



Final ESSA Accountability and Reporting Rules¹ Summary of Major Changes on Charter School Accountability Issues December 19, 2016

Wins

The Department of Education made significant changes to address the concerns we raised about the role of the SEA and the authorizer and appropriate interventions for identified schools.

1. New language defining SEA role in charter accountability

We supported 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.

The final rules added new language that further clarifies that if an authorized public chartering agency, consistent with State charter school law, acts to decline to renew or to revoke a charter for a particular charter school, the decision of the agency to do so supersedes any notification from the State that the school must implement a comprehensive or targeted support and improvement plan under §§ 200.21 or 200.22.

(c)(1) The accountability provisions under this section must be overseen for public charter schools in accordance with State charter school law.

(2) In meeting the requirements of this section, if an authorized public chartering agency, consistent with State charter school law, acts to decline to renew or to revoke a charter for a particular charter school, the decision of the agency to do so supersedes any notification from the State that such a school must implement a comprehensive support and improvement plan or targeted support and improvement plan under §§ 200.21 or 200.22, respectively.

2. Improved language addressing charter school conversions and intervening in low-performing charter schools (§200.21 and 200.23)

In response to our comments addressing appropriate interventions in charter schools identified for comprehensive support and improvement, the Department added our recommended language.

¹ Link to final rule: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-29/pdf/2016-27985.pdf>

These changes clarify the language regarding the revoking or non-renewing of a public charter school’s charter by adding language about public charter schools working in coordination with the applicable authorized public chartering agency to revoke or non-renew a school’s charter and ensuring actions are consistent with State charter law and the school’s charter. It also adds charter school conversion as an explicitly permitted strategy.

200.21 Comprehensive support and improvement

(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., **converting the school to a public charter school**; changing school governance; closing the school; and, in the case of a public charter school, **working in coordination with the applicable authorized public chartering agency, revoking or non-renewing the school’s charter by its authorized public chartering agency consistent with State charter school law and the terms of such a school’s charter**) to improve student outcomes in the school...”

3. Technical changes language specifying that charter schools are subject to the same single accountability system as public schools.

ED also revised § 200.12(b)(5)–(6) to further specify that the requirements for annual meaningful differentiation and identification of all public schools include all public charter schools, and made a corresponding change to § 200.18(a).

(5) Be the same accountability system the State uses to annually meaningfully differentiate all public schools, **including public charter schools**, in the State under § 200.18, and to identify schools for comprehensive and targeted support and improvement under § 200.19; and

(6) Include the process the State will use to ensure effective development and implementation of school support and improvement plans, including evidence- based interventions, to hold all public schools, **including public charter schools**, accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24.

Partial Progress

4. Accountability and graduation rates

In our comments (Issue #2) we strongly objected to proposed §200.19(a), which requires 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. The

Department did not change this language, but offered additional flexibility elsewhere in the regulation to develop appropriate accountability metrics for certain types of schools:

Comments and Responses, p. 86137: “.. we recognize that for a small subset of schools that serve unique populations of students, an extended-year rate may be a more appropriate indicator of a school’s performance, and we have revised § 200.18(d)(1)(iii) to clarify that States have flexibility to develop and implement alternate accountability methods—which may include the use of extended-year graduation rates—for schools designed to serve special student populations, including alternative schools, dropout recovery programs, and schools for neglected and delinquent youth. Under this provision, a State could, for example, propose through its State plan to use a five- or six-year adjusted cohort graduation rate to determine if an alternative or dropout recovery school’s graduation rate was 67 percent or less for the purposes of identifying those schools.

Given this flexibility, the Department does not believe that requiring States to use the four-year adjusted cohort graduation rate will result in the inappropriate or over-identification of schools that primarily serve special populations of students.”

Regulation: § 200.18(d)(1)(iii) includes a description of the kinds of schools that can access this flexibility: (D) Schools that are designed to serve special populations (*e.g.*, students receiving alternative programming in alternative educational settings; students living in local institutions for neglected or delinquent children, including juvenile justice facilities; students enrolled in State public schools for the deaf or blind; and recently arrived English learners enrolled in public schools for newcomer students);

In addition, the Department removed the seven-year cap on calculating extended-year graduation rate – there isn’t a time limit. Even though the example in the comment and responses section only alludes to a five or six year rate, it could be longer.

Concerns Not Addressed

The following issues were not addressed and will be a top priority should the Trump Administration develop a non-enforcement policy or rewrite any portion of these regulations.

- 5. Section 200.23 State responsibilities to support continued improvement/Section 200.17 Accountability, support, and improvement for schools.** In our comment letter (see issue #4) we raised concerns about the language treating authorizers as LEAs - operators of schools – should they have a significant number of schools identified for improvement. The final rule includes this language.

200.23(d)(1) includes, 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)

6. Charter-specific reporting requirements in Section 200.30 in the annual state report card

Section 200.30(a)(2)(ii) requires 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.

See issue #6 in our comment letter for a discussion of our concerns with this language. The Department did not make any changes in response to our concerns.

Unclear Implications

7. Section 299.18 Supporting excellent educators

Section 299.18(c) sets regulations for the 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. In our comments we requested 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. The Department did not make this change in their final rule, but they did say in their response to our comments that there is sufficient latitude to define these terms consistent with state law governing charter school teacher credentials. We anticipate that this could be provided to states in the form of accountability guidance.

Comments and responses, page 86206: “As a condition of receiving title I, part A funds, an SEA must ensure compliance with all applicable statutory and regulatory requirements, including the requirements in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, and § 299.18(c) of these final regulations. We note that under the final regulations, each SEA and, in the case of the term “ineffective teachers” **in States that elect to provide LEAs with statewide guidelines for defining this term in lieu of providing a statewide definition, districts, have substantial latitude in defining the terms ineffective, inexperienced, and out-of-field in a manner that is consistent with State charter schools law and all other State laws and regulations governing public school teacher evaluation.**”