The Impact of the New Title I Requirements on Charter Schools

Non-Regulatory Guidance

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Summary of Major Changes ……..5

A. Charter Schools and Accountability Requirements in NCLB……6

A-1. Are charter schools subject to the "adequate yearly progress" (AYP) and other accountability requirements of No Child Left Behind?

A-2. Which entity in a State is responsible for determining whether charter schools make AYP and and ensuring that they comply with other accountability provisions in Title I, Part A?

A-3. Is a charter school that is its own LEA covered by the NCLB requirements applicable to *schools* in need of improvement or by the requirements applicable to *LEAs* in need of improvement?

A-4. Which entity is responsible for carrying out the LEA's duties, under Section 1116 of Title I, when a charter school that is also an LEA is identified for improvement?

A-5. What are an LEA's responsibilities with respect to schools within its jurisdiction that are identified for improvement? (In other words, what are the responsibilities that authorized public chartering authorities, or other entities designated under State law, must assume when a charter school is identified for improvement?)

A-6. What resources are available to support the Title I accountability responsibilities of charter authorizers (or other entities designated under State law as responsible for charter school accountability)?

A-7. Must charter school authorizers insert State plans for meeting AYP into individual charter contracts?

A-8. Are charter authorizers now responsible for allocating Title I and other Federal formula funds to their charter schools?

A-9. Should State Title I accountability plans specifically address charter schools and reflect input from charter authorizers and operators?

A-10. What if a charter school fails to make AYP but meets its contractual requirements with its authorizer?

A-11. Does NCLB prohibit more rigorous accountability requirements than the requirements of a State's Title I accountability plan in an existing charter contract or a future charter contract?

B. Charter Schools and the Title I Public School Choice Provisions…….11

B-1. May an eligible charter school that is part of an LEA be listed as a choice option for parents who wish to transfer their child to a higher-performing school?

B-2. If a charter school is its own LEA but falls within the boundaries of a larger LEA, should eligible students from the larger LEA be able to transfer to it?

B-3. Do charter schools that admit students using a lottery have to give priority to eligible students transferring under the public school choice provisions of NCLB?

B-4. Must parents be notified if a charter school is identified as in need of improvement, corrective action, or restructuring?

B-5. Are charter schools that are parts of LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in the LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

B-6. Are charter schools that are their own LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in another LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

B-7. Are there Department resources one can use to find more information on NCLB's public school choice provisions?

C. Charter Schools and Supplemental Educational Services ……13

C-1. May charter schools apply for State approval to provide supplemental educational services to students enrolled in low-performing Title I schools?

C-2. Are students from low-income families who attend charter schools that are parts of LEAs under State law eligible for supplemental educational services?

C-3. Are students from low-income families who attend charter schools that are their own LEAs under State law eligible for supplemental educational services?

C-4. How much must an LEA pay for supplemental educational services?

C-5. Are there Department resources one can use to find more information on the Title I supplemental educational services provisions?

D. Charter Schools and Corrective Action……...14

D-1. Does NCLB give either States or authorizers the authority to reorganize a charter school's management and enforce other corrective actions?

D-2. Under the "corrective action" provisions, NCLB allows LEAs to convert low-performing Title I schools into charter schools. How might a State explain the manner in which this provision would be implemented?

E. Qualifications of Teachers and Paraprofessionals…….15

E-1. In general, what are the "highly qualified teacher" requirements under NCLB?

E-2. What qualifications do teachers in charter schools have to meet under NCLB?

E-4 What qualifications do charter school paraprofessionals have to meet?

E-4. When must paraprofessionals meet these requirements?

E-5. If a charter school does not accept Title I funds, must it comply with these requirements for paraprofessionals?

E-6. Must charter school LEAs reserve a portion of their Title I funds for professional development if they currently meet the "highly qualified" requirements for charter school teachers and the new requirements for paraprofessionals?

E-7. Which entity is responsible for ensuring that charter schools comply with NCLB's charter school teacher quality requirements?

Summary of Major Changes

This updated version of the nonregulatory guidance in the impact of Title I requirements (under the No Child Left Behind Act) on charter schools responds to inquiries that the Department has received since issuing the original guidance on this these issues in August, 2003. The new version addresses issues relating to charter school accountability and charter school lotteries. Significant changes are as follows.

- Item A-3 discusses whether a charter school that is its own LEA is treated as a *school*, or as a *local educational agency*, in need of improvement under the Title I Section 1116 requirements.

- Item A-5 describes the accountability-related responsibilities that the authorized public chartering authority, or another entity designated under State law, must carry out when a charter school has been identified as in need of improvement under Title I.

- Item A-6 describes the resources that may be available to support the authorized public chartering authority (or other entity) in carrying out those responsibilities.

- Item B-3, as revised, clarifies that a charter school that receives assistance under the Department's Charter Schools Program may use an admissions lottery that gives extra weight to students seeking to change schools under the Title I public school choice requirements.

The other changes made in this version of the guidance are primarily editorial, and seek to clarify statements made in the previous version.

The Impact of the New Title I Requirements on Charter Schools

A. Charter Schools and Accountability Requirements in NCLB

A-1. Are charter schools subject to the "adequate yearly progress" (AYP) and other accountability requirements of No Child Left Behind?

Yes, Title I of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act (NCLB) of 2001, requires each State, as a condition of receiving funds under the Title I program, to implement a "single, statewide State accountability system" applicable to all its public schools, including charter schools *[Section 1111(a)(2)(A)]*. A component of that system is a definition of "adequate yearly progress" that measures the extent to which schools succeed in educating all students to proficiency in at least reading (or language arts) and mathematics. In addition, a charter school that receives Title I funds is covered by the school improvement provisions under section 1116 of Title I.

A-2. Which entity in a State is responsible for determining whether charter schools make AYP and ensuring that they comply with other accountability provisions in Title I, Part A?

Section 1111(b)(2)(K) of the amended ESEA requires accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State's charter school law determines the entity within the State that bears responsibility for applying the Title I, Part A accountability provisions, including AYP, to charter schools. This generally means that the charter authorizer is primarily responsible for holding charter schools accountable under the Title I, Part A provisions unless State law specifically gives the State educational agency (SEA) direct responsibility for charter school accountability. We do not expect the local educational agency (LEA) in which the charter school is located to be this entity, unless it is also the charter authorizer.

In most States, the SEA has taken on the role of determining whether individual schools make AYP, based on student assessment results, the student participation rate on assessments, and the other academic indicators included in the State's AYP definition. Charter authorizers (or the other entities designated under State law as responsible for charter school accountability) will, thus, want to maintain close contact with the SEA in order to receive current and accurate information on whether charter schools have made AYP and whether individual schools have been identified as in need of improvement.

A.3 Is a charter school that is its own LEA covered by the NCLB requirements applicable to *schools* in need of improvement or by the requirements applicable to *LEAs* in need of improvement?

A charter school that is its own LEA and that is identified as in need of improvement is subject to the provisions of Title I that apply to *schools* in need of

improvement. This is the same policy that applies to all single-school LEAs receiving Title I funds.

A-4. Which entity is responsible for carrying out the LEA's duties, under Section 1116 of Title I, when a charter school that is also an LEA is identified for improvement?

As indicated in Item A-2, a State's charter school law determines the entity within the State that is responsible for carrying out Title I accountability provisions with respect to charter schools. Typically, this is the authorized public chartering authority, unless State law gives the SEA responsibility for charter school accountability.

A-5. What are the responsibilities of an LEA (or in the case of charter schools, of the entity designated under State law as responsible for charter school accountability) when a school within its jurisdiction is identified for improvement?

The responsibilities that an LEA (or, in the case of charter schools, the entity designated under State law) must assume when a school has been identified as in need of improvement include the following:

- Promptly providing information to the parents of each child enrolled in the school explaining what the identification means, the reasons for the school being identified, what the school is doing to improve, what help the school is getting, and how parents can become involved in addressing the academic issues that led to the identification *[Section 1116(b)(6)]*.

- Ensuring that the identified school receives technical assistance, both during the development or revision of its improvement plan and throughout the plan's implementation *[Section 1116(b)(4)]*.

- Reviewing, through a peer-review process, the school's improvement plan, working with the school to make necessary revisions in the plan, and approving the plan once it meets the requirements of the statute *[Section 1116(b)(3)(E).*

In implementing these requirements, States, charter school authorizers, and charter schools should attempt to align them, as much as possible, with State law requirements related to charter school accountability.

A-6. What resources are available to support the Title I accountability responsibilities of charter authorizers (or the other entities designated under State law as responsible for charter school accountability)?

Title I provides resources to SEAs and LEAs for carrying out the accountability-related responsibilities set forth in the statute. For example:

- The statute permits the SEA to retain up to one percent of the State's Title I allocation (and a slightly larger percentage, in the case of the smallest States) for administration of Title I programs in the State. The SEA may make available some of these funds to charter authorizers (or the other designated entities) to carry out the functions described in item A-5.

- The statute requires the SEA to reserve four percent of the State's Title I allocation, beginning in fiscal year 2004[1], specifically for the purpose of carrying out the State and local accountability-related responsibilities, including activities to assist schools identified for improvement. The SEA must allocate at least 95 percent of this amount to LEAs that have schools identified for improvement, corrective action, or restructuring, except that the SEA may serve those schools directly if it has the approval of the LEA. In allocating these funds, the State must give priority to LEAs that serve the lowest-achieving schools, demonstrate the greatest need, and demonstrate the strongest commitment to ensuring that their lowest-performing schools meet the goals outlined in their improvement plans *[Sections 1003(a), (b), and (c)]*.

  An SEA may use the five percent of this reservation that is not required to be allocated to LEAs to provide support for the efforts of charter school authorizers (or other designated entities) to carry out the accountability requirements of the statute. In addition, with the approval of appropriate LEAs in the State, such as the LEAs that have charter schools in improvement status within their jurisdiction, an SEA could use some of the remaining 95 percent of the set-aside to serve those charter schools, such as by providing funds to charter school authorizers for that purpose. Further, an SEA might provide funds from the 95 percent reservation directly to charter school LEAs, and condition that receipt of funds on a requirement that those LEAs provide a portion of the money to the authorizers or other entities that are responsible for the accountability of those schools. Finally, a State might require other (non-charter) LEAs that receive funds from the 95 percent reservation to ensure that charter schools under their jurisdiction are served; for instance, they might make it a requirement that an LEA provide some of its allocation to charter school authorizers responsible for the accountability of charter schools in the area.

A-7. Must charter school authorizers insert State plans for meeting AYP into individual charter contracts?

NCLB holds charter schools, like other public schools, accountable for making AYP. If authorizers wish, they may choose to incorporate the AYP definition into charter contracts, especially for new schools, but NCLB does not explicitly require this step.

[1] The amount was two percent in the two previous years.

A-8. Are charter authorizers now responsible for allocating Title I and other Federal formula funds to their charter schools?

No. If a charter school is authorized by an entity other than a traditional (school-district) LEA, the SEA will still be responsible for allocating Title I funds directly to the charter school, pursuant to Federal and State laws. In allocating these funds, SEAs will still comply with Section 5206 of ESEA and ensure that funds are allocated in a timely and efficient manner for new and expanding charter schools. If a charter school is, under State law, part of an LEA, the LEA will allocate Federal funds to the charter school on the same basis as it provides funds to its other schools.

A-9. Should State Title I accountability plans specifically address charter schools and reflect input from charter authorizers and operators?

Yes. Charter schools are public schools subject to the accountability requirements of NCLB. In accordance with congressional intent, Title I State accountability plans must be consistent with State charter school law and may not "replace or duplicate the role of authorized chartering agencies," or other designated entities, in overseeing accountability requirements for charter schools *[Conference report on the No Child Left Behind Act; note #77 on Title I, Part A]*. State Title I accountability plans should respect the unique nature of charter schools and should reflect input from charter operators and authorizers. In addition, State accountability plans should reflect the fact that the SEA is ultimately responsible for implementation of, and compliance with, the Title I requirements by all public schools in the State that receive Title I funds, including both traditional public schools and charter schools.

A-10. What if a charter school fails to make AYP but meets its contractual requirements with its authorizer?

If a charter school fails to make AYP, then the charter school authorizer or other designated entity must take the actions required by the statute. See item A-5.

A-11. Does NCLB prohibit more rigorous accountability requirements than the requirements of a State's Title I accountability plan in an existing charter contract or a future charter contract?

No. Nothing in NCLB prohibits the continuation of existing charter contractor prohibits the development of future contracts that meet or exceed Title I accountability requirements. If a charter school's contract with its authorizer imposes more immediate consequences than a State's Title I accountability plan, the authorizer should take appropriate steps to ensure that the school abides by the charter contract as specified in the State's charter school law, notwithstanding the fact that the charter school may have made AYP.

B. Charter Schools and the Title I Public School Choice Provisions

B-1. May an eligible charter school that is part of an LEA be listed as a choice option for parents who wish to transfer their child to a higher-performing school?

Yes. LEAs may list charter schools under their jurisdiction that have not been identified for improvement, corrective action, or restructuring as choice options.

B-2. If a charter school is its own LEA but falls within the boundaries of a larger LEA, may eligible students from the larger LEA be able to transfer to it?

Yes. An LEA should work with charter school LEAs within its geographic boundaries to reach agreements allowing students to transfer to these schools. However, allowing eligible students to transfer to a charter school LEA within its boundaries does not lift the requirement that the LEA give affected students the option to transfer to schools that it operates.

B-3. May charter schools that admit students using a lottery give priority to eligible students seeking to transfer under the public school choice provisions of NCLB?

A charter school that receives funding under the Department's Charter School Program (CSP) must use a random selection (lottery) process if more students apply for admission than can be admitted. A school that receives CSP funds generally may use a weighted lottery (that is, a lottery that gives preference to one set of students over another) only when necessary to comply with applicable civil rights laws. (See item C-3 of the Department's CSP guidance, available at http://www.ed.gov/policy/elsec/guid/cspguidance03.doc.) However, a charter school may weight its lottery in favor of students seeking to change schools under the public school choice provision of Title I, for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school could provide each student seeking a transfer under Title I with two or more chances to win the lottery, while all other students would receive only one chance to win.

B-4. Must parents be notified if a charter school is identified as in need of improvement, corrective action, or restructuring?

Yes. If a charter school is identified for improvement, parents of students enrolled at the school must be notified of its status before the beginning of the school year following identification, just as parents of students enrolled in other public schools are notified. If a charter school is part of an LEA, then the LEA should notify parents of their options. If the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school's status and their options, including returning children to their "home" public school.

B-5. Are charter schools that are parts of LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in the LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

Yes, consistent with the statute, LEAs that authorize charter schools must provide choice options and offer transportation to other public schools of choice within the LEA, even if a State's charter law does not require that transportation funds be made available for charter schools.

B-6. Are charter schools that are their own LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in another LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

As noted in Item B-4, if the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school's status and their options, including returning children to their "home" public school.

In addition, according to Section 200.44(h)(1) of the Title I regulations (67 Fed. Reg. 71710, 71725, to be codified at 34 C.F.R. pt. 200), if all public schools to which a student may transfer within an LEA (including charter school LEAs) are identified for school improvement, corrective action, or restructuring, the LEA must, to the extent practicable, establish a cooperative agreement with one or more other LEAs in the area. Therefore, a charter school LEA must, if it is practicable, establish such agreements with other LEAs.

Also, according to Section 200.44(h)(2) of the final Title I regulations, LEAs (including charter school LEAs) that have no eligible schools to which qualifying students may transfer are allowed to offer supplemental educational services to parents of eligible students in the first year of school improvement.

B-7. Are there Department resources one can use to find more information on NCLB's public school choice provisions?

Yes. For more information please consult the Department's Title I regulations at: http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html. You may also wish to consult the non-regulatory guidance on public school choice at: http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc

C. Charter Schools and Supplemental Educational Services

C-1. May charter schools apply for State approval to provide supplemental educational services to students enrolled in low-performing Title I schools?

Yes, charter schools that are not identified for improvement are eligible to become supplemental educational service providers pursuant to the Title I requirements.

C-2. Are students from low-income families who attend charter schools that are parts of LEAs under State law eligible for supplemental educational services?

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then students from low-income families who are enrolled in the school are eligible to receive supplemental educational services. The LEA must pay for such services on the same basis as it would pay for supplemental services for eligible students in any other school.

C-3. Are students from low-income families who attend charter schools that are their own LEAs under State law eligible for supplemental educational services?

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then students from low-income families who are enrolled in the school are eligible to receive supplemental educational services. A charter school that is its own LEA must pay for such services on the same basis as any other LEA. Also, charter school LEAs that are identified for improvement but are unable to enter into cooperative agreements with other LEAs to accept transferring students may make supplemental services available in the first year of school improvement to eligible students.

C-4. How much must an LEA pay for supplemental educational services?

The law establishes a combined funding requirement for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

(1) Choice-related transportation;
(2) Supplemental educational services; or
(3) A combination of (1) and (2).

These funds may come from Title I, other federal programs such as Title V, Part A of ESEA, funds moved into these programs under the "transferability" authorization, or State or local sources. This flexible funding approach means

that the amount of funding that an LEA must devote to supplemental educational services depends in part on how much it spends on choice-related transportation.

If the cost of satisfying all requests for supplemental educational services exceeds an amount equal to 5 percent of an LEA's Title I, Part A allocation, the LEA may not spend less than that amount on those services. An LEA may also spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services.

C-5. Are there Department resources one can use to find more information on the Title I supplemental educational services provisions?

Yes. For more information please consult the Department's Title I regulations at: http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html. You may also wish to consult the non-regulatory guidance on supplemental educational services at: http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc.

D. Charter Schools and Corrective Action

D-1. Does NCLB give either States or authorizers the authority to reorganize a charter school's management and enforce other corrective actions?

Yes. As with other public schools, charter schools that are unable to make AYP by the end of the second full school year after identification are placed under corrective action according to Section 1116(b)(7)(C) of ESEA. NCLB gives the appropriate entity under state law (see A-2) the responsibility to reorganize a charter school's management or take other corrective actions, consistent with State charter law and the State's accountability plan for its charter schools. State charter law would determine if this requires the charter school to modify its charter contract.

D-2. Under the "corrective action" provisions, NCLB allows LEAs to convert low-performing Title I schools into charter schools. How might a State explain the manner in which this provision would be implemented?

If a State's charter school law allows public schools to convert to charter status, a State's Title I accountability plan may explain how the process of converting schools identified for corrective action to charter schools would work. The accountability plan might also identify the entities that will be expected to authorize such charters and explain whether these entities have discretion in extending the contracts for these charter schools.

E. Qualifications of Teachers and Paraprofessionals

E-1. In general, what are the "highly qualified teacher" requirements under NCLB?

Sections 1119(a) and 9101(23) of ESEA, as reauthorized by NCLB, establish requirements for the qualifications of teachers who teach a "core academic subject[2]." In general, in order to be considered "highly qualified," a teacher must:

- Have obtained full State certification as a teacher or passed the State teacher licensing examination and hold a license to teach in the State, and may not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis:

- Hold a bachelor's degree; and

- Have demonstrated subject matter competency in each of the academic subjects in which the teacher teaches, in a manner determined by the State.

Under the law, all teachers hired after the first day of the 2002-2003 school year to teach core academic subjects in a program supported with Title I, Part A funds must be highly qualified. In addition, as a condition of receiving Title I, Part A funds, each State must ensure that all elementary and secondary school teachers of core academic subjects in the public schools of the State are highly qualified by the end of the 2005-2006 school year.

For more information on these requirements, see Section C of the Department's nonregulatory guidance on the Improving Teacher Quality State Grants program (Title II, Part A), available at http://www.ed.gov/programs/teacherqual/guidance.doc, and information on additional flexibility available to schools and local educational agencies in meeting these provisions, which is available at http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html

E-2. What qualifications do teachers in charter schools have to meet under NCLB?

The law provides that a teacher who teaches core academic subjects in a charter school meets the certification requirement if he or she meets the requirements set forth in a State's charter school law regarding certification or licensure *[Section 9101(23)(A)(i)]*. Thus, a teacher in a charter school does not have to be licensed or certified by the State if the State's charter law does not require such licensure or certification. All other elements of the "highly qualified teacher" requirement

[2] The core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

apply to charter school teachers in the same way, and on the same timeline, that they apply to teachers in traditional public schools.

E-3. What qualifications do charter school paraprofessionals have to meet?

Paraprofessional aides hired to work in programs supported with Title I, Part A funds must have a high school diploma or its recognized equivalent. Except for paraprofessionals who act as translators or conduct parent involvement activities, they must also have completed at least two years of study at an institution of higher education, possess at least an associate's degree, or demonstrate subject-matter competence through a formal State or local assessment *[Section 1119(c)-(e)]*. Note that this requirement applies only to paid paraprofessionals and not to parents or other volunteers. In addition, the Department's regulations clarify that the term "paraprofessional" applies only to individuals who provide instructional support and not to school staff who have only non-instructional duties (e.g., providing technical support for computers, providing personal care services to students, carrying out clerical functions) *[34 C.F.R. Section 200.58(a)(2)]*.

These provisions of the law apply to charter schools in the same manner that they apply to traditional public schools.

E-4. When must paraprofessionals meet these requirements?

The paraprofessional qualifications requirements apply immediately to all paraprofessionals hired to work in Title I programs after the enactment of NCLB (January 8, 2002). Paraprofessionals hired prior to the enactment of NCLB must meet the requirements by January 8, 2006.

For additional information on the paraprofessional requirements, see the Department's non-regulatory guidance at http://www.ed.gov/policy/elsec/guid/paraguidance.doc.

E-5. If a charter school does not accept Title I funds, must it comply with these requirements for paraprofessionals?

No, these requirements are applicable only to paraprofessionals working in Title I programs.

E-6. Must charter school LEAs reserve a portion of their Title I funds for professional development if they currently meet the "highly qualified" requirements for charter school teachers and the new requirements for paraprofessionals?

No. Section 1119(l) of ESEA requires all LEAs, including charter school LEAs, to spend between 5 and 10 percent of their Title I allocations on professional development to help all teachers meet the new requirements by the end of the 2005-06 school year. If all teachers and paraprofessionals in a charter school

LEA have met these requirements, the funds do not need to be reserved for professional development.

E-7. Which entity is responsible for ensuring that charter schools comply with NCLB's charter school teacher quality requirements?

As discussed in Item A-2 of this guidance, Section 1111(b)(2)(K) of ESEA requires that responsibility for charter school accountability be determined by individual State charter laws. This generally means that the charter authorizer bears primary responsibility for holding charter schools accountable for Title I, Part A provisions (including the teacher quality requirements) unless State law specifically gives the SEA direct responsibility for charter school accountability. We do not expect the LEA in which the charter school is located to be this entity, unless it is also the charter authorizer.