August 27, 2018

Allison Holte
U.S. Department of Education
400 Maryland Avenue SW, Room 5W106
Washington, DC 20202– 5970

RE: ED–2018–OII–0062

Dear Ms. Holte:

The National Center for Special Education in Charter Schools (NCSECS) is dedicated to ensuring that students with disabilities have equal access to charter schools and that charter schools are designed and operated to enable all students to succeed. NCSESCS is a leader and partner with state charter authorizers, charter networks, and charter schools across the United States.

We write today to provide comments regarding the U.S. Department of Education (ED) Office of Innovation and Improvement's *Proposed Priorities, Requirements, Definitions, and Selection Criteria— Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools*. NCSECS supports the Administration's efforts to fully implement the Every Student Succeeds Act (ESSA), which includes support for the improvement and expansion of high quality charter schools.

By many measures, the charter sector has met the ambitious goals that educators and school leaders set for them over the more than 25 years since charter schools were first established. Charter schools are attractive options in many districts across the country and they have spawned innovative and highly successful instructional models. Yet, when it comes to educating students with disabilities, the sector has not consistently met its full potential. Although enrollment of students with disabilities in charter schools continues to grow, the sector has generally not invested adequate resources to develop exemplary programs for students with disabilities. While these concerns have been acknowledged since the launch of the charter movement, shortcomings related to educating students with disabilities continue to undermine the credibility of the sector overall.

With this grant initiative, ED has a tremendous opportunity to help students with disabilities gain full access and appropriate services in charter schools by helping charter management organizations to build capacity to educate all learners. However, we believe ED has not quite gone far enough to prioritize and require Charter Management Organizations (CMO) to ensure students with disabilities have the same opportunities as all other students. The proposed expansion must embrace broad use of evidence-based programs that can strengthen and enhance the access, recruitment, retention, provision of instruction, and support to all students, and innovation designed to improve outcomes for students, including students with learning differences. With that in mind, we offer the following recommendations:

General Recommendations

Recommendation – Priority related to students with disabilities

- **Add a new priority related to applications focused on improving outcomes for students with disabilities.**

Rationale: By nearly every metric by which we measure school performance, students with disabilities experience significant gaps. The charter sector presents an opportunity to leverage parental choice and school autonomy to develop innovative approaches to educating students with disabilities. By giving priority to applications from CMOs that are committed to ensuring that students with disabilities are an intentional priority, ED can catalyze research and development that has the potential to benefit students with disabilities in all public schools.

Recommendation—Lottery Enrollment Procedures

- **Ensure applications intending to use a weighted lottery meet all of the requirements in 20 U.S.C. 7221b and such lotteries are designed to admit a proportional number of Educationally Disadvantaged Students, including students with disabilities into high-quality charter schools.**

Rationale: NCSECS supports and has worked with Congress through the Every Student Succeeds Act to develop common sense and equitable ways to encourage CMOs to create and expand access to new, successful, integrated and diverse charter schools. Weighted lotteries can be an effective tool to not only ensure that students with disabilities have equal access to charter schools but also to address under-enrollment of this sub-group of students.

Recommendation –Virtual/Online Charter Schools:

- **Provide clarity throughout the priorities that applications proposing to replicate or expand virtual/online school(s) must: 1) focus on all Educationally Disadvantaged Students to ensure student retention and outcomes are as important as enrollment; and 2) ensure all virtual and online instructional platforms and content conform to nationally accepted accessibility standards, such as WCAG 2.0 level AA.**

Rationale: We know that for a very small minority of students, who require flexibility in scheduling, in the design of curricula and for whom the traditional brick and mortar school does not fit, virtual schools can be a good match. In some cases, students with disabilities can be served particularly well by a virtual program that can be tailored to meet the child's needs and consistent with the requirements of the Individuals with Disabilities Education Act (IDEA), also provides instructional support and services. However, concerns remain that the quality of most virtual schools has not caught up with demand and research has demonstrated that significant challenges exist with regard to the success of such virtual programs.[i] Recent reports on virtual schools describe these programs as being characterized by large class sizes, heavy responsibilities placed on parents, and weak student academic achievement.[ii] Most notably, on average, online charter students achieved each year the equivalent of 180 fewer days of learning in math and 72 fewer days of learning in reading than similar students in district-run brick-and-mortar schools. [iii] And, there is still too little reported about students with disabilities accessing, performing in, and successfully exiting online schools having met relevant standards. In light of these data, as well as ED's recent launch of the [National Center for Research on Education Access and Choice,](#) whose charge it is to study the impact of this particular choice option among others, we urge ED to

make clear that applications proposed to replicate or expand virtual school(s) must include an explicit commitment to serve Educationally Disadvantaged Students as defined by this notice and strictly adhere to all other requirements of federal and state laws.

Also, it is imperative that full accessibility be ensured in the online instructional platform and content provided by virtual schools. For many students with disabilities, especially those who use assistive technology, this is the greatest barrier to being able to access and benefit from a virtual public school. It is essential that virtual public schools are fully accessible for students with disabilities by ensuring that their instructional platform and content conform to nationally accepted accessibility standards, such as WCAG 2.0 level AA. Virtual public schools must be made aware of their obligation under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) to create, purchase and provide accessible content, and the Federal government should ensure this requirement is clear in any grantmaking and/or guidance issued to Section 504 and ADA covered entities (such as virtual public schools). If digital instructional content is not accessible, students with disabilities who use assistive technology will be denied equal access to an education.

Recommendations for Priorities 1, 2, 3

Recommendation—Priority 1: Promoting Diversity

- **Revise the priority and its related rationale to ensure that schools place *an intentional focus on racial and socioeconomic diversity that <u>includes students with disabilities, English Learners and all other students defined as Educationally Disadvantaged Students</u>***.

- **Rationale**: While we support and commend ED for this priority overall, it is a mistake to hyper-focus on income and race. We urge ED to strengthen this priority by reinforcing to CMOs the importance of increasing diversity that specifically includes increasing the overall enrollment of students with disabilities as well as the range of disabilities. It is vital that ED recommend and support that students with disabilities also be a focus of this priority. Recent enrollment data show that on average in states with charter laws, students who qualify for services under IDEA made up 10.62 percent of total enrollment in charter schools and 12.46 percent of total enrollment in traditional public schools.[iv] We also know the following:
    - When disaggregated by legal status (i.e., charter schools operating as their own local education agency [LEA] or as part of an existing LEA), charter schools that operate as their own LEA enroll more students with disabilities, 11.5%, than charter schools that operate as part of an LEA, 9.74%.
    - Charter schools report higher percentages of enrollment of students with specific learning disabilities—the largest category of students with disabilities served under IDEA (49.49% vs. 45.98%), autism (7.2% vs. 6.53%), and emotional disturbance (5.06% vs. 4.10%) compared to traditional public schools.
    - Conversely, charter schools report lower percentages of enrollment of students with developmental delays (0.92% vs. 2.07%) and intellectual impairments (3.64% vs. 5.89%) compared to traditional public schools.
    - Charter schools and traditional public schools serve roughly the same proportion of students who have speech or language impairments, other health impairments, and other types of disabilities (e.g., multiple disabilities, hearing or visually impaired, and traumatic brain injury). [v]

o   The average difference in enrollment of students with disabilities between traditional and charter public schools across the nation is 1.84% but there is significant variance across the nation with states such as Delaware, Missouri, New Jersey, and Wyoming reporting a difference of more than 5% points.

These data make clear that CMOs must continue to seek to increase enrollment of students with disabilities and ensure that the students they enroll reflect the diversity of students eligible for special education according to level of support needs. ED can help assure that expansion and replication of high quality charter schools places an intentional focus on racial and socioeconomic diversity that includes disability among other factors.

Recommendation—Priority 2: School Improvement Through Restart Efforts

- **Require CMOs that target schools for restart to include specific strategies that intentionally address the disproportionately high percentage of students with disabilities typically seen in turnaround schools.**

Rationale: Many restarts (e.g., restarts in California, Massachusetts, and Tennessee) prioritize the enrollment of neighborhood children and in doing so, these schools tend to have high percentages of students with disabilities who are faring worse than the other students languishing in the failing school. Authorizers granting turn around approvals have driven the focus on community and neighborhood. However, in driving this, there is often too little focus and investment in assuring that students with disabilities will receive the necessary supports and services they require. Recent examples where this is a known problem are: Memphis and Los Angeles. ED must assure that any restart effort intentionally includes evidence-based, effective and innovative strategies to address the disproportionately high percentage of students with disabilities that most often will be enrolled in the school. And, this priority should catalyze the use of evidence-based practices such as use of Universal Design for Learning to increase the flexible design of classrooms and curricula and implementation of multi-tier systems of support that include positive behavior intervention and support.

Recommendation—Priority 3: High School Students

- **Require CMOs focusing on high school students to enroll, support, and outline plans to develop and implement effective transition programming for students with disabilities.**

Rationale: In 2014-2015 69.9 percent of students with disabilities graduated with a regular high school diploma.[vi] While this number continues to go up each year, there is still notable room to improve the post-secondary outcomes of students with disabilities. If charter schools are going to focus on high school students, they must actively and strategically consider how they can improve the outcomes of students with disabilities. Specifically, they must develop or implement evidence-based approaches to providing transition planning services that prepare youth to leave school, move into adulthood, and meet their employment, educational, or independent living goals. The IDEA recognizes the importance of preparing youth for success after high school and states that transition planning for students who receive special education services and have an Individualized Education Program (IEP) must begin by age 16[vii] (*some states require that the process starts earlier*). Transition planning means evaluating needs, strengths, and skills required for a student to move from high school to postsecondary life. Finally, as stated in the latest GradNation report,

> "it is becoming more evident that the nation will be unable to meet its goal of a 90 percent high school graduation rate for all students without doubling down on efforts to reach the students who have historically faced the greatest challenges – low-income students, Black and Hispanic/Latino students, students with disabilities, and English Language Learners…"[viii]

It is for these reasons that NCSECS urges ED to ensure that any application focused on high school students must include strategies to support transition planning for students with disabilities.

We believe in and support ED's focus on expanding and replicating high-quality charter schools. We encourage ED to seriously consider the recommendations we make in order to facilitate the crucial expansion of and access to effective educational programs for students with disabilities in the robust charter sector ED is striving to create and sustain. There is tremendous expertise and experience within and among CMOs that given the right set of factors, can significantly contribute to the development and dissemination of effective approaches to assuring the charter school sector can offer its innovation and results for more students.

Thank you for the opportunity to comment.

Sincerely,

Lauren Morando Rhim, Ph.D.
Executive Director

NCSECS.ORG
National Center for *Special Education* in Charter Schools

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[i] Rosa Pazhouh, Robin Lake, and Larry Miller, The Policy Framework for Online Charter Schools (Bothell, WA: Center for Reinventing Public Education, October 2015); Brian Gill et al., Inside Online Charter Schools (Cambridge, MA: Mathematica Policy Research, October 2015); James Woodworth et al., Online Charter School Study (Stanford, CA: Stanford University, 2015).
[ii] Ibid.
[iii] Ibid.
[iv] Lauren Rhim, Shaiini Kathari, Key Trends in Special Education in Charter Schools: A Secondary Analysis of the Civil Rights Data Collection (National Center for Special Education in Charter Schools, February 2018).
[v] Ibid.
[vi] 39th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (U.S. Department of Education, Office of Special Education and Rehabilitative Services, 2017).
[vii] IDEA (34CFR§300.320)
[viii] Jennifer L. DePaoli, Robert Balfanz, John Bridgeland, Matthew Atwell and Erin S. Ingram, Building a Grad Nation: Progress and Challenge in Raising High School Graduation Rates (Civic Enterprises, John Hopkins University, 2017).