

April 8, 2022

Hon. Amy Klobuchar  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington DC 20510

Dear Amy,

I realize there are many pressing domestic and foreign policy issues currently on your plate, but I wanted to bring to your attention a U.S. Department of Education proposal to change the priorities and criteria for start-up and expansion grants made by states under the Federal Charter School Program. The deadline for comments on this draft is April 13<sup>th</sup>.

If adopted, these changes would give local school districts the power to block what they consider “their competitors” from entering “their market” by making them ineligible for vital Federal start-up funding. And, without explicit Congressional authority, the Department is also challenging the historic role state governors and legislators have played in carrying out their Constitutional duties to set policy, assure funding and provide oversight of pre-K-12 public education.

Because of the stakes involved – and the tight timeline – your help is urgently needed to make sure this doesn’t happen. I urge you to insist that the Department call “time out” and not use these proposed priorities and selection criteria for the next round of grants to states. Instead, the Department should take whatever time is needed – in a much more inclusive and transparent manner – to discuss whatever concerns are behind these proposed changes with the states, the broader education community and charter school leaders across the country. Only after such an open, thoughtful and inclusive process should this kind of outright reversal in federal/state pre-K-12 education policy even be considered.

My strong and personal interest in this matter stems from the bipartisan partnership that created the Federal Charter School Program in 1994 – based on legislation Senator Joseph Lieberman (D-CT) and I introduced shortly after Minnesota adopted its charter school law in 1991. Because so much time has passed, Minnesota and national charter school leaders have asked me to provide you and others background on adoption of this vital program and – most importantly – on original legislative intent on the relative roles of the Federal and state governments in its implementation.

You’ll find that information attached to this letter. Other good resources on the details of the fine print, on issues and concerns that might lie behind them and on potential non-nuclear solutions, include: Nina Rees, National Alliance for Public Charter Schools, [nina@publiccharters.org](mailto:nina@publiccharters.org), 202-289-2700; Eugene Piccolo, Minnesota Association of Charter Schools, 651-789-3090 x 1, [eugene@mncharterschools.org](mailto:eugene@mncharterschools.org); and Sen. Ember Reichgott Junge, [ember.reichgott@gmail.com](mailto:ember.reichgott@gmail.com), 612-750-1262. Of course, individual charter school leaders you know or represent are also great sources.

I hope this information is helpful to you in communicating with the U.S. Department of Education, others of influence in the Biden-Harris Administration and your colleagues in the U.S. House and Senate on the issues and concerns raised above and by other charter school supporters. Thank you very much for your ongoing leadership in representing Minnesota’s interests on education and on so many other challenges now facing our state, nation and world.

Sincerely,

David Durenberger

## **Legislative history and background of the Federal Charter School Program**

The legislation Congress adopted and President Clinton signed in 1994 was not intended to create your garden-variety Federal education program, where grants go directly from Washington to a public school district or individual school – in response to an RFP written and distributed by Federal bureaucrats. Instead, our legislation was intended to do three important things:

**First, to begin to educate** Democratic and Republican policymakers, educators and others in Washington and around the country about a new, politically feasible way for states to improve learner outcomes by allowing the creation and oversight of public schools outside the “exclusive franchise” (Ted Kolderie’s words) of district school boards and administrators.

**Second, to incentivize** states to pass laws authorizing the creation of charter schools with the most important elements of Minnesota’s new law, absent several limiting provisions that were later removed.

**Third, to meet the highest priority need** that charter school pioneers in Minnesota and other states had identified by the time our legislation was adopted – start-up funding. To put it simply, school districts had taxpayer funding to start district public schools. Teachers, parents and community members starting charter public schools didn’t.

*To be blunt, the Department’s draft changes in priorities and criteria are inconsistent with this original legislative intent, that – for almost three decades – has enjoyed the support of Democratic and Republican Administrations and Congressional and state education policy leaders. Rather than developing this draft in an open and transparent manner, the Department has also failed to consult with the states and with important stakeholders across the country, conducting what the editorial board of the Washington Post has called a “sneak attack on charter schools.”*

To help explain how and why these original statements of legislative intent remain relevant in 2022 – and why the U.S. Department of Education’s draft changes in priorities and criteria run counter to them – please consider the following rhetorical questions, as well as my best effort to respond to them.

### **Why was (and is) a new way of defining “public education” needed in 1991 (and still) in 2022?**

In 1991, President George H. W. Bush had proposed a major initiative to improve student learning, but with private school vouchers as a non-negotiable centerpiece, along with Republicans’ historic deference to local control. President Bush’s overall proposal was his effort to respond to the *Nation at Risk* report made to President Reagan in 1983 and his own “Governor’s Education Summit” – which he convened in Charlottesville, Virginia, in 1989 – on the need for major changes in education for the United States to thrive in an increasingly competitive world. Bush’s Education Secretary, Lamar Alexander, the former “Education Governor” of Tennessee, was charged with getting the legislation passed.

Meanwhile, Democrats – as historic defenders of what conservatives often call “government schools” – were in control of both the U.S. House of Representatives and Senate. Of course, Democrats had historically placed a high priority on improving public education – especially for lower-income students and students with disabilities. This included a major role for the Federal government through passage of the Elementary and Secondary Education, Higher Education and Head Start Acts under President Lyndon Johnson and creation of the U.S. Department of Education (which I supported) under President Jimmy Carter. Regardless, these differences over vouchers and the role of the Federal government eventually killed the Bush/Alexander initiative in 1992, although many similar provisions were reintroduced two years later in President Clinton’s education reform proposal. And they were expanded upon by President George W. Bush in his “No Child Left Behind” initiative, introduced in 2001.

Meanwhile, with the bipartisan leadership of Governor Rudy Perpich (DFL), Senators Ember Reichgott Junge (DFL) and Tom Nelson (DFL), Representatives Becky Kelso (DFL), Ken Nelson (DFL), Connie Levi (IR), and Charlie Weaver (IR), education policy leaders like Ted Kolderie, Joe Nathan, and Dan Lortz, organizations like the Citizens League, Urban Coalition and others, Minnesota had been expanding choices within public education since the early 1990s.

As former chief of staff to Governor Harold LeVander and an active member of the nonpartisan Citizens League and other civic organizations in Minnesota, I had been following these developments closely through my Minnesota-based Policy Director, Jon Schroeder, who had worked under Ted Kolderie at the Citizens League from 1972 to 1977. In 1971 and 1972, both Jon and I had been staff members for the Minnesota Constitutional Study Commission. And once elected to the U.S. Senate, I chaired its Subcommittee on Intergovernmental Relations – working closely with the Reagan Administration, National Governors Association, National Council of State Legislatures, Education Commission of the States and others on “New Federalism” and “fundamentally changing the role of government.”

So, what I saw happening on education policy in Minnesota more than caught my attention. In particular, charter schools represented a fundamentally different way of defining “public education” and a redefinition of what makes schools “public.” Thus, the name “Public Education Redefinition Act of 1991” was given to the bill Senator Lieberman and I introduced just two months after Minnesota’s charter school law passed in May of 1991.

No longer were “public schools” defined by who owned the buildings and who hired the teachers. They were being defined by the underlying values and principles of “public education” – things like no discrimination, no tuition, no religion, the same fiscal reporting and open records and meetings required of district schools, the same special education services required by Federal and state laws, all students having a right to attend – with a lottery required if a school’s enrollment exceeded its physical capacity. And if the charter did not achieve the academic outcomes and other provisions of its contract with its authorizer, it could be closed.

### **If it was such a great idea, why was “an incentive” needed to get states to pass charter school laws?**

As I noted above, most people didn’t know what this new way of starting and overseeing public schools was all about. Skeptics saw it as “vouchers lite” or “a wolf in sheep’s clothing” or the dreaded “privatization of public education.” To be fair, states passing a charter school law were taking a risk. But, the potential reward was great: Creation of a variety of learning environments that allow each individual student to meet their full potential by acquiring the knowledge and skills needed to make them contributing members of society in an increasingly competitive world.

To be honest, we also realized that such a radically different approach to defining “public education” could meet resistance from a system that had undergone very little change over the last century. State governors and legislators would need some help in introducing this idea – an assurance that they had both the authority and the responsibility to make such changes in the interest of the families and younger citizens of their state.

Finally, since this was a new idea, we wanted to make sure state policy leaders “got it right.” That’s why we borrowed liberally from Minnesota’s charter school law in defining – in a not overly prescriptive manner – what charter schools were and what they couldn’t be. To be eligible, states had to pass an explicit charter school law that incorporated this basic policy framework.

*But, most relevant to the purpose of this letter, licensed teachers, parents and other community members – operating under explicit state charter laws – were to identify unmet learner needs and address them by creating new, different, accountable public schools outside the “exclusive franchise” held by local district boards and administrators.*

### **Why the focus on start-up funding?**

The Minnesota State Senate had passed modest charter school proposals in 1989 and 1990, so groups of teachers, parents, community leaders and others were already developing charter proposals by the time the final bill passed in May 1991. And my Policy Director, Jon Schroeder, had held several meetings with potential charter school founders. While there were good ideas and lots of passion in these meetings, there were also serious fiscal challenges.

When a school district – often with a growing enrollment – decides to open a new school, it has funding sources it can use to pay staff or contract with consultants for curriculum development, hiring a principal, recruiting and training teachers and other staff, identifying and leasing or constructing a facility, buying desks, computers, kitchen equipment, textbooks, copy machines, paper and pencils and all the rest of the “stuff” that’s needed to open and equip a new school.

These very necessary expenditures are usually paid out of the district’s tax-funded reserves, low interest loans or tax-exempt bonds guaranteed by the “full faith and credit” of the school district. On the other hand, teams of (often employed) teachers, parents, community leaders and others who are starting a new charter school have the same essential needs, but none of these tax-funded sources to draw upon.

So, it was no surprise that start-up funding was the top priority need identified by the “charter starters” that Jon was meeting with in Minnesota. This top priority need was also expressed to me personally in meetings with charter applicants after our bill was introduced in the Senate and during visits I made to the state’s first two charter schools – in St. Paul and Winona.

*A few years later, some wise people in Congress and the Clinton and Bush Administrations asked the same question of charter school leaders and planners in the growing number of states that were passing charter laws. The answer then was “state charter laws that allow for non-district authorizers, promote innovative, autonomous, high-quality schools and assure equity (with district schools) on operating and facilities financing.”*

*To their credit, Democrats and Republications in Congress and the Bush and Clinton Administrations responded by establishing these priorities and creating new facilities financing programs in 1999 and 2001. And states (now 45, plus the District of Columbia and Puerto Rico) responded as they passed and amended their own charter school laws.*

### **How did you get bipartisan support in Congress and support from the Clinton Administration for your legislation? And what role did Democrats play in getting the bill passed and implemented?**

Admittedly, when compared to today’s hyper-partisanship, it was easier to get Republicans and Democrats to agree and work together on policy matters in 1991, when my Democratic friend Joe Lieberman and I introduced the “Public School Redefinition Act of 1991.” Since Democrats were in control of both Houses of Congress, it also helped that Minnesota’s

charter law was authored by Democrats. On the other hand, some people believe “Big Ideas” coming from Minnesota are about as replicable and marketable elsewhere as a lutefisk sandwich on stale white bread!

So, we looked nationally for support for the idea that groups of licensed teachers, parents and community members should be empowered to start and run new public schools. Because he had a paid column every Sunday in the *New York Times*, it helped that Al Shanker, then President of the American Federation of Teachers, shared that goal. So did several of the early “education governors” from both parties who carried both higher visibility and a greater sense of responsibility following the “Governors Education Summit” President George H.W. Bush convened in 1989. They included Arkansas Governor (and later) President Bill Clinton, South Carolina Governor (and later) Education Secretary Bill Riley and Tennessee Governor (and later) Education Secretary Lamar Alexander.

As I noted above, the vehicle we hoped to use to carry our charter bill – the Bush-Alexander proposal – was not enacted in 1992 because of partisan differences over private school vouchers and the degree of engagement the federal government should have in the operations of local public schools. However, our pursuit of an appropriate federal role in supporting charter schools did take a big step forward in 1992, when we identified an important new ally and affirmed the (then contested) notion that *charter schools* – as authorized in Minnesota – *were public schools*.

As chair and ranking member of the Senate Finance Health Subcommittee, I had worked previously with Senator Ted Kennedy on health care issues and, in 1989, became a member of the Committee on Health, Education, Labor and Pensions (HELP), which he chaired and which would determine if our bill would ever become law. Because chartering public schools outside district control was such a new concept, I wanted to make sure that charter schools would be eligible for any federal support for innovative new schools – something embedded in the Bush-Alexander proposal.

*So, I asked Senator Kennedy – and he willingly agreed – to enter into a colloquy on the Senate floor during which he and I described the requirements of schools created under Minnesota’s charter law and he stated his intent that such schools would be considered public schools eligible for funding under the legislation we were then debating. I know that sounds simple. But it’s not possible to understate the importance of that exchange and its relevance to concerns now being raised about the U.S. Department of Education’s proposed changes in Federal charter grant criteria and priorities.*

Fortunately, our efforts to bring Minnesota’s bipartisan support for chartering schools to Washington did not end with Senators Lieberman and Kennedy. Education Governors Bill Clinton and William Riley came to Washington – to assume new jobs – in January of 1993. They were given marching orders by the Democratic Leadership Council in a publication called *Mandate for Change* that included support for charter schools and for the legislation Senator Lieberman and I introduced just sixteen months earlier.

At his confirmation hearing, I asked (soon-to-be) Education Secretary Riley how he felt about school choice and charter schools. He smiled in his courtly Southern way and said both he and President Clinton opposed private school vouchers, but supported choice among public schools, “to help parents give parents ownership and a feeling of control over their children’s destiny.” *Education Week’s* report on the hearing went on to note that “Riley also described the concept of ‘charter schools’ as a promising one,” pleasing Sen. Dave Durenberger (R-MN), whose state has been a pioneer in enabling groups of licensed teachers to run schools free from most outside regulations.”

Not surprisingly, the “Public School Redefinition Act (now) *of 1993*” was quickly reintroduced – this time with a House companion bill and four times as many Democratic co-sponsors. After a couple friendly meetings in Secretary Riley’s office, our bill was included in the Administration’s ESEA reauthorization proposal. And, with game-saving blocking and tackling by Senator Kennedy and Secretary Riley, the Senate’s position – *deferring to state law on who could grant and oversee charters* – prevailed in the House-Senate conference committee and was signed into law by President Clinton.

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