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August 1, 2016

Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW. Room 3C106
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

The purpose of this letter is to provide the comments of the National Alliance for Public Charter Schools (National Alliance), in partnership with the organizations that have signed this letter, regarding the Department's proposed regulations on Title I accountability and state plans under the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA). The National Alliance is the leading national organization committed to advancing the charter public schools movement.

The National Alliance commends the Department for moving ahead expeditiously with the implementation of ESSA. The new law, if administered in a manner consistent with Congressional intent, will give states, school districts, and schools, including charter public schools, greater flexibility in implementing programs that meet their particular needs, while ensuring a strong focus on improving educational outcomes for historically low-performing student populations. Further, it provides new opportunities to leverage federal resources in order to expand access to seats in high-quality schools for students in struggling schools. We appreciate the Department's effort to ensure that regulations are promulgated in a timely manner in order to extend the benefits of the new law to families as quickly as possible.

There are provisions that we support, as well as provisions that we believe need revision, in the proposed regulations published in the May 31, 2016 Federal Register. Our comments are on the specific provisions that are most important to charter schools and are as follows:

1. <u>Section 200.12 Single state accountability system</u>

We support the Department's inclusion of a reference to charter schools in section 200.12(a)(1), as well as the statement in section 200.12(c) providing that the Title I accountability provisions as they relate to charter schools must be overseen in accordance with state charter school law. While these provisions are taken from the statute (and have been law since 2002) and thus, technically, no regulatory action is needed, their inclusion in the section on the single state accountability system

will reiterate to state and local officials how charter schools are to be treated as those officials develop and implement their new accountability systems under ESSA.

Moreover, we believe that the statutory language is sufficient to ensure that students in charter public schools are held to the same expectations as all other students, as required under section 1111(b)(1)(B). Additional regulatory language is not required to clarify this point and may only confuse accountability for charter schools, since ESSA is not the only source of charter school accountability for charter schools. ESSA does not require that accountability metrics for charter schools be *identical* to those for regular public schools; charters should be free to set additional expectations.

The statutory language will ensure that, for Title I purposes, a charter school meeting the accountability requirements set forth in its charter will not be exempt from ESEA accountability requirements—nor will meeting ESEA requirements exempt a school from the performance targets in its charter. For example, a school that meets the terms of its charter but, under the state's accountability system, has subgroups performing at such a level to be identified for targeted support and improvement would be so identified and would develop and implement a plan to improve those subgroups' performance, even if the school meets the terms of its charter. Similarly, if a charter school meets ESEA requirements but fails to meet the performance targets in its charter, the authorizer could still close the school. These provisions should be implemented consistent with guidance issued to states with ESEA waivers: in the case of charter schools, an authorizer's decision to revoke or decline renewal of a charter based on academic performance will override the intervention by the state. In other words, low-performing charter schools can be shut down, rather than subject to intervention. Further, timelines associated with interventions for comprehensive and targeted support and improvement should not delay the authorizer's ability to close the charter school through its own charter review or revocation processes

2. <u>Section 200.19 Identification of schools</u>

Proposed section 200.19(a) would require that a state identify, for comprehensive support and improvement, any high school with less than a 67 percent graduation rate based exclusively on the school's four-year adjusted cohort graduation rate. **We strongly object to the proposed requirement that these identifications be based entirely on the four-year rate, which would be inconsistent with the way in which the law and proposed regulations otherwise address the graduation rate, with the Department's previous regulations on this issue, and with sound and thoughtful educational practice.** Furthermore, it would create a strong disincentive to open new charter schools to serve students at risk of dropping out, or who have dropped out, contrary to a statutory priority in the Charter Schools Program (section 4303(g)(2)(E)) to serve such students.

We take this position because a significant number of charter schools, as well as other public schools, have a specific mission of educating recent immigrants, adjudicated youth, re-enrolling dropouts, or other populations who can graduate but are unlikely to do so in four years. According to the latest data from the Common Core of Data, 12 percent of charter high schools are "alternate" schools with a mission to serve at-risk populations – and the proportion is likely higher than what is captured in this survey. In addition, there are other charter high schools that do not have such a special mission but enroll many students who are "under-credited" at the time they enter the school and thus may

need additional time before they can graduate. The statute recognizes the challenges these schools face by requiring students to attend a school for half an academic year before they are included in a cohort, but this provision is not sufficient to ensure appropriate accountability for serving credit-deficient students: half of a school year in a particular school is not typically enough to help these students get back on track towards graduating from high school. Nor is it sufficient to simply maintain that states can develop "different" interventions if alternative schools are identified for comprehensive support and improvement (section 200.21(g)): it does not make sense to intervene and "fix" schools that have a successful track record in serving students who are credit deficient.

These types of schools – both alternative schools and other schools that serve large populations of students who face special challenges -- are not "dropout factories," the label given to high schools with high dropout rates, which were the impetus for statutory language calling for schools with low graduation rates to be identified for comprehensive improvement. To the contrary, when schools serving such students succeed they should be considered "graduate factories," even if their students do not graduate by age 17 or 18.

Under the Department's proposal, many if not all of these schools would be identified for comprehensive improvement (essentially given a label of failure, even if they are successful); forced to divert their energies from educating students to coming up with a new improvement plan; and then have to implement new interventions (even if what they are already doing is highly successful), all because of the demographics of their students or their educational missions, not their performance. In addition, the proposed rule would disproportionately identify high schools when funds may be spent more effectively addressing the failure of elementary and middle schools to prepare students to succeed in high school. According to the Notice of Proposed Rulemaking (NPRM), the Department bases its proposal on the need for uniformity (even though it would create inconsistency between the graduation rate measure a state uses for its long-term goals, interim measures of progress, and annual indicators versus the measure used to identify schools) and a desire to "signal the importance of on-time graduation as a key determinant of school and student success" (even though "on-time" graduation, defined as graduation by age 17 or 18, is often not a meaningful concept for the populations these schools serve). This proposed requirement instead works at cross purposes to the intent of the statute: using the four-year adjusted cohort graduation rate as the sole trigger for identifying high schools for comprehensive intentions would systematically misallocate scarce intervention resources.

The Department's proposal would be harmful to the mission of many successful high schools, both charter and non-charter. State departments of education should have the ability to look deeper into the specifics of a school's graduation performance in order to better target scarce intervention resources to those high schools that actually require intervention, and not to those schools that simply serve populations such as credit-deficient students who became credit-deficient at a different school. The four-year adjusted cohort graduation rate is not a finely enough tuned metric for this purpose, which is why the statute permits a state to use an extended rate for its long-term goals, interim measures of progress, and annual indicators.

We strongly recommend that the Department grant states as much flexibility as permitted in the statute, which does not define the rate to be used, since even using extended-year rates might systematically penalize dropout recovery programs that serve over-age students. If there must be

parameters on the definition in the final rule, we urge that it permit states to use the four-year adjusted cohort rate or an extended-year rate, or a combination of both.

In addition, we recommend that the flexibility that enables states to use a different methodology to differentiate schools in section 299.17(b)(8) be expanded to cover all elements of a state's accountability system, including the 67% rule, not just performance differentiation as it is currently drafted.

3. Section 200.21 Comprehensive support and improvement/Section 200.23 State responsibilities to support continued improvement

In section 200.21(d)(3), we strongly support the Department's proposed inclusion of "converting the school to a public charter school" as one of the interventions that a local educational agency (LEA) may take to improve a school that has been identified for comprehensive support and intervention. This language would clarify that conversion to a charter school is an allowable intervention and, indeed, might be the best course of action for a low-performing school that would benefit from the introduction of new leadership, instructional program, and management. We also support the Department's proposed inclusion of similar language in section 200.23(c)(1).

Section 200.21(d)(3) also includes one other proposed intervention related to charter schools, specifically: "in the case of a public charter school, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with state charter school law." While NAPCS supports the closure of persistently low-performing charter schools (and agrees that Title I improvement activities should not delay closure), we believe that the proposed language might actually confuse rather than support charter school accountability. Specifically, it could be read as authorizing closures that are not carried out consistent with school's charter, such as automatic closure of charter schools that are among a state's lowest-performing Title I schools. **We therefore recommend revision of the language as follows:**

> "in the case of a public charter school, ***consistent with the school's charter and with State charter school law working with the applicable authorized public chartering agency to bring about improvement, which may include such agency revoking*** or non-renewing the school's charter, or ***restarting the charter school with new governance, which may include hiring a new charter school operator***, consistent with ***the terms of its charter and*** State charter school law."

We also recommend the same revision to the same phrase in section 200.23(c)(1).

In addition, the regulations should clarify that states and districts can implement comprehensive improvement efforts that address not only a school that is in need of comprehensive support and improvement but also the schools that feed students into that school. For example, a charter operator that restarts a middle school identified for comprehensive support and improvement should be able to partner with the LEA or state educational agency (SEA) to also address needs of the elementary school or schools that have been identified for targeted improvement and that feed into

the middle school so that turnaround efforts can be sustained over a longer period of time. Labels should not constrain improvement efforts or the use of Sec. 1003(b) funds.

Specifically, we recommend the addition of the following language to the proposed regulations:

> In section 200.21(d), renumber paragraphs (5) through (7) as (6) through (8), respectively, and insert a new paragraph (5) reading as follows:
>
> > ***"(5) if the school is a high school or middle school, may address the needs of schools that feed students into that school, notwithstanding whether those 'feeder schools' are identified for comprehensive support and improvement;"***
>
> In section 200.22(c), renumber paragraphs (5) through (8) as (6) through (9), respectively, and insert a new paragraph (5) reading:
>
> > ***"(5) if the school is a middle or high school, may address the needs of schools that feed students into that school, notwithstanding whether those 'feeder schools' are identified for comprehensive support and improvement;"***

4. <u>Section 200.23 State responsibilities to support continued improvement/Section 200.17 Accountability, support, and improvement for schools</u>

We note that proposed section 200.23(d)(1) includes, in addition to the language discussed above, an authorization for the SEA to take action to initiate additional improvement:

> "in any LEA*, or in any authorized public chartering agency consistent with State law*, with a significant number of schools that are consistently identified for support and improvement under §200.19(a) and are not meeting exit criteria established under §200.21(f) of a significant number of schools identified for targeted support and improvement under §200.19(b)…" (emphasis added)

In addition, section 299.17(e)(3) would require that a state's ESEA consolidated plan must describe:

> "Any additional improvement actions that State may take consistent with §200.23(c), including additional supports or interventions in LEAs, *or in any authorized public chartering agency consistent with State 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." (emphasis added)

We strongly oppose the addition of this language, which is not in the statute. Both of these provisions appear to equate authorized public chartering agencies with LEAs, that is, to assume that both operate schools and both should be held responsible (and forced to take action) if a school is low-performing or has low-performing subgroups. However, the role of a chartering agency and its legal relationship with both the SEA and the schools it authorizes are very different from (and frequently more complicated than) those of an LEA. Moreover, non-LEA authorizers do not receive Title I funding and aren't subject to these regulations. We are concerned that this section will be

interpreted as allowing or encouraging a state to directly intervene in the operations of an authorizing agency, much like a state may choose to directly intervene in the operations of a traditional school district. State intervention in a traditional school district has included the replacement of district personnel or the redistribution of district staff among schools operated by the school district—actions that would be wholly inappropriate when applied to authorizers or the portfolio of charter schools they oversee. This type of intervention is not only inappropriate; it is not allowed by any method of authorizer accountability in use across the country.

This language would also likely discourage authorizers from including in their portfolios schools that serve hard-to-serve student populations, or that are restarting a struggling traditional public school. Authorizers with large portfolios of charter schools are more likely to have a "significant number" of schools identified for support based on their size alone. These authorizers are more likely to have the skills and experience needed to oversee schools at risk of identification, but, as a result of this rule, would have a significant disincentive to do so.

We are concerned that the proposed language would unfairly jeopardize the operations of these agencies, and encourage SEAs to oversee their operations in a manner not envisioned in state charter school laws. Authorizer oversight and accountability should be addressed as part of state charter school law, not Title I, where the nuances of state governance cannot be addressed and the risk of unintended consequences is high. Charter schools are already included in Title I accountability and intervention requirements: this language could only serve to hinder the ability of schools and authorizers to serve students well. Congress addressed issues of authorizer quality in the Charter Schools Program and chose not to do so in Title I. **We thus recommend that the language we have italicized in the two sections above be deleted in the final version.**

5. <u>Section 200.24 Resources to support continued improvement</u>

We recommend that the Department revise proposed section 200.24(d)(2), by adding a new clause (iii) reading as follows:

> ***"(iii) Using funds that it reserves under section 1003(a), directly provide for the creation of new, replicated, or expanded charter schools to serve students enrolled in schools identified for comprehensive support and improvement, and other students in the local community, provided that:***
>
> ***"(A) The SEA has the authority to take such an action under State law or, if the SEA does not have that authority, the SEA has the LEA's approval to use the funds in this manner; and***
>
> ***"(B) Such charter schools will be established and operated by non-profit entities with a demonstrated record of success (particularly in serving students from communities similar to those that would be served by the new charter schools), which the State shall determine through a rigorous review process."***

This language would be consistent with other provisions of the proposed regulations that support the concept of making charter school options available to students who would otherwise be enrolled in low-performing schools. It would take a different approach than just authorizing conversions, by

making it possible for students enrolled in comprehensive support and improvement schools (as well as other students in the neighborhood or local community) to have the opportunity to transfer to a charter school run by a highly successful operator. We emphasize that the language would allow an SEA to use section 1003 funds for this purpose with the approval of the affected LEA, unless state law gives the SEA the authority to take such an action without LEA approval. (It would thus be somewhat parallel to the language currently in section 200.24(d)(2) allowing the SEA, with the LEA's concurrence to provide school improvement activities through external partners). **We strongly recommend that the Department adopt this recommendation.**

6. <u>Section 200.30 Annual state report card</u>

Proposed section 200.30(a)(2)(ii) would require that the Title I state report card include, in addition to the numerous data items mandated in the statute, information for each authorized public chartering agency in the state on:

> (1) how the percentage of students in each student subgroup for each charter school authorized by the agency compares to the percentage for the LEA or LEAs from which the school draws a significant portion of its students, or the geographic community within the LEA from which the charter school is located, as determined by the state; and
> (2) how the achievement of students in each school authorized by the agency compares to the achievement of the students in the LEA or LEAs from which the school draws a significant portion of its students, or the geographic community within the LEA in which the school is located, as determined by the state.

We strongly oppose the inclusion of this requirement, which is not authorized by the statute. The Department bases this proposal on a desire "to provide transparency." (No further justification is provided in the NPRM.) We, too, support greater transparency, regarding both charter and non-charter schools, but this requirement would result in the reporting of misleading data. Moreover, the proposed requirement appears to be based on the premise that charter schools should look the "same" as district public schools in close proximity, when by definition charter schools are open enrollment. Lastly, the proposed requirement that is not in the statute, and would not equally apply to all public schools – only charter schools would be included.

Charter schools, by design, are schools of choice. They must offer open enrollment. 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 must conduct a lottery if oversubscribed. It would thus be difficult to gain meaning from a comparison analysis, for two significant reasons.

- **It would be difficult to identify the appropriate school or schools with which to compare a charter school to in a uniform manner.** For example, two charter schools in the same community may serve very different areas and very different populations. A language immersion school might serve students from a large geographic area, while a conversion charter school might serve students within just a few square blocks. 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. We are concerned

that, faced with this task, states will default to the easiest comparison, or possibly a biased comparison protocol, instead of the right comparison. This would make the reported data unhelpful, and possibly misleading for parents, educators and policy makers.

- **A comparison analysis would be complicated by the parental act of choosing a charter school.** Within the education research community this problem is referred to as "selection bias", students at charter schools all share an attribute—the act of choosing a charter school—that is not shared by most students at a similar district public school. Education research models used by organizations like CREDO, Mathematica, and the Department to study the efficacy of charter schools use a variety of complex research methods to control for selection bias and ensure any comparison is valid and accurately presents charter school performance. This important step would be missing in the proposed comparison reporting.

The most important question is not who is enrolled in a charter school; it is whether all students and families who *may wish* to enroll have the opportunity to enroll – only then is the parent's choice a meaningful one. The comparison data that the Department is asking for would not reflect this factor because the data would confuse and conflate the decision to enroll with the opportunity to enroll. As such, comparison data may be one indicator of meaningful access but comparison data are not the correct, best or only frame with which to evaluate equity.

In addition, when charter schools are located in school districts that have a proven history of race-based discrimination and remain under federal desegregation orders or federal consent decrees, those charter schools are bound by the terms of those existing desegregation orders or consent decrees and, therefore, are subject to subgroup enrollment targets within a range (usually +/- 10%) of the district's subgroup enrollment percentages. However, it is absolutely critical to note that, even under such conditions, satisfying +/- targets is ***not*** the only indicator of a charter school's accessibility. Rather, federal courts and enforcement agencies consider a range of factors in assessing whether a charter school – with no prior history of discrimination or exclusion – is available to all students and is enrolling students equitably. Federal courts and federal enforcement agencies treat charter schools with this sophistication and nuance in order to honor and respect the role of parent choice in electing to enroll and attend a charter public school. Accordingly, it is necessary and vitally important to conclude that relying strictly or exclusively on comparison data is insufficient in measuring equity.

Ultimately, it is a state issue whether to place enrollment requirements on charter schools. A number of states have established subgroup enrollment targets for charter schools – through state statute, regulation, or authorizer policy. The decision to require this type of subgroup proportionality between charters and their host district LEAs (or the applicable geographic area inside their host district LEAs) is one that is best left to state law and policy-makers as they navigate and respond to their constituents' needs and demands. It is not possible to create a one-size-fits all reporting requirement that will accommodate the nuances of these state policies.

In conclusion, given the lack of statutory authority and the methodological and implementation issues we describe above, neither would it be appropriate to apply this reporting requirement only to charter schools in the context of Title I state report cards, nor would it enhance the implementation of ESSA or provide useful information consistent with the purposes of charter schools as schools of

choice. **Therefore, we recommend that it be deleted from the final rule.** We would be pleased to work with the Department on development of strategies for collecting data in a more methodologically sound manner (such as through an NCES sample survey, rather than the state report card) in order to provide information on enrollment and achievement in all schools of choice.

7. <u>Section 299.18 Supporting excellent educators</u>

Section 299.18(c) would promulgate regulations for implementation of the statutory requirement that a state's Title I plan describe how low-income and minority children enrolled in Title I schools are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and describe the measures the SEA will use to evaluate and publicly report on the SEA's progress in this area. Pursuant to that requirement, the proposed regulations would require SEAs: (1) to develop definitions of "ineffective teacher," "out-of-field teacher," "inexperienced teacher," "low-income student," and "minority student"; (2) to report on the extent to which students in the two student populations are taught by teachers in the three categories (compared to other students in non-Title I schools); and (3) to take certain actions when the SEA finds that low-income or minority students in Title I schools are taught disproportionately by teachers in three categories.

We request that the final regulations include language clarifying that the SEAs must carry out these requirements, as they affect teachers in charter schools, in a manner consistent with state charter schools law and all other state laws and regulations governing public school teacher evaluation. We make this request because we have learned that, in some states, SEA officials have begun to read the reauthorized law as requiring that, for example, any statewide teacher evaluation system put in place for the purpose of meeting the ESSA teacher equity language must include all teachers, including charter school teachers, notwithstanding the language of state statute. We disagree, and do not believe this is what the law says, or what it was intended to do.

Because of these misunderstandings in the states, we believe our requested clarification is necessary. We make the same request with regard to section 200.37, which establishes requirements for state and local report card data on teacher equity. Specifically, we request the following changes.

In section 299.18(c), after paragraph (2), insert a new paragraph (3) reading:

> ***"(3) The SEA must ensure that the definitions it establishes under paragraph (2), as they apply to teachers in public charter schools, are consistent with the State's charter schools law and all other State laws and regulations governing public school teacher evaluation."***

Renumber current paragraphs (3) through (7) as (4) through (8), respectively, and make other conforming changes.

In section 200.37, after paragraph (2), insert a new paragraph (3) reading:

> ***"(3) A State must ensure that the definitions it adopts under paragraph (2), as they apply to teachers, principals, and other school leaders in public charter schools, are***

consistent with the State's charter schools law and all other State laws and regulations governing public school teacher evaluation."

Thank you for the opportunity to comment on these very important proposed regulations. If I can provide additional information, please do not hesitate to contact me.

Sincerely,

National Alliance for Public Charter Schools
Achievement First
Alliance College-Ready Public Schools
Arizona Charter Schools Association
Aspire Public Schools
Audubon Center of the North Woods
Blackstone Valley Prep Mayoral Academy
Breakthrough Schools
Brooke Charter Schools
California Charter Schools Association
Center for School Change
Charter Schools Development Center
Collegiate Academies*
Colorado League of Charter Schools
Delaware Charter Schools Network
Democracy Prep Public Schools
Doral Academy Charter Schools
DSST Public Schools
Education Evolving
FOCUS (Friends of Choice in Urban Schools)
Georgia Charter Schools Association
Great Hearts Academies
Green Dot Public Schools
Idaho Charter School Network
IDEA Public Schools
Illinois Network of Charter Schools
International Studies Charter Schools
KIPP
LEARN Charter School Network
Louisiana Association of Public Charter Schools
Magnolia Public Schools
Massachusetts Charter Public School Association
Mater Academy Charter Schools
Michigan Association of Public School Academies
Milwaukee Charter School Advocates
Missouri Charter Public School Association
Network for Quality Education (Indiana)
New Jersey Charter Schools Association
New Mexico Coalition for Charter Schools
New York City Charter School Center
Noble Network of Charter Schools
North Carolina Public Charter Schools Association
Northeast Charter Schools Network
Oklahoma Public School Resource Center
Pinecrest Academy Charter Schools
Public Charter School Alliance of South Carolina

REpublic Schools *

ResponsiveEd

Rhode Island League of Charter Schools

Thurgood Marshall Academy

Rocketship

SLAM Charter Schools

Somerset Academy Charter Schools

Success Academy Charter Schools

Tennessee Charter School Center

Texas Charter Schools Association

Thomas B. Fordham Institute—Ohio

Uplift Education

Washington State Charter Schools Association

YES Prep Public Schools

*updated on August 18, 2016