The New ELL Toolkit –
Potentially a Great Resource… but Beware of Misuse

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The U.S. Department of Education's Office of English Language Acquisition (OELA) recently released a new, comprehensive English Learner Toolkit. This is a compilation of the latest research findings, current policy and resources or "tools," such as sample surveys and assessments, for districts and schools to use in addressing the educational needs of their English learners (ELs).

The new English Learner Toolkit, when used in its entirety, provides a great new resource for districts and schools to provide the type of quality education for English learners that is described in the January guidance issued by the Office for Civil Rights (U.S. Department of Education, 2015).

The release of the toolkit comes at a critical time as English learners face triple segregation[i] and many educators continue to struggle to serve English learners, who now constitute approximately one out of every 10 public school students in the United States[ii].

However, the public also must beware of how this toolkit can be misused and misconstrued to justify practices that do not protect the civil rights of English learners and/or that promote detrimental programs preferred by individuals or other organizations. While the toolkit has plenty of helpful tips and guidance, parents, educators and school leaders must be mindful of the potential misuse of the toolkit.

This letter highlights potential areas for abuse of the toolkit.

Use of the Terminology "Segregation" of English Learners

In Chapter Five, the toolkit critically addresses the need to provide an inclusive environment in education programs for English learners and describes various types of effective bilingual programs allowed under the law. However, in asserting the need to integrate English learners placed in self-contained language classes into mainstream, non-core content classes to protect the civil rights of English learners, the toolkit uses the terms "legal segregation" and "unnecessary segregation."

Although lawyers may use these terms to distinguish between what is and what is not allowed under the law, educators more commonly use the term *grouping* to describe the practice of pairing students together for legitimate, educational purposes, and the term *segregation* to describe the illegal grouping of students.

By using the term *unnecessary segregation*, it can easily be understood (wrongly) that there are times when it is *necessary* to segregate EL students. Self-contained bilingual education programs, for example, typically group EL students together for instructional purposes using the students' native language.

However, as the toolkit notes, schools must ensure that these EL students are included in other school activities and non-core classes with their English-speaking peers, such as music, art, and physical education. These bilingual programs would not, and should not, be described as "legally segregating" English learners for part of the day in the self-contained classrooms.

The use of the confusing and loaded terminology such as *legal* or *necessary* segregation could easily discourage parents from enrolling their children in quality self-contained bilingual programs. It also could dissuade schools from implementing appropriately-designed, successful bilingual programs, which certainly is not the intended effect of the toolkit as is clearly described throughout the toolkit itself.

To its credit, the toolkit critically raises a valid concern about the potential for segregating EL students in violation of their civil rights. For decades, schools have segregated Latino students and other students, and many have used language as a proxy or illegitimate excuse to segregate.[iii]

These practices have continued into the present. In *Santamaria v. Dallas ISD*, a federal court found a principal liable in 2006 for violating *non-EL* Latino students' equal protection rights by using English as a second language classes as a cover to segregate Latino students. The court also found the principal liable for failing to integrate EL Latino students assigned to self-contained bilingual classes with their English-speaking peers for non-core classes.[iv]

These practices are illegal and the toolkit makes this clear. The toolkit also provides a self-monitoring form for schools to use to ensure that they are providing an inclusive learning environment for English learners that is free of segregation.[v]

Preferential Language Programs

Within this same chapter of the toolkit, dual language immersion is mentioned as a program model of bilingual education where native English-speaking students and non-English-speakers attend classes together with both groups of students becoming bilingual and bi-literate.

Other authors have already misapplied this portion of the toolkit to promote dual language immersion as the best bilingual program option while implying that other bilingual programs are a form of segregation. As stated earlier, appropriately-designed self-contained bilingual education programs only group students for instructional purposes for part of the school day.

Both of these types of bilingual programs can be highly successful for English learners when executed correctly, and OELA makes it clear throughout the toolkit that it does not promote one program over another.

In Chapter Two, the toolkit notes that program models may reflect the context of a given district. These contexts might vary such as large numbers of newcomers and/or large numbers of ELs who have been in U.S. schools for many years yet never attained proficiency in English (LTELS – long-term English learners). They might also reflect the insufficient supply of certified bilingual teachers, in which case a school district may choose to create a self-contained bilingual program to ensure all EL students have access to a certified teacher.

Regardless of the program model adopted, one thing is clear from the toolkit: the rigorous educational program must be designed, supported and implemented so that ELs acquire English and achieve academically within a reasonable period of time in an inclusive setting.

The civil rights of English learners to an equitable opportunity to education must be at the heart and center of any language program that includes EL students.

Parent Choice to Opt-Out

Another cautionary note in the use of the toolkit concerns the issue of a parent's right to deny entry of their children into a school language program.

First, parents should be making informed decisions on whether to deny a language program and educators should not be suggesting that parents should refuse to enter a program so that the school does not have to serve their language needs. A key point made in the introduction of Chapter Seven states that an "LEA may not

recommend that a parent opt a child out of EL programs or services for any reason."

Second, for children who deny entry into the school's language program, Chapter Seven also makes clear the district responsibility concerning these ELs: "The LEA remains obligated to take affirmative steps and appropriate action required by civil rights laws to provide the EL student meaningful access to its educational program." English learners whose parents have declined the program are still learning English, and the school and staff must still provide instruction that is meaningful and comprehensible, developing the student's linguistic and academic skills, while continuing to monitor and assess those skills.

For informed and respectful educators, it also is important to remember that native language and culture are assets that students bring with them. Some parts of the toolkit address the need to value diversity and to build upon students' background knowledge and experiences. For it is when schools value and develop those assets that we get the best results for kids and communities.

The toolkit has great potential to guide school leaders and educators in providing sound, quality language programs for English learners. Schools and school districts may need further assistance in ensuring that they are implementing these important policies and practices.

IDRA operates the South Central Collaborative for Equity, one of 10 federally-funded equity assistance centers, and can assist schools and school districts in properly using the toolkit to ensure that the civil rights of EL students are respected and protected.

[i] Julian Vasquez Heilig, & Jennifer J. Holme, *Nearly 50 Years Post-Jim Crow: Persisting and Expansive School Segregation for African American, Latina/o, and ELL Students in Texas*, Education and Urban Sociey, 3-13(2013) ("triple segregation" refers to English Learner students isolated in de facto segregated communities, schools, and classrooms).

[ii] National Center for Education Statistics, *English Learners,* http://nces.ed.gov/programs/coe/indicator_cgf.asp , Retrieved December 2015.

[iii] Julian Vasquez Heilig, & Jennifer J. Holme, *Nearly 50 Years Post-Jim Crow: Persisting and Expansive School Segregation for African American, Latina/o, and ELL Students in Texas*, Education and Urban Sociey, 3-13(2013).

[iv] David Hinojosa & Karolina Walters, *How Adequacy Litigation Fails to Fulfill the Promise of Brown [But How It Can Get Us Closer]*, 2014 Mich. St. L. Rev. 575, 629 (discussing various court remedies in school finance cases).

[v] Toolkit, Chapter 5 at 6, Tool #3 Sample Self-Monitoring Aid.