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August 1, 2016

The Honorable John King
Secretary
US Department of Education
400 Maryland Ave, SW
Washington, DC 20202
Submitted via www.regulations.gov

Dear Secretary King,

It is my honor to submit comments regarding the proposed rules governing Accountability and State Plans, under Title I of the Every Student Succeeds Act (ESSA) (Docket ID ED-2016-OESE-0032).

The National Association of Charter School Authorizers (NACSA) is devoted to improving public education by improving the policies and practices of the organizations that are responsible for authorizing and overseeing charter schools. We advocate for authorizers to hold themselves, and the schools they oversee, to high standards based on national best practices for charter school authorizing, defined in our *Principles & Standards for Quality Charter School Authorizing*.

NACSA expects the best from the charter sector. We support policy that does the same. It is an authorizer's job to ensure all charter schools are held accountable to high standards, and since No Child Left Behind (NCLB) we have learned much about how Title I Reporting and Accountability provisions help authorizers do this important job.

The following pages provide specific analysis and recommendations concerning four rules that will shape charter school accountability and oversight in the next generation of state Title I plans. We are happy to discuss the issues further at any time. Please contact Amanda Fenton, our Director of Federal and State Policy, at amandaf@qualitycharters.org or 510-612-3244.

Sincerely,

Greg Richmond
President and CEO
National Association of Charter School Authorizers

PREFACE

A charter school authorizer and a Local Education Agency have fundamentally distinct roles within public education.

To understand NACSA's Comments it is important to understand this distinction.

Within the charter sector, every charter school has a Local Education Agency (LEA) and a charter school authorizer. The roles of the charter school authorizer and the LEA are distinct: the authorizer fulfills much of the oversight and accountability role, while the LEA fulfills much of the support role. In contrast, in the traditional school system a single entity (the LEA) is largely responsible for both functions.

In the charter sector, the LEA is the middle-man through which the charter school receives much state and federal funding and programmatic support. As that middle-man the LEA has some responsibilities to: (a) help a charter school use those resources well, through activities like training, the provision of services, and technical assistance; and (b) provide assurances to the government that the resources the LEA receives are used as intended. This is largely a supportive role in practice—the LEA gives the charter school funding and other programmatic support to help it operate the school and achieve results.

A charter school authorizer is responsible for the bulk of charter school oversight and accountability. This responsibility encompasses many different elements and uses several state and federal mechanisms, but is primarily enforced through the charter contract. The charter contract lays out the responsibilities of the charter school and the authorizer, including the mutually agreed upon performance goals and the consequences for the school if it does not meet its responsibilities.

The identities of the LEA and the authorizer varies from state to state and from school to school. The authorizer might be an independent state agency, a state Department of Education, a local school district, a university, a non-profit, or another governmental agency. The LEA may be the charter school itself, or it may be the local school district. Sometimes the same agency that is the authorizer is also the LEA, putting two roles under one umbrella. When one agency performs both roles, the distinction between its authorizer responsibilities and its LEA responsibilities remains. The agency essentially “switches hats” when taking on each distinct role.

This separation between the “oversight/accountability role” of the authorizer and the “support role” of the LEA is an important one in the charter sector. It was designed to delineate where the responsibility for operating a school stops and where the responsibility for holding a school accountable begins. The separation makes it possible to enforce a charter contract and hold a charter school accountable for its results.

1. SECTIONS 200.23 (STATE RESPONSIBILITIES TO SUPPORT CONTINUED IMPROVEMENT) AND 299.17 (CONSOLIDATED STATE PLANS)

NACSA has significant concerns with Sections 200.23(c)(1) and 299.17(e)(3) as written.

The proposed rule would allow States to fold authorizers in with Local Education Agencies (LEAs) for the purposes of designing and implementing a State system for continued improvement in schools identified for additional support. This is ill advised. Instead of supporting school improvement, it could encourage states to design ineffective, and potentially harmful, systems that could undermine authorizer-driven accountability.

Such a proposal also runs counter to ESSA statute, which recognizes that the primary mechanism for the oversight and enforcement of charter school accountability is the state charter school law. This should not be superseded by pieces of an indiscriminate Title I plan.

NACSA recommends that the term “authorized public chartering agency consistent with State charter school law” be stricken from Sections 200.23(c)(1) and 299.17(e)(3). We recommend that the Department instead issue guidance regarding the role authorizers may play in State plans for continued improvement.

While we do not believe the proposed rules as written are the right approach, we do support the Department’s intention to encourage States to develop systems and strategies for additional school improvement that work for all public schools.

This can best be done through Department guidance instead of regulations. Guidance can provide States with non-binding recommendations that capture the complex accountability and support.

RATIONALE

An authorizer does not function in the same way as an LEA. School improvement activities designed for LEAs will not be effective when directed at authorizers, and could be harmful.

The proposed rule, in its construction and rationale, conflates the role of the authorizer with that of the LEA. Unlike a traditional school district, an authorizer has no direct role in the management of individual charters schools. This separation between the authorizer and the day-to-day task of running a charter school is a core aspect of the autonomy in the charter model. As a result, the relationship between authorizer and charter school is very different than the relationship between a traditional school district and an individual traditional school. An authorizer cannot, for example, make decisions that a traditional school district makes for individual schools, such as the hiring personnel, the use of Title I funds at the school site, or the selection and teaching of curriculum.

As an oversight entity, an authorizer can identify a problem and impose consequences if the problem is not fixed, but only the operator can go in and actually make the needed school-level change. Instead, an authorizer, governed by a state’s charter school law, uses distinct mechanisms like non-renewal and revocation, both mentioned in the proposed regulations. In addition, authorizers also use other mechanisms like additional annual reporting, yearly interim benchmarks, monitoring of the school governing board, and probation that are the combined result of state charter law and authorizer-driven implementation. These all have one important aspect in common: they reflect that an authorizer is an oversight entity, not an operator.

When an authorizer is instead cast in a support role equivalent to that of an LEA, accountability can suffer.

The oversight role of the authorizer is one of the main reasons why an authorizer itself should not be implementing the types of comprehensive support methods this rule envisions. If an authorizer were to provide the support function of an LEA, it can inhibit the very enforcement of charter accountability that ESSA seeks to protect. For example, this rule could encourage a state to develop a comprehensive support system that required authorizers to direct charter schools to change instructional models or reorganize staff assignments. Not only would this be contrary to the autonomous nature of charter schools, but by blurring the line between authorizer and operator, a charter school could argue that it no longer had full control over the school outcomes, and therefore should not be held accountable for failing to achieve those outcomes. In essence, if applied to charter schools, this rule undermines the charter school contract and state charter school law.

The rule could allow States to circumvent State charter school law, further eroding charter school accountability.

Section 1111(c)(5) of ESSA, repeated in section 200.12(c) of the proposed rules, reiterates that accountability for charter schools shall be overseen in accordance with state charter school law. This clause has been included in the Elementary and Secondary Education Act (ESEA) since 2002 to ensure that an authorizer's decision to revoke or non-renew a charter school will override any Title I intervention system developed by the state. In other words, low-performing charter schools can be shut down, rather than be subject to intervention.

The inclusion of authorizers in this proposed rule could obfuscate this clear directive. Authorizers are the entities empowered by each state to oversee accountability for charter schools; they are the agencies responsible for making sure that accountability is enforced in accordance with state charter school law. Under this rule, a state could instead use Title I to mandate authorizers pursue a binding accountability action, such as instructional support, that is inconsistent with state charter school law.

This could not only supersede planned authorizer accountability actions (such as non-renewal), but would recast authorizers as the providers of support and intervention. As discussed above, such a role is fundamentally at odds with an authorizer's accountability responsibilities under the state charter school law.

The rule may make it more difficult to close low-quality charter schools in the very communities most in need of high-quality schools.

This policy intent of this rule is admirable—to encourage states to provide additional, targeted support to communities with a significant number of troubled schools. By design the policies developed by states would primarily impact those handful of high-need communities.

Unfortunately, a result of that design is that any negative consequences of these policies are also concentrated in these high-need communities. A negative consequence is anything that could get in the way of improving education, including previously discussed threats to charter school accountability. Only in these communities—those with a high concentration of failing schools—would authorizers be prevented from enforcing charter school accountability. Instead of breaking the cycle of failure in these communities, this policy could perpetuate it.

The intent of the policy may still be met with a simple modification that keeps authorizers out of the support role.

An authorizer should focus its efforts on oversight and accountability, a school improvement role that can be best encouraged through the combination of state charter school law and Department guidance.

Guidance on Title I state plans could, for example, encourage states to consider how they can support authorizers in fulfilling their accountability responsibilities, especially if a charter school in an authorizer's portfolio is identified for comprehensive or targeted support.

Guidance could also encourage states to consider employing authorizer accountability policies as a part of their state charter school law, something that is encouraged in the Expanding Opportunity through Quality Charter Schools program authorized under Title IV, Part C. Authorizer accountability can be an effective way to ensure authorizers are fulfilling their oversight responsibilities. Such policies work best when based on a two-part standard of judgment that looks at both school performance and authorizer actions. There are more than a dozen states with a form of authorizer accountability, and they are, by necessity, as varied in structure and scope as the charter sector itself.

NACSA further notes that the proposed change would not interfere in the LEA-based components of this rule. This means all charter schools, through their classification as an LEA themselves or their state-designated LEA, would still be able to receive any additional state support they needed. The proposed change would just take authorizers out of this inappropriate role.

PROPOSED LANGUAGE

§ 200.23 State responsibilities to support continued improvement

(c) *Additional improvement actions.* The State may—

(1) Take action to initiate additional improvement in any LEA, ~~or in any authorized public chartering agency consistent with State charter school law,~~ with a significant number of schools that are consistently identified for comprehensive support and improvement under § 200.19(a) and are not meeting exit criteria established under § 200.21(f) or a significant number of schools identified for targeted support and improvement under § 200.19(b), including school-level actions such as reorganizing a school to implement a new instructional model; replacing school leadership; converting a school to a public charter school; changing school governance; closing a school; or, in the case of a public charter school, revoking or non-renewing the school's charter consistent with the terms of its charter agreement and State charter school law;

§ 299.17(e)(3)

(e) *Performance management and technical assistance.* In addition to the requirements in §299.14(c), each SEA must describe—

(1) Its process to approve, monitor, and periodically review LEA comprehensive support and improvement plans consistent with the requirements in section 1111(d)(1)(B)(v) and (vi) of the Act and § 200.21(e); and

(2) The technical assistance it will provide to each LEA in the State serving a significant number of schools identified for comprehensive and targeted support and improvement, including technical

assistance related to selection of evidence-based interventions, consistent with the requirements in section 1111(d)(3)(A)(iii) of the Act and § 200.23(b).

(3) Any additional improvement actions the State may take consistent with § 200.23(c), including additional supports for or interventions in LEAs, ~~or in any authorized public chartering agency consistent with State charter school law,~~ with a significant number of schools identified for comprehensive support and improvement that are not meeting exit criteria or a significant number of schools identified for targeted support or improvement.

2. SECTION 200.30 (ANNUAL STATE REPORT CARD)

NACSA has concerns with Sections 200.30(a)(2)(ii)(A) and 200.30(a)(2)(ii)(B) as written.

The additional non-statutory reporting requirements, as proposed, are burdensome to states and misleading to parents, educators, and policymakers.

NACSA is a vocal proponent of increased transparency for authorizers and charter schools. This includes recommending policies and practices that ensure information on charter school academic performance and enrollment is available to the public each and every year.

However, the proposed reporting requirement is flawed. Contrary to the stated intentions of the Department to “provide transparency,” this proposed reporting rule could misrepresent charter school demographic and academic achievement data. In doing so, it would make it harder for parents to understand how schools are performing and could distort performance expectations for charter schools, making it more difficult to hold charter schools accountable.

NACSA shares the Department’s value of transparency, and recommends that the language be modified to eliminate the comparative reporting and replace it with reporting on absolute academic performance and enrollment.

NACSA recommends that a report on authorizers continues to be an element of state report cards, but how and what is reported to the public must: (a) be directly relevant to the standards of performance charter schools are expected to achieve; and (b) make it easier for parents to make informed decisions about all their educational options. This can be achieved by reporting on absolute, instead of comparative, academic performance and enrollment. This provides the desired added level of transparency, publically linking each authorizer with each charter school in its portfolio, while giving parents an easy way to view the achievement and enrollment data they need to draw their own comparisons.

RATIONALE

Making comparisons between individual charter schools and traditional public schools is technically challenging and difficult to do successfully. This challenge will increase exponentially when attempted statewide.

Charter schools, by design, are schools of choice. Unlike the enrollment method in a typical public school district, no student is required to attend a charter school through “zoning” or other restrictions. As a result, charter schools must attract students and families to enroll, and many do

this by identifying and serving a targeted need in their community—be that a specific neighborhood, a curricular focus (such as STEM or language immersion), or a high-need student population.

Designing a state reporting system that would “match” each charter school to the appropriate comparison area or school(s) or district(s) would be a significant undertaking for any state, much more complicated than the proposed in-district comparison requirement within LEA report cards. For example, two charter schools in the same community may serve very different areas and very different populations. A language immersion school may serve students from a large geographic area, while a conversion charter school may serve just a few square blocks. The appropriate comparison “match” for enrollment and academic achievement would be different in each case, even though both are located in the same community.

This is a significant, non-statutory burden to impose on states. When faced with this difficult and complex task, we believe states will default to the easiest comparison, or possibly a biased comparison protocol, instead of a useful comparison.

When a comparison analysis is done poorly, it can obscure the perception of school quality, providing unconstructive and possibly misleading information to parents and educators on the quality of schools.

This cuts both ways, as it may lead parents to think a school is better or worse than it is. In both scenarios, the reporting would serve to decrease public understanding of each school. For example, the comparison may list a school performing at 10 percent proficiency as “better than” the matched school or area, which has an average performance at five percent proficiency, unconsciously excusing the unacceptable performance of the charter school. Or, the comparison may list a school for dropout recovery as “worse than” the matched traditional school, even if the proficiency rates for the dropout recovery school are exceptional given its targeted model.

The unstated idea of this comparison achievement reporting is that charter schools should strive to achieve the same or “better than” a standard comparison cohort of traditional public schools—a goal that will only ever be as high as the comparative school. This shifts the public’s understanding of how charter success is defined away from the goals of the charter contract, or even the statewide school achievement goals, to one based on “better than.” When this happens, it becomes increasingly difficult for authorizers to explain to charter schools and the public why they are holding schools accountable for more rigorous absolute performance goals, making charter accountability ever harder to enforce. Charter schools must be judged by the achievement of those higher contractual goals; not reduced to a misleading comparison.

Similarly, rational factors of parent choice, or an approved focus on a particular student population, may lead to a student make-up that looks different than an area traditional public school. Instead of relying on only an enrollment comparison analysis, authorizers use a variety of metrics to ensure a quality, equitable education is provided to all students, no matter their subgroup identification. The cause of such a discrepancy can be benign, and an inappropriate comparison can make the public think there is a problem when there is none.

Instead of comparative reporting, NACSA recommends that this section of the state report card include reporting on absolute academic performance and enrollment.

Absolute reporting is the primary content of an authorizer’s annual report, a practice recommended

in NACSA’s *Principles & Standards for Quality Charter School Authorizing*. In reports produced by authorizers, absolute reporting communicates to charter schools, parents, and the public if a charter school is fulfilling the goals in its charter contract, which include metrics of academic performance, responsibilities for student services, and, often, overall enrollment targets with school demographic reporting requirements.

Absolute reporting provides educators and parents with a precise report on the characteristics of each charter school overseen by the authorizer without the addition of an unpredictable, potentially inaccurate and misleading comparative element. It also reduces the reporting burden of the state, as such information is already required to be collected and reported per proposed rule Section 200.31(b)(2)(i)(A) for every LEA and each school.

This report would bring more transparency to the authorizing sector while giving parents and educators consistent, easy to use information with which they can make their own comparisons.

PROPOSED LANGUAGE

§ 200.30 Annual State report card

(a) *State report cards in general.* (1) A State that receives funds under subpart A of this part must prepare and disseminate widely to the public, consistent with paragraph (d) of this section, an annual State report card for the State as a whole that meets the requirements of this section.

(2) Each State report card must include, at a minimum—

(i) The information required under section 1111(h)(1)(C) of the Act;

(ii) As applicable, for each authorized public chartering agency in the State—

(A) ~~How the~~ The percentage of students in each subgroup defined in section 1111(c)(2) of the Act for each charter school authorized by such agency ~~compares to such percentage for the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and~~

(B) ~~How~~ The academic achievement under § 200.30(b)(2)(i)(A) for students in each charter school authorized by such agency ~~compares to that for students in the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State;~~

3. SECTION 200.21 (COMPREHENSIVE SUPPORT AND IMPROVEMENT)

NACSA recommends a clarifying modification to Section 200.21(d)(3).

As detailed in ESSA statute, proposed Section 200.21(d)(3), and proposed Section 200.12(a)(1), the state charter school law will impact how all accountability provisions are overseen for charter schools, including the appropriate consequences for charter schools identified for comprehensive support and improvement.

A technical modification to the proposed rule will clarify that non-renewal or revocation by an authorized public charter agency, an example given in the rules, may be *one of* the interventions that can be pursued to support identified charter schools, but is not the only acceptable intervention

measure. This is particularly important in states where the LEA and charter school authorizers are different agencies, as is the case when the charter school itself is the LEA. The charter school should be able to pursue a variety of methods for school improvement, separate and distinct from the authorizer’s parallel responsibilities of oversight and accountability.

An additional modification will reiterate that the combination of state charter school law and a charter contract form the backbone on which charter school accountability activities must be based. This ensures that any LEA support activities do not supplant authorizer actions.

PROPOSED LANGUAGE

§ 200.21 comprehensive support and improvement (Page 34604)

(d) *Comprehensive support and improvement plan.* Each LEA must, with respect to each school identified by the State for comprehensive support and improvement, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes that—

(3) Includes one or more interventions (e.g., increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds; replacing school leadership; in the case of an elementary school, increasing access to high-quality preschool; converting the school to a public charter school; changing school governance; closing the school; or and, in the case of a public charter school, revoking or non-renewing the school’s charter by its authorized public chartering agency consistent with the terms of its charter agreement and State charter school law to improve student outcomes in the school that—

4. SECTION 200.19 (IDENTIFICATION OF SCHOOLS)

NACSA has concerns with Sections 200.19(a). The approach proposed by the Department fails to recognize the significant damage that an erroneous “dropout factory” label can inflict on a school, a risk felt acutely by Alternative Education Campuses (AECs).

The proposed rules use a two-step process to (1) identify and (2) intervene in a high-need subset of high schools. First, schools are identified and given a drop out factory label if they have a four-year cohort graduation rate lower than 67 percent. This is a large net and will capture any school that might warrant a dropout factory designation. Second, a state may sort identified schools to allow different types of schools to engage in different support activities, effectively separating out schools that specialize in dropout recovery (AECs). In essence, AECs retain the dropout factory label, but the state may exempt them from some or all of the accountability consequences of that label.

This approach captures the most number of schools that may need support, but it does so at significant cost to AECs and the public school sector.

NACSA recommends that the Department modify its approach by “flipping” it.

Instead of capturing too many schools and then pulling AECs out of the accountability mechanism, allow states to first distinguish between AECs and traditional high schools, and then apply a differentiated graduation rate calculation. This would accurately identify dropout factories at the outset.

RATIONALE

Identification as a dropout factory has significant consequences for an AEC. These consequences are not limited to those imposed by the state accountability system.

An AEC charter school misidentified as a dropout factory will find it more difficult to do a number of things because of the public stigma of that label. That stigma is one of risk, failure, and hardship—risk that a school will be shut down, leaving funders holding the bag; potential failure of students to graduate, making it difficult to attract students; and hardship for educators, who may be deemed a failure by association. This stigma could not be further from the truth for successful AECs. They instead give the most high-need students a better chance of success.

Misidentification of too many schools as dropout factories diminishes its impact, giving true dropout factories unwarranted relief.

When the dropout factory designation is inappropriately given, the list of identified schools swells. This allows true dropout factories to escape the level of scrutiny a shorter list would demand. It also creates the real possibility that the public will conflate the dropout factory label with the AEC label, leading the public to assume incorrectly that if a school has a dropout factory label it is likely an AEC. This assumption would take true dropout factories off-the-hook for their poor outcomes and lead parents to underrate the risk of attending those schools.

The Department should instead flip its approach and allow states to use differentiated, relevant graduation rates for the two sets of schools.

NACSA shares the Department’s desire for uniformity as well as its belief in the importance of on-time graduation. These ideals can be preserved by giving states a degree of flexibility to design a thoughtful, differentiated system to identify dropout factories.

Such a system would rest on three ideals: (1) that a four-year cohort graduation rate is an appropriate metric to identify traditional schools that are dropout factories; (2) that a different graduation rate is an appropriate metric to identify AECs that are dropout factories; and (3) that a state has a system for distinguishing between AECs and traditional schools, such as the proposed eligibility criteria for the use of differentiated improvement activities under 200.21(g). To gain approval a state would need to demonstrate that its method of identification met all three criteria.