

ARKANSAS DEPARTMENT OF EDUCATION

ESOL PROGRAM GUIDE



GUIDANCE FOR PROVIDING ESOL (ENGLISH TO SPEAKERS OF OTHER LANGUAGES) SERVICES

Mission Statement: The Arkansas Department of Education strives to ensure that all children in the state have access to a quality education by providing educators, administrators and staff with leadership, resources and training.

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This is a living document and subject to frequent updates. We recommend reviewing the document online rather than printing a hard copy.



**ARKANSAS
DEPARTMENT
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INTRODUCTION

This guide is provided for districts and schools in Arkansas which serve English Learners (ELs). Information provided in this guide comes from a variety of sources and is compiled for your use. If you find an error, or believe that portions of this guide need to be updated, please contact Tricia Kerr, Arkansas ESOL Program Director, at Tricia.Kerr@arkansas.gov. Please reference the page number in question and provide appropriate documentation supporting your recommendation as any changes will be reviewed carefully before being made.

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This guide is provided for informational and resource purposes and does not represent legal advice.

Vision Statement

School districts in Arkansas must be dedicated to providing a rigorous and relevant education in which all students gain the academic and personal skills needed for lifelong learning and success. It is the ESOL program's overall vision to serve and support our EL students so that they are able to reach fluent English proficiency in speaking, listening, reading and writing. It is also the goal that with these areas of proficiency, EL students will gain the skills needed to be college and career ready.

Belief Statements

The Arkansas Department of Education ESOL program believes that an:

- Effective education of every EL is the responsibility of all educational personnel.
- Effective education requires that excellent English Language Development and supplemental services are rendered to EL students.
- Effective programs for EL students respect and celebrate all students' native language in the contexts of both school and community.

Expectations of the ESOL Program

To fully meet the demands of the CCSS and the NGSS and to ensure access to an equitable education for ELs, ESOL programs are expected to provide effective English Language Development programs and provide support to English Learners so that they learn how to effectively employ a second language in an academic setting while learning through that second language knowledge and skills in multiple disciplines.

Arkansas' English Language Proficiency Standards

The 10 English Language Proficiency (ELP) Standards are organized according to a schema that represents each standard's importance to ELs' participation in the practices called for by college- and-career-ready ELA & Literacy, mathematics, and science standards. In the complete ELP Standards documents the ten standards are linked to K-12 Practices in math, science, and ELA, as well as to the CCSS ELA/Literacy Standards.

Standards 1 through 7 involve the language necessary for ELs to engage in the central content-specific practices associated with ELA & Literacy, mathematics, and science. They begin with a focus on extraction of meaning and then progress to engagement in these practices.

1. Construct meaning from oral presentations and literary and informational text through grade-appropriate listening, reading, and viewing.
2. Participate in grade-appropriate oral and written exchanges of information, ideas, and analyses, responding to peer, audience, or reader comments and questions.
3. Speak and write about grade-appropriate complex literary and informational texts and topics.
4. Construct grade-appropriate oral and written claims and support them with reasoning and evidence.
5. Conduct research, evaluate and communicate findings to answer questions or solve problems.
6. Analyze and critique the arguments of others orally and in writing.
7. Adapt language choices to purpose, task, and audience when speaking and writing.

Standards 8 through 10 hone in on some of the more micro level linguistic features that are undoubtedly important to focus on, but only in the service of the other seven standards.

8. Determine the meaning of words and phrases in oral presentations and literary and informational text.
9. Create clear and coherent grade-appropriate speech and text.
10. Make accurate use of standard English to communicate in grade-appropriate speech and writing.

Adapted from: [ELPA21 Organization of the Standards](#)

ELP Standards Organized By Modality

The ELP Standards might also be framed in relation to receptive, productive, and interactive language modalities and in relation to listening, speaking, reading, and writing. (Standards 9 and 10 address the linguistic structures of English and are framed in relation to the CCSS for ELA Language domain.)

Modality	Domains	ELP Standards
<p>Receptive modalities*: Ways in which students receive communications from others (e.g., listening, reading, viewing). Instruction and assessment of receptive modalities focus on students' communication of their understanding of the meaning of communications from others.</p>	Listening & Reading	1 & 8
<p>Productive modalities*:</p> <p>Ways in which students communicate to others (e.g., speaking, writing, drawing). Instruction and assessment of productive modalities focus on students' communication of their own understanding or interpretation.</p>	Speaking & Writing	3, 4, & 7
<p>Interactive modalities*:</p> <p>Collaborative use of receptive and productive modalities as "students engage in conversations, provide and obtain information, express feelings and emotions, and exchange opinions" (Phillips, 2008, p. 3).</p>	Listening, Speaking, Reading, & Writing	2, 5, & 6

*The ability to communicate via multiple modes of representation (e.g., non-verbal communication, oral, pictorial, graphic, textual) may be especially important for ELs with certain types of disabilities. When identifying the access supports and accommodations that should be considered for ELs and ELs with IEPs or 504 plans, it is particularly useful to consider EL needs in relation to broader receptive and productive modalities when listening, speaking, reading, or writing are not the focus of the construct(s) being explicitly instructed or assessed.

Note on interactive modalities: We envision that ELs will be using different kinds of language throughout the day. As a result, there should be less of a dichotomy between social and academic language. (They cross into each other...) Thus, we are approaching language with an emphasis on collaboration and interaction as students apprentice towards more academic registers.

Adapted from: [ELPA21 Organization of the Standards](#)

Common Vocabulary and Frequently Used Terminology

Annual Measurable Achievement Objectives (AMAOs): The accountability measures for ELs. An annual report providing information on the progress ELs are learning and acquiring academic English proficiency. (Title III only).

BICS: Basic interpersonal communication skills: The language ability required for verbal face-to-face communication.

CALP: Cognitive academic language proficiency: The language ability required for academic achievement.

Castañeda v. Pickard: On June 23, 1981, the Fifth Circuit Court issued a decision that is the seminal post-Lau decision concerning education of language minority students. The case established a three-part test to evaluate the adequacy of a district's program for ELs:

- 1) Is the program based on an educational theory recognized as sound by some experts in the field or is considered by experts as a legitimate experimental strategy;
- (2) Are the programs and practices, including resources and personnel, reasonably calculated to implement this theory effectively; and
- (3) Does the school district evaluate its programs and make adjustments where needed to ensure language barriers are actually being overcome. [648 F.2d 989 (5th Cir. 1981)]

Content-based English as a Second Language: This approach makes use of instructional materials, learning tasks, and classroom techniques from academic content areas as the vehicle for developing language, content, cognitive, and study skills. English is used as the medium of instruction.

Dear Colleague Letter-January 7, 2015: Letter from Assistant Secretary for Civil Rights Catherine E. Lhamon, and Vanita Gupta Acting Assistant Attorney General for Civil Rights, U.S. Department of Justice, regarding schools' obligations to ensure that English Learner (EL) students can participate meaningfully and equally in school and to communicate information to limited English proficient (LEP) parents in a language they can understand. The guidance, fact sheets, and other resources (including translated versions of the guidance and fact sheets) are available on OCR's [EL Students and LEP Parents](#) web page.

English for Speakers of Other Languages (ESOL): As its name implies, the ESOL approach focuses on instruction in English as the primary means to help ELs acquire the English language and ultimately meet high academic standards. Students learn and are taught in English exclusively or primarily—certain instructional materials or instructional techniques may make use of basic L1 (first language) vocabulary, but only as a means to support the students' use of English. Models that follow the ESOL approach may include both language instruction, where English language development is the instructional content itself and content-based instruction, in which academic content is the object of instruction, but delivered in such a way as to also support ELs' acquisition of English.

English Language Development (ELD): The instruction provided to ELs to assist the students in acquiring academic English proficiency.

English Learner (EL): A national-origin-minority student who is limited-English-proficient. This term is often preferred to limited-English-proficient (LEP) as it highlights accomplishments rather than deficits. ELs are defined as limited English proficient (LEP), and when used with respect to an individual according to [federal law](#), means an individual:

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;

- (C)(i) who was not born in the United States or whose native language is a language other than English;
- (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
- (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —
 - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);
 - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
 - (iii) the opportunity to participate fully in society

English Language Proficiency (ELP): Typically used to describe the standards for English language acquisition/development. May also refer to levels of English language acquisition along a continuum.

Equal Education Opportunities Act of 1974: This civil rights statute prohibits states from denying equal educational opportunity to an individual on account of his or her race, color, sex, or national origin. The statute specifically prohibits states from denying equal educational opportunity by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. [20 U.S.C. §1203(f)]

Fluent English Proficient (FEP): A student who has either initially tested at a fluent level on a state approved English language proficiency test or is a former EL who has met all state exit criteria to be reclassified as FEP.

Immigrant Children (Recent Arrivers) and Youth are defined in section 3301 of ESEA- Title III:

- (a) Are aged 3 through 21
- (b) Were not born in any State, and
- (c) Have not been attending one or more schools in any one or more States for more than three full academic years.

A required sub-grant is issued on an annual basis to qualifying school districts based on a formula measuring high rates of growth in immigrant youth.

Instructional Assistant: Paraprofessionals who work under the supervision of an appropriately licensed teacher and provide instructional support. Supervision means the licensed teacher guides the instructional work. Support may be provided in the supervising teacher's classroom or another location.

Language Dominance: Refers to the measurement of the degree of bilingualism, which implies a comparison of the proficiencies in two or more languages.

Language Instruction Educational Program (LIEP): (See section 3301 (8)) An instruction course:

- (a) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging state academic content and student academic achievement standards, as required by section 1111(b)(1); and
- (b) that may make instructional use of both English and a child's L1 to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language (L2).

Language Proficiency: Refers to the degree to which the student exhibits control over the use of language, including the measurement of expressive and receptive language skills in the areas of phonology, syntax, vocabulary, and semantics, and including the areas of pragmatics or language use within various domains or social circumstances. Proficiency in a language is judged independently and does not imply a lack of proficiency in another language.

Lau Plan: Another name for Local Plan.

Lau v. Nichols: A class action suit brought by parents of non-English-proficient Chinese students against the San Francisco Unified School District. In 1974, the Supreme Court ruled that identical education does not constitute equal education under the Civil Rights Act of 1964. The court ruled that the district must take affirmative steps to overcome educational barriers faced by the non-English speaking Chinese students in the district. [414 U.S. 563 (1974)]

Local Plan, From Federal [Title III Statute: SEC. 3116. Local Plans:](#) Each eligible entity desiring a sub grant from the State educational agency under section 3114 shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. The Office for Civil Rights uses the phrase "EL Plan".

The May 25 Memorandum: To clarify a school district's responsibilities with respect to national-origin-minority children, the U.S. Department of Health, Education, and Welfare, on May 25, 1970, issued a policy statement stating, in part, that "where inability to speak and understand the English language excludes national-origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open the instructional program to the students."

Newcomer Program: Newcomer programs are separate, relatively self-contained educational interventions designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs before they enter more traditional interventions (e.g., English language development programs or mainstream classrooms with supplemental ESOL instruction).

Reclassification: When a student obtains academic English proficiency, the student is exited from ESOL services. The federal term for this process is reclassification; Arkansas typically refers to this process as exiting.

Sheltered English Instruction: This approach consists of strategies teachers can use to make content concepts understandable to ELs, while simultaneously promoting their English language development. More specifically, sheltered instruction refers to a model of how teachers use strategies, such as visual aids, modeling, graphic organizers, vocabulary previews, adapted texts, interactional structures, and students' prior knowledge, in a systematic way to enable students to acquire content in their new language. Some examples of sheltered instruction include SIOP, CM, and SDAIE.

Submersion Program: A submersion program places ELs in a regular English-only program with little or no support services on the theory that they will pick up English naturally. This program is not appropriate.

Title VI of the Civil Rights Act of 1964: Title VI prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance. The Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a language minority student's limited proficiency in English.

ACRONYMS

Acronym	What it Stands For
ALP	Alternative Language Program
AMAOs	Annual Measurable Achievement Objectives (for Title III only-see common terminology)
BICS	Basic interpersonal cognitive skills (see common terminology)
CALP	Cognitive academic language proficiency (see common terminology)
CCSS	Common Core State Standards
CCSSO	Chief Council of School and State Officers
CM	Constructing Meaning . Sheltered English instruction methodology created by Susanna Dutro
CRT	Criterion Referenced Tests (e.g., Benchmark/EOC)
ELD	English Language Development (see common terminology)
ELDA	English Language Development Assessment (former Arkansas ELP annual assessment)
ELL/EL	English Language Learner/English Learner (see common terminology)
ELP	English Language Proficiency (see common terminology)
ELPA21	English Language Proficiency Assessment for the 21 st Century. Arkansas' ELP test effective Spring 2016.
EOC	End of Course exam
ESEA	Elementary and Secondary Education Act (same as NCLB)
ESL	English as a Second Language method of instruction
ESOL	English to Speakers of Other Languages method of instruction
FEP	Fluent English Proficient
HLS	Home Language Survey
ITBS	Iowa Test of Basic Skills
L1/L2	L1 = primary or first language. L2 = second language
LAS	Language Assessment Scales

Acronym	What it Stands For
LEA	Local Education Agency
LEP	Limited English proficient – synonym of EL (Federal term used in ESEA)
LIEP	Language Instruction Educational Program (see common terminology)
LMS	Language Minority Student – synonym of PHLOTE
LPAC	Language Placement and Assessment Committee
MAC II	Maculaitis II –English proficiency test
NCLB	No Child Left Behind (same as ESEA)
NGSS	Next Generation Science Standards
NRT	Norm Referenced Test (e.g., ITBS)
OCR	Office of Civil Rights
PHLOTE	Primary Home Language Other Than English
SDAIE	Specially Designed Academic Instruction in English—a sheltered instruction model
SEA	State Education Agency
SIFE	Students with Interrupted Formal Education
SIOP	Sheltered Instruction Observation Protocol – an instructional model
SMT	State Mandated Test(s)
SPED	Special Education

LANGUAGE INSTRUCTION EDUCATIONAL PROGRAM (LIEP)/ALTERNATIVE LANGUAGE PROGRAM (ALP) COMPONENTS

“Seemingly, school districts have all this legal guidance on how to theoretically comply with federal law. In practice, all the legal guidance fails to address how a school district should appropriately structure an alternative language program that will meet all the requirements in providing a program that will allow language minority students who are LEP/EL to participate meaningfully in the school district’s educational program. This is all in addition to fulfilling other requirements imposed by federal law and OCR policy statements. As previously mentioned, this section will address these issues by introducing the components of an alternative language program. Moreover, the components of the alternative language program in essence compose all the various interpretations of the Court cases, and OCR policy....”

After a school district has determined that there is a need to provide an alternative language program, the district needs to ensure that certain components are part of the formal structure.”—Mark K. Vasquez, “The Civil Rights Requirements for Educating English Language Learners” presented at the 2014 ESL Academy in Arkansas.

2015 Guidance from the Office for Civil Rights and US Department of Justice

The Department of Justice and the Office for Civil Rights issued joint guidance on January 7, 2015, to SEAs and school districts regarding the education of English Learner students and Limited English Proficient parents. Regarding the guidance, they wrote: *“The Departments are issuing the enclosed joint guidance to assist SEAs, school districts, and all public schools in meeting their legal obligations to ensure that EL students can participate meaningfully and equally in educational programs and services. This guidance provides an outline of the legal obligations of SEAs and school districts to EL students under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under Title VI and the EEOA and offers approaches that SEAs and school districts may use to meet their Federal obligations to EL students. The guidance also includes discussion of how SEAs and school districts can implement their Title III grants and sub grants in a manner consistent with these civil rights obligations. Finally, the guidance discusses the Federal obligation to ensure that LEP parents and guardians have meaningful access to district- and school-related information. We hope that you will find this integrated guidance useful as you strive to provide EL students and LEP parents equal access to your instructional programs.”*

SEA/School District Obligations to EL Students and LEP Parents

This guidance is best introduced by the January 7, 2015, Dear Colleague Letter, pages 5-9

“SEAs and school districts share an obligation to ensure that their EL programs and activities comply with the civil rights laws and applicable grant requirements.¹ Title VI prohibits recipients of Federal financial assistance, including SEAs and school districts, from discriminating on the basis of race, color, or national origin.² Title VI’s prohibition on national origin discrimination requires SEAs and school districts to take “affirmative steps” to address language barriers so that EL students may participate meaningfully in schools’ educational programs.³

“The EEOA requires SEAs and school districts to take “appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs.”⁴

“In determining whether a school district’s programs for EL students comply with the civil rights laws,⁵ the Departments apply the standards established by the United States Court of Appeals for the Fifth Circuit more than 30 years ago in *Castañeda v. Pickard*.⁶ Specifically, the Departments consider 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.

“The Departments also apply *Castañeda*’s standards when evaluating an SEA’s compliance with the civil rights laws. Even if an SEA does not provide educational services directly to EL students, SEAs have a responsibility under the civil rights laws to provide appropriate guidance, monitoring, and oversight to school districts to ensure that EL students receive appropriate EL services.⁷ For example, to the extent that SEAs select EL instructional program models that their school districts must implement or otherwise establish requirements or guidelines for such programs and related practices, these programs, requirements, or guidelines must also comply with the *Castañeda* requirements.

“In addition, Title III requires SEAs and school districts that receive funding under Title III sub grants to provide high-quality professional development programs and implement high-quality language instruction education programs, both based on scientifically-based research, that will enable EL students to speak, listen, read, and write English and meet challenging State standards.⁸ Not all school districts that enroll EL students receive such sub grants from their SEA under Title III, Part A. Some school districts have too small a population of EL students to meet the minimum sub grant requirement and are not members of a consortium of districts that is receiving a subgrant.⁹ Nonetheless, several key school district requirements for recipients under Title III that are discussed in this letter are also required by Title I of the ESEA, which has no such minimum sub grant requirement.¹⁰

“Title III, Part A funds must be used to supplement other Federal, State, and local public funds that would have been expended absent such funds.¹¹ Because the civil rights laws require SEAs and school districts to take appropriate action to overcome language barriers for EL students, Title III, Part A funds may not be used to fund the activities chosen to implement an SEA’s or school district’s civil rights obligations. Thus, SEAs and school districts can use these funds only for activities beyond those activities necessary to comply with Federal civil rights obligations. It is important to remember, however, that the legal obligations of an SEA and a school district under Title VI and the EEOA are independent of the amount or type of State or Federal funding received. Thus, for example, any change to State funding dedicated to EL programs and services, including State limitations on funding after a child has received EL services for a specified period of time, does not change an SEA’s or school district’s Federal civil rights obligations to EL students.

“Title III also contains its own non-discrimination provision, which provides that a student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.¹² In addition, SEAs and school districts that receive funding under Title III are required to regularly determine the effectiveness of a school district’s program in assisting EL students to attain English proficiency and meet challenging State academic content and student academic achievement standards.¹³ SEAs have a responsibility to assess whether and ensure that school districts receiving Title III sub grants comply with all Title III requirements.¹⁴”

1 See Department of Education Title VI regulations: 34 C.F.R. § 100.4(b) (every application by a State or State agency for continuing Federal financial assistance “shall . . . provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Departmental official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this [Title VI] regulation”); id. § 80.40(a) (“[grantees must monitor grant and sub grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved.”); id. §§ 76.500, 76.770 (requiring SEAs to have procedures “necessary to ensure compliance with applicable statutes and regulations,” including non-discrimination provisions of Title VI). See also Department of Justice Title VI regulations: 28 C.F.R. § 42.105(a)(1) (“[e]very application for Federal financial assistance [to carry out a program] to which this subpart applies, and every application for Federal financial assistance to provide a facility shall . . . contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart.”); id. § 42.410 (“[e]ach state agency administering a continuing program which receives Federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain Federal assistance through it. The Federal agencies shall require that such state compliance programs provide for the assignment of Title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for Federal agencies, including the maintenance of records necessary to permit Federal officials to determine the Title VI compliance of the state agencies and the sub-recipient.”).

2 Any Federal agency, such as the Department of Education or Justice, that provides Federal funds to an SEA or school district may initiate a compliance review to ensure compliance with, or investigate a complaint alleging a violation of, Title VI and its implementing regulations. DOJ also may initiate a Title VI suit if, after notice of a violation from a Federal funding agency, a recipient of Federal funds fails to resolve noncompliance with Title VI voluntarily and the agency refers the case to DOJ. Furthermore, DOJ coordinates enforcement of Title VI across Federal agencies and can participate in private litigation involving Title VI.

3 Lau, 414 U.S. at 566-67 (affirming 1970 OCR Guidance and stating that where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, Title VI requires that the district take affirmative steps to rectify the language deficiency to open its instructional program to these students); 34 C.F.R. §100.3(b)(1), (2).

4 20 U.S.C. § 1703(f) (“No State shall deny 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 its students in its instructional programs”). After providing notice of an EEOA violation, DOJ may institute a civil action if an SEA or school district has not taken “appropriate remedial action” within a reasonable time. Id. §§ 1706, 1710. DOJ also has the authority to intervene in private EEOA cases. Id. § 1709.

5 Throughout this guidance, “school district” or “district” includes any local educational agency (LEA) that is a recipient of Federal financial assistance directly from ED or indirectly through an SEA or LEA, including public school districts, public charter schools, and public alternative schools. 42 U.S.C. § 2000d-4a (incorporating 20 U.S.C. §7801(26)). “School district” and SEA also include, respectively, any LEA or SEA as defined by the EEOA. 20 U.S.C. § 1720(a), (b) (incorporating 20 U.S.C. §7801(26), (41)). In some cases, an SEA and LEA may be the same entity. (Hawaii and Puerto Rico are two examples.)

6 648 F.2d 989 (5th Cir. 1981); see United States v. Texas, 601 F.3d 354, 366 (5th Cir. 2010) (reaffirming and applying the Castañeda test); see 1991 OCR Guidance (“In view of the similarity between the EEOA and the policy established in the 1970 OCR memorandum, in 1985 OCR adopted the Castañeda standard for determining whether recipients’ programs for LEP students complied with the Title VI regulation.”).

7 See, e.g., *Horne v. Flores*, 557 U.S. 433, 439 (2009) (“The question at issue in these cases is not whether [the State of] Arizona must take ‘appropriate action’ to overcome the language barriers that impede EL students. Of course it must.”); *Texas*, 601 F.3d at 364-65 (applying EEOA to SEA); *United States v. City of Yonkers*, 96 F.3d 600, 620 (2d Cir. 1996) (“The EEOA also imposes on states the obligation to enforce the equal-educational-opportunity obligations of local educational agencies [LEAs].”); *Gomez v. Illinois State Bd. of Educ.*, 811 F.2d 1030, 1042-43 (7th Cir. 1987) (holding that SEAs set “general guidelines in establishing and assuring the implementation of the state’s [EL] programs” and that “§ 1703(f) requires that [SEAs], as well as [LEAs]. . . ensure that the needs of LEP children are met”); *Idaho Migrant Council v. Bd. of Educ.*, 647 F.2d 69, 71 (9th Cir. 1981) (holding that an SEA “has an obligation to supervise the local districts to ensure compliance” with the EEOA); see also supra note 9 (quoting regulations regarding SEAs’ obligations as recipients of any Federal funds to oversee sub grantees).

8 20 U.S.C. §§ 6823(b)(2), 6825(c)(1), (2), 6826(d)(4). Currently, all SEAs receive Federal funds under Title III,

Part A because they all have an approved plan. See id. §§ 6821, 6823. SEAs may reserve no more than 5 percent of the funds for certain State-level activities, and no more than 15 percent of the funds for sub grants to school districts that have experienced a significant increase in the number or percentage of immigrant children. Id. §§ 6821(b)(2), 6824(d)(1). When referring to Title III, Part A sub grants to school districts, this guidance is referring to the portion of Federal funds (which must be at least 80 percent of the total) that must be provided to school districts based on the population of EL students in each district. Id. § 6824(a). For more information on Title III grants, see <http://www2.ed.gov/programs/sfgp/index.html>.

9 20 U.S.C. §§ 6824(b), 6871.

10 This includes the requirement that school districts annually assess EL students for English proficiency, id. §§ 6311(b)(7) (Title I), 6823(b)(3)(C) (Title III); the provision of specific written notices for parents of EL students, id. §§ 6312(g)(1)-(3) (Title I), 7012(a)-(d) (Title III); prohibitions on discrimination on the basis of surname and language-minority status, id. §§ 6312(g)(5)(Title I), 7012(f) (Title III); and provisions regarding adequate yearly progress, id. §§ 6311(b)(2)(C)(v)(II)(dd), 6311(b)(3)(C)(ix)(III) (Title I), 6842(a)(3)(A)(iii) (Title III).

11 20 U.S.C. § 6825(g).

12 Id. §§ 6312(g)(5) (Title I), 7012(f) (Title III).

13 Id. § 6841(b)(2) (requiring every school district receiving Title III, Part A funds to engage in a self-evaluation every two years and provide it to the SEA to determine the effectiveness of and improve the LEA's programs and activities).

14 Id. §§ 6823(b)(3)(C) & (D), (b)(5), 6841(b)(3), 6842; see also supra note 9 (quoting regulations regarding SEA's obligations as recipient of any Federal funds to oversee sub grantees)."

ESOL PLAN DEVELOPMENT

(Adapted from: Programs for English Learners—OCR EL Guide)

To be effective, an ESOL plan needs to be comprehensive. It should address each aspect of the district's program for all EL students, at all grade levels, and at all schools in the district. To ensure its ongoing value, it needs to be viewed by district staff as containing useful information. It should contain enough detail and specificity so that each staff person can understand how the plan is to be implemented and should contain the procedural guidance and forms they need to use to carry out their responsibilities under the plan. Districts have indicated to OCR that they have found their ESOL plans most useful when they contain sufficient detail to inform staff fully of each action step in the ESOL plan.

Many districts have found that it is useful, when developing or revising an ESOL program, to establish a committee or work group that includes administrators, teachers (both ESOL program teachers and regular classroom teachers), instructional assistants, school counselors, and other staff who work with the district's EL student population. The district may also want to include parents, students, or community representatives who work with the same students in other settings. By working with a group that includes these stakeholders, the district can receive more comprehensive input from those whose support and efforts may be important to the success of the district's ESOL program. Inclusive approaches in program design and development tend to promote overall community awareness and support. In addition, these individuals will be valuable resources to draw upon during program evaluation and program improvement activities.

Does your plan answer the following questions?

- Who is responsible for the step?
- When is the step expected to be completed?
- What standards and criteria are to be applied to the step?
- How will the district document implementation of the step?

The sections of an ESOL Plan are organized around key components of a comprehensive plan:

- the district's educational theory for its program of services;
- the district's methods for identifying and assessing the students to be included in the district's ESOL program;
- the specific components of the district's program of English language development ESOL students;
- the specific staffing and other resources to be provided to EL students under the district's ESOL program;
- the specific methods for providing meaningful access to all curricular and extracurricular programs;
- the district's approach to avoid unnecessary segregation of EL students;
- the district's approach to evaluating EL students for special education services and providing dual services when appropriate;
- the district's approach to meeting the needs of EL students who opt out of ESOL programs or particular ESOL services;
- the district's method and procedures for exiting students from its ESOL program and for monitoring their success afterward;
- the district's method for evaluating the effectiveness of its program for EL students; and
- the district's procedures for ensuring meaningful communication with Limited English Proficient parents.

SELECTING THE EDUCATIONAL APPROACH

The Arkansas Department of Education and the Office for Civil Rights does not prescribe a specific program design/educational approach. The educational approach used must be recognized by some experts in the field, or be an approach that is recognized as a legitimate educational strategy. It must be properly resourced and it must be proven to work in the district or modified if it is not. It is the district's responsibility to ensure that the educational approach selected addresses

- 1) whether the approach provides for English language development, and
- 2) whether the approach provides for meaningful participation of EL students in the district's educational program.

IDENTIFYING AND ASSESSING ALL POTENTIAL EL STUDENTS

There are two ways to identify potentially eligible students for ESOL services – HLS and teacher referral. Both are described in this section, below.

Home Language Survey (HLS)

Districts must:

- identify the Primary Home Language Other than English (PHLOTE) of all students,
- use a Home Language Survey (Sample in appendix),
- ask questions that have to do solely with home languages of the individual students. If a parent (guardian) gives a single answer other than English to:
 - Which languages the child learned to speak first;
 - Which languages the child currently speaks; or
 - Which languages are spoken in the home;
- Then the child qualifies for initial program assessment.

eSchoolPLUS

Children who qualify for initial assessment are classified as a PHLOTE student and the language provided other than English must be appropriately entered in eSchool in the student language field. If a guardian language other than English is indicated, enter that language in eSchool in the guardian language field.

Whereas such information is helpful, inquiring exclusively about home languages can be misleading. For instance, the child may have spent only his or her infancy in a foreign country, foreign-born grandparents may be living in the home, or perhaps members of the family are learning a foreign language together. Such situations may not have a negative impact on a child's ability to speak English and should not lead to having a child placed in a program for ELs.

Finally, the HLS is administered to all students once rather than annually.

Teacher Referral

Occasionally, the HLS may indicate a student is English speaking only and no referral is made for initial program placement assessment. However, occasionally, some students may need to be identified as potentially eligible for ESOL services (e.g., Native American students). In these few cases, the student's classroom teacher may complete a referral form that highlights and provides evidence (classroom work, work samples scored with appropriate rubric) of the student's linguistic needs. ESOL staff review the referral and may make a determination to have the student assessed for initial placement. In these cases, a notation on HLS explaining the reason(s) the student is screened for placement in an ESOL program is good practice and always helpful.

Initial Identification

Based on the HLS, students are given an initial identification assessment. This language proficiency assessment must assess the student's academic English proficiency in all four language domains (reading, writing, speaking, and listening) and needs to be given by a trained administrator. The State has approved the following initial identification assessments:

- [LAS/LAS Links](#)
- [MACII](#)
- TELPA/ELDA

Districts are required to include their identification criteria in their ESOL Plan. These criteria should clarify which students are identified as ELs, and which students do not qualify based on the identification assessment showing academic English proficiency. Other data may be used in making initial placement decisions such as teacher observation, classroom performance, data gathered from interviewing the parents, as well as student input.

Initial Placements are made by a committee of educators responsible for the appropriate education of the EL student. This committee is called a Language Placement and Assessment Committee (LPAC) and consists of at least three people from the following list:

- Building administrator (required);
- ESOL Certified Staff (required);
- Counselor;
- Classroom Teacher;
- SPED teacher, appropriate

Parental Notification

NCLB, the 2001 reauthorization of the Elementary Secondary Education Act (ESEA), requires parents to be notified of their child's identification as an EL and placement in an ESOL program as follows:

- At the opening of the school year, parents and guardians of students who have been identified as an EL and placed in the district's ESOL program must be notified within 30 days of their child's identification and placement.
- After the school year begins, parents and guardians of students should be notified within two weeks of their child's identification and placement.

Parents/guardians must be notified in a language or manner they understand regarding the information and decision of the LPAC. It is optional to invite the parent to the actual LPAC meeting, but, if invited, invitations to attend the LPAC must be in a language and/or manner that the parent understands. If a parent does not understand English and requests a school-provided interpreter, the school must provide an interpreter to the extent practicable. Notification letters must be dated and signed by district or school personnel.

Statutory Authority

No Child Left Behind Act of 2001, Title I Part A, Sec. 1112 (g)(1)(A), Title III, Part C, Sec. 3302, and Title IX, Part A, Sec. 9101

Statutory Requirements

The notification must include the following information:

- Why the child was identified as an EL and why the child needs to be placed in a language instructional educational program that will assist the child to develop and attain English proficiency and meet state standards;
- The child's level of English proficiency, how such level was assessed, and the child's academic level;
- The method of instruction that will be used to serve the child, including a description of other methods of instruction available and how those methods differ in content, and instructional goals;
- How the program will meet the specific needs of the child in attaining English and meeting state standards;
- The program's exit requirements, the expected rate of transition into a classroom not tailored for EL students, and, in the case of high school students, the expected rate of graduation;
- How the instructional program will meet the objectives of an individualized education program of a child with a disability; and
- Written guidance on the rights that parents have to remove their child from a program upon their request or to choose another program or method of instruction, if available, and how parents will be provided assistance in selecting the best program to serve their child.

Optional Assessments

Further academic information may be obtained from additional assessments. However, these are optional to districts:

Basic Math Assessment: Students in grades 2 – 12 may be administered a basic math test, the Entry Assessment Mathematics Evaluation (EAMEs). The language in which the EAMEs is administered (40 languages are available) is determined by interviewing the student/family regarding language of preference. The EAME assessment is available by request from the ADE ESOL Director, Tricia Kerr, Tricia.Kerr@arkansas.gov

Native Language Assessment: For students who are Spanish speaking, districts may choose to use a Spanish Language Proficiency test to determine the Spanish language literacy level of a student. This may be beneficial for placement in appropriate Spanish courses or for informing the ESOL instruction of the student. Students who are not literate or limited literate in their first language will have additional learning needs than those who begin English instruction after becoming fully proficient in another language. Examples of Spanish Language Proficiency tests are:

- [LAS Links Español A](#)
- [Stanford Spanish Language Proficiency Test \(SSLP\)](#)

It is crucial that the teachers and administrators know the results of these assessments and preliminary recommendations being made as soon as the results are compiled in order to be most useful.

Students who are initially assessed for English proficiency should have the following information entered into eSchool:

- **ESL box checked** on Personal screen
- **ELL/LEP Entry Date**--*The date the student entered a U.S. school for the first time, regardless if the entry was in Arkansas or another state. MM/DD/YYYY*
- **Check the box** to the right of the ELL/LEP Entry Date
- If student meets exit criteria upon initial assessment,
 - Enter the assessment date as the **ELL/LEP Exit Date**--*The date the student met criteria for Fluent English Proficient status and was exited from the ESL/LEP program; no longer receives services; is a regular education student. MM/DD/YYYY*
 - Uncheck the box to the right of the ELL/LEP Entry Date

Does your plan answer the following questions?

- Does the plan contain a detailed description of the district's procedures for identifying potential EL students?
- Is the person(s) responsible for each step in the identification procedures specified in the plan? *(For example, the school secretary may be responsible for distributing and collecting HLS during enrollment and the school principal may be responsible for forwarding the surveys to the district's ESOL assessment staff.)*
- Are the timeframes for each step in the identification procedures set forth in the plan? *(For example, completed HLS will be forwarded to the ESOL assessment staff within ___ school days of a student's enrollment in the district. Surveys will be evaluated within ___ school days.)*
- If the district's identification procedures require participation by staff with special skills, such as an interpreter to communicate with EL parents or students during the enrollment process, does the plan describe how this special staff person is integrated into the identification process?
- Do the identification procedures state the criteria that will be utilized to classify a student as a PHLOTE student and, therefore, in need of assessment for English language proficiency?
- Does the ESOL plan contain a statement of how the district will maintain documentation of the following: the identification results; determination of the PHLOTE status of students; and referrals of such students for language proficiency assessment?
- Does the EL plan contain a detailed description of the district's procedures for assessing potential EL students?
- Are the assessment procedures designed so that all students identified as potentially needing ESOL services will be evaluated for English language proficiency?
- Do the assessment procedures include a description of all skill areas to be assessed and measured consistent with the educational approach and program model being utilized by the district? *(For example, do the assessment procedures cover all aspects of English language proficiency that could affect a student's ability to participate meaningfully in the regular curriculum--does the assessment address speaking, reading, writing, and understanding?)*
- Does the description of the assessment procedures include a statement of the instruments and methods (e.g., tests, past academic records, teacher observations, etc.) used to assess students' English language abilities and academic level?
- Are the guidelines and criteria for the use of each instrument and method included in the procedures? *(For example, has the district followed the test publisher's guidelines for use of the test?)*

Example-Identifying and Assessing All Potential EL Students

- To expedite appropriate placements of EL students, many school districts have parents complete an HLS and assess PHLOTE students' English proficiency levels before school starts. Some school districts have parents complete an HLS before classes commence, and then test PHLOTE students within a week of when classes start to minimize the disruption caused by possible changes in EL students' placements.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

- Are appropriate timeframes established for each step of the assessment process?
- Are the timeframes reflected in the ESOL plan?
- Does the description identify the person(s) responsible for assessing each student and any special abilities, skills, and training that individuals may need to conduct the assessments?
- Does the description include a statement of the criteria (e.g., test scores, or other information) that will determine whether a student is EL and in need of a program of services to participate meaningfully in the district's regular instructional program?
- Do the criteria include an objective measure(s)?
- Does the plan describe the interrelationship and weight accorded to the criteria (e.g., test scores and teacher observation) that the district uses to classify a student as EL?
- Does the ESOL plan contain a statement of how the district will maintain documentation of the assessment results and its decision regarding whether students are EL?
- Does the plan note where such records are kept and by whom?
- Are procedures included for appropriate parental notification and input?

EXAMPLES OF COMPLIANCE ISSUES—IDENTIFYING AND ASSESSING

“Some examples of when the Departments have identified compliance issues in the areas of EL student identification and assessment include when school districts: (1) do not have a process in place to initially identify the primary or home language of all enrolled students; (2) use a method of identification, such as an inadequate HLS, that fails to identify significant numbers of potential EL students; (3) do not test the English language proficiency of all PHLOTE students, resulting in the under-identification of EL students; (4) delay the assessment of incoming PHLOTE students in a manner that results in a denial of language assistance services; or (5) do not assess the proficiency of PHLOTE students in all four language domains (e.g., assessing the students in only the listening and speaking domains and as a result missing large numbers of EL students).” --Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

PROVIDING EL STUDENTS WITH A LANGUAGE ASSISTANCE PROGRAM

Choosing what services to provide as part of a district's language assistance program (also referred to as a "Language Instruction Education Program" or an "Alternative Language Program") is left up to individual school districts. School districts need to keep in mind the educational approach that has been chosen as well as the results of the placement assessments conducted. Language assistance services or programs for EL students must be educationally sound in theory and effective in practice; however, the civil rights laws do not require any particular program or method of instruction for EL students. Students in ESOL programs must receive appropriate language assistance services until they are proficient in English and can participate meaningfully in the district's educational programs without language assistance services.

ESOL programs must be designed and reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. (*Castañeda*, 648 F.2d at 1011). Each EL student's English proficiency level, grade level, and educational

COMMON ESOL PROGRAMS SOUND UNDER CASTAÑEDA'S FIRST PRONG

Some common ESOL programs for learning English that are considered educationally sound in theory under *Castañeda*'s first prong include:

- English as a Second Language (ESL)/English for Speakers of Other Languages (ESOL), also known as English Language Development (ELD), is a program of techniques, methodology, and special curriculum designed to teach EL students explicitly about the English language, including the academic vocabulary needed to access content instruction, and to develop their English language proficiency in all four language domains (i.e., speaking, listening, reading, and writing). ESOL instruction is in English with little use of the EL students' primary language(s).
- Structured English Immersion (SEI) is a program designed to impart English language skills so that the EL student can transition and succeed in an English-only mainstream classroom once proficient. All instruction in an immersion strategy program is in English. Teachers have specialized training in meeting the needs of EL students (e.g., an ESL/ESOL teaching credential and/or SEI training), and have demonstrated strong skills in promoting ELD and SEI strategies for ensuring EL students' access to content.

In school districts or schools where the number of EL students is small, EL students still must receive language assistance services; however, the ESOL program may be less formal. Additional ESOL programs not mentioned above may also meet civil rights requirements. (*Castañeda*, 648 F.2d at 1009-10.)

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

background must be considered to determine which ESOL program services are appropriate for EL students. For example, some school districts have designed programs to meet the unique needs of EL students whose formal education has been interrupted in their country of origin (perhaps due to dislocation,

war, disease, famine, or other situations resulting in missed educational instruction). To provide appropriate and adequate ESOL program services based on each EL student's individual needs, and to facilitate transition out of such services within a reasonable time period, a school district will typically have to provide more ESOL services for the least English proficient EL students than for the more proficient ones. In addition, districts should provide designated English Language Development (ELD)/English as a Second Language (ESOL) services for EL students at the same or comparable ELP levels to ensure these services are targeted and appropriate to their ELP levels.

Examples—Providing ELs with a Language Assistance Program

- A beginner-level EL student may receive two periods of ELD instruction per day, EL-only sheltered content classes in social studies and language arts, and sheltered content classes in math and science with both EL and non-EL students. As his English proficiency increases to a high intermediate level, he transitions into a daily period of ELD targeted to his lack of English proficiency in writing, and sheltered content classes with EL and non-EL students.
- A school district enrolls EL students at the high school with a range of English proficiency levels and years of study in the ESOL program. Recognizing that different EL students have different needs, the district creates EL-only ELD classes that appropriately target the English proficiency levels of students and the specific needs of long-term EL students. These ELD courses, which EL students take in addition to grade-level English, are designed to provide language development services with an emphasis on advanced academic vocabulary and expository writing. The EL students also receive integrated ELD instruction in their grade-level content classes from content-certified teachers who are adequately trained in ELD and sheltering techniques.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

Guiding Questions

The following questions may guide you as you develop a plan that addresses in a comprehensive manner the methods to be used in providing EL students appropriate English Language Development services as well as services to enable the students to benefit from the district's academic and special programs.

Does your plan answer the following questions?

- Are the district's programs and services as described in this section consistent with the educational theory(ies) (e.g., ESOL, sheltered instruction, etc.) selected by the district?
- Does the description of the program of services for EL students reflect:
 - The methods and the services the district will use to teach EL students English language skills (i.e., speaking, understanding, reading, and writing of English)?
 - The methods and the services the district will use to ensure that EL students can meaningfully participate in the academic and special programs (e.g., history, science, social studies, music, vocational education, etc.) offered by the district? (Note: Depending upon the district's education model, English language services and subject matter services may be concurrent or sequential.)
- Does the description of the delivery of services to EL students reflect:
 - How and where the English Language Development services will be delivered? (For example, are language development services delivered through a pullout program, within a self-contained program, or within the regular classroom?)
 - If EL students are in the regular classroom for academic subjects (history, science, etc.), how will the EL students be able to participate in these academic subjects? (For example, will the district provide training for teachers and/or provide support staff or services such as translators, so that the EL students can effectively participate in classroom activities and comprehend the academic material being presented?)
- Are guidelines and standards included for providing EL students each of the services in the district's ESOL program?
- Does the plan identify the person(s) responsible for providing services to EL students?
- Does the plan include standards and criteria for the amount and type of services to be provided? Does it include a process to decide the appropriate amount and type of services to be provided?
- If there are any variations in the district's program of services between schools and grade levels, are the variations described?
- Are procedures included for notification to parents of newly enrolled students, in a language that the parents understand, of the availability and type of program of services and other options for EL students?
- Are provisions made for language appropriate notice to the parents of EL students regarding school activities that are communicated to other parents (e.g., student progress reports, school schedules, information provided in student handbooks, extracurricular activities, special meetings and events such as PTA meetings and fund raising events, etc.)?

- Are the notification procedures sufficient so that the parents can make well-informed educational decisions about the participation of their children in the district's ESOL program and other service options that are provided to parents?

Compliance Issues

EXAMPLES OF COMPLIANCE ISSUES—LANGUAGE ASSISTANCE PROGRAM

“Some examples of when the Departments have identified compliance issues include when school districts: (1) exclude kindergarteners, or EL students with scheduling conflicts, from their ESOL program; (2) supplement regular education instruction with only aides who tutor EL students as opposed to teachers adequately trained to deliver the ESOL program; (3) fail to offer an ESOL program to a certain subset of EL students, such as students with disabilities or students speaking particular languages; (4) stop providing language assistance services when EL students reach higher levels of English proficiency but have not yet met exit criteria (including proficiency on a valid and reliable ELP assessment); or (5) fail to address the needs of EL students who have not made expected progress in learning English and have not met exit criteria despite extended enrollment in the ESOL program.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

STAFFING AND SUPPORTING ESOL PROGRAMS

School districts have an obligation to provide the personnel and resources necessary to effectively implement their chosen ESOL programs. This obligation includes having highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the ESOL programs.

At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district's program for EL students.¹⁵ Where formal qualifications have been established, e.g., the SEA requires authorization or certification to teach in particular ESOL programs or using specific Arkansas Course Codes, or a school district generally requires its teachers in other subjects to meet formal requirements, a school district must either hire teachers who already have the necessary formal qualifications to teach EL students or require that teachers already on staff be trained or work towards attaining the necessary formal qualifications and obtain the formal qualifications within a reasonable period of time.

SEAs (including ADE) and school districts that provide ESOL teacher training are also responsible for evaluating whether their training adequately prepares teachers to implement the ESOL program effectively.¹⁶ To meet this obligation, school districts need to ensure that administrators who evaluate the ESOL program staff are adequately trained to meaningfully evaluate whether ESOL teachers are appropriately employing the training in the classroom and are adequately prepared to provide the instruction that will ensure that the ESOL program model successfully achieves its educational objectives.¹⁷

15 SEAs that receive ESEA Title I funds, which is currently all SEAs, must ensure that all teachers in core academic subjects, including teachers of EL students, are "highly qualified." 20 U.S.C. § 6319(a). Being highly qualified means (1) holding at least a bachelor's degree, (2) obtaining full State certification or licensure, and (3) demonstrating subject-matter competency. *Id.* § 7801(23). If an SEA or school district uses a sheltered instruction model for serving EL students that includes core academic subjects at the secondary school level (e.g., "ESL math" or "ESL science"), the teacher must be adequately trained in the sheltering techniques, meet any State requirements for EL teachers, and be highly qualified in the core academic subject (e.g., math or science) as well. If the only English teacher of record is the EL teacher, that teacher must be highly qualified in English as well. In addition, teachers in school districts that receive funds under Title III must be fluent in English and any other language used for instruction, including having written and oral communications skills. See *id.* § 6826(c); *Castañeda*, 648 F.2d at 1013 (requiring teachers who are trained and qualified to deliver the type of language support instruction required by the chosen EL program(s)).

16 *Castañeda*, 648 F.2d at 1005, 1013.

17 To implement an ESOL program effectively, there must be a meaningful evaluation of whether the teachers who deliver the program are qualified to do so. See *Castañeda*, 648 F.2d at 1013. This includes ensuring that those tasked with evaluating the instruction of ESOL program teachers, such as principals, are qualified to do so. See *Rios*, 480 F. Supp. at 18, 23-24 (district's bilingual program violated the EEOA based on findings that included using administrators who were not bilingual and lacked relevant training to evaluate bilingual teachers).

In addition to providing qualified teachers, school districts must also provide EL students with adequate resources and, if appropriate, qualified support staff. For example, EL students are entitled to receive appropriate instructional materials in the ESOL program, including adequate quantities of English Language Development materials available at the appropriate English proficiency and grade levels. If the Departments find that a school district's materials are inadequate and/or not appropriate for its EL students, the Departments expect the district to obtain sufficient, appropriate materials in a timely manner.

Paraprofessionals, aides, or tutors may not take the place of qualified teachers and may be used only as an interim measure while the school district hires, trains, or otherwise secures enough qualified teachers to serve its EL students.¹⁸ And if a school district uses paraprofessionals to provide language assistance services to EL students that supplement those provided by qualified teachers, it may do so only if the paraprofessional is trained to provide services to EL students and instructs under the direct supervision of a qualified teacher.¹⁹

¹⁸ Castañeda, 648 F.2d at 1013 (explaining that bilingual aides cannot take the place of bilingual teachers and may be used only as an interim measure while district makes concerted efforts to secure a sufficient number of qualified bilingual teachers within a reasonable period of time).


¹⁹ 20 U.S.C. § 6319(c)-(g).



Examples—Staffing and Supporting ESOL Programs

- An SEA receives complaints that teachers who acquired the State's ESOL endorsement do not have some of the skills needed for effective ESOL instruction. In response to the complaints, the SEA surveys ESOL-endorsed teachers in the State and the administrators who evaluate them to identify areas where the teachers need additional training and support. The SEA develops teacher training supplements specific to those identified needs, requires the trained teachers to deliver an ESOL lesson as part of the SEA evaluation of whether teachers mastered the training's content, and provides training for administrators on how to evaluate teachers on appropriate ESOL instruction.
- A school district with a Structured English Immersion program, consisting of ESOL and sheltered content instruction, does not have a sufficient number of either qualified ESOL-licensed teachers to provide ESOL services or qualified content area teachers who are adequately trained to shelter content for EL students. The school district creates an in-service training on sheltering techniques, requires all core content teachers to successfully complete the training within two years, and requires a quarter of its new hires to obtain an ESOL license within two years of their hiring date.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"



Guiding Questions

The following questions may guide you as you develop a plan that addresses in a comprehensive manner the staffing and resources necessary to effectively provide ESOL services to EL students in your district.

Does your plan answer the following questions?

Staffing

- Does the description identify the number and categories of instructional staff determined appropriate to implement the district's program of services (e.g., qualified teachers, interpreters, translators, teaching assistants, and other categories of support staff)? *(For example, what has the district determined to be the appropriate student-teacher and student-support staff ratio to provide services consistent with program objectives?)*
- Does the description state the qualifications for instructional staff assigned to implement the program of services? *(For example, teachers need to have the educational expertise, consistent with state and local standards, to meet the goals of the ESOL program model. If they are responsible for subject matter instruction as well as English Language Development, they need to be qualified in both areas of responsibility.)*
- Does the description state the methods and criteria the district will utilize to ensure that staff are qualified to provide the services to EL students under the district's ESOL program? *(For example, if the program requires Spanish-speaking bilingual assistants, how will the district ensure that the assistants are fluent in Spanish?)*
- If circumstances beyond the control of the district necessitate temporary use of staff that do not meet the established qualification standards in order to implement its alternative program of services to EL students, does the plan address the following:
 - What are the training needs (i.e., in-service training and formal college course work) of current staff?
 - What is the amount, type, and schedule of training that will be provided to staff?
 - What steps will be taken by the district to recruit and hire qualified staff for its ESOL program?
 - What is the schedule for having fully qualified staff in place, and how will the district ensure appropriate services are provided during the period of staff development?

Resources

- What materials and resources, such as specialized books and equipment, are needed to fully implement its ESOL program?
- If the district does not currently have all the resources necessary to implement its program of services for EL students, what is the schedule or plan for obtaining such resources?
- Does the ESOL plan describe how a review of resources needed for the district's program of services for EL students will be accomplished on an ongoing basis?

EXAMPLES OF COMPLIANCE ISSUES—STAFFING AND SUPPORT

“Some examples of when the Departments have identified compliance issues in staffing and resourcing an ESOL program include when school districts: (1) offer language assistance services based on staffing levels and teacher availability rather than student need; (2) utilize mainstream teachers, paraprofessionals, or tutors rather than fully qualified ESOL teachers for ESOL instruction; or (3) provide inadequate training to general education teachers who provide core content instruction to EL students.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

PROVIDING MEANINGFUL ACCESS TO ALL CURRICULAR AND EXTRACURRICULAR PROGRAMS

To be able to participate equally and meaningfully in instructional programs, EL students have to acquire English proficiency and recoup any deficits that they may incur in other areas of the curriculum as a result of spending extra time on ELD.²⁰ Thus, the ADE and school districts share a dual obligation to provide EL students language assistance programs as well as assistance in other areas of the curriculum where their equal participation may be impaired by academic deficits incurred while they were learning English.²¹ This dual obligation requires school districts and the ADE to design and implement ESOL programs that are reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time.²²

In addition to ensuring EL students have access to the core curriculum, the ADE and school districts must provide EL students equal opportunities to meaningfully participate in all programs and activities of the ADE or school district—whether curricular, co-curricular, or extracurricular.²³ Such programs and activities include pre-kindergarten programs, magnet programs, career and technical education programs, counseling services, Advanced Placement and International Baccalaureate courses, gifted and talented programs, online and distance learning opportunities, performing and visual arts, athletics, and extracurricular activities such as clubs and honor societies.

²⁰ Castañeda, 648 F.2d at 1011.

²¹ *Id.*; see also *supra* notes 9, 12, 14, & 15.

²² Castañeda, 648 F.2d at 1011; see also *supra* notes 9, 12, 14, & 15.

²³ 34 C.F.R. § 100.1-2; 20 U.S.C. § 1703(f).

Core Curriculum

During their educational journey from enrollment to graduation, EL students are entitled to instruction in the school district's core curriculum (e.g., reading/language arts, math, science, and social studies). This includes equal access to the school's facilities, such as computer, science, and other labs or facilities, to ensure that EL students are able to participate meaningfully in the educational programs. Meaningful access to the core curriculum is a key component in ensuring that EL students acquire the tools to succeed in general education classrooms within a reasonable length of time.

Grade Appropriate Curriculum

One way to meet this obligation is to provide full access to the grade-appropriate core curriculum from the start of the ESOL program while using appropriate language assistance strategies in the core instruction so that EL students can participate meaningfully as they acquire English. In adapting instruction for EL students, however, school districts should ensure that their specialized instruction (e.g., structured immersion or sheltered content classes) does not use a watered-down curriculum that could leave EL students with academic deficits when they transition from ESOL programs into general education classrooms. Such specialized instruction should be designed such that EL students can meet grade-level standards within a reasonable period of time. School districts also should place EL students in age-appropriate grade levels so that they can have meaningful access to their grade-appropriate curricula and an equal opportunity to graduate.²⁴

Temporary Emphasis of ELD Implications

Alternatively, school districts may use a curriculum that temporarily emphasizes English Language Development over other subjects, provided that any interim academic deficits in other subjects are remedied within a reasonable length of time.²⁵ If districts choose to temporarily emphasize English Language Development, they retain an obligation to measure EL students' progress in core subjects to assess whether they are incurring academic deficits and to provide assistance necessary to remedy content area deficits that were incurred during the time when the EL student was more focused on learning English.²⁶ To ensure that EL students can catch up in those core areas within a reasonable period of time, such districts must provide compensatory and supplemental services to remedy academic deficits that the student may have developed while focusing on English Language Development. Similarly, OCR and the Department of Justice expect ADE to ensure through guidance and monitoring that school districts' ESOL programs are designed to enable EL students to participate comparably in the core curriculum within a reasonable time period and that school districts timely remedy any academic deficits resulting from focusing on English Language Development.²⁷

Students Entering 9th Grade as Beginning ELs

For an ESOL program to be reasonably calculated to ensure that EL students attain equal participation in the standard instructional program within a reasonable length of time, if an EL student enters the ninth grade with beginner-level English proficiency, the school district should offer EL services that would enable her to earn a regular high-school diploma in four years.²⁸ In addition, EL students in high school, like their never-EL peers, should have the opportunity to be competitive in meeting college entrance requirements. For example, a school district should ensure that there are no structural barriers within the design of its academic program that would prevent EL students who enter high school with beginner-level English proficiency from graduating on time with the prerequisites to enter college.

Progress Monitor ELs in English Proficiency and Core Content

To meet their obligation to design and implement ESOL programs that enable EL students to attain English proficiency and equal participation in the standard instructional program, school districts must use appropriate

and reliable evaluation and testing methods that have been validated to measure EL students' English language proficiency and knowledge of the core curriculum. Only by measuring the progress of EL students in the core curriculum during the EL program can districts ensure that students are not incurring "irreparable academic deficits."²⁹

24 The Departments recognize that students with interrupted formal education (SIFE students), especially in the higher grades, may be below grade level in some or all subjects when they enter a school district, and that some school districts provide appropriately specialized programs to meet their needs. The Departments would not view such programs as offering inappropriately watered-down instructional content where the program is age-appropriate, the content of the instruction relates to the core curriculum and is credit-bearing toward graduation or promotion requirements, and SIFE students have the opportunity to meet grade-level standards within a reasonable period of time. However, it would be inappropriate for a district to place high school-aged SIFE students in middle or elementary school campus programs because this would not permit SIFE students to meet high school grade-level standards and graduation requirements within a reasonable amount of time and the placements would not be age appropriate.

25 See *Castañeda*, 648 F.2d at 1011 ("[A] curriculum, during the early part of [EL students'] school career, which has, as its primary objective, the development of literacy in English . . . [is permissible] even if the result of such a program is an interim sacrifice of learning in other areas during this period" provided "remedial action is taken to overcome the academic deficits" incurred during participation in this curriculum in ways that enable the "students' equal participation in the regular instructional program.").

26 See *id.* at 1011-14 (recognizing that school districts may choose to "focus [] first on the development of English language skills and then later provide.... students with compensatory and supplemental education to remedy deficiencies in other areas which they may develop during this period" "so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.").

27 See *supra* notes 9, 12, 14 & 15; see also 20 U.S.C. § 6841 (Title III requires LEAs to provide SEAs with an evaluation including, among other things, the number and percentage of children in programs and activities attaining English proficiency at the end of each school year; and SEAs to use the LEA's evaluation to determine the effectiveness of and improve the LEA's programs and activities

28 See *Castañeda*, 648 F.2d at 1011 (requiring that districts "design programs which are reasonably calculated to enable [EL] students to attain parity of participation of the standard instructional program within a reasonable length of time after they enter the school system").

29 *Id.* at 1014.




Examples—Core Curriculum

- A science class using sheltered instruction for EL students should offer the same content and the same access to laboratories as the general education science class. And while a ninth-grade EL student with interrupted formal education may need targeted help in math to catch up to his grade-level math curriculum, his ESOL program should provide access to that curriculum and not be restricted to an elementary-grade math curriculum.

- A district has a Structured English Immersion (SEI) program, in which 20 percent of its EL students receive only part of their grade K-3 social studies and science curricula in their intensive ESOL courses while the other 80 percent of EL students received their full grade-level science and social studies curricula in sheltered classes with non-EL students. The district finds that the 20 percent are not performing as well as the 80 percent on the third-grade assessments in social studies and science or on the annual ELP test. In light of this data, the district provides intensive, supplemental instruction in science and social studies during the school day to the lower-performing 20 percent of EL students when they start fourth grade. To further address their academic deficits, their period of designated ESOL incorporates grade-level science and social studies texts in ESOL exercises focused on the reading and writing domains. The district also adjusts its SEI program so that when EL students in grades K-3 reach an intermediate level of English proficiency, they transition out of the second period of ESOL incorporating only some science and social studies into the sheltered classes of the full science and social studies curricula with non-EL students.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"



Specialized and Advanced Courses and Programs

School districts may not categorically exclude EL students from gifted and talented education or other specialized programs such as Advanced Placement (AP), honors, or International Baccalaureate (IB) courses. Unless a particular gifted and talented education program or advanced course is demonstrated to require proficiency in English for meaningful participation, schools must ensure that evaluation and testing procedures for gifted and talented education or other specialized programs do not screen out EL students because of their limited English proficiency.³⁰ If a school district believes that there is an educational justification for requiring proficiency in English in a particular gifted and talented education or other advanced program, the Departments consider a school district's proffered rationale to assess whether it constitutes a substantial educational justification and, if so, to determine whether a school could use comparably effective alternative policies or practices that would have less of an adverse impact on EL students.³¹

Examples-Specialized Programs

- An EL student demonstrates advanced math skills in the classroom but does not perform well on English language diagnostic tests. The student's math teacher recommends the student for the gifted math program. The school uses a different testing method, such as a non-verbal assessment or a math-only test with EL testing accommodations, to give the student an opportunity to demonstrate his or her readiness for entrance into the gifted math program.
- A school requires at least a B+ math average and an overall B average to enroll in AP Calculus. The school learns that some interested EL students cannot take AP Calculus because they lack an overall B average due to their limited English proficiency. So that more EL students can take this course, the school drops the overall B average requirement for all students because it is not necessary to meaningful participation in AP Calculus.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

30 1991 OCR Guidance; 34 C.F.R. § 100.3(b)(1), (2).

31 Id.

Guiding Questions

The following questions may guide you as you develop a plan that addresses in a comprehensive manner how the district will provide equal access for EL students to the full range of district programs including Title I, gifted and talented education, advanced courses, Reading Recovery, and nonacademic and extracurricular activities.

Does your plan answer the following questions?

- Does the plan describe methods to ensure that staff are aware of the district's policy regarding ensuring equal opportunities for EL students to participate in the range of programs made available to students generally?
- Does the district have, or know where to obtain, any tests or assessment materials needed to determine EL students' eligibility for special programs, including Title I, and gifted and talented, advanced courses, and Reading Recovery?
- Do the methods used by the district to notify parents and students of available programs and activities take into account language barriers?
- What methods or steps are taken to ensure that EL students have an equal opportunity to participate in extracurricular and nonacademic activities?

Compliance Issues

EXAMPLES OF COMPLIANCE ISSUES—

SPECIALIZED AND ADVANCED COURSE AND PROGRAMS

“Some examples of when the Departments have identified compliance issues in this area include when schools: (1) schedule EL language acquisition services during times when gifted and talented education programs meet; (2) exclude EL students from all components of a gifted and talented education program, even though proficiency in English is not necessary for a meaningful participation in a math, science, or technology component of the gifted and talented education program; (3) use arbitrarily high admissions criteria in English for a gifted and talented education math program that causes the exclusion of EL students who could meet the math requirement but not the arbitrarily high English requirement; or (4) solicit teacher recommendations of students for gifted programs from all teachers except teachers of ESOL program classes. ”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

AVOIDING UNNECESSARY SEGREGATION OF EL STUDENTS

EL programs may not unjustifiably segregate students on the basis of national origin or EL status. While EL programs may require that EL students receive separate instruction for a limited period of time, the Departments expect school districts and SEAs to carry out their chosen program in the least segregated manner consistent with achieving the program's stated educational goals.³² Although there may be program-related educational justifications for providing a degree of separate academic instruction to EL students, OCR would rarely find a program-related justification for instructing EL and non-EL students separately in subjects like physical education, art, and music or for separating students during activity periods outside of classroom instruction (i.e., during lunch, recess, assemblies, and extracurricular activities).

In determining whether a school district is unnecessarily segregating EL students, the Departments examine whether the nature and degree of segregation is necessary to achieve the goals of an educationally sound and effective EL program. As discussed more thoroughly in the portion of this handbook devoted to Monitoring and Exiting EL Students from ESOL Programs and Services, school districts should not keep EL students in EL programs for periods longer or shorter than necessary to achieve the program's educational goals; nor should districts keep EL students in EL-only classes for periods longer or shorter than required by each student's level of English proficiency, time and progress in the EL program, and the stated goals of the EL program.

In evaluating whether the degree of segregation is necessary in EL programs, OCR considers whether entry and exit into a segregated EL program model are voluntary, whether the program is reasonably designed to provide EL students comparable access to the standard curriculum as never-EL students within a reasonable length of time, whether EL students in the program have the same range and level of extracurricular activities and additional services as do students in other environments, and whether the district at least annually assesses the English proficiency and appropriate level of language assistance services for its EL students and determines their eligibility to exit from the EL program based on valid and reliable exit criteria.

Some districts use newcomer programs as a bridge to general education classrooms. Districts operating newcomer programs or schools should take particular care to avoid unnecessary segregation. For example, it is unlikely the Departments would find a violation in the area of EL student segregation by a school district that offers a voluntary newcomer EL program with self-contained EL programs for a limited duration (generally for one year) so long as it schedules the newcomer EL students' nonacademic subjects, lunchtime, and recess with non-EL students; encourages newcomer EL students to participate in integrated after-school activities; and evaluates their English proficiency regularly to allow appropriate transitions out of the newcomer EL program throughout the academic year.

³² See 1991 OCR Guidance; *Castañeda*, 648 F.2d at 998 n.4 ("We assume that the segregation resulting from a language remediation program would be minimized to the greatest extent possible and that the programs would have as a goal the integration of the Spanish-speaking student into the English language classroom as soon as possible.").

Guiding Questions

- Are guidelines and standards included for providing EL students each of the services in the district's ESOL program?
- Does the plan identify the person(s) responsible for providing services to EL students?
- Does the plan include standards and criteria for the amount and type of services to be provided?
- Does the plan include a process to decide the appropriate amount and type of services to be provided?
- If there are any variations in the district's program of services between schools and grade levels, are the variations described?

Compliance Issues

EXAMPLES OF COMPLIANCE ISSUES—UNNECESSARY SEGREGATION

“Some examples of when the Departments have found compliance issues involving segregation include when school districts: (1) fail to give segregated EL students access to their grade-level curriculum, special education, or extracurricular activities; (2) segregate EL students for both academic and non-academic subjects, such as recess, physical education, art, and music; (3) maintain students in a language assistance program longer than necessary to achieve the district’s goals for the program; and (4) place EL students in more segregated newcomer programs due to perceived behavior problems or perceived special needs.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

EVALUATING EL STUDENTS FOR SPECIAL EDUCATION SERVICES AND PROVIDING SPECIAL EDUCATION AND ESOL SERVICES

School districts must ensure that all EL students who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.

School districts must provide EL students with disabilities with both the language assistance and disability-related services³³ to which they are entitled under Federal law. Districts must also inform a parent of an EL student with an individualized education program (IEP) how the language instruction education program meets the objectives of the child's IEP.³⁴

OCR is aware that some school districts have a formal or informal policy of “no dual services,” i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status.³⁵ **These policies are impermissible under the IDEA and Federal civil rights laws, and OCR expects ADE to address these policies in monitoring districts' compliance with Federal law. Further, even if a parent of an EL student with a disability declines disability-related services under the IDEA or Section 504, that student with a disability remains entitled to all EL rights and services as described in this guidance.**³⁶

33 The term “disability-related services” is intended to encompass either special education and related services provided to children with disabilities who are eligible for services under the IDEA or regular or special education and related aids and services provided to qualified students with disabilities under Section 504.

34 20 U.S.C. §§ 6312(g)(1)(A)(vii) (Title I), 7012(a)(7) (Title III). If the parent is LEP, this information must be in a language the parent understands. See discussion in “Ensuring Meaningful Communication with Limited English Proficient Parents.”

35 The court in *Mumid v. Abraham Lincoln High School*, 618 F.3d 789 (8th Cir. 2010), cert. denied, 131 S. Ct. 1478 (2011), rejected a private claim that such a policy was intentional national origin discrimination in violation of Title VI. The EEOA does not require proof of intentional national origin discrimination to establish a violation of section 1703(f), see *Castañeda*, 648 F.2d at 1004, and the court in *Mumid* assumed that such a policy would violate the EEOA, but did not reach the merits of that claim for other reasons. *Mumid*, 618 F.3d at 795-96. The court's discussion of Title VI was limited to a private right of action and did not discuss the Federal government's enforcement of Title VI or the other statutes discussed in this section.

36 For more information regarding EL students with disabilities and Title III, see the Department of Education's Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives, available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>. Among other matters, this guidance addresses requirements for including EL students with disabilities in the annual ELP assessment, including providing appropriate accommodations or alternate assessments when necessary.

1. Individuals with Disabilities Education Act (IDEA)

The IDEA requires SEAs and school districts to, among other things, make available a free appropriate public education (FAPE) to all eligible children with disabilities.³⁷ Under the IDEA, FAPE means, among other things, special education and related services at no cost to parents provided in conformity with the student's IEP.³⁸

Under the IDEA, school districts must also identify, locate, and evaluate all children who may have disabilities and who need special education and related services, regardless of the severity of their disabilities.³⁹ A parent or a school district may initiate a request for an initial evaluation to determine if a child is a child with a disability under the IDEA.⁴⁰ A school district must ensure that assessments and other evaluation materials used to evaluate a child with a disability are “provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, **unless it is clearly not feasible to so provide or administer.**”⁴¹

This is true even for those EL students whose parents have opted their children out of EL programs.⁴² A student cannot be determined to be a child with a disability if the “determinant factor” is limited English proficiency and if the student does not otherwise meet the definition of a “child with a disability” under the IDEA.⁴³

37 20 U.S.C. §§ 1412(a)(1), 1413(a)(1); 34 C.F.R. §§ 300.101-300.102, 300.201.

38 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

39 20 U.S.C. §§ 1412(a)(3), 1413(a)(1); 34 C.F.R. §§ 300.111, 300.201. Under the IDEA, a child with a disability means a child evaluated as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in IDEA as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8. See *infra* note 77 for the definition of an individual with a disability under Section 504.

40 34 C.F.R. § 300.301(b). Once parental consent, as defined in 34 C.F.R. § 300.9, is obtained, the evaluation must be conducted within 60 days from the date that parental consent is received, or if the SEA has established a timeframe within which the evaluation must be conducted, within the State-established timeframe. 34 C.F.R. § 300.301(c)(1); see also 34 C.F.R. §§ 300.300-300.311.

41 34 C.F.R. § 300.304(c)(1)(ii); 20 U.S.C. § 1414(b)(3)(A)(ii). For the purposes of this document, native language and primary language are interchangeable terms. In determining whether an EL student is a child with a disability under the IDEA, the school district must draw upon information from a variety of sources (e.g., aptitude and achievement tests and social and cultural background), and ensure that all of this information is documented and carefully considered. 34 C.F.R. § 300.306(c)(1).

42 See discussion *infra* in “Meeting the Needs of EL Students Who Opt Out of EL Programs or Particular EL Services.”

43 20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)(1)(iii)-(b)(2).

Example-IDEA

• A teacher thinks that a Spanish-speaking EL student with beginner level English has a learning disability. She would like to have the student evaluated for a disability, but believes that the student must complete one year in the EL program or achieve intermediate proficiency in English before being evaluated for a disability or receiving special education and related services. **She is incorrect.** The principal explains to her that if she believes the student has a disability, the school district must seek parental consent for an initial evaluation and once consent is granted must evaluate the student in a timely manner. After the parents’ consent, the district arranges for a bilingual psychologist to conduct the evaluation in Spanish, given the EL student’s ELP level and language background. --Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

Once a school district determines that an EL student is a child with a disability under the IDEA and needs special education and related services, the school district is responsible for determining, through the development of an IEP at a meeting of the IEP Team (which includes the child’s parents and school officials), the special education and related services necessary to make FAPE available to the child.⁴⁴ As part of this process, the IDEA requires that the IEP team consider, among other special factors, the language needs of a child with limited English proficiency as those needs relate to the child’s IEP.⁴⁵ To implement this requirement, it is essential that the IEP team include participants who have the requisite knowledge of the child’s language needs. To ensure that EL children with disabilities receive services that meet their language and special education needs, it is important for members of the IEP team to include professionals with training, and preferably expertise, in second language acquisition and an understanding of how to differentiate between the student’s limited English proficiency and the student’s disability.⁴⁶ Additionally, the IDEA requires that the school district “take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.”⁴⁷

2. Section 504 of the Rehabilitation Act (Section 504)

As with evaluations under the IDEA, Section 504 evaluations of EL students must measure whether an EL student has a disability and not reflect the student’s lack of proficiency in English. When administering written or oral evaluations to determine whether an EL student has a disability under Section 504, school districts must administer those evaluations in an appropriate language to avoid misclassification.⁴⁸ This is true even for those EL students whose parents have opted their children out of ESOL programs.⁴⁹ Prior to evaluating an EL student, school districts should, to the extent practicable, gather appropriate information about a student’s previous educational background, including any previous language-based interventions.⁵⁰

44 20 U.S.C. § 1414(b)(4); 34 C.F.R. §§ 300.306(c)(2) and 300.323(c). For more information about IEPs, see 20 U.S.C. § 1414(d) and 34 C.F.R. §§ 300.320-300.324.

45 20 U.S.C. § 1414(d)(3)(B)(ii); 34 C.F.R. § 300.324(a)(2)(ii). IEP Teams also must consider this special factor in the review and revision of IEPs. 34 C.F.R. § 300.324(b)(2).

46 The Departments are aware that some States are using joint EL and IEP teams effectively to determine appropriate services for eligible students.

47 34 C.F.R. § 300.322(e); see also *id.* §§ 300.9, 300.503(c)(1)(ii), 300.612(a)(1). Under Title VI and the EEOA, for an LEP parent to have meaningful access to an IEP or Section 504 plan meeting, it also may be necessary to have the IEPs, Section 504 plans, or related documents translated into the parent’s primary language. For information on the separate Title VI obligations of school districts to communicate with LEP parents, see *infra* “Ensuring Meaningful Communication with Limited English Proficient Parents.”

48 Cf. 20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); see also 34 C.F.R. pt. 104, App. A at number 25, discussion of § 104.35 (recognizing that Title VI requires evaluations in the primary language of the student).

49 See discussion *infra* in, “Meeting the Needs of EL Students Who Opt Out of ESOL Programs or Particular ESOL Services.”

50 In conducting the evaluation and making placement decisions, school districts must draw upon information from a variety of sources (e.g., aptitude and achievement tests and social and cultural background). 34 C.F.R. § 104.35(c) (school district “shall . . . draw upon information from a variety of sources”).

Guiding Questions

The following questions may guide you as you develop a plan that addresses in a comprehensive manner how the district will provide equal access for EL students to the full range of district IDEA and Section 504 programs.

Does your plan answer the following questions?

- How are evaluations used to determine whether an EL student has a disability conducted in the appropriate language based on the student's needs and language skills, and are special education and ESOL services determined in light of both the student's disability and language-related needs?
- How is the disability determination of an EL student based on criteria that measure and evaluate the student's abilities and not the student's English language skills?
- How are EL students promptly evaluated for disability-related services? How are impermissible delays on account of a student's EL status and/or level of English proficiency avoided?
- How are language assistance services and disability-related services provided simultaneously to an EL student who has been evaluated and determined to be eligible for both types of services?
- How is the district ensuring the individualized plans for providing special education or disability-related services address EL students' language-related needs?

Compliance Issues

EXAMPLES OF COMPLIANCE ISSUES—EVALUATING EL STUDENTS FOR IDEA/SECTION 504 SERVICES

“Some examples of when OCR has identified compliance issues regarding EL students with disabilities eligible for services under Section 504 or the IDEA include when school districts: (1) deny English language services to EL students with disabilities; (2) evaluate EL students for special education services only in English when the native and dominant language of the EL student is other than English; (3) fail to include staff qualified in EL instruction and second language acquisition in placement decisions under the IDEA and Section 504; or (4) fail to provide interpreters to LEP parents at IEP meetings to ensure that LEP parents understand the proceedings.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

MEETING THE NEEDS OF EL STUDENTS WHO OPT OUT OF ESOL PROGRAMS OR PARTICULAR ESOL SERVICES

Although school districts have an obligation to serve all EL students, parents have a right to decline or opt their children out of a school district's ESOL program or out of particular ESOL services within an ESOL program.⁵¹ For example, parents may choose to enroll their child in ESOL English classes, but decline to enroll their child in EL-only sheltered content classes. **School districts may not recommend that parents decline all or some services within an ESOL program for any reason, including facilitating scheduling of special education services or other scheduling reasons.** A parent's decision to opt out of an ESOL program or particular ESOL services must be **knowing and voluntary**.⁵² Thus, school districts must provide guidance in a language parents can understand to ensure that parents understand their child's rights, the range of ESOL services that their child could receive, and the benefits of such services before voluntarily waiving them.⁵³

OCR considers whether a parent's decision to opt out of an ESOL program or particular ESOL services was **knowing and voluntary**. If a school district asserts that a parent has decided to opt out their child, OCR or ADE could examine the school district's records, including any documentation of the parent's opt-out decision and whether the parent signed such documentation. Appropriate documentation is important to support school districts' assertions and for OCR to evaluate school districts' legal compliance.

eSchoolPLUS

If a parent/guardian signs the documentation requesting that ESOL services be waived for their child, then the following must be entered into eSchool:

- **ESL Waived Services Date:** *The date a LEP/ELL student's parent signed the form waiving ESOL services for the student. MM/DD/YYYY*
- If at any time, the parent requests services, then remove the ESL Waived Services Date.

⁵¹ Cf. 34 C.F.R. § 100.3(b)(1), (2); see also 20 U.S.C. §§ 6312(g)(1)(A)(viii) (Title I), 7012(a)(8) (Title III).

⁵² Although not directly related to EL services, courts have found in other areas that a waiver must be informed and/or knowing as well as voluntary. See, e.g., *Town of Newton v. Rumery*, 480 U.S. 386, 393 (1987) (any waiver of statutory right of action must "be the product of an informed and voluntary decision"); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974) (waiver must be "voluntary and knowing").

⁵³ Parental notification of these rights must "be in an understandable and uniform format and, to the extent practicable, provided in a language that the parent can understand." 20 U.S.C. §§ 6312(g)(2) (Title I), 7012(c) (Title III). This means that whenever practicable, written translations of printed information must be provided to parents in a language that they understand; but if written translations are not practicable, SEAs and school districts must ensure parents are provided oral interpretations of the written information. See 67 Fed. Reg. 71,710, 71,750 (2002). This obligation is consistent with Title VI and EEOA obligations of school districts to ensure meaningful communication with LEP parents, discussed in Part II. J "Ensuring Meaningful Communication with Limited English Proficient Parents."

If parents opt their children out of an ESOL program or specific ESOL 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. Thus, OCR and the DOJ expect school districts to meet the English-language and other academic needs of their opt-out EL students under the civil rights laws.⁵⁴ To ensure these needs of opt-out EL students are being met, school districts must periodically monitor the progress of students who have opted out of ESOL programs or certain ESOL services.⁵⁵ If an EL student who opted out of the school district’s ESOL programs or services does not demonstrate appropriate growth in English proficiency, or struggles in one or more subjects due to language barriers, the school district’s affirmative steps include informing the EL student’s parents of his or her lack of progress and offering the parents further opportunities to enroll the student in the ESOL program or at least certain ESOL services at any time.

If the school district’s monitoring of the opt-out EL student shows the student is struggling but the parent continues to decline the ESOL program or services, the school district should take affirmative and appropriate steps to meet its civil rights obligations. School districts may accomplish this in a variety of ways. One such way would be providing adequate training to the opt-out EL student’s general education teachers on second-language acquisition and ELD to ensure the student’s access to some language acquisition supports.

Further, **opt-out EL students must have their English language proficiency assessed at least** annually to gauge their progress in attaining English proficiency and to determine if they are still in need of and legally entitled to ESOL services. There is no assessment exemption for students who do not receive ESOL services.⁵⁶ This means all EL students in Arkansas must participate in the Arkansas’ annual English proficiency test, currently ELPA21. Once opt-out EL students meet valid and reliable criteria for exiting from EL status, the district should monitor their progress for at least two years, as it does with other exited EL students (see “Monitoring and Exiting EL Students from ESOL Programs and Services”).

54 School districts also retain their EL obligations to a student even if parents opt their child out of IDEA or Section 504 services.

55 See 1991 OCR Guidance; 20 U.S.C. § 1703(f) (requiring SEAs and LEAs to take appropriate action to overcome individual students’ language barriers that impede their equal participation in the agencies’ instructional programs).

56 All students who meet the definition of LEP under the ESEA, see 20 U.S.C. § 7801(25), must be tested annually with a State-approved ELP assessment. *Id.* §§ 6311(b)(7) (Title I), 6823(b)(3)(D) (Title III), 6826(b)(3)(C) (Title III).

Examples-Meeting Needs of Opt-out EL Students

- A student is tested and determined to be an EL student. The parent initially refuses ESOL program services because the parent believes her child speaks fluent English. After the first quarter, the student's teacher contacts the parent to discuss that the EL student is struggling with reading and writing assignments despite her strong English-speaking skills. The teacher offers a period of ELD and sheltered content classes, explaining how both can improve the student's proficiency in reading and writing. The parent accepts the ELD services and agrees to reevaluate the placement at the end of the school year.
- At the beginning of the school year a kindergarten student is tested and determined to be EL. The parent declined Title III and English language services that were offered in segregated classes attended by EL students only. Although the student's parents opted the child out of ESOL-specific services, the school recognizes that the student continues to struggle in English. The school responds by training the kindergarten teacher to use ELD strategies in the EL student's regular, integrated classroom.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

Guiding Questions

The following questions may guide you as you develop a plan that addresses in a comprehensive manner how the district will meet the needs of EL students whose parents have decided to decline ESOL programs or services.

Does your plan answer the following questions?

- How does the district encourage parents or students to accept the ESOL services offered and respond appropriately when parents decline any or all ESOL services?
- How does the district maintain appropriate documentation demonstrating that a parent made a voluntary, informed decision to decline ESOL services?
- How does the district explore the causes of high opt-out rates for ESOL services, address any underlying cause(s) of opting out, and ensure that the academic and English language proficiency needs of the EL students who have opted out are being met?

EXAMPLES OF COMPLIANCE ISSUES—MEETING NEEDS OF OPT-OUT EL STUDENTS

“In areas around the country, OCR and the DOJ past investigations have found high numbers of EL students whose parents have opted them out of ESOL programs or particular services within an ESOL program due to problematic district practices such as school personnel steering families away from ESOL programs, or providing incorrect or inadequate information to parents about the ESOL program, particular services within the program, or their child’s EL status. OCR and the DOJ have also found noncompliance where school personnel have recommended that families decline ESOL programs due to insufficient space in such programs or because school districts served only EL students with a basic or emerging level of English. Parents have also been found to have opted their children out of ESOL programs because the school district did not adequately address parental concerns expressed about the quality of the ESOL program, their lack of confidence in the ESOL program offered because the school district was not able to demonstrate the effectiveness of its program, or their belief that their child did not need ESOL services.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

MONITORING AND EXITING EL STUDENTS FROM ESOL PROGRAMS AND SERVICES

School districts must monitor the progress of all of their EL students in achieving English language proficiency and acquiring content knowledge. Monitoring ensures that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the ESOL program or, in the case of opted-out EL students, in the regular educational setting.

With respect to monitoring EL students' acquisition of content knowledge, school districts must at a minimum validly, reliably, and annually measure EL students' performance in academic content areas.⁵⁷ School districts should also establish rigorous monitoring systems that include benchmarks for expected growth in acquiring academic content knowledge during the academic year and take appropriate steps to assist students who are not adequately progressing towards those goals. ADE also has a role to play in ensuring EL students acquire content knowledge by monitoring whether school districts are providing EL students with meaningful access to grade-appropriate core content instruction and remedying any content deficits in a timely manner.⁵⁸

With respect to monitoring EL students' acquisition of English proficiency, ADE had to develop ELP standards to inform ESOL programs, services, and assessments that are derived from the four domains of speaking, listening, reading, and writing, and that are aligned to the State's content standards.⁵⁹ ADE must also ensure that school districts implement these ELP standards. In addition, ADE and school districts must ensure the annual ELP assessment of all EL students in these domains and monitor their progress from year to year.⁶⁰ Because Title III requires that the annual ELP assessment be valid and reliable, the ELP assessment must be aligned to ADE's ELP standards which is why ELPA21 was chosen as the assessment for the English Language Proficiency Standards adopted by the Arkansas State Board of Education.⁶¹ Thus, in monitoring EL students' acquisition of English, their performance on the annual ELP assessment and their progress with respect to the ELP standards during the school year should inform their instruction.

⁵⁷ Castañeda, 648 F.2d at 1014 ("Valid testing of student's progress in these areas is, we believe, essential to measure the adequacy of a language remediation program").

⁵⁸ Id. at 1011; see also Gomez, 811 F.2d at 1042; Idaho Migrant Council, 647 F.2d at 71; supra notes 9, 14 & 15.

⁵⁹ 20 U.S.C. § 6823(b)(2).

⁶⁰ 20 U.S.C. §§ 6311(b)(7) (Title I), 6823(b)(3)(C), (D) (Title III).

⁶¹ 20 U.S.C. §§ 6841(a)(3), 6842(a)(3).

With respect to exiting EL students from ESOL programs, services, and status, a valid and reliable ELP assessment of all four language domains must be used to ensure that all K-12 EL students have achieved English proficiency.⁶² To demonstrate proficiency on the ELP assessment, EL students must have either separate proficient scores in each language domain (i.e., a conjunctive score) or a composite score of “proficient” derived from scores in all four language domains. Whether a conjunctive or composite “proficient” score is used, the score must meet two criteria. The ELP assessment must meaningfully measure student proficiency in each of the language domains, and, overall, be a valid and reliable measure of student progress and proficiency in English. A composite “proficient” score must be a valid and reliable measure that demonstrates sufficient student performance in all required domains to consider an EL student to have attained proficiency in English. The “proficient” score, whether conjunctive or composite, must be set at a level that enables students to effectively participate in grade-level content instruction in English without ESOL services

ADE may include additional objective criteria related to English proficiency to decide if an EL student who scores proficient on the ELP assessment is ready for exit or requires additional language assistance services, these additional criteria may not serve as a substitute for a proficient conjunctive or composite score on a valid and reliable ELP assessment.

⁶² See 2008 Title III NOI at 61832-61833 (explaining the requirements of an ELP assessment in all four domains and how “proficiency” may be demonstrated using a composite or a conjunctive score); see also supra note 33.

Examples-Monitoring and Exiting EL Students

- Some school districts choose to create forms for their ESOL and content teachers to use to monitor EL students each quarter. These forms include the students’ grades in each subject, scores on district and State assessments and standardized tests, and the teachers’ comments on an EL student’s strengths and weaknesses in each of the four language domains and each academic subject. When the monitoring form of an intermediate EL student reflects difficulties in social studies and writing papers, an ESOL teacher suggests sheltering strategies and writing rubrics to the social studies teacher to assist the EL student.

- School districts throughout a State found that a longitudinal cohort analysis shows that EL students who completed and exited the ESOL program are not able to meaningfully participate in regular education classes comparable to their never-EL peers. The State revises its criteria for exiting EL students from ESOL programs to ensure that the criteria are valid and reliable and require proficiency in the four domains. The district then provides teachers and staff with training on revised exit criteria and procedures. The district takes additional steps to improve the ESOL program’s services.

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

Arkansas State Board of Education Approved Exit Criteria

“MINIMUM CRITERIA FOR EXIT AND RECLASSIFICATION OF LEP STUDENTS ENROLLED IN ESL PROGRAMS AND REQUIRED ELEMENTS FOR LANGUAGE PLACEMENT AND ASSESSMENT COMMITTEE (LPAC) AND PARENT NOTIFICATION FORMS

Approved by the Arkansas Board of Education, August 14, 2006

1. Student Information

- School and District; First Name Last Name; Grade; Identification Number

2. Spring English Language Proficiency Assessment (ELPA) Scores and Proficiency Levels

- Speaking Raw Score and Level
- Listening Raw Score and Level
- Reading Raw Score and Level
- Writing Raw Score and Level
- Comprehension (Listening and Reading) Raw Score and Level

*Student must score proficient in all five sections of the spring English Language Proficiency Assessment (ELPA).

3. Previous Year's (or Semester's) Grades for:

- English Language Arts
- Mathematics
- Social Studies
- Science

*Student must earn a grade of “C” or above in all core subject areas.

4. Standardized Achievement Scores

- CRT Literacy and Mathematics or NRT

*Student must score Proficient or Advanced on the CRT (was Arkansas Benchmark or End of Course Exams, will be State Mandated Assessment) or score at or above the 40th percentile on the NRT.

5. Recommendations for exit or reclassification from current teachers

*At least two current teachers recommend exit or reclassification based on the criteria above.

6. The decision to exit or reclassify the LEP student from the ESOL program must be made on an annual basis by the Language Placement Assessment Committee (LPAC) following a review of spring ELPA results.

NOTE: Documentation is required on all LEP students during enrollment in the ESL program and for two years after exiting the ESOL program. Each student's progress should be reviewed and documented on a yearly basis by the school's LPAC.

Districts are required to monitor and to provide assistance to English language learners for two years after exiting the ESOL program, according the Federal Law under Title III of NCLB.”

Once an EL student is exited from the ESOL program, the district must update eSchool with the following information:

- 1) **ELL/LEP Exit Date**—*The date the student met criteria for Fluent English Proficient status and was exited from the ESL/LEP program; no longer receives services; is a regular education student.*
MM/DD/YYYY
- 2) Uncheck the box to the right of the ELL/LEP Entry Date

Two Year Monitoring Period after Exiting ESOL Program

After students have exited an ESOL program, school districts must monitor the academic progress of former EL students for at least two years to ensure that:

- the students have not been prematurely exited;
- any academic deficits they incurred as a result of participation in the EL program have been remedied; and
- they are meaningfully participating in the standard instructional program comparable to their never-EL peers.⁶³

When a school district's monitoring of an exited EL student indicates that a persistent language barrier may be the cause of academic difficulty because general education and remediation services have proven inadequate, school districts should re-test the student with a valid and reliable, grade-appropriate ELP test to determine if there is a persistent language barrier and must offer additional language assistance services where needed to meet its civil rights obligations. In no case should re-testing of an exited student's ELP be prohibited. If the results of the re-testing qualify the student as EL, the school district must reenter the student into EL status and offer ESOL services. If the student is reentered into EL services, school districts should document the bases for the reentry and the parents' consent to such reentry.

⁶³ Title III requires that school districts monitor for two years the progress made by exited ELs on content and achievement standards. 20 U.S.C. § 6841(a)(4). Exiting these students from EL status is not the same concept as the treatment of "former" EL students under Title I for accountability purposes. States are permitted to include the scores of former EL students on State content assessments in the LEP subgroup for up to two accountability determination cycles. 34 C.F.R. § 200.20(f)(2).

Students who are exited from ESOL services must have the following data updated in eSchool for the first two years after they are exited:

- **Former ELL/LEP Monitored** “A student who was ***exited*** from ESL services and whose academic progress is being monitored for two years in the regular education classroom as required by Federal Law.”
 - M1—Monitored Year 1 (first year after exit date)
 - M2—Monitored Year 2 (second year after exit date)

Guiding Questions

This section addresses the procedures and criteria for determining when students no longer need ESOL services and methods that the district will use to monitor the success of students after ESOL services have been discontinued. The following are questions that may be used as a checklist in developing a description of the transition procedures:

Transition from ESOL Services

- Does the plan describe all assessment instruments and procedures (e.g., tests, teacher observations, etc.) used as part of a transition assessment?
- Do the transition procedures describe how the district will assess the English language skills of EL students in the following four proficiency areas: listening, speaking, reading, and writing? (Upon initial testing by the district and annually with ELPA21)
- Do the transition procedures describe the methods and standards that will be used to assess whether students who have been receiving ESOL services have progressed to the point that such services are no longer needed to enable the students to participate meaningfully in the district's regular program?
- Do the transition procedures identify the person(s) who will conduct the transition assessments and any qualifications the person(s) must meet to conduct the assessments? (ELPA21 must be administered by Arkansas licensed educators.)
- Do the procedures include a statement of the criteria (e.g., test scores or other performance standards, teacher observation, etc.) that will determine when a student is English language-proficient and no longer in need of the district's program of services for EL students? (Districts must use, at a minimum, the Arkansas State Board of Education Approved Exit Criteria.)
- Do the procedures include a description of the documentation that will be maintained on the assessment results (e.g., continued need for services) and the decision whether to transition the student from the district's language instruction education program?
- Do the procedures include a description of who will update data on eSchool when a student is exited and who will notify the parents when a student is exited?

Monitoring the Success of Former EL Students

- Does the plan identify the staff person(s) who will be responsible for monitoring former EL students?
- Does the plan establish guidelines for how often the district will monitor former EL students (e.g., quarterly, each semester)? How long will the district monitor such students?
- Does the plan identify the information the district will review to measure whether individual former EL students are successful in the district's overall educational program (e.g., grades, test scores, teacher observations, etc.)?
- Does the plan include the methods or criteria the district will utilize to measure success of former EL students in the district's education program? (For example, the district may review the grades, testing results, teacher feedback, or other appropriate information to determine whether or not a former EL student has meaningful access to the district's education program.)
- If a former EL student, under the district's criteria, is not successful in the district's regular program, does the plan indicate:
 - How the district will determine whether a lack of success is due to academic deficits incurred while the student was receiving ESOL services, the lack of English language proficiency, or other reasons?
 - If the lack of success is due to academic deficits incurred while the student was receiving ESOL services or the lack of English language proficiency, do the procedures set forth the methods to be used and/or services the district will provide to assist the student? (For example, depending upon the reason for the individual student's lack of success, the district may consider approaches such as: providing additional services to develop English language skills, or providing academic tutorial or support services to address academic deficiencies incurred while the student was receiving ESOL services.)
 - Does the plan include appropriate notification procedures to inform parents of service options?

Compliance Issues

EXAMPLES OF COMPLIANCE ISSUES—MONITORING AND EXITING EL STUDENTS

“Some examples of when OCR and the DOJ have identified compliance issues regarding the exiting of EL students include when school districts: (1) exit intermediate and advanced EL students from ESOL programs and services based on insufficient numbers of teachers who are qualified to deliver the ESOL program; (2) prematurely exit students before they are proficient in English, especially in the specific language domains of reading and writing; (3) fail to monitor the progress of former EL students; or (4) fail to exit EL students from ESOL programs after EL students demonstrate (or could have demonstrated if assessed) proficiency in English.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

EVALUATING THE EFFECTIVENESS OF A DISTRICT'S ESOL PROGRAM

When evaluating a school district's or SEA's ESOL program(s) for compliance, OCR and the DOJ consider whether the program succeeds, after a legitimate trial, in producing results that indicate that students' language barriers are actually being overcome. In other words, they look at whether performance data of current EL, former EL, and never EL students demonstrates that the EL programs were in fact reasonably calculated to enable EL students to attain parity of participation in the standard instructional program within a reasonable length of time. For a school district or SEA to make such a determination, as a practical matter, a district must periodically evaluate its EL programs, and modify the programs when they do not produce these results.⁶⁴ Continuing to use an EL program with a sound educational design is not sufficient if the program, as implemented, proves ineffective.

Generally, success is measured in terms of whether the particular goals of a district's educationally sound language assistance program are being met without unnecessary segregation. **As previously discussed, those goals must include enabling EL students to attain within a reasonable period of time, both (1) English proficiency and (2) meaningful participation in the standard educational program comparable to their never-EL peers.**⁶⁵ OCR, the DOJ and ADE will not view a program as successful unless it meets these two goals. If an EL program is not effective, the district must make appropriate programmatic changes reasonably calculated to enable EL students to reach these two goals. Some EL programs have additional goals such as exiting students within a set number of years. Neither school districts nor ADE may exit an EL student from EL status or services based on time in the program if the student has yet to achieve English proficiency.

To assess whether an ESOL program is succeeding in overcoming language barriers within a reasonable period of time, school districts must consider accurate data that permit a comprehensive and reliable comparison of how EL students in the EL program, EL students who exited the program, and never-EL students are performing on criteria relevant to participation in the district's educational programs over time.⁶⁶

64 *Castañeda*, 648 F.2d at 1014-15; 1991 OCR Guidance; 20 U.S.C. § 6841(b)(2) (requiring every school district receiving Title III, Part A funds to engage in a self-evaluation every two years and provide it to the SEA).

65 An EL program may have other goals such as bicultural goals or maintaining primary language literacy.

66 See, e.g., *Castañeda*, 648 F.2d at 1011, 1014 (discussing student achievement scores under the third prong); *Flores*, 557 U.S. at 464 n.16 ("[An] absence of longitudinal data in the record precludes useful comparisons."); *Texas*, 601 F.3d at 371 (discussing achievement scores, drop-out rates, retention rates, and participation rates in advanced courses, and the need for longitudinal data, under prong three); *Keyes v. Denver Sch. Dist. No. 1*, 576 F. Supp. 1503, 1519 (D. Colo. 1983) (expressing concern over high drop-out rates of Hispanic students).

Meaningful ESOL program evaluations include longitudinal data that compare performance in the core content areas (e.g., valid and reliable standardized tests in those areas), graduation, dropout, and retention data for EL students as they progress through the program, former EL students, and never-EL students.⁶⁷ When evaluating the effectiveness of an ESOL program, the performance of EL students in the program and former EL students who exited the program should be compared to that of never-EL students. While the data need not demonstrate that current EL students perform at a level equal to their never-EL peers,⁶⁸ a school district's data should show that EL students are meeting exit criteria and are being exited from the program within a reasonable period of time, and that former EL students are participating meaningfully in classes without ESOL services and are performing comparably to their never-EL peers in the standard instructional program. To assess whether the ESOL program sufficiently prepared EL students for more demanding academic requirements in higher grades, OCR and the DOJ expect districts to evaluate these data not only at the point that students exit ESOL services, but also over time.⁶⁹

In addition, as stated in the sections about “Providing Meaningful Access to All Curricular and Extracurricular Programs” and “Monitoring and Exiting EL Students from EL Programs and Services”, school districts must monitor EL students’ progress from grade to grade so that districts know whether the ESOL program is causing academic content area deficits that require remediation and whether EL students are on track to graduate and have comparable opportunities to their never-EL peers to become college- and career-ready. Other important indicators of program success include whether the achievement gap between EL students and never-EL students is declining over time and the degree to which current and former EL students are represented in advanced classes, special education services, gifted and talented programs, and extracurricular activities relative to their never-EL peers.

67 See *Horne*, 557 U.S. at 464 n. 16 (“[An] absence of longitudinal data in the record precludes useful comparisons.”); *Texas*, 601 F.3d at 371 (discussing *Castañeda*’s third prong and noting that without an analysis of “longitudinal data . . . the comparisons made, and conclusions reached in making them, are unreliable”).

68 See *Horne*, 557 U.S. at 467 (“Among other things, the Court of Appeals referred to ‘the persistent achievement gaps documented in [Nogales] AIMS test data’ between EL students and native speakers, but any such comparison must take into account other variables that may explain the gap. In any event, the EEOA requires ‘appropriate action’ to remove language barriers, § 1703(f), not the equalization of results between native and nonnative speakers on tests administered in English – a worthy goal, to be sure, but one that may be exceedingly difficult to achieve, especially for older EL students.” (citation omitted)).

69 See *id.* at 464 n.16 (“[An] absence of longitudinal data in the record precludes useful comparisons.”).

Examples-Evaluating Effectiveness of ESOL Programs

•A district conducts a longitudinal cohort analysis that examines the percentage of beginner-level EL students who complete and successfully exit ESOL program services within four years, five years, and at other intervals. The district also compares the performance of the exited EL students and their never-EL peers on the standardized reading, math, science, and social studies tests in grades 3, 5, 8, and 10, as well as their retention-in-grade, drop out, and graduation rates. The district considers whether it is possible to attribute earlier exits and disparate performance data of exited EL students in the content areas to a specific program design, teacher training, or differences in programming across grade levels. The district disaggregates the average rate of EL program exit and the average standardized test performance by program, school, content areas, years in ESOL programs, and grade to determine which EL programs and services require modification.

•Some school districts have updated or modified their existing data systems for the purpose of collecting and analyzing complete and accurate information about EL and former EL student data relative to never-EL student data. Such data include standardized tests, district assessments, participation in special education and gifted programs, enrollment in AP classes, and graduation, drop-out, and retention-in-grade rates. For example, when a district's four-year longitudinal cohort analysis data revealed higher drop-out rates for EL students and exited EL students than never-EL students, the district revised its grade 6-12 ESOL curriculum with the help of its ESOL teachers and mandated more training for secondary sheltered content instructors.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

Guiding Questions

The following information is provided to assist districts in identifying methods and approaches for evaluating their programs. Districts are encouraged to review the literature on this topic and to develop approaches to evaluating their ESOL programs consistent with their respective program designs and individual needs and circumstances.

Because federal law does not prescribe a particular program model or evaluation approach, the approach to, and design of, an effective ESOL program evaluation will vary from district to district. The evaluation components set forth below are provided as examples for districts to consider in developing their own approach.

Program Implementation Information

Following are questions to consider in collecting and maintaining information needed to determine whether all aspects of the district's ESOL program are being evaluated:

- Does the evaluation cover all procedural and service provision requirements set forth in the district's ESOL plan, including
 - the identification process?
 - the student assessment process?
 - the provision of program services to all students with identified needs?
 - the provision of staff and resources consistent with program design?
 - following established criteria for transitioning students from ESOL program services?
 - the implementation of monitoring practices for students who have transitioned from ESOL program services?
- Is the information collected on each ESOL program element assessed with reference to the specific requirements of the district's ESOL plan? *(For example, when looking at the process for identifying potential EL students, does the evaluation determine whether the district has followed the established plan for identifying potential EL students, referral for English language assessment, and criteria for transitioning and/or exiting from ESOL services?)*
- Does the evaluation cover all procedural and service provision requirements set forth in the district's ESOL plan, including:
 - the identification process?
 - the student assessment process?
 - the provision of program services to all students with identified needs?
 - the provision of staff and resources consistent with program design?
 - following established criteria for transitioning students from ESOL program services?
 - the implementation of monitoring practices for students who have transitioned from ESOL program services?
- Is the information collected on each ESOL program element assessed with reference to the specific requirements of the district's ESOL plan? *(For example, when looking at the process for identifying potential EL students, does the evaluation determine whether the district has followed the established plan for identifying potential EL students, referral for English language assessment, and criteria for transitioning and/or exiting from ESOL services?)*
- Does the evaluation determine whether staff have followed applicable procedural and service requirements, including frequency, timeliness, and documentation?
- Do information sources and methods for gathering information to evaluate whether the program is being implemented as planned include, among others, the following examples:
 - file and records reviews?
 - staff interviews and surveys?
 - input from parents, student surveys, or focus group meetings?
 - grievances or complaints made to the district regarding program implementation or service delivery?

Student Performance Information

English Language Development

Following are questions that may be considered in evaluating the success of ESOL programs in meeting English language development goals:

- Rate of English Language Development
 - Are students acquiring English language skills at a pace that is consistent with ESOL program goals or expectations?

- Is the rate of language development progress compatible with the district's objectives for academic progress?
- English Language Proficiency
 - How are EL students performing in English language skills compared to the district's goals and standards?
 - Are EL students progressing in English language skills so they will be able to successfully handle regular coursework?
 - Do former EL students who no longer receive English language development services continue to demonstrate English language skills that enable them to successfully handle regular coursework?

Note: Information collection sources may include: performance on standardized achievement tests; standardized language proficiency tests; English oral, reading, and written skills as demonstrated by grades in language development courses; year-to-year test scores; teacher observation; parental observations and feedback; records on length of time from entry to transition and/or exit from program; grades in core classes; and graduation rates. Longitudinal data can be useful in evaluating overall language

Academic Performance

This area of the information collection addresses whether EL students are demonstrating progress in academic content. Are they learning course content in addition to English language development? Once they have completed ESOL program services, are they able to participate meaningfully in the mainstream curriculum? The following are considerations that may be appropriate to consider in evaluating program success in the area of academic performance:

- Rate of Academic Progress
 - Are EL students who are currently receiving English language development services progressing academically relative to program goals or expectations?
 - Depending upon the district's goals and educational model (concurrent or sequential), are EL students making sufficient academic progress so that they are either at academic grade level or will be able to "catch up" academically after English language development services have been discontinued?
- Comparison to Other Students
 - How are EL and former EL students doing, over time, as compared to the academic performance of all other students generally?
 - Are multiple measures used to assess the overall performance of EL students in meeting the goals the district has established for its ESOL program?

Note: Information collection sources may include a review of grades, standardized achievement tests, state competency standards, meeting promotion and graduation requirements, parent/teacher feedback. Most of the data needed should already be available in the district's records for students generally. Are data collection and maintenance systems maintained to effectively support this portion of the evaluation? Are data systems maintained that permit EL and former EL students to be compared to the population generally?

Analyzing the Information and Identifying Areas for Improvement

This section of the outline provides information on analyzing the data collected and describes steps to consider in developing an action plan to address the findings from the evaluation. For illustration purposes, the information is organized into three areas discussed below:

Review of Results: Findings and Conclusions

Following are questions that may be considered with respect to compiling, organizing, and summarizing the information collected for each area where the district is not meeting the educational goals it established:

- Is each identified area of concern evaluated to determine why it arose and how it is interfering with program objectives?
- Were adequate resources allocated to the area of concern?
- Were responsible staff adequately trained with respect to their responsibilities?
- Were goals and expectations realistic? Were goals and other program expectations adequately communicated?
- Does the concern suggest the need to take another look at some aspect of the program design?
- Are there any contributing factors, explanations, or reasons for each area of concern?

EXAMPLES OF COMPLIANCE ISSUES—

EVALUATING EFFECTIVENESS OF ESOL PROGRAMS

“In their investigations, the OCR and the DOJ consider, among other things, whether:

- *SEAs and school districts monitor and compare the academic performance of EL students in the program and those who exited the program over time, relative to that of their never-EL peers; and*
- *SEAs and school districts evaluate ESOL programs over time using accurate data and timely modify their programs when they are not meeting the standards discussed herein.”*

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

ENSURING MEANINGFUL COMMUNICATION WITH LIMITED ENGLISH PROFICIENT PARENTS

Limited English Proficient (LEP) parents are parents or guardians whose primary language is other than English and who have limited English proficiency in one of the four domains of language proficiency (speaking, listening, reading, or writing). School districts and ADE have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents. At the school and district levels, this essential information includes but is not limited to information regarding⁷⁰:

- language assistance programs,
- special education and related services,
- IEP meetings,
- grievance procedures,
- notices of nondiscrimination,
- student discipline policies and procedures,
- registration and enrollment,
- report cards,
- requests for parent permission for student participation in district or school activities,
- parent-teacher conferences,
- parent handbooks,
- gifted and talented programs,
- magnet and charter schools, and
- any other school and program choice options.

School districts must develop and implement a process for determining whether parents are LEP and what their language needs are. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. For example, a school district may use a student registration form, such as a home language survey, to inquire whether a parent or guardian requires oral and/or written communication in a language other than English. The school's initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that the inquiry is designed to reach parents in a language they are likely to understand. For LEP parents who speak languages that are less common at a particular school, the school may use a cover page explaining in those languages how a parent may receive oral interpretation of the form and should offer interpreters to ensure parents accurately report their language communication needs on the form. Schools may also use other processes reasonably calculated to identify LEP parents, and should identify the language needs of LEP parents whenever those needs become apparent. It is important for schools to take parents at their word about their communication needs if they request language assistance and to keep in mind that parents can be LEP even if their child is proficient in English.

SEAs and school districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources.⁷¹ It is not sufficient for the staff merely to be bilingual. For example, some bilingual staff and community volunteers may be able to communicate directly with LEP parents in a different language, but not be competent to interpret in and out of English (e.g., consecutive or simultaneous interpreting), or to translate documents. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, school districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

Districts should enter the preferred language of communication as the “guardian language” in eSchool. This field is also what school districts should use when providing data to outside programs designed to either call parents or generate letters based on the preferred language of the parent. (NOTE: Using the “student language” field is not appropriate for this purpose.)

70 In addition to the general requirement under the civil rights laws described in the text, LEP parents are also entitled to translation and interpretation of particular information under Titles I and III and the IDEA, as noted *supra* in Parts II. A, F.1, and G.

71 Some school districts have used web-based automated translation to translate documents. Utilization of such services is appropriate only if the translated document accurately conveys the meaning of the source document, including accurately translating technical vocabulary. The Departments caution against the use of web-based automated translations; translations that are inaccurate are inconsistent with the school district's obligation to communicate effectively with LEP parents. Thus, to ensure that essential information has been accurately translated and conveys the meaning of the source document, the school district would need to have a machine translation reviewed, and edited as needed, by an individual qualified to do so. Additionally, the confidentiality of documents may be lost when documents are uploaded without sufficient controls to a web-based translation service and stored in their databases. School districts using any web-based automated translation services for documents containing personally identifiable information from a student's education record must ensure that disclosure to the web-based service complies with the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(b), and its implementing regulations at 34 C.F.R. Part 99. For more information on this issue, please review the "Protecting Student Privacy While Using Online Educational Services" guidance found at <http://ptac.ed.gov/sites/default/files/Student%20Privacy%20and%20Online%20Educational%20Services%20%28February%202014%29.pdf>

Example-Ensuring Meaningful Communication with LEP Parents

•A district captures parents' language needs on a home language survey and stores these data electronically in its student information system. The district analyzes the parent language data to identify the major languages, translates essential district-level documents into the major languages, assists schools with translating essential school-level documents into the major languages and other languages, and stores these translated documents in a database that all schools can access electronically. For less common languages, the district ensures that LEP parents are timely notified of the availability of free, qualified interpreters who can explain district- and school-related information that is communicated in writing to parents. The district also canvasses the language capabilities of its staff, creates a list of staff who are trained and qualified to provide interpreter and/or translation assistance, contracts out for qualified interpreter and translation assistance in languages that are not represented on this list, and trains all schools on how to access these services.

--Adapted from "Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)"

Guiding Questions

- How does your school district develop and implement a process for determining whether parents are LEP, and evaluate the language needs of these LEP parents?
- How does your school district provide language assistance to parents or guardians who indicate they require such assistance?
- How does your school district ensure that LEP parents have adequate notice of and meaningful access to information about all school district programs, services, and activities?
- How does your school district provide free qualified language assistance services to LEP parents?

EXAMPLES OF COMPLIANCE ISSUES—

ENSURING MEANINGFUL COMMUNICATION WITH LEP PARENTS

“Some examples of when OCR and the DOJ have found compliance issues regarding communication with LEP parents include when school districts: (1) rely on students, siblings, friends, or untrained school staff to translate or interpret for parents; (2) fail to provide translation or an interpreter at IEP meetings, parent-teacher conferences, enrollment or career fairs, or disciplinary proceedings; (3) fail to provide information notifying LEP parents about a school’s programs, services, and activities in a language the parents can understand; or (4) fail to identify LEP parents.”

--Adapted from “Dear Colleague Letter, English Learner Students and Limited English Proficient Students (1/7/2015)”

APPENDIX

This section of the ESOL Program Guidance Handbook contains sample forms that districts may adapt for their own purposes. The Appendix may also contain resources that districts may find useful.

Please check the English Learners' webpage on the Arkansas Department of Education website regularly for updates to these forms or any portion of this handbook.

Sample Home Language Survey

(SAMPLE) HOME LANGUAGE SURVEY CUESTIONARIO SOBRE EL IDIOMA HABLADO EN EL HOGAR

Date: _____
Fecha

Student's Name: _____
Nombre del Estudiante

Gender: M F
Género

Student's ID # _____
Número de Identificación del Estudiante

Date of Birth: _____
Fecha de Nacimiento

Month Day Year
Mes Día Año

Place of Birth: _____
Lugar de Nacimiento

School: _____
Escuela

Grade: _____
Grado

Age: _____
Edad

1. What was/were the first language(s) the student learned to speak?
¿Cuál fue(ron) el/los primer idioma(s) que aprendió a hablar su hijo?

2. What language(s) are spoken in the home?
¿Qué idioma(s) se hablan en el hogar?

3. What language(s) are spoken or understood by the child?
¿En qué idioma(s) habla o entiende el niño?

4. What language(s) are spoken or understood by adults in the home?
¿En qué idioma(s) se hablan o entienden los adultos en el hogar?

5. What written language would you prefer to receive school communications (such as attendance letters, permission forms, etc.)?
¿En qué idioma usted prefiere recibir la comunicación escrita por parte de la escuela (tal como cartas de asistencia, formularios de permiso, entre otros)?

English
Inglés

Spanish
Español

Other _____
Otro

Signature of Parent/Guardian: _____
Firma del Padre/Encargado

Office Use Only

*Please contact ESOL Coordinator if any language other than English is indicated on any of these questions.

*File the original in the student's cumulative folder for all students.

*Questions 1 thru 4 - If any language other than English is indicated, enter that language in the eSchool language field on the main student screen. Otherwise, enter English in the eSchool language field.

*Question 5- Enter the chosen language in eSchool guardian contact information under the general information tab.

Sample Exit Form

LAU EXIT RECORD FORM ESOL Program

✓ Check one only. This form is being filled out:

ELL/LEP Entry Date: _____

1. _____ to initiate exiting process.
2. _____ to document a previous program exit which was not documented.
3. _____ to review former EL student's progress only.

I. STUDENT INFORMATION

Student's Name _____ APSCN ID# _____

School _____ Grade _____ Age _____ DOB _____ Gender **M** **F**

Parent/Guardian Name(s) _____

Address _____ Zip _____

II. RATIONALE FOR PLACEMENT

✓ Check as appropriate: Student must demonstrate English proficiency through ALL THREE areas of English Language Proficiency Assessment, Academic Achievement Testing, and Classroom Performance to be classified as FEP

1. _____ English Language Proficiency Assessment (student must meet criteria on all 5 areas listed):

- a. _____ Proficient in *listening* on ELPA (ELDA = 5)
- b. _____ Proficient in *speaking* on ELPA (ELDA = 5)
- c. _____ Proficient in *reading* on ELPA (ELDA = 5)
- d. _____ Proficient in *writing* on ELPA (ELDA = 5)
- e. _____ Comprehension on ELPA (ELDA = 5)

Test Form: _____ Test Date: _____

Speaking (Raw Score/Level): _____/_____ Listening (Raw Score/Level): _____/_____

Reading (Raw Score/Level): _____/_____ Writing (Raw Score/Level): _____/_____

Comprehension (Raw Score/Level): _____/_____

2. _____ Classroom Performance:

_____ Grades of C or above (or "3" or above on standards based report card) in English Language Arts, Mathematics, Science, Social Studies without accommodations (attach copy of report card).

3. _____ Academic Achievement Testing (if LEP accommodations were used, proceed with caution; at least one score must be available; use most recent score):

a. _____ Proficient or Advanced on standard (not portfolio) state literacy assessment

Test Name: _____ Test Date: _____ Performance level: _____

b. _____ Proficient or Advanced on standard (not portfolio) state mathematics assessment

Test Name: _____ Test Date: _____ Performance level: _____

c. _____ Norm Referenced Achievement Test Scores at the 40%ile or above in total reading and total language

Test Name: _____ Test Date: _____ Reading %ile: _____ Language %ile: _____

III. **LPAC RECOMMENDATION** FEP status can be recommended only when LPAC can ensure that student can perform regular class work in English without compensatory assistance and all three areas documented above meet exit criteria.

CIRCLE RECOMMENDED STATUS EL _____ (*) FEP1/M1 FEP2/M2 FEP _____ ELL/LEP Exit Date _____

(*) If EL is selected, EL testing accommodations must be documented using LPAC Accommodations Form.

LPAC MEMBERS' SIGNATURES (All required)	POSITION
1. _____	Administrator
2. _____	ESOL Teacher/Specialist
3. _____	Mainstream Teacher
4. _____	Counselor (Gr. 6-12)

ESOL Coordinator's Signature

Date
(used as current placement date)

Parent notification of exit or reclassification given by ESOL Staff

Date

eSchool Updated by: _____ Date: _____

Yellow Copy - Student's cumulative file

Lau Exit form (rev.8.27.15)

White Original - ESOL Office

Sample Waiver of Services Form

ALTERNATIVE LANGUAGE PROGRAM PLACEMENT
WAIVER FORM
ANY SCHOOL DISTRICT

We as parent/guardians of _____ do NOT
desire to have our child _____
(name of student) (grade level)
_____ directly served by the Any School District's ESL Program.
(school)

The Language Placement and Assessment Committee (LPAC) decision has been thoroughly explained to us in a language in which we can understand. We understand that we may reverse our decision by asking for a Language Placement and Assessment Committee (LPAC) meeting.

We also understand that the teachers of our child's school will closely monitor his/her progress and keep us informed of such. We understand that our child will be assessed annually with the state's English language proficiency test.

The lack of progress may warrant another conference with us to discuss alternatives to the regular classroom program.

We understand that we will need to revisit our decision to waive ESL services annually.

Signature of Parent/Guardian

Date

Signature of ESOL Coordinator

Date

Comments:

Attach a copy of the Initial Placement Form or Annual Review Form with the LPAC decision to this waiver form.

Original – ESL Center File

Yellow – School ESL File

Pink – Parent

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Resources for Potential Use By Districts

1. [English Language Development Tool](#)

A teaching tool developed by Springdale Public Schools. From the “Foreword”:

“Action to overcome language barriers’...as teachers in Springdale, we strive to provide to every student in our district equal access to all educational opportunities. The task set before you is not an easy one: providing a high quality educational experience to all students in your classroom while not lowering standards for anyone. This English Language Development Tool (ELDT) was developed to help you in your efforts to make your grade-level curriculum accessible to all your students.

This tool was designed to be used in conjunction with your content area frameworks/TIA and to enhance the implementation of the Gradual Release of Responsibility Model. After establishing the goal of learning, how the goal will be assessed, and the student learning experiences you will provide for attainment of the goal, refer to this tool. It will guide you in making all the phases of your lesson accessible to all English Language Learners in your classroom.

The ELDT has three distinct parts to help you in planning. First, each student’s stage of English development is identified in all four domains of language: listening, speaking, reading and writing. Secondly, the actions you can take as a teacher “to appropriately overcome language barriers” to reach the goal of instruction are included. And finally, you will find instructional routines that will serve as appropriate learning experiences allowing all members of your class to equally participate in the instruction you provide to your students.

A description of each instructional routine can be found in the glossary of the tool. The accompanying Strategy Cards provide directions for implementing many of the instructional routines in your classroom.

Also included with this tool is a flipchart that can be used as a quick reference guide for understanding the stages of English development and what behaviors can be used by the teacher to develop students’ English proficiency.”

2. [English Language Proficiency Development Framework](#)

Guidance provided by the Council of Chief State School Officers to states regarding how English Language Proficiency Standards can address aligning to state content area standards. The Framework outlines the underlying English language practices found in literacy, mathematics and science standards, communicates to EL stakeholders the language that all ELs must acquire in order to successfully engage in state content standards, and specifies a procedure by which to evaluate the degree of alignment between the Framework and ELP standards adopted by states.

3. [Gradual Release of Responsibility Model](#) (description taken from page 1 at link embedded)

“One way teachers can provide more targeted, individualized instruction is to use the gradual release of responsibility model (Pearson & Gallagher, 1983). This instructional model requires that the teacher, by design, transition from assuming “all the responsibility for performing a task . . . to a situation in which the students assume all of the responsibility” (Duke & Pearson, 2002, p. 211). This gradual release may occur over a day, a week, or a semester. Stated another way, the gradual release of responsibility “emphasizes instruction that mentors students into becoming capable thinkers and learners when handling the tasks with which they have not yet developed expertise” (Buehl, 2005). This gradual release of responsibility model of instruction has been documented as an effective approach for improving writing achievement (Fisher & Frey, 2003), reading comprehension (Lloyd, 2004), and literacy outcomes for English language learners (Kong & Pearson, 2003).”

4. Student Oral Language Observation Matrix

The “Student Oral Language Observation Matrix” (SOLOM) is a rating scale that teachers can use to assess their students' command of oral language on the basis of what they observe on a continual basis in a variety of situations - class discussions, playground interactions, and encounters between classes. The teacher matches a student's language performance in a five mains - listening comprehension, vocabulary, fluency, grammar, and pronunciation - to descriptions on a five-point scale for each.