



WHY IS THE CHARTER LOBBY SO UPSET ABOUT BIDEN'S PROPOSED REGULATIONS?



The Biden Administration has published proposed regulations concerning the Charter School Program that funds growth of the charter sector. NEPC Director Kevin Welner thinks he knows why charter advocates are in an uproar.

Over the past few weeks, I've been observing the conspicuous hand-wringing among prominent charter school advocates. They're expressing outrage that the Biden Administration is trying to rein in some past abuses and problems within the charter sector. This aggrieved reaction might make sense if the regulations were designed to harm the sector, but the proposals are in fact quite modest and will even help charters thrive in the future.

Understanding the outrage is difficult. This is in part because the Biden Administration already sided with charter advocates by resisting calls to eliminate the federal Charter School Program (CSP) or decrease its funding. I will not here rehash the arguments against charter sector expansion, but those arguments tend to focus on segregation, fraud and waste, self-dealing and private enrichment, harm to local public school districts, exaggerated claims about performance, under-enrollment of students with special needs, and other access and push-out issues.

Notwithstanding these concerns, the Administration's budget request keeps CSP funding at its historic high of \$440 million. This means that the same level of federal taxpayer dollars will continue to promote the expansion of charter schooling, which is already dominant in many metropolitan areas.

But the U.S. Department of Education’s proposed regulations do attempt to address some of these concerns, even while fully funding the program. One key proposal, for example, attempts to fulfill a Biden campaign promise to crack down on CSP funding for charters being operated by for-profit corporations.

The proposed regulations also provide additional points for applications that feature “community school” elements and for those that provide evidence of cooperation or collaborations with the local school district(s).

Another proposal—the one that has drawn the most outrage in the charter-advocacy world—requires that charters applying for CSP funding submit a “community impact” analysis that explains why the school would be beneficial in serving the community. For example, the application should explain why the charter would be in demand. If the applicant can provide evidence or arguments that it would be sought-after or useful, the application will likely be ranked higher. The application would receive some additional points in the scoring process. The application could garner these points by showing, for instance, that it will use “specialized instructional approaches” that are not currently available. It might show a list of people who have expressed interest in the proposed school. It might show that local schools (neighborhood schools and other charters) are overenrolled.

Notwithstanding some false claims to the contrary, these are all *priorities*—not *requirements*. We can anticipate that plenty of charter schools without these elements will still get CSP funding.

The above-mentioned attempt to keep CSP money away from for-profit EMOs has raised some hackles among charter school advocates, but the pushback has been relatively muted. Perhaps the advocates are feeling sanguine in trusting the ingenuity of attorneys to find loopholes and work-arounds. One more layer of *shell companies or sister corporations or real estate schemes* may do the trick. Or perhaps charter advocates know that these for-profits are awful poster children for their cause, so an overt public campaign might be counter-productive.

It’s been a different story regarding the requirement for a Community Impact statement; the pushback from charter advocates has been anything but muted. They have marched out a *parade of horrors*, warning us all that the proposed regulations will somehow stop charter schools from opening.

This is nonsense. Yes, the Community Impact statement is required, but even if the statement shows zero benefits of the proposed school to the community, the consequence is merely a loss of potential points in the scoring of the application. The provisions being attacked by the charter advocates are priorities, not requirements. They would change how a given proposal is scored and thus prioritized or ranked among different applications for CSP funding. All other things being equal, a proposal that shows how a charter school will broadly serve—and not harm—a local community will be scored higher than one that cannot make that showing. So our federal tax dollars would be more likely to support the opening of schools that are beneficial to local communities.

Yet the same \$440 million would still be disbursed. The same number of new charter schools

would presumably still be opened. That's (one would assume) what the charter lobby most cares about. For the rest of us, there's good news as well; if the Community Impact process works, the charter schools that do open will be more consistent with the [long-time rhetoric](#) of charter school advocates about how charters are a beneficial part of the overall public school system.

So why the objections? What's the real reason the charter lobby is upset about President Biden's proposed regulations?

My hunch is that it's a matter of principle—the principle that they should never give an inch.

For decades, charter schools have occupied a political sweet spot, enjoying the affections of politicians from both major parties. In that position, charter advocates were fully appeased. Compromise was not needed, so it was rebuffed. Like pampered royalty who never learn to listen and empathize, the charter lobby used its political capital to shut down discussions about addressing the sorts of ongoing problems listed earlier.

Over the years, little has changed—except perhaps the effectiveness of these tactics that resist any reform of the status quo for charter policy. For many outside the charter bubble, the sense of entitlement has grown old.

That entitlement was on full display last week. The charter school lobby organized a twitter campaign against the proposed regulations. It choose to use the hashtag #BackOff. If we had a “No Whining” jar, we could have funded next year's CSP. The advocates' [tweets](#) repeatedly asserted that the “overregulation” would “make it nearly impossible to open new charter schools.” This was accompanied by a newspaper commentary alleging that the proposed regulations were written by “[Bureaucratic Gremlins](#)” who had “burrowed” into the federal bureaucracy—rather than just a follow-through on candidate [Biden's](#) campaign promises.

On [Fox News](#), a school choice advocate contended that, through the regulations, the Biden Administration was “waging war on charter schools” in order to protect “unionized government schools.” Meanwhile, two editorial boards that have long pushed for charter school growth—[The Wall Street Journal](#) and [The Washington Post](#)—continued to misrepresent the regulation's proposed priorities as requirements, labeling the regulations as “charter school sabotage” (the WSJ) and “a sneak attack on charter schools” (the Post).

The charter lobby's *never-give-an-inch* strategy has long been successful in forestalling policies that might mitigate existing problems. But assuming the strategy ever was wise, it no longer is. Potential allies have become frustrated enemies. A once diverse coalition has withered away to expose a core group that appears to be the same anti-public-education and privatizing interests that have long pushed school vouchers.

This obstinacy, even when successful in its immediate aims, is counterproductive. The charter lobby is wrong to see thoughtful regulations as existential threats—or even as anything but beneficial. Reasonable public policy concerns about access, stratification and fiscal impact on students in other schools should never have been minimized or dismissed. The charter lobby should have been in the forefront in efforts to rein in fraud and abuse.

The charter sector still includes many schools that we can and should celebrate. The NEPC's

own [Schools of Opportunity](#) program has recognized [several charter schools](#) that exemplify how high schools can close opportunity gaps. For the charter approach to have a bright future, these are the sort of schools the CSP should prioritize—and the proposed regulations are a step in that direction.

For now, unfortunately, the charter sector as a whole continues to be under-regulated and often harmful. The Biden Administration’s proposals can help change this. They can help charter schools become a beneficial part of public school systems—a role that can be broadly embraced.

I personally decided to submit a “formal” comment. The process is easy—just fill out the [quick form](#) and include your comment. The comment window is currently scheduled to close next Monday, April 18th.

NEPC Resources on Charter Schools

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