special Conditions in the GAN by implementing an effective and compliant program, please note that failure to meet these or other grant requirements and conditions may constitute a material failure to comply with the requirements of the grant, subject to further enforcement actions.

ODE may request reconsideration of the “high-risk” designation of this grant by submitting a written request for reconsideration to Nadya Chinoy Dabby, Assistant Deputy Secretary for Innovation and Improvement, within 10 days of the date of this letter. Any request for reconsideration must state the specific reasons ODE believes the “high-risk” designation for this grant is inappropriate. The request for reconsideration may be submitted via e-mail to Kathryn.Meeley@ed.gov.

ODE may begin conducting activities under its CSP SEA grant and drawing down funds from the Department’s G5 Grants Management System, subject to the High-Risk Special Conditions and the Special Conditions in the GAN as described in the Attachment to this letter (collectively, “the Special Conditions”) and applicable statutory and regulatory requirements. The Special Conditions are designed to help ensure effective grant performance and implementation of ODE’s CSP SEA grant. The Special Conditions will be reviewed and updated, as appropriate, by the Department throughout the grant performance period.

Of special note, ODE will continue on “route payment” so that all payment requests are routed to the Department for approval prior to any funds being released. Additionally, in order to address concerns related to ODE’s implementation of its authorizer evaluation system and broader accountability mechanisms, particularly with respect to dropout recovery charter schools, we have included High-Risk Special Conditions that will require Department approval of ODE’s plans for awarding subgrants, with additional prerequisites for awarding subgrants to dropout recovery charter schools. Additionally, to facilitate public transparency with respect to the administration of ODE’s CSP SEA grant, we have included a High-Risk Special Condition that requires ODE to submit semiannual reports to the Department that detail activities and expenditures related to its CSP SEA Grant. Finally, in order to address concerns regarding ODE’s internal controls, to strengthen transparency, and to provide visibility and reporting to the public with respect to ODE’s CSP SEA grant, we have included High-Risk Special Conditions that require ODE to hire an independent monitor and to form a Grant Implementation Advisory Committee (Advisory Committee). The independent monitor—with approval by the Department—will perform periodic “agreed-upon procedures” that address the major areas of program implementation risk, including procedures for monitoring and reporting of expenditures of the SEA and subgrantees. The Advisory Committee will consist of representatives from key stakeholder groups and will provide assistance and oversight to ODE throughout the implementation process. When forming the Advisory Committee, in addition to representatives from the Ohio charter school sector, we strongly encourage ODE to actively consult with educators, school leaders, and families with children currently or formerly enrolled in charter schools. The Department will work with ODE in operationalizing all Special Conditions and we will monitor and approve the selection process for the independent monitor and Advisory Committee.

The Special Conditions are in addition to statutory provisions that exclude for-profit charter schools from receiving CSP grants and subgrants. We also note that in accordance with ODE’s FY 2015 grant application, virtual charter schools are ineligible to receive CSP funds. Finally, we strongly encourage ODE to review and adhere to the standards in non-regulatory guidance that we have published regarding contracting relationships between charter school subgrantees and for-profit management companies (i.e., “education management organizations”, or EMOs). The guidance clarifies the systems that must be in place—and that will be monitored closely by the Department, including but not limited to systems that provide for increased public transparency— in the event that non-profit CSP subgrantees choose to contract with for-profit entities.

As ODE implements its CSP SEA grant, the Department will continue to work with ODE to monitor grant activities and provide technical assistance, as necessary, to ensure that CSP funds are awarded only to charter school developers demonstrating the capacity to create high-quality charter schools and to expand high-quality charter schools that are authorized by high-quality authorizers, as determined by ODE’s Authorizer Quality Performance Review system. The Department will also work with ODE, the independent monitor, and the Advisory Committee to support ODE’s efforts to develop accountability systems and structures that support the growth of high-quality charter schools and that hold authorizers, charter schools, and management organizations accountable.

We are encouraged by the reforms put in place by Ohio’s House Bill 2 (HB 2) to strengthen charter school authorizer oversight and charter school accountability and we appreciate the written and public assurance that ODE has provided to confirm that the state will be able to implement the requirements of HB 2, including the requirement to complete the Authorizer Quality Performance Review process by October 15, 2016. The Department recognizes that ODE has had some early challenges in implementing HB 2, and we will carefully monitor the execution of the review process and the results. The review process is critical to effective charter school program administration and oversight, and we expect that ODE will take performance and accountability for all schools into account in the context of awarding CSP SEA subgrants. We further expect that ODE will do all it can to ensure that the review process reflects the rigorous oversight of authorizers that was described in ODE’s approved grant application and establishes high standards for performance and accountability, and that ODE will be transparent with the

Department and the public if it experiences further challenges in this area, in particular with the implementation of the combined components for the overall authorizer rating.

As the charter sector continues to grow in Ohio, it is even more vital that ODE expend every effort to uphold the highest standards of quality, accountability, and transparency. The Department appreciates ODE's cooperation throughout our supplemental review process and supports Ohio's goal of improving educational opportunities for all of its students, especially educationally disadvantaged students, through high-quality public charter schools. We look forward to working with Ohio as the state continues to improve its system for developing high-quality public charter schools where all students can thrive. All public schools—whether traditional or public charter schools—must strive to provide an excellent education and be accountable to the students and families they serve. We will continue to work with ODE to ensure that all charter schools provide a high quality education, and to take action when charter schools do not meet that bar. Please let us know if you have any questions about any of the matters discussed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan Huh', written in a cursive style.

Stefan Huh
Director
Charter Schools Program
Enclosure

Ohio Department of Education's CSP SEA Grant (U282A150023)
High-Risk Special Conditions and Special Conditions in the Grant Award Notice
September 14, 2016

High-Risk Special Conditions:

1. ODE's CSP SEA grant shall continue on route payment so that all payment requests are routed to the program office for approval prior to any funds being released. In addition, within 10 days of being notified of this condition and subsequently at least thirty days before the beginning date of each six month budget period of the grant (October 1 and April 1), ODE must provide to the Department an itemized budget that the program office will review and approve, as appropriate. When a payment request is submitted in the G5 system, ODE must provide to the Department documentation of all expenditures and supporting evidence to justify the allowability of all costs included in the payment request. All requests shall be submitted to the Department in a timely manner and will allow for, at minimum, 48 hours turnaround time for program office review.
2. ODE shall hire an independent monitor—approved by the Department—to perform periodic “agreed-upon procedures” (AUPs) that address the major areas of program implementation risk, including monitoring the SEA and subgrantees. The independent monitor will be hired at least 30 days prior to publishing the first Request for Applications (RFA) under ODE's CSP SEA grant. The scope of these AUPs will be developed by ODE in a process monitored by the Department. The Department will have direct, unfiltered access to the independent monitor and the records of the monitor, and the Department will require that any reports produced by the independent monitor be made available to the public. The independent monitor may be paid out of CSP SEA grants funds. The independent monitor will cost no more than \$250,000 per year.
3. ODE must submit to the Department quarterly performance reports (January 1, April 1, July 1, and October 1 of each year for the duration of the grant).
 - a. The performance reports shall describe all grant activities and expenditures (capturing activity through the last day of the prior month), including the following information:
 - i. updates on grant project timelines;
 - ii. updates on the timeline for implementing the Authorizer Quality Performance Review, and how the implementation status impacts the grant budget; and
 - iii. updates on audit findings and resolutions of audits involving charter schools in Ohio including the authorizers' responsibility and involvement.
 - b. Semiannually (January 1 and July 1 of each year) the performance report shall also:
 - i. include a report on all obligations, expenditures, revenues, and activities under the grant, including:
 1. a listing of the specific entities awarded CSP subgrants and the amount of those subgrants;
 2. the authorizer of each subgrantee;
 3. a description of the process by which subgrantees were selected for funding, including the criteria for evaluating subgrant applicants, and the scores and comments from subgrant competition peer reviewers;
 4. other information that the Department may determine is necessary to ensure public transparency and accountability regarding ODE's CSP SEA grant program; and
 - ii. be made available to the public and reviewed by the independent monitor under the agreed-upon procedures discussed in condition 2 above.
4. ODE shall establish a Grant Implementation Advisory Committee (Advisory Committee). The Advisory Committee will consist of representatives from key stakeholder groups in Ohio such as nonprofits with relevant expertise in charter school authorizer quality; state charter school organizations; institutes of higher education with particular expertise in performance management; high-quality charter management organizations; and organizations that represent the interests of families with children in charter schools. In addition, ODE may wish to include representatives of national organizations with expertise in charter school oversight and quality. ODE will create a charter for the Advisory Committee that sets forth roles, responsibilities, and membership, and includes rules that will address any potential conflict of interest issues; the charter will be subject to review and approval by the Department. The Advisory Committee shall not receive any compensation from ODE's CSP SEA grant funds and shall be formed at least 30 days prior to ODE publishing the first RFA under ODE's CSP SEA grant. The Advisory Committee will provide and ensure additional accountability with respect to implementation of ODE's CSP SEA grant, to include co-signing the semiannual reports produced as part of condition 3 above.
5. ODE shall develop a comprehensive plan for administering its CSP SEA grant effectively and efficiently for the duration of the grant's performance period. This plan must be submitted for review and approval by the

Department prior to ODE conducting a CSP subgrant competition and at a minimum, must describe the systems and processes ODE will implement for the following:

- a. authorizer evaluation and quality control, including an assurance that ODE will, in the context of designing the subgrant competition, awarding, and monitoring CSP subgrants, take into account:
 - i. the final authorizer ratings from the authorizer review process as well as, if appropriate, any additional information that reflects on authorizer performance; and
 - ii. any additional information that may indicate increased risk when reviewing and monitoring compliance for an authorizer's full universe of charter schools;
 - b. subgrantee eligibility screening;
 - c. the RFA process, including a copy of the RFA for review and approval by the program office prior to publication;
 - d. the competitive subgrant awards process, including:
 - i. pre-application training;
 - ii. selection and training of reviewers;
 - iii. budget reviews, internal screening, and risk assessment; and
 - iv. award determination process;
 - e. processing of subgrantee payments; and
 - f. ensuring subgrantee adherence to all program requirements and the terms of their approved applications.
6. Prior to making any subgrant awards, ODE must develop a subgrantee monitoring protocol. At a minimum, the monitoring protocol must address financial accountability and include a risk rubric and timeline for conducting monitoring activities that will apply to all subgrantees for the duration of the grant. This subgrantee monitoring protocol must be reviewed and approved by the Department prior to ODE implementation. Department staff will be available to provide technical assistance to ODE, as necessary, to help ensure that ODE's monitoring protocol establishes strong internal controls and mitigates areas of risk throughout the performance period of this grant.
7. In consultation with the Department, ODE shall ensure it maintains and updates annually a centralized listing of all public charter schools that is easily accessible to the public—the listing will include the names of authorizers and show school performance under the state accountability framework as well as additional information that will help the public understand overall school performance (e.g., finance, operations, EMO relationships).
8. ODE shall be prohibited from awarding any CSP SEA grant funds to dropout recovery charter schools until ODE has developed and received the Department's approval on a plan to ensure that any subgrants to dropout recovery charter schools go to only schools that demonstrate the capacity to deliver a high-quality program and are authorized by the highest quality authorizers.

Special Conditions (revised from September 28, 2015 Grant Award Notification):

1. Given the time necessitated to conduct our supplemental review, the Department will work with ODE to revise ODE's CSP SEA grant budget. As of now, grant funds in the amount of \$32,671,373 have been awarded and this includes funding in the amount of \$7,118,964 for FY 2015, \$13,886,625 for FY 2016, and \$11,665,784 for FY 2017. Additional funding for continuations may be modified by the Department over the duration of the five year grant based on ODE's performance and compliance with the special conditions. ODE may not obligate or disburse funds designated for future fiscal years until the start of that fiscal year. ODE must track funds and activities separately for each of the three fiscal years that have already been awarded. Consistent with the current grant budget, for FY 2016, ODE will be awarded an additional \$1, and for FY 2017, ODE will be awarded the remaining continuation funds for FY 2017, contingent on satisfactory grant performance. FY 2018 and FY 2019 continuation funding is contingent on overall grant performance.
2. The total recommended award amount of \$71,058,319 is an estimate based on the subgrant projections included in the approved application. The Department reserves the right to reduce continuation amounts based on performance, including actual need for additional funding. ODE should consider the possibility of a reduction in continuation funding when incurring administrative costs.
3. ODE shall ensure that the Authorizer Quality Performance Review system continues to include periodic review and evaluation, at least once every five years, throughout the life of the grant. Although the Authorizer Quality Performance Review system will look at periodic review and evaluation, it is not clear that "effective" authorizer ratings require this element to be met. Therefore, ODE shall ensure that an authorizer that is not performing periodic reviews and evaluations as required by Absolute Priority 1 will be designated "ineffective" for purposes of the CSP program and that no subgrants will be awarded to charter school developers with charter schools authorized by an authorizer rated as "ineffective."

4. ODE's proposed definition of "high-quality charter school" is approved for use for purposes of this CSP SEA grant with the following conditions:
 - a. ODE must use its definition of "high-quality charter school" when designating charter schools as high-quality in relation to the CSP SEA grant; and
 - b. ODE must be able to demonstrate that any charter school that ODE designates as a high-quality charter school for purposes of this CSP SEA grant has no significant compliance issues. Per the standards described in ODE's approved application, this would be demonstrated through evidence that:
 - i. the charter school is in good standing with its authorizer; and
 - ii. audits of the charter school conducted by the State auditor or other independent auditor do not identify any significant compliance issues.

5. Prior to approving the use of weighted lotteries by charter school subgrantees under CSP grant award (U282A150023), ODE must submit current information that demonstrates that state law permits the use of weighted lotteries consistent with applicable Federal laws and regulations, and ODE must receive approval from the Department to move forward. For guidance on how ODE can demonstrate that State law permits the use of weighted lotteries taking into account educationally disadvantaged students, please see section E of the CSP Nonregulatory Guidance that is available at <http://www2.ed.gov/programs/charter/legislation.html>.