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August 23, 2017

Jason Botel  
Acting Assistant Secretary for Elementary and Secondary Education  
US Department of Education

RE: Recommendations for Departmental Guidance Concerning Charter Schools and Title I of the Every Student Succeeds Act

Dear Acting Assistant Secretary Botel,

In February we wrote to the Department of Education concerning the implementation of the Every Student Succeeds Act (ESSA). Our letter included a recommendation that the Department issue additional regulations or non-regulatory guidance concerning several areas of Title I that would benefit from additional clarity. Similar activities were undertaken during the previous two administrations, as both administrations felt it important to issue non-regulatory guidance to protect charter autonomy and accountability.

It is our understanding that the Department is currently considering areas for Title I non-regulatory guidance, and we would like to again share our recommendations. Previous guidance has helped authorizers protect the charter bargain and has brought authorizers and charter schools together with SEAs to appropriately enforce accountability. Our recommendations highlight three areas where Title I guidance can support this important work of charter school authorizing.

Thank you for your consideration. We look forward to continuing our work with the Department of Education and Congress to advance our shared goals. Please feel free to contact Amanda Fenton at [amandaf@qualitycharters.org](mailto:amandaf@qualitycharters.org) with any questions.

Regards,

Greg Richmond  
President & CEO

Cc: Ebony Lee  
Stefan Huh

## Protect Charters from Overreach by Guarding State Charter School Law

### Relevant Citations:

- ESSA 1111(c)(5) [USC Title 20 6311 (c)(5)]
- Repealed regulations 200.12(c)(2) and 200.21(d)(3)
- NCLB Guidance
  - ESEA Flexibility FAQs, issued August 3, 2012, Questions A-10a through A-10d
  - The Impact of the New Title I Requirements on Charter Schools, issued July 2004, Questions A-2 and A-11

### Description:

ESSA Title I statute 1111(c)(5) includes an important provision that ensures states and authorizers can continue to use state charter school law to hold charter schools accountable for their actions. This language, which was also included in NCLB, protects the charter bargain of autonomy and accountability that is at the core of every charter agreement.

Faced with confusion and inconsistent implementation at the state level, during the NCLB and NCLB-waiver eras, authorizers and charter schools requested that the Department of Education—under both Presidents Bush and Obama—issue additional non-regulatory guidance to reinforce the law’s intent and ensure that Title I driven school improvement efforts would not impede charter-based accountability. Both Departments did so and, at the request of charter schools and authorizers, the Department of Education included similar language in the final Title I accountability regulations issued in November 2016.

The package of Title I accountability regulations was subsequently repealed in March 2017. In the process, the regulations that give primacy to state law in matters of charter accountability were also repealed.

**We strongly encourage the Department of Education to pursue regulations or issue non-regulatory guidance that protects charter school accountability from state or school district overreach. State systems for Title I accountability must *complement and make use of* authorizer-led accountability in state charter school law, as ESSA intends.** We appreciate that the Department referenced the underlying Title I statute 1111(c)(5) in its revised consolidated state plan template, but we do not believe that reference alone is enough to protect authorizers and charter schools from state or school district overreach.

Guidance can be based on the language that was in the Title I accountability regulations (200.12(c)(2) and 200.21(d)(3)) which combined make it clear that:

- (1) Charter schools are still subject to accountability per state charter school laws;
- (2) A decision by an authorizer to revoke or non-renew a charter school supersedes any notification from the State that such a school must implement an improvement plan; and
- (3) When appropriate, accountability actions driven by state Title I accountability policies should be done in coordination with a charter school’s authorizer.

Such language still represents significantly streamlined direction compared to guidance issued on charter school accountability under NCLB and under NCLB-waivers

**We also encourage the Department to raise awareness of the ESSA transition’s potential to impact the work of charter school authorizers.** Charter school authorizers often rely on the information

provided by state assessment and accountability systems when they are performing oversight functions and enforcing contractual accountability. As states modify these foundational systems, states, charter schools, and authorizers may need to explore a range of state policy or practice changes in the near and long term to keep charter autonomy and accountability functioning smoothly through the transition period. **Authorizers and states can also use this opportunity to examine their reporting requirements and find ways to smartly streamline, consolidate, and coordinate these requirements, thus reducing the reporting burden on individual charter schools.**

At NACSA we are working with authorizers to help them assess the transition's impact and proactively prepare for the change. The Department can join in this effort by disseminating NACSA's work and promoting best practices in transition planning to charter schools and authorizers across the country.

## Promote Quality Data for Authorizers, Charter Schools, and the Public During the ESSA Transition and in the Future

### *Related Statute:*

- ESSA Statute 1111 (h)(1)(A) [USC Title 20 6311(h)(1)(A)]
- ESSA Statute 1111 (h)(2)(A) [USC Title 20 6311 (h)(2)(A)]
- ESSA Statute 1111 (c)(3)(A) [USC Title 20 6311 (c)(3)(A)]
- ESSA Statute 1111 (d)(1)(A) [USC Title 20 6311 (d)(1)(A)]
- ESSA Statute 1111 (c)(4)(C) [USC Title 20 6311 (c)(4)(C)]

### *Description:*

To support ESSA's goal of making high quality data available to parents and the public—information that is crucial for authorizers and charter schools—we encourage the Department of Education to issue guidance on timelines, meaningful differentiation, and n-size that can aid in the drafting and review of consolidated state plans.

Authorizers and charter schools rely on timely, regular access to high quality school data to make important decisions about school programming and charter school accountability. Guidance can boost the quality of these state and LEA report cards in three important ways. First, the guidance on timelines ensure local and state data is collected and released on a predictable schedule from year to year. Second, guidance can improve the quality of the data released in these report cards by setting basic standards on the differentiation and weighting of state measurements, making them more meaningful to students, schools, and the public. Third, guidance can explicitly permit states to use different n-sizes for the purposes of reporting which, in practice, often results in higher quality data than would otherwise be available.

Guidance in these areas would provide assurances to authorizers, local school districts, and charter schools that they would have access to meaningful, high quality data from the state on a predictable schedule.

Such guidance can also encourage states and authorizers to examine their reporting requirements and find ways to smartly streamline and coordinate requirements for charter schools to reduce their reporting burden.

## Showcase how States Can Use Title I Initiatives to Support Charter School Growth

ESEA, as amended by the ESSA, can support the use of the Title I set-aside for school improvement (Sec. 1003(a)) to replicate charter schools, or to expand the capacity of high-performing charter schools, in order to serve students attending schools identified for comprehensive support and improvement. Under the No Child Left Behind (NCLB)-era School Improvement Grants program (SIG), school improvement shifted into a building-focused strategy and SEAs and LEAs were not encouraged or empowered to implement a student-based strategy of expanding access to seats in high-quality schools.

ESSA creates opportunities for states and districts to implement improvement strategies that include replication and expansion of high-quality charter schools to improve outcomes for students. **We encourage the Department to clarify the flexibility States have to use Title I funds to expand access to high-quality charter schools and implement a district-wide improvement strategy.**

The following table outlines different strategies supported under Sections 1003 and 1111 that a state might want to implement to address the needs of students attending comprehensive support and improvement as well as targeted support schools.

ESEA Authority	Title I 7% Set-Aside (Sec. 1003(b) School Improvement Strategy)
Section 1003(b)(1)(B) (SEA provision of services with LEA approval)	Convert an existing school identified under Section 1111(c) into a public charter school.
Section 1003(b)(1)(A) (Uses of Funds – authority to make grants competitive)	Prioritize strategies that incorporate charter school conversion, replication, or expansion in applications for Section 1003(b) sub-grants.
Section 1003(b)(1)(B) ) (SEA provision of services with LEA approval) Section 1111(d)(3)(B)(i)-(ii)(Additional authority for SEA to act in LEAs with identified schools that aren't improving)	Award funds directly to proven public charter operators to open new schools serving students who currently attend eligible schools.
Section 1003(b)(1)(B) (SEA provision of services with LEA approval) Section 1111(d)(3)(B)(i)-(ii) (Additional authority for SEA to act in LEAs with identified schools that aren't improving)	Award expansion grants to high-quality charters to expand their capacity to serve students attending eligible schools.
Section 1003(b)(1)(B) (SEA provision of services with LEA approval) Section 1003(b)(2)(C)(Authority for states to ensure that schools receive operational flexibility in identified schools)	Attract high-performing networks to open schools (or to restart low-performing schools)in an LEA with significant numbers of students attending eligible schools.
Section 1003(b)(1)(B) (SEA provision of services with LEA approval)	Award grants to LEAs or nonprofits to attract and develop high-potential school leaders, such as through a leadership development program.

Section 1003(b)(2)(C) (Authority for states to ensure that schools receive operational flexibility in identified schools) Section 1111(d)(3)(B)(i)-(ii) (Additional authority for SEA to act in LEAs with identified schools that aren't improving)	
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Part of helping states explore charter schools as an improvement mechanism is ensuring such turn-around charter schools can access all available funding sources. This means making sure guidance for the Charter School Program is flexible enough to fund these new turn-around schools. When designing improvement strategies that include replication or expansion of successful charter schools, LEAs must ensure that the needs of all students enrolled in a low-performing schools are addressed, such as by guaranteeing spots for such students in the newly replicated or expanded charter schools. In this way the LEA will be able to demonstrate that funds are being expended to serve the students they are intended to benefit under Title I. **Complementary guidance in the Charter School Program would help to clarify that prioritizing these Title I students does not disqualify schools from receiving start-up grants under the Charter School Program.**