



# A Bureaucratic Plan to Disempower Parents

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## INTRODUCTION

The Executive Branch of the United States government has scores of departments and agencies employing about 1.8 million civilians. Given its sprawling size, it's not surprising that the right hand doesn't always know what the left hand is doing.

Let's hope that's the case with an arcane set of rules newly proposed by U.S. Department of Education (ED). Unless the White House intervenes to block or fix them, the rules would make it harder for parents to choose high-quality public schools for their children. They would also undermine the progressive school reforms championed by the previous two Democratic presidents.

The target of this bureaucratic sabotage is one of President Bill Clinton's signature policy innovations, the Federal Charter School Program (CSP). Created in 1994, the CSP provides federal funding to state education agencies (SE) and nonprofit education organizations to encourage the development and continuous refinement of new models for public schools. CSP start-up grants have been a critical catalyst of America's public school choice movement, which has made high-quality public schools available to millions of low-income and minority families whose children are too often consigned to low-performing schools.

The next Democratic president, Barack Obama, continued and built creatively upon Clinton's modernizing reforms. His \$4 billion "Race to the Top"<sup>1</sup> initiative spurred a competition among states to devise plans for adopting higher standards

improving teacher quality, collecting performance data to help schools and parents measure their students' progress, and turning around failing schools.

During his 2020 campaign, however, President Biden stepped back from his predecessors' commitment to providing national encouragement to state and local efforts to reinvent K-12 education. He called for eliminating federal funding for charter schools that contract with for-profit external management organizations (EMO).<sup>2</sup> Only 9.1% of the nation's roughly 7,500 charter schools are run by for-profit companies; the remaining 90% are stand-alone self-operating schools or are run by non-profit groups.<sup>3</sup>

ED's proposed rules<sup>4</sup> would indeed make it difficult – if not impossible – for schools administered entirely or "substantially" by for-profit companies to get federal start-up grants under CSP. But they go further, imposing onerous and unreasonable requirements on all non-profit charter school models as well. So unprecedented are the proposed changes that if they had been enacted earlier, some public charter schools ED named "blue ribbon schools" – the nation's best – would have been excluded from its grant competition. Minneapolis' Friendship Academy of the Arts, which is 98% minority,<sup>5</sup> is an example of a public charter school that would fail to meet the expectation of the new diversity language in ED's proposed regulation.

The timing of the proposed rule changes is also odd. They will likely delay Fiscal Year 2022 CSP awards, as the annual competition is already behind schedule.

What's more, ED published the proposed rules on March 14, 2022 and has set an April 13, 2022 deadline for public comments – a very brief window considering what's at stake for millions of U.S. families whose children attend schools of choice.

From a political perspective<sup>6</sup> the timing of these proposals also couldn't be worse.<sup>7</sup> Many parents in the U.S. are dissatisfied with the way their children's public schools have performed during the COVID-19 pandemic.<sup>8</sup> They are frustrated by lengthy shutdowns<sup>9</sup> and learning losses, by political wrangling over vaccines and mask mandates, and by unresponsive central school bureaucracies<sup>10</sup> and teachers' unions<sup>11</sup> that didn't seem responsive to their concerns.<sup>12</sup>

During the pandemic, enrollment in traditional public district schools has fallen. But enrollment in public charter schools has risen, a sign that parents want the power to choose among a wider array of quality school options.<sup>13</sup>

Amid mounting public pressure for systemic change in K-12 schools, defending the educational status quo hardly seems like a progressive response. Worse, ED's proposed rules would roll back previous Administrations' progress toward modernizing a legacy school system created more than a century ago to serve the needs of a then-rapidly industrializing nation.

Thanks to pioneering efforts by state and local school reformers – mostly Democrats – a new model for 21st Century schools is emerging. It is built upon four pillars: expanding parental choice, shifting decision-making power from central bureaucracies to autonomous school leaders, delivering more personalized learning to students rather than one-size-fits-all instruction, and real consequences for failing to lift all students' performance.

So far, the main beneficiaries of this new model are parents of color in low-income communities who can't pick up and move to the suburbs if their local district schools don't make the grade. In cities such as New Orleans, Washington, D.C., Denver, Indianapolis, New York and Newark, public charter schools, innovation schools, partnership schools and other non-traditional schools have produced dramatic gains in student learning in impoverished communities. As a matter of civil rights and social

justice, the Biden Administration should stand with low-income and minority parents who are demanding an end to second-class schools for their children. Instead, ED's proposed rules seem designed to protect the interests of adults employed in local school districts at the expense of the children and their parents.

## ED's PROPOSED RULES

ED's new rules — “Proposed Priorities, Requirements, Definitions, and Selection Criteria-Expanding Opportunity Through Quality Charter Schools Program (CSP)-Grants” — would make it more difficult for charter school start-ups to get federal support. For nearly three decades those funds have served a critical need. Public charter schools, unlike traditional schools, do not have taxing authority to issue bonds to establish or increase the number of local school seats. Federal grants under CSP average about \$500,000. At least half of today's charter schools have received one.

The rules impose a raft of new requirements on applicants for federal grants to state education agencies, charter school management organizations, and grants to groups seeking to organize new charter schools. The rationale for the changes, according to ED, are as follows:

- To eliminate federal support for for-profit management contracts, which ED contends is necessary to ensure fiscal transparency and accountability.
- To encourage independent public charter schools to enter into new “partnerships” with central school districts.
- To ensure charter schools are racially and socioeconomically diverse;
- To require charter applicants to submit “community impact” analyses.

## ENDING GRANTS FOR-PROFIT MANAGEMENT SERVICES

Charter school opponents invariably cast a nefarious light on schools that seek to increase their capacities by obtaining academic, financial, human, facility and organizational resources from for-profit specialists in those fields. However, creating and sustaining a successful charter school is a complex undertaking, requiring skills, knowledge and capacities in many different areas.<sup>14</sup> As such, private companies can provide small charter schools with economies of scale in managing payroll, back office, and other services.

Because they are public schools, all charters are free, publicly funded and subject to financial oversight from authorizing boards that are answerable to public authorities. The quality of that oversight varies from state-to-state depending on the competence and diligence of the authorizing boards states have empowered by statute. When financial abuses or malfeasance occurs, it is the board's responsibility to take action.

Such problems are by no means confined to for-profit charters or those that contract with for-profit companies for some, or all, of their administrative functions. It's not hard to find examples of non-profit charters that have gone under or have been shut down as a result of financial mismanagement or misuse of public funds. In fact, without proper oversight<sup>15</sup>, even traditional public schools can be felled by corruption.<sup>16</sup>

No surprise, then, that rogue for-profit actors<sup>17</sup> prey on weak authorizers, seeking to take over failing schools and keep them limping along while they collect public funds. But rigorous local oversight is the best answer to financial mismanagement or profiteering. A strong authorizer, such as Washington D.C.'s Public Charter School Board, moves quickly to close schools that mismanage public funds. It also can and has refused to grant charters to private companies with bad financial and academic track records.<sup>18</sup>

And, there are signs that other places are taking concrete steps to reign in wrong doers. In Utah, the State Charter School Board (SCSB), which is responsible for the compliance of 91% of the charter schools in Utah, has issued a record number of

number of "letters of concern" and warnings to administrators this year, letting them know they are being closely watched and that expectations have increased. The state is responding to the high profile scandal that led to the closure of the American International School in June of 2019. The director of the SCSB, Jennifer Lambert says, "It's not that it isn't that charter schools are suddenly performing poorly... it's that the board is being more proactive to help keep these schools in line with rules and regulations."<sup>19</sup>

Nonetheless, the Biden Administration evidently believes the federal government should deny start-up grants to schools even "substantially" run by private companies. The Administration's purported main target is charter management organizations with "sweeps" contracts, which are arrangements in which the management company completely runs the school and also receives most of the school revenue. These have the greatest potential for abuse, because the entire school can collapse if the management company runs afoul of rules and regulations.<sup>20</sup>

Even so, we're skeptical of ED's argument for usurping the function of local authorizing boards and empowering a remote federal agency to act, in effect, as a "second authorizer" for charter schools. A better solution would be to invest more in raising the quality and rigor of charter authorizing boards.

Our skepticism extends to ED's failure to define "substantially" for future applicants. Many public charter schools, just like their district counterparts, contract out some administrative and operational responsibilities to private companies, while others purchase a variety of goods and services — transportation, technical supports, cafeteria services, professional development, facility maintenance, and so on — from for-profit businesses. Without a well-defined federal standard, it is difficult for CSP applicants to understand where ED will draw the "substantially" line. Leaving that definition to state education agencies is likely to create an uneven and confusing welter of rules for those seeking to open charter schools.

## REGULATORY OVERREACH

Our main concern, however, is for the 90% of public charter schools operated by non-profit boards and CMOs. ED's proposed rules would subject them to unprecedented federal micromanagement.

State law and local policy – not federal regulations – have always determined the conditions under which America's public schools open and operate. At present, ED awards CSP grants to non-profit developers with a charter approved by a state sanctioned charter authorizer, and to departments of education (SE) that then disburse funds to sub-grantees seeking to open or expand local charter schools in accordance with varying state laws.

ED's proposed regulations, however, would in effect override the authority of state laws. They would force SE grantees to require charter school applicants to comply with new, non-statutory federal rules in order to qualify for start-up grants. This in effect would make the federal agency a national school board supervening the decisions of charter school authorizers.

A host of new ED mandates will doubtless balloon CSP grant applications to thousands of pages. The department conservatively estimates that the new requirements will add a minimum of 60 additional hours to complete, over the current application requirements. It further estimates the total estimated burden created by the proposed regulations would be 21,900 annual hours at a cost of \$2.1 million per year.<sup>21</sup> While large CMOs experienced with CSP applications might absorb the additional burden of time and money, the new regulations would likely mean prohibitively high transaction and compliance costs for the vast majority of charter schools that are organized and run by small groups of educators and parents, many in low-income communities.

## MANDATING "PARTNERSHIPS" WITH DISTRICTS

In addition to public charter schools, which are autonomous and free of central district control, some states and cities have created semi-autonomous schools of choice variously called innovation schools, renaissance schools, I-zone schools, 1882 schools, and other names. Like charters, they compete for students with traditional district schools.

As the Progressive Policy Institute has documented,<sup>22</sup> the competition gives parents a wider choice of public schools for their kids, while also putting pressure on traditional district schools to improve their performance.

A key to the superior performance of these schools of choice is their ability to make key decisions on-site and operate nimbly, because they aren't constrained by the central school district's top-down rules and restrictive union contracts.

Another key to such autonomous or semi-autonomous schools' success is that they are voluntary partnerships, meaning that there is "buy in" from both partners - the district and the school operator. The voluntary nature of the relationship ensures they equally commit to ensuring the arrangement produces good outcomes for students.

However, ED would now mandate that all charter schools partner with local districts if grant applicants want to receive "priority points" for funding in federal CSP competitions. But the "partnership" ED envisions evidently is strictly one-way, since it imposes no such obligation on school boards and district leaders. But the "partnership" ED envisions evidently is strictly one-way, since it imposes no such obligation on school boards and district leaders.

Down on the ground, many school districts resent competition from charters, which they see as luring away "their" students. Compelling charters to partner with often hostile school districts or risking losing access to federal funding would compromise the independence and autonomy that makes them work. This is a longtime goal of the change-averse K-12 establishment and teachers unions, but it has nothing to do with the CSP's mission: increasing the number of high-quality public schools available to low-income and minority families whose children are too often "zoned" into low-performing neighborhood schools.

## AN IMPOSSIBLE "DIVERSITY" MANDATE

Similarly disingenuous is ED's proposed requirement that charter and independent public schools meet a uniform standard for "diversity" that doesn't take into account America's demographic and geographic realities.

PPI wholeheartedly believes that children of different races, creeds, cultures and socio-economic background should learn together. In practice, because schools of choice have made their deepest inroads in America's major urban centers, they often serve disproportionately low-income and minority students.

All CSP applicants already have to demonstrate to ED how they will maintain racially diverse student and staff populations. The department's current practice "prioritizes" (awards extra points) to grant competitors who use school models that are diverse-by-design.<sup>23</sup> The proposed rules essentially change ED's "priority" to a top-down "mandate."

This has enormous potential to harm urban students and indigenous populations. Notwithstanding vigorous enforcement of federal civil rights laws over the past 60 years, too many urban school districts have continuously failed low-income, African American, and Hispanic families. Charter schools are helping to change that baleful tradition, and it isn't fair to put the burden of reversing centuries of residential segregation entirely on them. Should their students be punished because charters operate in communities that don't have enough white students or because their schools don't have enough white teachers? Our answer is a resounding "No."

## ATTENTIOUS "COMMUNITY IMPACT" STANDARD

Perhaps the most egregious of the ED proposals is one that would give federal grant reviewers the power to override state and local decisions to authorize schools in the name of "community impact." This vague standard is transparently intended to protect school districts from losing students and public dollars when parents choose to enroll their children in charter schools. It apparently rests on the spurious assumption that charters create too much school capacity in communities where district schools have enough seats for all children that live there. Omitted from this zero-sum logic is any consideration of the quality of district schools.

Under the new rule, charter applicants would have to demonstrate "sufficient demand" for new school seats, rather than simply letting parents choose between charter and district schools. Specifically, an applicant must "show evidence that the number of charter schools proposed to be opened,

replicated or expanded. . . must not exceed the number of public schools needed to accommodate the demand in the community."

Charter schools were never conceived to be temporary classroom trailers waiting to catch traditional schools' overflow population.

Nor do parents typically choose public charters for their children because of overcrowding. Parents choose them because they believe they are a better fit for their children, offer higher quality instruction and outcomes, are safer, or are more culturally affirming.<sup>24</sup>

ED's criteria for this proposed regulation center make it clear that its chief concern is not a quality education for all students, but the fiscal health of traditional school districts, and preserving their monopoly on public schools to protect their staffing models. At a time when enrollment in traditional district schools is falling, this regulation aims at stopping the growth of charter school enrollment.<sup>25</sup> With long charter school waiting lists — around 50,000 children in New York City alone, for example<sup>26</sup> — this is no time for the U.S. government to be turning its back on America's neediest families.

## CONCLUSION

What is most striking about ED's proposed rules is their evident unconcern for making our public schools better, and for making sure all students have equal access to good schools. Parents frustrated by their interactions with their schools during the pandemic also are demanding a more transparent, accountable and responsive public education system. ED's push to load scores of new regulations and mandates onto CSP applicants points is fundamentally out of touch with the public's growing interest in systemic change.

The proposed rules, if adopted, inevitably will stall the growth of charter and other kinds of innovative public schools springing up in communities where they are urgently needed. We urge the White House to intervene to stop ED's bureaucratic attack on the federal CSP and, by extension, on parents who want to be able to choose the public schools that best fit their children's needs.

This is not the time for progressives to defend the educational status quo and turn their back on Black and Hispanic and low-income parents who have long been shortchanged by our legacy school system.

Instead, President Biden and the Democrats should pick up where Presidents Clinton and Obama left off, by championing public school innovation and modernization.

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## ABOUT THE AUTHORS

**Will Marshall** is president and founder of the Progressive Policy Institute (PPI), a catalyst for political change and policy innovation with offices in Washington, D.C. and Brussels. Its mission is to craft new ideas for advancing the enduring values of liberal democracy. A veteran policy entrepreneur, Marshall in 1985 helped to found the Democratic Leadership Council, serving as its first policy director. He is an honorary Vice-President of Policy Network, an international think tank launched by Tony Blair to promote progressive policy ideas throughout the democratic world. Marshall has served on the boards of the National Endowment for Democracy and the Washington, D.C. Public Charter School Board.

He is editor of many books, including *Memos to the New President* (PPI, January 2009); *With All Our Might: A Progressive Strategy for Defeating Jihadism and Defending Liberty* (Rowman & Littlefield, 2006); *The AmeriCorps Experiment and the Future of National Service* (PPI, 2005); *Building the Bridge: 10 Big Ideas to Transform America* (Rowman & Littlefield, 1997); and *Mandate for Change* (Berkley Books, 1992), PPI's best-selling policy blueprint for President Clinton's first term. His articles have appeared in the *New York Times*, *Washington Post*, *Wall Street Journal*, *Los Angeles Times* and many other newspapers, as well as *The American Interest*, *The American Prospect*, *Democracy*, *The New Republic* and other journals.

Marshall's previous political and campaign experience includes posts as press secretary, spokesman and speechwriter for the 1984 United States Senate campaign of former North Carolina Governor Jim Hunt, speechwriter and policy analyst for the late U.S. Representative Gillis Long of Louisiana, Chairman of the House Democratic Caucus; and, spokesman and speechwriter in the 1982 U.S. Senate campaign of former Virginia Lt. Governor Dick Davis.

**Tressa Pankovits** is the Co-Director of Reinventing America's Schools project at Progressive Policy institute, which researches innovations needed to create a 21st century model for public education that is geared to the knowledge economy. A lawyer with more than 10 years of experience in domestic and international education policy, management, and operations, Tressa is a national thought leader and passionate advocate for autonomous school models that increase educational equity. In addition to guiding the project's strategic plan, Tressa's research and advocacy have appeared in the *Washington Post*, *The Hill*, *Real Clear Education*, *The 74Million*, and other publications. She has published numerous white papers and model legislation.

## ABOUT THE REINVENTING AMERICA'S SCHOOLS PROJECT

The **Reinventing America's Schools Project** inspires a 21st century model of public education geared to the knowledge economy. Two models, public charter schools and public innovation schools, are showing the way by providing autonomy for schools, accountability for results, and parental choice among schools tailored to the diverse learning styles of children. The project is co-led by Curtis Valentine and Tressa Pankovits.



The **Progressive Policy Institute (PPI)** is a catalyst for policy innovation and political reform based in Washington, D.C. Its mission is to create radically pragmatic ideas for moving America beyond ideological and partisan deadlock.

Founded in 1989, PPI started as the intellectual home of the New Democrats and earned a reputation as President Bill Clinton's "idea mill." Many of its mold-breaking ideas have been translated into public policy and law and have influenced international efforts to modernize progressive politics.

Today, PPI is developing fresh proposals for stimulating U.S. economic innovation and growth; equipping all Americans with the skills and assets that social mobility in the knowledge economy requires; modernizing an overly bureaucratic and centralized public sector; and defending liberal democracy in a dangerous world.

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