



NO CHILD LEFT BEHIND

Policy Brief

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NCLB Title I Accountability and Charter School Authorizer Obligations

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On January 8, 2002, President Bush signed into law the re-authorization of the Elementary and Secondary Education Act, commonly known as No Child Left Behind (“NCLB”). This law dramatically affects how all schools, including charter schools, are held accountable for the academic performance of their students.

Since the passage of NCLB, there has been much speculation in the charter school community generally, and among authorizers specifically, on how the provisions of this federal law will affect how authorizers hold charter schools accountable for performance. This Policy Brief reports on and makes several recommendations on the obligations of charter school authorizers in relation to the implementation of NCLB Title I accountability. NCLB requires every state to develop and implement a “single, statewide State accountability system” (“state accountability

plan” or “state plan”) as a condition for receiving Title I funds. Sec. 1111(a)(2)(A). These state plans define the NCLB terms, goals and measures to which local education agencies (LEAs) and individual schools are held accountable.

More than a year ago, NACSA urged authorizers to “take an active role in working with their states to develop charter-specific components for their state plans and to ensure that they have adequate resources for their important accountability oversight responsibilities.” (NACSA Notes, Vol. I, No. 7, April 21, 2003). If authorizers are to understand and, more importantly, influence Title I accountability for charter schools, they must understand and influence their respective state plans.

State Accountability Plans

This month, the U.S. Department of Education issued updated Non-Regulatory Guidance on *The Impact of the New Title I Requirements on Charter Schools* (July 2004) (“Guidance”). The Department continues to emphasize deference to state law and state plans in defining responsibility for Title I accountability in charter schools. Nevertheless, the Guidance clearly anticipates that authorizers will play a central role in holding charter schools accountable for performance under NCLB.

The U.S. Department’s non-regulatory guidance on *The Impact of the New Title I Requirements on Charter Schools* (July 2004) provides critical information about how NCLB applies in the charter school setting. A copy of the Guidance can be downloaded at www.ed.gov/policy/elsec/guid/charterguidance03.doc.

AYP Determinations

State accountability plans must define “adequate yearly progress” (AYP)—the minimum percentage of students that must be at proficiency in reading and math¹ for each school each year as the state moves towards the 2014 deadline for 100% proficiency. State Education Agencies (SEAs) were responsible for developing state accountability plans. These plans define AYP and provide the means for determining whether districts and individual schools have made adequate progress each year. Authorizers have been and will generally continue to be responsible for enforcing consequences if an SEA determines a charter school has not made AYP.

NACSA Commentary. Charter authorizers may need to gather relevant performance information from schools they oversee, but they are typically *not responsible* for making the determination as to whether a particular school has made adequate yearly progress. Authorizers are, however, responsible for implementing consequences associated with a charter school’s failure to make AYP.

Implementation of NCLB Title I Accountability Consequences

The Department’s Guidance clarifies its expectation that charter school authorizers will play an important role in implementing NCLB Title I accountability provisions when a charter school is identified as needing improvement. The Guidance provides that “states, charter school authorizers, and charter schools should attempt to align

[Title I requirements], as much as possible, with State law requirements related to charter school accountability.” (Guidance ¶ A-5). These responsibilities include the following:

- Promptly providing information to the parents of each child enrolled in the school by explaining what the identification means, the reasons for the school being identified, what the school is doing to improve, what help the school is getting, and how parents can become involved in addressing the academic issues that led to the identification [Section 1116(b)(6)].
- Ensuring that the identified school receives technical assistance, both during the development or revision of its improvement plan and throughout the plan’s implementation [Section 1116(b)(4)].
- Reviewing the school’s improvement plan, working with the school to make necessary revisions in the plan, and approving the plan once it meets the requirements of the statute [Section 1116(b)(3)(E)].

NACSA Commentary. The Department clearly expects that charter school authorizers will play an important role in implementing Title I consequences, as defined in state plans, in charter schools identified as needing improvement. Authorizers should work with SEAs to clarify the expectations for authorizers in implementing Title I consequences in charter schools that have been identified for improvement.

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The State Plan vs. the Charter

There has been much discussion of and speculation about the interplay between performance requirements as set out in a charter agreement and the Title I state plan. The expectation that schools make adequate yearly progress is consistent with the charter school idea of holding schools accountable for educational performance and outcomes.² However, the uniformity that seems to characterize NCLB accountability may be at odds with the charter concept that performance goals and measures should reflect each school and its particular mission. The authorizer is the medium through which this tension needs to be resolved.

The Guidance makes clear that uniformity is at issue. The state accountability system is broadly applicable to all public schools, including charter schools, and charter schools are subject to its consequences regardless of their performance against other measures in the charter agreement. If a charter school fails to make AYP despite meeting other contractual requirements, “then the charter school authorizer or other designated entity *must take the actions required by [NCLB].*” (¶ A-10) (emphasis added).³ The Guidance

further explains that although the charter agreement cannot supplant AYP, authorizers have discretion to impose requirements that are *more rigorous* than the state plan requires. (¶ A-11).

Furthermore, the Guidance clarifies

that individual charter agreements are not required to incorporate AYP definitions. (¶ A-7). However, charter schools remain accountable for making AYP regardless of

whether the charter expressly addresses the issue. Therefore, authorizers intending to treat the charter agreement as a complete accountability document should incorporate AYP definitions.

NACSA Commentary. The terms of a charter agreement do not abridge the performance requirements set out in the state plan. The Guidance makes inclusion of AYP definitions in the agreement optional. However, NACSA believes that the charter agreement should clearly articulate *all* expected outcomes.⁴ Therefore, we encourage authorizers to incorporate AYP definitions into individual charter agreements.

The Guidance confirms that definitions of adequate yearly progress in state plans establish a floor for charter school academic accountability rather than a ceiling. If authorizers wish to influence where and how that floor is defined, they must do so through the state plan that each SEA is responsible for developing and overseeing.

Defining State Plan Goals and Measures

Authorizers have an important role to play not only in administering charter school accountability but in defining it. Since NCLB’s accountability requirements apply to charter schools, *state plan goals and measures govern much of what authorizers are required to do in terms of academic accountability.*

The Guidance supports the expectation that charter school authorizers and operators play a role in defining NCLB accountability. Specifically, the Guidance provides that “State Title I accountability plans should respect the unique nature of charter schools and should reflect input from charter operators and authorizers.” (¶ A-9). Moreover, the Guidance warns that state plans “*may not* ‘replace or duplicate the role of authorized chartering agencies.’” (¶ 9, quoting Conference Report on the No Child Left Behind Act; note #77, Title I, Part A) (emphasis in the original). Although these

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comments are directed at the state, this Guidance also implies a *call to authorizers to become more actively engaged in defining and modifying charter school accountability in the state plan.*

Individual Progress Over Time

NCLB accountability can be a blunt instrument. In their plainest form, state plans compare scores of unrelated groups of students, take account of progress only when that progress happens to traverse an arguably arbitrary line, and create incentives for schools to devote attention primarily to those students who stand in the vicinity of—but not yet above—that line. Moreover, state plan accountability measures may be particularly unreliable in the charter school context where schools are often small, have transient populations, and have only been in existence for a short time.

Common sense, backed by many educational assessment experts, suggests that educators should expect adequate progress from all students regardless of which side of or how far from a particular performance line they happen to be. A more sensible approach to educational accountability is to measure longitudinal data by student, *i.e.*, how individual students progress from year to year. Measuring individual progress over time can be done through “value added assessment”⁵ or gains scores. A number of experts believe that state plan definitions of AYP can be based on such measures consistent with NCLB’s accountability requirements.

Some authorizers already incorporate such measures into each school’s charter agreement.⁶ Accountability based on individual student progress over time helps to address some of the particular accountability challenges related to small size, brief existence, and transient populations that charter schools face routinely. However, if these measures are not incorporated into the state’s Title I plan, the Department’s Guidance indicates that they may be considered *in addition to*

rather than as a substitute for AYP. If, on the other hand, such measures are incorporated into the state plan, at least with respect to charter schools, then authorizers will be able to obtain a more accurate picture of school performance without having to impose parallel accountability frameworks that may or may not be well aligned.

NACSA Commentary.

The Department calls for state plans to reflect input from authorizers and authorizers should use this expectation to advocate for incorporating reliable measures of individual student progress over time into the state’s definition of adequate yearly progress. Defining performance expectations in relation to individual student progress over time aligns accountability with the intent of NCLB and offers a more accurate gauge of student progress. In addition, the introduction of such measures into state plans would improve public education as a whole by helping to achieve a broader purpose of charter schools.

Authorizers and Financial Resources

Quality authorizing requires resources.⁷ The Department’s Guidance now recognizes this to be true not only as a general premise but specifically in the context of Title I accountability. The Guidance poses the question “What resources are available to support the Title I accountability responsibilities of charter authorizers?” (§ A-6). The Department answers this question by identifying the following ways that SEAs may make a portion of Title I funds available for authorizers to carry out their Title I-related responsibilities:

Accountability based on individual student progress over time helps to address some of the particular accountability challenges related to small size, brief existence, and transient populations that charter schools face routinely.

- SEAs may retain up to one percent of the state’s Title I allocation for administration; they may make “some of these funds” available to charter authorizers for carrying out charter school accountability under Title I.
- SEAs may reserve four percent of the state’s Title I allocation for carrying out state and local accountability-related responsibilities. Of this amount, 95% must go to LEAs that have missed their AYP mark for two or more consecutive years. The remaining five percent may be used to support the efforts of charter school authorizers. In other words, *0.2% of the state’s Title I allocation may go to authorizers* under this part.
- Of the remaining 95% of the four percent set aside, the Guidance suggests that, with the approval of appropriate LEAs, (e.g., ones with charter schools in improvement status in their jurisdiction) an SEA could

use “some” of the remaining set-aside to serve those charter schools, such as by providing funds to charter school authorizers for that purpose. In other words, “some” part of 3.8% of the overall Title I allocation may go to authorizers.

- Drawing on the same 3.8%, an SEA could send funds directly to LEAs on the condition that the LEAs provide “a portion” to the authorizers responsible for charter accountability in that area.

These uses of Title I funding to support authorizer responsibility for Title I accountability are discretionary. They indicate the Department’s recognition that quality authorizing requires resources. They also provide another important reason for authorizers to work with SEAs on charter school accountability under No Child Left Behind.

NACSA Commentary. Some Title I funds may go to authorizers to help them carry out their charter school accountability obligations under NCLB. Authorizers may request Title I accountability support from SEAs. They should frame such requests in terms of the sources of funding specifically identified in the Guidance, as discussed above.

Miscellaneous Title I Guidance

One other part of the Department’s updated Guidance warrants mention:

The Guidance clarifies that non-LEA charter authorizers are generally *not* responsible for allocating Title I and other Federal formula funds to charter schools. Rather, this responsibility remains with the SEA. (¶ A-8).

References

U.S. Department of Education, *The Impact of the New Title I Requirements on Charter Schools, Non-Regulatory Guidance* (July 2004).

NACSA, *NCLB ‘Leading Indicators’ Surveys of Charter School Authorizers and State Education Agencies: Final Report* (July 30, 2004).

NACSA, *Principles & Standards for Quality Charter School Authorizing* (2004).

Nelson Smith, *Two Years and Counting: Charter Schools and No Child Left Behind* (ECS, December 2003).

Massachusetts Department of Education, *Charter School Technical Advisory 03-2: The Impact of NCLB on Massachusetts Charter Schools* (July 2, 2003).

Louann Bierlein Palmer & Rebecca Gau, *Charter School Authorizing: Are States Making the Grade?* (Thomas B. Fordham Institute, June 2003).

Endnotes

- 1 NCLB requires state plans to incorporate AYP requirements for science in 2005-06.
- 2 NACSA's recent survey of authorizers found that 61% of authorizer respondents believe NCLB helps them hold charter schools accountable for performance.
- 3 One might argue that this phrasing does not resolve the question of what actions are "required" under the statute but the intent seems to be that performance under the charter does not have the effect of mitigating accountability actions that NCLB would otherwise mandate.
- 4 *Principles & Standards for Quality Charter School Authorizing*, NACSA (2004), p. 8.
- 5 Value-added assessments are complex measures of student progress that control for other variables that can influence scores. There are a number of articles that describe in detail the intricacies of value added-assessments, such as "Putting Education to the Test: A Value-Added Model for California." Harold C. Doran and Lance T. Izumi. Pacific Research Institute, June 2004. Authorizers advocating for such models should be well versed in what these assessments are, and what they are not.
- 6 In NACSA's NCLB 'Leading Indicators' Survey, 14% of authorizers reported adding longitudinal student data or value added measures to their accountability measures since enactment of NCLB.
- 7 Louann Bierlein Palmer & Rebecca Gau, *Charter School Authorizing: Are States Making the Grade?* (Thomas B. Fordham Institute, June 2003)

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