

Participation of English Learners (ELs) with Disabilities In English Language Proficiency (ELP) Assessments:

The Role of Individualized Education Program (IEP) Teams (Updated 2015)

Background

The United States Department of Education (DOE) has issued guidance on the role of IEP Teams in determining the inclusion of English Learners (ELs) with disabilities in English language proficiency (ELP) assessments. In order for the IEP Team to determine student participation there are several components that must be in place:

- (a) the IEP Team must have the right composition;
- (b) parents with limited English proficiency must be able to meaningfully participate as a member of the IEP Team;
- (c) the IEP Team must have information on appropriate accommodations to meet the unique needs of ELs with disabilities.

The Rhode Island Department of Elementary and Secondary Education (RIDE) has organized the US DOE guidance in the following pages to assist IEP Teams in making decisions so that ELs with disabilities are appropriately assessed and included in Title III accountability measures. This document was developed using:

Office of Special Education and Rehabilitative Services letter to State Chiefs:

<http://www2.ed.gov/policy/special-ed/guid/idea/memosdcltrs/cover-letter-els-w-disabilities-7-18-2014.pdf>

FAQ 2014 <http://www2.ed.gov/policy/special-ed/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>

FAQ 2015 <http://www2.ed.gov/policy/special-ed/guid/idea/memosdcltrs/addendum-q-and-a-on-elp-swd.pdf>

Initial Identification

To ensure that the special education eligibility determination is based on a student's disability and need for special education and related services, and not solely on a student's limited English proficiency, providing accommodations on the regular EL screening tool (such as the W-APT or the WIDA MODEL) or administering an alternate form of the EL screening tool could be necessary to give a student with a disability, or a student suspected of having a disability, a meaningful opportunity to accurately demonstrate his or her English language proficiency. An EL screening tool may be necessary after a child is found eligible for services under the IDEA but has not yet been determined to be an EL. It is possible to use IDEA funds in connection with the EL screening process, as long as using the funds is consistent with the requirements in Part B of the IDEA for the provision of special education and related services (34 CFR §§300.705 (Grants to States) and 300.815-300.816 (Preschool Grants)).

Neither the Elementary & Secondary Education Act (ESEA) nor the Individuals with Disabilities Education Improvement Act (IDEA) requires that ELs wait for a certain period of time before being evaluated for special education. Child find obligations require districts to identify, locate, and evaluate all children residing in the State who are suspected of having disabilities and who are in need of special education and related services and must be carried out regardless of a child's ELP level. Once parental consent is obtained, the evaluation must

occur in a *timely* manner. Delaying a referral for an evaluation can result in the under-identification of ELs as “children with disabilities” under the IDEA.

If a school district incorrectly determines that students’ language difficulties are due to a disability rather than lack of English language proficiency, it is possible for an LEA to over-identify ELs as having disabilities. A child’s limited English proficiency may not be the **determinant factor** in the child’s disability determination (34 CFR §300.306(b)(1)(iii) and (2)).

For more information:

DOE’s Office for English Language Acquisition (OELA) Toolkit Chapter 6 Tool #2: Considering the Influence of Language Differences and Disability on Learning Behaviors, Comparison of Language Differences Versus Disabilities: www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf

The report titled, “Identifying and Supporting English Learner Students with Learning Disabilities: Key Issues in the Literature and State Practice,” prepared for the Institute of Education Sciences at the U.S. Department of Education in July 2015, available at: <http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2015086>

ACCESS for ELLs Guidelines for Accommodating English Language Learners with Disabilities <https://www.wida.us/assessment/access/accommodations.aspx>

ELs with disabilities whose parents/guardians refuse EL services

If the parents/guardians of an EL with a disability refuse EL services, the same analysis of need for accommodations on the ELP assessment or alternate ELP assessment must take place. Parents can refuse to have their children enrolled in an EL program, and this refusal is also known as waiving services. The children retain their status as EL students, and LEAs must periodically monitor the progress of students who have opted out of EL programs or certain EL services and must inform their parents if the EL student does not demonstrate appropriate growth in English proficiency or academic subjects due to language barriers. However, LEAs may not recommend that parents decline all or some services within an EL program for any reason, and a parent’s decision to opt out must be knowing and voluntary. A district cannot require a parent/guardian to waive EL program services in order to receive services on an IEP.

For more information:

Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, pp 29-32, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

RIDE Guidance on LEA Obligations for Waivered ELLs can be viewed here: www.ride.ri.gov/Portals/0/Uploads/Documents/Instruction-and-Assessment-World-Class-Standards/Other-Subjects/Guidance-on-LEA-Obligations-for-Waivered-ELLs.doc

OELA English Learner Toolkit Chapter 7: Serving English Learners who Opt-Out of EL Programs www.ride.ri.gov/StudentsFamilies/EnglishLanguageLearners/TranslationandInterpretationServices.aspx

Role of IEP Team

The IEP Team makes the determination of whether a student must take state assessments, with or without appropriate accommodations, including an alternate English language proficiency assessment or the ELP assessment. This must be done within the IEP process as described in RI Regulations §300.320 through §300.324. Accommodations for either the ACCESS or the Alternate ACCESS must be recorded on the IEP.

Members of the IEP Team, RI Regulations Section 300.321(a)

The IDEA regulation in 34 CFR §300.321(a) specifies that the participants on each child's IEP Team include:

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who – (i.) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
(ii.) Is knowledgeable about the general education curriculum; and
(iii.) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

For ELs with disabilities, the IEP Team must include persons with expertise in second language acquisition and other professionals, such as speech and language pathologists, who understand how to differentiate between limited English proficiency and a disability (RI Regulations §300.321 (a) 4-6). The participation of these individuals on the IEP Team is essential in order to develop appropriate academic and functional goals for the child and provide specially designed instruction and the necessary related services.

It is important that IEP Teams for ELs with disabilities include a public agency representative, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of ELs with disabilities. This representative should be knowledgeable about the availability of agency resources needed to enable ELs with disabilities to meaningfully access the general education curriculum. This will ensure that the services included in the IEP are appropriate for the student who is an EL with a disability and can actually be provided.

The IEP Team should be able to make thoughtful decisions about the content of an EL's IEP, including the manner in which the student participates in the annual Rhode Island English Language Proficiency (RI ELP) assessment. In addition, districts are encouraged to provide other IEP Team members with appropriate training in language acquisition and the unique needs of ELs with disabilities.

The IEP Team must consider a number of special factors in developing, reviewing and revising a child's IEP. Under §300.324(a)(2)(ii), the IEP Team must "in the case of a child with limited English proficiency, consider the

language needs of the child as those needs relate to the child’s IEP.” Therefore, to implement this requirement, the IEP Team should include participants who have the requisite expertise about the student’s language needs.

For more information in developing IEPs for ELs with disabilities, refer to DOE’s Office for English Language Acquisition (OELA) Toolkit Chapter 6 Tool #3 *Developing an IEP for an English Learner with a Disability*: <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf>

Ensuring meaningful participation of parents with Limited English Proficiency (LEP)

In order for a parent whose native language is other than English to participate in IEP Team meetings, the RI regulations require each public agency to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter (§300.322(e)). In addition, Title VI of the Civil Rights Act of 1964 requires that the LEA must effectively communicate with parents in a manner and form they can understand and provide meaningful access to the same information that is provided to non-LEP parents, such as providing free interpretation and/or translation services.

For more information:

<http://www.lep.gov/> is a website that supports fair, reasoned and consistent implementation of Executive Order 13166, Title VI of the Civil Rights Act of 1964, and the Title VI regulations regarding language access.

RIDE’s list of resources for finding translators and interpreters can be found at <http://www.ride.ri.gov/StudentsFamilies/EnglishLanguageLearners/TranslationandInterpretationServices.aspx>

OELA English Learner Toolkit Chapter 10: Ensuring Meaningful Communication with Limited English Proficient Parents: <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap10.pdf>

Determining accommodations for an EL with disabilities taking the annual RI ELP assessment

An IEP Team must make the determination whether an EL with disabilities will need accommodations on the RI ELP assessment on a case-by-case basis. An IEP Team could determine that accommodations need to be used for the entire ELP assessment, or only for part of the assessment. The IEP Team will need to ensure that the student is familiar with the accommodations to be used for the ELP assessment, that the student is using similar accommodations in classroom instruction, and that the student could benefit from similar accommodations on the ELP assessment.

For more information:

The WIDA materials outline ACCESS accommodations for ELs with disabilities:

ACCESS for ELLs 2.0 Accessibility and Accommodations **Guidelines**
https://www.wida.us/assessment/WIDA_AccessAccGuidelines.pdf

ACCESS for ELLs 2.0 Accessibility and Accommodations **Descriptions**
https://www.wida.us/assessment/WIDA_AccessAccDescriptions.pdf

ACCESS for ELLs 2.0 Accommodations, Accessibility, and Test Administration **FAQs**

https://www.wida.us/assessment/FAQs_ACCESS2%20Accommodations.pdf

Tool #5 of Chapter 6 in the OELA Toolkit, “Dos” and “Don’ts” When Selecting Accommodations:

<http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf>

Determining whether an EL with a disability should take an alternate ELP assessment

In order for an IEP Team to determine that a student cannot participate even with individual appropriate accommodations in the regular RI ELP assessment, the IEP Team would use the Alternate ACCESS for ELLs Participation Guidelines to identify how an EL with a disability can be appropriately and validly assessed through an alternate assessment. In this situation, the Team must include in the child’s IEP a statement of (1) Why the child cannot participate in the regular ELP assessment; and (2) Why the particular alternate assessment selected is appropriate for the child (§300.320(a)(6)(ii)).

Title III of the ESEA requires States to develop and implement one set of ELP standards aligned to the State’s academic content and student academic achievement standards (section 3113(b)(2) of the ESEA). States may not develop alternate ELP standards for ELs with disabilities. In RI, all ELs use WIDA ELP Standards, available at:

www.wida.us

Information on the Alternate ACCESS for ELLs is available online:

www.wida.us/assessment/alternateaccess.aspx

- Alternate ACCESS for ELLs Participation Guidelines www.wida.us/get.aspx?id=567
- Alternate ACCESS for ELLs Test Overview www.wida.us/get.aspx?id=568
- Alternate ACCESS for ELLs FAQ www.wida.us/get.aspx?id=428
- Alternate ACCESS Interpretive Guide www.wida.us/get.aspx?id=571
- Guidelines for Accommodations on the Alternate ACCESS for ELLs www.wida.us/get.aspx?id=574

Exiting an EL with a disability from EL status

According to RI ELL Exit Criteria, the IEP team must give input to the EL exit decision but is not solely responsible for removing the EL designation. District and/or school personnel do not have the authority under Federal law to remove a student’s EL designation before the student has been deemed proficient in English solely because the student has an IEP. The IEP Team must determine whether an EL with a disability needs to receive appropriate accommodations on the state ELP assessment, or needs to take an alternate assessment to ensure that the language proficiency of the student is validly and reliably assessed. RI ELL Exit Criteria can be viewed at

<http://www.ride.ri.gov/Portals/0/Uploads/Documents/Instruction-and-Assessment-World-Class-Standards/Other-Subjects/Rhode-Island-Required-Exit-Criteria-5-3-11.pdf>