



Protecting Accountability and Autonomy for Charter Schools under ESEA Flexibility

In response to input from NACSA, the U.S Department of Education recently released guidance stating that states implementing waivers under the Elementary and Secondary Education Act (ESEA) Flexibility process should not use their new plans to undermine charter school accountability and autonomy.

NACSA looks forward to working with states to develop and implement plans that support accountability and autonomy for charters and that do not prevent authorizers from taking necessary action to close failing schools.

Background

The Department is promoting flexibility under ESEA. Under their “ESEA Flexibility Program,” the Department is awarding states with waivers to the No Child Left Behind Act (NCLB). State plans to alter accountability systems that are proceeding based on these waivers could threaten charter school accountability and autonomy.

Under the waiver plan, new state systems may task failing charter schools with implementing improvement plans when the schools’ authorizers would otherwise have acted to close them. Rather than looking to charter school accountability plans, charter contracts, authorizer practices, and state law and regulations regarding charter school accountability, states may feel bound to simply apply the same remediation practices to all schools, charters and traditional schools alike. This would undercut the autonomy of charter schools and greatly undermine authorizer authority.

What Happened?

NACSA communicated its concern that these new improvement plans and their timelines could undermine the ability of authorizers to close those schools according to the terms of their charter contracts while they implemented new plans. There is also a concern that the implementation of such plans, as well as related teacher evaluation systems, would undermine charter school autonomy. In ongoing consultation with NACSA, Department officials made it clear that they agreed with NACSA and hoped to avoid this harm to the charter movement.

NACSA and the Department believe that all charter schools are accountable for meeting performance expectations under state accountability systems. However, as the Department explained in its guidance, the accountability provisions in each state’s charter school law and each school’s charter contract take precedence over the implementation of less-severe sanctions or slower timelines that states may institute under ESEA Flexibility.

In the new guidance, the Department has clarified that:

1. States are to include charter schools in their new state systems. According to the guidance:

ESEA flexibility affects public charter schools (including public charter school LEAs and public charter schools within a regular LEA) in the same manner as it does all other LEAs and public schools.

2. Regardless of a school's identification and involvement in these other processes, charter authorizers retain the authority to act according to state charter school laws act on a timely basis to close failing schools according to the terms of their charter contracts. The guidance explains:

A charter school that is performing low enough to be considered a priority or a focus school will face revocation of its charter by its authorizer. When a charter school authorizer has indicated that it intends to decline to renew or intends to revoke a charter for a particular charter school based on lack of progress towards improved student academic outcomes or other significant issues cited by the authorizer, the authorizer's decision to do so supersedes any designation from the SEA that such a school is a focus or priority school, as consistent with any applicable State law. In such cases, the charter school would not implement the interventions associated with the SEA's ESEA flexibility request, and would instead proceed towards school closure as designated by the authorizer.

3. Authorizers are free to apply higher standards to charter schools they oversee than are applied in state systems. According to the guidance:

...we encourage charter school authorizers and SEAs to work together so that charter school academic performance requirements are at least as rigorous as those used to define priority and focus schools. The Department encourages SEAs to clarify the role they will play in reviewing and supporting or closing persistently low-performing charter schools when authorizers fail to close them.

--and--

Nothing in ESEA flexibility prohibits the continuation of existing charter contracts or the development of future contracts that exceed the minimum requirements of an SEA's system under ESEA flexibility. If a charter school's contract with its authorizer imposes more immediate or rigorous consequences than an SEA's differentiated accountability system would impose, the authorizer should take appropriate steps to ensure that the charter school abides by the charter contract as specified in the State's charter school law.

4. In states with adequate charter school accountability, teacher evaluation systems implemented under these waivers need not apply to charters and charter schools in these states should have the flexibility to implement alternatives. According to the guidance:

...if the SEA can demonstrate to the Department that all charter schools in its State are held to a high standard of accountability through a strong charter school authorizer system... the SEA may allow its charter schools to develop and implement evaluation and support systems that meet all of the elements of

Principle 3, but that do not necessarily adhere specifically to the SEA's guidelines.

What's Next?

The important work going forward will take place in states. For states that already have waivers, state departments of education are going to be working out the details of how they will act on their waivers. Other states are likely to draft and submit additional waivers. In both circumstances, states should clarify how they will act to safeguard accountability and autonomy among their charter schools.

Charter school authorizers, charter school operators, charter support organizations, and other stakeholders should work with their state agencies to ensure that each state's plan addresses these concerns.

Additional Resources

The Department's Guidance is available at:

<http://www.ed.gov/sites/default/files/eSEA-flexibility-faqs-addendum4.doc>

For more information on this issue, see NACSA's materials at:

<http://www.qualitycharters.org/ESEA-flexibility>