



# Impact of ESSA Provisions on Authorizing



The National Charter School Resource Center ([www.charterschoolcenter.ed.gov](http://www.charterschoolcenter.ed.gov)) is dedicated to supporting the development of high-quality charter schools. The NCSRC provides technical assistance to sector stakeholders and has a comprehensive collection of online resources addressing the challenges charter schools face. The NCSRC is funded by the U.S. Department of Education and led by education consulting firm Safal Partners.

### Prepared By:



Safal Partners ([www.safalpartners.com](http://www.safalpartners.com)) is a mission-driven strategy consulting firm that supports education reform efforts at the federal, state, district, and school levels.

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## Summary

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Charter schools face high-stakes accountability. When charter schools fail to perform as expected, including as measured on state tests, authorizers are often expected to close them. While the details of charter school oversight are shaped by each state's charter school policy, federal law influences how states test children and evaluate all public schools, including charter schools. Most charter school authorizers place considerable weight on data drawn from their state accountability system when evaluating charter schools. This means that federal policy influences state accountability systems for all public schools, which then affect charter school accountability. This paper explores the possible impact of new federal and state policies on the charter school sector.

In 2015, Congress revised the Elementary and Secondary Education Act (ESEA), through the Every Student Succeeds Act (ESSA). The new federal law required states to submit plans describing how they would revise their systems for identifying and intervening in low-performing public schools.

As these plans were being developed and implemented, the U.S. Department of Education (ED) heard from stakeholders who expressed concern that challenges could arise in charter school accountability due to a failure by states to align their ESSA plans to implement federal policy with their state charter policy. They asked ED to release guidance to help states align these policies to ensure the new state approaches did not undermine charter school accountability, while also protecting charter school autonomy.

To better understand how things were developing in the field, ED asked the National Charter Schools Resource Center (NCSRC) to study these issues and to explore the types of challenges that could arise.

The first section of this paper analyzes policy and authorizer practice to describe how federal policy affects state accountability systems and how charter school authorizers use data from state accountability systems to evaluate charter schools. This first section explores potential challenges that could arise for authorizers making high-stakes decisions about charter schools if federal and state policy is not aligned or designed to accommodate charter school accountability. This includes a discussion of how charter policies and state incentives are expected to work; the impact of incentives affecting states applying for CSP funding that may undermine charter accountability; and a series of technical issues that are affected by evolving state testing systems. The section closes with potential challenges that may arise.

The second section of this paper is based on six case studies of state-level implementation. In a series of interviews, people discussed a variety of challenges and opportunities presented by ESSA in their state. Interviews explored problems that arose and how they were addressed. Charter stakeholders also discussed potential promising practices to leverage the opportunities presented in the implementation of ESSA. These cases are organized based on the states' authorizing structure, which appears to be linked to people's attitudes about ESSA implementation and charter school accountability. The case studies include the following takeaways that may be worth exploring further or considering for application in other settings:

- **Florida:** A prescriptive state system for charter school oversight leaves districts feeling exposed to challenges if they exercise rigorous charter school oversight without revised

materials. Further guidance from ED or the state may be necessary to clarify expectations for both charter schools and authorizers.

- **California:** A unique state approach to charter school oversight that is less standardized than most states could leave California schools and authorizers vulnerable to increased conflict over arbitrary performance expectations under the state’s new accountability system.
- **Arizona:** A single authorizer with a strong reputation and the state education agency (SEA) can work together in a mature market where family choice adds a layer of accountability.
- **Washington, DC:** A city with a strong authorizer overseeing half the local public schools collaborates with the SEA office, using a Memorandum of Agreement (MOA) that clarifies each party’s role that may be a model for other settings.
- **New York:** A state with a few authorizers with strong practices can benefit from collaboration and coordination. Alternative measures and adjustments in accountability systems for Alternative Education Campuses (AECs) are also needed in the field.

Finally, section three presents a series of observations based on these case studies as well as recommendations for ED and state leaders. Based on this analysis and on requests from diverse stakeholders in the field, this report concludes with two sets of recommendations. The first address the need for tools and materials that help authorizers navigate these issues. The second involves requests for guidance from both ED and states.

1. **Support the development of tools and materials for charter school oversight.** This includes the targeting of resources from the State Entity (SE) grants under the Charter Schools Program (CSP) that should be used to support the development of oversight tools, such as performance frameworks.
2. **ED and states should issue guidance on these issues in general as well as guidance on specific topics:**
  - a. Roles and Responsibilities of stakeholders in the states;
  - b. Handling performance data on non-academic issues; and
  - c. The treatment of AECs.

## Federal Policy and Charter Accountability

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This section describes three issues related to federal policy that affect charter accountability:

- Differences between charter school accountability and ESSA-based accountability applied to all public schools, including the impact of lower stakes under ESSA and the impact of state incentives to win CSP competitions on charter policy;
- Technical issues in charter school accountability, including appeals, delays in testing and their impact on measurement of student growth, and the treatment of alternative schools; and
- Potential challenges in charter school accountability and autonomy.

## How Charter School Accountability is Different from ESSA-Based Accountability for all Public Schools

In all states, charter authorizers oversee charter schools' academic performance. The expectations of charter school performance are outlined in charter contracts, which often reference academic performance frameworks that consolidate a range of academic data and offer a summary appraisal of the charter school's performance. Generally, these academic performance frameworks emphasize state testing data, including student proficiency and growth as well as performance by various student sub-populations. Additional performance frameworks are used by many authorizers to evaluate finance and operations.

At the end of a charter schools' contract period—or sooner if problems are more severe—the school's academic performance is compared to the expectations outlined in the charter contract using the academic performance framework. Often the most important data is drawn from the state accountability system. In many cases, schools that have failed to achieve the expectations are closed or they are renewed on a probationary status, which is later revisited. If the performance does not improve during the probationary period, charter schools are often closed. On average, the National Association of Charter School Authorizers (NACSA) reports that, considering closure for all reasons, 7.3 percent of charter schools were not renewed at the end of their charter contract in the 2015-2016 school year. This is down from a high of more than 12 percent in the 2011-2012 school year.<sup>1</sup>

Several states have provisions in their charter law that are designed to lead to the closure of low-performing charter schools. For example, Florida charter schools that receive an “F” grade in the state accountability system two years in a row are subject to closure. More than a dozen states have state laws with language that supports the timely closure of school by the state or the authorizer when charter schools fail to achieve state standards unless exceptional circumstances exist.<sup>2</sup>

### Lower Stakes under ESSA

Under ESSA, traditional public schools do not face the same degree of high-stakes accountability provided by charter contracts, and their flexibility is constrained by state and district policies that may not apply to charter schools. When traditional public schools struggle to perform, ESSA requires that states design a system in which the identified schools pursue a planning process for school improvement and are subjected to a series of interventions implemented over time. Interventions vary by state and include options like implementing curriculum reforms and working with external partners, for example. The state interventions and the accountability stakes for schools depend on the severity and longevity of academic performance problems.

In general, the charter accountability systems are more severe and far more likely to lead to the closure of chronically-underperforming schools compared to district school accountability. A national study of closure comparing the rate of closure for all reasons among charter schools to

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<sup>1</sup> <https://www.qualitycharters.org/policy-research/inside-charter-school-growth/closings/>

<sup>2</sup> National Association of Charter School Authorizers, 2016. *State Policies that Ensure Quality Charter School Oversight: On the Road to Great Charter Schools: State Policy Analysis: 2016*, p. 130. See also the National Alliance for Public Charter Schools (NAPCS) dataset available here: <https://www.publiccharters.org/our-work/charter-law-database/components/9>.

traditional public schools found that 5.5 percent of charters in their sample closed, while 3.2 percent of traditional public schools closed.<sup>3</sup>

Charter school advocates are concerned that if the accountability of ESSA replaces the stricter accountability outlined in charter laws and charter contracts, there will be less rigorous accountability for charters.<sup>4</sup> Primarily, they fear that low-performing charter schools will be allowed to remain open and subject to the state’s interventions assigned to non-charter schools, rather than being closed at the end of their charter contract under authorizer accountability provisions. This may lead to low-performing charter schools remaining open under state accountability systems that would otherwise have been closed by their authorizer under the state charter law. Many charter advocates at the state and national level have called for the closure of schools, both to better serve the needs of students and to protect the reputation of the sector.

States are wrestling with the best ways to balance their charter school policies with their general approach to accountability for all public schools. As the next section explains, federal funding for charter schools may complicate this balancing act.

### **State Incentives to Win CSP Competitions Impact Accountability**

State efforts to balance charter laws with their ESSA plans are potentially complicated by incentives for states to emphasize ESSA-based accountability over charter school policies if they hope to compete in the CSP SE grant competition.

In drafting ESSA, Congress included two potentially contradictory pieces of language that states must navigate when deciding how to balance state charter law against the state’s accountability system for all public schools.

Title I of ESSA emphasizes the importance of state charter school laws. ESSA states:

*“The accountability provisions under this Act shall be overseen for charter schools in accordance with State charter school law.”<sup>5</sup>*

This language seems to indicate that the implementation of ESSA should not contradict, and perhaps defers to, the accountability that charters are expected to encounter under their state charter law. ESSA statute directs states to use state charter school law to oversee ESSA-driven accountability for charter schools but provides no additional guidance on what that means in practice. This leaves implementation open to interpretation at the state and authorizer levels.

Later, ESSA language authorizing the CSP—a competitive grant program that supports grants in dozens of states to start up and replicate high-quality charter schools—emphasizes the importance of each state’s accountability system for all public schools, and how this general accountability system is expected to be used to hold charter schools accountable. States interested in receiving an SE grant to award subgrants to new charter schools and support the replication and expansion of high-quality charter schools are required to align charter school authorizing with their state accountability system.

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<sup>3</sup> CREDO Closure report full citation: [http://credo.stanford.edu/pdfs/Closure\\_FINAL\\_Volume\\_I.pdf](http://credo.stanford.edu/pdfs/Closure_FINAL_Volume_I.pdf)

<sup>4</sup> Include citation to memos and briefing material provided by NACSA.

<sup>5</sup> ESSA, Section 1111(c)(5).

Under ESSA, states applying for an SE grant under the CSP must explain how subgrant applicants will be able to show:

*“...how a school’s performance in the State’s accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school’s charter”.*<sup>6</sup>

Many states, including several described in Section 2 of this paper, have responded to this language by enacting statements paralleling this federal CSP language in state statute or state rule.

The language in ESSA is a change to earlier language that was contained in appropriations bills funding the CSP in 2010. The 2010 appropriations language required that each state application for CSP funding contain assurances,

*“...that State law, regulations, or other policies require that... authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA as the most important factor when determining to renew or revoke a school’s charter,” (emphasis added).*<sup>7</sup>

The case studies presented in this paper will show how state interpretation of these various pieces of federal language can have multiple impacts. When states codify language to support the NCLB and ESSA provisions emphasizing state accountability systems, the effect may be to undermine their state’s ability to implement the first piece of language, which deferred to the state charter law. Of course, it is easy to conceive of a state that strikes this balance appropriately, as it is possible for state accountability systems and state charter-driven accountability to work hand-in-hand towards an effective accountability environment.

#### Technical Issues in Charter School Accountability that may be Impacted by Federal Policy

In addition to larger issues of charter accountability, a series of technical details in charter school accountability may also be affected by state policy changes that are driven by ESSA. These issues include:

- How appeals of closure decisions are addressed;
- Delays in state tests that interrupt the measurement of student growth; and
- The treatment of AECs.

#### **Appeals**

In some states, the actions to close a charter school are subject to appeal, either to the State Board of Education (SBE) or to Courts, where Administrative Law Judges (ALJ) decide whether a closure can proceed. Part of the concern regarding ESSA involves these appeals. Where authorizer decisions are subject to appeal to the SBE or an ALJ, the ambiguity presented by conflicting state

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<sup>6</sup> Every Student Succeeds Act, Section 4303. (f)(1)(C)(i)(II).

<sup>7</sup> Public Law 111-117-Dec. 16, 2009. Innovation and Improvement. As accessed at: <https://www.congress.gov/111/plaws/publ117/PLAW-111publ117.pdf>

charter law and state accountability systems used for traditional public schools under federal statute may be used to influence the final decision.

In the case of the SBE, the board may have pressure to emphasize the state's accountability system language designed under ESSA for all public schools, rather than face charges that the SBE is being "unfair" by allowing charter schools to continue operations under their contract with an authorizer, which is already an additional accountability level to what guides traditional district schools. In the courts, the ALJ may not be prepared to explore the intricacies of conflicting state and federal policy.

In the absence of clear state policy or federal guidance, the appellate bodies hearing these cases will decide debates over which set of policies should apply.

### ***Testing Delays and Growth***

Many states have experienced delays in the implementation of new assessments or the reporting of valid results. Charter school authorizers rely on state tests and designations of quality as part of their accountability system for charter schools. Performance frameworks and charter contracts reference targets and performance on state assessments. Many authorizers also value the use of growth models, which require multiple years of testing to develop valid measures of student growth.

Growth measures are particularly useful to address historical allegations that charter school performance is inflated by the initial preparation of children in families that exercise choice. This concern over selection bias, based on fears of systematic variation in which families choose charters, can be partially addressed by using measures of student growth to evaluate school quality. Growth measures account for each student's starting test scores and progress made by the end of the year. Therefore, growth measures provide authorizers with a greater sense of the school's impact on student performance. The use of growth data has been an effective strategy both to determine school quality and to counter charges that charters only appear to succeed because they attract students who were already performing at high levels.

Growth measures require multiple years of testing using the same assessment. Delays in state testing and changes in test format and content can undermine timely and comparable accountability in charter contracts and performance frameworks. Eventually, new state testing data and measures of growth will become available. In the meantime, authorizers have been challenged to continue holding schools accountable.

The impact of delays in testing have been stronger in some states where the transitions were further complicated by technical issues that added more time to the gap in growth scores. Authorizers interviewed for this paper from states with technical delays noted that schools did delay pending closures due to testing problems and a lack of growth data even after the first year of new testing data.

### ***Alternative Education Campuses***

Further complicating the differences in accountability for charter and traditional public schools are the charter schools that are designed to serve extremely at-risk students. According to a

forthcoming analysis by Momentum Strategies, 684 charter schools are AECs.<sup>8</sup> These AECs are defined as schools that, “as their mission, serve a disproportionately high percentage of High-Risk Youth.”<sup>9</sup>

Due to the student populations they serve, AEC charter schools generally produce lower performance scores and many would be considered to be failing on state performance measures. However, despite low performance on standardized measures, many AECs are improving life outcomes (like graduation, enrollment in post-secondary education, or future employment) for their students. Growth scores are also an important way to quantify improvement for individual students even though the overall student score may still not reach adequate performance levels on state measures. AECs that cannot quantify student improvement through growth scores or other rigorous measures agreed upon with their authorizer must be examined more closely.

Charter school authorizers and some states are involved in discussions of how to design and apply alternative measures that appropriately reflect AECs.<sup>10</sup> Nine states have policies that define the proportion of at-risk youth a school must serve to be designated as an AEC.<sup>11</sup> Charter school authorizers are aware of the challenges of AEC accountability.<sup>12</sup> Many authorizers are working to adjust charter contracts and performance frameworks to accommodate alternative measures.<sup>13</sup>

Under ESSA, there are concerns that revised accountability systems will not appropriately reflect the work and challenges of AECs. An authorizer that is monitoring achievement on appropriate standards may face pressure to prematurely intervene in an AEC. Further, AECs may face ongoing scrutiny and interventions designed for traditional public schools under the state’s ESSA-based plan that are inappropriate for their student population or program.

### Potential Challenges in Charter Accountability and Autonomy

Based on all the dynamics that can occur when federal policies interact with charter school laws and practices, a series of potential complications could arise that might affect various types of charter schools in different circumstances. A series of hypothetical events illustrates the range of potential problems that might arise as states implement new accountability systems under ESSA without appropriately considering charter school context. These and similar hypothetical challenges were discussed with stakeholders who explained how things are working in their context. Case studies based on these interviews are presented after the hypothetical challenges.

Potential challenges with charter accountability and ESSA implementation include:

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<sup>8</sup> Momentum Strategies and Research, Forthcoming. National Opportunity Youth Collaborative Report: AECs across the Country.

<sup>9</sup> Ibid, p 4.

<sup>10</sup> See for example: Hailly T. Korman and Jason Weeby, 2018. *How Do We Incentivize Charter Authorizers to Approve More High-Quality Alternative Schools? A Q&A with Colorado’s Antonio Parés*. Bellwether Education Partners, Washington, DC.

<sup>11</sup> Momentum Strategies, Forthcoming.

<sup>12</sup> Nelson Smith, 2013. Anecdotes Aren’t Enough. NACSA.

<sup>13</sup> Colorado Charter School Institute, 2018. Establishing Optional Measures: Findings from the Colorado Alternative Education Campuses (AEC) Task Force.

- 1. Using Lower ESSA Standards to Override State Closure:** A charter fails to meet the expectations in its charter contract and the staff of the authorizer recommends the school not be renewed at the end of its contract term. The closure is blocked by the authorizer's board, and the school is renewed when the board of the authorizer rejects the staff recommendation that had been based on the performance contract. The board cites the school's argument that the state's accountability system under ESSA justifies overriding the existing charter contract and applying a lower performance benchmark to the school that is based on the accountability system applied to traditional public schools.
- 2. Using the ESSA "Disconnect" Between Charters and Districts to Appeal Closure:** An authorizer acts to close a charter school. The school appeals the closure to the SBE or an ALJ as allowed by state charter law. During the appeal, the differences between the state charter law and policies, and the state's accountability system under ESSA, are used to argue that the closure is "unfair" and not allowed or warranted under the state's ESSA accountability system for traditional public schools. In subsequent renewal decisions, the authorizer determines the cost of litigation and the likelihood of being overturned on appeal. This leads the authorizer to forego closing schools they would otherwise shutter.
- 3. Lack of Performance Data as a Defense:** An authorizer is concerned about a charter school with two years of unacceptable test scores, including low growth scores. The state test is interrupted for a year while a new test is put in place. The school argues it is not subject to closure or other intervention in the absence of current performance data. When tests are available, overall results are still weak, but growth scores are not available due to incomparability issues so will not be applicable until after the second year of the new test. The school is eventually found to have extremely low growth after the third year of the new testing system and is closed. The closure happens two years later than it would have without the interruption in growth scores due to the new testing format.
- 4. Unrealistic Evaluation of Alternative Education Campus:** An innovative AEC is performing acceptably according to its charter contract, which includes alternative performance measures that adjust for its mission and student population. It is performing unacceptably on the state accountability system applied to all schools. Under the state accountability system, the school is identified as low-performing, which triggers interventions that limit the school's autonomy. This lack of autonomy undermines the schools' ability to implement the academic design and pedagogical approach outlined in its charter application that was designed for its target population.
- 5. Accountability Violates Autonomy:** A struggling charter school is identified under the state's accountability system. The state requirements for identified schools fail to acknowledge the charter school's autonomy. The state requires the school to adopt various policies or practices that interfere with the school's ability to implement its chosen model. This contrasts with agreements articulated in its charter application and charter contract, in which the school is allowed to follow its initial plan until the end of its charter contract. At that point, closure is the assumed result if the school has not improved.

## Case Studies

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We turn to the states to explore the dynamics described above. We present a series of case studies to explore the degree to which the potential challenges described above are playing out in states. The authors interviewed state and national leaders active in the charter school sector.<sup>14</sup> The interviews explored the status of the local systems used to hold charter schools accountable. Interview subjects reflected on the connections between the state's accountability system under ESSA and the ability of charter school authorizers to exercise oversight and make high-stakes decisions based on charter school performance. They also discussed charter school autonomy and opportunities for the charter sector's lessons to influence the emerging state practices.

As this section will demonstrate, the impressions of interview subjects regarding ESSA were related to the number of authorizers in the state and the reputation about these authorizers' policies and practices. Accordingly, the case studies are organized by the states' authorizing structures.

- **Florida and California:** The first two case studies feature Florida and California, both of which have many district authorizers. In Florida, the districts feel their ability to hold schools accountable for low performance is limited by state policies, but they also see opportunity for state support via new materials. In California, which applies a unique approach to authorizing, various stakeholders fear that a district could use non-academic outcomes, or one or two academic outcomes, to arbitrarily close charter schools that are doing well on many other measures.
- **Washington, DC and Arizona:** Case studies of Washington, DC and Arizona indicate that a setting with one authorizer with a strong reputation can make a relatively smooth transition under ESSA.
- **New York:** ESSA is also not considered a challenge in New York, where the two primary authorizers have strong reputations and leverage established state procedures in charter oversight that promote the power of authorizers to close failing schools.

### Florida and California: States with Many District Authorizers

Florida and California are states with many district authorizers. They also suffer from a lack of trust between charter schools and districts under evolving state accountability systems. Florida's approach is heavily influenced by prescriptive state policy, whereas California has an extremely decentralized approach. Despite these differences, they face similar challenges. These state-specific dynamics were established prior to the passage of ESSA, but the change in federal law may exacerbate existing challenge as well as present opportunities for the state and other stakeholders to support improved practices. Each case study closes with a takeaway that may be relevant in other settings or worthy of further study.

#### *Florida*

All charter schools in Florida are authorized by school districts. Despite district control over all authorizing, authorizing practices are heavily influenced by state policies and state-level model materials. District representatives generally argue that state policy limits their ability to conduct appropriate authorizing practices, which is potentially complicated by the passage of ESSA and state steps to comply with ESSA by adjusting the state charter law. District officials suggest that

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<sup>14</sup> See Acknowledgements for a partial listing of interview subjects. Several interviewees preferred to provide input confidentially.

the situation could be improved by additional guidance from the Florida Department of Education about district authority to close weak schools, including for non-academic topics, as well as the creation of additional model materials, such as a performance framework linked to the state’s model contract.

Historically, Florida has experienced districts approving unprepared applicants as well as denying applicants that had operated other schools successfully. The state also has politically-influential operators. These factors produced legislative skepticism about some districts’ ability to implement the state charter law. This skepticism contributed to a state approach to charter accountability that is driven by prescriptive state policies and mandated practices. The districts use a model contract that is established in statute as the basis for charter accountability. State law requires the closure of charter schools that receive an “F” on the state’s A to F grading system two years in a row. As a result of this state-prescribed approach, according to district staff, charter schools that are chronically low-performing, but that do not have two consecutive F’s on the state system, are difficult to close.

In response to requirements in ESSA around the federal CSP, Florida recently added statutory language about the importance of academic outcomes in charter school accountability. This bill also included provisions that raised the standard for evidence districts must use to close schools—including potential closures based on academic, financial, or operational underperformance. Districts fear that the new statutory language, combined with the history of state influence over authorizing practices, means that it will be more difficult for districts to close charters based on weak finances, operations, or performance, especially if the school’s academics are only slightly better than the “double F” threshold for mandatory closure. Districts complain that some schools cycle between an F and D rating and avoid closure under the double F standard while still being among the state’s worst schools for several years. This movement in and out of accountability sanctions affects charter schools and traditional public schools, but the charter schools are not expected to operate indefinitely as the default. Prior to the enactment of standards like the double F in Florida, few charter advocates would defend the renewal of charter schools that circulate between Ds and Fs on a state grading system.

The districts argue that recent changes, which were prompted by the state’s desire to be competitive for CSP funding under the SE grant competition, ultimately undermine the districts’ ability to enforce charter school performance expectations. This is especially true when those schools are doing poorly but avoid two consecutive Fs on the state accountability system.

District officials suggest the Florida Department of Education could improve the situation by issuing further guidance that outlines the authority districts have under state law to oversee charter schools. The authority of districts to close schools that are above the double F standard, as well as the ability to close schools for non-academic purposes, could be clarified by the state or ED. Districts also suggest that the state’s accountability for charter schools would be improved by convening an inclusive stakeholder group to update the state’s model contract and that this revised contract should be explicitly linked to a new performance framework that includes academic results, finance, and operations.

***Takeaway:*** *A prescriptive state system for charter school oversight leaves districts feeling exposed to challenges if they exercise rigorous charter school oversight without revised materials. Further*

*guidance from ED or the state may be necessary to clarify expectations for both charter schools and authorizers.*

## **California**

California has long been an outlier among states in how it conducts charter school accountability, which was recently documented by Kirsten Slungaard Munna and Martin West.<sup>15</sup> As one of the first states to adopt charter law, California established an approach to charter school accountability in its initial years that has been institutionalized over the last two decades. This approach worked in the first years, leaving California to further institutionalize its unique approach to charter school accountability.

The state's approach emphasizes school-specific accountability measures that are based on the achievement goals each school proposed in its charter application. Renewals are also based on a forward-looking analysis of what the school proposes after it is renewed. Where other states have moved to standardized performance frameworks that apply a similar set of metrics to multiple charter schools, California has resisted standardized approaches. Instead, each school arguably has its own accountability approach. Authorizers in California do not use performance frameworks or separate charter contracts. Instead, authorizers treat the charter application as the primary document to outline the school's performance expectations.

To develop predictability, the state has relied on patterns of previous litigation and the development of jurisprudence that is applied to its charter schools. This approach is creating concern among charter advocates and some operators because the lack of structure may empower some districts to arbitrarily select data to justify closure that is not sensitive to a charter school's overall performance. They also believe the lack of structure will continue to enable districts that refuse to hold charter schools accountable that exhibit extremely poor performance.

In California school districts, county offices of education, and the state can all authorize charter schools, although districts oversee most charter schools. Charter applicants generally must apply to local districts first, before seeking charter approval from the county or state levels after being denied by districts.

The state's new approach to accountability for all public schools may exacerbate the unpredictable nature of California's approach to charter authorizing. The California approach to accountability for all public schools includes an extensive array of data and a lack of summarized conclusions on performance. Charter advocates fear that a charter school with generally strong performance may be slated for closure based on one or two elements selected from the long list of possible measures that are applied out of context. They also express concern that this application would conflict with the federal requirement under ESSA that "...a school's performance in the State's accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter."<sup>16</sup> Given the lack of guidance from the state or ED, and the number of authorizers in the state, charter advocates are requesting clarity from the state and ED on these issues.

The California Charter Schools Association (CCSA) has also advocated for years for the closure of the states' chronically underperforming charter schools. The CCSA expressed concern that efforts

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<sup>15</sup> Mumma, Kirsten Slungaard and Martin R. West Harvard, 2018. *Getting Down to Facts II. Charter School Authorizing in California, Technical Report*. Policy Analysis for California Education.

<sup>16</sup> Every Student Succeeds Act, Section 4303. (f)(1)(C)(i)(II).

to close these schools could be further undercut by the new accountability system. Since the state has so many measures in its accountability systems, including many that are not directly related to academic performance, a school with very weak academic results, they explain, may have positive data in some of the measures, including non-academic measures. Conflicts over these issues may generate a high volume of litigation between charter schools and authorizers.

CCSA expressed concern that some authorizers may use these intentionally selected measures to justify keeping a weak school open. This is particularly likely, they argue, in the case of weak authorizers with limited capacity for oversight. In some instances, very small districts oversee large independent-study charter schools. These schools operate like cyber schools in other states. They can span multiple counties and generate considerable revenue for very small districts that authorize them. It is equally likely that weak charter schools will emphasize a single positive data point that looks acceptable despite overwhelmingly negative outcomes on most measures.

These challenges were created, in part, by California's unique approach to charter school accountability. The creation of the new state accountability system began before the passage of ESSA. However, the state's unique accountability system, further codified under the state's ESSA plan and by policies enacted to emphasize academic results that were added to make California competitive for CSP grant competitions, may exacerbate these tensions. On the plus side, the evolution of the new state system and the implementation of the state ESSA plan provide opportunities for the state to clarify how the state system should be applied to charter schools. CCSA representatives also suggest that the state could help by clarifying how charter schools are accommodated in the state's approach to school improvement and technical assistance.

Ultimately, California may benefit from adopting performance frameworks and charter contracts that are like other states. Stakeholders in California support predictable and clear documentation of performance, similar to other state's performance frameworks. They remain divided on the merits of adopting charter contracts. Nevertheless, charter management organization (CMO) leaders, authorizers, and other stakeholders suggested the state may be ready for an approach to accountability more in line with other states. The state could help provide support and materials and convene stakeholders to consider or pursue this change. Clarity on the application of various measures could be provided by ED and the state.

***Takeaway:*** *A unique state approach to charter school oversight that is less standardized than most states could leave California schools and authorizers vulnerable to increased conflict over arbitrary performance expectations under the state's new accountability system.*

### **Arizona and Washington, DC: Settings with One Main Authorizer**

Arizona and Washington, DC, both have a single authorizer with a strong reputation, which has helped facilitate a smooth transition under ESSA. Coordination between the SEAs and the authorizers in both have helped to clarify roles and responsibilities.

#### **Arizona**

Observers in Arizona believe that a strong set of practices by the state's primary authorizer has produced a smooth transition under ESSA, and that charter school autonomy and accountability have not been threatened by the change in federal law.

The Arizona Charter Schools Program (AZCSP) at the Arizona Department of Education administers a federally-funded CSP grant. Almost all charter schools in Arizona are overseen by the Arizona State Board for Charter Schools (ASBCS). The ASBCS oversees almost 400 charter entities.

According to Mark Francis, Project Director of the AZCSP, the accountability system in Arizona is working well. Francis attributes this to the leadership at the authorizer as well as the system of tools and practices established by the ASBCS, which applies new accountability frameworks, developed in collaboration with NACSA. Under this system, Arizona has closed many low-performing charter schools in recent years. In addition, Arizona’s courts support the accountability system and the authorizer’s attempts to close charter schools.

ESSA implementation has been smoother in Arizona as compared to other states. “Everything ESSA wants really does align to what Arizona is doing,” said Francis. The Arizona Department of Education has worked to ensure policies for all schools comply with ESSA. For charter accountability, the ASBCS remains the main overseer, and “they have higher bars and tighter timelines.”

Questions have emerged around teacher qualifications. ESSA does not include the same standards for hiring teachers or school leaders that was present under the previous No Child Left Behind (NCLB) ESEA authorization. According to Francis, “this is a huge liability of the sector.” Arizona compensates for this challenge by adding extra examination of the experience and backgrounds of boards and potential school leaders during the review of new charter schools.

Arizona also benefits from accountability driven by school choice. According to Francis, the state enjoys a high level of competition between schools, which acts “like their own version of accountability.” Schools need to maintain high standards to attract students. Students and families may leave lower-performing schools, which may be forced to close their doors if they do not maintain a large enough student body.

***Takeaway:*** *A single authorizer with a strong reputation and the SEA can work together in a mature market where family choice adds a layer of accountability.*

### ***Washington, DC***

In Washington, DC, where there is a single authorizer, a formalized agreement between the SEA and the authorizer helps clarify roles and responsibilities. This safeguards charter school accountability and protects the SEA’s oversight of funding streams. This collaborative work should be explored as a potential model for other states.

The DC Public Charter School Board (DC PCSB) oversees around 120 schools within the District that serve about half of the district’s students. DC PCSB has an established accountability system that is working well. Its system uses three frameworks to assess accountability: academic, financial, and equity.

Naomi DeVeaux, Deputy Director of DC PCSB, believes accountability systems must examine learning and performance outcomes for students. You need to “measure things that are consistent across schools.” Timing also matters. Authorizers should assess performance across multiple years rather than just the most recent year. And most importantly, authorizers need to provide remediation options as soon as there is a sense that a school may not meet requirements. To implement a system like this, DeVeaux believes it “takes trust between an [authorizer] and the SEA” to create a collaborative system.

DeVeaux would be nervous without this collaboration. She fears that when ESSA is implemented in states without consideration for authorizers, the authorizers may not have the tools and authority to fully monitor and assess their charter schools. In DC, the SEA and the authorizer are working towards an MOA that will clarify and re-enforce roles of each group. The MOA will direct charters to follow the rules laid out in the charter agreement. The MOA is intended to produce clarity regarding roles and provide the schools with an accurate map of how things will work. According

to DeVeaux, “States must work with entities to enforce a single accountability system,” and schools need to be aware of the process.

DC uses the following components within its MOA:

- The authorizer has the sole authority to open and close schools. Schools should expect accountability decisions to come from the authorizer. As DeVeaux explains, “Student performance should stay with the authorizer.”
- ESSA, Title I, and other state/federal funding issues are overseen by the SEA. The SEA is responsible for assessing and managing funding eligibility.
- Messages from the state for schools should route through the authorizer (rather than the state sending messages directly to schools). This will prevent contradictory messaging. States can communicate any uncovered issues to the authorizers, and then authorizers can manage the remediation process. In this sense, DeVeaux believes that “states should treat the authorizer like an LEA.”

While it is still under development, this MOA deserves further study. If it works as anticipated, this could be a model for other states.

**Takeaway:** *A city with a strong authorizer overseeing half the local public schools collaborates with the SEA office, using a Memorandum of Agreement that clarifies each party’s role that may be a model for other settings.*

### **New York: Two Primary Authorizers Collaborate**

New York benefits from collaboration among its two main authorizers, but challenges with alternative schools may require further work.

In New York, authorizers generally feel they are still able to execute well-established authorizer oversight functions, and policies and practices support continued authorizer ability to perform their functions. Part of this stability comes from established policies and practices that are supported by state policy but have been strengthened through high-quality authorizing and a commitment to charter school autonomy and accountability. Challenges are more likely to arise in the treatment of AECs, but the state’s authorizers are working to mitigate this risk.

Observers consider New York’s charter sector to be high-performing.<sup>17</sup> Most schools are overseen by two authorizers: the New York State Department of Education (NYSED) and the State University of New York (SUNY). The two main authorizers actively monitor charter schools, have strong oversight practices, and can close schools that fall below standards. Collaboration and communication between the two strong state-wide authorizers help improve quality and drive innovation.

According to David Frank, Executive Director of the Charter School Office at the NYSED, accountability laws in New York create a strong framework for how authorizers are expected to approve, monitor, and assess charter schools. Authorizers have built upon this foundation and have created rigorous standards that evaluate charters against district and state statistics, financial measures, and enrollment equity figures. In New York, it is “not enough to be better at the district level,” schools are expected to have academic goals that outperform the state average.

Frank explains that ESSA complicates a few of these components. ESSA suggests that ultimate charter accountability is left up to state law. He suggests that ED issue concrete guidance to this

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<sup>17</sup> Center for Research on Educational Options (CREDO), 2017. Charter School Performance in New York.

effect so that authorizers can confidently communicate requirements that will remain valid over time.

People in New York are also concerned about how alternative schools, including AECs, are evaluated under new systems. As Frank explains, many ESSA frameworks may use measures that may not be differentiated for different types of schools, such as graduation rates. Frank predicts that issues may arise when a school meets the differentiated accountability graduation requirements that are benchmarked to the school population, currently under consideration, but fails to meet ESSA-related state-wide graduation requirements. According to Frank, the ambiguity within ESSA has exacerbated the problem because “charters are not one-size fits all.”

The primary authorizers at SUNY and the NYSED are collaborating to clarify how to measure the performance of AECs and apply alternative measures. Ways in which non-academic indicators of school quality can be used to best evaluate the full scope of work of the state’s charter sector are also being explored. There is ongoing communication and effort spent trying to reconcile the expectations between systems.

Frank believes that ED can be helpful by providing authorizers with clear authority or guidance on navigating these conflicts. He also suggests that ED should find ways to “reduce the regulatory burden on charters and develop funding streams for charter schools that serve highly at-risk populations across the country.”

**Takeaway:** *A state with a few authorizers with strong practices can benefit from collaboration and coordination. And alternative measures and adjustments in accountability systems for Alternative Education Campuses are needed in the field.*

## Drawing Lessons from the Field

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This section reflects on the analysis and case studies. It first presents observations taken from the case studies and then presents recommendations.

### Observations

The case studies reveal a range of state experiences with the impact of ESSA on charter school accountability. Some of the variation may be linked with the state’s authorizing structure and historical developments in charter school oversight. In states with predictable, transparent authorizing that is based on tools like performance frameworks, and where authorizers have reputations for exercising appropriate oversight, the addition of ESSA is not a substantial obstacle. Where authorizers are less established, or where they do not have as strong a reputation, the addition of ESSA has introduced challenges. In some cases, the reported challenges are as much based on the state’s authorizing environment and chosen accountability system as they are due to federal requirements.

In Florida and California, states where districts do all or most of the charter school authorizing, there are concerns that the implementation of ESSA may negatively impact charter accountability, but the impact is not the same in both places. In both cases, the inconsistency in the treatment of schools by authorizers raises concerns that may be exacerbated in newly emerging systems.

In Florida, where a prescriptive state policy environment constrains districts’ sense of authorizing discretion and authority, there is concern that the implementation of ESSA will undermine the districts’ ability to intervene in low-performing schools. In California, which has a much less

standardized approach and accountability is more flexible, it is the charter operators and their supporters who are fearful.

In California, charter stakeholders fear that districts may use the new accountability system's expansive list of measures to arbitrarily punish charter schools based on a single point of data, even if the schools general record of performance is strong. They also fear that non-academic measures will be given undue attention when districts try to close a school with otherwise acceptable performance. They also fear that ongoing efforts to close the chronically underperforming schools will be undermined by this same lack of clarity or structure.

In cities or states with a single authorizer, collaboration between the authorizer and the SEA seems to build a positive sense that accountability systems, which are generally believed to function appropriately, will not be undermined by the implementation of ESSA. Ongoing collaboration between the single authorizer and the SEAs in Arizona and Washington, DC illustrate the ability for a smaller number of parties to work out the details of their evolving system together.

In both these cases, the authorizers had reputations for having developed and overseen accountability systems that are now effectively identifying low-performing schools and the authorizers are seen as closing failing schools at the end of their charter term. These reputations may make collaboration with the SEA easier and may be part of the reason why accountability systems were not destabilized by changes in federal law. In these cases, the SEAs continued historical patterns of deferring to the authorizers under the new statute.

In New York, which has a small number of authorizers that have reputations of carefully exercising accountability systems, the two primary authorizers were able to collaborate on emerging challenges. In general, the state implementation of ESSA is not considered a strong threat to these entities, and collaboration may help them address specific issues, such as the measures used to hold AECs accountable.

## Recommendations

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Based on this analysis and on requests from diverse stakeholders in the field, this report concludes with two sets of recommendations. The first address the need for tools and materials that help authorizers navigate these issues. The second involve requests for guidance from both ED and states.

- 1. Support the development of tools and materials for charter school oversight.** In places with many district authorizers, there are concerns about uncertainty and potentially arbitrary acts by authorizers (California) as well as concerns that districts will not be able to close weak schools (Florida). In both cases, the districts in Florida and the school's in California may benefit from more clarity and the development of common tools and materials that help authorizers and schools achieve transparency and predictability under the new system. SEAs and local stakeholder partners may be able to develop new tools and materials, but these efforts need to be developed with sensitivity to the local challenges and historical context. Tools like performance frameworks, covering academics, finance, and operations would be helpful as well as model contracts that clarify the link between performance frameworks and authorizer decision-making.

- a. **Resources from the SE grants under the CSP should be used to support the development of oversight tools.** In states with CSP grants, the state may be able to dedicate resources to efforts to support collaboration, communication, and the development of tools that help authorizers establish transparent and predictable accountability systems. There were suggestions that ED prioritize funding to states that allow them to support the development of tools, such as performance frameworks. These tools may be most useful in states with many authorizers or where there is distrust between charter schools and authorizers over current practices.
- 2. ED and states should issue guidance on these issues in general.** Guidance would be most helpful in states with many authorizers. Topics of concern include the following:
- b. **Roles and Responsibilities:** Communication and clarification of the key stakeholders' roles and responsibilities is a theme in several of the case studies. The plans of SEAs and authorizers appear to benefit from communication and clarity about roles, responsibilities, and next steps. The desired clarity was easier to generate in the cities and states that were served by a small number of authorizers with strong reputations. In settings where there are many authorizers, and more concern about authorizer consistency or charter school quality, more clarity from the SEA is needed. Additional guidance might alleviate these concerns. This recommendation may be most useful in states with many authorizers.
  - c. **Handling data on performance on non-academic issues:** Charter advocates and districts request clarity from ED and from their states on how authorizers should handle non-academic performance data. Federal language in ESSA described above produced questions in Florida about the authority to close schools that have acceptable performance, yet extreme problems with finance and operations. In California, given the large number of indicators that can be applied to a school, there is concern that many measures that are not academic may be treated as if they are academic and used to justify closure. This recommendation may be most useful in states where there is a lack of trust between authorizers and charter schools.
  - d. **The treatment of AECs:** Charter advocates in several states expressed concern about the challenges with evaluating AECs, which is tricky in all settings but more challenging if authorizing oversight must accommodate a state accountability system that does not recognize the unique circumstances of these schools and the utility of alternative measures.