

SEA Communities of Practice: SEA Assurances Webinar

Slides 1, 2, 3

PEGGIE: Welcome to the webinar. This is Peggie Garcia from the National Charter School Resource Center. Thank you all for joining us. I think most of you are familiar with our webinar platform. On the left-hand side, we have a chat box, and you're welcome to enter a chat question in there at any time during the webinar and we'll try to get to as many questions as we can during the question-and-answer period. In the bottom left-hand corner is the file-share window. I have the slides there. There was a small change from the one that I sent out this morning, so if you're going to save this for future purposes, please do download the slides from that file down share that say assurances slide final. Then we've also included the 2010 appropriations language that we will refer to during the webinar. In the note box underneath the PowerPoint slide there are a few notes. Please use STAR 6 to mute and unmute your line if you're joining by phone. You can also listen in through your computer and then enter your questions through the chat. If you'd like to make the screen go full-screen, larger at any point, you can use the full-screen button up at the top or, again, you can download the file to the right and then you can make that larger on your computer. We are recording this webinar and an archive will be available by Monday the 15th on our website, www.charterschoolcenter.org. I think those are all the technical issues that I have, a quick overview of the platform.

We've had a number of questions from the field about the charter schools program assurances related to authorizers. So we have several experts from the department who have agreed to join us for this call so they can give you a little bit more background about how those assurances were put into place and the process by which they're being implemented right now so that we can clarify any questions that you have, and so you have a better understanding of why they're there and how they're going to work moving forward. So, joining us is Stefan Huh, the new director of the charter schools program in the Office of Innovation and Improvement at the U.S. Department of Education. He'll also be ably assisted by several of his staff members, including Erin Pfeltz and Leslie Hankerson. Then we're also lucky to have Cathy Grimes-Miller with us, who represents the Office of the General Counsel at the U.S. Department of Education. With that I'm going to go ahead and turn it over to Stefan.



STEFAN: Well, thank you very much, Peggie, for that introduction and the opportunity to be able to address the SEAs and talk to these assurances, address any concerns you have, and clarify what they're about and how we're applying them. Erin Pfeltz is going to walk everyone through the first part of this presentation and webinar. So I'll turn it over to her now, and she'll introduce the objectives and some of the background of these assurances.

ERIN: Great. Thanks, Stefan. Like Stefan just said, I'm going to talk a little bit about the background of the assurances, but overall during this call we're also going to talk about the scope and application of the assurances,

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and how ED is reviewing and evaluating them, and then give some examples of evidence and compliance and then more information about timeline for compliance and consequences, things like that.

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Peggie has already talked about the participating members of the team. That would be me, Stefan, Leslie—we also have LaShawndra Thornton on the phone from the CSP team—and then Cathy Grimes-Miller.

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Moving on into a little bit of the background and history of the authorizing assurances, these assurances were included in the language with the 2010 Appropriations Act. If you look in the bottom left-hand side of the webinar we do actually have the copy of the 2010 Appropriations Act. Be forewarned, it's a large file, it's a lot of pages, the CSP information is buried pretty deeply in there, but if you look at the PDF, it's on page 232. The next slide gives the excerpt that has the assurances information:

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“That each application submitted shall contain assurances that state law, regulations, or other policies require that each authorized charter school in the state operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that describes the obligations and responsibilities of the school and the public chartering agency;

conduct annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency; and demonstrate improved student academic achievement; and authorized public chartering agencies use increases in student achievement for all groups of students described in section 1111 of the ESEA as the most important factor when determining to renew or revoke a school's charter." Just so everybody is aware, we did add the emphasis on this slide. It wasn't underlined and bolded in the actual Appropriations Act, but we wanted to highlight a couple of key things.

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Moving along to slide 6: For the new SEA assurances, once the Appropriations Act came out in 2010, we did add these to the assurances document as assurances 3A and 3B. The applicants in 2010 would have been the first group of applicants to see these assurances. In late fall 2010, our team contacted the SEAs that were granted that year to request evidence of their compliance with the assurances and then they were also included in the 2011 application requirements.

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Slide 7 is going to show you the text of the assurances themselves. You can read through that, and you will see it's coming pretty much directly from the Appropriations Act. Next, Stefan is going to talk a little bit more about the evidence and review of the assurances.

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STEFAN: Excellent. Thank you very much, Erin. We have here on this slide which programs these assurances have been [AUDIO SKIP] 2010 SEA competition grantees were awarded grants have all been required to comply with these assurances and the two most recent awardees will also have to comply with [AUDIO SKIP] we are collecting evidence from them this fall. Also listed are other current programs, and we are not applying these assurances now as the Appropriations Act [AUDIO SKIP] those programs and [AUDIO SKIP] those programs will be affected.

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The 2010 SEAs who were impacted are here [AUDIO SKIP] started to reach out to them last fall to collect evidence and then our team

started to review evidence and [AUDIO SKIP] about what types of information we needed to better clarify their [AUDIO SKIP].

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As stated in the Appropriations Act, there were three compliance options: legislation, regulation, and policy. [AUDIO SKIP] provided evidence both of state code that included these various issues and how those states were complying [AUDIO SKIP] issued by the state department of education [AUDIO SKIP] policy that was provided.

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Here we're talking about the four basic compliance elements that SEAs need to be concerned with. Erin mentioned when she went over the Appropriations Act, there are these basic four elements that comprise assurances 3A and 3B. The first one is the charter performance contract, second the independent audit, third the improved student academic achievement, and then finally that increase in student academic achievement are the most important factors that authorizers consider in renewal and revocation decisions.

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What were we looking for under each of these elements? We'll start with the charter performance contract, and this was probably the most straightforward, as you could probably assume. We're expecting that states submit evidence that schools in that state have to operate under a legally binding contract with the authorizer that describes the responsibilities and obligations of the school and the authorizer.

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Probably not a huge surprise, but most states were compliant. Of twelve states that submitted evidence, we deemed that nine were compliant, but three were noncompliant based on what they submitted. All the compliant states submitted excerpts from their state code, which defined the performance contract between schools [AUDIO SKIP], and the three noncompliant states generally did not provide adequate documentation for us to reach a conclusion regarding compliance. We're still awaiting follow-ups in those cases, so that we can verify compliance.

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The independent audit: What were we looking for with the independent audit? In this case, we wanted states to demonstrate that charter schools are required to conduct annual, timely, and independent audits of their financial statements that are then filed with their public chartering agency. The key word here is that *independent* means an external auditor that is conducting a financial audit of the financial statements that are prepared in accordance with generally accepted accounting principles.

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What were the results of the independent audit element of the compliance? Seven SEAs were deemed compliant and five noncompliant. As you can see, of the seven SEAs that were compliant, six provided evidence for their charter law or state code. In one case, there was a state that could not initially demonstrate that all charter schools had to undergo independent audits, but they were able to cure this through a letter that was sent to all authorizers that clarified the requirements. So we use this as kind of an example of how a form of policy was able to address compliance. Of the five noncompliant states, two did not provide adequate evidence that enabled us to reach a conclusion, and three could not demonstrate that the audit was independent, as well as in one case annual. So we were really pushing to ensure that this was truly an independent audit, not an internal audit, and not a review. We have another one of our team members who was involved in the review of evidence, LaShawndra Thornton on this call and LaShawndra, could you maybe highlight an example of what a compliant state submitted that we deemed to be adequate?

LASHAWNDRA: Yes, I'm actually going to provide everyone with two examples on a compliant independent annual audit. One particular SEA, in their law actually states that each charter school shall comply with annual reporting requirements, which include a financial statement audited by an independent, certified public accountant or public accounting firm. And so, as you'll see in this particular one, they were very, very clear about the independence and it's now being conducted within the actual school. Another SEA within their law also has that they require each charter school located in that particular SEA has a financial audit conducted at least annually by a certified public accountant in accordance with generally accepted governmental auditing principles and its requirement must be noted in each charter school's authorizing contract before the state will issue a district code to allow for school funding and operation. So once again, in this

particular example, you can see the actual audit is being held independent from the actual charter school. An annual audit is required, and it must be independent from the actual charter school. These are just two examples of how SEAs have implemented these assurances into their particular law, or created a regulation of such.

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STEFAN: Thank you, LaShawndra. The next element, the charter schools demonstrating improved academic achievement for all students. In this case, we asked states to provide evidence that authorizers require that charter school demonstrate improved academic achievement for all students and adequate evidence in some cases included written documentation of a state requirement that the goals in a school's charter include academic improvement in academic achievement.

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So what were the results of this element? Five SEAs were deemed compliant, two have legislation pending that will bring them into compliance, and five were deemed noncompliant. Of the compliant states, all of them provided evidence from their charter law and state code and one other also provided evidence of state policy that addresses this and I'll ask LaShawndra once again to maybe mention what she found in her review as some of the excellent examples of states that met compliance.

LASHAWNDRA: Before going into the states and the compliance, I am going to provide one example of a state that was not compliant, so that way you can compare the two. One SEA actually submitted a cite within their law that stated a charter school must be revoked or nonrenewed by the authorizer if the charter school failed to make reasonable progress toward pupil academic achievement standards as identified in the charter application. Reasonable progress to us is not the same as demonstration of improved academic achievement. Because of that, the SEA would need to explicitly state goals to improve student academic achievement, as we don't deem reasonable progress to meet that. But there are two just really quick examples on how some SEAs did meet compliance in this particular area and one SEA as part of their performance management framework actually requires all charter agreements to have growth goals for all students and we think this is compliant, or deemed it compliant. The second, for another SEA is that in order to obtain final approval for their charter, the charter developer actually must develop a final charter and it actually includes within the guidelines

an assurance that the school shall improve academic achievement as defined by the academic standards established in the charter for increasing academic achievement for all groups of students in which a number of students in a category is sufficient to use statistically reliable information and then they proceed to explain that. But once again, you can see they are very explicit about improving academic achievement and because of that, we have deemed them compliant in this particular area.

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STEFAN: Okay. Thank you, LaShawndra. Let's go on to the next slide. It was a very material correction that we made to the slide from the one that we sent out earlier, to the third bullet, and it would be inserting the word *not*, so, a very small, three-letter word, but has huge implications for this. I expect that's going to be a huge relief to some SEA project directors that are on this call. This element I think has created a lot of the concern among SEAs regarding whether or not their states are able to comply with this and this is, increases in student academic achievement for all groups of students described in that section of ESEA are the most important factor when determining to renew or revoke a school's charter. So, a few highlights: First of all, as you can see, it's addressing all of those groups that are mentioned in ESEA, the economically disadvantaged students, students from the major categories and ethnic groups, students with disabilities, students with limited English proficiency. We interpreted *most important* to mean an absolute requirement for all charter schools. There may be other factors considered, but this is an absolute requirement that all schools must demonstrate increases in student academic achievement. That leaves the third bullet. This does not prevent state law from permitting authorizers to decline a renewal or to revoke a charter for other reasons, including but not limited to material violation of law, violating other terms of the charter in a material fashion, financial insolvency, student safety, et cetera. So once again we were focused on increases in student academic achievement, but this does not preclude state law from revoking a charter for other reasons.

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So what was the result of this element? Only four of the twelve SEAs were deemed compliant. Three of them have legislation pending and five were deemed noncompliant. Of the four, they all provided evidence of law and state code and one also provided evidence of their authorizer policy that requires this and that takes this into account in making their renewal and revocation decisions. In one

case, state law requires improved academic achievement, but it does not address how that was considered in renewal and revocation decisions, and that state was compliant with the third element of assurance 3A but found to be noncompliant with 3B. So that state is now issuing a new termination process guidance that will clarify that increases in student academic achievement will be the most important factor when making renewal and revocation decisions. So, Leslie Hankerson, who's on our call, was also part of our team reviewing these, and she'll provide us with an example or two of some of the states that complied.

LESLIE: Hello, everyone. A specific example from an SEA that was in compliance with 3B, this SEA submitted a specific cite from their regulation and this cite clearly stated and specifically stated that affirmative evidence regarding the success of the school's academic program as defined by the academic standards established in the charter for increasing academic achievement for all groups of students shall be weighted most heavily in the board's decision to renew a charter. Also within this cite, in reference to all groups of students, they listed various groups of students within the cite, which brought them into compliance. So this particular cite was very specific and clear as far as being in compliance with improved academic achievement in renewing and revoking charters.

STEFAN: Great, thank you, Leslie. So we performed this review of all the state evidence that was submitted and we looked through it to determine who was in compliance and who was not. So, how did that impact the next steps?

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First of all, in all of the SEAs' continuation awards, we included this special term and condition, you should be able to read it. It's kind of a small font. It's basically saying that the U.S. Department of Education has determined that your state is not in compliance, if you are one of those states with assurances 3A and 3B and then it states what you're going to have to do to cure this situation, which is that by September 1st your state is going to have to submit a written plan to us of how you're going to meet these requirements and you're going to meet them on or before January 31st. So you're submitting a plan by September 1st that describes how you're going to meet those assurances by January 31st, and this plan is subject to our approval and your plan must be approved by us by October 1st. Then you can see the language down there that describes what we might do if we find you out of compliance. This part of the webinar we might want to ask Cathy to weigh in on what some of those remedies are. We want

to stress that it's our objective through this program to work with all the states. We want to provide technical assistance, work with you on how we can assist you, but the bottom line is, these are program requirements and we have to ensure that all recipients of these awards are in compliance.

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I'll just go to the next slide that provides those dates again, the September, October, and January deadlines.

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Then here's the list of what can happen if you're found in noncompliance after January: withholding of funds, you can be placed on a cost reimbursement basis, grant termination, recovery of funds or other appropriate enforcement actions. It's probably best to assume the worst in this case and use this as an opportunity and use this time that you have within your state to put in place the laws that will get you into compliance. That's the end of our webinar. We do have our program attorney, she was able to join us, Cathy Grimes-Miller. Cathy, I don't know if you want to make any final remarks related to that compliance timeline or the noncompliance or we can just go in and start taking questions.

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CATHY:

I just want to reiterate what Stefan said, this is a statutory requirement, so as the Department of Education we have responsibility for administering the program and enforcing the statutory provision. What I would like to say is that we really are approaching this from the standpoint of providing as much technical assistance as we can to states to try to help states get into compliance. We're trying to exercise as much flexibility as we can within the meaning and spirit of the law in order to make this happen. The best part about it is that the statutory language doesn't just require a statutory provision or regulation, it also allows for state policy in order for states to get into compliance. So again, I think there is some flexibility within the statutory provision and what we like to do is work with states as much as possible, as much as necessary to help states get into compliance. Again, as the agency responsible for administering the program, to the extent that states are not in compliance, we do have a responsibility to enforce the statutory provision. From that standpoint, there are repercussions for states who don't make the effort to get into compliance, but hopefully we won't get to that point because we're really going to work

diligently over the next couple of months to help states do what they need to do, provide technical assistance, and get into compliance from that standpoint.

Stefan had asked me previously just to touch on the difference between the law and regulation or policy in this respect. I think law is self-explanatory, generally it's a rule or system of rules that govern a person's conduct and laws are generally enacted by the governing board of whatever state or city or whatever it is. In this case, I guess the best example of the law is the state's charter school law, and in many cases, the state's charter school law will address many of these issues with respect to the requirement of a performance contract or charter. Oftentimes the state charter school law will specify the types of provisions that have to be in that charter and oftentimes those provisions do require a certain level of improved student academic achievement.

A regulation is very similar to a law, except that usually regulations are issued by a governmental agency as opposed to an elected body. Regulations generally are based on existing statutory provisions or laws and therefore have the force of law. Policies, on the other hand, generally may be written or unwritten, but basically a policy doesn't necessarily have the force of law, but it sort of is a plan or practice or course of action that's implemented by a government or other entity that's designed to sort of influence decision making and behavior. So in this case, for example, if there is no specific statutory provision or regulation that addresses these requirements, to the extent that a policy is not inconsistent with the law, then the state has flexibility or discretion to actually develop a written policy that would bring the state into compliance with these provisions. That's basically it. In terms of the type of evidence that we're looking for to show compliance, I think Leslie and LaShawndra provided really good examples, but they don't necessarily have to be as specific as some of the statutory provisions were, that they highlighted.

But, of course, the best evidence is going to be a statutory provision, regulation, or written policy that the state can point to that specifically addresses each requirement. Generally, we would prefer a copy of that statute or regulation with the citation and other relevant information such as dates and that sort of thing. Again, as I mentioned before, while a policy doesn't have to be in writing to qualify as a policy, it must be in writing in order to qualify as the type of evidence that we would need to show a state's compliance with the assurances. Again, we would ask that you include a copy of the statutory or regulatory provision, including the citation, upon which

the policy is based, as well as other pertinent information, such as the date the policy was implemented, the title of the individual who's responsible for ensuring that the policy is followed, et cetera. And, again, as I mentioned before, the policy has to be consistent with state law and we would advise that if there is some sort of ambiguity in the law that maybe brings into question whether or not the policy is consistent with the law or whether or not the law requires it, it may be a good idea to request or obtain some sort of legal opinion from the state attorney general's office or something along those lines. But again, as I said before, we really are interested in working with states to help states get into compliance. We do think we have some flexibility, and we're willing to explore that to the extent possible consistent with the plain meaning of the language of the law as well as the spirit of the law in this case.

PEGGIE: Thank you. That's really helpful. Gail Taylor from New Hampshire: Gail, you can use STAR 6 to unmute yourself. She had a question about the timeline. When will SEAs be notified that they are not in compliance? So, she's concerned about the time crunch to make sure that she has to get a response by September 1st. Anything you want to add to that?

GAIL: Nope, that's about it.

PEGGIE: Okay. Stefan or Cathy?

STEFAN: Yes, you should be notified very soon. Another one of my team members can also jump in here, but that special term and condition is being included in your continuation grant award notice, which I believe should be in the mail or be in the mail very soon. Leslie maybe can clarify that a little bit.

GAIL: We just received that today.

LESLIE: Actually the continuation notices have gone out and if you have not already received them, then you should be receiving them very soon. But particularly for the states that I have worked with and even the states where Richard Payton has, I will be contacting and letting you know very soon, as soon as I can, this week and next week.

STEFAN: Yeah, I think that's a good point. I think we will plan to contact all states as soon as possible so we can be a little bit more specific about the exact elements of these assurances where you were found to be noncompliant. That's an excellent point, Ms. Taylor, and we'll huddle up after this on the timing of reaching out to all the states and writing on their compliance status.

GAIL: Thank you.

PEGGIE: I'm going to skip to Maryann Duncan's question because I think this is a quick one, and then, Cindy, we'll take you if you want to unmute yourself. Maryann is asking if we can provide written copies of the acceptable responses that LaShawndra and Leslie shared with us today, would that be a possibility for us to share those on the website of the National Charter School Resource Center?

STEFAN: Yeah, I think that's reasonable. I think in those instances where there were states that were found compliant and we'll just give those states a call, those project directors, and let them know we're going to be posting their state law. I wouldn't think that would be a problem. That's an excellent idea. We'll put up some of those examples for everyone.

PEGGIE: So Maryann, we can probably do that within the next week or so, as soon as those states have had a chance to be contacted. Cindy, do you want to go ahead and ask your question?

CINDY: In some of the examples that you shared, I didn't hear you using this direct reference that's in the assurance which is the [AUDIO SKIP] . So as we're thinking about how we might move forward to ensure compliance, I'm wondering about examples that are inclusive of all subgroups. So, if language says "all students" or "for all students," how to use the data, interpret that type of reference be sufficient, or are you really looking and expecting across the board that there are specific indications of the crosswalks from state law and the ESEA provisions?

STEFAN: I can take a shot at that one and then maybe Cathy might be able to chime in. I think it's pretty clear what the Appropriations Act stated for all groups as cited in ESEA, all those subgroups. So I think from a policy standpoint, I think that's very reasonable. We expect charter schools to demonstrate improved academic achievement for all students. So we would expect that you're able to crosswalk that to the actual practices that the authorizers had in place, that the authorizers are ensuring that when they are reviewing a school's performance and also assisting them in putting together their goals, that they're taking into account academic improvement for all students and all those subgroups. I don't know if Cathy has anything else she wants to add to that.

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CATHY: I guess I would just point out that the reference to all students applies to assurance 3B with respect to increase in student academic achievement being the most important factor in determining whether to renew or revoke a school's charter. So that's the first thing to keep in mind. Then secondly, while the statutory language is clear that all students have to be included in any requirement like that, we're not intending to be anal with respect to a specific reference to each individual group of students. As long as the evidence that's presented can be interpreted as including those students, then we would accept that as proof that the requirement has been met. So no, I don't think each category has to be listed individually, but on the other hand there has to be some sort of evidence that those categories are included in the requirement of increase in student academic achievement being the most important factor in such determination.

PEGGIE: Cindy, do you want to follow up or does that answer your question?

CINDY: That's fine, thank you.

PEGGIE: Adam has a question about the newly awarded SEAs. So, congratulations to New York and Florida. Are the timelines the same for those two new grantees?

STEFAN: Excellent question. No. There will be a similar process for the two new awardees as the 2010 awardees had. Our office will reach out to you this fall requesting evidence, and then there'll be a process going into winter and spring whereby we review that evidence and then come to a conclusion. And let me just verify that with Leslie, that that's what our plan is. But it'll be nearly identical to what happened last year for the 2010 grantees.

PEGGIE: Adam, do you have a follow-up? [PAUSE] Okay, Robert, from New Mexico, do you want to go ahead and ask your question? Maybe I'll start it for you—it looks like you're typing: May an SEA or school district select, through language in the contract, the external auditor for the charter schools that fall under the SEA or district, or must the selection of the external auditor be left to the charter school in order to meet the criterion of independent?

STEFAN: Okay, wow.

CATHY: I'll take a stab at that. I think the answer to that question is going to be based on state law. Our concern is that the auditor is independent and that the audit is performed on an annual basis in compliance with generally accepted accounting principles. But with respect to

how the auditor is selected, that is going to be a matter of state law, and we don't really care about that process as long as it's consistent with state law and federal law and is done on an annual basis and that the auditor is independent.

PEGGIE: Looks like that answers Adam's question.

So, we had one other question come in on the registration page, and it looks like you've addressed it. But the question was: Short of changing statutes, is there an acceptable way for SEAs to demonstrate compliance? So, you've indicated that you could have new policies, new regulations—I think I heard a mention of new guidance documents. Are there other recommendations that you would make to SEAs who are not able to change the statutes but are very interested in demonstrating compliance?

STEFAN: Well, I think, yeah, we've addressed a lot of them. I think Cathy gave an excellent overview of the differences between those three potential ways to come into compliance. I think, especially with policy, that there is the opportunity to be creative, in terms of providing evidence from authorizers in the form of letters that represent what their policy and systems are. I don't know if there are opportunities, perhaps, to have any type of MOUs that authorizers and SEAs sign on to that kind of agree on their policies and practices for authorizing new schools and then for monitoring academic performance.

So, I think, to echo what Cathy said before, there is the opportunity to be creative, as long as it's very clear that the authorizers intend to comply with these provisions.

PEGGIE: It doesn't look like there are any other questions from the chat. Are there any other questions that people have? Feel free to ask over the phone. [PAUSE]

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Okay. So, it looks like we've answered all of your questions. If you do have any other questions, please contact Leslie or Stefan or Erin Pfeltz and we can make sure that we get your questions answered.

This webinar has been recorded, and it will be archived on the website of the National Charter School Resource Center by Monday, August 15, at the latest. And we will also post, as Maryann suggested, the examples that were cited during the webinar today. Please share your feedback with us: we're going to do a short

evaluation right now.

It looks like Cindy was typing. Cindy, did you have a last question?
No? Okay.

So, thank you to Stefan and Cathy, and Leslie and LaShawndra and Erin. I think this was very helpful for the SEAs.

And enjoy the rest of your afternoon!

STEFAN: Wonderful. Thank you, Peggie.

ALL: Thank you.