

AOE Testimony: Federal Requirements for English Learners

Testimony To: Task Force on the Implementation of the Pupil Weighting Factors Report

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Background

From the U.S. Department of Education (USED)'s [\(2016\) Title III Non-Regulatory Guidance on Title III, ELs, and ESSA](#):

“In the last several decades, English learners (ELs) have been among the fastest-growing populations in our Nation’s schools. ELs comprise nearly 10 percent of the student population nationwide, and in many schools, local educational agencies (LEAs) and States, account for an even higher percentage of the student population. ELs also comprise a highly diverse group of students who bring with them valuable cultural and linguistic assets, including their home languages. Yet despite these many assets, ELs face significant opportunity and academic achievement gaps compared to their non-EL peers. For example, in school year 2013-2014, the high school graduation rate for ELs was just 62.6 percent, compared to 82.3 percent for all students. With effective, research-based supports and access to excellent educators, ELs can achieve English language proficiency and perform academically at the same high levels as their non-EL peers.”

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Definitions and Acronyms

The below definitions apply to the Federal Title III EL program:

English Language Proficiency (ELP) Standards

ESSA requires States to adopt English language proficiency standards for ELs that: (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing; (ii) define progressive levels of competence in the acquisition of the English language; and (iii) are aligned with the challenging State academic standards in the content areas of reading/language arts, mathematics, and science. (ESEA Section 1111(b)(1)(F)). As such, ELP standards should be designed to assist teachers in moving EL students towards both proficiency in the English language and proficiency on a State's academic content standards.

English Learner (EL)

'An individual who -

- 1) is aged 3 through 21;
- 2) is enrolled or preparing to enroll in an elementary or secondary school;
- 3) meets one of the following criteria –
 - a. was not born in the United States, or whose native language is a language other than English;
 - b. is a Native American or Alaska Native, or a native resident of the outlying areas; and comes from an environment where a language other than English is dominant-and
- 4) has difficulties in speaking, reading, writing, or understanding the English language, that might be sufficient to deny the individual
 - a. the ability to meet the challenging state academic standards;
 - b. the ability to successfully achieve in classrooms where the language of instruction is English; or
 - c. the opportunity to participate fully in society.'

English Learner (EL) with a Disability

The term 'English Learner with a disability' means an English learner who is also a child with a disability, as that term is defined in section 602 of the Individuals with Disabilities Education Act.

Immigrant Children and Youth

With regard to eligibility for Title III Immigrant set-aside grant(s), the term 'immigrant children and youth' means individuals who –

- "(A) are aged 3 through 21

- “(B) were not born in any State (including the District of Columbia and the Commonwealth of Puerto Rico)
- “(C) have not been attending one or more schools in any one or more States for more than 3 full academic years.”

*English-speaking students who meet the above criteria are also counted as ‘immigrants’ under Title III.

Language Instruction Educational Program (LIEP)

The term ‘language instruction educational program’ (sometimes referred to as a ‘language assistance program’) means an instruction course –

“(A) in which an English Learner is placed for the purpose of developing and attaining English proficiency, **while meeting challenging State academic standards, as required by section 111(b)(1); and**

(B) that may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency and, may include participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.”

Native Language

The term “native language”, when used with reference to an individual of limited English proficiency, means –

- (A) the language normally used by such individual; or
- (B) in the case of a child or youth, the language normally used by the parents of the child or youth.

State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Federal Legislation & Guidance for State and Local Education Agencies: Civil Rights Obligations to English Learners and Their Families

Laws

- (1964) [TITLE VI of the Civil Rights Act](#) – Prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. 42 U.S.C. § 2000d to d-7.
- (1974) [Equal Educational Opportunities Act \(EEOA\)](#) – Requires State Education Agencies (SEA) and Local Education Agencies (LEA) to take “appropriate action to overcome language barriers that impede equal participation by students in [their] instructional programs.” 20 U.S.C. § 1703(f).

- [\(2015\) ESSA - EVERY STUDENT SUCCEEDS ACT](#) – amended the ESEA of 1965 – includes provisions in both Title I and Title III for ELs

Significant Guidance

- (2015) Joint Guidance from USED Office of Civil Rights (OCR) and Department of Justice (DOJ) - [Dear Colleague Letter on 'ELs and Parents with Limited English Proficiency'](#)
- [\(2016\) Title III Non-Regulatory Guidance on Title III, ELs, and ESSA](#)

Considerations for SEAs and LEAs in Planning, Implementing, and Evaluating Educational Programs for ELs

Under Title VI of the Civil Rights Act of 1964 and the EEOA, all States and LEAs must ensure that ELs can participate meaningfully and equally in educational programs and services. To meet their obligations under Title VI and the EEOA, LEAs must, for example:

- Identify and assess all potential EL students in a timely, valid, and reliable manner;
- Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard* and the Supreme Court decision in *Lau v. Nichols*;
- Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students;
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
- Avoid unnecessary segregation of EL students. [*“While EL programs may require that an EL student receive separate instruction for a limited period of time, EL programs may not unjustifiably segregate students on the basis of national origin or EL status—thus, LEAs must carry out their chosen EL program in the least segregative manner consistent with achieving the program’s stated educational goals.”*] [Section II. E. of the 2015 EL DCL (pages 22-24)]
- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services are considered in evaluations and delivery of services;
- Meet the needs of EL students who opt out of language assistance programs;
- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district’s language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is

reasonably calculated¹¹ to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and

- Ensure meaningful communication with limited English proficient (LEP) parents.

Additional information about States' and LEAs' legal obligations under Title VI and the EEOA can be found in the 2015 Dear Colleague Letter (DCL) about EL students and LEP parents jointly released by the Department of Education and the Department of Justice, available at

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

Recommendations on promising practices to ensure that language instruction educational programs (LIEPs) facilitate improved English language proficiency and academic outcomes can be found in the Department's [English Learner Tool Kit](#) English Learner Tool Kit, available at from NCELA. This includes sections that follow the structure of the Dear Colleague Letter, and provides key points, check lists, sample tools, and additional resources to help states, districts, and schools in their legal compliance and meeting the needs of ELs.

Federal Grant Programs to Assist SEAs and LEAs In Meeting Obligations to ELs and Families

As delineated above, Title VI of the Civil Rights Act, the EEOA, subsequent case law, and policy guidance from the US Department of Education laid the foundation on which SEAs and LEAs must establish and implement **English language instruction for ELs as part of their core instructional program**. These obligations apply to all SEAs and LEAs that receive federal funds, not just to those with the largest EL populations. As a condition of accepting grant awards, assurances to uphold these laws are signed.

The ESEA, as reauthorized by ESSA, encompasses these same expectations and provides funding embedded in several Title programs, which SEAs and LEAs can access in accomplishing these goals of helping English learners gain essential language skills and meet the same challenging academic standards that all children are expected to meet.

Title III State Formula Grant Program - *Language Instruction for English Learners and Immigrant Students*, (ESEA of 1965 (ESEA), section 3115)

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Purpose: To help States, LEAs, and schools provide effective services that improve the English language proficiency and academic achievement of ELs and to provide guidance on the requirements of Title III, Part A of the ESEA.

Program Description: To learn about state-level Title III program activities, Title III Local Education Agency (LEA) applications for subgrants, federal legislation, civil rights obligations & regulations, performance monitoring, technical assistance, professional learning opportunities, and resources for EL, please visit the following websites:

- Vermont Agency of Education: [English Learners](#);

- WIDA Consortium: [Vermont – State Members Page](#).
- US Department of Education: [English Language Acquisition State Grants, Title III, Part A](#).

All services provided to ELs using Title III funds must *supplement, and not supplant*, the services that must be provided to ELs under Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA), and other requirements, including those under State or local laws.

Under ESSA, LEAs must use Title III funds to conduct three required activities to improve the English language proficiency and academic achievement of ELs. They must provide *effective*:

1. **language instruction educational programs (LIEP)** programs to increase EL’s English language proficiency and academic achievement;
2. **professional development** that meets standards, increases the knowledge and skills of classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), as well as principals and other school leaders, administrators, and other school or community-based organizational personnel who serve EL student;
3. **parent, family, and community engagement** activities and strategies that enhance or supplement their LIEPs. and may include strategies that serve to coordinate and align related programs.

Vermont Context:

- US Department of Education distributes Title III funds on a formula basis to state education agencies (SEAs), which make subgrants to local education agencies that have sufficient numbers of eligible ELs enrolled in schools by the district to qualify for a minimum grant of \$10,000.
- Six Vermont school districts currently qualify for Title III subgrants: Burlington SD; Champlain Valley SD; Colchester SD; Essex-Westford SD; South Burlington SD; Winooski SD.
- Last year, the Colchester SD also met the definition and criteria for “significant increase” in the number of immigrant children and youth in 2020-2021 and received an additional ‘Immigrant Grant.’

Title I Part A - Improving the Academic Achievement of the Disadvantaged; Improving Basic Programs Operated by Local Educational Agencies (ESEA Title I, Part A)

Purpose: The purpose of Title I Part A is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. Title I Part A provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging academic standards.

Title I Part A also include major provisions designed to ensure that ELs gain essential language skills and meet the same challenging academic standards that all children are expected to meet. As a result of the reauthorization of the ESEA in 2015 (amended by Every Student Succeeds Act), some EL requirements such as assessment and accountability shifted entirely from Title III to Title I while others (ELP standards, reporting) remained as shared requirements. EL requirements now found in Title I statute and addressed in Vermont's State Plan apply to ALL LEAs in the state, not only to LEAs with sufficient numbers of eligible EL students necessary to qualify for Title III funds.

In order to comply with requirements and take full advantage of Federal resources to supplement their programs, SEAs and LEAs should therefore carefully consider how they address the needs of ELs and families when planning and implementing all programs. Title I, Part A and Title I, Part B (Grants for State Assessments) include funding that can potentially be used to meet requirements and fund activities, as long as there are core language instructional programs already in place to meet SEA and LEA obligations under Title VI, Civil Rights Act.

For more in-depth information about ESSA Federal Programs can be used to **supplement** state and local funding for core instructional programs for ELs, please refer to: [Office of School Support and Accountability](#).

EL Demographic Trends in Vermont

As mentioned previously, SEAs and LEAs are required by law to identify all ELs and administer an annual English language assessment. In 2004, Vermont joined the WIDA Consortium at the University of Wisconsin's *Wisconsin Center for Educational Research (WCER)*, made up of 40 states, territories, commonwealths organized for the purpose of developing and implementing common K-12 English Language Proficiency Standards and Assessments.

In addition to ensuring that students are identified and assessed, SEAs are required to report on the demographics and performance of English Learners as part of ESSA. WIDA collects and reports testing data which is reported in the **State Profile**. The table below breaks down the last six years by numbers of ELs who participated in statewide testing, including the ACCESS for ELLs assessment and the Alternate ACCESS for ELs with significant cognitive disabilities.

TESTING TOTALS						
Total ELs	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Kindergarten	180	181	208	168	167	141
Grades 1	201	205	196	213	160	153
Grades 2	194	197	201	200	201	143
Grades 3	188	206	193	200	186	175
Grades 4	88	121	193	174	195	164
Grades 5	79	84	115	153	143	139
Grades 6	70	74	78	104	117	107
Grades 7	68	69	72	79	105	106
Grades 8	72	72	75	74	85	84
Grades 9	105	118	85	97	91	82
Grades 10	98	62	116	78	96	79
Grades 11	68	80	73	109	79	74
Grades 12	57	50	74	68	97	90
ACCESS for ELLs	1,468	1,519	1,679	1,717	1,722	1,537
ALT. ACCESS	22	15	17	21	23	27

A Few Take-Aways from ELP Testing Numbers –

In general, the percentage breakdowns show that, of those ELs who test, approximately:

- 66% are enrolled in Grades K–6;
- 34% are enrolled in Grades 7–12.

Based on Spring 2020 assessment data* - [Note: Due to COVID and local factors in Spring 2021, a significant number of ELs were in **Remote Learning** settings and did not participate in the ELP annual assessments administered by their LEAs in 2020-2021.]

- 30% of all VT ELs were enrolled in a **District*** with > 500 ELs. (Burlington S.D.)
- 41.4% of all VT ELs were enrolled in Districts with between 100 - 499 ELs. (Champlain Valley S.D., Essex-Westford SD, South Burlington S.D., and Winooski SD)
- 19.5% of all VT ELs are enrolled in Districts with 10 – 99 ELs. (Colchester SD qualified for a Title III subgrant)
- 9.2% of all VT ELs are enrolled in Districts with 1-9 ELs.

Please refer to the document “**English Language Learners by District,**” prepared by the **Joint Fiscal Office** with data from the Vermont Agency of Education’s **Fiscal Year 2022** average daily membership (ADM) collection, for numbers and percentages of students reported as English Learners by each district.

Most Common Languages

The following chart shows the most common languages spoken by ELs who took the 2019-2020 annual English Language Proficiency assessment required for all English Learners in Grades K-12 public schools. The data is reported by families of ELs on the Home Language Survey administered in all LEAs statewide.

Languages	# ELs Tested in 2020
Nepali	358
Spanish	178
Swahili	145
Maay	126
Somali (SOM)	102
French (FRE)	97
Vietnamese (VIE)	76
Arabic (ARA)	73

Chinese, Unspecified (CHI)	54
Mandarin Chinese	24
Bosnian (BOS)	54