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| POLICY TITLE: | Emerging Multilingual Learner Audit and Monitoring Policy |
| ADOPTION/EFFECTIVE DATE: | October 26, 2015 |
| MOST RECENTLY UPDATED: | September 26, 2023 |

PURPOSE

This policy identifies practices that may be preventing emerging multilingual learners' success and provides guidance on how the DC Public Charter School Board (DC PCSB) will monitor schools' compliance with local and federal laws related to emerging multilingual learner (EML) students.¹ This policy also identifies criteria for DC PCSB to initiate an audit, and the subsequent audit procedures it will initiate in response to each potential indication of noncompliance or inequitable provision of services schools must provide to EML students.

The School Reform Act (SRA), D.C. Code §§ 38-1802 *et seq.*, requires public charter schools to comply with all applicable laws and tasks DC PCSB with ensuring this compliance.² The SRA explicitly states that public charter schools must comply with Title VI of the Civil Rights Act of 1964 (Title VI).³ In addition, DC PCSB has determined that other laws related to the education of students who are Limited English Proficient, Non-English Proficient, or English learner (EL) students as defined in federal law⁴ or the laws of the District of Columbia,⁵ are applicable law, including but not limited to the Equal Educational Opportunities Act of 1974 (EEOA). As such, DC public charter schools must comply with these laws and their interpretations as provided by relevant agencies, including guidance or regulations issued by the U.S. Department of Education, the Department's Office for Civil Rights (OCR), and the District of Columbia Office of the State Superintendent of Education (OSSE).⁶ Generally, public charter schools have a duty to take appropriate action to overcome language barriers that impede equal participation by students in their instructional programs.⁷

¹ The term emerging multilingual learner is not defined by federal law. Therefore, the term English learner shall be used when referencing federal laws and regulations. However, DC PCSB shall use the term emerging multilingual learner to describe English learners when discussing DC PCSB policies. The purpose of using the term, emerging multilingual learner, is to highlight the students' existing language skills and to embrace the language assets of students regardless of their English language development status.

² See D.C. Code §§ 38-1802.12(c)(1), 38-1802.13(a)(1), 38-1802.11(a)(1)(B).

³ D.C. Code § 38-1802.04(c)(5).

⁴ See 20 U.S.C. § 7801(25).

⁵ See D.C. Code § 38-2901(7).

⁶ Certain laws and regulations may be applicable only to schools that receive particular grants or federal funding.

⁷ See *Lau v. Nichols*, 414 U.S. 563, 566-67 (1974) (stating that where inability to speak and understand English excludes national origin-minority group children from effective participation in the educational program offered by a school district, Title VI requires that the school district take affirmative steps to rectify the language deficiency); see *also* 20 U.S.C. §1703(f) ("No State shall deny any equal educational

POLICY

The table below outlines base requirements for meeting the needs of EML students and corresponding criteria that may indicate a school is not meeting these requirements. All requirements are aligned to guidance issued by OCR (Dear Colleague Letter), which can be found [here](#).

| Requirements | Potential Criteria |
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| A school must provide meaningful access to all curricular and extracurricular programs. | <ul style="list-style-type: none"> A school receives poor feedback on a Qualitative Site Review (QSR) Report regarding EML instruction (<i>i.e.</i>, receives scores of nearly all ones and twos per the Danielson Framework for Teaching). EML students' growing English language proficiency levels are not leading to academic progress (<i>i.e.</i>, EML students reaching WIDA levels 3.0 or 4.0 continue to score at the lowest PARCC levels). |
| A school shall not unnecessarily segregate EML students. ⁸ | <ul style="list-style-type: none"> Classroom observations, transcript audits, and/or school schedule suggest that a school's language acquisition program routinely segregates EML students from mainstream, rigorous academic instruction and/or non-academic subjects such as recess, physical education, art, and music. Rates of exclusionary discipline for EML students, including out-of-school suspension and expulsion, are double the rates of exclusionary discipline for non-EML students. |
| A school must provide language assistance to EML students, monitor the effectiveness of its language assistance | <ul style="list-style-type: none"> The school is not able to provide responses to DC PCSB's EML Questionnaire prior to a QSR. |

opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students in its instructional programs.”)

⁸ Where there are legitimate program-related justifications, school districts may require or allow EL students to receive separate instruction for a limited period of time (*e.g.*, in a short-term newcomer program). However, districts must implement their chosen EL program in the least segregative manner consistent with achieving the program's stated educational goals. *Dear Colleague Letter* at 22-23.

| Requirements | Potential Criteria |
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| program, and ensure that the program is properly staffed and supported. | <ul style="list-style-type: none"> • Half of a school's EML students have either not progressed or regressed on the WIDA assessment. • Only 25% of a school's EML students met growth targets on the WIDA assessment. • Data from literacy and language screeners on EML students in early grades (Pre-kindergarten–3rd grade) reveal a consistent pattern of weak oral language development for EML students. • A community complaint alleges that EML students are not offered appropriate academic support. • EML students are re-enrolling at the school at half the rate of non-EML students. • The rate of midyear withdrawals for EML students is double the rate of midyear withdrawals for non-EML students. |
| A school is required to meet the needs of students who opt out of EML programs or particular services. ⁹ | <ul style="list-style-type: none"> • A family/community complaint about the opt-out process or student progress. • New information collected in the EML assurance documents exhibit a lack of programmatic support. |
| A school is required to identify and assess all potential EML students, monitor and exit EML students from EML programs and services and ensure meaningful communication with limited English proficient parents. | <ul style="list-style-type: none"> • The school did not include a Home Language Survey in its enrollment packet. • The school continues to administer the WIDA exam to students who have met the state's exit criteria. • The school did not sufficiently complete the EML Assurance Letter during the compliance review process. • A family/community complaint regarding rights of EML students. |

⁹ If parents opt their children out of an EL program or specific EL services, the children retain their status as EL students, and the school district remains obligated to take the "affirmative steps" required by Title VI and the "appropriate action" required by the EEOA to provide these EL students access to its educational programs. *Dear Colleague Letter* at 30-31.

| Requirements | Potential Criteria |
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| A school is required to evaluate EML students for special education and provide dual services. ¹⁰ | <ul style="list-style-type: none"> • Disproportionate number¹¹ of students are dual identified as Special Education students and EML students without evidence of proper evaluation and student support and intervention practices.¹² • Community complaint that EML students are not being provided with appropriate services. • Special Education Audit indicates that the school is not properly evaluating or serving EML students with disabilities. |
| A school must accept and enroll all students regardless of national origin or language spoken. ¹³ | <ul style="list-style-type: none"> • Lottery procedures indicate that a mandatory in person meeting in English is required to enroll. • Enrollment packet requires documentation that may discourage a student from enrolling. • A school fails the Mystery Caller Initiative, and there is evidence of a lack of programmatic support (e.g., EML Assurance Letter illustrates lack of support or discriminatory practices). |

In addition to the specific criteria listed above, DC PCSB may conduct an EML audit of a public charter school at any time and for any reason if DC PCSB deems such an audit necessary to ensure the school is compliant with the requirements of the law and its charter regarding the provision of services to EML students.

¹⁰ School districts must provide students concurrently with both the language assistance and disability-related services to which they are entitled. Districts may not delay disability evaluation of EL students based on their EL status. *Dear Colleague Letter* at 24-25.

¹¹ In determining disproportionality for this or any other trigger in this policy, DC PCSB will look to relevant case resolutions issued by OCR. For the purposes of this policy, DC PCSB staff will reach out to the school when EML students are identified at either double or half the rate of non-EML students at the school.

¹² See *Dear Colleague Letter* at 24 ("School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency."); see also Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

¹³ See, generally, U.S. Department of Justice & U.S Department of Education, *Dear Colleague Letter: School Enrollment Procedures* (2014), available at <https://bit.ly/3XH0yx5>.

EML Audit and Monitoring Procedures

In the event that DC PCSB staff identifies one or more of the criteria listed above, DC PCSB may then intervene with one or a combination of the audit procedures described below. Depending on the severity of the criteria, a school may be subjected to an audit without a pre-audit warning.

- **Pre-Audit Warning**
DC PCSB staff may notify the school's staff of its concerns before identifying the school for an audit. This first communication does not require a specific action from the school, but the school may be audited later if it continues to meet a criterion for an audit procedure.
- **Desk Audit**
DC PCSB staff may conduct a desk audit, which is a secondary review of relevant information, if the school meets one or more criteria. DC PCSB will request information about the school's language acquisition program as well as written evidence that the program is properly staffed and has been evaluated and deemed effective in meeting the needs of EML students.¹⁴ Based on the information reviewed, DC PCSB will write to close the audit with required technical assistance or training provided by OSSE, suggest potential process to be adjusted, or to pursue further action, including an on-site audit, staff-to-staff meeting, or a Board response. Staff will continue to monitor a school after an audit is closed and will request progress updates within six months of the desk audit. Past audit results will be considered in determining future procedures.
- **On-Site Audit**
DC PCSB staff may conduct an on-site audit if the school meets one or more criteria. DC PCSB staff will visit the school to review the files of EML students, interview staff, and/or conduct EML observations. Based on the information reviewed, DC PCSB will write to close the audit with required technical assistance or training provided by OSSE, suggest potential processes to be adjusted or to pursue further action. Staff will continue to monitor a school after an audit is closed and will request progress updates. Past audit results will be considered in determining future procedures.

¹⁴ *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), established a three-part test, adopted by OCR, to evaluate the adequacy of a program for EL students. Specifically, OCR considers whether: (1) The educational theory underlying the language assistance program is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (2) the program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome within a reasonable period of time. *Dear Colleague Letter* at 6. In evaluating a school's EML program, DC PCSB considers these same factors

In response to an EML audit, DC PCSB may intervene with one or more of the following procedures, depending on the severity of the evidence of inequitable practices.

- Recommendations to Review and Revise Internal Processes
DC PCSB staff may recommend specific review and revision of school practices or processes that result in inequitable or non-compliant practice.
- Staff-to-Staff Meeting
DC PCSB staff members may meet with school staff members to discuss EML data and trends, community complaints, and/or the findings and recommendations of an EML audit.
- OSSE Technical Assistance
DC PCSB staff may recommend or require OSSE provided technical assistance relevant to the audit findings.
- Board-to-Board Meeting
DC PCSB Board Members may meet with key staff and members of the school's board to discuss EML data and trends, community complaints, and/or the findings and recommendations of an EML audit.
- Notice of Concern
The Board may issue a Notice of Concern if the issue demonstrates a lack of compliance with local and federal EML laws, and/or if the school's actions are deemed systemic. Notices of Concern are made public, require the school to come before the Board at a meeting, and are taken into consideration during each school's charter reviews, the charter renewal process, and enrollment ceiling increase requests. The Notice of Concern will provide a timeframe for the school to correct the issue. Uncured Notices may lead to further Board action.



Board Approval Acknowledged By:

A handwritten signature in black ink, reading "Lea Crusey". The signature is written in a cursive style and is positioned above a horizontal line.

Lea Crusey
DC PCSB Board Chair

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