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September 20, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW., Room 6E231
Washington, D.C. 20202
Submitted via regulations.gov

RE: Request for Comment—Evaluation of Existing Regulations (Docket ID: ED-2017-OS-0074)

Dear Ms. Malawer,

On behalf of the National Association of Charter School Authorizers (NACSA) I am writing to provide comments to assist in the Department of Education's efforts to evaluate existing regulations in accordance with Executive Order 13777.

The comments in this letter concern the administration of the programs included in Title IV, Part C: Expanding Opportunity Through Quality Charter Schools. Specifically, this letter provides NACSA's recommendations for the implementation of this important program, which was newly reauthorized through the Every Student Succeeds Act. The reauthorization provides an opportunity to re-examine the various regulations, guidance, and other non-binding directives embedded in the program to set a strong foundation for years to come.

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 with any questions.

Regards,

Greg Richmond
President & CEO

Modify, Revise, and Reissue Charter School Program Nonregulatory Guidance

Relevant Citations

- Charter Schools Program, Title V, Part B of the ESEA; Nonregulatory Guidance, issued January 2014
- Every Student Succeeds Act, Title IV, Part C—Expanding Opportunity through Quality Charter Schools. Section 4303. Grants to Support High-Quality Charter Schools.

Description

The Every Student Succeeds Act (ESSA) re-authorized the Expanding Opportunity through Quality Charter Schools program, colloquially known as the Charter School Program (CSP), in December 2015. The reauthorization made significant changes to the authorizing statute, which in turn necessitates significant changes to the nonregulatory guidance associated with the program.

We recommend that the Department issue new guidance in two areas and prioritize revising guidance in an additional two areas. Further, [as detailed in our letter dated August 23, 2017](#), we also encourage the Department to consider waivers to allow existing grantees to make full use of new flexibilities that ESSA allows.

New Guidance: Authorizer Quality Initiatives

The new State Entity Program authorized by ESSA includes significant new provisions to support and encourage authorizer quality initiatives. Notable new provisions include: a competitive preference for states that implement best practices in charter school authorizing, significant selection criteria that rewards applicants with strong programs of authorizing oversight and support; robust school application requirements and assurances that verify the presence of strong charter school accountability standards; and new technical assistance provisions to help ensure charter schools are serving all students well. It also greatly enhances a state's ability to dedicate resources to these efforts, as for the first time ever awardees have funding set aside to invest in efforts to improve authorizing quality in ways that meet the needs of their state and communities.

When taken together, these provisions represent an unprecedented investment in the tools of charter school authorizing as a crucial lever to expand access to high-quality charter schools across the country. However, the very thing that makes these new provisions so impactful—that they are spread across many different sections of the CSP statute—also means it can be difficult for an applicant to take a step back and design a strategic, comprehensive plan for authorizer quality in their state.

NACSA believes the CSP competition would benefit from additional guidance to help state entities make the most of their authorizer quality initiatives. Such guidance would pull all the pieces of CSP statute together and illustrate the ways in which states can design a comprehensive strategy to improve authorizer quality and provide technical assistance to authorizers. We believe such guidance should do the following:

- 1) Reinforce the significant flexibility applicants have to design authorizer quality and technical assistance programs that meet their specific needs and adapt to the context of the state.

- 2) Encourage applicants to think holistically about their plan for authorizer quality, by illustrating how such a plan can incorporate each of the individual authorizer quality requirements that are spread throughout the state entity application. This will encourage applicants to pursue a comprehensive approach that is right for their needs and their contexts.

- 3) Remind applicants that authorizer quality initiatives are, first and foremost, another means to support the creation of high-quality charter schools. Authorizer quality initiatives should always be designed with that end goal in mind.

NACSA believes that such guidance will result in more thoughtful, effective, and innovative strategies to improve authorizer quality. We fear that, without such guidance, state entities may instead revert to a narrow, compliance-based view of authorizer quality initiatives that prioritizes processes instead of results. Such an approach would certainly demonstrate adherence to CSP requirements, but it could unintentionally restrict charter school growth by making authorizing itself too regulatory and cumbersome, especially if authorizers push unnecessarily burdensome requirements down to schools. A thoughtful approach to authorizer quality gives both authorizers and charter schools the tools they need to thrive as autonomous, accountable, public schools.

The section below provides an example of how this coordinated approach could be presented in guidance. It pairs a table, which illustrates the different methods and topics the applicant may wish to address, with a hypothetical example of the type of comprehensive approach a state could put together to address a specific topic.

Table: The table illustrates the different statutorily referenced methods that applicants could use to advance authorizer quality, and the different statutorily referenced topics authorizer quality initiatives can address. States are by no means limited to these methods or these topics; rather, there is a statutory example that may require or encourage this type of activity. Such a presentation would encourage applicants to design thoughtful, coordinated approaches to authorizer quality that employ a variety of methods to address their own priority topics.

Methods applicants can use to advance Authorizer Quality	Topics applicants can address through Authorizer Quality initiatives
Work with authorizers to develop their capacity for oversight on different topics. 4303(b)(2), 4303(f)(2)(E)(ii), 4303(f)(1)(A)(xii)(I), 4303(f)(1)(A)(xii)(II)	Increase coordination between state entities and authorizers to avoid duplication of work and streamline reporting requirements. 4303(g)(1)(D)(ii)
Establish authorizing standards. 4303(f)(1)(A)(xii)(I)	Recruitment, enrollment, and retention practices. 4303(f)(1)(A)(viii)(I), 4303(f)(1)(A)(viii)(II), 4303(f)(2)(C)
Provide an assurance that authorizers are using best practices in charter school performance management, such as performance agreement, annual performance assessments, and accountability standards. 4303(f)(2)(C)	Charter school performance: academic, financial, and operational. 4303(f)(2)(E)(iii), 4303(f)(1)(C)(i)(II)
Ensure authorizers have different plans and procedures in place. 4303(f)(1)(A)(iv), 4303(f)(1)(C)(i),	Charter school accountability: academic, financial, and operational 4303(f)(2)(E)(iii), 4303(f)(1)(C)(i)(II), 4303(f)(2)(E)(i)

Provide an assurance that authorizers are adequately monitoring their charter schools, which includes conducting annual reviews on certain topics. 4303(f)(2)(E), 4303(f)(2)(C)	Fiscal oversight. 4303(b)(2), 4303(f)(2)(E)(ii) <i>Dear Colleague Letters issued in August 2016 and September 2015, respectively.</i>
Provide an assurance that authorizers are employing a generally applicable standard for charter school renewal or revocation. 4303(f)(1)(C)(i)(II)	School closure. 4303(f)(1)(A)(iv)
Employ different authorizer accountability methods, like approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency. 4303(f)(1)(A)(xii)(I) and 4303(f)(1)(A)(xii)(II)	Services for educationally disadvantaged students. 4303(f)(1)(A)(viii)(I)
Encourage authorizers to implement best practices in charter school authorizing. 4303(g)(2)(F)	Services for students with disabilities. 4303(f)(2)(C)
Work with charter schools directly to help them improve a variety of practices. 4303(f)(1)(A)(viii)(I), 4303(f)(1)(A)(viii)(II), 4303(f)(2)(C)	Services for English learners. 4303(f)(2)(C)

Example in Action: The illustration of choices presented in the table can be complemented with examples of how an applicant may combine different authorizer quality methods to address different topics. For example, an applicant may decide it will address recruitment, enrollment, and retention practices using methods like:

- (a) *Provide an assurance that authorizers adequately monitor their charter schools:* issue state-level guidance to charter schools on recruitment and enrollment practices
- (b) *Work with authorizers to develop their capacity for oversight:* conduct trainings with authorizers on how to oversee charter school compliance with the new guidance, and
- (c) *Employ different authorizer accountability methods:* include charter school retention rates as an indicator in an annual report the applicant issues on the authorizing sector.

We would be happy to assist the Department in identifying diverse, successful methods states have used to improve authorizer quality, which could serve as real-world illustrations for this important guidance.

New Guidance: Standard of Renewal and Revocation

We encourage the Department to issue new guidance that clarifies how applicants and subgrantees may fulfill new requirements governing the standard of renewal and revocation for charter schools.

Appropriations language in effect between FY2010 and FY2014 required state applicants to provide an assurance that all charter schools receiving Charter School Program funds could meet a renewal and revocation standard that prioritized the consideration of academic outcomes. In response, at least four states (California, Florida, Michigan, and Minnesota) changed their own state charter school laws to fulfill this assurance. Unfortunately, such state law changes unintentionally made it more difficult for authorizers to non-renew or revoke a school for financial, structural, or operational factors. This was embodied most forcefully in a legal ruling (*American Indian Model Schools vs. Oakland Unified School District*) that cited this federal assurance, and California’s related state law,

to overturn the revocation of a charter school whose founder was accused of receiving improper financial benefits in the amount of \$3.9 million.

ESSA corrected this error and includes modified language governing an authorizer's standard of renewal and revocation for charter school grantees. This new language (a) makes it easier for charter school program applicants to verify compliance with this provision; and (b) protects the ability of states and authorizers to non-renew or revoke schools for financial, structural, or operational factors (4303(f)(1)(C)(i)(II)).

Guidance can remind state entities of this important change and provide examples of how applicants can comply with this requirement. Such examples may include:

- Referencing a state law or regulation;
- Referencing a binding authorizer policy document; or
- Including appropriate terms in charter school contracts or performance agreements.

Revise Guidance: Eligible Expenses

ESSA redefines allowable fund use for state entity grantees and for individual school subgrantees.

Guidance concerning allowable costs (Questions D-2, D-3, D-4, and D-4, Pages 15-17) needs to be subsequently revised to reflect the new ways individual school subgrantees can use funds, as authorized by ESSA 4303(h). This should, at a minimum, include an updated list of allowable expenses pulled from statute (such as preparing teachers and school leaders, acquiring supplies, equipment and educational materials, carrying out community engagement activities, acquiring school buses, and carrying out some types of facilities renovations). While we do not want the Department to provide an extensive list of what might be permissible, or to define “non-sustained costs,” it would be helpful to clearly communicate the increased amount of flexibility.

Guidance on state-level fund use (Question D-1, Page 15) should also be amended to clarify that, per Sections 4303(b)(2) and 4303(c)(1)(B), reserved administrative and technical assistance funds can now be used to support technical assistance and authorizer quality initiatives. This would entail inserting a reference to the new ESSA language. It would be helpful for this guidance to also reference new guidance on Authorizer Quality Initiatives, proposed on pages 2 to 4 of this letter, to serve as illustrative examples of the types of allowable activities these funds can support.

Revise Guidance: Lottery, Recruitment, and Admissions

ESSA statute 4303(c)(3)(A) clarifies that, under certain circumstances, charter schools receiving charter school program funds may use a weighted lottery as long as the use of such a lottery is not prohibited by state law. **Existing guidance (Question E-3, page 18) is outdated and reflects an old Department interpretation that is no longer consistent with current ESSA law. It must be revised to reflect these new ESSA laws.**

NACSA also encourages the Department to expand the definition of categories of applicants that can be exempted from lottery requirements (Question E-4, Page 20). An expanded definition of exemptions could include students from traditional schools or charter schools that (a) have been recently closed or (b) have been identified for additional comprehensive or targeted support. Research from the Center for Research on Education Outcomes (CREDO) on the impact of school closures on student performance shows that “the quality of the receiving school made a significant difference in post-closure student outcomes.” Some cities, such as New Orleans, have started using

universal enrollment systems that provide students in recently closed schools with a slight preference in charter school lotteries. We believe small lottery preferences such as these can help students from closed schools land at better charter schools, and guidance can clarify that such preferences are allowed. Such guidance would also be consistent with 4303(f)(1)(A)(iv), which supports procedures to help students from closed charter schools attend high-quality schools.

Recommendations for Implementation of the Newly Re-Authorized National Activities Program for FY 18 and beyond: National Leadership Awards

Relevant Citations

- Application for New Awards: CSP Grants for National Leadership Activities. Federal Register / Vol. 79, No. 134 / Monday, July 14, 2014 / Notices.

Description

Focus on strengthening charter school authorizing.

Time and again, thoughtful national organizations, like the Fordham Institute, National Alliance for Public Charter Schools, the Center for Research on Education Outcomes at Stanford (CREDO), and more, have, like us, noted the importance of quality authorizing for the growth of a quality charter school sector. Quality authorizing gives parents quality choices. Bad authorizing over-regulates schools, denies proposals for good new schools, and allows persistently failing schools to stay open. To grow great charter schools, we need to support efforts to improve authorizing by investing in projects that support the dissemination of best practices across three core principles:

- **Access:** More students have the equal opportunity to attend and benefit from a quality charter school.
- **Autonomy:** Charter schools have the necessary flexibility to innovate and adapt to meet the needs of their students.
- **Accountability:** Charter schools face tangible consequences based on their outcomes for students, families, and taxpayers.

Quality authorizing that follows these principles can have a significant impact on student outcomes. In multiple studies, CREDO has concluded that authorizers have an impact on charter school quality and that authorizing practices and actions contributed overall to improved student outcomes in multiple states.

Since 2012, when NACSA launched its *One Million Lives* initiative to improve authorizing, the percent of charter schools in the top half of state accountability systems has increased from 41% to 48%. In that same time period, national data shows that roughly 837,000 students are in better schools because of quality openings and closings. Two CSP National Leadership Activities Grants supported this important work. That is an enormous impact for the Charter Schools Program because of a modest focus on authorizing.

We encourage the Department to include priorities on charter school authorizing in future CSP National Leadership Award solicitations. This will ensure the Department of Education and the charter school sector continue to build on this strong record of success.

Recommendations for Implementation of the Newly Authorized State Entity Program for FY 18 and beyond

Relevant Citations

- Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities. Federal Register / Vol. 82, No. 57 / Monday, March 27, 2017 / Notices.
- Every Student Succeeds Act, Title IV, Part C—Expanding Opportunity through Quality Charter Schools. Section 4303. Grants to Support High-Quality Charter Schools.

Description

Include only statutory Competitive Priorities.

The FY17 State Entity Program included two additional competitive priorities for charter school oversight that are not in ESSA statute—Competitive Priority #1 and Competitive Priority #2. In order to receive points for these priorities applicants had to demonstrate that state law, regulations, or other policies required: (1) the periodic review of charter schools by their authorizer on a prescribed timetable; and/or (2) authorizers to employ several best practices in charter school management, such as performance contracts, annual audits, and strong renewal standards.

NACSA supports the goal of these priorities, which is to encourage quality authorizing and promote the use of several best practices in charter school authorizing. Such a goal is expressed throughout numerous sections of the new CSP authorizing language; it is emphasized in everything from application requirements and program assurances to statutory selection criteria, and even a statutory priority (Priority #8 in the FY17 competition).

While we support this goal, we also believe it is important for the Charter School Program to do what it can to model the types of innovative administration that we want to see in the charter sector. This means promoting new ideas and maintaining a commitment to streamline administration when possible.

It is with this in mind that we recommend that these two non-statutory competitive priorities be eliminated. We believe these goals are adequately addressed elsewhere in statute and will be vigorously represented when applicants are evaluated. We also believe it is important for competitive priorities to strike a balance between encouraging the adoption of policies and practices *already* known to advance program goals, and inspiring states to find *new* innovative approaches to advance those same program goals. Within the charter sector we know that means finding new ways to balance the core principles of access, autonomy, and accountability that make our schools unique. Competitive priorities that are too specific can have the unintended effect of discouraging applicants from pursuing innovation approaches, leaving applicants to perpetually jockey for an advantage by implementing the innovations of a previous era. We are worried this may have happened in previous SEA CSP competitions, where innovative practices concerning the periodic review of the highest-performing charter schools in Louisiana and Texas contributed to a year delay in grant approval.

We encourage the Department to take different actions to encourage quality authorizing and strong charter school oversight. This should include:

- Continued inclusion of a Competitive Preference Priority on Best Practices for Charter School Authorizing.
- A continued emphasis on charter school oversight and charter school quality in the selection criteria and related scoring rubric. This includes robustly evaluating applications and awarding points only to applicants that will: implement strong programs to support authorizing efforts in the state; work with authorizers to adequately oversee all charter schools in the state; and improve educational results for students.
- Regular and recurring monitoring of awardees to ensure they continue to fulfill their program assurances, particularly those concerning authorizer quality and charter school oversight [Sections 4303(f)(2)(C), (D), (E), and (G)].
- Issuing guidance on issues of Authorizer Quality, as outlined on pages 2 to 4.

This will ensure grantees devote the necessary attention and resources to these important goals without the introduction of extra-statutory priorities.