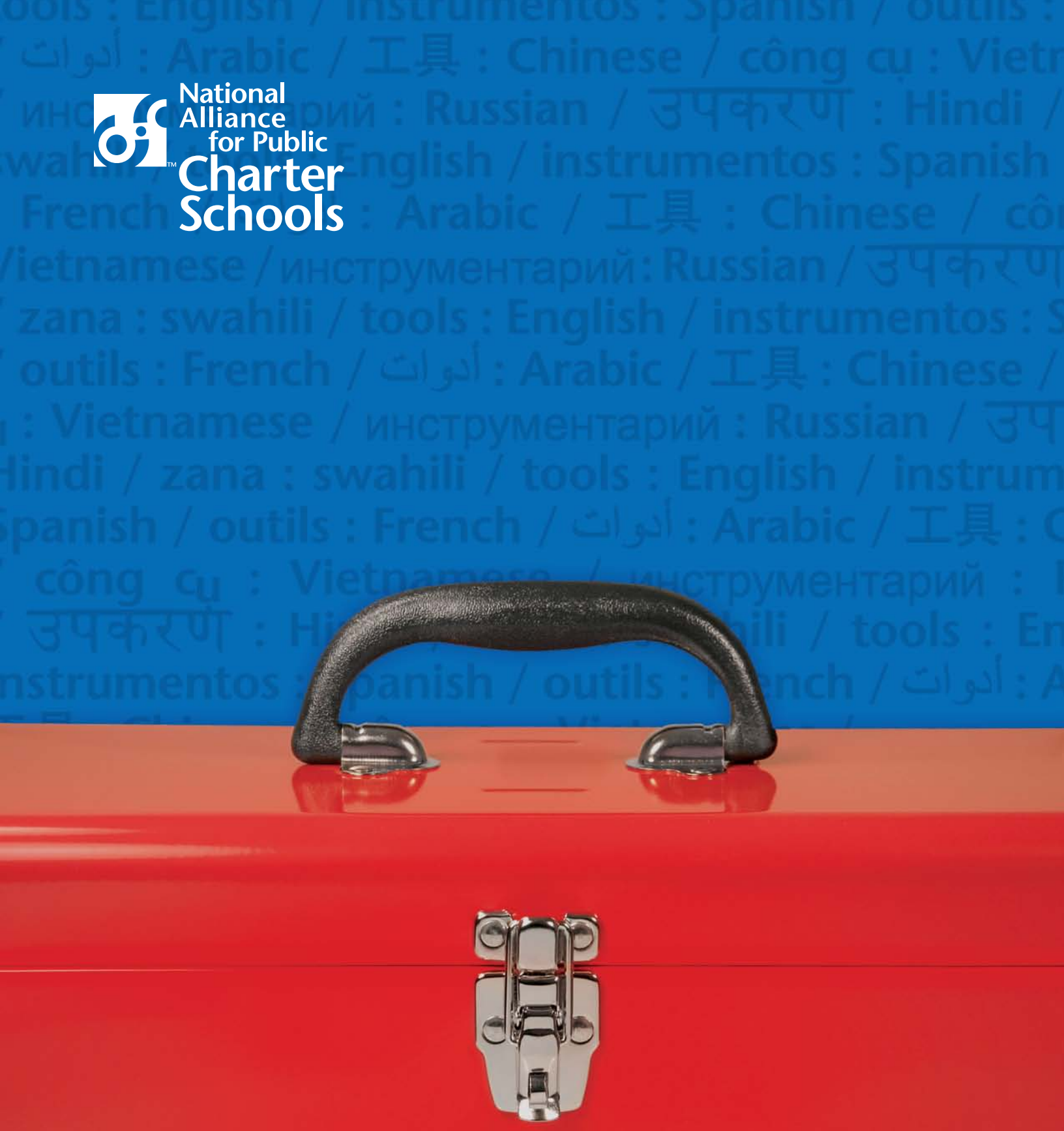
National Alliance for Public Charter Schools



Serving English Language Learners:

A TOOLKIT FOR PUBLIC CHARTER SCHOOLS

April 2013

Nuts & Bolts Checklist

Prepared by Sunil Mansukhani
with assistance from Francella Chinchilla

Acknowledgements

Renita Thukral, Vice President of Legal Affairs at the National Alliance for Public Charter Schools, led the Alliance's efforts on this project. Without her, this exceptional toolkit would not have come to life.

In addition, we'd like to thank our authors and thought partners at The Raben Group, Sunil Mansukhani and Francella Chinchilla, for sharing their expertise and stoking our passion.

We'd like to offer a special thank you to our working group; we learned so much from the invaluable experiences and on-the-ground insight provided by these school leaders, charter support organizations, authorizers, and attorneys.

And, most of all, we'd like to extend our deepest gratitude to the school leaders and their teams who are profiled in this publication — not only did you all contribute to our work, but you moved and inspired us with your creativity, innovation and relentless commitment to your students, all of them.

Thank you.

National Alliance for Public Charter Schools

Introduction

For over 20 years, the public charter school movement has been creating schools that respond to the unique needs of communities. Working in partnership with teachers and parents, charter school leaders design schools that deliver an educational experience that is tailored to students' strengths and challenges. From a handful of schools in a few states, the public charter sector has expanded to include 6,000 schools in 42 states and the District of Columbia, serving 2.3 million students. Student enrollment is growing by 12 percent a year.

The growth of public charter schools has coincided with the rapid growth of English Language Learner (ELL) students.[1] While the total public school population increased by 3 percent from 2000-01 to 2009-10, the number of ELL students increased by 27 percent.[2] Nearly 75 percent of the nation's ELL students speak Spanish; overall, however, ELL students speak over 150 languages.[3] Demographic projections indicate that ELL students will be an even larger percentage of the school-age population in the years to come.

Historically, ELL academic performance has lagged behind that of non-ELL students. Nonetheless, these students come with a valuable advantage that sets them apart — the ability to communicate in a foreign language and share a new culture. These skills will be increasingly valuable as our 21st century economy becomes even more global.

As incubators of innovation and creativity, charter schools are uniquely positioned to provide ELL students a quality education. The charter school sector should embrace this opportunity and share best practices. Many public charter schools are already successfully addressing the educational needs of ELL students. In this toolkit, you will read about some of the practices these charter schools use.

A complicated mix of federal and state laws govern the education of ELLs and can make understanding the legal requirements challenging. The laws in this area are less prescriptive than in other areas, such as special education, and are, generally speaking, less well known. This toolkit breaks down the key federal laws and policies and provides examples of state laws where appropriate. It also gives real world examples from charter schools across the country, and provides a basic framework for conceptualizing, implementing, and monitoring an ELL instructional program.

This toolkit discusses the areas that any charter school should consider when deciding how to serve ELL students:

- school opening/recruitment,
- admissions,
- identification/assessment,
- program requirements,
- teacher qualifications,
- exiting students from the program,
- program monitoring, and
- parental communication.

This document, coupled with the experience and expertise of your educators, will help ELL students get the education they need and deserve.

General Legal Requirements

The federal legal requirements governing the education of ELLs come from two primary sources: the civil rights laws and the Elementary and Secondary Education Act (ESEA).[4] The relevant civil rights laws are Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 (EEOA). State education laws and state laws governing charter schools may impose additional requirements. The legal requirements remain the same regardless of whether the charter school is a stand-alone local education agency (LEA) or part of an LEA.

Federal Civil Rights Laws

Title VI prohibits recipients of federal financial assistance (which is every public school in the country) from discriminating on the basis of race, color, or national origin. Discriminating against ELL students can constitute discrimination on the basis of national origin.[5] The EEOA requires state and local educational agencies to take "appropriate action" to overcome ELL students' language barriers that impede these students' equal participation in the instructional program. Title VI does not have specific regulations that discuss how ELL students should be educated, and the EEOA does not have any regulations at all. There have been, however, a series of court cases over the past 40 years interpreting these laws that provide the basic framework on what schools need to do.

GENERAL LEGAL REQUIREMENTS (CONTINUED)

"There is no equality of treatment [between ELL students and non-ELL students] merely 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."

In addition, the United States Department of Education's Office for Civil Rights (OCR) has issued a series of policy documents that provide guidance. These court cases and policy documents discuss how to address the unique needs of ELL students in a way that complies with federal non-discrimination laws. The U.S. Supreme Court stated in 1974: "There is no equality of treatment [between ELL students and non-ELL students] merely 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."[6]

OCR does not require an alternative language program for ELL students if, without such a program, students have equal access to the school's general education program.[7] However, such a program will help ensure all school personnel know the steps they must take to properly serve ELL students, and will help demonstrate compliance with the law.

Under Title VI and the EEOA, a school should:

(1) choose an educational theory that is recognized as sound by some experts in the field or is considered a legitimate experimental strategy;

(2) use programs and practices that are reasonably calculated to implement effectively the educational theory adopted by the school; and

(3) demonstrate that the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome.[8]

If the program is not succeeding, the school should modify it. The courts and OCR have given schools a great deal of flexibility in implementing the specifics of the language assistance program. For example, the case law and OCR guidance do not mandate a specific instructional method (e.g., bilingual education, structured immersion, English as a Second Language (ESL)).[9] What is required is that the students learn English in a timely manner and have meaningful access to the rest of the instructional program.

The federal government enforces Title VI and the EEOA in a variety of ways. A person who believes that a school is failing to properly serve ELL students may file a complaint with OCR under Title VI. OCR must investigate these complaints if certain basic prerequisites are met. OCR also may begin Title VI investigations on its own initiative. These investigations are known as compliance reviews. The Department of Justice has joined OCR investigations in the past, and can initiate its own investigations under the EEOA. A private party also can file a suit in court alleging a violation of one or both of these laws.

Some of these complaints result in settlement agreements with the LEA or the state itself. Charter schools, regardless of whether they are part of a LEA or their own LEAs, must follow the terms of those agreements if they are within the jurisdiction covered by the agreement. For instance, if a school district signs an agreement with the federal government that requires the district to take specific steps with respect to its ELL program, a charter school located within that district also must follow those steps. The elements of a sound ELL program are discussed in more detail below. While this toolkit gives general guidance, you may wish to consult with the resources listed at the end of this document or seek legal advice that is specific to your unique situation if you have further questions.

Elementary and Secondary Education Act and Waivers

The ESEA as amended by the No Child Left Behind Act (NCLB), contains numerous provisions relating to ELLs. Under this law, schools are held accountable for two key elements:

1) ensuring ELL students develop English proficiency based on state expectations; and

2) providing ELL students the opportunity to achieve the same academic content and achievement standards all students are expected to meet.[10]

Because the ESEA and federal civil rights laws are different laws, compliance with ESEA requirements does not necessarily constitute compliance with the civil rights laws.[11] Similarly, compliance with the civil rights laws does not necessarily mean that a school has complied with ESEA.

In 2012, the United States Department of Education granted ESEA waivers of various provisions of the law in an effort to give educators increased flexibility in exchange for states adopting a series of educational reforms. As of December 2012, 34 states and the District of Columbia have received waivers. The civil rights obligations of schools, such as those that relate to ELLs, cannot be waived, so the basic requirements discussed in this toolkit remain applicable in states that have received waivers. The waivers can, however, change how schools define sub-groups for performance assessment purposes and how they are held accountable for the achievement of ELL students.

There is also a chance that Congress will amend the ESEA in 2013. If such legislation becomes law, the status of the waivers will undoubtedly be affected. In this dynamic environment, public charter school authorizers and operators need to review how these legal requirements may affect their ELL educational program. Due to the uncertainty created by the possible reauthorization of the ESEA and the state-specific nature of waivers, this toolkit will focus on the requirements under the federal civil rights laws.

KEY POINTS:

- ☐ There are a variety of laws governing the education of English Language Learners, which can make understanding the legal requirements challenging.
- ☐ The main sources of law are:
  1) Federal civil rights statutes;
  2) Elementary and Secondary Education Act; and
  3) State education laws and the laws governing charter schools.

School Opening and Recruitment

Opening the School

The first step toward creating an effective ELL program begins before an ELL student even enters the schoolhouse door, and, in fact, even before a school exists. Numerous decisions must be made before a school opens, such as location, the attendance area, and the academic program. Authorizers and operators should examine whether these decisions will have the effect of keeping ELL students from attending the school. If so, the decision should be modified unless the operator can provide a nondiscriminatory explanation. It is illegal to turn away ELL students from the school on the grounds that the school would be unable to serve these students.

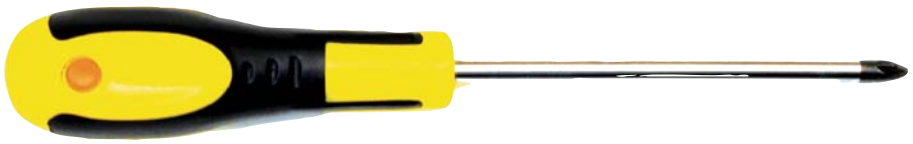
Operators seeking to enroll a diverse student body should consider how they can address the factors in a way that gives them the best chance of attaining this goal.[12] Operators also should review their state's law to see if the state has more detailed requirements. For example, New York is explicit about the need for charter schools to enroll and retain ELL students in numbers that are comparable to the enrollment in the surrounding area.[13]

DID YOU KNOW?

Authorizers, which can include State Educational Agencies (SEAs), LEAs, or another state-created entity, have a particularly important role to play at this stage to help ensure that a school is set-up in a manner that conforms with the civil rights laws.

Although not required by federal law, an authorizer may want to ask about an **operator's plans** with respect to each area discussed in this toolkit. Engaging in this dialogue with the operator on the front end should make it easier for the operator to serve ELL students when they arrive.

See National Association of Charter School Authorizers Issue Brief, "Charter Schools and ELLs: An Authorizer and School Leader Guide to Educating ELLs," June 2011, at 2 ("Authorizers are responsible for ensuring that charter schools applicants and operators have a plan in place to educate ELLs.") (available at: www.qualitycharters.org/images/stories/publications/Issue_Briefs/IssueBriefNo22_CharterSchoolsandELLs.pdf).



PRACTICE SPOTLIGHT:

At **Strive Preparatory,** a 6th–8th grade middle school in Denver, Colorado, teams of staff, parents, and students **go door-to-door** to visit all fifth grade students in the surrounding area to tell them about the school. They also send mailings to all fifth grade students. The list of fifth grade students is made available through the LEA.

PRACTICE SPOTLIGHT:

The **Academy of Math and Science**, a K–12th grade school in Tucson, Arizona, has **established partnerships** with local refugee resettlement groups, in part to help with their recruitment of ELL students.

DID YOU KNOW?

The **Census Bureau** provides detailed breakdowns of foreign languages spoken in a community.

This data is available at:
http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none

Recruitment

A school usually conducts outreach to encourage students to apply. When conducting outreach, a school should ensure that its efforts do not have the unintended effect of excluding ELL students. For instance, outreach should be done throughout the area served by the school, and it should not leave out certain neighborhoods that may have a larger percentage of ELL students. If feasible, school informational meetings should be held in locations that are accessible by public transportation. Conducting broad and inclusive outreach is particularly important for charter schools that may be able to draw from a large attendance area.

As part of its overall recruiting strategy, a school can also proactively reach out to areas more likely to have ELL students. An operator of a public charter high school could, for example, recruit from middle schools with a significant ELL population. Guidance issued by the United States Department of Education to funding recipients of the federal charter school program specifically states that in order to meet the goal of not discriminating on the basis of national origin (which includes ELLs), "charter schools should consider additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs."[14]

Other options include, but are certainly not limited to: doing interviews on foreign language radio stations serving the area, going to churches and community fairs with high ethnic minority populations, collaborating with trusted community organizations, and encouraging individual students to apply. When doing this outreach, it is important to have school-related materials available in the languages most commonly spoken in the community. This will ensure that the parents of ELL students, who themselves may be Limited English Proficient (LEP), and LEP parents of non-ELL students can understand the programs offered by the school and the process for applying.[15]

The success of many charter schools has led to large waitlists. Even in these circumstances, however, it is important for a school to continue its outreach efforts so that all segments of the community are notified about the charter school as a possible option.

KEY POINTS:

- ☐ Important decisions that occur before a school opens, such as the location of the school, the nature of the academic program, and the attendance area, can affect the ability of a school to attract a diverse student body, including ELL students.
- ☐ Recruitment should be done broadly and inclusively. A charter school can proactively reach out to areas that are more likely to have ELL students.

PRACTICE SPOTLIGHT:

The **EL Sol Science and Arts Academy**, a Pre-K–8th grade school in Santa Ana, California, offers an array of **family services on-site**, such as a wellness center, English as a Second Language (ESL) and citizenship courses, and an evening adult program in collaboration with a local community college.

These services also serve as a **recruiting tool** for the school since community members see what the school has to offer.

SCHOOL SHOWCASE:

EL Sol Science and Arts Academy, Santa Ana, CA

El Sol is a **dual immersion school** employing a 90/10 model. When the students enroll in kindergarten, **90 percent of the day is conducted in Spanish**. The rate **decreases by 10 percentage points** each year until the fourth grade when they reach a 50/50 language ratio.

I. Introduction

Located in Santa Ana, California, El Sol Science and Arts Academy (El Sol) opened in 2001 with a kindergarten and first grade class. The school added one grade level each year. Today, El Sol has 763 students in K–8th grade and 72 students in their part time Pre-K program. Ninety-six percent of El Sol students are Latino, many of whom are recent immigrants. Seventy percent are English Language Learners, and 80 percent qualify for free or reduced lunch.

II. Recruitment and Admission

When the school first opened, the cohort of founding families filled the first few classes. As time went on, the school recruited at community agencies and placed signs outside the school. In addition, the family services center at the school served as a recruiting tool because it helped showcase the school to the community. Soon, there was more than enough demand to fill their enrollment needs. As the school's outcomes continued to improve, there was more demand than space, so the school had to use a lottery. It now has 400 children on the waiting list.

III. Programmatic Components

Every student who enrolls must complete a home language survey that is required by the State of California. The answers to the survey determine whether the student has to take the California English Language Development Test (CELDT) to determine their level of English proficiency. This test measures English proficiency and the particular level of instruction the student will receive. To provide targeted instruction, four teachers each teach different proficiency levels in each grade.

III. Programmatic Components (continued)

The students have a long school day, with breakfast starting at 7:30 a.m. and the day ending at 2:45 p.m. or later depending on the grade. There is also an extended day program from 3 p.m. - 6 p.m. for K-5th grades and 4 p.m. - 6 p.m. for middle school students. This program is very popular, and the instruction is integrated with the teaching that occurs during the regular school day. Activities like art and music are also included. The day ends with a 6 p.m. - 9 p.m. adult program in collaboration with the local community college.

To assess progress in the program, the students undergo an internal writing assessment and oral assessments in addition to the standardized exams. The student's portfolios and grades are discussed by the teachers before making the decision to advance the student to the next level.

IV. Parent Engagement and Cultural Understanding

The nature of a dual immersion program makes it easier for limited English proficient parents who speak Spanish to be involved in the school because much of the conversation is already in Spanish. Parents are at the school participating and volunteering frequently. El Sol has mandatory volunteer hours for parents each year, and the school creates opportunities to help them meet those requirements. These opportunities draw from the parent's strengths and could include everything from tutoring to handy work around the school. Parents also see a great resource in El Sol, because the school has a full array of family services, including an onsite wellness center, ESL and citizenship courses, and attorneys who come in to do pro bono work.

All school correspondence goes home in English and Spanish, and virtually the entire staff can speak both languages.

V. Teachers

El Sol has high expectations for their teachers, and they have a heavy workload. The school communicates those expectations from the beginning of the recruitment process. To recruit high-quality teachers, they partner with many universities. One university, Chapman University's School of Education, sends student teachers to the school.

All of El Sol's teachers are required to have a bilingual certificate in language acquisition development in addition to their teaching credential. The school attempts to find teachers who have taken nontraditional paths to the profession. They often hire staff from other countries who do not have U.S. teaching credentials but do have higher education degrees from other countries. They use them as instructors who supplement the work of teachers.

Admissions

Use of Lotteries

Most charter schools use a lottery when the number of applicants exceeds the number of available spaces; in fact, recipients of federal charter school funds must use a lottery when the number of applicants is more than the school can serve. The federal government has interpreted this requirement to mean that a recipient of federal charter school funds must use a random lottery. There are very limited exceptions to this requirement.[16]

State Law

A few states go further in their efforts to get public charter schools to enroll ELL students. Massachusetts requires all charter schools have a recruitment plan for ELL students and other at-risk populations.[17] New York has taken similar action. Specifically, New York's charter statute was amended in 2010 to require charter schools to enroll ELL student populations reflective of their host districts' ELL enrollment percentages (as described previously on page 5); accordingly, New York now allows its charters to grant an admissions preference to ELL students and other underrepresented groups.[18] It is therefore critical to carefully review state law and policy when deciding how to structure a school's admissions process.

PRACTICE SPOTLIGHT:

Inwood Academy, a 5th–7th grade school in New York City, New York, has a long **waiting list**.

It uses a **lottery** that grants a preference to ELL students so that these students have a better chance of being admitted to the school.

Registration Documents

On both the application itself and the forms parents fill out to register for school, it is extremely important that the operator not request information that may dissuade parents from enrolling their children. Although the majority of ELL students are born in the United States, many come from immigrant families that may not have all the documents that parents who are native born would have as a matter of course. In 2011, the United States Departments of Justice and Education reiterated the rules with respect to documentation requirements for enrolling children in school.[19] While a state or school may require proof of residency within the school's attendance zone, the letter made clear that inquiring into the immigration status of a child would not be relevant to determining residency. Similarly, while some schools ask for a birth certificate to establish the age of a student, the absence of a birth certificate should not serve as a bar to enrollment. Nor may a school deny enrollment to a student if either the parent or student does not have or refuses to provide a social security number. Finally, all students should be asked for the same enrollment information regardless of race, national origin, or ELL status.

KEY POINTS:

- ☐ Charter schools receiving funds from the federal charter school grant program cannot use weighted lotteries except in limited circumstances. State law may provide more flexibility for schools and should be consulted.
- ☐ A school should not ask for registration documents that may discourage parents from enrolling their children in school.

Identification and Assessment

Home Language Survey

A school first needs to decide which students qualify for ELL services. This process typically begins by having a parent complete a Home Language Survey (HLS). A HLS is the preliminary screen that should be completed for all entering students (even those who appear to be fluent English speakers) to decide whether a school needs to conduct further assessment of a particular student. Simply asking, "What is the primary language of the student?" is insufficient.[20] At a minimum the questions should elicit answers to the following:

- The language(s) spoken at home regardless of the language spoken by the student.
- The language most often spoken by the student.
- The language the student first acquired.[21]

The HLS should be translated into the language spoken by the parent to help ensure accurate answers, or the school should provide an interpreter who can interpret the form for the parent. If the language provided in response to any question is a language other than English, the student should be referred for further assessment. A school also should conduct further assessment upon parental or teacher request. At this stage in the process, schools should err on the side of being over rather than under inclusive in deciding who needs further assessment for ELL program eligibility.

DID YOU KNOW?

For a sample **Home Language Survey**, please visit:

http://notebook.lausd.net/
and search for "Home Language Survey"

http://notebook.lausd.net/pls/ptl/docs/page/ca_lausd/fldr_organizations/fldr_instructional_svcs/instructionalsupportservices/language_acq_home_new/language_acq_private_schools/tab1170817/homelanguagesurvey%20eng.pdf

PRACTICE SPOTLIGHT:

The **Pioneer Charter School**, a K–8th grade school located in Denver, Colorado, uses the **Home Language Survey** produced by the Denver Public Schools. The survey is available in **16 languages**.

Testing for ELL Services Eligibility

If the HLS indicates further testing is required, the next step should be to conduct an objective assessment that considers four language domains — reading, writing, speaking, and listening. This screening test should be appropriate for the student's grade level. State law or the test administration materials should give scores that correlate to a particular English proficiency level, which will help guide whether a student should receive ELL services. The test should be administered as early in the school year as possible.

Generally speaking, the same procedures should be used regardless of whether the student joins in the beginning of the school year or transfers in during the year. If, however, a transfer student who is classified as ELL comes from a school that uses the same screening test as the charter school, it should not be necessary to have the student re-take this test to determine if the student is ELL.

State law or a federal settlement agreement with a district or state will often govern what must be asked as part of the HLS and the specific screening test a school must use, so a charter school operator should check with their SEA, authorizer, or LEA if they are part of a LEA. For those jurisdictions that do not have a state-mandated test, there are a variety of commercially available assessments.[22] Whatever test is used must be validated for the purpose of assessing ELL proficiency. The HLS and assessment test results should be kept in the student's educational record. Finally, parents must be notified of their child's placement in an ELL program.

KEY POINTS:

- ☐ A Home Language Survey is a preliminary screen to determine which students should be tested for ELL eligibility. It should not be used as the only measure.
- ☐ State law or a federal settlement agreement often will dictate which screening test should be used to determine if a student is eligible for ELL services. If a specific test is not required, a charter school should use an objective test that measures reading, writing, speaking, and listening.

Overview of Program Requirements

A school should choose the educational theory it will follow to educate ELL students, set educational goals for them, establish policies for all faculty and staff, and ensure there are sufficient resources to carry out the program effectively.

As noted above, federal law provides schools flexibility in deciding on the educational theory that is best suited for their ELL students. These options include, but are not limited to:

- ESL pull-out,
- sheltered English,
- structured immersion,
- transitional bilingual, and
- dual language programs.

State law may put restrictions on the type of instruction that is permissible, but charter schools may have more flexibility even in those instances. In Arizona, for instance, bilingual instruction is not permitted in traditional public schools, but charter schools have the discretion to provide this type of educational program.[23] A school also can employ different models for different students. For example, a school with a large Spanish-speaking ELL population may choose to provide them with bilingual instruction while providing ESL instruction to the few Mandarin speakers.

While the federal government does not dictate the educational theory a school must follow, it does pay close attention to whether the programs and practices used by the school are reasonably calculated to implement the school's theory effectively. The critical question is, "Do the ELL students receive the tools they need to learn English in a timely manner and receive meaningful access to the rest of the school's instructional program?"

PRACTICE SPOTLIGHT:

The **Namaste Charter School**, a K–8th grade school in Chicago, Illinois, uses a **dual language model**.

In Kindergarten and first grade, **90 percent** of the school day is conducted in Spanish, and the rate decreases by **10 percent** each year after first grade until the students reach a **50-50** language ratio in fifth grade.

The goal is for students to reach **full literacy in both languages**.

In the past few years, due in large part through the Common Core State Standards initiative, nearly every state has taken steps to increase the rigor of their academic standards, and they are creating assessments to help measure whether their students are mastering the content of these new standards. The goal is to make all students, including ELL students, college and career ready. Efforts to finalize the standards and the assessments for these students remain a work in progress. Given the evolving nature of these efforts, it is important for authorizers and operators to pay close attention to the specific standards and assessments that are being developed in their states and to analyze their impact on charter schools.

The critical question is, "Do the ELL students receive the tools they need to learn English in a timely manner and receive meaningful access to the rest of the school's instructional program?"

PRACTICE SPOTLIGHT:

At **Highpoint Academy**, a Pre-K–8th grade school in Aurora, Colorado, all students have an "intervention" block during the day, where students receive **targeted instruction** depending on their educational needs. ELL students are given English instruction during this time period so they do not miss core subject classes.

PRACTICE SPOTLIGHT:

The **Academy of Math and Science**, a K–12th grade school in Tucson, Arizona, has learning plans tailored to the individual needs of each ELL student. In addition, ELL students are provided **supplemental instruction** in individual or small group settings during the regular school day or after school following extracurricular activities.

While the ELL educational program will vary from school to school, there are some general requirements to which all operators must adhere:[24]

- The instructional materials must be appropriate for the students' age or grade level, as well as for the instructional model selected by the school. So, if the school has chosen a bilingual education model, there must be sufficient grade appropriate materials in both English and the native language for the students to use. This includes not only the classroom materials, but also those that are in the library. If online instruction is a part of the charter school's instructional methodology, the online content must also be appropriate for the ELL students' educational program.
- ELL students should be educated in the same caliber of facilities as other students. So, while there may be fewer ELL students in a particular class, they cannot be relegated to the most undesirable parts of the building. Nor should they be educated in places like hallways or make-shift classrooms if other students receive their instruction in a regular classroom environment.
- While ELL students may be separated from their non-ELL peers for at least part of the school day, this separation should be only as long as needed to carry out the chosen instructional program.

- Some schools offer "newcomer" programs in which newly arrived ELL students are separated and given intensive instruction in English in an effort to get them into mainstream classes as soon as possible and/or so that they can learn the customs of the United States in a more sheltered environment. Schools that separate ELL students for any part of the day should be prepared to demonstrate why the educational benefits the students receive from the ELL instructional program outweighs the detriment to these students that may result from being separated from their peers. ELL students should not be separated during recess, lunch, and courses such as physical education, music, and art.

- ELL students are entitled to special education services if they qualify. Similarly, special education students must receive ELL services if they qualify pursuant to the school's assessment procedures. A student's participation in one program cannot preclude participation in the other. Furthermore, as OCR has stated, schools "may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English language skills."[25] Therefore, the special education assessment team must take into account the fact that a student is ELL. This may require a school to use an assessment tool in the student's native language, or provide an interpreter for the student. In determining whether a student should receive special education services, the ELL teacher should be a part of the assessment team so he or she can provide background information on the student and help spot instances where a student's lack of English language ability may be mistaken for a special education need. Conversely, if a student needs special education services, language services also should be provided so the student can participate meaningfully.

DID YOU KNOW?

Virtual schools are subject to the same **civil rights requirements** as brick and mortar schools. Consequently, a virtual school must provide ELL students with an English language acquisition program that is **accessible** to them.

PRACTICE SPOTLIGHT:

In an effort to **minimize separation** between ELL students and their non-ELL peers, the **Folk Arts Cultural Treasures Charter School**, a K–8th grade school in Philadelphia, Pennsylvania, adopted an educational model that fosters **community building** and use of intentional strategies to support **respect** for linguistic and cultural differences within the student body.

All content courses are differentiated through a true **collaborative effort** between the ESL and content area teachers to ensure that learning is meaningful and grade-appropriate. For example, a student designated as an ELL may remain in the math and science courses with other students, but would receive separate and **more focused** instruction in English and Social Studies.

PRACTICE SPOTLIGHT:

The **ACE Charter School**, a 5th–8th grade school in San Jose, California, takes a variety of steps to make sure students are not mistakenly placed into special education due to their limited English proficiency.

They first **assess the student's ability** in the student's native language to see how the student is performing. They also put together a **"student study team"** for all students.

The team meets with all of the student's teachers to discuss approaches that might be useful for the student. This team meets twice a month. If a student still is not progressing appropriately, they recommend the student be tested to see if he or she has any **special education needs**. The team also **meets with the student's family** to make sure the family is in agreement with how the team is approaching the student's challenges.

- ELL students should not be excluded from other aspects of the school's educational program due to a lack of English language ability. This includes school-sponsored activities (such as after school activities) and gifted programs, unless proficiency in English language skills is required for meaningful participation. Therefore, any eligibility tests, such as those for a gifted program, must take into the account the student's limited English skills. As with special education tests, this could mean translating the test into the student's native language or using an interpreter. By employing these measures, students who are gifted in particular areas (e.g., math) can be identified and provided appropriate services. School administrators also should encourage ELL teachers to refer their students to these specialized programs.

KEY POINTS:

- ELL students should receive the instruction needed to help them learn English in a timely manner and have meaningful access to the rest of the school's instructional program.
- ELL students are entitled to special education services if they qualify for special education, and special education students are entitled to ELL services if they qualify. Participation in one program cannot preclude participation in the other.

Teacher Qualifications

Under the ESEA, all teachers, including ELL teachers, who teach core academic subjects must be "highly qualified." Generally speaking, a teacher must have:

1) a bachelor's degree;

2) state certification, which can include alternate certification (if a state's laws exempt some or all charter school teachers from the standard certification requirements, such exemption applies under the ESEA); and

3) subject matter competence in the core academic subjects he or she teaches.[26]

State law governs the specifics of the "highly qualified" requirements and should be consulted as well.

Under Title VI and the EEOA, a school should begin by determining the number of ELL teachers and support staff who are needed to carry out the school's ELL program. When hiring teachers, the school should ensure that the qualifications of the ELL teachers are comparable to the qualifications of the teachers who teach the non-ELL students. If a teacher is responsible for both subject matter instruction as well as English language development, the teacher should be qualified in both areas.

TEACHER QUALIFICATIONS (CONTINUED)

PRACTICE SPOTLIGHT:

The **EL Sol Science and Arts Academy**, a Pre-K–8th grade school in Santa Ana, California, requires all teachers to have a **bilingual certificate** in language acquisition development in addition to their teaching credential.

The school makes a special effort to **hire staff who have higher education degrees from other countries** but who do not have U.S. teaching credentials and uses them as instructors who supplement the work of teachers.

PRACTICE SPOTLIGHT:

At **Highpoint Academy**, a Pre-K–8th grade school in Aurora, Colorado, begun a **new initiative** designed to help staff better understand the needs of ELL students.

One of Highpoint's teachers, who is an immigrant and refugee from Liberia, meets with the other teachers to tell them about the **types of issues** that their ELL students may be facing as they adjust to a new country.

Similarly, if a school has a bilingual program, teachers in the program need to demonstrate fluency in reading, writing, speaking, and listening in both languages and have adequate instruction in bilingual education methods. Teachers who instruct students with different levels of English proficiency in the same class should receive specialized training. If a school can demonstrate that it has unsuccessfully tried to hire qualified teachers, it must provide adequate training to teachers already on staff to meet the programmatic requirements of its ELL program. Teacher aides can be used to supplement instruction, but the primary education of ELL students should be by qualified teachers.

As the percentage of ELL students in our nation's schools increases over time, it will be helpful for all teachers to receive some training in instructing ELL students. In California, where approximately 25 percent of the state's students are ELL, any teacher who instructs even one ELL student must have an English language authorization.[27]

KEY POINTS:

- ☐ Federal law provides the basic requirements for teacher qualifications. State law provides the specifics.
- ☐ Teachers of ELL students should be as qualified as teachers who instruct non-ELL students.

Exiting Students From the ELL Program and Monitoring Former ELL students

Exit Assessments

Students must be kept in the ELL program only as long as needed for them to develop adequate English skills that will allow them to participate meaningfully in the regular instructional program for their grade level. As with the initial ELL assessment, students who may be eligible for exiting the ELL program should be tested with an objective assessment that has been validated for this purpose. State law may dictate the specific type of test that must be used. Generally, students are tested annually at the end of the year; however, schools may be able to give these exit assessments at other times during the year if a teacher or parent requests it.

Monitoring Former ELL Students

Schools must monitor the academic performance of former ELL students for two years following their exit from the program to make sure they can participate meaningfully in the regular educational program. OCR does not require schools to monitor a specific list of factors, but has provided the following general parameters:

(1) whether former ELL students are able to perform comparably to their non-ELL peers in the regular educational program;

(2) whether they can participate successfully in essentially all aspects of the school's curriculum without the use of simplified English materials; and,

(3) whether their retention in grade and dropout rates are similar to those of their non-ELL peers.[28]

Schools must monitor the academic performance of former ELL students for two years following their exit from the program to make sure they can participate meaningfully in the regular educational program.

EXITING STUDENTS FROM THE ELL PROGRAM AND MONITORING FORMER ELL STUDENTS (CONTINUED)

PRACTICE SPOTLIGHT:

At the **Folk Arts Cultural Treasures Charter School**, a K–8th grade school in Philadelphia, Pennsylvania, the former ELL student's content area teachers each fill out a **monitoring form** on a quarterly basis that is then reviewed by the ELL instructors to **determine if the student is making adequate progress**.

If a former ELL student is not progressing at the expected pace, the school should provide appropriate interventions. If those interventions do not work, the school should consider whether to place the student back in the ELL program. In addition, if a school has temporarily emphasized an ELL student's instruction in English over other academic subjects, the school has the obligation to provide the extra assistance the student needs to remedy any academic deficits that may have occurred in other subjects while the student was focusing on learning English. A school can provide this assistance prior to or subsequent to the student's exit from the ELL program. This assistance can take several forms, such as tutoring, paraprofessional support, and academic counseling.

KEY POINTS:

- ☐ A school should use an objective assessment to determine if a student should exit the ELL program.
- ☐ A school must monitor the academic progress of former ELL students for two years to make sure the student is able to progress at an appropriate pace in the regular instructional program.

Evaluation of the ELL Program

Schools have a responsibility to evaluate the ELL program to make sure its ELL students are overcoming language barriers and meeting academic goals.

Ideally, the evaluation should cover both the policies and actual practices of the school in each of the areas discussed in this toolkit, and include a review of the performance of both ELL and former ELL students. As noted in the discussion of legal requirements, a school must modify its program if the results indicate that language barriers are not being overcome after a trial period. This evaluation should occur annually.

An authorizer also has responsibility to make sure all students are progressing appropriately. The legal responsibility for monitoring the school's ELL program may fall to the authorizer, the SEA, or both. If an authorizer does not have someone on staff who is skilled at conducting ELL program oversight, they should contract with an outside evaluator with the requisite skills.

PRACTICE SPOTLIGHT:

The **ACE Charter School**, a 5th–8th grade school in San Jose, California, disaggregates and reviews its assessment data of ELL students. It is beginning to take steps to further disaggregate the data by particular ELL sub-groups to see if they can **use this more refined data to better serve these students**.

Evaluation Metrics

As was the case with evaluating the progress of former ELL students, the federal civil rights laws do not provide a rigid set of indicators to determine if the ELL program is working. Examples of possible indicators to review are those mentioned above with respect to monitoring former ELL students (whether the former ELL students are able to perform comparably to their non-ELL peers; whether they can participate successfully in essentially all aspects of the school's curriculum without the use of simplified English materials; and whether their retention in grade and dropout rates are similar to those of their non-ELL peers).

Other possible indicators for both ELL and former ELL students include: assessment scores and other standardized test results; grade level performance information; participation rates in gifted/talented programs and honors courses; and a longitudinal analysis of student progress. When evaluating an ELL program, the fact that achievement gaps may exist between ELL and non-ELL students does not necessarily indicate the program is failing, given that there may be other factors that account for the disparities.[29] In addition, the law does not require an equalization of results between the two groups.[30] However, a school with a successful program should be able to demonstrate that the ELL students are making appropriate gains in learning English and other subjects. For charter school operators with multiple campuses, the data for the evaluation should be broken down by campus so it is easier to assess whether a particular campus's ELL program is succeeding.

As part of its Civil Rights Data Collection (CRDC), OCR collects a variety of data indicators from schools related to its students, including ELLs. For the 2011-12 school year, all schools in the country were required to submit this data to OCR.[31] This data can be a useful starting point for evaluating the success of the ELL program.

KEY POINTS:

- ☐ The school has primary responsibility for evaluating the effectiveness of its ELL program.
- ☐ The evaluation should look at the progress of both ELL students and former ELL students.

Parental Communication

Legal Requirements

Long-standing OCR policy requires schools to adequately notify LEP parents of information that is called to the attention of other parents, and that such notice may need to be provided in a foreign language.[32] There is not a hard and fast list of documents that must be translated or situations in which interpreters must be used. As a general matter, the federal government uses a four-factor analysis to determine the extent of a school's obligation to provide language assistance to parents or guardians:

(1) Number or proportion of LEP individuals likely to encounter the program;

(2) Frequency with which LEP individuals come into contact with the program;

(3) Nature and importance of the services provided by the program; and

(4) Resources available.[33]

As with the other areas discussed in this toolkit, state law may provide more specific requirements.

Practical Steps a School Can Take to Facilitate Parental Communication

Schools can take a number of steps to help ensure that parental communication will be efficient and effective. First, a school should determine what translating and interpreting resources it has available, either on-staff or through an outside entity. These resources can include bilingual staff, staff who are trained to be interpreters or translators, and outside vendors that can provide language services.

Second, a school should develop a comprehensive list of parents needing language services and the language in which assistance is needed. This includes LEP parents of both ELL and non-ELL students. One way to gather this information is to give parents of all students a form to fill out at registration that asks them to indicate their preferred language of communication. The form should be available in the primary languages spoken in the school. The preferred method of communication should be documented in a way that is accessible to all school staff who may have contact with the parent.

Third, the school should develop a notice for parents telling them that free interpreter and translator services are available. The notice should be translated into the languages most commonly spoken at the school and be made widely available in the school community.

Fourth, the school should have a written policy for school staff that details which documents have been and will be translated, how to request interpreters and translators, and provide training on how to work with them. The policy should be reviewed periodically and revised if needed.

PRACTICE SPOTLIGHT:

Inwood Academy, a 5th–7th grade school in New York City, New York, uses **translated text messages** and **automated voice messages** in Spanish to assist in communicating with parents.

They also **provide interpreters** at every school meeting, and their website is in both Spanish and English.

Here are some additional guidelines that apply to translation and interpretation:

Translating Documents

Given the importance of parental participation in the education of their children, schools should translate important documents whenever possible, with more translated materials available in the languages with a sizable ELL population at the school. For those languages that are less common, a school should be prepared to provide an interpreter who can orally convey the contents of the document.

Some of the more important documents to translate include: outreach materials; disciplinary notices and procedures; application and enrollment forms; emergency notification forms; report cards; notices of parent teacher conferences and placement in the ELL program; parent handbooks; documents detailing academic options available to students, such as enrollment in gifted/talented programs and course prerequisites; counseling-related information; and information about co-curricular and extra-curricular activities. In addition, special education laws require that parents be notified if the school initiates or changes the identification, evaluation, or educational placement of the student. This notification must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.[34] A school also should take steps to ensure that online materials for parents on the school's website can be understood by LEP parents.

Since many of these documents are standard forms, it may be necessary only to translate the documents once — and they could be used for years. It is important for these documents to be translated by someone who is qualified to translate. While it may be quicker and less expensive to have a bilingual staff member translate a document, the risk of error and the possible consequences of that error make it advisable to use a professional if the bilingual staff member is not a qualified translator.

Providing Interpreters

Although it may be common for schools to use friends, family members, or even the students themselves to serve as interpreters because of convenience or to save money, this practice should be avoided. The use of these individuals may raise questions related to confidentiality, privacy, or conflict of interest. For instance, a parent may be hesitant to raise potentially embarrassing but important information during a parent-teacher conference if a neighbor is interpreting. The neighbor also may not be competent to interpret accurately because it is unlikely he or she has been trained as an interpreter. The school's policy should make clear to staff members that friends, family members, or the students themselves should not be used as interpreters unless the matter is fairly routine (e.g., scheduling a meeting) or an emergency.

While in-person interpreters may not always be available, there are a number of telephonic interpreter services that typically can get an interpreter on the phone quickly. Interpreters should be provided for teacher-parent meetings, as well as for school events where parental involvement is expected. As is the case with translators, a school should rely only on qualified interpreters. In addition to having the requisite technical skills, the interpreter must understand the ethics of interpreting, such as the need to maintain confidentiality.

While there have been some concerns about the cost of providing qualified interpreters and translators, these costs must be viewed in light of how important it is for parents to be involved and understand what is going on with their children's education. In addition, a school can seek to partner with others (such as with neighboring charter schools or with their local LEA) to split costs — for instance, by creating forms they can all use and by seeking bulk discounts on interpretation and translation services.

PRACTICE SPOTLIGHT:

The **Namaste Charter School**, a K–8th grade school in Chicago, Illinois, has a **full-time bilingual parent coordinator** who runs a family center at the school.

The center has **materials in Spanish as well as English**. Parents can receive a variety of services, such as counseling, in Spanish. The school's **report cards** are also in English and Spanish.

KEY POINTS:

- ☐ Given the importance of parental engagement, schools should place a high priority on making their materials accessible to LEP parents. This can be done by using qualified interpreters and translators.
- ☐ Friends, family members, and the students themselves should not be used as interpreters or translators unless it is for a routine, non-sensitive matter or an emergency.

SCHOOL SHOWCASE:

Folk Arts Cultural Treasures Charter School, Philadelphia, PA

I. Introduction

Located in the Chinatown neighborhood of Philadelphia, Pennsylvania, the Folk Arts Cultural Treasures Charter School (FACTS) is a K–8 school founded by Asian Americans United and the Philadelphia Folklore Project in 2005 with the goal of serving the immigrant and refugee communities in Philadelphia. FACTS enrolls 479 students, approximately 68 percent of whom are Asian American, 20 percent are African American, 6 percent are multi-racial, 4 percent are Latino, and 2 percent are White. Eighty-four percent of the students qualify for free or reduced lunch. Sixteen percent are classified as English Language Learners (ELLs), with approximately 70 percent of the students speaking a language other than English at home. The school has met the Adequate Yearly Progress (AYP) goals for four consecutive years, and its program for ELLs achieved its Annual Measurable Achievement Objective (AMAO).

II. Recruitment and Admission

When FACTS was founded, recruiting efforts included direct engagement with families in the predominantly immigrant neighborhoods in Philadelphia. School officials visited local stores and handed out materials in different languages to encourage enrollment in their first class. One of the founding organizations, Asian Americans United, already had a reputation among these immigrant communities as a trustworthy resource and partner, so this drew immigrant families to the school. Over time, the school has proven itself to be successful, and it is a desirable option for families throughout the city. As a result, demand has risen quickly. The school has a waiting list of over 400 students, which includes 140 hoping to enroll in kindergarten.

III. Programmatic Components

FACTS's staff attributes the demand for their school to its reputation for rigorous academic programming and the sense of community it instills in students and their families.

FACTS's high standards for academic achievement apply to all students, including ELLs. The school evaluates and responds to each ELL student's academic abilities. This is done with comprehensive assessment tools including a home language survey that captures nuanced information such as the dominant language for both father and mother; a detailed assessment of the state standardized test scores; and input from the teachers, administrators, and parents. ELL students are on a "flexible program model" which is also customized to his or her individual needs. Students' ELL teachers and content area teachers meet weekly to ensure the lesson plans are meeting the students' needs. The program model ensures ELLs are integrated into the general education classrooms as much as possible.

The school has met the **Adequate Yearly Progress** (AYP) goals for four consecutive years, and its program for ELLs achieved its **Annual Measurable Achievement Objective** (AMAO).

III. Programmatic Components (Continued)

FACTS's students are monitored for two years after they exit the ELL program. Each quarter, every content area teacher is required to fill out a short form outlining the student's progress. ELL staff review these forms to ensure that former ELL students are not falling behind. To monitor its program's overall success, FACTS conducts an annual evaluation that is based in part on students' test scores, but also incorporates input from administrators, parents, teachers, and the students themselves.

IV. Parent Engagement and Cultural Understanding

Parent engagement, a culturally sensitive classroom setting, and a clear mission statement all contribute to FACTS's ability to create a sense of cultural pride in its students. It is a top priority for FACTS administrators that their teachers understand the life experiences of its students and families. FACTS creates a welcoming and inspirational learning environment by encouraging home languages be spoken in the classroom and creating its own curricula.

Connecting parents to their children's academic lives is a top priority at FACTS. This all begins with a large investment in language access. FACTS translates every major document. This includes the school's application, flyers for events, and other notices that are sent to a student's home. Further, if a parent calls the school, there is an interpreter language line service available as needed. FACTS offers professional interpreters to ensure parents are able to participate fully for report card conferences between teachers and parents and at school events.

Sources of Technical Assistance

While the list of areas to address in developing a quality ELL program may seem daunting at first, there are a variety of other resources to turn to for assistance. These resources include:

- **Charter School Authorizers** — Authorizers can be a valuable source of technical assistance and training. If authorizers do not have the skill set to provide this assistance, they should acquire this expertise in other ways, either by training relevant staff or contracting with a consultant who has the expertise.
- **State and Local Educational Agencies** — These entities often have a wealth of expertise in the education of ELL students and may be able to provide sample forms as well as recommendations (e.g., type of entrance and exit assessments to use if one is not already mandated).
- **State Charter School Associations** — These associations may be able to connect a school with others in the state that have addressed similar issues, and can provide statewide technical assistance on particularly challenging topics.
- **United States Department of Education Office for Civil Rights** — OCR provides technical assistance free of charge on all of the statutes it enforces. To request this assistance, please visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.
- **National Charter School Resource Center** — This national center provides resources, information, and technical assistance to support successful planning, authorizing, implementation, and sustainability of high-quality charter schools. It is funded by the United States Department of Education. http://www.charterschoolcenter.org.

In addition, the Appendix contains website links to numerous other resources.

Conclusion

The charter school community has a unique opportunity to shape the education of one of our nation's fastest growing demographics — English Language Learners. While no two schools are alike, and neither are any two students, this toolkit provides guidance and concrete examples for operators and authorizers to help them provide ELL students with a quality education. We also encourage you to speak with peers about best practices and to share innovative ideas. Through our collective efforts, we can make a difference.

Appendix

This section contains internet links to documents that provide additional information in each of the areas discussed in this toolkit.

General Legal Requirements

Statutes and Regulations

- Title VI of the Civil Rights Act of 1964 and accompanying regulations (http://www.justice.gov/crt/about/cor/coord/titlevi.php)
- Equal Educational Opportunities Act of 1974 (http://www.law.cornell.edu/uscode/text/20/1703)
- Elementary and Secondary Education Act (http://www2.ed.gov/policy/elsec/leg/esea02/index.html)

Cases

- Lau v. Nichols, 414 US 563 (1974) (http://scholar.google.com/scholar_case?case=5046768322576386473&hl=en&as_sdt=2&as_vis=1&oi=scholarr)
- Horne v. Flores, 557 US 433 (2009) (http://www.supremecourt.gov/opinions/08pdf/08-289.pdf)
- Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981) (http://faculty.ucmerced.edu/khakuta/LAU/IAPolicy/IA1bCastanedaFullText.htm)

U.S. Department of Education Office for Civil Rights Policy Documents

- Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited English Proficiency (September 27, 1991) (http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html)
- Office for Civil Rights Policy Regarding the Treatment of National Origin Minority Students Who Are Limited English Proficient (April 6, 1990) (http://www2.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html)
- Identification of Discrimination and Denial of Services on the Basis of National Origin (May 25, 1970) (http://www2.ed.gov/about/offices/list/ocr/docs/nationaloriginmemo.html)

Waivers Under Elementary and Secondary Education Act

- U.S. Department of Education webpage on waivers (http://www.ed.gov/esea/flexibility)

School Opening and Recruitment

- United States Department of Justice and United States Department of Education, "Guidance On The Voluntary Use Of Race To Achieve Diversity In Postsecondary Education" (December 2011) (discusses recruiting techniques that can also be applied at the K-12 level) (http://www2.ed.gov/about/offices/list/ocr/docs/guidance-pse-201111.pdf)
- United States Department of Education, Charter Schools Program Title V, Part B of the ESEA Nonregulatory Guidance, April 2011 (www2.ed.gov/programs/charter/nonregulatory-guidance.doc)

Admissions

- United States Department of Education, Charter Schools Program Title V, Part B of the ESEA Nonregulatory Guidance, April 2011 (www2.ed.gov/programs/charter/nonregulatory-guidance.doc)
- United States Department of Justice and United States Department of Education, Dear Colleague Letter, May 6, 2011 (discusses acceptable registration documents) (http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf)
- Questions and Answers for School Districts and Parents (discusses acceptable registration documents) (http://www2.ed.gov/about/offices/list/ocr/docs/qa-201101.pdf)

APPENDIX (CONTINUED)

Identification and Assessment

- United States Department of Education Office for Civil Rights, "Programs for English Language Learners: Resource Materials for Planning and Self-Assessments" (Nov. 30, 1999) (http://www2.ed.gov/about/offices/list/ocr/ell/index.html)
- The OCR Policy Documents listed in the "General Legal Requirements" section should also be consulted.
- Ariana Quinones-Miranda, "English Language Learner Compliance 101: What CSOs Need to Know" (2011) (http://www.floridacharterschools.org/global/downloads/NAPCSEnglishLanguageLearnerCompliance.pdf)

Overview of Programmatic Requirements

- United States Department of Education Office for Civil Rights, "Programs for English Language Learners: Resource Materials for Planning and Self-Assessments" (Nov. 30, 1999) (http://www2.ed.gov/about/offices/list/ocr/ell/index.html)
- The OCR Policy Documents listed in the "General Legal Requirements" section should also be consulted.
- National Association of Charter School Authorizers Issue Brief, "Charter Schools and ELLs: An Authorizer and School Leader Guide to Educating ELLs" (June 2011) (http://www.charterschoolcenter.org/resource/charter-schools-and-ells-authorizer-and-school-leader-guide-educating-ells)
- Ariana Quinones-Miranda, "English Language Learner Compliance 101: What CSOs Need to Know" (2011) (http://www.floridacharterschools.org/global/downloads/NAPCSEnglishLanguageLearnerCompliance.pdf)

Teacher Qualifications

- United States Department of Education Office for Civil Rights, "Programs for English Language Learners: Resource Materials for Planning and Self-Assessments" (Nov. 30, 1999)(http://www2.ed.gov/about/offices/list/ocr/ell/index.html)
- The OCR Policy Documents listed in the "General Legal Requirements" section should also be consulted.
- United States Department of Education webpage on teacher quality requirements under the Elementary and Secondary Education Act (http://www2.ed.gov/teachers/nclbguide/improve-quality.html)

Exiting of Students From the ELL Program and Monitoring Former ELL Students

- United States Department of Education Office for Civil Rights, "Programs for English Language Learners: Resource Materials for Planning and Self-Assessments" (Nov. 30, 1999) (http://www2.ed.gov/about/offices/list/ocr/ell/index.html)
- The OCR Policy Documents listed in the "General Legal Requirements" section should also be consulted.

Parental Communication

For general information about serving limited English proficient individuals, please see:

- U.S. Department of Justice "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." 67 Fed. Reg. 41,455 (June 18, 2002) (http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf)
- Federal government's inter-agency website: www.lep.gov

Endnotes

[1] This document uses the phrase "English Language Learner" but depending on the jurisdiction, these students may be referred to as "Limited English Proficient" (LEP) or "English Learners" (EL). In this toolkit, these phrases refer to school-age children whose native language is not English and whose difficulty speaking, reading, writing, or understanding English impedes the student's ability to succeed in school. *See* Section 9101(25) of the *No Child Left Behind Act*. Therefore, students who are English proficient, but participate in a foreign language immersion program, would not be considered ELL.

[2] National Center on Education Statistics, "English Language Learners in the Public Schools (Aug. 2012) (available at http://nces.ed.gov/programs/coe/indicator_ell.asp).

[3] Migration Policy Institute, ELL Information Center Fact Sheet Series, 2010 (available at http://www.migrationinformation.org/ellinfo/FactSheet_ELL3.pdf).

[4] The ESEA was initially passed in 1965 and was most recently revised in 2001. It is also known as the *No Child Left Behind Act*.

[5] *Lau v. Nichols*, 414 US 563 (1974).

[6] *Id.* at 566.

[7] Memorandum from Assistant Secretary for Civil Rights Michael L. Williams to OCR Senior Staff, September 27, 1991, at 11 (1991 Policy Update). (available at http://www2.ed.gov/about/offices/list/ocr/ell/september27.html) *See also id.* at 9 ("In districts with few LEP students, at a minimum, school teachers and administrators should be informed of their obligations to provide necessary alternative language services, and of their obligation to seek any assistance necessary to comply with this requirement.").

[8] *Castaneda v. Pickard*, 648 F.2d 989, 1009-1010 (5th Cir. 1981); 1991 Policy Update, at 1.

[9] For an explanation of these and other forms of instructional methods, please see U.S. Department of Education, Office for Civil Rights, "Programs for English Language Learners: Resource Materials for Planning and Self-Assessments" Nov. 30, 1999, at 35-37 (available at http://www2.ed.gov/about/offices/list/ocr/ell/index.html).

[10] For instance, under Title I, schools must, as a general matter, classify ELL students as their own sub-group for federal accountability purposes, have ELLs' academic achievement assessed in areas including English language proficiency, and are subject to various parental notification requirements. Title III of the ESEA provides additional funding to support the needs of ELLs. Under this funding stream, states distribute funds to LEAs based on the number of ELL students in the district. Because of complications in the funding formula, charter schools have sometimes had difficulty getting access to these funds. *See* Center for American Progress and the National Council of La Raza, "Next Generation Charter Schools: Meeting the Needs of Latinos and English Language Learners," Sept. 2010 at 14. Schools receiving Title III funds are also subject to specific evaluation, testing, and parental notification requirements. For example, schools receiving Title III funds must evaluate a student's comprehension in addition to evaluating his or her reading, writing, speaking, and listening skills. For a copy of the ESEA, please visit http://www2.ed.gov/policy/elsec/leg/esea02/index.html. For further information about how the ESEA affects ELLs, please see following Department of Education publications: Final Interpretations of Title III of ESEA, 2008 (available at http://www2.ed.gov/legislation/FedRegister/other/2008-4/101708a.html); Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students, 2007 (available at http://www.ed.gov/policy/elsec/guid/lepguidance.doc); NCLB Provisions Ensure Flexibility and Accountability for Limited English Proficient Students, 2004 (available at http://www2.ed.gov/nclb/accountability/schools/factsheet-english.html).

[11] *Horne v. Flores*, 557 U.S. 433, 462 (2009) (case involves a lawsuit against the State of Arizona for failing to adequately fund ELL programs).

[12] For further information on how schools can take steps to achieve diversity, see United States Department of Justice and United States Department of Education, "Guidance On The Voluntary Use Of Race To Achieve Diversity And Avoid Racial Isolation In Elementary And Secondary Schools" (December 2011) (available at http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf).

[13] N.Y. Education Law Section 2852(9-a)(b)(i).

ENDNOTES (CONTINUED)

[14] United States Department of Education, Charter Schools Program Title V, Part B of the ESEA Nonregulatory Guidance, April 2011, at 18 (Nonregulatory Guidance). The guidance reiterates this point on page 19: "Charter schools should reach out broadly to the community, including to English Language Learners and students with disabilities." (available at http://www2.ed.gov/programs/charter/nonregulatory-guidance.html).

[15] When this toolkit uses the terms "parent" or "parents" it is also intended to cover guardians.

[16] The federal government permits weighted lotteries when required to comply with the civil rights laws (which would normally occur as a result of a court order), or under the public school choice provisions under Title I of ESEA. *See* Nonregulatory Guidance at 17.

[17] Mass. Gen. Laws Ann. ch. 71, § 89.

[18] N.Y. Education Law Section 2854(2); 8 NY ADC 119.5(a)(2).

[19] Dear Colleague Letter, United States Department of Justice and United States Department of Education, May 6, 2011 (available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.html).

[20] *See, e.g.,* Letter from the United States Department of Education and United States Department of Justice, to the Arizona Department of Education, OCR Case Number 08-09-4026, May 24, 2011, at 1. Case resolutions or statements made in case-specific letters are not considered official government policy, but they do give insight into what the federal government will find acceptable or unacceptable (available at http://www2.ed.gov/about/offices/list/ocr/docs/investigations/08094026-a.html).

[21] *See, e.g.,* OCR Resolution Agreement with Dearborn Public Schools, OCR Case Number 15-10-5001, May 23, 2012, at 4 (available at http://www2.ed.gov/about/offices/list/ocr/docs/investigations/15105001-a.html).

[22] *See* http://www.state.nj.us/education/bilingual/resources/prof_tests.htm for examples of assessment tests.

[23] Arizona Attorney General Opinion No. I03-002 (July 25, 2003).

[24] Each of the bullet points in this section is taken from the OCR policy documents that are cited in the Appendix.

[25] 1991 Policy Update, at 7.

[26] Under ESEA, a parent must be informed if their child is not being taught by a highly qualified teacher.

[27] *See* California Commission on Teacher Credentialing FAQ (available at http://www.ctc.ca.gov/credentials/CREDS/english-learners-FAQ.html).

[28] 1991 Policy Update, at 6. Under Title I of ESEA, a state can include the performance of former ELLs in measuring the performance of an ELL sub-group for up to two years following their exit from the program. Schools receiving Title III ESEA funds must track the academic performance of former ELL students for two years following their exit from the program.

[29] *Flores*, 557 US at 467.

[30] *Id.*

[31] More information about the CRDC can be found at http://www2.ed.gov/about/offices/list/ocr/data.html?src=rt.

[32] Memorandum from J. Stanley Pottinger, Director, Office for Civil Rights, "Identification of Discrimination and Denial of Services on the Basis of National Origin," May 25, 1970, at 2 (available at http://www2.ed.gov/about/offices/list/ocr/docs/nationaloriginmemo.html).

[33] *See* U.S. Department of Justice "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." 67 Fed. Reg. 41,455 (June 18, 2002) (available at http://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf).

[34] *See, e.g.*, 34 CFR Section 300.503.

SERVING ENGLISH LANGUAGE LEARNERS: A TOOLKIT FOR PUBLIC CHARTER SCHOOLS

Prepared by Sunil Mansukhani
with assistance from Francella Chinchilla

ABOUT THE AUTHORS

Sunil Mansukhani

Sunil serves as a Principal at The Raben Group. He joined The Raben Group after serving in the Obama Administration as deputy assistant secretary at the U.S. Department of Education's (ED) Office for Civil Rights (OCR). While at OCR, Sunil led the office's policy initiatives. During his tenure, OCR issued guidance in areas such as the consideration of race in school admissions, harassment and bullying, sexual violence, athletics, and equal access for students with disabilities.

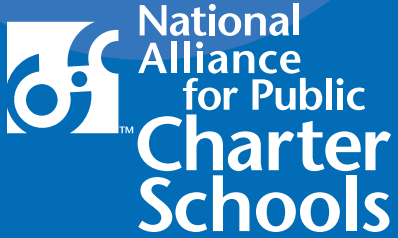
Prior to joining ED, Sunil was the first executive director of the D.C. Access to Justice Commission and worked in the U.S. Department of Justice's Civil Rights Division, where he litigated education-related civil rights cases.

Sunil received his B.A. in Political Science and Economics, summa cum laude, from the University of Illinois at Urbana-Champaign, his J.D. from Yale Law School, and a LL.M in Advocacy from Georgetown University Law Center. He was named one of the "Best Lawyers Under 40" by the National Asian Pacific American Bar Association.

Francella Chinchilla

Francella serves as an Associate at The Raben Group. Immediately prior to joining The Raben Group, Francella worked as a donor relations and scholarships assistant at the California Community Foundation. In this role, she collaborated with students, university officials, and donors to ensure that student scholarship funds both satisfied donor intent and assisted deserving students with their financial burdens. Prior to joining the California Community Foundation, Francella served as the national office administrator of grants and services to the local programs as the Resource Development Coordinator for the LULAC National Educational Service Centers, Inc., an organization providing innovative educational programming to high-need students in predominantly Latino communities across the nation.

Born in San Jose, Costa Rica and raised in Southern California, Francella earned a B.A. in Government from Georgetown University in Washington, DC and an M.P.P. from the University of Southern California in Los Angeles, CA.



The National Alliance for Public Charter Schools
1101 Fifteenth Street, NW, Suite 1010, Washington, DC 20005
202.289.2700 ■ www.publiccharters.org