



National Alliance for Public Charter Schools

**Testimony of Nelson Smith
President**

**National Alliance for Public Charter Schools
On the Miller-McKeon Discussion Draft
House Committee on Education and Labor
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Mr. Chairman, Ranking Member McKeon, and members of the Committee, good afternoon. Thank you for the opportunity to testify today on recommendations to improve the Elementary and Secondary Education Act. I am Nelson Smith, President of the National Alliance for Public Charter Schools (the Alliance), a nonprofit organization representing all sectors of the national charter school movement.

Background: A Commitment We Share

In 1965, President Johnson signed into law the Elementary and Secondary Education Act (ESEA). Subsequent reauthorizations have seen changes in the name and scope of this groundbreaking law, but its goals have always remained the same: improving public schools for our nation's most underserved children. An overwhelming number of public charter schools subscribe to this same philosophy, and these independently operated public schools today serve a higher percentage of poor students, minority students, and English language learners than traditional public schools.

The federal government has played a critical role supporting the growth of public charter schools. Initially created in 1995, when only seven states had charter laws and just 60 schools operated in the country, the federal Charter Schools Program has been instrumental in propelling public charter school growth. Currently, there are over 4,000 charter schools enrolling over 1.14 million students in 40 states and the District of Columbia.

As public schools, charters are open to all students, regardless of income, gender, race, or religion. Like other public schools, charter schools receiving federal money fall under the purview of the No Child Left Behind Act (NCLB). While there are certain programs that only impact them, charter schools are required to operate under many of the same NCLB requirements as traditional public schools.

No legislation is easy to craft, and reauthorizing a bill as large and complex as NCLB is particularly difficult. The Alliance commends the Committee and its staff for their hard work on this discussion draft, and more broadly, for the open and transparent manner in which the reauthorization effort is being managed.

Title I and the Accountability System

No federal education program has had as broad an impact as Title I. NCLB pushed its effect even further by striking a new accountability bargain. In exchange for Title I funding, schools must work towards universal student proficiency by 2014, the first year a class would graduate after having spent their entire K-12 education career under NCLB's requirements. This bargain relies on a complicated but manageable Adequate Yearly Progress (AYP) measurement. States set their own standards and proficiency goals, and are required to administer yearly reading and math tests in grades three through eight and one grade in high school. Schools are required to report the progress of subgroups of students via race and ethnicity, economic status, disability level, and

language proficiency. For schools and districts to make AYP, tested students have to meet certain increasing percentages of proficiency as well as test participation goals.

Despite the complexity of this approach, the national charter community has strongly supported NCLB, particularly because its accountability rules have laid bare the troubling gaps in achievement between groups of American students. If there is one great goal of our movement, it is closing those gaps and providing high quality education for all students.

As we all know, the 2002 Act has flaws. By relying on end-of-year "snapshots" of average proficiency levels, it fails to acknowledge that students often enter schools with skills far below grade level, or to recognize schools that make significant student-level gains but fall short of the AYP bar. The current system continually forces states to push for higher absolute achievement levels, but fails to measure or credit student progress toward those increasingly challenging summits.

We have strong empirical evidence from studies in three of the largest chartering states (Florida, California, and Texas) that charter school students typically enter our schools behind their peers in academic performance. As the AYP threshold rises, charter and other public schools that actively recruit low-performing students will likely be labeled "in need of improvement" even if they achieve substantial annual gains in student achievement, creating a huge disincentive to create schools that serve the nation's most disadvantaged students.

To remedy these problems, the current discussion draft includes a well-crafted growth model that will reward public schools across the country for their actual effect on individual students. Moreover, it will recognize those schools that barely missed making AYP, but clearly produced impressive academic results.

The discussion draft also requires states to develop longitudinal data systems capable of tracking individual student results and linking those results back to individual teachers. This information will help identify truly effective teachers and inform policy makers in future discussions about teacher qualifications.

While there are many positive aspects about the draft's proposed accountability system, there are three areas that deserve reconsideration.

Multiplied Complexity. First, the draft allows states to use multiple indicators for determining AYP, partially substituting these indicators for the law's current requirements for proficiency on reading and math tests. We know that the Committee has faced enormous pressure to include additional indicators, and appreciate your effort to include rigorous measures. However, we are concerned that the complexity of the proposed approach outweighs its potential benefits. States adding new indicators will surely become embroiled in the same disputes over measurement and reporting that have marked the first five years of NCLB. The burden of data collection will be multiplied for

all public schools, but will weigh especially heavily on charter schools and their authorizers.

Besides diluting focus on the paramount objective of reading and math proficiency, the proposed system would greatly complicate achievement reporting, a hallmark of the current NCLB. For instance, for one charter school here in Washington, D.C., there are 108 cells in its reading report card alone.¹ Under the proposed system, parents could receive report cards with several hundred additional cells – not to mention explanations of weighting formulas for counting math and reading test results as 75% of AYP and the new indicators as 25% of it, as the draft allows.

More to the point, multiple indicators simply may not be necessary. The primary shortcoming of NCLB's current approach to AYP – and the source of much current criticism of the Act – is that by relying on one-day test "snapshots," it may identify for improvement schools that are actually making substantial progress but fall short of absolute proficiency standards. By allowing states to consider growth measures in AYP, the draft largely resolves this problem.

Restricting Choice. A second source of controversy in the 2002 Act is that the accountability system treats all schools that don't make AYP the same. A school that misses AYP in only one subject for one subgroup should be treated differently than a school that misses in almost all subjects for just about every subgroup. The need for a system that recognizes these differences has been broadly endorsed by the Administration, the Aspen Commission, and other groups.

However, the discussion draft responds by creating a two-tiered system for categorizing schools that don't make AYP for two consecutive years. For schools that don't make AYP for the next two years, it creates another two-tiered classification system. Apart from the complexity of this approach, and the real possibility of arbitrary judgments by school districts, the interventions proposed for schools in the various categories differ dramatically. The net result would deny parents and families the new opportunities they were guaranteed in the 2002 Act.

Currently, if a school does not make AYP for two consecutive years or more, it must offer all of its students the option of transferring to a higher-performing public school, including a charter school. The new system would require a smaller number of struggling schools to provide this option. We recommend that the draft be changed to require that all schools that fail to make AYP for two years or more must continue to offer public school choice to all of their students.

Keeping the Loophole Closed. Finally, with respect to the proposed rules on restructuring, there is good news and bad news in the draft. Currently, if a school does not make AYP for six consecutive years, it faces a range of consequences including

¹ Capital City Public Charter School, 2006 AYP Report:
<http://www.dcpubliccharter.com/nclbayp/allreports/capcitynclbayp.pdf>

contracting, state takeover, and closure/reopening as a charter school. The impact of this provision has been severely limited by a loophole that allows districts to pursue “any other major restructuring of a school’s governance arrangement,” which has been by far the preferred option and resulted too often in cosmetic changes. We applaud the Committee for closing this loophole, but we caution that the proposed new rules will create an even larger one. Schools that chronically fail students must be an urgent priority, period. Allowing districts and states to put them on "List B" and then merely suggesting a set of remedies will simply replicate the sorry record of the past five years.

Title II and Highly Qualified Teachers

The quality of a student’s teacher is the most important controllable factor impacting a student’s achievement. If a student has highly effective teachers year after year, a bright academic future is likely. Conversely, several consecutive ineffective teachers can cause serious harm to a student’s potential.

The No Child Left Behind Act took some important first steps on the teacher quality issue, attempting to ensure a highly qualified teacher (HQT) for every student. However, the law’s definition of a highly qualified teacher focused more on inputs such as degrees and certifications than on classroom effectiveness.

For charter schools, NCLB explicitly defers to state charter law regarding certification requirements. If a state does not require any charter teachers to be certified, NCLB does not impose that additional mandate. Fortunately, the discussion draft keeps this provision.

In other areas, however, the discussion draft maintains aspects of the current law that make innovation difficult not only in charter schools, but in any small school -- a point recognized in the U.S. Department of Education's recent rulemakings regarding HQT rules in rural schools. For example, the list of core academic subjects for which NCLB’s teacher requirements is applicable is long, and demonstrating subject-matter competency in multiple subjects can be time-consuming and burdensome for teachers (and expensive for schools). These requirements are particularly problematic for high schools using project-based or other interdisciplinary methods. Teachers in such innovative high schools should be allowed to demonstrate their abilities in a manner consistent with the environment in which they teach.

The Alliance recommends that NCLB provide broader latitude to states in defining teacher quality, including allowing states to define core subjects. It should also encourage states to focus on teacher effectiveness instead of input-based qualifications. This shift will be facilitated by the move to an accountability system that includes student-level growth data, which should be the foundation for the definition of a “highly effective teacher.”

Title V and the Charter Schools Program

In the last 20 years, few education reforms have been as successful as charter schools, which have provided thousands of new public school choices to children and families who need them the most. While many public school districts around the country struggle to maintain their current students (particularly in inner cities), charter schools have grown exponentially since 1992, and demand continues to grow. We estimate that there are over 300,000 students on charter schools waiting lists.

The federal Charter Schools Program (CSP) has been an invaluable and well-managed contributor to the success of the charter school movement. The program has provided much needed financial assistance to charter schools to cover start-up costs.

Over the past two years, the Alliance has engaged in a nationwide dialogue with charter school operators, key stakeholders, and other supporters to consider what changes ought to be made to enhance the program. The discussion draft incorporates many of the most important suggestions from the field, which we deeply appreciate.

- First, while helping charter school start-ups remains the foundation of the CSP, the draft also provides greater support for the expansion and replication of successful charter models. In particular, the draft allows more than one CSP grant per recipient and permits charter support organizations to receive grants to undertake expansion and replication activities. *We emphasize that enabling the growth of high-quality charter schools is a crucial corollary to the other goals of NCLB.* Parents must have an expanding array of solid new public-education options in communities where their children are disserved by the traditional system.
- Second, the draft strengthens the priority criteria by which the Secretary of Education may award grants to states. An ideal state charter school law encourages growth and quality as well as a high degree of school autonomy and accountability. To motivate states to adopt the ideal law, the draft adds priorities to encourage the creation and support of non-district authorizers, the strengthening of charter school autonomy and accountability, and the provision of equitable funding to charter schools.
- Third, the draft strengthens the administration of the CSP by allowing charter school authorizers to serve as grant administrators in addition to state education agencies (SEAs). In some states, the SEA may be the best organization to manage CSP funds. These SEAs have involved their state's public charter school leaders in the administration of their grants and in developing programs that reflect their state's specific needs. In states where SEAs have fallen short in administering (or even applying for) the program, however, accountability will be enhanced by allowing charter school authorizers to compete for the CSP grant administrator role.

- Fourth, the draft allows the Secretary of Education to allocate funds as needed between the Charter Schools Program and State Facilities Incentive Grants Program. Despite the continuing growth of public charter schools, the CSP funding level has been relatively stagnant for the past five years. This funding challenge is further exacerbated by the reservation of up to \$100 million in new CSP funds for the State Facilities Incentive Grants Program. By granting discretion to the Secretary, the draft allows for federal appropriations to respond to the needs of the states, recognizing that in certain years more money will be needed for the CSP, while in other years more money will be needed for the State Facilities Incentive Grants Program.
- Fifth, the law creates a national dissemination program. As charter schools continue to grow, the best practices developed in these innovative public schools must be disseminated to all other public schools. Previously, the CSP's dissemination activities were primarily state-focused. As proposed by the law, a new national dissemination program will encourage the sharing of charter schools' best practices among public schools across the nation.
- Finally, the draft incorporates reauthorization of the Credit Enhancement for Charter School Facilities Program, an important vehicle for encouraging private sector investment in charter school facilities. This change will enhance administrative efficiency in the overall charter schools programs.

Conclusion

Few pieces of federal legislation have as far-reaching and important an impact on this nation's disadvantaged students as the Elementary and Secondary Education Act. As custodians of this legislation, it is vital that the Committee ensure reauthorization happens in a timely manner this year.

NCLB 1.0 was clearly a momentous step in the right direction for American education. However, too many of our most vulnerable children still remain in struggling schools. As the Committee works to create NCLB 2.0, we urge that you put much stronger emphasis on creating new, high quality public charter schools where they are most needed – schools that will foster radically higher academic achievement for children who are still, today, left behind.

As you move forward with your markup, I hope you will look to the National Alliance for Public Charter schools as a resource in your discussions. I want to again thank the Committee for inviting me to testify today.

