

VII. Meeting the Needs of ELs Who Opt Out of EL Programs or Particular EL Services

School districts may not recommend that parents decline all or some services within an EL program for any reason, including attending the neighborhood school, facilitating scheduling of special education services or other scheduling reasons.

A parent's decision to opt out of an EL program or particular EL services must be knowing and voluntary.¹

School districts must provide guidance in a language parents can understand to ensure that parents understand their child's rights, the range of EL services that their child could receive, and the benefits of such services before voluntarily waiving them.²

If parents opt their children out of an EL program or specific EL services, the children retain their status as EL students, and the school district remains obligated to take the "affirmative steps" required by Title VI and the "appropriate action" required by the EEOA to provide these EL students access to its educational programs.

The Departments expect school districts to meet the English-language and other academic needs of their opt-out EL students under the civil rights laws.³ 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 EL programs or certain EL services.⁴

If an EL student who opted out of the school district's EL programs or services does not demonstrate appropriate growth in English proficiency, or struggles in one or more subjects due to language barriers,

¹ *Dear Colleagues Letter: English Learner Students and Limited English Proficient Parents*. (Jan. 7, 2015). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>. 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").

² *Dear Colleagues Letter: English Learner Students and Limited English Proficient Parents*. (Jan. 7, 2015). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>. 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."

³ School districts also retain their EL obligations to a student even if parents opt their child out of IDEA or Section 504 services.

⁴ 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).

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 EL program or at least certain EL services at any time.⁵

ELP accountability for ELs has been moved from Title III to Title I of the ESEA, as amended by ESSA. Title I requires LEAs to notify parents of their child's EL status and their right to opt their child out of EL programs [Section 1112 (e)(3) and (4)], and also requires continued annual ELP assessment of all ELs [Section 1111(b)(2)]. For more information, see Section E-6 of the NRG (U.S. Department of Education, Office of Elementary and Secondary Education, 2016).⁶

⁵ *Dear Colleagues Letter: English Learner Students and Limited English Proficient Parents*. (Jan. 7, 2015). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

⁶ U.S. Department of Education, Office of English Language Acquisition. (2017). *English Learner Tool Kit* (2nd Rev. ed.). Washington, DC: Author.