

## PUBLIC NOTICE

### Application for Waiver of Requirements under the Federal Charter School Program

The Wisconsin Department of Public Instruction (WDPI) is submitting a waiver from certain regulations within Sections 4301 – 4311 under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) and an amendment to WDPI's FY17 Charter School Program (CSP) State Entity grant award.

Section 8401(a)(3) of ESEA, as amended by ESSA, allows the Secretary of the U.S. Department of Education to waive any statutory or regulatory requirement of this Act for which a waiver request is submitted. All waiver requests are required to address a number of components, which are included below.

WDPI is simultaneously seeking an amendment to its FY17 CSP State Entity grant that would allow it to award CSP subgrants to established charter schools to implement a virtual program for the first time as a result of COVID-19.

### Background Information

In 2017, the WDPI was awarded a five-year \$95 million grant to support quality charter schools in Wisconsin. The main objectives of the grant are to:

- Support the growth of high-quality charter schools in Wisconsin, especially those focused on improving academic outcomes for educationally disadvantaged secondary students;
- Strengthen and improve authorizing quality and promote the adoption of best practices for all authorizers in Wisconsin; and
- Promote and support collaboration and sharing of best practices between high-quality charter schools and other schools in the state, especially those that experience difficulty in adequately serving educationally disadvantaged students.

The Wisconsin Charter Schools Program (CSP) has made significant progress towards meeting the overall objectives of the CSP grant in its first three years. To date, WDPI and its partners have awarded 37 subgrants, developed a suite of resources around Wisconsin-specific best practices, created a charter school governance board development program, created a charter school classroom/leadership development program, and authorizer development program, and developed a mentorship program with charter schools from across the state.

The waiver requests described below align with the purposes of the CSP and generally fall within the scope and objectives of the WDPI's approved application, as these flexibilities will enable the state to support the growth of high-quality charter schools, particularly those serving educationally disadvantaged students, through an incredibly challenging period. Additionally, these waiver requests will allow the WDPI to continue to award subgrants and spend down funds as projected in the approved application.

#### *1. Identify the federal programs affected by this waiver request.*

WDPI is seeking this waiver pertaining to the state's CSP State Entity grant to allow for the deployment of CSP funds to assist charter schools in implementing distance learning and other initiatives related to responding to the COVID-19 pandemic. Flexibility under this waiver will allow for Wisconsin charter schools to better respond to the crisis as it evolves.

#### *2. Describe which federal statutory or regulatory requirements are to be waived.*

A waiver from the U.S. Department of Education is required to help WDPI and Wisconsin charter schools respond to this challenging moment. WDPI seeks to expand the eligibility of applicants, modify the application and application review process for subgrants, and allow schools that have previously received grant monies to receive additional funds to effectively respond to the COVID-19 pandemic.

**WDPI requests a waiver of §4303(b)(1)(A)(1) so that eligible applicants may also include existing charter schools that need funding to start up newly-designed instruction as a result of COVID-19.**

WDPI seeks a waiver to expand the type of school that may be eligible for an award to “open and prepare for the operation of a new charter school.” Under this expanded definition, eligible applicants would include charter schools seeking to open and prepare for the operation of virtual education models as an immediate response to COVID-19, regardless of how long they have been operating.

Allowable activities approved for the subgrants awarded under this waiver will only be for those activities in §4303(h) of ESEA that are related to initial costs associated with the implementation of a school’s new instructional design and learning plans for virtual learning associated with the shutdown of in-person learning due to COVID-19. This may include:

- Purchasing of technology hardware and software for teachers and students, particularly low-income students who do not have access to these technologies at home;
- Providing students with the internet access necessary to access educational programs from their homes;
- Supporting professional development and planning costs associated with implementing and overseeing virtual learning; and
- Supporting other one-time costs related to implementing changes in instructional practices during the COVID-19 crisis.

Only 20 percent of Wisconsin charter schools are identified as virtual schools. Exclusively online instruction and learning is a new medium for 80 percent of Wisconsin charter schools. The 80 percent of charter schools that previously implemented their academic programs in person did not have any substantial virtual learning plans in place prior to the onset of COVID-19 and, therefore, have start-up costs associated with implementing this new programming that have not previously been supported by CSP funds. Generally, virtual charter schools that have experience with implementing distance learning will not be eligible for a subgrant under this waiver, unless they can demonstrate that their school has needed to implement a new and different distance learning program to respond to COVID-19.

As noted in Wisconsin’s most recent Annual Performance Report (APR) submitted in April 2020, the state has \$28,270,682.71 available, and not obligated or spent, for subgrant awards. Accounting for anticipated new subawards, WDPI anticipates that it will have \$24 million available for additional subgrant awards to be distributed under this waiver in response to COVID-19. If WDPI receives its continuation award as proposed, there will still be ample funding available for WDPI to run two additional subgrant competitions as planned in its approved application. Because these funds will still be utilized for subgrants as initially proposed, no changes to Wisconsin’s approved budget are required.

Since this flexibility would help enable the WDPI to expend subgrant funds as projected and would be consistent with the state’s approved budget, it would help ensure the WDPI continues to spend funds within the parameters dictated by §4303(c)(1). DPI anticipates it may make up to 200 additional subawards under this waiver. This will depend on charter schools’ interest, eligibility, and the quality of their plans.

**WDPI requests a waiver of §4303(f)(1)(C) and §43030(d)(2) so that WDPI can award subgrants based on need and may do so in an expedited fashion, without a peer review process.**

Roughly 188 of Wisconsin's 236 charter schools are in need of start-up funds as they transition to virtual instruction for the first time. These schools need resources to enable them to meet the logistical, fiscal, and pedagogical challenges associated with implementing virtual instruction for the first time. Over half of students served by Wisconsin charter schools are economically disadvantaged and are likely to have fewer resources to assist in their transition to remote learning, and these subgrant funds would enable their schools to better support their transition.

To facilitate the necessarily expedited nature of these subgrant awards, WDPI requests permission to utilize WDPI staff to evaluate and process application requests under this waiver through a noncompetitive process. WDPI staff possess the skills and expertise needed to evaluate subgrant applications efficiently. Based on previous subgrant competitions, soliciting and training peer reviewers, scheduling and facilitating peer review discussions, and gathering peer review feedback is a process that can take months. Given the urgency of the situation, the WDPI would like to use the most efficient process possible.

The WDPI will base their review on each school's need and the quality of the school's plan for utilizing funds. As noted in the next section, applications will include information about why start-up funds are needed to implement educational continuity plans, the activities to be supported by the subgrant funds, the school's plan for serving students through virtual or blended learning, and the purchases that will be made with the subgrant funds.

The subgrant period for subgrants awarded under this waiver would run from March 12, 2020, when an initial state of emergency was declared in response to the COVID-19 threat<sup>1</sup>, to March 12, 2021. Subgrants shall be limited to up to \$150,000 per charter school that meets the federal definition of a charter school in § 4310(2)(A)-(M) of ESEA. If the funding requested exceeds that which is available, eligible applicants will be prioritized by the percentage of economically disadvantaged students enrolled in the school as reported in the most recent publicly available data on the Wisconsin Information System for Education Data Dashboard.

Charter schools must have authorizer approval to be eligible for a subgrant under this proposed waiver and must submit an application by the deadline established by WDPI.

**WDPI requests a waiver of § 4303(f)(1)(C)(i) so that charter schools can submit a subgrant application without the burden of supplying information that is already part of the school's charter contract.**

WDPI requests to waive the requirements set forth in §4303(f)(1)(C)(i)(II), (IV) and (VI). The requirements of §4303(f)(1)(C)(i)(II), (IV) and (V) must already be identified in the school's charter contract and requiring them as part of the application process would be burdensome and unnecessary.

A description of the "roles and responsibilities of eligible applicants, partner organizations, and charter management organizations" as well as a "description of how the autonomy and flexibility granted to [the] charter school is consistent with the definition of a charter school in section 4310" will still be required as part of the application. A description of "the eligible applicant's planned activities and expenditures of subgrant funds to support the activities described in subsection (b)(1)" will also be a requirement to apply for these proposed subgrants.

The request for applications will require a narrative that clearly describes why the funds are needed to respond to COVID-19 and a corresponding budget demonstrating how the funds will be spent on one-time costs associated with this response. The applications will describe why start-up funds are needed to implement educational continuity plans, the activities to be supported by the subgrant funds, the school's plan for serving students through virtual or blended

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<sup>1</sup> <https://evers.wi.gov/Documents/EO/EO072-DeclaringHealthEmergencyCOVID-19.pdf>

learning, and the purchases that will be made with the subgrant funds. Applicants will also be asked to provide some brief information regarding how they plan to transition back to their traditional model.

**WDPI requests a waiver of § 4303(e)(2) so that a charter school may receive more than one subgrant under this section for each individual charter school for a five-year period, if the second subgrant is for the purposes of responding to COVID-19.**

WDPI seeks to waive the requirement that “[an] eligible application may not receive more than 1 subgrant under this section for each individual charter school for a 5-year period.” Wisconsin charter schools that previously received CSP planning and implementation subgrants under the current State Entity grant or under previous State Entity grants are in need of additional start-up funds as they transition from in-person to virtual instruction. Previously, an exclusively virtual model has only been utilized by virtual charter schools in the state. As a result, the vast majority of charter schools were not prepared for the required transition to remote learning, so subgrant funds would support start-up activities that were not covered through previous funding sources. Established charter schools do not necessarily have any additional capacity to successfully shift to a virtual delivery model compared to those in their first years of operation.

*3. Describe how the waiving of the requirements indicated above will advance student academic achievement.*

A May 2020 study from the Wisconsin Policy Forum<sup>2</sup> revealed that “[t]he COVID-19 crisis threatens to exacerbate the ‘digital divide’ between students who have fast, reliable at-home internet access and those who do not.” Using WDPI’s 2019 Digital Learning Survey, the study identified that “nearly 10% of districts overall said fewer than half of their students have adequate internet access.” Further, that same survey identified that one-third of all Wisconsin school districts reported at least 25 percent of their students do not “have enough internet access at home to complete homework assignments and other school related activities.”

The Digital Learning Survey found access disparities to be higher in districts with fewer than 500 students but a significant portion of students in large districts of 2,000 students or more also experienced access disparities. The digital divide in Wisconsin exists in both rural and urban communities. The difficult economic circumstances caused by COVID-19 furloughs and layoffs may make it harder for impacted families to pay for or maintain high-speed internet service.

With the benefit of the flexibility afforded to WDPI by the Secretary under a granted waiver, Wisconsin can accomplish the following:

1. Make additional financial resources available to charter schools in the state to adapt to distance-learning and remote instruction;
2. Allow charter schools to purchase computers or smart tablets, computer programs, internet access, and other learning materials and services for their teachers and students, particularly those who do not have access to these materials at home;
3. Expedite the subgrant award process, allowing the state to make subgrant funds more immediately available to eligible charter schools as they combat the effects of the pandemic on education delivery and outcomes;
4. Enable schools to implement academic, social-emotional, and compensatory services virtually to remediate learning gaps resulting from mandated school closures connected to COVID-19;
5. Support all professional development and planning costs associated with implementing and overseeing

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<sup>2</sup> <https://wispolicyforum.org/research/wisconsins-digital-divide-and-its-impacts-on-learning/>

remote instruction; and

6. Assist charter schools in developing and implementing mental health supports for students as they adjust to the pandemic.

Providing immediate state-wide support to charter schools will ensure continuity of education. Without the Secretary granting the requested waivers, WDPI's ability to support charter schools will be affected by time constraints and restrictive eligibility requirements. The granting of this waiver will assist WDPI in meeting the needs of charter schools in supporting student achievement.

Because this waiver will help support charter schools, and particularly those with educationally disadvantaged students, the flexibilities will enable the WDPI to continue to work toward its first grant objective and continue to support high-quality charter schools. Without these funds, charter schools in the state may struggle to continue to engage students in their existing high-quality programming, given the changes required by COVID-19.

*4. Describe the methods that will be used to monitor and regularly evaluate the effectiveness of the implementation plan of this waiver request.*

WDPI will disperse one-year awards of up to \$150,000 per charter school. Applicants will be required to submit an application form as described above and a modified version of the same budget form used by other Wisconsin CSP (WCSP) subgrant applicants. Each subgrantee will utilize WISEgrants, the WDPI's budgeting and claiming system. Using WISEgrants is standard practice under WDPI's current CSP State Entity grant; continuing to utilize it under the granted waiver will allow WDPI to maintain the appropriate level of oversight while minimizing the administrative burden on schools and WDPI staff.

Within WISEgrants, subgrantees will submit a detailed annual budget using certain available Wisconsin Uniform Financial Accounting Requirements combinations, which helps ensure budgeted costs are allowable. The budget will then be reviewed by WCSP staff and compared to the school's budget summary form and either approved or returned so that required changes can be made. WCSP staff review helps ensure that costs are allowable, as well as reasonable, necessary, and allocable to the subgrant. Schools utilize this same system to submit claims based on their approved budget, which are reviewed and approved by both the grant accountant and the subgrantee's WISEgrants "authorizer." A record of budget submissions and claims are saved within the system and can be viewed.

In order to access funds, an awarded applicant under this waiver must have the following on file: Proof of Wisconsin Non-stock Status and an approved contract. This approved charter contract between the authorizer and the school's governance board must be on file with WDPI and must meet all applicable requirements under state law. At the end of the school's year-long subgrant period, the school will be required to submit a report summarizing the manner in which it utilized funds and the impact this had on the school's ability to serve students in the COVID-19 environment.

*5. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.*

As currently written, only charter schools that are opening and charter schools that are high-performing and seeking to replicate or expand can benefit from WDPI's CSP State Entity grant funding. With the benefit of a waiver, all charter schools in the state of Wisconsin that meet certain requirements will have the opportunity to benefit from access to additional funding to address the impacts of the COVID-19 pandemic. If funding requested exceeds that which is available, the state will prioritize schools that serve primarily educationally disadvantaged students. This priority is aligned with WDPI's grant objectives as currently written and continues the state's focus on serving at-risk students.

*6. If the waiver relates to provisions of subsections (b) or (h) of section 1111 of ESEA, describe how the SEA requesting the waiver will maintain or improve transparency in reporting to parents and the public on student*

*achievement and school performance, including the achievement of the subgroups of students identified in section llll(b)(2)(B)(xi) of ESEA.*

The waiver being requested is related to CSP-specific requirements and is not directly related to the statewide accountability system.

As required under the waiver process, the state educational agency must provide the public and all local education agencies in the state with notice of and the opportunity to comment on this request. The Department's application for waiver authority is available to review at <https://dpi.wi.gov/esea/esea-and-covid-19>.

### **Written Comments**

Public comment on the application described above may be submitted by using the Department's form for submitting comment at <https://forms.gle/tLBpwzsocWyAFYWo9>. Questions or additional comment may be accepted by using the contact information below. Written comments should be submitted no later than 10 a.m. on Friday, June 12, 2020, in order to receive consideration.

### **Agency Contact Person**

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