

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." 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.