

POLICY TITLE:	<u>Emerging Multilingual English-Learner Audit and Monitoring Policy</u>
ADOPTION/EFFECTIVE DATE:	October 26, 2015
MOST RECENTLY UPDATED:	July 17, 2023

## **PURPOSE**

This policy identifies practices that may be preventing emerging multilingual learners' English learners' (EL students') 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) EL students.<sup>1</sup> This ~~policy document~~ 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 school must provide to EML students additional monitoring to ensure that schools are complying with all applicable laws.

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.<sup>2</sup> The SRA explicitly states that public charter schools must comply with Title VI of the Civil Rights Act of 1964 (Title VI).<sup>3</sup> 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 law<sup>4</sup> or the laws of the District of Columbia,<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup>

<sup>1</sup> 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 who are learning English as a second language.

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

<sup>3</sup> D.C. Code § 38-1802.04(c)(5).

<sup>4</sup> See 20 U.S.C. § 7801(25).

<sup>5</sup> See D.C. Code § 38-2901(7).

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

<sup>7</sup> 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

## **POLICY**

The table below outlines base requirements for meeting the needs of **EML students** ~~ELs~~ and corresponding **criteria flags** 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](#).

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

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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 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.")

<sup>8</sup> 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 <b>Criteria Flags</b>
<p>A school must provide language assistance to <b>EML EL</b>-students, monitor the effectiveness of its language assistance program, and ensure that the program is properly staffed and supported.</p>	<ul style="list-style-type: none"> <li>• The school is not able to provide responses to DC PCSB's <b>EML EL</b> Questionnaire prior to a QSR.</li> <li>• Half of a school's <b>EML EL</b> students have either not progressed or regressed on the WIDA assessment.</li> <li>• Only 25% of a school's <b>EML EL</b> students met growth targets on the WIDA assessment.</li> <li>• Data from literacy and language screeners on <b>EML EL</b>-students in early grades (Pre-kindergarten–3rd grade) reveal consistent pattern of weak oral language development for <b>EML EL</b>-students.</li> <li>• A community complaint alleges that <b>EML EL</b>-students are not offered appropriate academic support.</li> <li>• <b>EML EL</b>-students are re-enrolling at the school at half the rate of non-<b>EML EL</b> students.</li> <li>• The rate of midyear withdrawals for <b>EML EL</b>-students is double the rate of midyear withdrawals for non-<b>EML EL</b> students.</li> </ul>
<p>A school is required to meet the needs of students who opt out of <b>EML EL</b> programs or particular services.<sup>9</sup></p>	<ul style="list-style-type: none"> <li>• <u>A family/community complaint about <b>opt-out</b> process or student progress.</u></li> <li>• <u>Information collected in the <b>EML assurance documents exhibit a lack of programmatic support, formation collected in the EML assurance documents</b></u></li> </ul>
<p>A school is required to identify and assess all potential <b>EML EL</b>-students, monitor and exit <b>EML EL</b>-students from <b>EML EL</b>-programs and services and ensure meaningful communication with limited English proficient parents.</p>	<ul style="list-style-type: none"> <li>• The school did not include a Home Language Survey in its enrollment packet.</li> <li>• The school continues to administer the WIDA exam to students who have met the state's exit criteria.</li> <li>• The school did not sufficiently complete the <b>EML DC PCSB English</b></li> </ul>

<sup>9</sup> 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 <b>Criteria Flags</b>
	<p><del>Language Learners Services</del> Assurance Letter during the compliance review process.</p> <ul style="list-style-type: none"> <li>• A family/community complaint regarding rights of <del>EML EL</del> students.</li> </ul>
<p>A school is required to evaluate EL students for special education and provide dual services.<sup>10</sup></p>	<ul style="list-style-type: none"> <li>• Disproportionate number<sup>11</sup> of students are dual identified as Special Education students and <del>EML EL</del> students <u>without evidence of proper evaluation and student support and intervention practices</u>.<sup>12</sup></li> <li>• Community complaint that <del>EML EL</del> students are not being provided with appropriate services.</li> <li>• Special Education Audit indicates that the school is not properly evaluating or serving <del>EML EL</del> students with disabilities.</li> </ul>
<p>A school must accept and enroll all students regardless of national origin or language spoken.<sup>13</sup></p>	<ul style="list-style-type: none"> <li>• <u>Lottery procedures indicate that a mandatory in person meeting in English is required to enroll.</u></li> <li>• <u>Enrollment packet requires documentation that may discourage a student from enrolling.</u></li> <li>• <u>A school fails the Mystery Caller Initiative, and there is a lack of evidence of programmatic support (e.g., EML Assurance Letter illustrates lack of support or discriminatory practices toward EML students).</u></li> </ul>

In addition to the specific flags 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

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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>.



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.

### 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. In the event that DC PCSB staff identifies one or more of the flags listed above, they may initiate the following process:-

- 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 flag 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 flags. 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.<sup>14</sup> 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 flags. 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

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<sup>14</sup> 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 EL program, DC PCSB considers these same factors



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.

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

- Recommendations to ~~to~~ Review and ~~R~~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.~~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 ~~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 ~~EM~~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.
- DC PCSB staff will notify the school's staff of its concerns. DC PCSB may ask the school respond to DC PCSB's notice by offering an acknowledgement and plan to remedy, by providing a programmatic justification, or by providing

evidence to contest DC PCSB's conclusions. DC PCSB staff will consider the school's response before taking any further action.

- DC PCSB may request that the school provide additional information about its current 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 EL students.<sup>15</sup>
- DC PCSB may ask school leaders to adjust internal procedures to ensure full compliance with the requirements included in the English Language Learners Services Assurance Letter.
- DC PCSB staff may meet with the school to review data and discuss progress serving EL students or conduct site visits and classroom observations to observe EL instruction.

Should concerns persist, DC PCSB Board Members may inquire with the school's board about ongoing concerns. Persistent academic and legal concerns will be considered during reviews and renewals, and if a school's actions are deemed systemic, the school may be issued a Notice of Concern.

### Board Approval Acknowledged By:

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Lea Crusey Darren Woodruff

DC PCSB Board Chair

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