

SEA Communities of Practice: Learning More About 2011 Nonregulatory Guidance

Slides 1 & 2

PEGGIE: This is Peggie Garcia from the National Charter School Resource Center. Welcome to our Wednesday webinar, SEA Communities of Practice, Learning More About the 2011 Nonregulatory Guidance.

Slides 3 & 4

The U.S. Department of Education funds the National Charter School Resource Center and they've asked us to host this webinar in order to allow you the opportunity to ask them questions and to learn more about the guidance that they released in April 2011. So our two presenters today will be Scott Pearson, the associate assistant deputy secretary and acting director of the charter schools program at the U.S. Department of Education, and Richard Payton, who is the State Education Agency Charter School Program project officer, also at the department. So, I think most of you are familiar with the platform, but I'll just give you a quick run-through. So, on the left-hand side you can go ahead and enter questions through the chat. You can enter questions at any time. We did receive a couple in advance, so please feel free to enter those at any time, and Scott and Richard will answer those either during their presentation or during the Q & A. On the left-hand side in the bottom corner there are two documents there in the file-share window. So, in order to access those, you can just click on the document and then the "save to my computer" button will sort of light up and you can click on that button and download it to your computer. So the slides are there that we're showing in case you did not receive those in the reminder e-mail that I sent earlier today and the guidance document that the department leaders will be discussing today is also available in that file-download area.

This webinar is being recorded, and an archive will be available after the webinar at our website. We should have that up by Friday afternoon without a problem if you want to access the archive after this afternoon. If the slides are too small for any reason, you can also use the full-screen option on the top right of your screen. And if you'd like to raise your hand to speak over the phone during the Q & A, then please use, on the top left corner, the "raise your hand" icon. So I think that's about it. If you could mute your phones you can help preserve the quality of the audio recording, that would be helpful, and I will be muting people throughout



the webinar as well. With that I'm going to go ahead and turn it over to Scott and Richard.

Slide 5

SCOTT: Great. Welcome, everybody, and thanks for joining us on this webinar. This is Scott Pearson. I'll be taking us through the first part of the presentation. Richard will take us through the second part, and then we hope to leave at least 30 minutes for questions.

So we released in April a new version of our nonregulatory guidance. The last revision was done in 2007,

Slide 6

and so this tries to capture a number of things that have come up since then as well as trying to reflect a philosophy here that we want, where possible, to give SEAs and charter schools greater flexibility in administering the program to best meet the specific local needs that you encounter. So I hope that this new guidance achieves that and I would say that if there are further changes to the nonregulatory guidance that any of you feel would be warranted, please communicate that to the charter schools office, because we're always eager to find ways to make this program work better for our grantees and subgrantees.

So, Peggie, were you going to mute everybody except us?

PEGGIE: I'm going to go ahead and do that right now.

SCOTT: Okay, so, to continue: The major changes to the nonregulatory guidance we'll go through in a second, but as I think all of you know, the basic law that covers the charter schools program is Title V, Part B, of the ESEA. Our guidance amplifies on that as well as on the basic departmental regulations, most of which are contained in our EDGAR regulations.

Slide 7

The major changes to the guidance are around allowable expenses, lottery exemptions, relationships between charter boards and for-profit charter management organizations, factors to consider when determining if a school is new or an expansion, and finally the relationship between public charter schools and private schools.

Slide 8

So, allowable expenses is sort of a perennial issue. It comes up all the time with our staff, and we're continually receiving questions about whether something is allowable or not and what we've heard from a number of states as well as from many subgrantees is that the definition of allowable expenses had sometimes been interpreted quite narrowly and created often a very burdensome situation for charter schools in that many of the things that they needed to spend money on for initial implementation of their schools were not allowed by the states. So we tried to give both clearer guidance as well as more flexibility in this. So, first of all, we make it clear that creating and implementing office functions of the charter school, such as accounting systems, attendance and registration systems, and HR policies is an allowable expense and that installing computers, data systems, networks, and telephones are also allowable. Some states had interpreted that as being an unallowable construction expense, and we want to make it clear that all installation of data systems, networks, et cetera, is an allowable expense.

A very significant clarification is around personnel expenses. Many states had essentially said that either charter schools could not spend money on personnel unless those personnel were contracted or that they could not spend any money on personnel once the school opened, in other words they permitted them to spend money on personnel during the planning period, but then once the school opened, personnel were not permitted to be covered by this. And we make it clear in this guidance that personnel expenses incurred either before or after the school's opening are allowed, provided that they are associated with initial implementation activities and are not ongoing expenses. So, an example could be if in the first or second year of a school's opening, if the principal is spending half of her time on the ongoing management of the school, but is spending half of her time on start-up activities such as hiring new teachers because the school is expanding every year, searching for real estate to accommodate a growing school, developing curriculum and systems that are implemented as an initial activity as part of the initial implementation of a school—all of those activities and the costs associated with her time are allowable expenses. And so, the portion of that time associated with the initial implementation of the charter school is allowable, because you're now into a situation where somebody is assigning part of their time to ongoing expenses and part of their time to initial implementation expenses, it would be necessary for the school to maintain some sort of time and effort record. This is not meant to be a huge bureaucratic burden, so it doesn't have to be something that's super sophisticated, but there needs to be some written justification that keeps track of that person's time, but overall we want to make it clear that personnel expenses associated with initial implementation are allowed, whether they occur before or after the

opening of the school.

Also allowable, we want to make it clear, is rent and occupancy costs for a reasonable period of time prior to the school's opening. So whether it's leasing the actual school building prior to the school's opening or office space for the staff who's planning it, that is allowable. And then we do need to make it clear that no construction expenses are allowed, even for ADA compliance. In the past, we had thought that the regulations permitted a narrow loophole where if charters were putting in rails or ramps or things like that, that that would be a permitted expense, but we have clarified that no CSP start-up money can be used on any construction expenses.

Slide 9

Now, as I think all of you know, in the enumeration of allowable expenses, at the end of that list, there is a category at ESEA 5204(f)(3)(b)(iv) that says that allowable expenses include other initial operational costs that cannot be met from state or local sources. Now up to now many states have essentially put the burden of proof on the charter school to say, tell us that this expense could not have been met by state or local expenses. And so the interpretation has been that if in theory local funds or state funds could be used to pay for that expense that it would not be an allowable expense under the CSP. And we have, in this new guidance, we have pretty fundamentally changed the burden of proof by saying that if the charter school can show that the state or local funds that it has received are necessary to meet expenses other than the one at issue, in other words they've used up all those state and local funds on other things, then the charter school has met its burden of showing that the other initial operational costs cannot be met from state or local sources, and therefore it's allowable under the CSP grant, and we expect that that would significantly expand the range of activities of initial operational activities that could be permitted under the CSP grant. So now I'm going to turn it over to Richard to talk about the remaining sections of the guidance.

Slide 10

RICHARD: Hi, everybody. We just have a couple more changes that we'd like to go over, starting with lottery exemptions. And so, under the previous guidance, we had four exemptions for the lottery and those four exemptions were students enrolled in a public school when it's converted to a charter; siblings of students already admitted to or attending the same charter; children of a charter school's founders, and I actually should say teachers as well; and then children of employees in a worksite charter

school. For those last two, rather than write it out, we just included the small percentage clause—you remember those last two exemptions could only constitute a small percentage of the school's population. We're always asked what that percentage is and we can't give a definitive answer, but to us something in the neighborhood of 10 percent seems like a small percentage, though that's one of the issues that's always up to SEA's discretion. So, in the new guidance, the lottery exemptions are all of the above, plus students who are eligible to attend and are living in the attendance area of a public school at the time it's converted into a public charter, and then you can just add teachers and staff to C, the third exemption.

So, for the first one, students who are eligible to attend and are living in the attendance area, they don't necessarily have to be enrolled in the public school when it's converted to a charter. So it's just a slight deviation from A in the old exemption.

Peggie, I think we may have lost the arrows to switch to the next slide.

PEGGIE: I think I just need to slide this note down. There you go. You got it?

RICHARD: Yeah, we're good.

Slide 11

The next change we have in the new guidance is related to charter boards and then for-profit education management organizations, this is in B-13 of the guidance. What doesn't change is the fact that for-profits are not eligible for CSP grants. They can have management contracts with the nonprofit organization who oversees the school and receives a grant, but the for-profit itself cannot be the recipient of the subgrant. Directly from our regulations from EDGAR, it says that the grantees must directly administer or supervise administration of the grant. So again, this just means that the nonprofit board must receive the grant and it must be independent of the EMO. And we list out a couple factors that SEAs should use in determining the separation between the charter school and its board and the EMO, and those four are listed here, and they include that charter board is free of EMO representatives and EMO selection influence; so, basically, we've seen a lot of charter boards that are composed entirely of EMOs or there's a large percentage of them or the EMO is placing people on the charter board, so it needs to be free of both of those. The charter also must have an attorney, an accountant, or an audit firm that's independent of the EMO. There needs to be an arm's-length contract on agreements which describe each party's rights and responsibility and specify responsible and feasible terms under which either party can terminate the contract. Scott's favorite phrase for this is there can't be a

poison pill. If there's something in there that says if the charter school breaks this contract then the school will shut down or something to that extent, or they lose their lease on the building, something like that. It has to be a reasonable contract. And then, finally, there should be a reasonable fee that the EMO is charging to the charter board. Scott gave this presentation to a group yesterday and someone asked, What's a reasonable fee? And again, we're not going to say what a reasonable fee is, but we understand that SEAs have good experience with this so you should be able to determine what's a reasonable fee, particularly considering what services the EMO is providing in general.

Slide 12

So, the next change relates to determining if a school is new or an expansion. This is section C, and this was in the old guidance, but we just had a couple updates to it. So, as we've explained to SEAs in the past, there's a variety of factors that the SEA should consider when determining if the school is new or it's an expansion. And you'll see below its bolded that it's the SEA's determination, so again, this is up to your discretion to determine whether it's new or expanding, and those seven factors are the terms of the charter; whether or not the schools are established and recognized as separate schools under the state's charter law (A lot of times that means whether or not they have a separate charter or separate state ID codes, things like that); whether or not the schools have separate performance agreements with their authorizer; whether each school reports its academic performance data for SEA separately; whether they have separate facilities, separate staffs; and whether the charter school's day-to-day operations are carried out by different administrators. What's important to note here is that the existence or nonexistence of any one of these factors doesn't determine whether a particular charter school is separate or part of a larger school. The existence or nonexistence of several factors, however, may inform an SEA's determination. Again, it's up to your discretion whether multiple schools created under a charter are distinct entities or for practical purposes they're just the same school or an extension of a school.

Slide 13

Just to expand on this a little bit more: One issue that a lot of schools are running into is whether or not they want to expand and have a separate admissions process or they want to expand and create a feeder pattern through their schools. So any new school that gets a grant from us has to conduct separate admissions process and lottery. So, let's say you have

an elementary school and a middle school, those two have to do separate lotteries, so it's really difficult to establish a feeder pattern between those two. But if an SEA wants to fund multiple schools that have that pipeline, so you can create that feeder pattern between a middle school and an elementary school, the SEA has to request a waiver from ESEA5202.D1 that limits a charter school to receiving just one subgrant, so that way they're getting a second subgrant rather than a new school getting its own separate subgrant. This is unrelated to what's above, but just to clarify, we have no objection to one governing board overseeing multiple charters. We just want to make sure that the board is exercising appropriate oversight and monitoring of each school.

Slide 14

I believe this is the last issue we have to cover today. We provided some clarifying information about relationships between public charter schools and private schools. A lot of people have asked if there's a private school out there that wants to open a charter school that's separate from it, can they do that? Our answer is it's not prohibited by statute, but the key issue is that the charter must be operated separately from the private school. Then another issue that's pretty common in this area is, What if a charter school wants to share a facility with a private school? Again, this isn't prohibited by statute, but the charter has to be truly separate from the private school. And along the same lines, the CSP funds can't be used for shared things with the private school, they can only be used for the charter school. So I think the best example that we've seen is a kindergarten classroom where half the kids were from the private school and half the kids were from the charter school and really there's no way to say "Well, this textbook is used for the charter school kids and this textbook is used for the private school kids," so we just told them no CSP funds can be used for this classroom, so it has to be very clear that the charter and the private school are completely separate.

Slide 15

So, like I said, I think—yeah—I think that's the end of the issues we wanted to cover. This is the link for the new guidance. I think maybe a couple weeks ago I sent out the guidance, a hard copy and the link, but just in case you need it again, this is where you can access it. And as always, if you have any questions about this, please don't hesitate to contact us after today, but at this point we're happy to open it up for questions.

PEGGIE: Richard and Scott, you have a few questions coming in through the chat, so I'll just read you a couple that came in. The first one is from Ben Walker, and so if any of the SEA leaders on the line would like to further clarify, just please raise your hand and unmute yourself and you can go ahead and speak over the phone, because we have a relatively small group today. So, Ben would like you to explain what is meant by reasonable period relative to rent and occupancy costs.

SCOTT: We don't have guidance on that. We leave that to your discretion as to what is reasonable. If it were me, I would say, you know, a year, maybe two years if they could make a good claim, but it's really up to the SEA.

Slide 16

PEGGIE: Okay. And Arnoldo in Texas: Has the department defined what a work site charter is?

SCOTT: No, so, to answer Arnold's question, we have not defined what a work site charter is. I know that there are a variety of examples out in the field right now. I can think of a couple in Florida and Texas. They may or may not be still in operation, but we haven't defined what that is. If Arnold wants to maybe elaborate on his question a little bit, if there's a particular instance that he's thinking of, I'd be happy to...

PEGGIE: Arnoldo, do you want to unmute and talk about that a little more? Okay, so, Robert—Arnoldo, you can jump in later if you like—okay, so, Robert in New Mexico is referring to slide number 9, so I just slid back to slide number 9. He's asking about initial operational costs. What period of time does the department consider to be initial or what types of activities are considered to be initial?

SCOTT: So, the period of time that we typically think of as being the start-up phase of a charter school is the first three years. And in terms of what we would define as initial, it would be anything that does not constitute an ongoing activity or expense. So, let me give you an example that came up in the CMO competition. So we had two schools, both of which were looking for charter school money to support an extra teacher aide in the classroom. Now, one school said our plan is that we provide an extra aide in the first year to enable the school to get over its initial operating issues to get the teachers familiar and then after that first year that aide goes away. We had another school that said, our model is, is that we always have a teacher and an aide in every classroom forever and ever. So in that case, the first organization was able to use CSP money on that aide because it was an initial expense associated with getting the school running, whereas the second school was not allowed to use their funds for that aide because that was an ongoing expense that was part of the school's

regular program. That's an example on a grant that we managed, or we oversaw, but you as states are overseeing your own subgrants, and so you need to make that determination. And what we've tried to communicate is that, from the federal perspective, we can envision you exercising quite a bit of latitude in that regard, rather than putting lots of narrow constraints and tying charter schools up with a very narrow definition of what constitutes initial.

PEGGIE: Okay. Joanna in Massachusetts asks, Can you define converted regarding a public school being converted into a public charter school?

SCOTT: So, if you have the, uh—hang on a second...

RICHARD: I'm thinking that state law should either allow for conversions or it won't allow for conversions. So, my understanding is that for this question it's more about state law and as long as it's not a private school converting into a charter school, which, you know, we lay out in the guidance can't be done, as long as it's recognized by state law that public schools can convert into charter schools and that that new charter school meets our federal definition of a charter school, then that school would be eligible for CSP funds.

SCOTT: I guess I would add to that, that a school using the restart model under our school improvement grant could also be construed to be a conversion, though, and that would be for the provisions of providing a lottery exemption to students who are already living in the attendance zone of the school.

PEGGIE: Joanna, did you want to follow up? You can unmute yourself with STAR 6 if you want to follow up over the phone. All right, I'm going to go onto Tabitha Press and then Adam Miller has raised his hand so he'll be next after Tabitha's question. If you have any other questions, please raise your hand or enter the question in the chat. So from Tabitha, she asks, Can conversion charter schools continue to provide an enrollment priority to the students who live within their attendance zone after their initial year of conversion?

SCOTT: The way the regs are written is that the answer is yes, provided those students have lived in the attendance zone at the time of the conversion.

[music]

Did everybody hear that?

PEGGIE: (laughing) Yeah. We can hear you now.

SCOTT: Okay. So, all right, so I'll say that again: So the school can continue to provide a lottery exemption to students who live in the attendance zone at the time of the conversion.

TABITHA: I have a followup question. This is Tabitha. I know it was in the federal definition of a charter school that requires it to be a school in which parents choose to send their kids. Because of this enrollment priority, the conversion charter school never has empty slots for students outside of the primary attendance zone. How would a local school be able to prove [SILENCE]...

SCOTT: Well, they have to be a school of choice first of all, in the sense that there can't be a process where the students are automatically enrolled in the school. So the students who are in the school, whether they're within the attendance zone or not, have to choose to go to that school, so from that perspective it would remain a school of choice.

PEGGIE: Does that answer your question, Tabitha?

TABITHA: Yes, I'll take that, thank you.

PEGGIE: Okay, I'm going to go to Adam on the phone and then we'll come back for Michele's question. Adam, do you want to go ahead and ask your question? No. So jump back in if you have a question and we'll take Michele's question right now. So Michele is asking, What issues are there if we previously allowed minor ADA compliance renovations? Is this something we will have to go to the subgrantee and collect the money from the school?

SCOTT: No, because under our prior guidance it was allowed, so this would only be for future expenditures.

PEGGIE: Okay. And then there were a couple of questions that came in before the webinar. So, the first one was, Is there a time limit for a charter school to be in existence and still qualify as a new school?

RICHARD: I think we touched on that a little bit earlier when we spoke about initial operating expenses. Generally what we say is if a school has been serving students for more than three years it's no longer considered a new school for the purpose of CSP.

PEGGIE: Kate from Oregon has raised her hand, Kate?

KATE: Hi. Those ADA—the ADA and construction questions—so, if we have subgrantees right now that have been approved to do some ADA

renovations, do we need to stop them right now because they had this grant previously or when would be your preference?

SCOTT: If you've already approved the expenditure of the funds then you don't have to stop it. But in the future if people come and ask for approval to do it then you would say they don't have approval. But if somebody has already been given the go-ahead and they're planning to spend the money or they're in the process of spending the money, then they should be allowed to continue.

PEGGIE: Okay. Adam, do you have a question?

ADAM: Sorry. I forgot to unmute my line before. I have two questions. First, back to the slide where you talked about the feeder patterns and requesting a waiver: Do you prefer that SEAs request a blanket waiver or request waivers on a case-by-case basis?

SCOTT: We prefer that they request a blanket waiver, and typically the way they've come in and the way we're envisioning it is that it's a waiver specifically to allow a school in a related school with a different age group, so elementary to middle or middle to high school, to be awarded multiple grants.

ADAM: Okay, great. And then my second question was that, We were talking about the conversion, you said the school restart model would be [SILENCE], would that still be the case if we have [SILENCE] state laws very explicit definition of a conversion school [SILENCE] also use the restart model for purposes of CSP [SILENCE] conversion?

SCOTT: Yes.

ADAM: Okay. Thank you.

PEGGIE: And then there was one more question that came in earlier, and I think you've addressed this to some extent, but I'll just ask it again just to make sure. So, the person asks, Please address how a charter school's requirement to provide accessibility in its building to students with disabilities under IVEA, seems to conflict with the limits on construction imposed by the nonregulatory guidance.

SCOTT: They are two separate statutes and the basic regulation governing all federal grants by the Department of Education is that—in fact, I think this goes beyond the Department of Education and it comes from the Office of Management and Budget—is that no grant funds may be used on construction unless the statute specifically authorizes the use of those funds for construction.

PEGGIE: All right, are there any other questions? You can go ahead and enter them in the chat or over the phone. We won't keep you for a really long time if you don't have any more questions, but we do want to make sure we give you ample opportunity to ask any questions that you might have for the Department. [SILENCE] Okay. So, I think that's adequate wait time. Scott or Richard, do you have any final thoughts?

SCOTT: I would only say that if there are other changes to this guidance that you think would be warranted, we would love to hear about it. As questions come up you should feed them to Richard or Leslie, Erin or myself. I think that's all we have to say. Thanks for your time, everybody, and thanks to Learning Point/AIR for setting this up.

PEGGIE: Great. Ben Walker, you don't have a question, do you? It looked like you were typing? [SILENCE]. Okay. Thank you very much for joining us. We look forward to your participation in future webinars hosted by the National Charter School Resource Center. We will archive this webinar on our website by Friday afternoon. I think many of you are involved in the SEA virtual community of practice, so I encourage you to continue the conversation virtually in the SEA exchange that is accessible through our website or through the link that I provided there. And I'm going to send you to an evaluation in a moment and I encourage you to share your feedback so we can continue to improve these webinars and offer them on topics that are of interest to you in the future. So, thank you for joining us, and enjoy the rest of your afternoon.

Slides 17 & 18