

[Docket ID ED-2022-OESE-0006]

April 13, 2022

The Honorable Miguel Cardona
U.S. Secretary of Education
Ms. Porscheoy Brice
U.S. Department of Education
400 Maryland Avenue SW
Room 3E209
Washington, D.C. 20202-5970



Submitted via Federal eRulemaking Portal at www.regulations.gov

Dear Secretary Cardona:

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties for all Americans, and promoting a common culture based on fairness, understanding, and humanity. We submit these comments regarding the U.S. Department of Education’s proposed application requirements for charter school grants: specifically, “Proposed Requirement 1 for CMO Grants and Developer Grants” and “Proposed Requirement 1 for SE Grants” (collectively, the “Proposed Requirements”), published in the Federal Register on March 14, 2022. While FAIR supports efforts to achieve diversity, the proposed requirements are vague and will likely harm the groups they intend to help. We urge the Department to reject or amend the proposed priorities as specified below in Section III.

I. Background and Proposed Requirements

Charter schools serve a remarkably diverse student population, both racially and socio-economically. Nationwide, charter school student bodies are 35% Latino, 30% white, 25% black, and 4% Asian. *See* “Charter School Data Dashboard, NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS (2021), at data.publiccharters.org. More than 54% of charter students are eligible for free or reduced price lunches. *Id.* 58% of charter schools are in urban areas, 25% are in suburbs, and 16% are in rural locations and towns. *Id.*

Despite that existing diversity, the Department has proposed new regulations to “ensure” the creation of charter schools that are “racially and socio-economically diverse.”¹ The Proposed Requirements would require each charter school applicant to provide a “community impact analysis” that contains multiple sophisticated analyses and requires substantial research and evidence-gathering in at least twelve different areas. One of the required components is a description of “how the applicant plans to establish and maintain racially and socio-economically diverse student and staff populations....”

¹ Notably, the proposed requirements and priorities do not mention the data (referenced above in this letter) showing the high degree of racial and socio-economic diversity that charter schools already exhibit.

The Proposed Requirements provide no definition or interpretative guidance for the terms “racially and socio-economically diverse.”

II. The Proposed Requirements Are Vague and Will Harm Those They Intend to Help

Although diversity is a laudable goal, the Proposed Requirements are vague and counterproductive. They require charter school grant applicants to ensure “racially and socio-economically diverse” student and staff populations, but left the quoted terms undefined. This is a significant omission that will lead to confusion and uncertainty for charter school applicants and will likely deter many from even applying.

For example, will an applicant need to ensure the representation of all skin colors and socio-economic groups, or just some? If the latter, how many different skin colors and socio-economic groups will be sufficient? Many charter schools are located in areas that are not socio-economically diverse, including inner cities and rural areas. As written, the Proposed Requirements will require applicants in low-income areas to recruit students and staff from middle class and more affluent areas. While this might add socio-economic diversity, it will take seats away from lower-income residents who are most in need of quality charter schools. Similarly, many charter schools are located in communities with few residents classified as white. The Proposed Requirements will effectively force applicants in those communities recruit and admit more students classified as white from outside the local area. Again, although this might result in greater diversity of skin color, it will mean fewer spots for local non-white students whom the Department ostensibly seeks to help.

Additionally, the Proposed Requirements do not specify the geographical areas that are relevant in determining whether a charter school is sufficiently racially and socio-economically diverse. This is significant, for populations can vary considerably depending on the size of the area considered. For example, a charter school may be located in a community that is 70% Latino, but the Latino population might be 30% for the entire city, 15% for the state, and 18% for the nation at large. Will the applicant be required to create a plan to achieve 70%, 30%, 18%, or 15% Latino representation? Or will just some efforts be required, and if so, to what extent? The Proposed Requirements give no indication of the answers.

Without any clarity or governing standards, those matters will be determined by the subjective beliefs of the state officials who are tasked with approving charter school applications. This will lead to arbitrary results that are inconsistent not only across geographical location but also across time. For while one board may find an applicant’s plan to exhibit sufficient diversity, their successors may not.

Lower-income communities will be further hurt by the proposals’ “community impact analysis” requirement. Impact analyses are time-consuming and costly efforts. They often take weeks to complete, involve multiple complex surveys and calculations, and require the retention of expensive third party firms. The final product is often scores of pages long; the cost is in the many thousands of dollars. Applicants in more affluent areas may well be able to afford such costs, but those in lower-income areas—the very populations the Department intends to aid—will not. Thus, the communities most in need

of new charter schools are the ones who will be least likely to afford the expensive impact analyses mandated by the Proposed Requirements.

III. FAIR's Proposed Changes and Conclusion

FAIR respectfully requests that the Department reject in their entirety "Proposed Requirement 1 for CMO Grants and Developer Grants" and "Proposed Requirement 1 for SE Grants." Charter schools nationwide already serve student populations that are remarkably diverse, both socio-economically and ancestrally. Adopting the Proposed Requirements not only will create confusion and uncertainty but will impose significant burdens and costs on the communities that are most in need of assistance.

Respectfully submitted,

The Foundation Against Intolerance & Racism