

## LEGAL HISTORY/FRAMWORK

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

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

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

### WHAT DOES THIS MEAN FOR CHARTER AUTHORIZERS?

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

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

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

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

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

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

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

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

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

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