

---

ENGLISH LEARNERS  
TOOLKIT:  
GUIDANCE FOR CHARTER  
SCHOOL AUTHORIZERS

PREPARED BY CIVIL RIGHTS SOLUTIONS, LLC  
FOR

NATIONAL ASSOCIATION OF  
CHARTER SCHOOL AUTHORIZERS

---

2018

© 2018 National Association of Charter School Authorizers (NACSA)

This document carries a Creative Commons license, which permits noncommercial re-use of content when proper attribution is provided. This means you are free to copy, display, and distribute this work, or include content from the application in derivative works, under the following conditions:

**Attribution:** You must clearly attribute the work to the National Association of Charter School Authorizers and provide a link back to the publication at [www.qualitycharters.org](http://www.qualitycharters.org).

**Noncommercial:** You may not use this work for commercial purposes, including but not limited to any type of work for hire, without explicit prior permission from NACSA.

**Share Alike:** If you alter, transform, or build upon this work, you may distribute the resulting work only under a license identical to this one.

For the full legal code of this Creative Commons license, please visit [www.creativecommons.org](http://www.creativecommons.org). If you have any questions about citing or reusing NACSA content, please contact us.

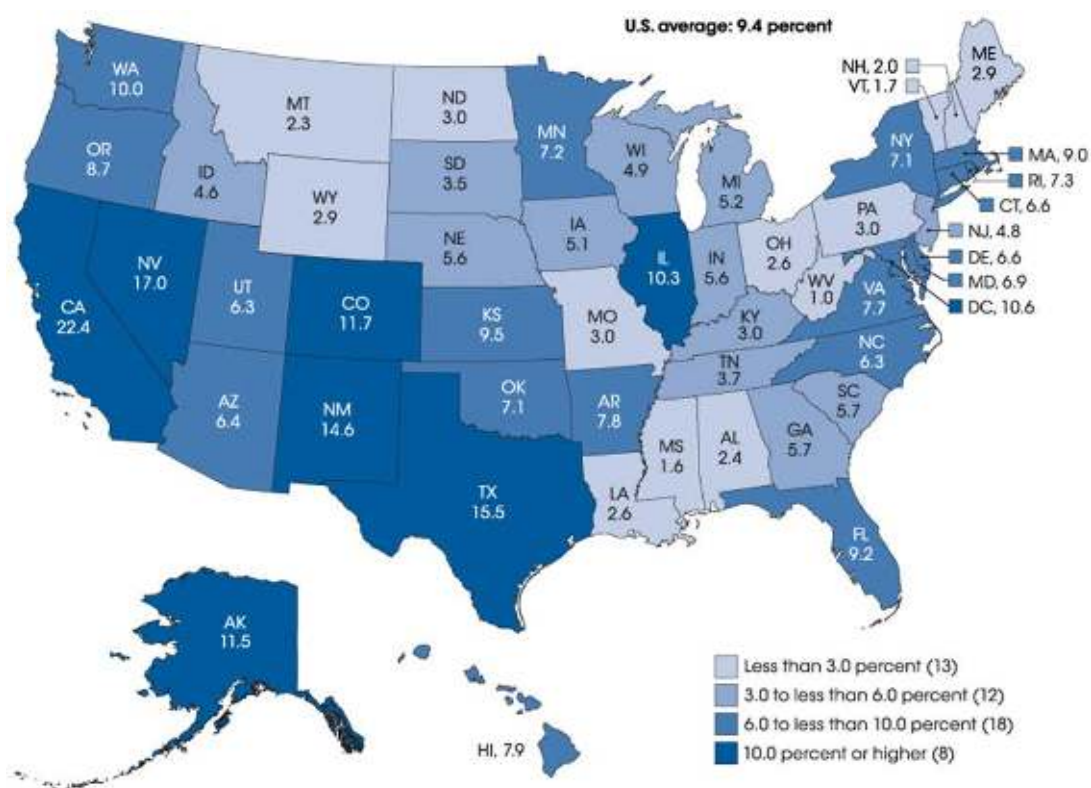
# TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	<b>4</b>
<b>LEGAL HISTORY/Framework</b> .....	<b>7</b>
<b>ENROLLMENT/ADMISSIONS</b> .....	<b>10</b>
<b>AFFIRMATIVE OBLIGATIONS FOR EDUCATING EL STUDENTS</b> .....	<b>11</b>
IDENTIFICATION AND ASSESSMENT .....	11
EL PROGRAM.....	12
PERIODIC EVALUATION .....	15
<b>PARENTAL INVOLVEMENT/NOTIFICATION</b> .....	<b>17</b>
<b>AUTHORIZER PRACTICES</b> .....	<b>18</b>
<b>RECOMMENDED TOOLS</b> .....	<b>25</b>
TOOL 1: EVALUATING A CHARTER APPLICATION.....	25
TOOL 2: IDENTIFYING ENGLISH LEARNERS .....	29
TOOL 3: ASSESSING ENGLISH LEARNERS .....	30
TOOL 4: PLACING STUDENTS IN AN ENGLISH LEARNER PROGRAM AND NOTIFYING PARENTS....	31
TOOL 5: EVALUATING ENGLISH LEARNER PROGRAMS .....	32
TOOL 6: EXITING ENGLISH LEARNERS FROM ENGLISH LEARNER PROGRAMS .....	34
TOOL 7: STAFFING AND TRAINING QUALIFIED TEACHERS AND STAFF .....	35
TOOL 8: TRANSLATING AND INTERPRETING MATERIALS FOR STUDENTS AND FAMILIES.....	36
TOOL 9: RESOURCE LIST .....	38
<b>ENDNOTES</b> .....	<b>40</b>

# INTRODUCTION

English learners<sup>1</sup> (EL) are one of the fastest growing student populations in the United States, and all public schools must ensure that they are equipped to meet the educational needs of this diverse student population. There are more than 4.5 million EL students attending public schools across the country, making up more than 9 percent of the public school population.<sup>2</sup> Six states<sup>3</sup> and the District of Columbia have an EL student population of 10 percent or more.<sup>4</sup> California has the highest EL student population, exceeding 22 percent.<sup>5</sup> Thirty states and the District of Columbia experienced an increase in their EL student population between 2012-13 and 2013-14.<sup>6</sup> And according to a March 2017 joint publication, the National Council of La Raza (now UnidosUS) and the National Alliance for Public Charter Schools estimate 10 percent of students in charter public schools are EL students.<sup>7</sup>

Percentage of EL Public School Students: School Year 2014-15



While the native language of most EL students across the country is currently Spanish, there is tremendous diversity among Spanish-speaking ethnic groups and across the entire EL community. This presents additional challenges and opportunities for the authorizers and schools that serve them.

There is a significant achievement gap between EL students and non-EL students. Nationally, the achievement gap between EL and non-EL students hovers at approximately 40 percentage points in both fourth-grade reading and eighth-grade math on average<sup>8</sup> and has remained fairly unchanged between 2000 and 2013.<sup>9</sup> Some research suggests that this

achievement gap is not static; rather, it can widen even further as an EL student moves through school without adequate language acquisition supports, and it may take up to eight years to close the gap.<sup>10</sup> The gap “illustrates the daunting task facing these students, who not only have to acquire oral and academic English, but also have to keep pace with native English speakers, who continue to develop their language skills. It may simply not be possible, within the constraints of the time available in regular formal school hours, to offer efficient instruction that would enable the ELL students to catch up with the rest.”<sup>11</sup> It follows that in addition to the achievement gap, EL students have disproportionately high dropout rates, low graduation rates, and low college-completion rates.<sup>12</sup> For example, the national high school graduation rate in 2013-14 for EL students was just 62.6 percent, compared to 82.3 percent for all students.<sup>13</sup>

Charter school authorizers are responsible for ensuring that charter schools are honoring student rights and meeting the unique needs of special populations. **This responsibility requires authorizers, in partnership with schools, districts, and State Education Agencies, to hold schools accountable for providing equal access and appropriate services to EL students.** Efforts have been made across the country to hold authorizers liable for charter school violations of EL student rights under federal law. In 2013, an advocacy organization in Louisiana filed a complaint with the USDOE Office for Civil Rights (OCR) against the Orleans Parish School Board and Recovery Schools District, both local district authorizers, alleging discrimination against minority students and limited English proficient parents. In 2014, the American Civil Liberties Union filed a complaint against the Delaware Department of Education as a state authorizer and a local school district authorizer alleging that its charter schools unlawfully segregate students. In 2015, an advocacy organization in Idaho filed a complaint with OCR against the state board of education, state department of education, the Idaho Charter School Commission (a statewide authorizer) and all 48 of Idaho’s charter schools alleging discrimination against EL students in public charter schools.

**Given these recent efforts to hold authorizers jointly liable for alleged violations of federal civil rights laws by charter schools, strong authorizer oversight may now be even more critical than ever.** It would not be surprising to see advocacy organizations become more aggressive in their efforts to enforce civil rights laws, including those specific to EL students and families with limited English proficiency, and these advocacy and enforcement efforts could very well include authorizers.

Moreover, federal and state laws across the country are evolving to explicitly address the needs of EL students, and authorizers must stay informed of these legal developments to ensure compliance by the schools in their portfolio. Not only do many state charter statutes require charter schools to enroll proportionate percentages of EL students (generally relative to the district of location) or to enroll a cross-section of the community in which they are sited, but notably the Every Student Succeeds Act, the 2015 federal reauthorization of No Child Left Behind, expressly requires states to develop academic performance goals for EL students, clearly signaling a deepened commitment to both enrolling and educating them.

Authorizers should strive to offer more support and guidance to charter schools to assure their ability to understand and satisfy legal requirements, to understand and implement best practices, and to access resources to meet the needs of EL students. When evaluating charter schools, authorizers should take care to ensure their performance frameworks allow for the disaggregation of student subgroups to allow them to explicitly measure the academic progress of EL students. This toolkit provides authorizers an understanding of charter school obligations when serving EL students, as well as the tools to effectively monitor whether they are meeting these obligations.

## LEGAL HISTORY/FRAMWORK

As public schools that receive federal funding, charter schools must comply with federal civil rights laws that govern how educational programs are designed for EL students. **A combination of federal law, state law, and federal court jurisprudence establishes the standards that charter schools must meet in serving EL students.**

Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving federal financial assistance, including public schools. In 1974, the United States Supreme Court made a landmark decision that influenced the application of Title VI to the education of EL students moving forward, including EL students being served in charter schools today. In that case, *Lau v. Nichols*, the Supreme Court decided that in order to comply with Title VI, schools must take affirmative steps to ensure that students with limited English proficiency (LEP) can meaningfully participate in their educational programs and services. The case involved a class action lawsuit filed against the San Francisco Unified School District by 1,800 non-English-speaking Chinese students. Most of those students were taught exclusively in English, and those who did not become proficient in English were denied high school graduation. **In determining whether such an educational program resulted in discrimination in violation of Title VI, the Supreme Court concluded there is no equality...by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.**

While the Supreme Court did mandate that schools take affirmative steps to ensure that EL students can meaningfully participate in their educational programs, the Court did not go so far as to require a particular curriculum or program. The applicability of this finding is that while charter schools do not generally need to follow EL programming mandates of their state's regulations, all charter schools are required to have a program in place to serve EL students.

### WHAT DOES THIS MEAN FOR CHARTER AUTHORIZERS?

Charter authorizers should ensure that their new school RFPs require applicant groups to outline their educational plan for EL students. When evaluating operating schools, authorizers should evaluate the efficacy of a school's EL program through classroom visits, interviews with school staff responsible for educating EL students, and by disaggregating student results to include an EL-specific analysis.

**Please see page 25 for tools that will assist you in these oversight practices.**

Shortly after *Lau v. Nichols* was decided, Congress passed the Equal Educational Opportunities Act (EEOA) of 1974. The EEOA prohibits the denial of equal educational opportunities to individuals on account of his or her race, color, sex, or national origin. One of the specific requirements with respect to EL students is that public schools and State Education Agencies (SEAs) must take "appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs."

Another seminal court decision that influenced the requirements of EL programs came out of the United States Court of Appeals for the Fifth Circuit in 1981. The case of *Castaneda v. Pickard* established standards for determining whether a school district's programs for EL students comply with federal civil rights laws. In that case, the court of appeals concluded that "appropriate action under the EEOA" is "a genuine and good faith effort consistent with local circumstances and resources to remedy language deficiencies." **The court of appeals went on to establish a three-part test for determining whether an EL program is appropriate:**

- Is the EL program based on a sound educational theory or considered "legitimate experimental strategy"?
- Is the program implemented effectively?
- Are language barriers overcome in a reasonable period of time?

That test is still applied today in determining whether a school's EL program is compliant with federal civil rights requirements and should inform an authorizer's oversight process of EL programs.

The Every Student Succeeds Act (ESSA), the 2015 federal reauthorization of No Child Left Behind, expands states' legal commitment to EL students in several key ways. Most notably, ESSA prioritizes and emphasizes both academic achievement and accountability for EL students while allowing states the flexibility to design their own identification and exiting policies, proficiency standards, and assessments. For instance, under ESSA, states must have the following practices in place:

- Standardize identification and exiting processes for EL students by developing a statewide uniform policy
- Set high academic standards for their EL students by developing multi-level English language Proficiency (ELP) standards. These ELP standards must align with content standards for reading and language arts and must include all four domains of language development (reading, writing, listening, and speaking).
- Administer a rigorous, statewide, uniform assessments for their EL students by developing a single assessment aligned with ELP standards for grades K-12 to be used by all schools
- Design state accountability plans with specific indicators of EL students' academic progress by giving "substantial weight" to attainment of grade-appropriate ELP and content standards
- Provide appropriate accommodations for EL students by offering assessments in languages other than English when those languages are "present to a significant extent" as defined by each state

There is also a long history of guidance from OCR. Specifically, OCR issued guidance documents in 1970, 1985, 1990, 1991, and most recently in January 2015. The January 2015 guidance is what currently governs OCR's interpretation of federal requirements related to EL programs. OCR also issued separate guidance in 2011 and 2014 related to immigrant student enrollment that may also be relevant to how schools can ensure equal access to students regardless of national origin.



In order to effectively monitor charter school compliance with the legal requirements for educating EL students, authorizers must familiarize themselves with the legal framework established by the combination of federal law and policy outlined above. In addition, and particularly in light of ESSA's requirements, authorizers also must understand how state laws and policies may impact this work. Every state is different—some states have very few, if any, legal requirements for EL programs beyond what is mandated by ESSA, while others are very prescriptive. Moreover, in many states, charters are either explicitly exempt from requirements placed on traditional district schools (or LEAs) or can request an exemption. Authorizers need to understand and stay abreast of the EL-specific statutory, regulatory, and policy developments at the federal and state levels in order to support and monitor how their charter schools enroll, serve, and exit EL students and engage with LEP families and communities.

## ENROLLMENT/ADMISSIONS

Charter schools must ensure that their recruitment efforts are not discriminatory. In doing so, charter schools must recruit from all segments of the community served by the school and provide information to individuals who are not proficient in English in a language that they understand. For instance, written recruitment materials must be translated into languages common in the community that a charter school serves. Additionally, interpreters must be available at events such as open houses and school tours to ensure that individuals who are not proficient in English are able to participate in those events. Authorizers should include asking about recruitment and equitable access supports during oversight visits.

Further, authorizers must ensure that charter schools are schools in compliance with federal law by not discriminating against individuals who attempt to enroll. As such, charter schools may not categorically deny enrollment of EL students or immigrant students nor institute enrollment practices that could have a chilling effect on the enrollment of immigrants or non-citizens. Practices that have a negative effect on such enrollment include requirements that applicants provide Social Security numbers, birth certificates, citizenship status, country of birth, and race or ethnicity. Requests for such information may cause significant anxiety to some potential applicants, thereby dissuading them from attempting to enroll. Thus, requests for such information should be avoided.

In the event a charter school requests such information from applicants, it cannot deny enrollment if an applicant fails to provide the requested information. If a birth certificate is requested to confirm a student's age, charter schools must rely on alternative sources of information to confirm the student's age if a birth certificate is not available. A charter school may not deny enrollment because the parent/student cannot produce a birth certificate. Similarly, charter schools may require proof of residency as a condition of enrollment, but immigration or citizenship status is not necessary to confirm residence. For example, a charter may require copies of phone and water bills or lease agreements to establish residency, but information about citizenship would be irrelevant.

If the information identified above is requested, applications/enrollment forms must include a statement that the disclosure is voluntary, that the information will not be used to discriminate against the applicant, and an explanation of the reason that the information is being requested. To go a step further, charter schools should include a notice of nondiscrimination on all recruitment, application, and enrollment materials. That notice should also include information on how individuals can make a complaint in accordance with the school's grievance procedures.

### WHAT DOES THIS MEAN FOR CHARTER AUTHORIZERS?

In order to ensure that charter school enrollment practices are not discriminatory, authorizers should require charter school applicants to provide an outreach, recruitment, and enrollment plan during the charter application review process and should include review of recruitment, application, and enrollment materials and practices in their ongoing, annual, monitoring processes.

**Please see page 25 for tools that will assist you in these oversight practices.**

# AFFIRMATIVE OBLIGATIONS FOR EDUCATING EL STUDENTS

## IDENTIFICATION AND ASSESSMENT

One of the affirmative obligations placed on schools is having a process in place to identify and assess potential EL students. This process must ensure that all potential EL students are identified and assessed within 30 days of the start of the school year. As noted previously, under ESSA, each state will develop a standardized entrance and exit process for identification of EL students. Authorizers need to ensure its charter schools are aware of and abiding by the statewide uniform policy.

**Generally speaking, the process for identifying potential EL students begins with the administration of a Home Language Survey (HLS). Most, if not all, states have a standard version of the Home Language Survey to be administered by schools.** The Home Language Survey asks whether a language other than English is used in the home, whether the student's first language was a language other than English, and whether the student frequently speaks a language other than English.

If the answer to any of these questions is yes, the student must be assessed to determine his/her English proficiency and need for placement in the EL program. The Home Language Survey should be translated into high-incidence languages, and qualified interpreters should be available when needed to help families complete the Home Language Survey in a language that they understand.

OCR also recommends that schools clearly communicate the purpose of the Home Language Survey to applicants, letting them know that the HLS will only be used to offer appropriate educational services, not for determining legal status, not for immigration purposes, or to otherwise discriminate against them. OCR further recommends that schools inform families that if their child is identified as needing EL services, they may decline those services.

A school's identification and assessment process should comply with the statewide uniform identification policy in accordance with ESSA and should include standard and uniform procedures for administering and interpreting the Home Language Survey results. This procedure should describe who is responsible for administering the HLS, how it is to be done, and in what forms it should be administered (i.e., orally, written, in English, or in a home language translation). The procedure also should describe how staff are trained to administer the HLS and how often refresher trainings will occur. The procedures should further provide specific guidelines for interpreting HLS responses (for example, what responses trigger an assessment, what happens if responses are unclear or contradictory, etc.). Finally, the procedures should include methods to record results in the student's records and to record translation/interpretation needs of the parents in the student information system.

Once the Home Language Survey is administered, schools must administer a valid and reliable assessment of proficiency in all four domains of English (i.e., speaking, listening, reading, and writing), consistent with the state’s uniform EL identification policy and process, to determine if placement in the EL program is necessary. Many states rely on a standard assessment (and more states may do so in order to comply with ESSA’s requirements), but in the event that a charter school is permitted to choose its own assessment, it must be considered valid and reliable and test in all four domains of English. Individuals administering this assessment should be trained and qualified to administer such assessment. Additionally, a school’s procedure for assessing potential EL students should describe who will administer and score assessments, what training is required to ensure valid and reliable results, and how records of results are maintained.

In addition to the assessment of English proficiency, schools should solicit teacher input to determine if teachers have identified any students in their classes who may have limited English proficiency but who have not yet been identified.

Once a student is identified for placement in the EL program, schools must provide written notice to parents in a language they understand of the student’s EL program placement. This notice must be provided within the first thirty days of the school year. Further requirements for this notice are discussed in more detail on page 36.

Authorizers should require charter applicants to provide an “EL Identification and Assessment” plan during the petition phase, and authorizers should annually review both the school-level policies/practices and data collected by the school about students who have been identified and assessed as potential English learners. Moreover, authorizers must ensure the school’s policies and practices align with the statewide uniform EL identification policy and process.

## **EL PROGRAM**

Once students have been identified and assessed, schools must provide language assistance services to enable students to attain proficiency in English and meaningfully participate in the schools’ educational programs within a reasonable length of time. What is considered reasonable may depend on an individual student’s time in the U.S., time in the EL program, English proficiency levels, the particular EL program model, etc. What is considered reasonable should be grounded in research taking these factors into consideration.

Schools and authorizers must be cognizant of the fact that while full English-language proficiency takes time, too much time can be problematic. “Research on long-term [EL students] shows that the longer students are identified as [EL students], the less likely they are to get access to the full set of courses they need to finish high school—and to graduate.”<sup>14</sup> Schools must adjust their EL programs and services as needed based on individual student needs. For instance, an EL student new to the United States may require a different level of services than a student who has been in an EL program for several years. Adjustments should be made accordingly to ensure that both students are able to attain proficiency and meaningfully participate in the school’s educational programs within a reasonable amount of time in light of their individual circumstances.

## DESIGNING AN EL PROGRAM

No specific EL program is required, provided four standards are met:

- The program must be based upon sound educational theory or principles.
- The program must be implemented effectively.
- The program must result in students overcoming language barriers after a reasonable period of time.
- The program must result in students achieving the ELPs and content standards established by the state's accountability plan under ESSA.

## QUALIFIED TEACHERS

While schools retain the autonomy and flexibility to design their own EL programs, schools must be able to effectively implement their chosen program. For instance, schools must employ an adequate number of qualified staff to deliver EL services. Paraprofessionals, aides, and/or tutors may not replace qualified teachers but may be used as an interim measure while schools hire, train, or otherwise find/hire qualified teachers. Nevertheless, schools may use paraprofessionals to supplement instruction from teachers if the paraprofessionals are trained to provide services and are directly supervised by a qualified teacher. Authorizers must recognize that charter schools often struggle to find adequate numbers of qualified staff and should encourage and allow charter schools to be creative with how they ensure that they have the staff necessary to implement their EL programs. For instance, rather than hiring new teachers with particular certifications or training, a charter school may elect to train existing teachers so that they can implement the EL program. Charter schools may also elect to share resources with other schools in order to implement their EL programs. Such practices are legally permissible provided that the end result is in line with the selected educational model that the EL program is based upon.

## SEPARATE INSTRUCTION

Some EL programs may be completely immersive, but others may include some non-immersive, or segregated, instruction. If so, a school must be able to demonstrate no unnecessary segregation is used. Specifically, a school must be able to show valid, nondiscriminatory reasons for segregated class assignments; for instance, a school may point to a valid educational purpose either when a segregated class is designed specially to teach English or when a limited period of separate instruction is consistent with the EL program's goals. Separating EL students during physical education, music, lunch, recess, assemblies, and extracurricular activities deprives EL students from crucial social immersion opportunities and is not likely to be legally acceptable.

## EXAMPLES OF EL PROGRAMS

Authorizers often seek examples of potentially acceptable educational models for EL programs. Six common models include the following:

- Transitional bilingual education program
- Maintenance bilingual education program

- Dual language two-way immersion program
- Structured English immersion program
- Mainstream English program
- Sheltered instruction observation protocol

However, because federal and state law provide charter operators with substantial autonomy and flexibility to design their own EL programs, authorizers should consider any EL program that satisfies the standards set forth above.

## **OPPORTUNITY TO PARTICIPATE IN SPECIAL PROGRAMS**

As ESSA’s proficiency, assessment, and state accountability provisions make clear, EL students must receive instruction and attain academic achievement through access to a school’s core curriculum. Moreover, EL students must be provided the opportunity to participate in the same special programs as English-proficient students. Not only may special programs not categorically exclude EL students, but special program eligibility requirements may not screen out EL students based on English proficiency unless English proficiency is required for meaningful participation. For example, EL services may not be provided when special programs are offered; a special math program cannot use arbitrarily high English-proficiency admission criteria; and a special program must consider teacher recommendations that include the input of EL program teachers.

## **STUDENTS WHO OPT OUT**

Schools cannot force a student or their family to receive EL services. Instead, schools must provide parents the right to decline or opt out of the school’s EL program. Nevertheless (and perhaps surprisingly), the school’s obligation to the EL student remains. Schools are still required to take “affirmative steps” and “appropriate action” to provide students who opt out access to the school’s educational program. Specifically, the school still must monitor the EL student’s progress; must inform the student’s parents if the student is not making progress and reiterate its offer to provide EL services; must provide services (but not force the student into the EL program) if the student continues to struggle; must assess English proficiency annually; and must monitor the student’s academic progress for at least two years after the student meets the state’s exit criteria.

## **EXITING STUDENTS**

Exiting EL students either too early or too late may trigger civil rights concerns. If an EL student is exited too early, s/he is denied access to EL services; if an EL student is exited too late, s/he may be denied access to parts of the general curriculum. As such, clear exit assessments and post-exit monitoring practices are critical.

In general, schools must provide services until an EL student is proficient enough in English to participate meaningfully in the regular education program. Under ESSA, every state will develop a uniform exit process, and exit criteria must be based on objective standards. Furthermore, every LEA must be able to document that an EL student has demonstrated English proficiency using valid and reliable English language proficiency (ELP) assessments that test all four (reading, writing, listening, and speaking) language domains. Notably, an EL student’s demonstrated speaking proficiency is insufficient for exiting. Finally, an EL

student's academic deficit resulting from her/his focus on learning English must be remediated.

## **MONITORING EXITED (OR OPTED-OUT) STUDENTS**

Students exiting from EL status must be monitored for at least two years to ensure they are able to meaningfully participate in their schools' educational programs. Specifically, schools must assure (a) an EL student has not been prematurely exited; (b) any academic deficits incurred as a result of participating in the EL program have been remedied; and (c) the EL student is meaningfully participating in the standard instructional program comparable to her/his never-EL peers.

A school must retest an exited EL student if ongoing monitoring shows the student's language barrier may be preventing the student from participating meaningfully in the school's instructional program and/or may be the cause of her/his academic problems. A school must place the student back in an EL program if retesting shows EL services are needed.

In addition, ESSA now requires LEAs to report the number and percentage of former EL students meeting state academic standards for four years following a student's exit from a school's EL program. Accordingly, most schools (and LEAs) may extend their post-exit monitoring period to four years to allow for ongoing data collection and timely re-testing/placement back into an EL program, if warranted.

## **STUDENTS WITH DISABILITIES**

Another unique challenge exists in educating EL students who also have disabilities. Policies or practices that prohibit a student from receiving both EL services and special education services are not allowed. In addition, schools must have resources in place to conduct evaluations for students with disabilities (or suspected of having disabilities) who are not proficient in English in a language that they understand. Schools must also ensure that Individualized Education Program (IEP) teams include individuals knowledgeable about the EL program and the student's EL-related needs and that such information is incorporated into the student's IEP. Similarly, schools should ensure that the student's disability-related needs are considered when determining his/her EL program needs.

## **PERIODIC EVALUATION**

Schools have an affirmative obligation to periodically evaluate their EL program to determine whether, after a reasonable period of time, the program has resulted in EL students overcoming language barriers. What is "reasonable" should be based on research and may be specific to the particular model of instruction utilized for the EL program. In conducting this evaluation, schools must understand their EL program model and what progress is to be expected based on the research that has gone into that particular model. "Research indicates that EL students require 3 to 5 years to achieve oral fluency and 4 up to 7 years to develop grade-level academic literacy skills in a second language."<sup>15</sup>

The evaluation must include input from a variety of stakeholders, such as teachers, students, parents, and other staff involved in development and implementation of the EL

program. The evaluation must include a review of performance data of current EL students, former EL students, and students who were never in the EL program. Such data should include academic assessments, language proficiency assessments, grades, attendance, graduation rates, participation in school programs, etc.

Based on review of that information and stakeholder input, the evaluation must consider the following:

- Is the EL program being implemented?
- Is the EL program effective?
  - Is the EL program achieving its established goals?
  - Are EL students developing English language skills at the rate that is reasonably expected?
  - Are EL students able to participate meaningfully in the school's programs?

Schools should document the evaluation process and outcome and must make changes to the program if the evaluation reveals deficiencies. These changes should also be documented and then evaluated again after they have been implemented for a reasonable period of time.



## PARENTAL INVOLVEMENT/NOTIFICATION

Schools also have a duty to keep parents of EL students informed about their identification, assessment, placement in the EL program, and progress. Within 30 days of the start of the school year, schools must provide parents of EL students with written notice (in a language that they understand) of initial or continuing placement in the EL program. This notice must be in the parent's native language and must include the following information:

- The level of English proficiency and how that level was assessed
- The method of instruction and other available methods of instruction
- How the program will meet the educational needs of the student
- Graduation requirements
- Exit requirements
- LEP students and special education;
- The right of parents to remove their student from the program or refuse services

## AUTHORIZER PRACTICES

A handful of authorizers across the country are developing and refining comprehensive, application-through-renewal policies and practices specific to enrolling and educating EL students. In many places, authorizers simply ask applicants to describe their EL programs in their charter petition and, if approved, require operators to make a general commitment to serve EL students in their charter contracts. While this is a good start, authorizers in some places are requiring more.

Although the kind and range of supports offered by these authorizers vary, several themes emerge. As discussed below, these authorizers are using the following procedures and processes:

- Providing substantial resources for applicants and operators
- Seeking detailed information at the application phase
- Setting forth specific academic performance goals for EL students in charter contracts
- Implementing annual evaluation frameworks and conducting on-site visits with clear expectations about a school's staffing and delivery of its chosen EL program
- Mandating data collection about students who are assessed, identified, served by, and exited from EL programs each year

Every authorizer in the country may not have the capacity or resources to offer all these supports. Nevertheless, every authorizer may be able to implement several of these approaches, either by emulating the work already underway by the authorizers discussed below or by using one or more of the tools offered on page 38.

## RESOURCES AND TRAININGS

Providing resources and trainings for applicants and operators is a key authorizer responsibility. By offering guidance and direction to existing and future schools, authorizers can articulate expectations, anticipate and answer questions, assist the creation of EL programs and staffing models, and establish evaluation criteria.

Denver Public Schools (DPS), for example, offers a thorough, thoughtful “English Language Acquisition Guidebook for Charter Schools”<sup>16</sup> that walks readers through the applicable legal requirements, the role of the district, federal, and state funding streams, teacher certification requirements, English language development requirements, assessments for EL students, parent engagement strategies, translation/interpretation service requirements, and service provider recommendations. This guidebook is written exclusively for charter schools; it serves as a comprehensive resource for applicants, existing schools, students, and families, and it clearly explains what is expected of schools as they develop English language programs for their students.

The Los Angeles Unified School District (LAUSD) also offers a very rich, comprehensive resource for designing and delivering an EL program, though it is not written exclusively for charter schools. Rather, LAUSD has created an “English Learner Master Plan”<sup>17</sup> for its traditional district schools; this Master Plan includes a section on charter schools which

explains that charter schools may adopt LAUSD’s Master Plan or must provide LAUSD, as the authorizer, an alternative, proposed, EL services program that effectively meets the language needs of EL students. The LAUSD Master Plan sets forth the requirements a charter school’s EL program must satisfy—both during the application phase and annually thereafter. Notably, even though the LAUSD Master Plan expressly exempts from its requirements charter schools that seek to develop independent EL programs, the detail and rigor of the Master Plan may serve as a tool and idea hub for charter applicants and operators as they design and implement their own EL programs.

The Massachusetts Department of Education (MDE) takes a different and equally effective approach in supporting its charter schools. Instead of publishing a comprehensive guidebook, the MDE assembles and updates a webpage with EL resources;<sup>18</sup> this compendium of material includes self-evaluation templates as well as information on legal requirements, assessments, funding, and curriculum models. These resources provide practical guidance to charter applicants and operators, outlining broad strokes of what is expected and allowing operators to design their own EL programs adhering to the broad parameters set up by the MDE.

The District of Columbia Public Charter School Board (DCPCSB) has provided regular trainings for schools as part of its efforts to ensure that charter schools in the District of Columbia are effectively serving EL students. DCPCSB has also offered “office hours” during which schools can consult with the general counsel and other knowledgeable staff about EL program requirements. While the general counsel/staff do not provide legal advice, they are able to point schools in the right direction or give them guidance on where they may need to do more work.

## **CHARTER APPLICATION: RFP THROUGH APPROVAL**

Many authorizers require applicants to include EL plans in their charter petitions; some authorizers demand substantial detail on how applicants will serve their EL students. For instance, in its annual request for proposals, the State University of New York Charter School Institute (SUNY) asks applicants to discuss the following:

- The process for identifying students whose first language is not English and the methods for determining the scope of assistance these students may need, including how the school will ensure EL students are not inappropriately identified as students with special education needs
- The approach, resources, and personnel (including qualifications and associated administrative responsibilities) the school will use to meet the needs of EL students (both within general education classrooms and in other settings)
- The research and evidence that supports the appropriateness of this approach
- The process for coordination between general education teachers and staff serving EL students and professional development for general education teachers serving EL students
- The process that will be used to monitor the achievement and progress of EL students, including exit criteria

- The process that will be used to evaluate the efficacy of the program and instructors and to ensure that the needs of EL students are being met
- How the school will make all necessary materials available to parents of EL students in a language that they can understand
- How the school will make after-school and other extracurricular programming accessible to EL students

By seeking this information in its RFP, SUNY clearly articulates the rigor and thoughtfulness it expects from applicants' EL plans.

Notably, Chicago Public Schools (CPS) goes even farther. Its charter approval process requires new applicants to complete a separate, detailed application form, created by the Illinois State Board of Education, specific to serving EL students.<sup>19</sup> This supplemental application seeks very specific information on every aspect of an applicant's EL program, such as its identification process; its program structure; how its curriculum and standards will meet the instructional needs of its EL students; the affirmative steps the school will undertake to ensure its EL students will overcome language barriers and will meaningfully participate in the school's educational program and extracurricular offerings; its staff's qualifications and planned professional development; how the school will inform parents of their rights and implement effective community engagement; how the school will maintain and manage accurate student data and satisfy its accountability measures; and how the school will abide by its Title III obligations, if it receives these monies.<sup>20</sup>

In addition, each component of this EL-specific, supplemental application form is anchored in the relevant federal and state statutory and regulatory authorities. As such, applicants are informed not only of what CPS expects but also learn their legal obligations and are provided the legal citations should an applicant seek additional information from the governing statutes/regulations.

CPS's in-depth, comprehensive approach assists operators in designing thoughtful, well-staffed, and well-resourced EL programs from the start and simultaneously helps CPS effectively evaluate the capacity of applicants to build and deliver strong EL programs. CPS, through its charter approval process, sets a very high bar for effective EL program delivery.

## CHARTER CONTRACT LANGUAGE

**Authorizers have few tools as powerful as their charter contracts.** The language in a charter contract puts operators on notice as to what is expected and alerts operators that consequences may be imposed for failure to meet those expectations.

Charter contracts should include specific provisions that, at the very least, establish an operator's legal responsibility to serve English learners and an operator's legal duty not to discriminate against any student based on language acquisition or proficiency. But charter contracts can go much farther to clearly articulate a broader range of requirements.

For instance, the Florida Department of Education's "Standard Charter Contract"<sup>21</sup> went into effect in December 2016 and included six, different, EL-specific provisions. Not only does this model contract, one that may be used by every authorizer in the state, require an

operator to either adopt the District’s EL plan or seek local authorizer approval for another legally sufficient plan (and include such plan as an exhibit to the charter contract), but this model contract also establishes that the charter contract may not be renewed if the operator fails to abide by all applicable laws relating to EL students. While many charter contracts imply non-renewal as a consequence for failure to abide by federal and state laws, especially federal and state civil rights laws, the Florida model contract’s explicit notice of potential non-renewal for failure to satisfy EL laws is both powerful and easy to emulate.

Moreover, Florida’s model charter contract requires an operator to annually submit both academic proficiency and academic growth data for EL students in English language arts and math and requires EL students be taught by certified personnel. This clear language focuses an operator on the academic performance required by its authorizer, emphasizing the need for an operator to educate, not just enroll, its EL students.

Finally, this model contract does not just include non-discrimination language (prohibiting discrimination against EL students)–it raises the standard. It both establishes that an operator shall make a reasonable effort to achieve a racial/ethnic balance reflective of the community it serves and expressly demands that an operator recruit all segments of a community, enlisting local media and convening informational meetings across the community, using non-English materials when appropriate. This provision again clearly communicates the authorizer’s expectation; schools must outreach broadly and with translated materials as needed, and schools are on notice that failure to do so may be enforced by their authorizers as non-compliance with their charter contract.

We caution authorizers against forcing an applicant to incorporate every detail of their EL program into the charter contract to the extent that it limits the applicant’s flexibility to make changes to their program in response to the needs of its students, results of period evaluations, etc. Authorizers can impose specific requirements related to the minimum requirements of an EL program and policy while giving applicants some flexibility to make adjustments without a formal charter amendment.

## **PROGRAMMATIC EXPECTATIONS**

To monitor the implementation of a school’s EL plan, some authorizers require the maintenance of English Language Development (ELD) plans. The Colorado Charter School Institute (CSI), for example, demands not only the creation of an ELD plan, but it also compels schools to update their ELD plans as needed. Specifically, CSI requires its schools’ ELD plans to include the following components:

- Introduction
- Identification of the primary language other than English (PHLOTE)
- Assessment of EL students
- Instructional program and education approaches for EL students
- Staffing and professional development
- Reassessment, reclassification, and exiting
- Equal access to other charter school programs
- Parent and community involvement
- Program evaluation, review, and improvement

By requiring this detailed information, CSI ensures its schools' ELD plans are living, breathing, evolving documents—not just prospective plans submitted in charter applications or aspirational plans disconnected from the problem solving and adjustments often required as EL programs are delivered and refined.

## EVALUATION FRAMEWORK

Some authorizers go even farther than Florida's model charter contract by explicitly establishing performance criteria; in other words, these authorizers set forth not just expectations but also the criteria that must be satisfied in order to meet those expectations. The Massachusetts Department of Education (MDE), for example, articulates an "access and equity" criterion and a "program delivery" criterion, each with a distinct list of key indicators that must be demonstrated by a school in order to comply with its performance obligations.

To illustrate, the MDE's "access and equity" indicators include but are not limited to "eliminating barriers to program access...[by]...ensuring that information is readily available to parents, students, and the general public regarding non-discriminatory enrollment practices and the availability of specialized programs and services at the school to meet the needs of all students, particularly...English language learners...." In addition, the key indicators for the MDE's "program delivery" criterion require that a "school has systems in place to identify students in need of support and provides supports, interventions, and resources to meet the academic needs for all students, including but not limited to...English language learners."

Finally, the MDE goes on to specify the sources of evidence it will consider when evaluating a school's performance against the articulated criteria. The MDE states it will consider "a wide body of evidence" which may include student subgroup analysis (including those that may be statistically insignificant for state reporting purposes) for EL students and also may consider EL program self-evaluations.

The MDE's approach provides substantial clarity to applicants and operators about what is expected and how to demonstrate how those expectations have been satisfied. While not all authorizers may choose to undertake this kind of approach, the MDE's policies and practices offer significant guidance on how an authorizer may choose to evaluate the strength of a school's EL program.

The DC Public Charter School Board has similarly developed an annual assessment for EL program compliance. The assessment requires schools to certify that their EL programs and related policies/practices meet the minimum legal requirements established by federal and local law. The assessment serves as a mechanism for DCPCSB to monitor compliance with these laws while also flagging for schools what is required. In their initial roll out of this assessment, DCPCSB used the tool as a self-assessment, giving schools a year to use the tool to bring their programs/policies into compliance before it became part of the authorizer's annual monitoring practice. During that year, DCPCSB offered training and "office hours" for schools as additional resources to support compliance with the requirements of the assessment.

## DATA COLLECTION

Some authorizers rely on data as a primary tool for evaluating a school's accessibility and an EL program's academic performance. These authorizers often establish (and given ESSA's enrollment and academic performance expectations, perhaps will do so even more going forward) data reporting requirements in their authorizer policies and/or in their charter contracts.

While the specific data sought varies by authorizer, the Idaho Charter School Commission provides a compelling example of an authorizer that has chosen to pursue a comprehensive approach to data collection. The Idaho Charter School Commission requires EL data be collected and submitted annually to the state's EL program and requires data including but not limited to the following:

- Total number of students assessed as EL with a language placement test (aka, a Home Language Survey)
- Total number of EL students served
- Progress/growth in the English language made by students enrolled in the program
- Progress/growth in the academic content area made by students enrolled in the program
- Types of language instruction educational programs implemented by the school
- Total number of certified or licensed teachers working with language instruction educational programs
- Number of paraprofessionals serving EL students in a language development program
- Number of students exited from the program each year
- Proposed changes, if any, for the subsequent year

Moreover, the Idaho Charter School Commission requires all school-level student data be compiled by gender, race/ethnicity, grade, special education services required, date placed into the LEP program, and assessment scores.

This holistic approach to EL data collection allows both the school and the authorizer to actively evaluate how well the school's chosen EL program is working, enabling the school to identify and implement potential changes during the term of the charter contract. This real-time feedback loop is critical. Not only does it assure the school will conduct the legally required periodic evaluation of its EL Program, but, and perhaps most importantly, it will allow the school the opportunity to make targeted improvements, if needed.

## A WORD OF CAUTION ABOUT THE APPROPRIATE USE OF ENROLLMENT AND RETENTION DATA

**While several state statutes require charter schools to enroll and retain a proportionate number of student subgroups (proportionate either to the school's host district's enrollment of those student subgroups or to the state's average enrollment of those student subgroups), authorizers should be careful to note that enrollment and/or retention data may not tell the whole story.** Authorizers collecting EL student enrollment and/or retention data when required by law or as a best practice should also examine outreach, recruitment,

accessibility, and translation services in order to gain a clear understanding of a school's comprehensive approach to informing, engaging with, and ultimately serving EL students and LEP communities and families.

### **AN IMPORTANT NOTE ABOUT ESSA REQUIREMENTS**

Authorizers must adapt their EL policies and practices to achieve the goals set forth in their respective states' ESSA plans. As detailed above, ESSA requires states to standardize identification and exiting processes; set high academic standards for EL students; administer a rigorous, statewide, uniform EL assessment; and design state accountability plans with specific indicators of EL students' academic progress. Every statewide and local authorizer will need to design application, oversight, renewal and non-renewal policies and practices, as well as charter contract language and data collection goals, aligned with the EL provisions articulated in its state's ESSA plan.



# RECOMMENDED TOOLS

## TOOL 1: EVALUATING A CHARTER APPLICATION

An authorizer’s first and perhaps most significant opportunity to support the creation and implementation of a strong English learner program comes during the evaluation of a charter application. By asking key questions and establishing specific criteria with which to evaluate an operator’s preparedness to enroll and educate English learners, an authorizer not only signals a deep commitment to serving its English learner and limited English proficient communities but also teaches an operator what essential components are included in a strong English program.

It should be noted that many states have implemented—or are beginning to implement—new statutory, regulatory, and/or policy provisions specific to serving EL students. Sometimes those new provisions apply to charter schools; sometimes charter schools are exempted if they can demonstrate—and if their authorizer approves—other proven pedagogical methods to educate EL students. Every authorizer must familiarize itself with the specific state laws, regulations, and policies pertaining to the education of EL students and determine which/how those may apply to charter operators.

Finally, we know not all authorizers are the same size or have the same resources. Some are big with ample resources; others manage small (and sometimes, very small) portfolios and must evaluate, monitor, and support applicants and operators with very modest means. The “essential elements” described below zoom in on all the elements that together build a strong EL program. They are designed to help authorizers of all sizes and resources ask key questions and focus an authorizer’s examination of a charter application’s proposed EL program.

The “critical considerations” follow the essential elements and are designed to help an authorizer zoom out of its detailed inquiry, see the big picture proposed by the applicant, and evaluate if/how the operator’s entire program is well rounded and complete. These critical considerations may serve as a final checklist, assisting an authorizer as it summarizes its final evaluation.

## THE ESSENTIAL ELEMENTS OF A CHARTER APPLICATION

Every charter school application should have the following elements:

- A community-based analysis, including but not limited to a review of recent census data, of the five most commonly spoken languages in the communities which the school intends to serve
- A detailed plan of how English learners (EL) and limited English proficient (LEP) families and communities will be engaged and communicated with, including how
  - EL students and/or LEP families will be informed about the school, actively recruited, and encouraged to enroll
  - School materials, including the website, will be made available in other languages, either in writing or orally, as required by law

- Open houses and other school events will identify and include interpreters
  - Community partners will be engaged and collaborated with to ensure EL students and/or LEP families understand their eligibility to enroll
  - The operator will satisfy any enrollment targets for EL students that may exist under state law
  - The operator will ensure EL students and/or LEP families understand residency can be proven without providing Social Security information
  - The operator will create, maintain, and update a roster of LEP parents/guardians and their respective preferences for the languages in which they would like to communicate with the school
- A detailed plan of how an English learner will be
    - Recruited
    - Identified
    - Assessed for placement into an EL program
    - Placed into an EL program
    - Have her/his parents or guardians notified and provided the opportunity to opt out of the EL program
    - Evaluated annually on her/his attainment of English proficiency
    - Evaluated annually on her/his academic performance, in both proficiency and growth
    - Included in field trips, extracurricular activities, and summer school programs
    - Exited from an EL program
    - Monitored after exiting an EL program
- A detailed plan of how an English learner program will be
    - Created, based on what specific sound pedagogical theory/data
    - Staffed
    - Implemented in such a way that students are not segregated unnecessarily
    - Evaluated regularly and by whom
    - Assessed as effective, based on the collection and review of what data
    - Improved as needed, based on the outcome of the program evaluation
- A clear staffing plan that explains
    - How many teachers and support staff and with what qualifications will be needed to implement the chosen EL program
    - What and how often professional development opportunities will be provided to teachers/staff implementing the chosen EL program
    - How often trainings for all staff (not just those implementing the EL program) will be administered to ensure all staff understand their roles in supporting and educating EL students
    - How EL students with Individualized Education Programs will be served by the EL program
    - Which staff members will be responsible for ensuring satisfaction with all state and federal legal obligations, in addition to those specific to implementing a sound EL program, including but not limited to
      - administering the HLS

- ensuring potential EL students are placed into appropriate EL programs within 30 days (or less, as required by state law)
  - updating the website with translated materials
  - ensuring interpreters are present as needed
  - ensuring student and family records are updated as needed
- A clear plan to collect data, such as
  - The number of students given the Home Language Survey (HLS) each year
  - The number of students identified as potential EL students by the HLS each year
  - The number of students placed into the EL program each year
  - The number of EL students progressing academically each year
  - The number of EL students also identified as needing IEPs or 504 plans each year
  - The number of students who exited the EL program each year
  - Absence rates for EL students each year
  - Discipline rates for EL students each year, including but not limited to in-school suspensions, out-of-school suspensions, expulsions
  - Academic performance, both proficiency and growth, of each EL student each year
  - Attrition rates for EL students each year
  - Graduation rates for EL students each year
  - Length of time each EL student has been in the chosen EL program, compiled/updated annually
- In addition to the information discussed above, an authorizer may choose to ask an applicant to submit any/all of the following supporting documentation:
  - Application form
  - Home Language Survey
  - Notification letter to be sent home to family of eligibility to be placed into an EL program and parents'/guardians' right to decline
  - State assessment to be used to place a student in an EL program and used to exit a student from an EL program
  - Translated "vital" documents
  - Calendar of trainings/professional development to be offered (both to teachers/staff implementing the EL program and to the entire faculty/staff)

## THE CRITICAL CONSIDERATIONS

Ultimately, an authorizer should look for the following:

- A clear understanding of both the most commonly spoken languages in the communities intended to be served by the school and the resources (website, translation services, interpreters) and documents needed to actively engage with EL students and/or LEP families
- A demonstrated understanding of the legal obligations under state and federal law specific to serving English learners, including state and federal civil rights laws as well as the Every Student Succeeds Act

- A clear, comprehensive plan to recruit, enroll, identify, and educate English learners that provides meaningful and equitable access to the school's curriculum and activities
- A clear, specific plan to evaluate the academic progress of English learners, including processes for data collection/review, exiting English learners from the EL program, and subsequent monitoring of exited English learners
- A clear, specific plan to evaluate the effectiveness of the EL program and processes to revise/improve the EL program as needed
- A demonstrated capacity to implement the chosen EL program using qualified staff
- A clear, specific plan to communicate effectively with limited English proficient parents/families
- A clear, specific plan to identify and engage community partners and find additional supports for EL students and/or LEP families

## **TOOL 2: IDENTIFYING ENGLISH LEARNERS**

Schools must have a process in place to ensure that all potential EL students are identified and assessed within 30 days of the start of the school year.

How to Identify Potential EL Students: Administer Home Language Survey (HLS) to all enrolling students

- Schools should clearly communicate the purpose and use of the HLS.
  - Let families know that the HLS is used solely to offer appropriate educational services, not for determining legal status or for immigration purposes.
  - Let families know that if their child is identified as needing EL services, they may decline those services.
- The HLS should be translated into home languages of students/parents.
- Qualified oral interpreters should be available when needed to help families complete the HLS.
- There should be standard and uniform procedures for administering and interpreting the HLS results.
  - Procedures should describe who is responsible for administering the HLS, how it is to be done, and in what forms it should be administered (i.e., orally, written, in English, or in a home language translation).
  - Procedures should describe how staff are trained to administer the HLS and how often refresher trainings will occur.
  - Procedures should provide specific guidelines for interpreting HLS responses (for example, what responses trigger an assessment; what happens if responses are unclear or contradictory, etc.).
  - Procedures should include methods to record results in student's records and to record translation/interpretation needs of the parents in the student information system.
- The Home Language Survey should include the following questions:
  - Is a language other than English used in the home?
  - Was the student's first language a language other than English?
  - Does the student frequently speak a language other than English?

### **TOOL 3: ASSESSING ENGLISH LEARNERS**

Once a student is identified through the Home Language Survey as a potential EL student, schools must administer valid and reliable assessments to determine the student's English proficiency and resulting need for placement in the EL program.

Any student who answered yes to any of the questions on the Home Language Survey should be assessed.

- Schools must use a valid and reliable assessment of proficiency in four domains of English (i.e., speaking, listening, reading, and writing) to determine if EL services are necessary
  - The W-APT Placement Test is commonly used.
  - States sometimes develop their own placement test.
  - Check with your state.
- The assessment must be appropriate for the student's age and grade level.
- The assessment must be administered within 30 days of the start of the school year.
- Individuals administering assessments/placement tests should receive some training.
- The school's procedure for assessing potential EL students should describe who will administer and score assessments and what training is required to ensure valid and reliable results.
- The school's procedure should also describe how records of results are maintained.

## **TOOL 4: PLACING STUDENTS IN AN ENGLISH LEARNER PROGRAM AND NOTIFYING PARENTS**

Once a student is identified and assessed, a determination must be made as to whether placement in the school's EL program is appropriate and notice given to the parents:

- EL program placement
  - The school must rely on objective criteria to place students in the EL program.
  - Placement in the EL program must occur within 30 days of the start of the school year.
  - Parents must be given the opportunity to opt out of the EL program.
- Parent notice
  - Notice of identification and placement in an American Language Program (ALP) must be provided to parents (in a language they understand) within 30 days.
  - The notice should include the following information:
    - The level of English proficiency and how level was assessed
    - The method of instruction and other available methods of instruction
    - How the program will meet the educational needs of the student
    - Graduation requirements
    - Exit requirements
    - LEP students and special education
    - The right of parents to remove their student from the program or refuse services

## **TOOL 5: EVALUATING ENGLISH LEARNER PROGRAMS**

Schools must provide adequate language assistance services (through their EL program) so that students attain proficiency in English and are able to meaningfully participate in the school's educational programs within a reasonable length of time.

No particular EL program is required, but all EL programs must meet certain minimum standards:

- The program must be based upon sound educational theory or principles.
- The program must be implemented effectively.
- After a reasonable period of time, the program must result in students overcoming language barriers.

When evaluating the adequacy of an EL program, the following considerations should be made:

- Is the program based upon sound educational theory or principals or a legitimate experimental strategy?
- Is the program implemented effectively and in accordance with the educational theory or strategy that the program is based on?
  - Does the school allocate appropriate staff to provide instruction/support?
    - The answer must be yes.
    - Qualifications/training necessary for staff will depend on the chosen EL model.
    - All staff should be adequately trained on implementation of the EL program.
    - All staff must be made aware of the services/supports that EL students require.
    - Effective implementation of the EL program should be included in teacher/staff evaluations.
    - EL services offered should not be based on staffing levels and teacher availability but rather should be based on student need.
  - Does the school allocate appropriate resources and materials?
    - The answer must be yes.
  - Are EL students unnecessarily segregated from non-EL peers?
    - The answer must be no.
    - Segregation of EL students must not occur unless necessary to implement the EL program—the EL program must be implemented in the least segregated manner possible.
    - The school must be able to demonstrate valid, nondiscriminatory reasons for segregated class assignments.
      - A valid educational purpose exists when the class is specially designed to teach English.
      - The school may require separate instruction for a limited period consistent with the EL program's goals.
      - There is not likely to be justification to separate EL students in physical education, music, lunch, recess, assemblies, and extracurricular activities.



- Are EL students educated in facilities that are of comparable quality to those available to non-EL peers?
  - The answer must be yes.
- Do EL students have an equal opportunity to participate in extracurricular and non-academic activities?
  - The answer must be yes.
- Are EL students categorically excluded from special programs?
  - The answer must be no.
  - The school must ensure that evaluation/testing procedures for gifted/accelerated or other specialized programs do not screen out EL students because of limited English proficiency unless the school can demonstrate that English proficiency is required for meaningful participation.
- Is the EL program periodically evaluated to ensure that EL students are overcoming language barriers and accessing the school's curriculum within a reasonable period of time?
  - Schools must formally evaluate their EL program periodically.
  - Evaluations and results should be documented.
  - The evaluation of the EL program must include the following:
    - A review of available data including but not necessarily limited to English language proficiency assessment results, academic achievement assessment results, grades, promotion and retention rates, graduation rates, attendance, and rates of participation in special programs
    - Input from a variety of stakeholders, including teachers, students, and parents
  - The evaluation should consider:
    - Is the EL program is being implemented?
    - Is the EL program effective?
      - Is it achieving its established goals?
      - Are EL students developing English language skills at the expected rate?
      - Are EL students able to participate meaningfully in the school's educational program?
  - The evaluation results must identify any necessary and appropriate revisions to the EL program and a plan for implementing said revisions.

## **TOOL 6: EXITING ENGLISH LEARNERS FROM ENGLISH LEARNER PROGRAMS**

An EL student should be exited from an EL program when s/he scores sufficiently high on the statewide assessment adopted by the state in accordance with ESSA. Schools no longer independently determine when an EL has performed well enough to exit an EL program; instead, every school must use the exit criteria established by the state in which it operates.

Accordingly, an authorizer must ensure applicants and/or operators know and understand the standardized process for exiting EL students from EL programs. In addition, an authorizer must ensure an applicant/operator understands how to monitor an exited EL student, for how long, using what measures, and what to do if an exited EL student seems to be falling behind academically.

Specifically, an authorizer must determine whether the following criteria are met:

- An operator's exit criteria must align with, or explicitly adopt, the state's exit criteria.
- Exited students must be monitored for up to four years to ensure they are able to meaningfully participate in the school's educational program.
- An operator must have a policy/system in place to identify which exited EL students are no longer effectively participating in the school's curriculum and activities.
- An operator must have a policy/system in place to determine if/which additional services are needed.
- An operator must have a system in place to provide additional services as necessary, including a process to re-enter an EL student into an EL program if necessary (as measured by the statewide, standardized entry criteria adopted by the state in accordance with ESSA).

## **TOOL 7: STAFFING AND TRAINING QUALIFIED TEACHERS AND STAFF**

### **STAFFING AND TRAINING**

- A qualified staff member must be designated to oversee/coordinate the EL program.
- A sufficient number of qualified staff must be employed to implement the EL program.
- Teachers must have received the necessary training to implement the EL program.
- All staff must have received training on the EL program and practices for identifying and serving EL students and families with limited English proficiency.
- Staff responsible for administering EL assessments must have been trained in the administration of such assessments.

### **PROFESSIONAL DEVELOPMENT MATERIALS**

#### **English Learner Tool Kit for State and Local Education Agencies (SEAs and LEAs):**

<https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>

- See Chapter 3, pp. 1 – 16, which includes the following:
  - An overview of legal obligations and key questions
  - Four tools for professional development
  - A list of resources for further inquiry/support
- This tool kit is not charter-specific, but can be easily adapted to charter classrooms/curricula.
- This report was drafted June 2015 and updated November 2016.

#### **Stanford CLAD ELL Modules:**

<http://web.stanford.edu/dept/gse/cgi-bin/clad/>

- This is a free online 14-module series on effective EL pedagogy.

#### **Professional Development Courses for English Language Teachers:**

<http://www.worldlearning.org/projects/professional-development-courses-for-english-language-teachers/>

- This is a paid online EL certification program.

## **TOOL 8: TRANSLATING AND INTERPRETING MATERIALS FOR STUDENTS AND FAMILIES**

Title VI of the Civil Rights Act of 1964 requires schools to ensure meaningful communication with limited English proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of the school that is shared with non-LEP parents.

Schools must provide written translations of “vital documents” for any language that makes up 5 percent or more of the school population.

“Vital documents” include the following:

- All section 504 and IDEA documents
- Disciplinary notices and procedures
- Emergency notification forms and other forms most commonly used to communicate with parents
- Report cards and student progress reports
- Notices of parent-teacher conferences or meetings
- Documentation regarding the availability of academic options and planning, including gifted and talented programs, enrollment opportunities and pre-requisites for AP/honors classes, alternative language programs, college preparedness planning, and counseling and guidance services
- Screening procedures that request information from parents about the child’s language background and the parents’ preferred language for communication with the school
- Requests for parent permission for student participation in school-sponsored programs and activities
- Announcements distributed to students/parents that contain information about school activities for which notice is needed to participate (e.g., testing, school performances, co-curricular activities, activities requiring an application)
- Registration/enrollment forms
- Parent handbooks and fact sheets

If written translations are not provided for languages that make up less than five percent of the school population, oral translation of this information must be provided.

### How to Identify LEP Parents

- Remember that an LEP parent may have a child who is proficient in English—don’t assume that only EL students will have LEP parents.
- Use the Home Language Survey to identify families where a language other than English is spoken at home.
- Include a notice in your enrollment materials, student/family handbook, website, and other widely disseminated materials letting LEP families know how they can request language assistance.
  - This notice should be translated into at least the top 5 languages common in the school and communities that the school serves.

- Maintain a running record of LEP families and their needs–update it as new information becomes available.

#### Providing Effective Communication

- Use appropriate, competent staff.
  - Not all bilingual staff will be considered appropriate or competent to provide language assistance.
  - The school must ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue.
  - The school must ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.
- Use appropriate, competent, outside resources.
  - The use of web-based, automated translation programs/apps to translate documents is discouraged; translations may not be accurate, and confidentiality issues could arise if a web-based system stores information that has been translated.
  - If schools use such programs, they must take steps to ensure that the translations are accurate and that confidential information is protected in accordance with federal and location privacy laws.
- Do not rely on students, siblings, friends, or untrained school staff to translate or interpret for parents.
- Ensure that qualified interpreters are available for IEP meetings, parent-teacher conferences, enrollment or career fairs, disciplinary proceedings, etc.
- Maintain a running list of resources available for translation and update the list at least annually.
- Ensure that school staff are aware of parents that need translation and how to access resources for translation.
- Include a translator function on the school’s website.

## TOOL 9: RESOURCE LIST

To find more information on schools', LEAs', and SEAs' respective legal requirements, authorizer best practices, ESSA's EL-specific provisions, and other related information, please check out the resources below.

### COMPILATION OF ENGLISH LEARNER RESOURCES, 2009-2016

#### English Learner Resources

- These resources were compiled by the National Charter School Resource Center at Safal Partners and include the following:
  - US Department of Education tools, resources, and legal guidance
  - Data compilations, tables, and fact sheets
  - Studies and reports
  - Case studies, toolkits, and illustrative resources
- These resources are intended for the following audience:
  - Charter schools
  - Traditional district schools
  - LEAs
  - SEAs
  - Authorizers
  - Policymakers
  - Community stakeholders

### EVERY STUDENT SUCCEEDS ACT: ENGLISH LEARNER ANALYSIS

#### English Learners and ESSA: Implications for States and Charter Schools, 2016

This report was authored by the National Council of La Raza (now UnidosUS) and the National Alliance for Public Charter Schools.

#### Tools for State Advocacy, 2016

This webpage of resources was created by UnidosUS (formerly the National Council of La Raza) and includes the following topics:

- What the Every Student Succeeds Act Means for Latino Students and English Learners (webinar and slide deck)
- Working with State Education Policymakers for ESSA (webinar and slide deck)
- Parent and Family Engagement in ESSA (webinar and slide deck)
- Setting New Accountability for English-Learner Outcomes in ESSA Plans (fact sheet)

### AUTHORIZER PRACTICES/TOOLS

#### Denver Public Schools: English Language Acquisition Guidebook for Charter Schools, August 2017

Authored by Denver Public Schools, the local district authorizer for Denver charter schools, this guidebook is intended exclusively for charter operators:

- It is an example of the type of resource an authorizer may offer both its prospective applicants and its portfolio schools.
- It is a comprehensive, 62-page guidebook; although specific to Denver charter schools (and the legal requirements under Colorado law, regulations, policy, and ongoing court-mandated consent decree), the scope and depth may be helpful to authorizers around the country.

# ENDNOTES

---

<sup>1</sup> The term English learner is often used interchangeably with English language learner (ELL), students who are limited English proficient (LEP), students who are learning English as a second language (ESL), students who are learning English for speakers of other languages (ESOL), and students who are learning English as a new language (ENL).

<sup>2</sup> ELL population in public schools increased from 8.8 percent of an estimated 4.2 million students in 2003-04 to 9.3 percent of an estimated 4.5 million students in 2013-14. U.S. Department of Education, National Center for Education Statistics. (2016). Fast facts for English language learners. Retrieved from <https://nces.ed.gov/fastfacts/display.asp?id=96>

<sup>3</sup> Alaska, California, Colorado, Nevada, New Mexico, and Texas

<sup>4</sup> U.S. Department of Education, National Center for Education Statistics. (2016).

<sup>5</sup> U.S. Department of Education, National Center for Education Statistics. (2016).

<sup>6</sup> U.S. Department of Education, National Center for Education Statistics. (2016).

<sup>7</sup> National Alliance for Public Charter Schools and National Council of La Raza. (2017, March 9). English Learners and ESSA: Implications for States and Charter Schools, p.1. Retrieved from [http://www.publiccharters.org/wp-content/uploads/2017/03/ESSA\\_Report\\_V4.pdf](http://www.publiccharters.org/wp-content/uploads/2017/03/ESSA_Report_V4.pdf)

<sup>8</sup> Murphey, D. (December 2014). The Academic Achievement of English Language Learners: Data for the U.S. and Each of the States. *Child Trends*. Retrieved from <https://www.childtrends.org/wp-content/uploads/2015/07/2014-62AcademicAchievementEnglish.pdf>

<sup>9</sup> Murphey, D. (December 2014). The Academic Achievement of English Language Learners: Data for the U.S. and Each of the States. *Child Trends*. Retrieved from <https://www.childtrends.org/wp-content/uploads/2015/07/2014-62AcademicAchievementEnglish.pdf>

<sup>10</sup> Farbman, D. (December 2015). Giving English Language Learners the Time They Need to Succeed: Profiles of Three Expanded Learning Time Schools. *National Center on Time and Learning*. Retrieved from [https://timeandlearning.org/sites/default/files/resources/ell\\_report\\_12.14.15.pdf](https://timeandlearning.org/sites/default/files/resources/ell_report_12.14.15.pdf)

<sup>11</sup> Hakuta, K., Butler, Y. G., and Witt, D. (January 2000). How Long Does It Take English Learners to Attain Proficiency? *The University of California Linguistic Minority Research Institute*. Retrieved from <https://web.stanford.edu/~hakuta/Publications/%282000%29%20-%20HOW%20LONG%20DOES%20IT%20TAKE%20ENGLISH%20LEARNERS%20TO%20ATTAIN%20PR.pdf>

<sup>12</sup> Olsen, L. (March 2014). Meeting the Unique Needs of Long Term English Language Learners. *National Education Association*. Retrieved from [https://www.nea.org/assets/docs/15420\\_LongTermEngLangLearner\\_final\\_web\\_3-24-14.pdf](https://www.nea.org/assets/docs/15420_LongTermEngLangLearner_final_web_3-24-14.pdf)

<sup>13</sup> National Center for Education Statistics. (2014). Table 1. Public high school 4-year adjusted cohort graduation rate (ACGR), by race/ethnicity and selected demographics for the United States, the 50 States, and the District of Columbia: School year 2013–14. Retrieved from [https://nces.ed.gov/ccd/tables/ACGR\\_RE\\_and\\_characteristics\\_2013-14.asp](https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp)

<sup>14</sup> The Education Trust. (n.d.). English Learners in ESSA: English Language Proficiency. Retrieved from <https://edtrust.org/students-cant-wait/english-language-proficiency/>

<sup>15</sup> The Education Trust. (n.d.). English Learners in ESSA: English Language Proficiency. Retrieved from <https://edtrust.org/students-cant-wait/english-language-proficiency/>

<sup>16</sup> Denver Public Schools. (Rev. August 2017). Language Acquisition Guidebook for Charter Schools. Retrieved from [http://portfolio.dpsk12.org/wp-content/uploads/2015/08/ELA-Guidebook-for-Charter-v1\\_08-14-15.pdf](http://portfolio.dpsk12.org/wp-content/uploads/2015/08/ELA-Guidebook-for-Charter-v1_08-14-15.pdf)

<sup>17</sup> Los Angeles Unified School District. (2012). English Learner Master Plan. Retrieved from <https://achieve.lausd.net/Page/74#spn-content>

<sup>18</sup> Massachusetts Department of Elementary and Secondary Education. (2017, May 21). Massachusetts Charter Schools: Access and Equity. Retrieved from <http://www.doe.mass.edu/charter/sped/default.html?section=ell>

<sup>19</sup> Chicago Public Schools. (2017, November 9). 2017 Process to Open a New School. Retrieved from <http://cps.edu/NewSchools/Pages/RFP2017.aspx>

<sup>20</sup> Chicago Public Schools. (April 2016). Charter School Initial Application for English Language Learning Services. Retrieved from [http://cps.edu/NewSchools/Documents/2017/EL\\_InitialCharterSchoolApplication.pdf](http://cps.edu/NewSchools/Documents/2017/EL_InitialCharterSchoolApplication.pdf)

<sup>21</sup> Florida Department of State. (2016, November 17). Florida Standard Charter Contract. Retrieved from <https://www.flrules.org/gateway/reference.asp?No=Ref-07647>