

# Charter Schools and English Language Learners

## What Authorizers Need to Know



### Overview

Charter school authorizers are responsible for protecting student and public interests. This responsibility requires authorizers to hold schools accountable for fulfilling fundamental public education obligations to all students, including providing equal access and appropriate services to students whose native language is not English. English Language Learners (ELLs) have rights that are protected by federal and state laws. Authorizers are responsible for ensuring that charter schools uphold these rights.

A variety of federal laws establish the rights of ELLs, including the U.S. Constitution, Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, and the Elementary and Secondary Education Act (ESEA). Individual states have also adopted laws that provide additional protections for ELLs. These laws vary in scope and prescriptiveness. Authorizers need to be aware of the federal requirements that establish the minimum protections that must be afforded to ELLs while also understanding any special requirements that are particular to their state.

### Key Responsibilities

Federal law prohibits discrimination against ELLs in public education and establishes certain minimum requirements to prevent that discrimination. Different schools may use different instructional strategies and approaches, but each school must develop and implement a program that is sufficiently staffed and resourced to allow students to acquire English in a timely manner and fully participate in opportunities provided by the school to all other students. As part of their responsibility to protect student interests by holding schools accountable for fulfilling fundamental public education obligations, authorizers should ensure that charter schools do not discriminate against ELLs and that they provide these students with the services and support that they need and deserve.

**A quality authorizer ... holds schools accountable for fulfilling fundamental public education obligations to all students, which includes providing ... appropriate services for all students, including those with disabilities and English learners, in accordance with applicable law.”**

– NACSA’s *Principles & Standards for Quality Charter School Authorizing*

### Equal Access

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance. Federal courts and the U.S. Department of Education’s Office of Civil Rights have interpreted this prohibition to bar recipients of federal funds from denying equal access to education because of a student’s limited proficiency in English. This means that public schools, including charter schools, must assist ELL students in overcoming language barriers, and ensure that they can participate meaningfully in educational programs. Schools also have a duty to adequately communicate with non-English-speaking parents and guardians so that they can be well-informed about their child’s education.

Authorizers have a responsibility to ensure that the charter schools they authorize are open to all students and do not discriminate against ELLs in their policies or programs. Authorizers should require all charter applicants to describe in detail how they will ensure equitable access and quality services to ELLs; they should evaluate whether schools fulfill their obligations throughout their charter term; and they should make

renewal decisions based in part on how well schools educate ELLs and whether the schools meet their legal responsibilities. When evaluating schools in this area, authorizers should consider the full range of school policies and practices, including recruitment, admission, assessment, instructional programming, staffing, and communication.

## Accurate Identification

Schools have broad discretion in how to provide equal educational opportunity for ELLs, but they also have an affirmative responsibility to identify such students. Although there is no single correct way to identify ELLs, a common practice is to conduct a home language survey of all students who enroll in the school, regardless of apparent language ability or background. At a minimum, the survey should ask students about the languages used at home, the language they first learned, and the language they use most often. If this initial screening indicates that a student may be an ELL, additional assessment may be necessary to determine if services are in fact needed. If so, the assessment should help determine what services the student may need to be successful in the school. Authorizers should ensure that schools have a clearly established, educationally sound method for identifying ELLs.

## Instructional Staffing, Services, and Support

Under federal law, schools have substantial flexibility when developing programs to meet the needs of ELL students. Federal law does not require schools to use any particular type of intervention strategy or instructional program, and does not require instruction in a student's native language. Schools are required to develop a program for ELLs that is "based on a sound educational theory; adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success; and periodically evaluated and, if necessary, revised." While there is no duty to adopt a particular type of instructional program, schools must have a program in place that has a reasonable chance of success, and must modify that program if it proves unsuccessful. Authorizers should generally focus their attention on student outcomes rather than programming inputs, but they do need to make sure that schools implement instructional programs and practices that

address the needs of ELLs, and should hold schools accountable for their success with these students. An evaluation of a school's programming for ELLs is especially important when considering a school's initial proposal, when making renewal decisions, and if there is evidence during a school's charter term that it is not fulfilling its obligations.

## Ongoing Assessment

Once identified, ELL students must be provided with services and support until they are proficient enough in English to participate meaningfully in the regular education program. Federal law also requires schools to annually assess ELL students for their English language proficiency using an objective measure of a student's ability to read, write, speak, and comprehend English, and to report assessment data for these students. Schools must provide ELL students with appropriate testing accommodations including, to the extent practicable, assessments in the language and form most likely to yield an accurate picture of what students know and can do until they have achieved English proficiency. If schools receive funding for ELL services under Title III of the ESEA, there are additional testing and reporting requirements. Schools should also monitor the progress of former ELL students for two years after they achieve proficiency. Because states implement federal assessment and reporting requirements in a variety of ways and may impose additional requirements through state law, authorizers need to understand their state's specific approach.

## Effective Communication

Under federal law, schools have a responsibility to adequately notify the parents and guardians of ELL students and limited-English-speaking parents and guardians of other students about school activities that are called to the attention of other parents. Notification must be sufficient so that parents and guardians can be informed about their child's education. Depending on the circumstances, this obligation may require schools to provide notification in the parents' home language. In collaboration with schools, authorizers should develop clear guidelines and an effective process for ensuring that schools communicate effectively with ELL students and their families.

<sup>1</sup> U.S. Department of Education, Office for Civil Rights, *Questions and Answers on the Rights of Limited-English Proficient Students*, <http://www2.ed.gov/print/about/offices/list/ocr/qa-ell.html>