

## English Language Learner Frequently Asked Questions

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### INTRODUCTION

Charter schools are required to ensure that all English language learner (ELL) students have “a meaningful opportunity to participate in the educational program.”<sup>1</sup> Title VI of the Civil Rights Act of 1964 also prohibits schools receiving federal assistance (which all charters do) from discriminating on the basis of race, color or national origin. The Federal Equal Education Opportunities Act of 1974 (EEOA) further establishes that all schools, including charter schools, are required to take “appropriate action” to make sure ELL students, despite language barriers, are equally participating in the school’s instructional program. In addition, both of these Acts require that ELL parents are entitled to meaningful communication with their child’s school and must receive any information that was disseminated to English speaking parents in the language of their choice. This means that, among other things, schools must provide translation and interpretation for ELL parents at no cost to the parents. The Office of Civil Rights, a division of the U.S. Department of Education, has released several publications interpreting these federal laws, most notably a “Dear Colleague” letter in January 2015 that provides significant guidance on what schools must do to serve ELL students to be in compliance with the federal laws.

All NYC charter schools are responsible for ensuring they are in compliance with these federal laws. The below FAQ highlights common questions we have received from schools. In addition, we strongly recommend that all schools review the [January 2015 Dear Colleague Letter](#). Please contact [Melissa Katz](#), the Charter Center’s ELL Specialist, if you have further questions.

**Important Note: Commissioner Regulations Part 154**

Pursuant to state law, charter schools are not required to follow Commissioner Regulations Part 154 (CR 154) except for the regulations relating to students with disabilities.

In 2014, the New York State Department of Education passed regulations (Commissioner Regulations Part 154), which establish rules all district schools must follow in serving ELL students. These regulations **DO NOT** apply to charter schools as long as charter schools create and follow their own ELL program that is an “alternative instruction educational program based on scientifically based research and approved by their charter entity.” See CR 154-2.1(b). Charter schools that do not want to select their own ELL program may instead follow the regulations in CR 154.

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<sup>1</sup> See *Lau v. Nichols*, 414 U.S. 563 (1974)

## **Students with Disabilities under Commissioner Regulations Part 154**

CR Part 154-3, which establishes procedures for students with disabilities who may also be ELL students, **DOES** apply to charter schools as the DOE, as the LEA for special education is required to follow these regulations. There are several steps that charters must take when a student with a disability is also being recommended for ELL services. See the [NYC DOE's Guidance](#) to charter schools on CR Part 154-3.

### **Identification and Enrollment**

*Are charter schools required to recruit and enroll ELL students?*

Yes. In 2010, the New York State legislature passed legislation requiring that all charter schools in New York State recruit, enroll, and retain ELL students at rates comparable to the district in which the charter is located. Education Law Section 2851(4)(e). Schools can find out their enrollment and retention targets [here](#).

*How do schools identify ELL students once they are enrolled in the charter school?*

There are various ways for schools to identify ELL students enrolled at their school. The most common is to administer a home language survey at the time of entrance. If a student is identified as potentially ELL after this home language survey and informal interview, the school must administer a valid and reliable English language proficiency assessment to determine if the student is an ELL.

*Do charter schools have to administer the NYC DOE's Home Language Identification Survey (HLIS)?*

No. Schools do not have to use the NYC DOE'S HLIS, but as it is already translated into multiple languages, the majority of charter schools do use this survey.

*What valid and reliable English language proficiency assessment is available for schools to administer to potential ELL students?*

New York State has created the New York State Identification Test for English Language Learners (NYSITELL) as its valid and reliable English language proficiency assessment.

*What is the timeline for administering the home language survey/language proficiency assessment for a new student?*

Under federal law, charter schools are required to provide notice to parents of ELL students regarding the ELL student's identification and services 30 days from the beginning of the school year. Therefore, schools need to complete the identification process within 30 days of the beginning of the school year. New York State, under CR 154, has shortened that timeline for district schools and requires ELL students be identified within 10 school days of initial enrollment to the state system (i.e. incoming Kindergarteners, transfer students from private schools, and students brand new to the country or state). This is a strict deadline for district schools. While this timeline does not apply to charters, charters will need to identify their ELL students in the ATS attendance system. Because of the 10 school day deadline for NYC DOE, the ATS system does not allow any school, including charters, to change a designation for an ELL student 10

school days (not 30) after the beginning of the DOE's school year. Charter schools that find themselves locked out of ATS after 10 school days must make requests for overrides through the DOE's Office of School Design and Charter Partnerships. Also note that students who were *eligible* for the NYSITELL, but were *not administered* the NYSITELL, receive ELL classification by default and will be expected to take the NYSESLAT in the spring.

*I think a student's previous school misidentified a student. Can I change the ELL status in ATS?*

Potentially. It is the responsibility of the student's first school in New York State to follow the state's identification protocol (HLIS, bilingual informal interview, and NYSITELL). If a parent requests in writing that a student's status be reviewed within 45 school days of initial enrollment to a NYS school, then a school can form a committee and potentially decide to either remove the ELL status of the student or administer the NYSITELL to potentially gain ELL status. If it's past 45 school days of initial enrollment to the NYS system, then the ELL status cannot be changed in ATS by a school.

*An incoming student has an IEP. Does the school still administer the NYSITELL?*

Potentially. Students with disabilities in charter schools are subject to CR 154-3, which requires that each charter school form a Language Proficiency Team (LPT) that meets to determine if a student with an IEP who is eligible for the NYSITELL should:

1. Take the NYSITELL
2. Take the NYSITELL with accommodations
3. Not take the NYSITELL

The LPT process must be complete within 20 school days of initial enrollment. For more information on forming the LPT team and process, see [this guidance](#).

## **Parent Communication/Language Access**

*Is there a minimum amount of parents who speak the same home language that would require us to translate everything?*

No. It is a violation of a parent's civil rights if the school does not provide information to them in the language of their choice. However, the translated communication does not have to be in writing; the information can be communicated orally. This means schools can send home notices in English to parents, but deliver that information orally to parents in other languages. We recommend that schools develop a policy to distribute to parents identifying the types of communications that will be translated in written form and types of communications that will be translated orally for parents.

*What requirements do schools have to follow regarding translating home languages that have no written form and are only spoken? (i.e. Massalit).*

Federal law does not specify that the mode of communication be the same when delivering information to parents. As stated above, schools do not have to translate all communications in writing, so information for a parent can all be translated orally.

*Is there any way to mitigate the cost of translation?*

For documents that are used over and over again (e.g. handbooks, permission slips, report card comments, etc.), submitting in bulk can lower costs. Also, hiring staff who speak other languages and training them on translation and interpretation can also save on the cost of hiring a professional translator. However, translation services are not that expensive and schools can find reasonable rates for translation [here](#).

*Do charter schools have to hire a translator? Can students translate for their parents?*

Students and family friends cannot translate for parents because they are not **qualified** translators. Schools can use bilingual staff to translate for parents, but the staff member should be trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. Otherwise, charter schools must provide a professional translator for parents.

## **Programming**

*Are there any laws charter schools must follow in terms of programming ELL supports?*

Yes. The Equal Educational Opportunities Act (EEOA) of 1974 requires schools to take “appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs.” Under state law, charters are either required to develop their own ELL program based on scientifically based research and approved by their charter entity or follow CR Part 154. Schools are accountable to follow this program and must notify their authorizer if they wish to change programs.

*Do charter schools have to follow the mandated minutes in CR Part 154?*

No. Charter schools are required to provide ELLs the services outlined in their ELL program, approved by their authorizer. Only charter schools that have chosen to follow CR 154 are required to follow the mandated minute requirements in CR 154.

*Who must provide ELL supports to students?*

Charter schools developing their own ELL programs must specify in their charter the staff responsible for implementing the program and whether this staff must have specific certification requirements. Charter schools following CR Part 154 must follow the certification requirements outlined in the [regulations](#). It may be best practice to have an ELL instructor that is TESOL or bilingual certified, but charter schools, as approved by their authorizer, determine the staff qualifications for teachers working with ELL students.

*Is there a NYC DOE agency that charter schools can contact to hire ESL service providers?*

No. ESL is not like speech or other special education services. There is not an outside agency that provides these teachers.

*Are there a minimum number of supports that must be provided to ELL students?*

Each charter school must provide ELLs the services that are outlined in the school's ELL program in the school's charter. This program must be research based and help ELLs participate equally in the school's instructional programs.

## Assessment

*Do charter schools have to administer the NYSESLAT? Can schools administer their own assessment?*

Yes and yes. Charter schools are held to the same requirements for assessments as district school students and must administer the NYSESLAT. Education Law Section 2854(1)(b). Therefore, charter schools can choose to administer their own language assessments in addition to the NYSESLAT, but not in lieu of the NYSESLAT.

*Which testing accommodations can charter schools give ELLs on the NYSESLAT?*

The NYSESLAT has accommodations built in already, so ELLs do not receive additional accommodations on the NYSESLAT. If an ELL student has an IEP, he/she can receive the accommodations listed on the IEP except:

- The Reading subtest may NOT be read aloud to any student.
- For the Writing subtest, students may NOT receive assistance or have their responses corrected for spelling, grammar, paragraphing, or punctuation.

*What testing accommodations are available for ELL students on the state exams (Grades 3-8 Common Core testing and High School Regents)?*

ELLs and former ELLs (those students who are within two years of passing the NYSESLAT) are entitled to the following accommodations:

- Time extension
- Separate location
- Third reading of Listening section on the ELA
- Bilingual dictionaries/glossaries (must provide one-to-one direct translation only)
- Simultaneous use of English version and native language version (except on the ELA)
- Oral translation for lower incidence languages (not available for ELA exam)

Schools decide which of these accommodations to offer each individual ELL student, but all of the above can be provided.

*Are ELLs exempt from any state exams?*

Potentially. ELL students can receive the following exemptions:

- In their first year as an identified ELL, ELLs are exempt from the 3-8 ELA exam.
- ELLs who arrive in Grade 11 can be exempt from the Global History and Geography Regents exams.
- ELLs arriving in Grade 12 can be exempt from the Global History, Geography, and Science Regents exams.