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# Appendix 1.4A.1

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# ENGLISH LEARNERS

## PROGRAM GUIDE

**Oregon Department of Education**

**Revised September 2015**

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

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## INTRODUCTION

This guide is designed as a reference for district and school personnel working with English learners (ELs). The content of the guide represents a compilation of information, examples, and resources for your use. If you find an error, or feel this guide needs to be updated to reflect new or additional information, please email Leslie Casebeer at [leslie.casebeer@state.or.us](mailto:leslie.casebeer@state.or.us). Please be sure to include appropriate documentation to support your submitted recommendation, as careful review of the document will take place prior to any changes being made.

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*"There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."*

*Lau v. Nichols* (1974)

## OREGON STATE ENGLISH LEARNER PROGRAM GOALS

English learner programs are expected:

- To assist students in accessing core subject courses in their path toward graduation from high school and access to post-secondary educational opportunities.
- To provide resources and assistance to school districts in providing effective instructional programs for ELs while meeting required Federal and State regulations.
- To assist school districts in creating, implementing, and improving English language development programs that provide academically rigorous and equitable learning opportunities leading to Career and College Readiness.
- To promote culturally relevant and responsive curricula and pedagogies embracing the unique identities of those gaining proficiency in an additional languages.
- To provide and ensure access to an equitable education for ELs.

## COMMON VOCABULARY AND FREQUENTLY USED TERMINOLOGY

**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.

**Dual Language Program:** Also known as two-way or developmental, the goal of these bilingual programs is for students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom usually comprised of half native English speakers and half native speakers of the other language.

**Educational Assistant:** Educational assistants who work under the supervision of an appropriately licensed teacher may provide instructional support pursuant to OAR 581-038-0005-0025.

**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, means an individual who:

- is aged 3 through 21;
- is enrolled or preparing to enroll in an elementary school or secondary school;
- was not born in the United States or whose native language is a language other than English;
- is a Native American or Alaska Native, or a native resident of the outlying areas; and
  - 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
  - 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
  - whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's

proficient level of achievement on State assessments described in section 1111(b)(3); the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society

**English Language Learner (ELL):** Another name for English learner.

**English Language Proficiency Assessment for the 21<sup>st</sup> Century (ELPA21):** Oregon's annual summative assessment for all students who have been identified as English learners. This annual assessment is required whether the student received EL services or not. ELs participate in this assessment each year until they are officially exited from the program by their districts. This assessment replaces the Oregon English Language Proficiency Assessment (ELPA) beginning in 2015-16.

**English as a Second Language (ESL):** As its name implies, the ESL approach focuses on instruction in English as the primary means to help ELs acquire the 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 ESL approach may include both language instruction, wherein English language is the instructional content itself, or 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.

**ELSWD (English Learner Students with Disabilities):** An EL who also has a disability. These students have an Individual Education Plan (IEP).

[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)]

**FEP:** Fluent (or fully) English proficient.

**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.

**Informed Parental Consent:** The permission of a parent to enroll their child in an EL program; or, the refusal to allow their child to enroll in such a program after the parent is provided effective notice of the educational options and the district's educational recommendation.

**Instructional Assistant:** See Educational Assistant

**JDEP:** Juvenile Detention Education Program.

**LTCT:** Long-Term Care and Treatment Education Programs.

**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):** 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, ELL Plan or EL 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)]

**LEP:** Limited-English-proficient, Federal term used in ESEA.. (See [ELL](#) or EL).

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

**Local Service Plan:** This phrase is sometimes used in place of "Local Plan".

**Maintenance Bilingual Education (MBE):** MBE, also referred to as late-exit bilingual education, is a program that uses two languages, the student's primary language and English, as a means of instruction. The instruction builds upon the student's primary language skills, and develops and expands the English language skills of each student to

enable him or her to achieve proficiency in both languages, while providing access to the content areas.

**MOU:** Memorandum of Understanding.

**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."

**NEP:** Non-English-proficient.

**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 ESL instruction).

**Reclassification:** When a student obtains academic English proficiency, the student is exited from ELD services. The federal term for this process is reclassification; Oregon typically refers to this process as exiting. See [Numbered Memorandum 007-2013-14](#) for specific guidance.

**Sheltered English Instruction:** An instructional approach used to make academic instruction in English understandable to ELs. In the sheltered classroom, teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in mathematics, science, social studies, and other subjects.

**Specific courses:** As used in ORS 336.079 mean educational units consisting of a series of instructional periods that explicitly teach speaking, reading, and writing English in a manner enabling ELs to benefit from regular classroom instruction in English. Since these courses apply to students who are "unable to benefit from classes taught in English", these classes are not the same as general education content classes (reading, writing, speaking) taught in English.

**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.

**Title VII of the Elementary and Secondary Education Act (ESEA):** The Bilingual Education Act, Title VII of the ESEA, recognizes the unique educational disadvantages faced by non-English speaking students. Enacted in 1968, the Bilingual Education Act established a federal policy to assist educational agencies to serve students with limited-English-proficiency by authorizing funding to support those efforts. In addition to providing funds to support services to LEP students, Title VII also supports professional development and

research activities. Reauthorized in 1994 as part of the Improving America's Schools Act, Title VII was restructured to provide for an increased state role and give priority to applicants seeking to develop bilingual proficiency. The Improving America's Schools Act also modified eligibility requirements for services under Title I so that LEP students are eligible for services under that program on the same basis as other students.

**Transitional Bilingual Education (TBE) Program:** The primary goal of a Transitional Bilingual Program is to facilitate the EL student's transition to an all-English instructional program while receiving academic subject instruction in the native language to the extent necessary. This program, also known as Early-Exit Bilingual Education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. Typically, transition to all English occurs by mid- to late elementary school. These programs are designed for ELs.

**Tutor:** In the context of [OAR 581-023-0100](#), the definition of tutors are educational assistants providing tutoring services who meet the requirements of [OAR 581-037-0005](#) to 0025. According to [ORS 342.120](#), educational assistant means a classified school employee who does not require a license to teach, who is employed by a school, district, or education service district, and whose assignment consists of and is limited to assisting a licensed teacher in accordance with rules established by the Oregon State Board of Education.

**YDEP:** Youth Detention Education Program.

## Acronyms

Acronym	What it stands for:	What it means:
AMAO	Annual Measurement Achievement Objectives	The accountability measures for ELs. An annual report providing information on the progress ELs are learning and acquiring academic English proficiency.
AMO	Annual Measureable Objectives	Formerly known as AYP
AYP	Adequate Yearly Progress	Used prior to Oregon's ESEA waiver
CM	Constructing Meaning	Sheltered English instruction methodology - created by Susanna Dutro.
DB	Developmental Bilingual	Like Two-Way Immersion programs, these programs share the goals of bilingualism and biliteracy, and thus typically last through elementary school or longer (preferably through high school). Also, referred to Dual Language Immersion, Maintenance Bilingual or Late-Exit Bilingual Education programs, these are programs that use two languages, the EL student's primary language and English, as a means of instruction. The instruction builds upon the student's primary language skills and develops and expands the English language skills of each student to enable him or her to achieve proficiency in both languages, while providing access to the content areas. These programs are designed for and typically enroll only ELs
DSA	District Security Administrators	DSAs can delegate their duties to <i>District Test and Security Administrators</i> . The only difference between DSAs and DTSA is that DTSA cannot create any other DTSA users. A district can only have one DSA. However, DSAs can create one or more DTSA for each district.
DTSA	District Test and Security Administrators	<i>District Test and Security Administrators</i> are responsible for creating STC, TA users within their district. DTSA can set student test restrictions and access reports within their district.
EL	English Learner	An identified student who qualifies for additional support in school in acquiring academic English proficiency.
ELD	English Language Development	The instruction provided to ELs to assist the students in acquiring academic English proficiency.
ELL	English Language Learner	Another term for English Learner.

ELP	English Language Proficiency	Typically used to describe the standards for English language acquisition.
ELPA	English Language Proficiency Assessment	Oregon's former English language proficiency assessment used from 2006-07 through 2014-15 school years.
ELPA21	English Language Proficiency Assessment for the 21 <sup>st</sup> Century	An improved language proficiency assessment in development by Oregon and 12 other states. This assessment is scheduled to be used beginning with the 2015-16 school year.
ELSWD	English Learner Students with Disabilities	An EL who also has a disability. These students have an Individual Education Plan (IEP).
ESEA	Elementary and Secondary Education Act	Federal Education Law
ELD	English Language Development	A program of techniques, methodology, and special curriculum designed to teach LEP students English language skills, including listening, speaking, reading, writing, study skills, content vocabulary, and cultural orientation. ELD instruction is in English with little or no use of native language.
GLAD	Guided Language Acquisition Design (Project GLAD)	Sheltered English instruction methodology.
IPT	IDEA Language Proficiency Tests	IPT is one of four state-approved assessments available in Oregon for the identification of ELs. Others referenced in this table include LAS, Stanford, and W-M (see references contained on this table).
LAS	Language Assessment Scales	LAS is one of four state-approved assessments available in Oregon for the identification of ELs. Others include IPT, Stanford, and W-M (see references contained on this table).
LEA	Local Education Agency, Or Local Educational Agency	
LEP	Limited English Proficient	The federal term for ELs.
LIEP	Language Instruction Educational Program	An Instructional Program: (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).
PHLOTE	Primary Home Language Other Than English	
SDAIE	Specially-Designed Academic Instruction in English	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.
SEA	State Education Agency, or State Educational Agency	
SI	Sheltered Instruction	An instructional approach used to make academic instruction in English understandable to LEP students. In the sheltered classroom, teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in mathematics, science, social studies, and other subjects. Some examples of sheltered instructional model may include SIOP, GLAD, SDAIE, Constructing Meaning.
SIOP	Sheltered Instruction Observation Protocol	Sheltered English instruction methodology.
SPED	Special Education	The Individuals with Disabilities Education Act, as amended in 2004 (IDEA 2004-PL 108-446), is a federal law governing special education services and federal funding for eligible infants, toddlers, children, and youth with disabilities across the country. Children and youth (ages 3-21) receive special education and related services under IDEA, Part B. Infants and toddlers with disabilities (ages birth-2) and their families receive early intervention services under IDEA Part C. In Oregon, IDEA funds helped support the education of almost 83,000 children with disabilities in the past year. For more information about IDEA see the U.S. Department of Education website at <a href="http://idea.ed.gov">http://idea.ed.gov</a> .
Stanford	Stanford ELP	Stanford is one of four state-approved identification assessments available in Oregon for the identification of ELs. Others referenced in this table include IPT, LAS and W-M (see references contained on this table).  The Stanford ELP evaluates the listening, reading,

		<p>comprehension, writing, and speaking skills of ELs in Pre K–12. This assessment is developed by Pearson Assessments, see link below.</p> <p><a href="http://education.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=015-8429-206">http://education.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=015-8429-206</a></p>
STC	Secure Test Coordinator	A person responsible for ensure test security.
TA	Test administrator	A person who administers the state assessments to students.
TAG	Talented and Gifted	<p>“Talented and Gifted children” means those children who require educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society, and who demonstrate outstanding ability or potential in one or more of the following areas:</p> <ul style="list-style-type: none"> <li>(a) General intellectual ability as commonly measured by measures of intelligence and aptitude.</li> <li>(b) Unusual academic ability in one or more academic areas.</li> <li>(c) Creative ability in using original or nontraditional methods in thinking and producing.</li> <li>(d) Leadership ability in motivating the performance of others either in educational or non-educational settings.</li> <li>(e) Ability in the visual or performing arts, such as dance, music, or art.</li> </ul>
TB	Transitional Bilingual	<p>The primary goal of a Transitional Bilingual program is to facilitate the EL student's transition to an all-English instructional program while receiving academic subject instruction in the native language to the extent necessary. This program, also known as Early-Exit Bilingual Education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. Typically, transition to all English occurs by mid- to late elementary school. These programs are designed for ELs.</p>
TIDE	Test Information Distribution Engine	A system for State assessment.

TWI	Two-Way Immersion	Also referred to as Dual Language Immersion, this is a program in which the language goals are full bilingualism and biliteracy in English and a partner language. Students study language arts and other academic content (math, science, social studies, arts) in both languages over the course of the program, and the program lasts at least through elementary school (and many programs continue through high school). These programs use an immersion approach (maximizing the teacher's use of the target language during the target language's instructional time) and enroll both native English speakers and native speakers of the partner language, with neither group making up more than two-thirds of the student population. Because of this student composition, these programs also emphasize cross-cultural awareness as a key goal of the program. If your program enrolls primarily ELs, it should be coded as a Developmental Bilingual program
W-M	Woodcock-Muñoz	One of four assessments available for districts to determine if a student is an EL. Others are LAS, Stanford, and IPT (see prior acronym descriptions).

### TITLE III PROGRAM ADMINISTRATION PROCEDURES AND REQUIREMENTS

#### Purpose

To help ensure LEP children (federal term used when citing federal law), including immigrant children and youth, attain ELP and meet the same standards that all children are expected to meet ([section 3102, ESEA](#)).

One of the key goals of Title III of the ESEA is to ensure LEP students attain ELP, attain high levels of academic achievement in English, and meet the same challenging State academic content and student academic achievement standards all children are expected to meet. To achieve this goal, Title III grants provide States and their sub-grantees with funds to implement language instruction educational programs to help LEP students acquire English and achieve high levels in the core academic subjects. Title III sub-grantees are required to use Title III funds to support:

- high-quality professional development designed to improve services to LEP students, and
- high-quality language instruction educational programs that are designed to increase the English proficiency and academic achievement of LEP students.

Title III does not require sub-grantees to use a specific or particular curriculum or approach to language instruction, except the language instruction must be, as required in section

3113(b)(6) of the ESEA, tied to scientifically-based research on teaching LEP students and demonstrated to be effective.

Title III, like ORS 336.079, requires instructional ‘*courses*’, or educational units consisting of a series of instruction periods dealing with a particular subject. The difference between ORS 336.079 and Title III is that courses under ORS 336.079 are designed specifically to teach English proficiency, whereas courses under Title III must, in addition to teaching English proficiency, simultaneously ensure that ELs meet state academic content and student achievement standards.

Also, Title III requires that student progress is rigorously assessed, students meet annual measurable achievement objectives, and states hold districts accountable for meeting those objectives. Title III, §3122; § 3116(3).

### **Local Educational Agency (LEA) Responsibilities**

- Provide high quality, research based, language instruction educational programs that are effective in increasing English proficiency and academic achievement of LEP students.
- Provide high quality, researched-based professional development to teachers, administrators, and other school/community-based organizations, of sufficient intensity and duration.
- Provide a biennial evaluation to the SEA.
- Provide outreach to parents of LEP children.

### **EL Plan (Local Service Plan, Local Plan, Lau Plan)**

Districts submit updated EL Plans the spring of each odd numbered year for the next biennium. District plans are reviewed and feedback is provided back to districts. The [ODE Local Plan](#) web page includes documents to assist with EL Plan development.

To be effective, an EL Plan needs to be comprehensive. It must address each aspect of the district's program for all ELs, 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 each staff person can understand how the plan is to be implemented, and contain the procedural guidance and forms the staff needs to use to carry out his/her responsibilities under the plan. Districts have indicated to OCR they have found their EL Plans most useful when they contain sufficient detail to inform staff fully of each action step in the EL Plan.

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?

<http://www2.ed.gov/about/offices/list/ocr/ell/plandev.html>

Many districts have found it is useful, when developing or revising an EL program, to establish a committee or work group that includes administrators, teachers (both EL program teachers and regular classroom teachers), educational assistants, school counselors, and other staff who work with the district's EL 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 EL 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.

The questions in the EL Plan outline are organized around key components of a comprehensive plan:

- The district's educational theory and goals for its program of services;
- The district's methods for identifying and assessing the students to be included in the district's EL program;
- The specific components of the district's program of ELD and academic services for ELs;
- The specific staffing and other resources to be provided to ELs under the district's EL program;
- The district's method and procedures for transitioning and/or exiting students from its EL program, and for monitoring their success afterward; and
- The district's method for evaluating the effectiveness of its program for ELs (discussed in Part III of the ed.gov materials).

### **How to Develop an EL Plan (Local Plan, Lau Plan)**

- Consult with stakeholders and form a work group that includes:
  - Parents, teachers, building administrators, community members as well as other people having interest in EL student success.
- Describe the EL program, addressing the eight requirements for an EL program as outlined by the USDOE OCR.
- Describe activities that will be implemented with the Title III funds.
- Describe how the EL program will ensure ELs develop English proficiency.
  - Describe how Title III funds will be used to meet AMAOs, and how schools will be held accountable for meeting AMAOs and annually assessing ELs with ACCESS for ELs.
- Describe how parental and community participation in the EL program will be promoted.
- Consult in a timely and meaningful manner with private schools within the district (if any) and document this collaboration with meeting agendas, etc.

## TYPES OF PROGRAM SERVICE MODELS

Below is a chart of the program model codes used to describe the specific ELD program for each EL. These codes explain the types of programs provided to assist the student in acquiring the English language. These codes are used in the LEP data collection (see data collection section).

<b>English Language Development Programs</b>	
Program Model Code 1 (LEPPrgMdl TypCd1) Valid Values	Description
21	<b>ELD Push-in</b> ELD instruction is provided within the student's mainstream or content-area classroom.
22	<b>ELD Pull-out</b> ELs spend part of the day in a mainstream classroom, and are "pulled out" for a portion of the day to receive ELD instruction. This approach is more common in elementary school settings.
23	<b>ELD Class Period</b> ELs receive their ELD instruction during a regular class period and also receive course credit for the class. This approach is more common in middle schools and high schools.
41	<b>Newcomer Program – ELD</b> Separate, relatively self-contained educational interventions designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs on a short-term basis (usually no more than two years) before they enter more traditional programs (e.g., Bilingual, English language development and/or Sheltered Instruction courses or programs). ELs receive their ELD in this program.
51	<b>Not participating in a ELD program</b> NOTE: Used only for students in: Category 3 – LEP Placement score excludes ELD program eligibility (3-H), or Category 4 – ELD Program eligible but declined services (4-N, 4-O, 4-P)
60	<b>Monitored year 1</b> – Exited as proficient in the prior school year. Category 5-M
61	<b>Monitored year 2</b> – Exited as proficient two school years prior. Category 5-M
70	<b>Former EL</b> – Exited as proficient more than 2 school years prior. Category 5-F

Below are the program model codes used to describe the specific sheltered content programs for each EL. These codes are used for the LEP data collection. Districts are required to provide the program model(s) used annually in the budget narrative with complete explanation of the district's selected program models included in the district's local plan.

<b>Access to Core Content Program Models</b>	
<b>LEPPrgMdl TypCd2) Program Model Code 2 Valid Values</b>	<b>Description</b>
12	<b>Two-Way Immersion</b> Also referred to as Dual Language Immersion, this is a program in which the language goals are full bilingualism and biliteracy in English and a partner language. Students study language arts and other academic content (math, science, social studies, arts) in both languages over the course of the program, and the program lasts at least through elementary school (and many programs continue through high school). These programs use an immersion approach (maximizing the teacher's use of the target language during the target language's instructional time) and enroll both native English speakers and native speakers of the partner language, with neither group making up more than two-thirds of the student population. Because of this student composition, these programs also emphasize cross-cultural awareness as a key goal of the program. If your program enrolls primarily ELs, it should be coded as a Developmental Bilingual program.
13	<b>Transitional Bilingual (13)</b> The primary goal of a Transitional Bilingual program is to facilitate the EL student's transition to an all-English instructional program while receiving academic subject instruction in the native language to the extent necessary. This program, also known as Early-Exit Bilingual Education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. Typically, transition to all English occurs by mid- to late elementary school. These programs are designed for ELs.
14	<b>Developmental Bilingual (14)</b> Like Two-Way Immersion programs, these programs share the goals of bilingualism and biliteracy, and thus typically last through elementary school or longer (preferably through high school). Also referred to as Dual Language Immersion, Maintenance Bilingual or Late-Exit Bilingual Education programs, these are programs that use two languages, the EL student's primary language and English, as a means of instruction. The instruction builds upon the student's primary language skills and develops and expands the English language skills of each student to enable him or her to achieve proficiency in both languages, while providing access to the content areas. These programs are designed for and typically enroll only ELs
15	<b>Other Bilingual (15)</b> This could include Heritage language preservation or other bilingual program models that are not easily classifiable into another program definition. You must have prior approval to use this code and will need to include a description of your program's goals, instructional approach, duration of the program, and target population when this code is used.
30	<b>Sheltered Instruction</b> Teacher provides instruction that simultaneously introduces both language and content, using specialized techniques to accommodate ELs' linguistic needs. Instruction focuses on the teaching of academic content rather than the English language itself, even though the acquisition of English may be one

	of the instructional goals. Some examples of sheltered instruction models may include SIOP, GLAD, SDAIE, and CM. Classes using a Sheltered Instruction approach can be designed exclusively for ELs or for a mixture of ELs and non-ELs.
31	<b>Newcomer Program – Core Content instruction</b> Separate, relatively self-contained instructional program designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs on a short-term basis (usually no more than two years) before they enter more traditional programs (e.g., Bilingual, English language development and/or Sheltered Instruction courses or programs). ELs receive their core content instruction in this program. These programs enroll ELs exclusively.
60	<b>Monitored year 1</b> – Exited as proficient in the prior school year. Category 5-M
61	<b>Monitored year 2</b> – Exited as proficient two school years prior. Category 5-M
70	<b>Former EL</b> – Exited as proficient more than 2 school years prior. Category 5-F
51	<b>Not participating in a program.</b> <b>NOTE: Used only for students in</b> Category 3 – LEP Placement score excludes ELD program eligibility (3-H) or Category 4 – ELD Program eligible but declined services (4-N,4-O, 4-P)

Other evidence-based, researched services models can be used as determined effective at district discretion; however, one of the codes in the charts above must be used in the LEP data collection.

## PROGRAM REQUIREMENTS

### Identifying a Student as an EL

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

### Home Language Survey (HLS)

TransACT Communications, Inc. has created many compliance related forms, including those required for Title III. These forms, translated into several languages, are available through TransACT at: <http://www.transact.com/>

If a school chooses not to use the TransACT forms, the forms used by the school must contain the same elements as the TransACT form in order to comply with current Federal Regulations.

Districts must:

- Identify the Primary Home Language Other than English (PHLOE) of *all* students.
- Using Home Language Survey is the most commonly used instrument to identify students as potentially eligible for ELD services. Templates for HLS are available through TransACT at <http://www.transact.com/>.

- Ask questions that have to do solely with home languages of the individual students. If a parent (guardian) gives a single affirmative answer to whether:
  - the child learned to speak a language other than English first;
  - the child currently speaks a language other than English; or
  - a language other than English is spoken in the home;
 Then the child qualifies for initial program assessment. As such the child is classified as a primary home language other than English PHLOTE student.

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 have a child placed in a program for ELs.

For proper placement, the survey could include questions about the child's ability to speak English. The following questions would be reasonable in a primary home language survey:

- What language or languages are spoken in your child's home?
- What language or languages does your child speak?
- In what language does your child communicate with:
  - adults in the home?
  - with friends or peers?

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 ELD 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. School team reviews 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 placed in the ELD program is good practice.

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:

- Woodcock-Muñoz
- IPT
- Stanford
- LAS

Districts are required to include their identification criteria in their EL 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. Once a student is identified as an EL, the district must notify parents within 30 days at the beginning of the school year and two (2) weeks after the school year has begun (forms are available through TransACT.com).

### **Notifications to Parents/Option to Waive Services**

Parents can opt to not have their children enrolled in an EL program. This decision must be an independent decision of the parent/guardian. Districts are required to provide parents with student English proficiency level and describe what educational supports the student is eligible to receive. When a parent declines participation, the district retains a responsibility to ensure the student has an equal opportunity to have his or her English language and academic needs met. Districts can meet this obligation in a variety of ways (e.g., adequate training to classroom teachers on second language acquisition; monitoring the educational progress of the student). <http://www2.ed.gov/about/offices/list/ocr/qa-ell.html>

Students not served by district programs are required to participate in all state-required assessments, including ELPA21, and are counted in the district's progress towards meeting academic and graduation outcomes.

Students with a waiver for services are reported annually to the district's LEP Collection, and they are coded 4-N (waiver and participated in ELPA21) or 4-O (waiver and not enrolled during the ELPA21 testing window). The State uses these codes to review trend data for language minority students.

### **Program Exit Criteria (Reclassification)**

The program exit criteria must assess whether a child understands English well enough to profit from classes conducted in English. Accordingly, the exit criteria must be the student's level of English language proficiency, rather than whether the student meets state academic content standards expectations.

**Please see the Numbered Memo below for how to reclassify a student as proficient. Oregon has multiple pathways to reclassification. Additional information is included in the district EL plan, section 6.**

**[Executive Numbered Memo 007-2013-14](#) - Reclassification and Retention Procedures for English Learners (ELs)**

**09/15/15 Please note that this memo is being revised for 2015-16, as all references to the Oregon ELPA and "level 5" are outdated.**

Revision to Memo# 002-2008-09 - Promoting, Retaining, and Exiting English Learners from English Language Development Program

To: All District Superintendents, Principals, and Title III Directors  
Re: Reclassifying and Retaining Students in English Language Development (ELD) Programs

**Below are the procedures for districts to use when:**

- Exiting a student from the ELD program;
- Retaining a student in the ELD program after a proficient score on the ELPA is obtained;
- Returning a former English learner to the ELD program.

**Summary**

These revisions are intended to clarify previous procedures to ensure that these practices are consistently applied throughout the state. Additional language has been added to define the team of reviewers required for exiting and retention decisions as well as limitations on retention options. Please note: A student who receives a level 5 on the ELPA and is retained in the English Language Development (ELD) program due to a determination of student need and then receives a second level 5 score on the ELPA must be exited unless the district completes a separate retention process. See the “Retention in the ELD program” section below for full details.

The Oregon Department of Education (ODE) has developed policies around exiting, retaining, and returning ELs [also known as English language learners (ELLs) or Limited English Proficient (LEP) students] from or to districts’ ELD programs. “English learner” means all identified ELs, regardless of participation in ELD programs.

Oregon’s ELP standards are presented in steps of sequential skills called proficiency levels. Students in the ELD instructional programs, aligned to the ELP standards, shall be expected to move through the progressive achievement continuum at a rate that allows them to become proficient within a reasonable and appropriate period of time, generally five years. Some students may achieve proficiency in less than five years while others may need additional time. Students are promoted, or exited, from the ELD program when they meet the exit criteria as set by their districts in accordance with the guidelines set forth in this memo. In addition, districts should consult the updated English Learners Program Guide for guidance on proficiency timeline expectations.

The following are guidelines for school districts to follow in making decisions to exit, retain, or return ELs from or to the ELD program.

**Exiting from the ELD Program**

The English Language Proficiency Assessment (ELPA) is Oregon’s primary measure for determining ELs’ ELP. Students who achieve a level of 5 (Advanced) on ELPA are generally considered to be proficient, and the vast majority of this group of students will exit the ELD programs. Districts must enter an exit date on the Spring LEP collection for each student who exits the program. All exited student records are submitted to the LEP collection with an LEP exit date. The LEP exit date is the only indicator of exited students used in the calculation of AMAOs and the AMO for the EL sub-group.

Districts have the option to exit ELs before students have achieved a level of 5 (Advanced) on ELPA. This decision requires special consideration and evidence of the student’s language proficiency and the student’s academic performance. A school-level team must consider multiple factors indicating the student has already demonstrated that he or she can profit fully from instruction in the regular education program without additional language

support from the ELD program. A school-level team must, at minimum, include a content-area teacher, an ELD teacher familiar with the student's language ability, a school-level administrator, and a parent/guardian. In the event that a parent/guardian cannot attend the school-level meeting, parental input must be obtained prior to any decision making about the student's promotion from the ELD program.

### **Retention in the ELD Program**

Districts may, on a case-by-case basis, decide to retain a student who achieves a level of 5 (Advanced) on the ELPA. This decision must be based on a thorough evaluation conducted by a school-level team of the student's ELPA results and additional evidence of the student's language proficiency and academic performance. This evaluation must also indicate that the student needs additional instruction in ELD and this instruction can only be provided within the context of the district's ELD program. If a previously retained student scores a 5 (Advanced) on the ELPA in a future school year, the district must exit that student using the district exit criteria or proceed with a 2-step process in order to retain a student again. The 2-step process includes (1) specific evidence that the student is not yet able to profit from instruction in English (ORS 336.079), and (2) documentation of how the ELD program will be modified to address the specific linguistic needs of the student that prohibit the student from being able to profit from instruction in English. This 2-step process must be reviewed by a school-level team and is subject to examination by the Oregon Department of Education upon request. The school-level team conducting the evaluation must, at minimum, include a content-area teacher, an ELD teacher familiar with the student's language ability, a school-level administrator, and a parent/guardian. In the event that a parent/guardian cannot attend the school-level meeting, parental input must be obtained prior to any decision making about the student's retention in the ELD program.

### **In order to receive additional state funding for ELs retained in the ELD program under these circumstances, districts must comply with two laws:**

- [ORS 327.013 \(7\) \(a\) \(B\)](#) - allows an additional .5 to be added to the average daily membership (ADM) funding calculation "for each student in average daily membership eligible for and enrolled in an ESL program under ORS 336.079"; and
- [OAR 581-023-0100](#) - to be eligible to receive that funding, district programs must meet the criteria set out in [OAR 581-023-0100 \(4\) \(a\) \(B\)](#).

### **Returning to the ELD Program**

In rare circumstances, an EL in monitor status might qualify to re-enter the ELD program after being exited in a previous school year. For this rare circumstance, the decision requires a thorough evaluation by a school-level team and an examination of evidence that clearly shows that the student's language proficiency is a barrier to accessing instruction in academic classes. A barrier is defined as a language issue that is beyond the average experience of a non-EL. Specific evidence of language proficiency must be provided to the school team and parents/guardians that clearly shows that the student has a language issue in more than one of the four language domains (speaking, listening, reading, and writing). A school-level team must, at minimum, include a content-area teacher, an ELD teacher familiar with the student's language ability, a school-level administrator, and a parent/guardian. In the event that a parent/guardian cannot attend the school-level meeting, parental input must be obtained prior to any decision making about the student's return to the ELD program. Students are coded as returning to an ELD program with a LEP Program Code of 1-D or a 4-

P (for students with a waiver for service re-entering EL status).

### **Parental Notification**

Districts must notify parents when either (a) a student is recommended to be retained in or returned to the ELD program even after achieving a level of 5 (Advanced) on ELPA, or (b) a student is recommended to be promoted out of the ELD program prior to achieving a level 5 (Advanced) on ELPA. Title III law requires that districts include parents as active participants throughout the process.

### **Monitored Students**

A student is monitored for two years from the date the student is reclassified (exited) from the ELD program. Monitoring consists of reviewing student academic progress in class(es). Teacher observations, work samples, grades, and state assessment data may be reviewed as part of monitoring. If a student is struggling academically due to academic language, it is possible for the student to be re-entered into the ELD program. This type of determination is made by a team of educators, who review evidence of the student's academic English. The team should consider if the student is in need of assistance due to academic language needs, or if the student could benefit from core instruction interventions prior to re-entered the student in the EL program.

***Ideally students would be monitored frequently enough so that the district can address any necessary remediation needed for the student to be successful in school. Monitoring only on the semesters may not provide for needed support in a timely manner.***

### **Allocation of Federal Title III Funds**

The ODE receives a formula allocation that is determined by the USDOE on an annual basis. This annual amount requires a percentage (up to 15%) be set aside for distribution as the Recent Arriver's (Immigrant) sub-grant. The ODE is allowed up to 5% of the total funds to be used for state administration of the program. The remainder is distributed to each EL program participating in Title III, based on a per-pupil allocation.

### **Steps to Title III Allocations**

Each spring districts are asked to provide a District Grant Intent form. This form requires the districts to provide a list of all private schools participating in Title III, and a count of all ELs enrolled in these private schools. The districts must also confirm their intent to participate in Title III for the following school year. Districts must choose between one of the following three options:

- Have a district Title III sub-grant, if the district has an allocation of at least \$10,000.00.
- Continue to participate in the district's current Title III consortium.
- Join a Title III consortium.
- Decline to participate in Title III for the following school year.

District grant intents are due to the ODE in mid-June, so the State can disseminate the next year's allocations in a timely manner. Technical assistance is provided to districts in making their district grant intent and consortium membership. Funding and grant information forms are located: <http://www.ode.state.or.us/search/page/?id=2597>

### **Sub-grantee Allocations**

Sub-grantees receive allocations based on a per-pupil basis following the approval of their budget narrative outlining how they plan to expend the available funds. Budget narratives include questions on the program of service, AMAO status, improvement plans, parent involvement, and private schools. Sub-grantees must respond to these questions, plus include a budget for all activities funded by Title III. The budget narrative is a secure application available through the ODE district secure web page <https://district.ode.state.or.us/home/>

Allocations are disseminated in August of each school year at the same time as the other Federal Title grants. School year budget narrative submissions are due in mid-September of each school year.

### **Carryover Budget Narratives**

Sub-grantees not expending the previous school year's allocations may apply for a no-cost extension for one additional year. Carryover budget narratives open in mid-November and are due in mid-December. All carryover funds must be claimed by the following September 30<sup>th</sup>.

### **Consortia Allocations**

Districts serving ELs who do not qualify for a minimum of a \$10,000.00 Title III federal grant allocation may opt to join a Title III consortium. A Title III consortium is a group of districts working together to support ELs. Allocations generated by consortium member districts are disseminated to the consortia lead (district or ESD). The consortium members work together planning activities to assist all member districts with services to support ELs. The consortium member districts develop the consortia budget narrative and submit it to the ODE as a team with the consortium lead submitting the budget narrative on behalf of the consortia. Like district sub-grantees, a consortium has access to 20% of their Title III sub-grant prior to the approval of the budget narrative.

Each consortium member district must provide a Consortium Membership Certificate that gives ODE the authorization to transfer the Title III allocations to the consortium lead. The certificate is available on the Title III fiscal and grant information web page <http://www.ode.state.or.us/search/page/?id=2597>

## **Immigrant Sub-grant Allocation**

Up to 15% of the total Title III allocation is required to be distributed to the EL program demonstrating the highest increase in immigrant student population by Title III law. Oregon has selected to reserve .5% of the total Title III sub-grant for the Immigrant sub-grant. Beginning with the 2014-15 Title III allocations, the State will use the Recent Arrivers data collection to determine the districts with the greatest significant increase.

**Oregon definition of significant increase: LEAs must have at least a .5% increase of immigrant students over the prior 2 academic school years and a minimum of 10 immigrant students, as identified on the current year's recent arrivers data collection.**

LEAs meeting the above criteria will be notified and invited to participate, and will be given a preliminary immigrant allocation amount (per student allocation and guidance on allowable expenditures). Upon acceptance from the LEAs, the allocation amount will be divided on a per student basis based on the number of immigrant students in the participating LEAs. Immigrant grants will be entered into EGMS and managed through that system. Immigrant fiscal records will be reviewed when the LEA participates in Title III monitoring or on a 3-year cycle.

(See the Recent Arrivers in this document, under State Data Collections section for more information on this collection.)

The districts receiving this allocation must provide a detailed narrative outlining the activities to support the district's recent arrivers. The narrative must include a description of each activity and the budget for each activity. As with all Title III sub-grants, the districts must consult with local private schools to ensure recent arrivers enrolled in private schools participating in Title III are included in all activities.

The districts receiving this allocation must also respond to additional data submission questions that are used in the State's annual Immigrant EdFacts report.

## **Indirect/Administrative Rate**

All Title III sub-grants are subject to a maximum 2% of the allocation for indirect/administration requirements. Sub-grantees are asked to provide copies of all staffing job descriptions as part of their budget narrative to ensure that personnel funded by Title III are not performing activities that supplant other federal or state requirements.

## **Supplement, Not Supplant**

Sub-grantees will be asked to provide documentation that activities funded with Title III allocations do not supplant other state or federal-required activities in accordance with federal law:

[Section 3115\(g\) of Title III of the ESEA](#) (hereafter "Title III") provides as follows:

SUPPLEMENT, NOT SUPPLANT -- Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended

for programs for limited English proficient children and immigrant children and youth, and in no case to supplant such Federal, State, and local public funds.

In practice, the prohibition against supplanting under Title III means that recipients may not use those funds to pay for services that, in the absence of Title III funds, would be necessary to be provided by other Federal, or State, or local funds. Districts provide this information annually in the Budget Narrative application.

## **Monitoring**

Program monitoring is designed to provide technical assistance to schools, districts, and consortia, as well as ensuring compliance with federal and state laws applicable to serving ELs. Monitoring documents and guidance is available on the web at <http://www.ode.state.or.us/search/page/?id=2594>.

Generally, all districts and consortia are monitored by the ODE every three years, as required by USDOE program requirements. This process will begin with a desk audit, and may include peer monitoring processes or site visits in cases where program intervention is determined to be necessary.

Districts having a focus or priority school, as determined by the Oregon's ESEA waiver, will have an on-site technical assistance visit following desk monitoring. Any district having not met AMAOs for four or more years will also have an on-site technical assistance visit following desk monitoring. The purpose for these on-site technical assistance visits is to assist the district in implementing their Improvement Plan(s) to improve services for the ELs.

Occasionally, districts may be selected for a targeted monitoring. Targeted monitoring allows the State to focus attention on specific areas for careful review. Targeted monitoring includes an on-site visit specifically designed based on the area(s) of review. Districts are notified by official letter, required to submit documentation and coordinate the on-site visit with the State.

## **DATA COLLECTION AND ANALYSIS**

Several data elements should be tracked by EL program staff to meet legal requirements and to evaluate EL programs. Many of these elements are listed in the table below. Due to the complexity of the data process, EL program staff should work closely with their district's designated data personnel to ensure a comprehensive, cohesive, and accurate school and district data plan to serve ELs. Additional information relating to data collections can be found at the following website: <http://www.ode.state.or.us/search/page/?id=1223>

Note: Bolded names below are the codes used in the State data system. This information may be helpful when discussing data submissions with district data personnel.

<b>Data Element</b>	<b>Purpose</b>	<b>Included in State Data Collection</b>	<b>State Data Collection Name and Field Name for this Element</b>
Recent Arrivers	Identify the number of qualifying recent arrivers a district has to calculate the rate of growth.	Yes	Recent Arrivers Collection
LEP Start Date	Represents the date on which the student was first identified as an EL.	Yes	LEP Collection – <b>LEPStrtDt</b>
EL Program Code	Identifies the type of ELD class instruction provided for the student.	Yes	LEP Collection – <b>LEPProgCd 1</b> (ELD class) Cd 2 (access to core content)  Cd 3 (optional can pull from both list 1 and 2).
EL/LEP Identification Assessment Data	District-level assessment data for the purpose of identifying students ineligible to receive ELD services.	Yes	Students found ineligible are reported the year the student is assessed (LEP Record Type code 3-H)  Students identified in the current school year have this data reported (LEP Record Type 1-A, 1-E, 4-N, or 4-O)
LEP Record Type	Identifies the specific code defining the status of an EL.	Yes	LEP Collection – <b>LEPRecTypCd</b> – identifies the status of an EL in the district program (first year, continuing, exiting as proficient, waiver for ELD services, did not participate in ELPA21, or not eligible for services)
LEP Exit Date	Specifies the date the district determines the student has obtained academic English proficiency.	Yes	LEP Collection – <b>LEPExtDt</b>

**It is recommended that the district collect and store the following data elements annually. The district does not submit this information to the state data collections; however, this information may be reviewed during Title III monitoring.**

<b>Data Element</b>	<b>Purpose</b>
ELPA21 scores	The statewide assessment for ELP (formerly “ELPA”) – districts should track the progress of students from year to year.
SBAC assessment scores	The statewide assessments for English Language Arts and Math taken by all students – districts need to track the progress of former (monitored) ELs to ensure the students continue to make academic progress.

	<b>New guidance from DC encourages districts to track the academic progress of all <u>former</u> ELs in addition to monitored ELs.</b>
Years identified as EL	The number of years a student has been identified as an EL – AMAO 2 calculations are based on the number of years an EL has been identified.
Parent Program Placement letters	Federal Requirement: Districts must provide parents with an annual notice of the placement of their student’s ELD program.

## **State Data Collections**

There are two main data collections relating to Title III: the LEP collection and the Recent Arriver’s collection. Districts not participating in Title III are required by OAR to submit data to all ODE data collections.

The LEP collection is a part of the consolidated collections application located on the ODE District Secure website (<https://district.ode.state.or.us/home/>). This collection represents an annual count of all ELs enrolled at any time during the school year. This collection is also used for districts to report any potential ELs found ineligible for services as defined by the district’s chosen EL identification assessment.

The LEP collection opens in the spring each year and is used to determine the:

- LEP sub-group used to calculate AMO;
- EL count reported by each district used to determine Title III allocations;
- EL count used for AMAO accountability purposes;
- State report to the USDOE;
- Verify the student’s EL status to confirm the district is entitled to claim the weighted State school funding for ELs.

Additional information relating to the LEP collection can be found at the ODE District Secure web page, schedule of due dates. On the schedule of due dates, look for the NCLB: LEP Collection – typically opening in April. From that page, documents to assist districts are located under the Help menu.

The Recent Arrivers Data Collection is part of the consolidated collection located on the ODE District Secure web site (<https://district.ode.state.or.us/home/>). The purpose of this collection is to gather information related to students aged 3-21 who were born outside the United States and Puerto Rico, and who have not been enrolled in school in the U.S. for more than three cumulative years (540 days).

The Recent Arrivers Data Collection began during the 2011-12 school year. Districts are required to identify and report records for all recent arrivers enrolled during the academic school year. This information is submitted to the ODE for a required calculation to distribute a sub-grant of the Title III grant providing funds for districts experiencing a sudden influx of students recently arriving in the U.S. The calculation includes a three-year average of the growth of immigrants within a district. Recent Arrivers data is used to submit data to the USDOE, as well as to determine the sub-grant for Title III.

The Recent Arrivers Data Collection opens annually in the spring. This collection is a school year level collection. All students meeting the definition of a Recent Arriver are required to be reported to this collection, regardless if the student has withdrawn from the district during the school year.

### **Data Collection Requirements**

Districts are required to report initial assessment data for students identified as EL for the first time in the current school year and data for students not qualifying as EL (proficient on initial assessment) is reported to the LEP collection. Required data for student's found proficient include name of assessment, date of assessment, and student proficiency level.

Initial assessments: Please refer to the section on identifying an EL for the required procedures. There are four state-approved initial placement assessments. These assessments are "off the shelf" assessments.

- IPT
- LAS
- Stanford
- Woodcock-Muñoz

Districts must determine student eligibility for the ELD program using one of the four approved assessments. Identification as an EL is required by [OAR #581-023-0100](#), and therefore, the purchase of these assessments in addition to the required training to administer the assessment is a required state activity. Title III funds may not be used for the purchase or training of these assessments. All students identified as LEP must receive instruction in ELD. Parents may complete a waiver to refuse services if they do not wish the student to be given ELD instruction.

### **EQUAL ACCESS**

In 1970, the federal [Office for Civil Rights \(OCR\)](#) issued a memo regarding school districts' responsibilities under civil rights law to provide an equal educational opportunity to ELs. This memorandum stated:

*"Where the 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 its instructional program to these students."*

Although the memo requires school districts to take affirmative steps, it does not prescribe the content of these steps. It does, however, explain that federal law is violated if:

- Students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;
- National origin minority students are inappropriately assigned to special education classes because of their lack of English skills;

- Programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead end track; or
- Parents whose English is limited do not receive school notices or other information in a language they can understand.

In its 1974 decision in [Lau v. Nichols](#), the United States Supreme Court upheld OCR's 1970 memo. The basis for the case was the claim students could not understand the language in which they were being taught; therefore, they were not being provided with an equal education. The Supreme Court agreed, saying that:

*“There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”*

The case reaffirmed that all students in the U.S., regardless of native language, have the right to receive a quality education. It also clarified equality of opportunity does not necessarily mean the same education for every student, but rather the same opportunity to receive an education. An equal education is only possible if students can understand the language of instruction.

Within weeks of the [Lau v. Nichols](#) ruling, Congress passed the [Equal Educational Opportunity Act \(EEOA\)](#) mandating no state shall deny equal education opportunity to any individual, *“by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students in an instructional program.”* This was an important piece of legislation because it defined what constituted the denial of education opportunities.

The USDOE’s OCR oversees school districts and has broad discretion concerning how to ensure equal educational opportunity for ELs. This means that the OCR recognizes that there is not one program model that works for all districts or all students and reviews each district individually. OCR does not prescribe a specific intervention strategy or program model a district must adopt to serve ELs.

The following guidelines have been outlined for school districts to ensure their programs are serving ELs effectively. Districts should:

- identify students as potential ELs;
- assess student's need for EL services;
- develop a program which, in the view of experts in the field, has a reasonable chance for success;
- ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- assess the success of the program and modify it where needed.

For additional information regarding the provision of equal education opportunity to ELs, see additional resources or contact the [Office for Civil Rights](#) enforcement office at:

Phone: (800) 421-3481

Email: [ocr@ed.gov](mailto:ocr@ed.gov)

URL: <http://www.ed.gov/about/offices/list/ocr/index.html>

## PRIVATE SCHOOL PARTICIPATION

Districts must annually consult with private schools. This consultation must include a discussion on the needs of the enrolled private school ELs and funding to ensure that equitable services under the law are provided. The ODE has provided a form that documents the required consultation with private schools. The form can be found at <http://www.transact.com>. All school districts should store this completed form for monitoring review and complete the required private schools sections on their budget narrative.

To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the Title III program on issues such as:

- How the EL needs to be identified.
- What services will be offered.
- How, when, and by whom the services will be provided.
- How the services will be assessed and how the results of the assessment will be used to improve those services.
- What the size and scope of the services to be provided to the private school children and educational personnel.
- What amount of funds will be available for those services.
- How and when the LEA will make decisions about the delivery of services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers.
- Title III services provided to children and educational personnel in private schools must be equitable and timely and address their educational needs.
- Funds provided for educational services for private school children and educational personnel must be equal, taking into account the number and educational needs of those children, to the funds provided for participating public school children.
- Title III services provided to private school children and educational personnel must be secular, neutral, and non-ideological.
- LEAs may serve private school LEP children and educational personnel either directly or through contracts with public and private agencies, organizations, and institutions.
- The control of funds used to provide services and the title to materials and equipment purchased with those funds must be retained by the LEA.
- Services for private school children and educational personnel must be provided by employees of the LEA or through a contract made by the LEA with a third party.
- Providers of services to private school children and educational personnel must be independent of the private school and of any religious organization, and the providers' employment or contract must be under the control and supervision of the LEA.
- Funds used to provide services to private school children and educational personnel must not be commingled with non-federal funds.

A Memorandum of Understanding (MOU) between the LEA and private school should be developed as a result of initial consultation and address the items listed above. Subsequent meetings may be necessary between the LEA and private school to assess services and determine areas and plans for improvement. Documentation of timely and meaningful consultation with private schools should be included in the service delivery plan, and is a requirement on the budget narrative submission for release of Title III funds.

Once a private school student is identified as EL, the private school may request the student continue to receive Title III services in subsequent school years until the student attains English proficiency.

It is possible that more than one consultation a year may be required:

- Spring consultation for participation the following school year.
- Fall consultation regarding possible ELs.
- Fall consultation regarding needs and funding limits for regular Title III allocations.
- Consultation regarding potential immigrant (recent arrivers) and funding support for immigrant (recent arrivers) enrolled in private schools, when the district is the recipient of the Title III – Immigrant sub-grant.

### **Private Schools and Title III Consortium Members**

All districts are required to consult with private schools within district boundaries. Districts who are members of a Title III Consortium must inform their consortium lead if a private school has agreed to participate in Title III. The consortium lead, member district, and private school will need to consult on the services to be provided and the funding available for the identified ELs enrolled in the private school.

The link to U.S. Department of Education Private School Participation, Sec. 9501 is:

<http://www2.ed.gov/policy/elsec/leg/esea02/pg111.html>

The Non-Regulatory Guidance for ESEA 9501 can be found at:

<http://www2.ed.gov/programs/titleiparta/psguidance.doc>

### **PARENT NOTIFICATION REQUIREMENTS (SECTION 3302 (A), (B), (C), (D))**

Districts are required to notify parents of their student's identification and placement in a language instructional program (ELD program) within the timelines listed below:

- Not later than 30 days after the beginning of the school year for ELs participating in an EL program or identified at the beginning of the school year.
- Within two weeks if the student enrolls after the school year has begun.
- If the district has failed to meet AMAOs, parents must be notified within 30 days of determination of failure.

All notifications must be in an understandable and uniform format, and to the extent practicable, in a language the parent can understand. Notification letters must be dated and signed by district or school personnel.

Templates for these letters are available through TransACT.com ([www.transact.com](http://www.transact.com)) and are provided free of charge to Oregon schools by the ODE.

## **English Language Proficiency Standards**

In October 2013, the Oregon State Board of Education adopted new ELP standards that correspond to the Common Core. These standards will be assessed on the ELPA21, new language proficiency assessment currently in development. ELP Standards web page: <http://www.ode.state.or.us/search/results/?id=36>

Definition: Academic language is different from everyday speech and informal writing. It is the language of texts, of academic discussion, and formal writing. Without academic language proficiency, students will not achieve long-term success in school. ELs at the intermediate and advanced levels of ELD, who receive no formal language instruction, demonstrate oral fluency, but generally show critical gaps in language knowledge and vocabulary. Academic language must be continuously developed and explicitly taught across all subject areas

## **ASSESSMENT OF ENGLISH LEARNERS**

### **English Language Proficiency Assessment for the 21<sup>st</sup> Century (ELPA21)**

All students with a primary language other than English who qualify for EL services are required to participate annually in English language proficiency (ELP) testing. In 2015-16, Oregon is transitioning to the new English Language Proficiency Assessment for the 21<sup>st</sup> Century (ELPA21). ELPA21 is administered as a single test that contains both the ELPA21 reading, writing, and listening segment, and the ELPA21 speaking segment. While both segments are part of the same ELPA21 test, students will require an additional TA approval to begin each segment.

The ELPA21 reading, writing, and listening section is the first segment presented to students. Students should review their answers upon completing all questions in this segment, as they will not be able to return to this portion of the test after they have been approved to start the ELPA21 speaking segment. After reviewing his or her responses for the first ELPA21 segment, the student will await Test Administrator (TA) approval before they can start the ELPA21 speaking segment.

Due to the nature of some students' disability, a student's IEP or 504 Plan might exempt the student from responding to a particular domain of the ELPA21 (reading, writing, speaking, or listening). Please review the final version of the Test Administration Manual (TAM) for information on domain exemption policies for ELPA21, and the Oregon Accessibility Manual (OAM) for information regarding available supports for ELPA21. TAs who need to administer the ELPA21 must be officially trained for that assessment. Please see the TAM for details.

## **State Content Assessments**

Students participate in the State Mathematics and English Language Arts/Literacy (ELA) as part of the Smarter Balanced Assessment (SBAC) system beginning with the 2014-15 school year. Science and Social Studies assessments are taken on the Oregon Assessment of Knowledge and Skills (OAKS).

ELPA21, Test Administration Manual and Oregon Accessibility Manual websites:

[www.ode.state.or.us/go/ELPA](http://www.ode.state.or.us/go/ELPA)

[www.ode.state.or.us/go/TAM](http://www.ode.state.or.us/go/TAM)

<http://www.ode.state.or.us/search/page/?=487>

## **Annual Measureable Achievement Objectives (AMAO)**

The AMAOs are the yearly accountability report on the district's ability to meet targets for ELs. There are three targets:

- AMAO 1 – progress in learning English;
- AMAO 2 – obtaining academic English proficiency;
- AMAO 3 – participation and achievement in Reading and Math assessments.

In Oregon, AMAO 2 is broken down into two sub categories:

- AMAO 2A – obtaining academic English proficiency out of all identified having been identified fewer than five years ELs;
- AMAO 2B – obtaining academic English proficiency out of all identified ELs having been identified for five or more years.

Districts can access the current year's AMAO report and previous year's reports from the following web page: <http://www.ode.state.or.us/search/page/?id=3408>

ODE publishes an annual AMAO policy and technical manual for districts prior to the release of the AMAO report. This report is linked to the AMAO web page.

<http://www.ode.state.or.us/search/page/?id=3408>

## **Improvement Plans**

ODE provides formal communication for all districts not meeting AMAOs each year. This letter outlines district requirements and timelines. Districts will enter 2-year Title III improvement status when they do not meet the AMAO target(s) for 2 consecutive years. Districts will remain in 2-year improvement status for a 3rd year if the district does not meet that same AMAO target for 3 consecutive years, these districts (i.e., 2-year improvement status) are required to:

1. Develop an improvement plan; and
2. Address the factors that prevented the district from meeting the AMAOs in the district's improvement plan.

Districts will enter 4-year Title III Improvement status when they do not meet the same AMAO target(s) for 4 or more consecutive years. District will remain in 4-year Improvement status if

the district continues to not meet the same AMAO target(s) in future years. Districts **MUST** fulfill 4-year improvement requirements listed.

Districts who fail to meet one or more AMAO targets for four consecutive years (i.e., 4-year improvement status) are required to:

1. Develop an improvement plan;
2. Address the factors that prevented the district from meeting the AMAOs in the district's improvement plan; and
3. Review, evaluate, and revise curriculum, program, and methods of instruction that prevent the district from meeting AMAOs.

Title III regulations require the state to:

- Require the LEA to modify the curriculum, program, and methods of instruction, OR
- Make a determination on the continuation of funding, AND
- Require such entity to replace educational personnel relevant to the entity's failure to meet such objectives.

Title III 20 USC 6842(b) (4) (A) (B) (i) (ii)

Title III regulations require the state to:

- Provide technical assistance to districts.
- Title I regulations also require states, when applicable, to provide technical assistance to schools served by the district that need assistance in meeting the AMAOs.
- In consultation with the district, develop professional development strategies and activities that the district will be required to use to meet AMAOs.
- In consultation with the district, review, evaluate, and revise curriculum, program, and methods of instruction that prevent the district from meeting AMAOs.
- In consultation with the district, develop a plan to incorporate strategies and methodologies to improve the specific ELD program or method of instruction
- Monitor the district's implementation of all planned improvement strategies and activities.

### **What happens if districts do not meet one or more AMAOs for three consecutive years?**

Federal law is silent about any differences in district requirements between districts not meeting for two consecutive and three consecutive years. Thus, districts not meeting for three consecutive years are subject to the same requirements as districts who do not meet for two consecutive years. ODE requires districts in 3-year improvement status to update their Title III Improvement Plan.

### **What happens if districts do not meet one or more AMAOs for five or more consecutive years?**

Districts not meeting for five or more years are required to annually revise and submit an updated Improvement Plan. Technical assistance will be provided to districts as they work toward to meeting the AMAOS.

The state may provide additional technical assistance and guidance while working with the district to address barriers to not meeting the AMAO targets. ODE requires districts to update their Title III 4-year Improvement Plan.

## FORMS AND CORRESPONDENCE

### Home Language Survey (HLS)

- Registration cards/documents must include at least the question:
  - What is the primary language spoken in the home?
- If a response is **any** language other than English, a HLS survey must be given.
- The survey must be comprehensive.
- If a district has Native American students, more questions should be included, such as:
  - Is the student’s language influenced by the Tribal language through a parent, grandparent, relative, or guardian?
  - Does the student have at least one grandparent that is part of a federally-recognized tribe?
- If the survey responses indicate a student may be an EL, the student must be tested with an ELP test within 30 days of registration, or within two weeks of entry into the school (if during the school year).
- If the student tests less than proficient on the ELP assessment, then a letter must go home to the parents indicating their child was identified as needing specific English language services. The parent must be given the opportunity to waive the services, if desired.
- If the parent does not waive the limited ELD services for their child, then the student must be placed in a program of “high quality language instruction, based on scientifically based research” (Section 3115(c)(1)), as determined by the individual district.
- Students placed in a program can be counted for state and Federal funding purposes.
- Once a student tests proficient on the annual ELP assessment, they will be exited from the EL program and monitored for two years.
- Those students, whose parents waive the services, may not be considered as “LEP” for State and Federal funding purposes; however, they are still ELs and must still be served according to their needs, according to the Office of Civil Rights. Waiver students are included in the district’s accountability reports as part of the EL sub-group.

### Required K-12 Parent Notices

TransACT Communications, Inc., has created many compliance related forms, including those required for Title III. These forms, translated into many languages, are available through TransACT, at <http://www.transact.com/> These forms are provided for the convenience of those responsible for EL services at the district/consortia level. Actual samples of these forms (or district forms created with the same information) are **REQUIRED** to be maintained at the school and district level for compliance monitoring purposes. Failure to save copies of the official parent notification communication as evidence of program

implementation, including the signature of a district personnel and the specific date (mm/dd/yyyy) the communication was disseminated, will result in Title III program monitoring findings for the district and the State of Oregon.

Forms used by school districts and accessible from this site include:

- AMAO Parent Notification (completed samples to ODE required for monitoring)
- Description of ELD program
- EL Parent Meeting (agendas from meetings need to be retained for monitoring)
- Home Language Surveys (English and translation samples to ODE required)
- Parent Meeting Participation
- Private School Consultation (completed forms must be submitted to ODE annually)
- Program Placement Notification (completed forms must be submitted to ODE annually)
- Waiver of Services (signed, dated copies must be retained for program monitoring)
- Verification of Private School Consultation (completed forms must be retained and submitted with monitoring documentation)
- Recent Arriver's (Immigrant) Student Count required for private schools

While districts are not required to use these specific forms, the completion and submission of forms containing this specific information is required for Federal compliance. Compliance will be confirmed with district monitoring.

**Home language surveys, as well as other personally identifiable information, are subject to FERPA requirements. Care should be taken to ensure student confidentiality and privacy.**

### [ENGLISH LEARNER STUDENTS WITH DISABILITIES](#)

**09/15 ODE is currently reviewing this section of the EL Program Guide – this section is subject to revisions in the 2015-16 school year. Please see the ELSWD web page for additional guidance and support. <http://www.ode.state.or.us/search/page/?id=4255>**

If you suspect that an EL has a disability, referral and evaluation should happen in a timely manner, as it does for all students.

Designated staff in each school/district should lead this process (whether IDEA or 504) as there are very specific guidelines to be followed. Educators who are knowledgeable about and familiar with the student's language acquisition must be involved at every step throughout the process.

All notices and consents are required to be provided in the parents' native language, unless the language is not written or it is clearly not feasible to do so. Qualified interpreters should be utilized to translate all other information.

Evaluations must be conducted by professionals who are able to select and administer procedures so that results are not biased by the child's culture or language. Both IDEA <http://idea.ed.gov/> and Section 504 <http://www2.ed.gov/about/offices/list/ocr/504faq.html> provide

specific information, and answer common questions in order to assist school and district personnel to best serve students with special academic needs.

IDEA requires that when an EL has a disability, planning for the child's language needs and the effect of language development on the overall educational program be considered by the IEP team, which must include someone who is knowledgeable about the child's second language acquisition and level of functioning.

Once an EL has been identified with as eligible for special education, the IEP team, with appropriate representation from those knowledgeable about the child's background, culture, and language acquisition should make the decisions about the relationship between the child's disability, language needs, participation in required assessments, and educational program.

For a 504 plan implementation, the team should include a professional who is knowledgeable about the child, and someone who understands the child's language development.

It is important to maintain the perspective that if the child's disability affects his or her functioning in any academic area, it is likely it will affect their progress in learning English. As such, it is not appropriate to withdraw language instruction from a child based on limited performance consistent with their disability.

### **Special Education**

The disproportionate representation of ethnically and linguistically diverse students in high incidence special education programs (mental retardation, learning disabilities, and emotional disturbance) has been a concern for over three decades ([Artiles, Trent, & Palmer, 2004](#); [Donovan & Cross, 2002](#); [Dunn, 1968](#)).

The importance of this issue is evident in the fact it has been studied twice by a National Research Council (NRC; [Donovan & Cross, 2002](#); [Heller, Holtzman, & Messick, 1982](#)). Yet two NRC reports, resolutions, statements, and actions from major professional organizations, such as the Council for Exceptional Children (CEC) ([CEC, 1997, 2002](#)), litigation (e.g., court cases such as [Larry P. vs. Riles](#) and [Diana vs. the California State Board of Education](#)), policy and advocacy efforts (e.g., new IDEA amendments, CEC Institutes on Disproportionality), pressure from parent groups, and efforts from a relatively small group of researchers have not been sufficient to significantly reduce this problem. The recent NRC report concluded, "twenty years later, disproportion in special education persists" ([Donovan & Cross, 2002, p. 1](#)). The phenomenon of disproportionate representation becomes particularly problematic when one considers our nation's school-aged population is becoming culturally and linguistically diverse at an unprecedented rate ([Smith, 2003](#); U.S. Department of Commerce, 2000).

Blatchley and Lau [report](#) in the National Association of School Psychologists (NASP) Communique May 2010, students who are learning English as a second or third language often lag behind native English speakers in academic skills, and may display differences in behavior or social skills compared to their native English speaking peers. These ELs are, therefore, at risk for referral for special services including special education.

Educators are encouraged to use appropriate, nonbiased approaches to screen ELs to determine their need for support within the general education program, and to implement culturally competent instructional strategies prior to considering referral to special education (e.g., see Lau & Blatchley, 2009). But, when ELs make little or no progress despite additional supports and special education services are considered, school personnel are urged to take a broad, ecological perspective, collecting data through a multi-dimensional, multi-task approach, and interpreting results within the context of the students' unique cultural, linguistic, and experiential backgrounds (Lau & Blatchley, 2010).

Using nationally standardized, norm-referenced test (NRT) scores to determine eligibility for special education requires considerable caution with ELs. As ELs present a continuum of English proficiency and acculturation, the appropriateness of NRTs for a given student depends on the similarity of that student's experience to that of the test's standardization population.

Tasks from standardized tests may be administered to find out what skills the learner does and does not have; however, if the learner's background experience is significantly different from the group on which the test was normed, it is inappropriate to use the normative scores to draw conclusions regarding student needs and special education eligibility. The use of native language interpreters does not negate this principle, and in fact introduces other complicating factors. For instance, current standardized tests do not involve the use of interpreters as part of their standardization procedure. Moreover, some test items just cannot be translated from English to another language without seriously distorting their original meaning or without suggesting the correct or expected response. These extraneous factors could seriously compromise the validity and utility of the assessment.

### **Impact of second language acquisition**

A major complication of academic assessment of ELs is their varying stages of second language acquisition and academic experience. Understanding the specifics of their current and previous instructional programs is essential to accurate interpretation of ELs' academic performance. If a student has previously and recently received instruction in his or her native language, it will be important to assess those skills using appropriately trained bilingual staff to ensure these competencies are not overlooked when all current instruction is in English; however, if a student has only received instruction in English, it is not useful to evaluate academic skills in the native language, unless he or she has been exposed to these skills at home or in community settings.

### **Using norm referenced achievement tests**

The focus in academic assessment is generally on the skill areas of reading, writing, and mathematics, and to a lesser extent, the content areas (such as science and social studies). The more unique an individual's educational experience and background, the more educators must individually tailor the assessment. Norm-referenced achievement tests are often not very useful in assessing ELs because the norms do not adequately represent EL populations. Further, test content does not adequately reflect ELs' instructional experience and test formats are often unfamiliar and confusing to the student.

To ensure ELs are appropriately identified with disabilities requiring special education services, student study teams, pre-referral teams, and RTI teams must be knowledgeable about:

- Second language acquisition;
- Culturally responsive instructional practices;
- Appropriate multicultural assessment practices;
- Linguistic and cultural challenges in using standardized test measures;
- Challenges faced by children whose L1 is not English;
- Effective instructional strategies for ELs; and
- Working with interpreters (oral communication) and translators (written communication).

ELs can be misidentified with disabilities for a huge variety of reasons. Some students with limited English exposure and knowledge have not received appropriate instruction, while others have experienced academic difficulties not related to disabilities such as:

- Interrupted schooling
- Limited formal education
- Medical problems
- Attendance problems due to family mobility
- Acculturation challenges

A resource guide is available on the ODE website to assist school district staff in managing the challenges of appropriately evaluating ELs who may have disabilities that require specialized instruction via an IEP (Special Education). The goal of the [Special Education Assessment Process for Culturally and Linguistically Diverse Students 2007 Revision](#) is to provide content, relevant to the challenge of deciding when academic learning difficulties are influenced by second language acquisition, the acculturation process, inappropriate instruction, or a disabling condition, as well as providing culturally responsive instructional and assessment considerations. Included in this 2007 Revision is a discussion on emerging practices on Response to Intervention (RTI) which has promising utility for CLD learners.

The following are a series of issues and requirements that student study teams should consider as they work with ELs:

- Informed parental consent for the evaluation.
- Legal timelines to develop assessment plan.
- Timeline for holding IEP team meeting.
- How much exposure to English has this child experienced?  
Where is this child and his/her family in the acculturation process?
- Immigrant or refugee status.
- The type of instruction has the student had: model of ELD or bilingual, if any.
- History of access to core curriculum.
- The student's language proficiency in the four skill areas in: L1, L2.
- How the student compares with his/her peers.
- How the student interacts with others in the home environment.

[Alfredo J. Artiles and Alba A. Ortiz \(2002\)](#)

The National Joint Committee on Learning Disabilities ([NJCLD](#)) strongly supports comprehensive assessment and evaluation of students with possible learning disabilities by a multidisciplinary team for the identification and diagnosis of students with learning disabilities. Comprehensive assessment of individual students requires the use of multiple data sources. These sources may include standardized tests, informal measures, observations, student self-reports, parent reports, and progress monitoring data from RTI approaches (NJCLD, 2005). Reliance on any single criterion for assessment or evaluation is not administered the student's native language, nor is a group assessment, such as universal screening or state-wide academic assessment tests, sufficient for comprehensive assessment or evaluation.

*Assessment* is used to refer to the collection of data through the use of multiple measures, including standardized and informal instruments and procedures. These measures yield comprehensive quantitative and qualitative data about an individual student. The results of continuous progress monitoring also may be used as part of individual and classroom assessments. Information from many of these sources of assessment data can and should be used to help ensure that the comprehensive assessment and evaluation accurately reflects how an individual student is performing.

*Evaluation* follows assessment and incorporates information from all data sources. *Evaluation* refers to the process of integrating, interpreting, and summarizing the comprehensive assessment data, including indirect and preexisting sources. The major goal of assessment and evaluation is to enable team members to use data to create a profile of a student's strengths and needs. The student profile informs decisions about identification, eligibility, services, and instruction. Comprehensive assessment and evaluation procedures are both critical for making an accurate diagnosis of students with learning disabilities. Procedures that are not comprehensive can result in identification of some individuals as having learning disabilities when they do not, and conversely, exclude some individuals who do have specific learning disabilities.

### **Additional Resources**

Language and Reading Interventions for English Learners, and English Learners with Disabilities:

[http://www.ode.state.or.us/opportunities/grants/nclb/title\\_iii/lang-and-rdng-interventions-for-ells-and-ells-with-disabilities.pdf](http://www.ode.state.or.us/opportunities/grants/nclb/title_iii/lang-and-rdng-interventions-for-ells-and-ells-with-disabilities.pdf)

### **IEP Team**

- Group described in [Sec. 34 CFR 300.306](#).
- The IEP team considers whether the student's lack of progress is consistent with the second language acquisition process or a possible manifestation of a disability.
- The team must include a representative with knowledge of second language acquisition and ELD programs/services.
- The team also includes parents/guardians, and student when appropriate.
- The team considers the results of the assessment and whether instruments used are valid and reliable for ELs.
- IEP teams must review ELPA results to determine the student's level of English proficiency.

## **IEP Development for ELs - Must include:**

- Current levels of performance (based on assessment results; include strengths and weaknesses).
- Assessment and classroom accommodations, program supports and modifications (including the ELPA21).
- Goals should be linguistically appropriate and standards based.
- The need for special education services and ELD services; instruction could be provided by both programs.
- ELD standards when appropriate.
- Language of instruction (can be different for different subjects).
- Materials and instructional programs appropriate for ELs.
- The ELPA21 should be the primary criterion to determine the student's level of English proficiency, unless the IEP Team decides that the student needs an alternate English proficiency test.
- Should ELPA21 be given with or without accommodations.
- The need to use alternate assessment in one or more required domain.

## **In the IEP**

- Instruction needs to address both their linguistic and cultural characteristics and their disabilities.
  - May include:
    - Sheltered academic instruction
    - Mediating scaffolds – peer support
- Task scaffolds – reduce the information students must generate independently.
- Material scaffolds – learning prompts.
- Comprehensible input – language appropriate to the student's ELP.

## **504 Accommodation Plans**

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal civil rights statute which provides:

*“No otherwise qualified individual with disabilities in the United States...shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.”*

Although Section 504 protects all individuals with disabilities – students, staff, parents, and the public – this publication addresses Section 504 as it affects students in public schools. Since all public school districts receive federal funds, all public school districts (and public charter schools) must comply with Section 504. Additionally, public school districts are government entities covered by Title II of the Americans with Disabilities Act of 1990 (ADA), a federal law. This publication is designed to assist Oregon school districts to comply with these nondiscrimination laws. Section 504 is an evolving area of law, and readers should always supplement their understanding of Section 504 with current information.

To be in compliance with Section 504 and state nondiscrimination requirements for schools, school districts with more than 15 employees must do the following:

1. Designate an employee to coordinate compliance with Section 504.
2. Adopt and implement procedures to ensure interested persons can obtain information regarding the existence and location of services, activities, and facilities accessible to and usable by persons with disabilities.
3. Provide grievance procedures that have appropriate due process standards, and provide for the prompt and equitable resolution of complaints of discrimination.
4. Provide notices that the district does not discriminate in violation of Section 504. The notification must state, where appropriate, the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity.
5. Provide notice of the designated employee, how to obtain information about access, the grievance procedures, and the district's statement of nondiscrimination to students, parents, employees, unions, and professional organizations. These notices should be included in student/parent handbooks and on the district's website.

Taken from: <http://www.ode.state.or.us/policy/federal/civilrights/sec504info.doc>

Additional resource, PowerPoint presentation:

[http://www.ode.state.or.us/teachlearn/conferencematerials/sped/504\\_presentation.ppt](http://www.ode.state.or.us/teachlearn/conferencematerials/sped/504_presentation.ppt)

### **Talented and Gifted (TAG) Identification**

In considering the pool of candidates for identification as TAG learners, it is important to note gifted students exist in all cultures, all races, all ethnicities, and all socio-economic groups. According to the [Belin-Blank International Center for Gifted and Talented Education \(2008\)](#), there is minimal research about the characteristics of gifted ELs. Characteristics appear in varying degrees in ELs who are identified as gifted. The following list was compiled by the Iowa Department of Education as possible giftedness indicators:

- Acquires a second language rapidly,
- Shows a high ability in mathematics;
- Displays a mature sense of diverse cultures and languages;
- Code switches easily (think in both languages);
- Demonstrates an advanced awareness of American expressions;
- Translates at an advanced level;
- Navigates appropriate behaviors successfully within both cultures (Belin-Blank, pg 12).

Identifying ELs for gifted programming begins with collaboration among classroom teachers, gifted/talented educators, and EL educators, and is supported by ORS and OAR:

<http://www.ode.state.or.us/search/page/?id=2309> In identifying ELs for TAG identification, educators need to be especially sensitive to cultural bias in testing instruments and in the

TAG nomination processes for students who are essentially caught between two languages. (Belin-Blank, pg 16 – 17)

[Oregon Revised Statutes \(ORS\) 343.395 \(4\)](#) define Talented and Gifted Children as:

- Those children who require special educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society and who demonstrate outstanding ability or potential in one or more of the following areas:
  - General intellectual ability as commonly measured by measures of intelligence and aptitude.
  - Unusual academic ability in one or more academic areas
- Districts may also identify students in the follow areas:
  - Creative ability in using original or nontraditional methods in thinking and producing.
  - Leadership ability in motivating the performance of others either in educational or non-educational settings.
  - Ability in the visual or performing arts, such as dance, music, or art.

Oregon Administrative Rule ([OAR 581-022-1310 \(2\)\(a\)](#)) requires districts to “make efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged.”

Further, this rule indicates “despite a student’s failure to qualify” under the traditional methods of identification that “districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97<sup>th</sup> percentile”. Once identified, OARs described under [OAR 581-022-1330 \(4\)](#) requires “the instruction provided to identify students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning”.

Further considerations: The Oregon process for any student to be identified as TAG requires the nomination process include a “body of evidence” which should include the results of at least one nationally normed test and should also include convergent testing data, evidence of classroom performance, parent and teacher recommendations, work portfolios, and classroom observations. It is important to note the parent survey should be in the parents’ native language, if possible. No single measurement, nor the results of one test, can be used as the sole criterion for TAG education identification in Oregon.

Once the student is identified, she or he should receive services in the area of identification. The testing instrument used for identification defines the student’s area of identified giftedness. It is important for parents and teachers to know the student’s area(s) of gifted identification so the services are accurately provided.

There are complicating factors in identifying a student who are also receiving EL services. Here are some considerations:

- For example, if the student scored at the 97<sup>th</sup> percentile on a non-verbal instrument, he or she may still be struggling with the nuances of second language acquisition. In an attempt to improve this situation, many educators assume that testing the student in his/her native language for gifted education might be the answer. An example of this

would be testing a native Spanish speaker for TAG on a test that is written in Spanish. At this point, it would be extremely important to know if the student speaks and reads Spanish. This may not be the case; the student may not read or write Spanish, and may have verbal skills which only encompass “speaking Spanish”.

- For some cultures, parents do not seek recognition for their child. Cultural values should be considered for TAG identification. Although TAG is a needs-based program, it may not align to the family’s cultural values to extol the abilities of one child and not all of the children in the family.
- Another consideration is the “element of expectation” once a student is identified to receive TAG education services. It is most likely important for the student to continue to receive EL services. In addition, gifted education identification can set an extraordinary learning path for a student. However, when a student is identified as gifted, both the teacher’s and the family’s expectations rise. In a outcome manner, the student’s self-expectation also rises. While a student is still acquiring English language skills, he or she should be afforded opportunities to check-in with teachers on appropriate levels of expectation both from the student’s and parent’s points of view and from the teacher’s point of view. This collaboration of expectations serves the newly identified EL/TAG student in the best possible way.

Below are some resources to assist parents and teachers to further understand the needs of high ability TAG students who may be culturally and linguistically diverse.

The TAG brochure has been translated into the five most frequently occurring languages in Oregon.

<http://www.ode.state.or.us/teachlearn/specialty/tag/giftedbrochure.pdf>

Link to the National Association for Gifted Children (NAGC) position paper on Identifying Culturally and Linguistically Diverse Learners:

[http://www.nagc.org/uploadedFiles/PDF/Position\\_Statement\\_PDFs/Identifying%20and%20Serving%20Culturally%20and%20Linguistically%20Diverse%20Gifted%20Students.pdf](http://www.nagc.org/uploadedFiles/PDF/Position_Statement_PDFs/Identifying%20and%20Serving%20Culturally%20and%20Linguistically%20Diverse%20Gifted%20Students.pdf)

Recommended Reading: *Cultural Competence, A Primer for Educators* by Jerry V. Diller and Jean Moule, 2005, Wadsworth, Thomson Learning, Inc.

Recommended Resource: *Identifying Gifted and Talented English Language Learners, Grades K-12*, the Iowa Department of Education, published by the Belin-Blank International Center for Gifted Education and Talent Development (2008) Click on the following link: <https://www.educateiowa.gov/sites/files/ed/documents/IdentifyGiftedTalentedELL.pdf> , then on the embedded link, under “Gifted & Talented Connections”.

## CHARTER SCHOOLS

Charter schools are required to have an EL Plan, this plan could be included in the sponsoring district’s EL Plan or a separate plan. This plan addresses the federal requirements on services for ELs (Title VI) as well as Oregon’s ELL weighted funding requirements. Charter schools not meeting AMAOs for 2 or more years will be required to write a Title III Improvement Plan.

Although public charter schools are exempt from [ORS 336.079](#), applicable state and federal anti-discrimination laws require public charter schools to identify ELs and provide them with appropriate programs to overcome their language barriers. Whether a particular program is appropriate under federal law depends on whether it: (1) is based on a **sound educational theory or legitimate experimental strategy**; (2) implemented effectively; and (3) produces results that demonstrate that language barriers are being overcome. Oregon requirements are, most likely, substantially the same as federal requirements.

1. **Sound educational theory or legitimate experimental strategy** – Castañeda (see legal resources) requires districts to use educational theories that are recognized as sound by some experts in the field, or at least theories recognized as legitimate educational strategies. Some approaches falling under this category include transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and ESL. A public charter school using any of these approaches has complied with the first requirement of Castaneda. If a district is using a different approach, it is in compliance with Castañeda if it can show that the approach is considered sound by some experts in the field or that it is considered a legitimate experimental strategy.
2. **Implemented effectively** - If a public charter school uses a program model such as ELD or bilingual education, the public charter school should have ascertained teachers who use those methods are effective in their implementation. This training can take the form of in-service training, formal college coursework, or a combination of the two. In addition, a public charter school should be able to show it has determined its teachers have mastered the skills necessary to teach effectively in a program for LEP students. In making this determination, the public charter school should use validated evaluative instruments -- that is, tests that have been shown to accurately measure the skills in question. The public charter school should also have the teacher's classroom performance evaluated by someone familiar with the method being used.

If a public charter school has shown it has unsuccessfully tried to hire qualified teachers, it must provide adequate training to teachers already on staff to comply with the Title VI regulation. Such training must take place as soon as possible. For example, public charter schools sometimes require teachers to work toward obtaining a credential as a condition of employment in a program for EL students. This requirement is not, in itself, sufficient to meet the public charter school's obligations under the Title VI regulation. To ensure that EL students have access to the public charter school's programs while teachers are completing their formal training, the public charter school must ensure those teachers receive sufficient interim training to enable them to function adequately in the classroom, as well as any assistance that may be necessary to carry out the public charter school's interim program.

3. **Produces results that demonstrate language barriers are being overcome.** Programs of service for ELs are required to meet three state goals measured annually by the state assessment system: 1) demonstrate ELs have progressed one proficiency level higher at the end of each school year; 2) demonstrate that a set number and percent of ELs who have been enrolled in an ELD program for five years or more have achieved proficiency; and 3) the EL sub-group have met the AYP as required by the ESEA and as measured by OAKS reading and mathematics.

[OAR 581-0210-0046\(8\)](#) requires public charter schools to (1) develop and implement a plan for identifying students whose primary language is other than English, and (2) provide those students with "appropriate programs" until they are able to effectively participate in regular classroom instruction. OAR 581-021-0046(8) does not set out the requirements for "appropriate programs" nor have Oregon courts addressed that issue. Oregon courts would likely construe the requirements of "appropriate programs" similarly to how federal courts construe requirements for taking "appropriate action" under federal anti-discrimination laws.

If a district is using a different approach, it is in compliance with Castaneda if it can show the approach is considered sound by some experts in the field or it is at least, deemed a legitimate experimental strategy.

Also, the USDOE OCR in [The Provision of an Equal Education Opportunity to Limited-English Proficient Students \(2000\)](#), has provided non-formal general guidelines for districts to ensure that they meet the needs of EL's:

<http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html>

## **ALTERNATIVE SCHOOLS AND PROGRAMS**

### **Alternative Schools**

How are ELs served in alternative education settings?

- Public Alternative Schools (OAR 581-022-1350)  
Alternative programs may occur within a traditional school or public alternative school.
- Private Alternative Schools (OAR 581-021-0072, 0074)

Same lawful requirements as traditional public schools:

- Education plan and profile
- Career-related learning experiences
- Transportation
- SPED
- Background checks for staff
- Comprehensive Guidance and Counseling

Additional requirements for Alternative Schools:

- Transition plan
- Transportation plan
- Special Education Transition Plan

What resources are available?

- Alternative Education web site <http://www.ode.state.or.us/search/results/?id=78>
- Oregon State School Directory <http://www.ode.state.or.us/search/results/?id=227>
- Alternative School Evaluation Toolkits <http://www.ode.state.or.us/search/page/?id=731>

- Comprehensive Guidance and Counseling  
<http://www.ode.state.or.us/search/results/?id=132>

How might ELD instruction in an alternative education setting be different than a traditional school?

- ELD instructional period may look different, less time, etc.
- Small group or individual instruction
- Homeroom and advisory periods to support non-academic skills
- District counts by hours of instruction “part-time”
- Drug/alcohol intervention/counseling may be included in the program
- Instructors may or may not have the same academic background and licensure as ELD instructors in traditional school:
  - public alternative schools = same licensure requirements as traditional schools
  - private alternative schools (contractors) = not required to employ only licensed teachers or administrators (see ORS 336.635 (3))

### **JDEP, YCEP, LCTC**

JDEP - Juvenile Detention Education Program

YCEP - Youth Correctional Education Program

LCTC - Long-Term Care and Treatment Education Programs

All the Youth Correctional Education Programs (YCEP) and Juvenile Detention Education Program (JDEP) sites adhere to the current EL service and reporting requirements. The client services contracts that ODE has with each school district or educational service districts to provide the educational services have the following paragraph as a requirement.

*“Contractor’s Education Program shall comply with all requirements of OAR Chapter 581, Division 22 (Standards for Public Elementary and Secondary Schools), to the extent appropriate given the student’s anticipated length of stay, and OAR Chapter 581, Division 15 (Special Education) and all state and federal statutes and regulations referenced therein. Contractor shall comply with all other state and federal laws, regulations, and administrative rules applicable to the services provided under this Contract.”*

The YCEP has two points of entry referred to as “Intake” into the YCEP system: Farrell HS for the boys and Three Lakes HS for the girls. At each intake program, the students are assessed to determine whether they are eligible for EL services. The student’s status is designated in the statewide student information system that all the YCEP and JDEP schools utilize. Each year, the different sites administer the ELPA as appropriate for each student.

Additional information is available at:

JDEP and YCEP: <http://www.ode.state.or.us/search/results/?id=158>

LTCT: <http://www.ode.state.or.us/search/results/?id=79>

## OREGON DIPLOMA REQUIREMENTS

<http://www.ode.state.or.us/search/results/?id=368>

### ESSENTIAL SKILLS

In January 2007, the State Board adopted Essential Skills as a requirement for graduation. After public review and input, the Essential Skill definitions were adopted by the State Board of Education in March 2008. Beginning in 2012, students must demonstrate proficiency in identified essential skills to receive a high school diploma. The essential skills are process skills occurring across academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

Specific Essential Skills graduation requirements are based on the year the student first enrolled in Grade 9:

- Enrolled in Grade 9 in 2010-11 and beyond: Read and comprehend a variety of text; write clearly and accurately; and apply mathematics in a variety of settings.
- The remaining Essential Skills will be phased-in over subsequent years - timeline to be determined.

#### **Essential Skills:**

1. Read and comprehend a variety of text.
2. Write clearly and accurately.
3. Apply mathematics in a variety of settings.

*The following Essential Skills were phased-in after 2014; timeline to be determined:*

4. Listen actively and speak clearly and coherently.
5. Think critically and analytically.
6. Use technology to learn, live, and work.
7. Demonstrate civic and community engagement.
8. Demonstrate global literacy.
9. Demonstrate personal management and teamwork skills.

In support of the Essential Skills graduation requirement, many districts will offer work samples as an assessment option for their students. As districts build their local assessment systems, they will need to develop or acquire work sample resources such as prompts and scoring. ODE has developed a list of districts that have work sample resources in a variety of languages that are available to share with other districts in the areas of Reading, Writing, and Math. The list is located at:

<http://www.ode.state.or.us/wma/teachlearn/testing/resources/work-sample-sharing.xls>

Please visit the Essential Skills website for additional information:

<http://www.ode.state.or.us/search/page/?id=2042>

## ADDITIONAL RESOURCES

### Office of Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/qa-EL.html>

### Title III web page:

<http://www.ode.state.or.us/search/results/?id=106>

### Title III Contact List:

<http://www.ode.state.or.us/search/page/?id=2593>

## STATUTES, RULES, AND MEMORANDUMS: SERVICES FOR ENGLISH LEARNERS

### Federal Law

Each LEA receiving Title III funds is required by federal law to meet minimum program requirements. Federal laws relating to the distribution and use of Title III funds are found in the current ESEA document: <http://www2.ed.gov/policy/elsec/leg/esea02/pg39.html>

Title III – Language Instruction for Limited English Proficient and Immigrant Students

### SEC. 3102. PURPOSES.

The purposes of this part are —

- (2) to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;
- (3) to assist all limited English proficient children, including immigrant children and youth, to achieve at high levels in the core academic subjects so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet, consistent with section 1111(b)(1);
- (4) to develop high-quality language instruction educational programs designed to assist State educational agencies, local educational agencies, and schools in teaching limited English proficient children and serving immigrant children and youth;
- (5) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;
- (6) to assist State educational agencies, local educational agencies, and schools to build their capacity to establish, implement, and sustain language instruction educational programs and programs of English language development for limited English proficient children;

- (7) to promote parental and community participation in language instruction educational programs for the parents and communities of limited English proficient children;
- (8) to streamline language instruction educational programs into a program carried out through formula grants to State educational agencies and local educational agencies to help limited English proficient children, including immigrant children and youth, develop proficiency in English, while meeting challenging State academic content and student academic achievement standards;
- (8) to hold State educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by requiring —
  - (A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and
  - (B) adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 1111(b)(2)(B); and
- (9) to provide State educational agencies and local educational agencies with the flexibility to implement language instruction educational programs, based on scientifically based research on teaching limited English proficient children, that the agencies believe to be the most effective for teaching English.

Funds are directed to states and eligible local districts or consortia through a formula grant allocation to:

- develop high-quality language instruction educational programs;
- assist SEAs, LEAs, and schools to build their capacity to establish, implement, and sustain language instruction and development programs;
- promote parental and community involvement; and to
- hold SEAs, LEAs, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by:
  - demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and
  - adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 1111(b)(2); and (B).

The link to U.S. Department of Education Private School Participation, Sec. 9501 is:

<http://www2.ed.gov/policy/elsec/leg/esea02/pg111.html>

The Non-Regulatory Guidance for ESEA 9501 can be found at:

<http://www2.ed.gov/programs/titleiparta/psguidance.doc>

### SEC. 3116. LOCAL PLANS (AKA Plan of Service/Lau Plan).

(b) PLAN REQUIRED - 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.

(c) CONTENTS - Each plan submitted under subsection (a) shall—

- (1) describe the programs and activities proposed to be developed, implemented, and administered under the sub-grant;“
  - (2) describe how the eligible entity will use the sub-grant funds to meet all annual measurable achievement objectives described in section 3122;
  - (3) describe how the eligible entity will hold elementary schools and secondary schools receiving funds under this subpart accountable for—
    - (A) meeting the annual measurable achievement objectives described in section 3122;
    - (B) making adequate yearly progress for limited English proficient children, as described in section 1111(b)(2)(B); and
    - (C) annually measuring the English proficiency of limited English proficient children, so that such children served by the programs carried out under this part develop proficiency in English while meeting State academic content and student academic achievement standards as required by section 1111(b)(1);
  - (4) describe how the eligible entity will promote parental and community participation in programs for limited English proficient children;
  - (5) contain an assurance that the eligible entity consulted with teachers, researchers, school administrators, and parents, and, if appropriate, with education-related community groups and nonprofit organizations, and institutions of higher education, in developing such plan; and
  - (6) describe how language instruction educational programs carried out under the subgrant will ensure that limited English proficient children being served by the programs develop English proficiency.
- (d) TEACHER ENGLISH FLUENCY - Each eligible entity receiving a sub-grant under section 3114 shall include in its plan a certification that all teachers in any language instruction educational program for limited English proficient children that is, or will be, funded under this part are fluent in English and any other language used for instruction, including having written and oral communications skills.
- (e) OTHER REQUIREMENTS FOR APPROVAL - Each local plan shall also contain assurances that—
- (1) each local educational agency that is included in the eligible entity is complying with section 3302 prior to, and throughout, each school year;
  - (2) the eligible entity annually will assess the English proficiency of all children with limited English proficiency participating in programs funded under this part;
  - (3) the eligible entity has based its proposed plan on scientifically based research on teaching limited English proficient children;
  - (4) the eligible entity will ensure that the programs will enable children to speak, read, write, and comprehend the English language and meet challenging State academic content and student academic achievement standards; and
  - (5) the eligible entity is not in violation of any State law, including State constitutional law, regarding the education of limited English proficient children, consistent with sections 3126 and 3127.

## Subpart 2—Accountability and Administration

### SEC. 3121. EVALUATIONS.

- (a) **IN GENERAL** - Each eligible entity that receives a sub-grant from a State educational agency under subpart 1 shall provide such agency, at the conclusion of every second fiscal year during which the sub-grant is received, with an evaluation, in a form prescribed by the agency, that includes—
- (1) a description of the programs and activities conducted by the entity with funds received under subpart 1 during the two immediately preceding fiscal years;
  - (2) a description of the progress made by children in learning the English language and meeting challenging State academic content and student academic achievement standards;
  - (3) the number and percentage of children in the programs and activities attaining English proficiency by the end of each school year, as determined by a valid and reliable assessment of English proficiency; and
  - (4) a description of the progress made by children in meeting challenging State academic content and student academic achievement standards for each of the 2 years after such children are no longer receiving services under this part.
- (b) **USE OF EVALUATION** - An evaluation provided by an eligible entity under subsection (a) shall be used by the entity and the State educational agency—
- (1) for improvement of programs and activities;
  - (2) to determine the effectiveness of programs and activities in assisting children who are limited English to attain English proficiency (as measured consistent with subsection (d)) and meet challenging State academic content and student academic achievement standards; and
  - (3) in determining whether or not to continue funding for specific programs or activities.
- (c) **EVALUATION COMPONENTS** - An evaluation provided by an eligible entity under subsection (a) shall—
- (1) provide an evaluation of children enrolled in a program or activity conducted by the entity using funds under subpart 1 (including the percentage of children) who—
    - (A) are making progress in attaining English proficiency, including the percentage of children who have achieved English proficiency;
    - (B) have transitioned into classrooms not tailored to limited English proficient children, and have a sufficient level of English proficiency to permit them to achieve in English and transition into classrooms not tailored to limited English proficient children;
    - (C) are meeting the same challenging State academic content and student academic achievement standards as all children are expected to meet; and
    - (D) are not receiving waivers for the reading or language arts assessments under section 1111(b)(3)(C); and
  - (2) include such other information as the State educational agency may require.
- (d) **EVALUATION MEASURES** - A State shall approve evaluation measures for use under subsection (c) that are designed to assess—
- (1) the progress of children in attaining English proficiency, including a child's level of comprehension, speaking, listening, reading, and writing skills in English;

- (2) student attainment of challenging State student academic achievement standards on assessments described in section 1111(b)(3); and
- (3) progress in meeting the annual measurable achievement objectives described in section 3122.

(e) SPECIAL RULE FOR SPECIALLY QUALIFIED AGENCIES - Each specially qualified agency receiving a grant under this part shall provide the evaluations described in subsection (a) to the Secretary subject to the same requirements as apply to eligible entities providing such evaluations to State educational agencies under such subsection.

## SEC. 3122 – ACHIEVEMENT OBJECTIVES AND ACCOUNTABILITY. ESEA 20 USC 6842

(b) ACCOUNTABILITY -

- (1) FOR STATES - Each State educational agency receiving a grant under subpart 1 shall hold eligible entities receiving a sub-grant under such subpart accountable for meeting the annual measurable achievement objectives under subsection (a), including making adequate yearly progress for limited English proficient children.
- (2) IMPROVEMENT PLAN - If a State education agency determines, based on the annual measurable achievement objectives described in subsection (a), that an eligible entity has failed to make progress toward meeting such objectives for 2 consecutive years, the agency shall require the entity to develop an improvement plan that will ensure that the entity meets such objectives. The improvement plan shall specifically address the factors that prevented the entity from achieving such objectives.
- (3) TECHNICAL ASSISTANCE - During the development of the improvement plan described in paragraph (2), and throughout its implementation, the State educational agency shall —
  - (A) provide technical assistance to the eligible entity;
  - (B) provide technical assistance, if applicable, to schools served by such entity under subpart 1 that need assistance to enable the schools to meet the annual measurable achievement objectives described in subsection (a);
  - (C) develop, in consultation with the entity, professional development strategies and activities, based on scientifically based research, that the agency will use to meet such objectives;
  - (D) require such entity to utilize such strategies and activities; and
  - (E) develop, in consultation with the entity, a plan to incorporate strategies and methodologies, based on scientifically based research, to improve the specific program or method of instruction provided to limited English proficient children.
- (4) ACCOUNTABILITY- If a State education agency determines that an eligible entity has failed to meet the annual measurable achievement objectives described in subsection (a) for four consecutive years, the agency shall —
  - (A) require such entity to modify the entity's curriculum, program, and method of instruction; or
  - (B) (i) make a determination whether the entity shall continue to receive funds related to the entity's failure to meet such objectives; and

(ii) require such entity to replace educational personnel relevant to the entity's failure to meet such objectives.

## LEGAL REFERENCES

There are both Federal and State Laws governing the implementation of EL programs. In addition, there is a requirement for all public schools to follow the guidelines 1) 1868 - Fourteenth Amendment - "No state shall deny to any person within its jurisdiction the equal protection of the laws."

3) [Bilingual Education Act \(Amended in 1974 and 1978\)](#) - "The Congress declared it to be the policy of the United States, in order to establish equal educational opportunity for all children, (a) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods; and (b) for that purpose, to provide financial assistance to local education agencies, and to State education agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs in elementary and secondary schools, including activities at the pre-school level, which are designed to meet the educational needs of such children; and to demonstrate effective ways of providing, for children of limited English speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language."

The United States Office of Civil Rights (OCR)  
<http://www2.ed.gov/about/offices/list/ocr/index.html>

### **Overview of the Agency**

*The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.*

We serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems. An important responsibility is resolving complaints of discrimination. Agency-initiated cases, typically called compliance reviews, permit OCR to target resources on compliance problems that appear particularly acute. OCR also provides technical assistance to help institutions achieve voluntary compliance with the civil rights laws that OCR enforces. An important part of OCR's technical assistance is partnerships designed to develop creative approaches to preventing and addressing discrimination.

Step 1: Determine the planned Educational Approach.

Step 2: Have a system for identification.

Step 3: Have a planned assessment to determine students who have identified a primary language other than English on the HLS for English proficiency.

Step 4: Develop a system for placement and services.

**Step 5: Provide adequate staffing and resources.**

- Ensure instructional staff are appropriate to implement services, have the educational expertise, and are qualified to implement services.
- Recruit and hire qualified staff, and establish a timetable to have them in place.
- Identify and meet training needs.
- Identify and obtain resources needed to implement the EL program.

**Step 6: Develop and communicate a consistent system for transition/exiting students.****Step 7: Monitoring.**

- Monitor the success of former ELs for two years after exiting bilingual/ESL program.
- Determine how often students will be monitored and what information will be reviewed to measure success.
- If a student is not successful, determine whether the causes are language, academics, or other reasons.
- Have procedures in place to assist students.
- Inform parents of service options.

**Step 8: Program Evaluation.**

In order to meet state regulatory requirements, LEAs should have a system of evaluating their programs in place. It will likely include:

- Description of programs and activities;
- ELs' progress in English and academic achievement;
- Determine effectiveness of programs and activities;
- Determine whether to continue funding for specific programs or activities.

**State Educational Agency (SEA) Responsibilities:**

- Allocate sub-grants and provide technical assistance to LEAs, creating systems to complying with federal and state program requirements.
- Participate in monitoring of LEAs.
- Establish and calculate AMAOs.
- Provide technical assistance.
- Collect and synthesize data on effectiveness of services and activities.
- Report to the USDOE on the effectiveness of services in improving the education of ELs.

**Oregon State Laws**

Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) for Education related to ELs are listed on page 67 in the Appendix section of this guide. The Appendix lists the sections in OAR and ORS that pertain to ELs, with hyperlinks to specific sections for viewing of complete text. Web page addresses for OAR and ORS sites are:

OAR: [http://arcweb.sos.state.or.us/pages/rules/oars\\_500/oar\\_581/581\\_tofc.html](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html)

ORS: <http://www.leg.state.or.us/ors/home.htm>

The following OAR and ORS are a few, but not all, of those relating to ELs.

**ORS 336.079 Special English courses for certain children.** Specific courses to teach speaking, reading, and writing of the English language shall be provided at kindergarten and each grade level to those children who are unable to benefit from classes taught in English. Such courses shall be taught to such a level in school as may be required until children are able to profit from classes conducted in English. [1971 c.326 §3; 1993 c.45 §77]

**ORS 659.850 Discrimination in education prohibited; rules.**

- (1) As used in this section, “discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. “Discrimination” does not include enforcement of an otherwise valid dress code or policy, as long as the code or policy provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.
- (2) A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.
- (3) The State Board of Education and the State Board of Higher Education shall establish rules necessary to ensure compliance with subsection (2) of this section in the manner required by ORS chapter 183. [Formerly 659.150; 2007 c.100 §29]

**OAR 581-021-0046(8) Bilingual or Linguistically Different Students.** Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

**The following OAR is under review for updated language, this OAR is subject to change during the 2015-16 school year.**

**OAR 581-023-0100 (4)**

- (4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:
  - (a) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;
  - (b) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;
  - (c) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;

- (d) Adequate equipment and instructional materials;
- (e) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.
- (f) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.
- (g) Process for transition from ELL Services that include procedures and criteria for determining when students no longer need those services. The criteria shall include:
  - (A) Achieving at the advanced level on the State's English Language Proficiency Assessment (ELPA).
  - (B) The advanced level is a culmination of progress demonstrated on the same state proficiency measure over a legitimate period of time.

### **Case Law and Related Statutes**

Title VI of the Civil Rights Act of 1964 and its regulations at [34 CFR Part 100.2](#) - "No person in the U.S. shall, on the ground of race, color, national origin be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

[May 25, 1970, Memorandum, Department of Health, Education, and Welfare](#) - This memorandum interpreted the Civil Rights Act. It delineates the responsibility of school districts in providing equal education opportunity to national origin minority group students whose English language proficiency is limited. The following quotes discuss some major areas of concern with respect to compliance with Title VI and have the force of Law:

*"Where inability to speak and understand the English language exclude 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 its instructional program to these students."*

*"School districts have the responsibility to adequately notify national origin minority group parents of school activities which are called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English."*

*"School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin minority group children access to college preparation courses on a basis directly related to the failure of the school system to inculcate English language skills."*

- 5) 1974 - Equal Educational Opportunities Act (EEOA) - *"No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or nation origin, 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."*

Title II of the Americans with Disabilities Act of 1990, 42 USC 12131-12161  
Individuals with Disabilities Educational Improvement Act (IDEIA) of 2004

*Lau v. Nichols* - The decision stated that providing students the same desks, books, teachers and curriculum did not ensure that they had equal educational opportunity, particularly if the students did not speak English. If English is the mainstream language of instruction, then measures have to be taken to ensure that instruction is adapted to address those children's linguistic characteristics (*Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 1974).

*Castaneda v Pickard*, 648 F2d 989(5<sup>th</sup> Cir 1981), the 5<sup>th</sup> Circuit set out a widely adopted three-part test to determine whether districts have taken "appropriate action" to remedy the language deficiencies of their ELs: (1) is the school "pursuing a program informed by an educational theory recognized as sound by some experts in the field, or at least, deemed a legitimate experimental strategy"; (2) are the programs and practices actually used by the school "reasonably calculated to implement effectively the educational theory adopted by the school"; and (3) does the program "produce results indicating that the language barriers confronting students are actually being overcome". Congress intended that schools make a "genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students".

### **State Archiving (Retention) Requirements**

Educational Service Districts, School Districts, and Individual School Records, Division 400  
[http://arcweb.sos.state.or.us/pages/rules/oars\\_100/oar\\_166/166\\_400.html](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_400.html)

## OREGON ADMINISTRATIVE RULES (OAR) AND OREGON REVISED STATUTES (ORS)

Web page addresses for OAR and ORS sites are:

OAR: [http://arcweb.sos.state.or.us/pages/rules/oars\\_500/oar\\_581/581\\_tofc.html](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html)

ORS: <http://www.leg.state.or.us/ors/home.htm>

The following is a list of OAR and ORS that relate to ELs, with hyperlinks to the specific section.

Oregon 2015 passes new legislation this June, this bill has not been given it ORS number at the time of this posting. This is [HB 3499](#). Two workgroups are in process as outlined in this bill. Additional requirements will be forthcoming in the coming months, including additional OARs.

Oregon Department of Education			
Type	Number	Title	Click on Link, then scroll down to specific number
OAR	581-021-0030	Limitation on Administration and Utilization of Tests in Public Schools	<a href="#">OAR 581-021-0030</a>
OAR	581-021-0045	Discrimination Prohibited	<a href="#">OAR 581-021-0045</a>
OAR	581-021-0046	Program Compliance Standards	<a href="#">OAR 581-021-0046</a>
OAR	581-021-0260	An Educational Agency or Institution's Annual Notification	<a href="#">OAR 581-021-0260</a>
OAR	581-022-0610	Administration of State Assessments	<a href="#">OAR 581-22-0610</a>
OAR	581-022-0615	Assessment of Essential Skills	<a href="#">OAR 581-22-0615</a>
OAR	581-022-0617	Essential Skill Assessments for English Language Learners	<a href="#">OAR 581-22-0617</a>
OAR	581-022-1140	Equal Educational Opportunities	<a href="#">OAR 581-22-1140</a>
OAR	581-022-1363	Expanded Options -- Definitions	<a href="#">OAR 581-22-1363</a>
OAR	581-023-0100	Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution	<a href="#">OAR 581-023-0100</a>
ORS	327.013	State School Fund distribution computations for school districts	<a href="#">ORS 327.013</a>
ORS	327.345	Grants for training English as second language teachers; qualifications; use; rules	<a href="#">ORS 327.345</a>

<b>Oregon Department of Education</b>			
<b>Type</b>	<b>Number</b>	<b>Title</b>	<b>Click on Link, then scroll down to specific number</b>
ORS	<b>336.074</b>	<b>Teaching in English required; exceptions</b>	<a href="#">ORS 336.074</a>
ORS	<b>336.079</b>	<b>Special English courses for certain children</b>	<a href="#">ORS 336.079</a>
ORS	<b>336.081</b>	<b>Opportunity to qualify to assist non-English-speaking students</b>	<a href="#">ORS 336.081</a>
ORS	<b>339.351</b>	<b>Definitions for ORS 339.351 to 339.364.</b>	<a href="#">ORS 339.351</a>
ORS	<b>659.850</b>	<b>Discrimination in education prohibited; rules</b>	<a href="#">ORS 659.850</a>
ORS	<b>659.855</b>	<b>Sanctions for noncompliance with discrimination prohibitions</b>	<a href="#">ORS 659.855</a>

**Numbered Memoranda Pertaining to English Learners**

<b>Numbered Memorandum</b>	<b>Pertaining to:</b>	<b>Link</b>
001-2014-15	English Learner Students with Disabilities	<a href="#">Executive Numbered Memorandum 001-2014-15 English Learner Students with Disabilities</a>
009-2013-14	Proper Identification of Spanish-Speaking English Learners for the Kindergarten Assessment	<a href="#">Executive Numbered Memorandum 009-2013-14 – Proper Identification of Spanish-Speaking English Learners for the Kindergarten Assessment</a>
007-2013-14	Reclassification and Retention Procedures for English Learners (ELs) (Revision to Memo #002-2008-09)  <b>(Note: this memorandum is under review for updating to reflect ELPA21)</b>	<a href="#">Executive Numbered Memo 007-2013-14 – Reclassification and Retention Procedures for English Learners</a>
011-2012-13	Postponement of Materials for English Language Proficiency and Development (ELP/D)	<a href="#">Executive Numbered Memo: 011-2012-13 – Postponement of Materials for English Language Proficiency and Development (ELP/D)</a>
007-2011-12	ELL participation in annual English Language Proficiency Assessment (Revision)  <b>(Note: this memorandum is under review for updating to reflect ELPA21)</b>	<a href="#">MEMORANDUM NO. 007-2011-12 - ELL Participation in annual English Language Proficiency Assessment (Revision to MEMORANDUM NO. 006-2009-10)</a>
007-2009-10	Assessment of Essential Skills Options for LEP Students  <b>(Note: this memorandum is under review for updating to reflect ELPA21)</b>	<a href="#">MEMORANDUM NO. 007-2009-10 – Assessment of Essential Skills Options for LEP Students</a>
006-2009-10	ELL participation in annual English Language Proficiency Assessment (original)	<a href="#">MEMORANDUM NO. 006-2009-10 – ELL Participation in annual English Language Proficiency Assessment (ELPA)</a>
002-2008-09 <b>(Revised/Out of date)</b>	Promoting, Retaining, and Exiting English Language Learners from English Language Development Program	<a href="#">Memo # 002-2008-09 Promoting, Retaining and Exiting English Language Learners from English Language Development Program</a>
010-2006-07	New federal regulations and assessment options for LEP	<a href="#">Memo # 010-2006-07 New federal regulations and assessment options for LEP</a>
024-2005-06	Meeting State Annual Measurable Achievement Objectives (AMAOs)	<a href="#">Memo # 024-2005-06 Meeting State Annual Measurable Achievement Objectives (AMAOs)</a>
005-2005-06	Oregon’s New English Language Proficiency Assessment (ELPA)  <b>(Note: This memorandum is under</b>	<a href="#">Memo # 005-2005-06 Oregon's New English Language Proficiency Assessment (ELPA)</a>

	<b>review for archiving).</b>	
029-2003-04	Assessing New LEP students – state assessments <b>(Note: this memorandum is under review for updating to reflect ELPA21)</b>	<a href="#">Memo # 029-2003-04 Assessing New Limited English Proficient Students</a>
001-2003-04	English Language Proficiency Testing – identification	<a href="#">Memo # 001-2003-04 English Language Proficiency Testing</a>