UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

ASSISTANT DEPUTY SECRETARY

December 12, 2008

Dear Colleague:

The purpose of this letter is to remind you of the obligation State educational agencies (SEAs) have in ensuring that charter schools receive the Federal education funds to which they are entitled. In this regard, in October 1998, Congress reauthorized the Department's Charter Schools Program (CSP) and amended the Elementary and Secondary Education Act of 1965 (ESEA) by, among other things, requiring in section 5206 the Secretary and SEAs to take measures to ensure that a charter school that opens for the first time or expands its enrollment receives the federal formula funds for which it is eligible in a timely fashion (20 U.S.C. 7221e(a)). The Department has taken a number of steps to implement section 5206 of the ESEA, including issuing regulations (34 C.F.R. part 76, subpart H) and nonregulatory guidance (See http://www.ed.gov/policy/elsec/guid/cschools/cguidedec2000.pdf). In addition, the Office of Management and Budget (OMB) has revised the OMB Compliance Supplement to add the requirement in section 5206, thereby making it more likely that the SEAs' compliance with these requirements will be audited.

Under the implementing regulations for section 5206, a charter school local educational agency (LEA) that opens for the first time or expands its enrollment on or before November 1 of any year must receive the proportionate amount of Federal formula funds for which it is eligible within five months of the date the charter school opens or significantly expands its enrollment; and a charter school LEA that opens or expands after November 1 but before February 1 must receive at least a *pro rata* portion of the funds for which it is eligible on or before the date the SEA allocates funds to other LEAs for the succeeding year. For a charter school LEA that opens or expands on or after February 1, an SEA may, but is not required to, provide the charter school with a *pro rata* portion of funds for which the charter school is eligible on or before the date the SEA allocates funds to other LEAs for the succeeding year (34 CFR 76.792-76.793). Under a Federal formula program in which an SEA awards subgrants on a competitive basis, the SEA must provide an eligible charter school LEA that is scheduled to open on or before the closing date of any competition a "full and fair opportunity" to apply to participate in the program. However, the SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or expanded to compete for funds (34 CFR 76.794(a)).

To receive funds, a charter school LEA or its authorized public chartering agency must notify the SEA, in writing, at least 120 days in advance of the date the charter school is scheduled to open or significantly expand its enrollment (34 CFR 76.788(a)). In turn, the SEA must provide the charter school with "timely and meaningful information" about the federal formula programs in which the charter school may be eligible to participate (34 CFR 76.789). In addition, the statute and its implementing regulations prohibit an SEA from relying on enrollment or eligibility data from a prior year in determining the eligibility of a new or expanding charter school LEA to receive funds under a federal formula grant program. This is true even if allocations to other LEAs are based on a prior year's data (34 CFR 76.791).

Some of the major formula grant programs that are covered by section 5206 and its implementing regulations include the Title I Grants to Local Educational Agencies program (Title I, Part A of the ESEA), the Special Education State Grants program (Part B of the Individuals with Disabilities Education Act), and the Career and Technical Education State Grants program (Carl D. Perkins Career and Technical Education Act of 2006). However, these requirements apply to other elementary and secondary education formula grant programs administered by the Department as well (except the requirements do not apply to a program or a portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis). See 34 C.F.R. 76.787 (definition of "covered program").

The Department urges states to establish written procedures for allocating federal formula funds to charter school LEAs in accordance with section 5206 and its implementing regulations. The Department also recommends that states issue guidance annually to charter schools, charter authorizers, and LEAs to ensure that they are aware of the requirements of section 5206 and its implementing regulations, such as the 120-day notice requirement and the definition of "significant expansion of enrollment."

If you have any questions or need additional assistance, please contact Dean Kern, Director of the Parental Options and Information, at (202) 260-1882 or dean.kern@ed.gov.

We look forward to working with each State to ensure that charter schools that are opening for the first time or significantly expanding their enrollment receive the federal formula funds for which they are eligible in a timely fashion.

Sincerely,

Amanda L. Farris

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