

# English Learners with Disabilities (ELSWD): The Role of Individualized Education Program (IEP) Teams and Participation in English Language Proficiency (ELP) Assessments (Updated 2019)

## A. 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 and linguistically appropriate goals to meet the unique needs of ELs with disabilities.

The Rhode Island Department of Elementary and Secondary Education (RIDE) has compiled the US DOE guidance in the following pages to assist IEP Teams in making decisions that comply with ESSA Title I and 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/speced/guid/idea/memosdcltrs/cover-letter-els-w-disabilities-7-18-2014.pdf>

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

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

Additional resources from the Federal DOE on ELSWD <https://osepideasthatwork.org/federal-resources-stakeholders/english-language-learners>

## B. Initial Identification

Providing accommodations on the **typical** EL screening tool (such as the WIDA SCREENER) could be necessary to give an ELSWD, or a suspected ELSWD, a meaningful opportunity to demonstrate their English language proficiency. The accommodation will ensure that the identification of a student as an EL is not based on a student's disability. An EL screening tool may be necessary after a child is found eligible for services under the Individuals with Disabilities Education Act (IDEA) but has not yet been determined to be an EL. Screening accommodations may include paper versions administered in conjunction with a special education provider familiar with the child's educational needs.

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 (. §34 CFR §300.111; RI Reg 200-RICR-20-30-6.5.1.J ) require districts to identify,

locate, and evaluate all children residing in the LEA 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.

To ensure that 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 emerging English proficiency, a wide variety of culturally and linguistically appropriate data must be used in the full and individual evaluation for eligibility. If a school district incorrectly determines that students' language difficulties are due to a disability rather than a development of English language proficiency, it is possible for an LEA to over-identify ELs as having disabilities. According to federal law, English proficiency may not be the **determinant factor** in a 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](http://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>

WIDA Identifying ELLs with Specific Learning Disabilities Focus Bulletin  
<https://wida.wisc.edu/sites/default/files/resource/FocusOn-Identifying-ELLs-with-Specific-Learning-Disabilities.pdf>

WIDA Accessibility and Accommodations page <https://wida.wisc.edu/assess/accessibility>

WIDA Accessibility and Accommodations Supplement including SCREENER accommodations checklists for IEP teams <https://wida.wisc.edu/sites/default/files/resource/ACCESS-Accessibility-Accommodations-Supplement.pdf>

RIDE EL Toolkit Chapter 6, Evaluation/Providing Services to Students with Disabilities  
<http://www.ride.ri.gov/StudentsFamilies/EnglishLearners.aspx#40321608-el-toolkit>

### C. ELs with disabilities whose parents/guardians decline EL services

A district cannot require a parent/guardian to waive EL program services in order to receive services on an IEP. If the parents/guardians of an EL with a disability refuse EL services, the student must receive the same level of analysis of need for accommodations on the ELP assessment or alternate ELP assessment as an EL with a disability that is participating in district EL programs. Parents can refuse to have their children enrolled in an EL program. 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.

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:  
<http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/EL-Toolkit/VIII-Guidance-on-LEA-Obligations-for-Waivered-ELLs.pdf>

OELA Toolkit Chapter 7: Serving English Learners who Opt-Out of EL Programs  
[https://ncela.ed.gov/files/english\\_learner\\_toolkit/7-OELA\\_2017\\_optout\\_508C.pdf](https://ncela.ed.gov/files/english_learner_toolkit/7-OELA_2017_optout_508C.pdf)

RIDE EL Toolkit Chapter 7: Meeting the Needs of Opt-Out Students  
<http://www.ride.ri.gov/StudentsFamilies/EnglishLearners.aspx#40321608-el-toolkit>

#### D. 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 200-RICR-20-30- §6.7.4 through §6.7.5. Accommodations for either the state ELP assessment (ACCESS) or the alternate English language proficiency assessment (Alternate ACCESS) must be recorded on the IEP developed with an appropriately constituted IEP team.

Members of the IEP Team, RI Regulations Section 6.7.4 B and 34 CFR §300.321  
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 (34 C.F.R §300.321 (a) (4)-(6). The participation of these individuals on the IEP Team is essential in order to develop culturally and linguistically 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 beginning as early as Kindergarten. 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 34 CFR §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. In this way, districts can ensure that the student's language acquisition and needs are reflected in present levels of academic and functional performance, supplementary aids and services to students, as also in culturally and linguistically appropriate goals and objectives.

For more information,

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>

RI EL Toolkit, *Ensuring Appropriate Practices for IEP Teams*  
<http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/EL-Toolkit/VI-Ensuring-Appropriate-Practices-for-ELSWD.pdf>

WIDA Providing ELLs with Disabilities Access to Complex Language Focus Bulletin  
<https://wida.wisc.edu/sites/default/files/resource/FocusOn-Providing-ELLs-with-Disabilities-Access-to-Complex-Language.pdf>

Alternate model performance indicators for students taking Alternate ACCESS

<https://wida.wisc.edu/sites/default/files/resource/Alternate-Model-Performance-Indicators.pdf>

Using the WIDA Standards for Instruction

<https://wida.wisc.edu/teach/standards/eld>

### **E. 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 federal and 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 (34 CFR §300.322; 200-RICR-20-30-6.7.4.C). 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. See specific resources on interpretation and translation at

[https://www.lep.gov/interp\\_translation/trans\\_interpret.html](https://www.lep.gov/interp_translation/trans_interpret.html)

RIDE's list of resources for finding translators and interpreters can be found at

<http://www.ride.ri.gov/StudentsFamilies/EnglishLearners.aspx#40321621-translation-and-interpretation-services>

RIDE EL Toolkit Chapter 10 Communication with Parents

<http://www.ride.ri.gov/StudentsFamilies/EnglishLearners.aspx#40321608-el-toolkit>

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>

### **F. 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 beginning as early as the Kindergarten IEP. 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. A paper version of the assessment is one type of accommodation the IEP team can consider. Accommodations are also available on the Alternate ACCESS. IEP teams should consult the various checklists for accommodations on the various ELP assessments

provided by WIDA. Accommodations must be documented on the corresponding IEP page where other state and district assessment accommodations are documented.

For more information, the WIDA materials outline ACCESS accommodations for ELs with disabilities:

Accessibility and Accommodations **Supplement**

<https://wida.wisc.edu/sites/default/files/resource/ACCESS-Accessibility-Accommodations-Supplement.pdf>

Accessibility and Accommodations **Framework**

<https://wida.wisc.edu/sites/default/files/resource/WIDA-Accessibility-Accommodations-Framework.pdf>

Accommodations Checklists

- SCREENER (paper) <https://wida.wisc.edu/sites/default/files/resource/WIDA-Screener-Paper-Accommodations-Checklist.pdf>
- SCREENER (online) <https://wida.wisc.edu/sites/default/files/resource/WIDA-Screener-Online-Accommodations-Checklist.pdf>
- Alternate ACCESS <https://wida.wisc.edu/sites/default/files/resource/Alt-ACCESS-Accommodations-Checklist.pdf>
- Kindergarten ACCESS <https://wida.wisc.edu/sites/default/files/resource/Kinder-ACCESS-Accommodations-Checklist.pdf>
- ACCESS (paper) <https://wida.wisc.edu/sites/default/files/resource/ACCESS-Paper-Accommodations-Checklist.pdf>
- ACCESS (online) <https://wida.wisc.edu/sites/default/files/resource/ACCESS-Online-Accommodations-Checklist.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>

### G. 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 Criteria to identify how an EL with a disability can be appropriately and validly assessed through an alternate ELP 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: <https://wida.wisc.edu/teach/standards/eld>

For more information,

Alternate ACCESS for ELLs

<https://wida.wisc.edu/assess/alt-access>

Alternate ACCESS Participation Decision Tree

<https://wida.wisc.edu/sites/default/files/resource/Alt-Access-Participation-Criteria-Diagram.pdf>

Preparing for Alternate ACCESS

<https://wida.wisc.edu/assess/alt-access/preparing>

Alternate ACCESS sample items

<https://wida.wisc.edu/sites/default/files/Alternate-ACCESS-for-ELLs-Sample-Items.pdf>

Alternate ACCESS training resources in the online secure portal

<https://portal.wida.us/ACCESSTraining/AlternateModule/index.aspx>

Alternate ACCESS Interpretive Guide

<https://wida.wisc.edu/sites/default/files/resource/Alt-Interpretive-Guide.pdf>

Alternate ACCESS Accommodations

<https://wida.wisc.edu/sites/default/files/resource/Alt-ACCESS-Accommodations-Checklist.pdf>

## H. Exiting an EL with a disability from EL status

According to RI ELL Exit Criteria (see below), 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. ELSWD have the right to receive both special education and related services and language instruction educational programs regardless of the type or severity of disability. 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. ELSWD may be eligible to exit from EL status in three ways as described in the RI ELL Exit Criteria: .

For more information,

RI ELL Exit Criteria

<http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/State-of-RI-EL-Exit-Criteria-2019.pdf>

Q&A on the Updated Criteria

[http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/EL-Criteria-Q-A\\_2019final.pdf](http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/EL-Criteria-Q-A_2019final.pdf)

# Considerations and Recommendations for Screening English Learners with Significant Disabilities.

## Questions to pose and discuss with the IEP team prior to screening:

- How does the student interact with technology and computers? What adaptive devices might be needed to conduct the screening?
- When considering student access, would a paper version following the accommodations recommendations be a better choice?
- How does the child use language in the home and community? Conduct an interview with parents about language use in the home to document language use in natural and home environment to help verify accuracy of language demonstration on the screening.
- How has the child used language in early childhood or school age programs?
- What questions do special education providers have about the WIDA SCREENER?

## During Screening:

- Someone from the special education team should be present during the screening process to document observable behaviors for the student's file.
  - Document the type of screener (paper or online) that the student was administered as well as any accommodations per IEP/IEP team discussion.
  - Record any student response or non-response (point, eye gaze, eye contact, no response.)
- If the student is not interacting with the screener or screener administrator, screening may be ended sooner.
- If the student is able to participate in part on some domains, document what the student is able to do. Document if the disability precludes the assessment of the student in one or more domains of the English language proficiency such that there are no appropriate accommodations for the affected domain(s).
- If you have any data from special education evaluations that address the area of communication, include that in your record to help inform instructional strategies.

## After Screening:

- Review the file to ensure that it contains observational, interview, and screening proficiency level data to demonstrate that the student is an EL with a disability and provide rich information for planning instructional supports for language development.

## Resources:

- Slide Deck Resource: [ELSWD-DLL-Accommodations-Screening](#)
- Refer to the WIDA Accessibility and Accommodations for further details: <https://wida.wisc.edu/assess/accessibility>
- ALT Criteria & Resources: <https://wida.wisc.edu/assess/alt-access>
- [ALT State Assessment eligibility criteria for RI.](#)
- RIDE [Eligibility for the Alternate Assessment](#) This information is also contained in the [RISAP Accommodations and Accessibility Features manual](#)