

Resources to Assist English Learners-Part Two

ABC



TOOLS AND RESOURCES FOR CREATING AN INCLUSIVE ENVIRONMENT FOR AND AVOIDING THE UNNECESSARY SEGREGATION OF ENGLISH LEARNERS

This is the fifth chapter of the English Learner Tool Kit, which is intended to help state and local education agencies (SEAs and LEAs) meet their obligations to English Learners (ELs). This tool kit should be read in conjunction with the U.S. Department of Education Office for Civil Rights' (OCR) and the U.S. Department of Justice's (DOJ) Dear Colleague Letter on "English Learner Students and Limited English Proficient Parents," published in January 2015, which outlines SEAs' and LEAs' legal obligations to ELs under civil rights laws and other federal requirements.

CREATING AN INCLUSIVE ENVIRONMENT FOR AND AVOIDING THE UNNECESSARY SEGREGATION OF ENGLISH LEARNERS

KEY POINTS

- LEAs must limit the segregation of ELs to the extent necessary to reach the stated goals of an educationally sound and effective program.
- LEAs should not keep ELs in segregated EL programs (or "EL-only" classes) for periods longer or shorter than required by each student's level of English proficiency, time and progress in the EL program, and the stated goals of the EL program.
- While ELs may receive intensive English language instruction or bilingual services in separate classes, it would rarely be justifiable to segregate ELs from their non-EL peers in subjects like physical education, art, music, or other activity periods outside of classroom instruction.



Preparing all students for college, careers, and civic life begins with creating an inclusive and welcoming school climate where effective teaching and learning occur.

Schools should take steps to create positive school climates that welcome diversity and that prevent and address inappropriate behaviors, such as bullying and harassment. Such positive steps include training staff, engaging families and community partners, and helping students develop social-emotional skills that include conflict resolution. For additional information on school climate from the U.S. Department of Education, see *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>. As part of an inclusive school climate, LEAs should implement

educationally sound and effective EL programs and limit the degree of segregation of ELs to what the program requires.

EL programs may not segregate students on the basis of national origin or EL status unless there is a program-related, educational justification for doing so. Programs that allow for continuous inclusion and interaction between ELs and non-ELs, such as two-way immersion programs, do not raise concerns about segregation.

In addition, LEAs should not keep EL students in EL programs for periods that are longer or shorter than necessary to achieve the program's educational goals. The degree of segregation should be necessary to achieve the stated goals of the program and required by each

student's level of English language proficiency (ELP) and his or her time and progress in the EL program. For example, as ELs in a Spanish-transitional bilingual education program acquire higher levels of ELP, they should be transitioned from EL-only classes in Spanish into integrated content classes in English. These should include continued supports, as needed, in the students' primary languages or other supports needed to access the content. Further, while ELs may receive intensive English language instruction or bilingual services in separate classes, it would rarely be justifiable to segregate them from their non-EL peers in subjects like physical education, art, music, or other activity periods (e.g., lunch, recess, assemblies, and extracurricular activities). Research shows that when placed at length in segregated settings, ELs may be at risk for school failure, delayed graduation, and negative academic self-concepts (Gandara & Orfield, 2010).

Therefore, before placing an EL in an EL program that contains a degree of segregation, an LEA should ensure that (1) the degree of segregation in the program is necessary to achieve the goals of an educationally sound and effective program; (2) the EL has comparable access to the standard curriculum within a reasonable period of time; and (3) the ELs in the EL program have the same range and level of extracurricular activities and additional services as non-EL students.

Some LEAs establish newcomer programs that are designed to help high school-age immigrant students develop linguistic, academic, and cultural skills. LEAs operating such programs should focus on increasing their inclusion by limiting the duration of self-contained newcomer programs (generally to one year) and regularly evaluating students' ELP to allow appropriate transitions out of newcomer programs throughout the academic year.

It is important to note that participation in a segregated EL program is voluntary. Further, the LEA should at least annually assess the ELP and appropriate level of language assistance for its ELs and determine their eligibility to exit.

See Chapter 2 for information on educationally sound and effective programs, Chapter 7 for information on parents' rights to opt their EL students out of EL programs or particular EL services, and Chapter 8 for information on monitoring and exiting ELs.

The following checklist is intended to assist SEAs and LEAs in determining whether their EL programs unnecessarily segregate ELs from non-ELs. The checklist provides suggested questions only. Schools and LEAs should check their SEAs' policies and federal guidance to ensure compliance.

- ★ What steps have been taken to develop positive and inclusive school climates for ELs?
- ★ What are the stated educational goals of the EL program? Is the degree of segregation necessary to achieve those goals?
- ★ Does the degree of segregation decrease commensurate with ELs' rising ELP levels as well as their time and progress in the EL program?
- ★ Do EL students participate with their non-EL peers during
 - grade-level curriculum?
 - extracurricular activities?
 - after-school activities?
 - other subjects (e.g., physical education, art, music)?
- ★ Is the EL program carried out in the least segregative manner, consistent with achieving the program's stated educational goals?
- ★ Have parents been informed of their right to opt their children out of the EL program or particular EL services?
- ★ Does the LEA at least annually assess the ELP of ELs and base program placement decisions on that data?
- ★ How is EL student progress monitored and assessed throughout the school year to inform instruction and placement?
- ★ For those EL students who are newcomers:
 - Does the LEA offer a segregated newcomer program? If so, is participation in it voluntary?
 - Is participation in a newcomer program based on ELs' academic and linguistic needs and not perceived behavior issues or other perceived needs?
 - Does the LEA offer opportunities for ELs in a newcomer program to take classes and participate in activities with non-ELs?
 - What support is provided to assist ELs to successfully transition out of newcomer programs?

CREATING AN INCLUSIVE ENVIRONMENT FOR AND AVOIDING THE UNNECESSARY SEGREGATION OF ENGLISH LEARNERS

TOOLS

The U.S. Department of Education does not mandate or prescribe particular curricula, lesson plans, assessments, or other instruments in this tool kit. This tool kit contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other interested parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items does not reflect their importance, nor is it intended to endorse any views expressed, or materials provided. All links were verified on August 11, 2015.

The following set of tools is intended to help schools, LEAs, and SEAs to create welcoming and inclusive environments for and avoid the unnecessary segregation of ELs. The tools give tips on how to begin conversations about diversity and address bullying and harassment. They also provide a sample self-monitoring aid to avoid unnecessary segregation.

Tool #1, Diversity Self-Assessment, can help generate conversation among teachers and other education personnel on the topic of diversity.

Tool #2, Resources to Address Bullying and Harassment, provides resources to help address the bullying and harassment of ELs.

Tool #3, Sample Self-Monitoring Aid, can help schools, LEAs, and SEAs monitor the extent to which ELs are segregated in order to address any potential issues.



TOOL #1

DIVERSITY SELF-ASSESSMENT

This Diversity Self-Assessment tool has been reprinted with permission from the Council for Exceptional Children. It can be used by individual teachers or during administrative team meetings, professional development sessions, or district planning meetings. Educators, administrators, and other stakeholders can answer the questions below to “examine their assumptions and biases in a thoughtful and potentially productive way.” This tool can be adapted from an individual to a team-building tool in order to engage in conversations on diversity.

DIVERSITY SELF-ASSESSMENT

1. What is my definition of diversity?
2. Do the children in my classroom and school come from diverse cultural backgrounds?
3. What are my perceptions of students from different racial or ethnic groups? With language or dialects different from mine? With special needs?
4. What are the sources of these perceptions (e.g., friends, relatives, television, movies)?
5. How do I respond to my students, based on these perceptions?
6. Have I experienced others' making assumptions about me based on my membership in a specific group?
How did I feel?
7. What steps do I need to take to learn about the students from diverse backgrounds in my school and classroom?
8. How often do social relationships develop among students from different racial or ethnic backgrounds in my classroom and in the school? What is the nature of these relationships?
9. In what ways do I make my instructional program responsive to the needs of the diverse groups in my classroom?
10. What kinds of information, skills, and resources do I need to acquire to effectively teach from a multicultural perspective?
11. In what ways do I collaborate with other educators, family members, and community groups to address the needs of all my students?

TOOL #2

RESOURCES TO ADDRESS BULLYING AND HARASSMENT

As part of the White House Initiative on Asian Americans and Pacific Islanders (AAPI), the U.S. Department of Education, the U.S. Department of Health and Human Services, and the U.S. Department of Justice collaborated to form an AAPI Bullying Prevention Task Force (AAPI Task Force). The AAPI Task Force recently launched a bullying prevention website, available at <http://www.ed.gov/edblogs/aapi/aapi-bullying/>. The website includes timely, relevant statistics about bullying, specifically bullying related to race, religion, or immigration status. It also provides links to useful resources from multiple federal agencies, many of which are available in multiple languages.

INFORMATION ON BULLYING AND HARASSMENT

- Some students, such as Micronesian students whose families have recently immigrated to the United States, face bullying and harassment based on their immigration status.
- Other students are bullied for the way they look or for their lack of English language skills. One [2014 study](#) found that 67 percent of turbaned Sikh youths in Fresno, California, have experienced bullying or harassment.
- A [2012 survey](#) found that half of the 163 Asian-American New York City public school student participants reported experiencing some kind of bias-based harassment, compared with only 27 percent in 2009.
- Another [2012 survey](#) found that 50 percent of Muslim youths surveyed experienced verbal or social bullying because of their religion.

SAMPLE RESOURCES AVAILABLE

Federal Partners in Bullying Prevention

<http://www.stopbullying.gov>

Video: [Overview of School Districts' Federal Obligation to Respond to Harassment](#)

U.S. Department of Justice

Harassment Fact Sheet – [English](#) | [Punjabi](#)

[Community Relations Service: Flyer on Student Problem Identification and Resolution of Issues Together – SPIRIT](#)
“Federal Protections Against National Origin Discrimination” [Arabic](#), [Cambodian](#), [Chinese](#), [English](#), [Farsi](#), [French](#), [Haitian Creole](#), [Hindi](#), [Hmong](#), [Korean](#), [Laotian](#), [Punjabi](#), [Russian](#), [Spanish](#), [Tagalog](#), [Urdu](#), [Vietnamese](#)

U.S. Department of Education, Office for Civil Rights

OCR Fact Sheet on Harassment and Bullying (October 2010): [English](#) | [Chinese](#) | [Korean](#) | [Punjabi](#) | [Tagalog](#) | [Vietnamese](#)

[OCR Fact Sheet on Bullying and Harassment of Students w/ Disabilities](#) (October 2014)

[“Dear Colleague” letter](#) (Oct. 26, 2010) clarifying the relationship between bullying and discriminatory harassment, providing examples of harassment and illustrating how a school should respond in each case

TOOL #3

SAMPLE SELF-MONITORING AID

The following tool is a self-monitoring aid that schools, LEAs, and SEAs can use to determine if ELs are unnecessarily segregated from their non-EL peers. The sample tool is based on current LEA and SEA tools. The form begins with key guidelines for creating an inclusive environment for ELs.

CREATING AN INCLUSIVE ENVIRONMENT FOR ELs: SELF-MONITORING FORM

KEY GUIDELINES

- While most EL programs require that EL students receive separate instruction for a limited period of time (e.g., a period of ESL), LEAs must implement each program in the least segregative manner, consistent with achieving the program's stated educational goals.
- LEAs must ensure that (1) parents are informed that they have the right to opt their children out of the EL program or particular EL services, and (2) EL students have their English proficiency assessed at least annually to ensure appropriate placement and levels of language assistance services.
- LEAs should not keep EL students in EL programs for periods longer or shorter than necessary to achieve the program's educational goals, and the degree of segregation should not exceed that required by each student's level of ELP and time and progress in the EL program.
- LEAs operating newcomer programs or schools should limit the duration of self-contained newcomer programs (to generally one year) and regularly evaluate students' ELP to allow appropriate transitions into more integrated EL programs throughout the academic year.

Elements to Support Inclusion	Rating 5 = All of the time 4 = Most of the time 3 = Some of the time 2 = Rarely 1 = Never	Evidence to Support Rating	Needed Action
1. Vision			
a. The LEA values and celebrates student diversity as reflected in its organizational vision or mission statement.			
b. Leadership is knowledgeable about civil rights laws as they pertain to English Learners.			
c. The LEA has a plan of action to facilitate an inclusive school culture and climate.			

TOOL #3: SAMPLE SELF-MONITORING AID (CONTINUED)

Elements to Support Inclusion	Rating 5 = All of the time 4 = Most of the time 3 = Some of the time 2 = Rarely 1 = Never	Evidence to Support Rating	Needed Action
2. Program Placement			
a. The LEA's enrollment forms do not inquire about students' or their parents' immigration status.			
b. The LEA does not segregate EL students from their English-speaking peers, except where programmatically necessary, to implement an educationally sound and effective EL education program.			
c. If it is programmatically necessary to separate ELs from their English-speaking peers for part of the school day, the LEA (or SEA when prescribing the EL program) provides guidance on the amount of time that is instructionally appropriate for each program model and the ELs' ELP level and time and progress in the program.			
d. ELs participate fully with their non-EL peers in subjects like physical education, art, music, or other activity periods outside of classroom instruction (e.g., recess, lunch, and assemblies).			
e. The LEA ensures that participating in an EL program is voluntary by informing parents of their right to opt their children out of EL programs and services.			
f. Program facilities and resources are comparable to the facilities and resources of the non-EL student population.			

TOOL #3: SAMPLE SELF-MONITORING AID (CONTINUED)

Elements to Support Inclusion	Rating 5 = All of the time 4 = Most of the time 3 = Some of the time 2 = Rarely 1 = Never	Evidence to Support Rating	Needed Action
3. Curriculum			
a. The LEA ensures that ELs have access to the same academic standards and rigorous curriculum as their non-EL peers.			
b. The LEA ensures that EL students have the opportunity to enter academically advanced classes, receive credit for work done, and have access to the full range of programs as non-EL students.			
4. Assessment and Monitoring			
a. ELs are included in SEA and LEA assessments.			
b. Classroom assessments are culturally and linguistically appropriate.			
c. The LEA regularly monitors EL placement patterns to ensure that placement decisions are based on each student's level of ELP and time and progress in the EL program.			
5. Access to Support Services and Activities			
a. The LEA provides access to the full range of academic instruction and supports including special education and/or related aids and services for eligible students with disabilities under the <i>Individuals With Disabilities Education Act</i> and <i>Section 504 of the Rehabilitation Act of 1973</i> , Title I services, career and technical education, magnet programs, and any other services and supports available to non-EL students.			
b. The LEA ensures that ELs have equal access to all co-curricular and extracurricular activities.			

TOOL #3: SAMPLE SELF-MONITORING AID (CONTINUED)

Elements to Support Inclusion	Rating 5 = All of the time 4 = Most of the time 3 = Some of the time 2 = Rarely 1 = Never	Evidence to Support Rating	Needed Action
6. Staffing			
a. The EL program is staffed with teachers who are qualified to provide EL services, core-content teachers who are highly qualified in their field as well as trained to support EL students, and trained administrators who can evaluate these teachers.			
b. The LEA provides resources to support the professional learning of all staff in the requirements for EL inclusion and effective EL instructional practices.			
c. The LEA provides appropriate administrative support for implementing inclusive practices for ELs.			
7. Communication with Students and Families			
a. Limited English proficient (LEP) parents are provided information in a language they understand about any program, service, or activity that is called to the attention of non-LEP parents.			
b. Parents of ELs are involved as members of school and LEA committees and engaged in decision-making activities affecting their children's education.			
c. The LEA provides support to schools in their efforts to reach out to families and engage them as partners in their children's education.			
d. The LEA provides parents with information, training, and support that are respectful of cultural and linguistic diversity.			

Language Lizard. (2011). Eight tips to protect ELLs from bullying in your classroom and school. Retrieved from the Colorín Colorado website: <http://www.colorincolorado.org/article/55612/>

This article explains how ELs are often bullied and mocked because of their accents and diverse cultural characteristics. Included are suggestions and resources for families and teachers to help ELs understand and cope with bullying.

Mendez v. Westminster School District of Orange County, 64 F. Supp. 544 (S.D. Cal. 1946), aff'd, 161 F.2d 774 (9th Cir. 1947) (en banc). Retrieved from http://www.esaubeock.com/index/Mendez_v_Westminster_64_FSupp_544

This federal court case, brought by the fathers of five Mexican and Mexican-American students, challenged racial segregation of Mexican and Mexican-American students in Orange County, California, schools. The United States Court of Appeals for the Ninth Circuit ultimately held that the segregation of these students into separate "Mexican schools" was unconstitutional. This case preceded *Brown v. Board of Education* and laid the foundation for ending school segregation.

Menken, K., Kleyn, T., & Chae, N. (2012). Spotlight on "long-term English language learners": Characteristics and prior schooling experiences of an invisible population. *International Multilingual Research Journal*, 6, 121-142. Retrieved from <https://katemenken.files.wordpress.com/2011/10/menken-kleyn-chaе-2012-spotlight-on-e2809clong-term-english-language-learnerse2809d-imrj1.pdf>

This article presents qualitative research findings about the characteristics and prior schooling experiences of "long-term English language learners (LTELLs)," who have attended U.S. schools for seven years or more, and about whom there is little empirical research, despite their significant numbers. Findings indicate that these students are orally bilingual for social purposes yet have limited academic literacy skills in English or in their native languages as a result of prior schooling experiences. Two main groups of LTELLs are identified: (1) students with inconsistent U.S. schooling, who have shifted between bilingual education, English as a Second Language (ESL), and mainstream classrooms with no language support programming, and (2) transnational students, who have moved back and forth between the United States and their families' countries of

origin. It argues that programming for LTELLs in high school must be distinctive and offers policy and practice recommendations.

Montgomery, W. (2001). Creating culturally responsive, inclusive classrooms. *Teaching Exceptional Children*, 33(4), 4-9. Retrieved from http://www.nclr.org/images/uploads/general/A1d_%20Creating%20CR%20Classrooms.pdf

The author provides suggestions for creating culturally responsive classrooms to help culturally diverse students understand the meaning of what is being taught and the tasks they must perform. The author provides numerous suggestions for creating a culturally responsive classroom. A first step is to conduct a diversity self-assessment to understand assumptions and biases.

National Education Association. (2012, May). *Focus on Asian American and Pacific Islanders: API students at increased risk for bullying*. Washington, DC: Author. Retrieved from <http://www.nea.org/assets/docs/FocusOnAsianAmPacificIsl.pdf>

This article provides several reasons why Asian-American and Pacific-Islander students are bullied, such as "racial tensions, resentment of immigrants and language barriers . . . , the stereotype of API students as unassertive overachievers, and the spike in attacks against students perceived as Muslim." It includes strategies and resources that schools, teachers, and policy makers can use to "protect students and empower the school community" against bullying.

U.S. Department of Education, Office for Civil Rights. (2010, October). *Dear colleague letter: Harassment and bullying*. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

This Dear Colleague Letter outlines the obligations of schools to prevent bullying and harassment on the basis of race, color, national origin, sex, or disability. The guidance draws a distinction between bullying and discriminatory harassment and outlines the obligations of schools to address both forms of student misconduct appropriately. The guidance points to *Title VI of the Civil Rights Act of 1964*, which prohibits discrimination on the basis of race, color, or national origin; *Title IX of the Education Amendments of 1972*, which prohibits discrimination on the basis of

sex; and *Section 504 of the Rehabilitation Act of 1973* and *Title II of the Americans with Disabilities Act*, which prohibit discrimination on the basis of disability. Schools have responsibilities under these statutes to prevent and address discrimination, sometimes beyond the requirements of their anti-bullying policies. The letter offers several concrete examples in which schools failed to respond to discriminatory student conduct appropriately and guidance on what should have been done differently.

U.S. Department of Education, Office for Civil Rights. (2014, October). *Dear colleague letter: Resource comparability*. (Guidance to ensure all students have equal access to educational resources.) Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>

This document provides detailed and concrete information to educators on the standards set in *Title VI of the Civil Rights Act of 1964*, including information on the requirements for educational resources; how OCR investigates resource disparities; and what SEAs, LEAs, and schools can do to meet their obligations to all students. Under *Title VI*, SEAs, LEAs, and schools must not intentionally treat students differently based on race, color, or national origin in providing educational resources. In addition, they must not implement policies or practices that disproportionately affect students of a particular race, color, or national origin, absent a substantial justification. The law does not require that all students receive the exact same resources to have an equal chance to learn and achieve. It does, however, require that all students have equal access to comparable resources in light of their educational needs.

U.S. Department of Education, Office for Civil Rights, and U.S. Department of Justice. (2015, January). *Dear colleague letter: English learner students and limited English proficient parents*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

This document provides guidance to assist SEAs, LEAs, and all public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs and services. This guidance provides an outline of the legal obligations of SEAs and LEAs to ELs under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under *Title VI of the Civil Rights Act of 1964* and the *Equal Educational Opportunities Act* and offers approaches that SEAs and LEAs may use to meet their federal obligations to ELs. A discussion of how SEAs and LEAs can implement their *Title III* grants and subgrants in a manner consistent with these civil rights obligations is included. Finally, the guidance discusses the federal obligation to ensure that limited English proficient parents and guardians have meaningful access to SEA-, LEA-, and school-related information.

White House Initiative on Asian Americans and Pacific Islanders. (n.d.). Bullying. (Web page). Retrieved from <http://www.ed.gov/edblogs/aapi/aapi-bullying/>

The White House Initiative on Asian Americans and Pacific Islanders was created to “improve the quality of life for Asian Americans and Pacific Islanders,” and—through the efforts of its Asian American and Pacific Islander Bullying Prevention Task Force—has a bullying prevention website that includes timely, relevant statistics about bullying and specifically bullying related to race, religion, or immigration status.

TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

This is the sixth chapter of the English Learner Tool Kit, which is intended to help state and local education agencies (SEAs and LEAs) meet their obligations to English Learners (ELs). This tool kit should be read in conjunction with the U.S. Department of Education Office for Civil Rights' (OCR) and the U.S. Department of Justice's (DOJ) Dear Colleague Letter on "English Learner Students and Limited English Proficient Parents," published in January 2015, which outlines SEAs' and LEAs' legal obligations to ELs under civil rights laws and other federal requirements.

TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

KEY POINTS

- LEAs must identify, locate, and evaluate ELs with disabilities in a timely manner.
- LEAs must consider the English language proficiency of ELs with disabilities in determining appropriate assessments and other evaluation materials.
- LEAs must provide and administer special education evaluations in the child's native language, unless it is clearly not feasible to do so, to ensure that a student's language needs can be distinguished from a student's disability related needs.
- LEAs must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.
- LEAs must provide EL students with disabilities with both the language assistance and disability related services they are entitled to under federal law.



The *Individuals with Disabilities Education Act (IDEA)* and *Section 504 of the Rehabilitation Act of 1973 (Section 504)* address the rights of students with disabilities in school and other educational settings. If an EL is suspected of having one or more disabilities, the LEA must evaluate the EL promptly to determine if the EL has a disability or disabilities and whether the EL needs disability-related services (which are special education and related services under IDEA or regular or special education and

related aids and services under Section 504). Disability evaluations may not be delayed because of a student's limited English language proficiency (ELP) or the student's participation in a language instruction educational program (LIEP). Also, a student's ELP cannot be the basis for determining that a student* has a disability.

It is important for educators to accurately determine whether ELs are eligible for disability-related services. Research shows that there is variability in how LEAs

identify ELs as eligible for special education services; some LEAs over-identify and others under-identify ELs as eligible for special education services when compared to non-ELs (Artiles, Rueda, Salazar, & Higareda, 2005; Zehler et al., 2003). Researchers have identified four potential factors that may contribute to the misidentification of special education needs, and learning disabilities in particular, among students who are ELs: (1) the evaluating professional's lack of knowledge of second language development and disabilities; (2) poor instructional practices; (3) weak intervention strategies; and (4) inappropriate assessment tools (Sánchez, Parker, Akbayin, & McTigue, 2010).

Appropriate disability identification processes that evaluate the student's disability-related educational needs and not the student's English language skills will help school personnel to accurately identify students in need of disability-related services. In addition, LEAs must ensure that a student's special education evaluation is provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information about what the student knows and can do, unless it is clearly not feasible to do so. Assessing whether a student has a disability in his or her native language or other mode of communication can help educators ascertain whether a need stems from lack of ELP and/or a student's disability-related educational needs.

Both IDEA and Section 504 require that schools provide a free appropriate public education (FAPE) to eligible or qualified students with disabilities. Under IDEA, FAPE requires, among other things, the provision of special education and related services at no cost to the parents in conformity with an individualized education program (IEP). An IEP is a written document, developed at a meeting of the IEP team that includes the specialized instruction and related services to address the student's needs that result from the student's disability. LEAs must develop and implement either an IEP under IDEA, or convene a group of knowledgeable persons to determine what services the student should receive under Section 504, as appropriate. Depending on the individual needs of the student, FAPE under Section 504 could include regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met. While Section 504 and IDEA are different statutes,

as reflected in ED's regulations, one way to meet the requirements of Section 504 FAPE is to implement an IEP developed in accordance with IDEA.

When an EL student is determined to be a child with a disability—as defined in IDEA, or an individual with a disability under the broader definition of disability in Section 504—the student's EL *and* disability-related educational needs must be met. For EL students, in addition to the required IEP team participants under IDEA, it is essential that the IEP team include participants who have knowledge of the student's language needs. It is also important that the IEP team include professionals with training, and preferably expertise, in second language acquisition and how to differentiate between the student's needs stemming from a disability or lack of ELP.

In addition, under IDEA, the LEA must take whatever action is necessary to ensure that the student's parents understand the proceedings of the IEP team meeting, including arranging for an interpreter for parents with limited English proficiency or parents who are deaf. Under *Title VI of the Civil Rights Act of 1964* and the *Equal Educational Opportunities Act*, for an LEP parent to have meaningful access to an IEP or Section 504 plan meeting, it also may be necessary to have the IEPs, Section 504 plans, or related documents translated into the parent's primary language. For more information on the separate *Title VI* obligations of school districts to communicate with LEP parents, see Chapter 10 of the EL Tool Kit.



Should parents decline disability-related services under IDEA and Section 504, the SEA and LEA remain obligated to provide appropriate language assistance services to ELs. If parents opt out of specific EL programs and services, but have consented to the provision of disability-related services, the LEA remains obligated to provide such services as required in the IEP or Section 504 plan, and to conduct ELP monitoring and/or provide language assistance as appropriate. See Chapter 7 of the EL Tool Kit for information on obligations to students who opt out of EL programs and services.

The following checklist is intended to help SEAs and LEAs serve ELs who also have a disability. The checklist provides suggested questions only. LEAs and schools should check their SEA's policies and procedures and federal regulations and guidance to ensure compliance.

Identifying Whether an EL Has a Disability

- ★ When an EL is suspected of having a disability, is the disability evaluation administered within required timelines once required notices have been provided and parental consent has been obtained?
- ★ Is the reason for the disability evaluation based on the student's suspected disability and need for disability-related services, and not on the student's ELP?
- ★ Does the evaluation use appropriate methods to measure the student's abilities and not the student's English language skills?
- ★ Is the disability evaluation administered in the child's native language, unless clearly not feasible to do so, to avoid misclassification?
- ★ Can the disability evaluation be conducted in more than one form, such as orally or in writing?
- ★ Did the IEP or Section 504 team gather information from the student, parents, and school records regarding the student's previous educational experiences, language assessments, and special education assessments?
- ★ Does the IEP or Section 504 team include participants who have knowledge of the student's language needs and training in special education and related services, and professionals with training in second language acquisition and EL services? Do these participants have the knowledge to recommend an educational program or plan that provides the student with appropriate services and/or supports based on the student's disability and English language acquisition needs? Do these participants also understand cultural differences that may exist?
- ★ Have the parents been invited to participate in the planning process and informed of their rights, in a language they understand?
- ★ Have a trained interpreter and translated documents been made available for parents with limited English proficiency when required (e.g., parent notices under IDEA), or when determined necessary to ensure effective communication? Is a qualified sign language interpreter available for parents who have hearing loss and need such services?
- ★ Does the LEA's educational program address the EL's language needs and include disability-related services designed to address those needs?
- ★ Does the IEP or Section 504 plan outline when and by whom the accommodations, modifications, and supports in the IEP or Section 504 plan will be provided?
- ★ Will the recommended services allow ELs with a disability to be involved and make progress in the general education curriculum and to participate in extracurricular activities?
- ★ Is there a formal plan to monitor the progress of ELs with disabilities with respect to language and disability-based goals?
- ★ Have the student's general education teachers and related service providers been made aware of the IEP or Section 504 services for the EL?

Analyzing and Utilizing the Results of the Disability Evaluation

- ★ Are evaluators trained to conduct the evaluation and interpret the results, including knowing how to differentiate between language needs and a disability?

ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

TOOLS

The U.S. Department of Education does not mandate or prescribe particular standards, curricula, lesson plans, assessments, or other instruments in this tool kit. This tool kit contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other concerned parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items does not reflect their importance, nor is it intended to endorse any views expressed, or materials provided. All links included here were verified on August 10, 2015.

The following set of tools* is intended to help schools, LEAs, and SEAs in appropriately identifying and serving ELs with disabilities. The tools give examples of how schools can refer, assess, and identify ELs who may have a disability; how to write an IEP and select accommodations for ELs with disabilities; and how to compare data about EL students with disabilities from LEA to LEA.

Tool #1, Referral, Identification, Assessment, and Service Delivery to ELs with Disabilities, includes recommendations about ELs with disabilities from states with large or rapidly growing EL student populations.

Tool #2, Considering the Influence of Language Differences and Disability on Learning Behaviors, offers a matrix of learning behaviors organized by skill area (e.g., listening, speaking, reading, etc.) and the varying roles that language difference or disability can play in those behaviors.

Tool #3, Developing an IEP for an English Learner with a Disability, is a list of questions to consider for ELs during the IEP-writing process.

Tool #4, How to Use Data from the Office for Civil Rights' Civil Rights Data Collection (CRDC), provides instructions about how to access EL data at the LEA level, including data about ELs with disabilities.

Tool #5, Selecting Appropriate Accommodations for Students with Disabilities, offers a list of "dos" and "don'ts" related to choosing accommodations for students with disabilities.



TOOL #1

REFERRAL, IDENTIFICATION, ASSESSMENT, AND SERVICE DELIVERY TO ELs WITH DISABILITIES

This list of policy recommendations comes from the National Association of State Directors of Special Education as part of a publication dedicated to policies related to ELs with disabilities. For this publication, researchers interviewed SEA staff members from seven states that were selected because they had a large or rapidly growing EL population. The states were Alaska, Arkansas, California, Florida, Kansas, New Mexico, and Texas.

POLICY RECOMMENDATIONS

The states that participated in the interviews offered a number of suggestions when asked for policy recommendations pertaining to referral, identification, assessment, and service delivery to ELs with disabilities.

- **Local accountability**—Local planning areas that submit special education program plans to the state should be required to detail their process for the referral, identification, assessment, and service delivery to ELs with disabilities.
- **Clear policies and guidance**—States should create a comprehensive policy for ELs with exceptionalities (including gifted education) based on current research followed by extensive guidance to localities.
- **Teacher training and licensure**—States should facilitate and/or require all teachers to be trained to some extent in ESL [English as a Second Language] strategies and language acquisition. Further, policies should be in place that require any teacher who serves at least one EL to be trained in the appropriate ESL or bilingual education strategies necessary in order to meet the language development as well as academic needs of the students.
- **Coordinated policies between special education and EL professionals**—States should consider developing policies that require and set parameters for communication and collaboration between EL and special education professionals at the point of entry to and exit from special education as well as during the monitoring process while ELs are being served in special education.

TOOL #2

CONSIDERING THE INFLUENCE OF LANGUAGE DIFFERENCES AND DISABILITY ON LEARNING BEHAVIORS

Differentiating language and literacy acquisition from disability can be difficult for some educators. The following table illustrates learning behaviors that a student might exhibit in class, followed by corresponding indicators of whether that behavior could represent a language difficulty or a potential learning disability. By determining the root of each student's difficulties, educators can select the most appropriate and effective teaching and learning strategies to use.

COMPARISON OF LANGUAGE DIFFERENCES VERSUS DISABILITIES

This tool is taken from *Meeting the Needs of English Learners with Disabilities: Resource Book* by Jarice Butterfield, Ph. D., Santa Barbara County SELPA, on behalf of the SELPA Administrators of California Association. In the tool below, L1 refers to the student's native language and L2 refers to the student's second language (English). It is reprinted with permission of Dr. Butterfield.

Oral Comprehension/Listening

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student does not respond to verbal directions	Student lacks understanding of vocabulary in English but demonstrates understanding in L1	Student consistently demonstrates confusion when given verbal directions in L1 and L2; may be due to processing deficit or low cognition
Student needs frequent repetition of oral directions and input	Student is able to understand verbal directions in L1 but not L2	Student often forgets directions or needs further explanation in L1 and L2 (home & school); may be due to an auditory memory difficulty or low cognition
Student delays responses to questions	Student may be translating question in mind before responding in L2; gradual improvement seen over time	Student consistently takes a longer time period to respond in L1 & L2 and it does not change over time; may be due to a processing speed deficit

**TOOL #2: CONSIDERING THE INFLUENCE OF LANGUAGE DIFFERENCES
AND DISABILITY ON LEARNING BEHAVIORS (CONTINUED)**

Speaking/Oral Fluency

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student lacks verbal fluency (pauses, hesitates, omits words)	Student lacks vocabulary, sentence structure, and/or self-confidence	Speech is incomprehensible in L1 and L2; may be due to hearing or speech impairment
Student is unable to orally retell a story	Student does not comprehend story due to a lack of understanding and background knowledge in English	Student has difficulty retelling a story or event in L1 and L2; may have memory or sequencing deficits
Student does not orally respond to questions, or does not speak much	Lacks expressive language skills in English; it may be the silent period in 2nd language acquisition	Student speaks little in L1 or L2; student may have a hearing impairment or processing deficit

Phonemic Awareness/Reading

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student does not remember letter sounds from one day to the next	Student will initially demonstrate difficulty remembering letter sounds in L2 since they differ from the letter sounds in L1, but with repeated practice over time will make progress	Student doesn't remember letter sounds after initial and follow-up instruction (even if they are common between L1/L2); may be due to a visual/auditory memory deficit or low cognition
Student is unable to blend letter sounds in order to decode words in reading	The letter sound errors may be related to L1 (for example, L1 may not have long and short vowel sounds); with direct instruction, student will make progress over time	Student makes letter substitutions when decoding not related to L1; student cannot remember vowel sounds; student may be able to decode sounds in isolation, but is unable to blend the sounds to decode whole word; may be due to a processing or memory deficit
Student is unable to decode words correctly	Sound not in L1, so unable to pronounce word once decoded	Student consistently confuses letters/words that look alike; makes letter reversals, substitutions, etc. that are not related to L1; may be processing or memory deficit

**TOOL #2: CONSIDERING THE INFLUENCE OF LANGUAGE DIFFERENCES
AND DISABILITY ON LEARNING BEHAVIORS (CONTINUED)**

Reading Comprehension and Vocabulary

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student does not understand passage read, although may be able to read w/ fluency and accuracy	Lacks understanding and background knowledge of topic in L2; is unable to use contextual clues to assist with meaning; improvement seen over time as L2 proficiency increases	Student doesn't remember or comprehend what was read in L1 or L2 (only applicable if student has received instruction in L1); this does not improve over time; this may be due to a memory or processing deficit
Does not understand key words/phrases; poor comprehension	Lacks understanding of vocabulary and meaning in English	The student's difficulty with comprehension and vocabulary is seen in L1 and L2

Writing

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Errors made with punctuation/capitalization	The error patterns seen are consistent with the punctuation and capitalization rules for L1; student's work tends to improve with appropriate instruction in English	Student consistently or inconsistently makes capitalization and punctuation errors even after instruction; this may be due to deficits in organization, memory or processing
Student has difficulty writing grammatically correct sentences	Student's syntax is reflective of writing patterns in L1; typical error patterns seen in 2nd language learners (verb tense, use of adverbs or adjectives); improves over time	The student makes more random errors such as word omissions, missing punctuation; grammar errors are not correct in L1 or L2; this may be due to a processing or memory deficit
Student has difficulty generating a paragraph or writing essays but is able to express his or her ideas orally	Student is not yet proficient in writing English even though they may have developed verbal skills; student makes progress over time and error patterns are similar to other 2nd language learners	The student seems to have difficulty paying attention or remembering previously learned information; the student may seem to have motor difficulties and avoids writing; student may have attention or memory deficits

**TOOL #2: CONSIDERING THE INFLUENCE OF LANGUAGE DIFFERENCES
AND DISABILITY ON LEARNING BEHAVIORS (CONTINUED)**

Spelling

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student misspells words	Student will “borrow” sounds from L1; progress seen over time as L2 proficiency increases	Student makes errors such as writing the correct beginning sound of words and then random letters or correct beginning and ending sounds only; may be due to a visual memory or processing deficit
Student spells words incorrectly; letters are sequenced incorrectly	Writing of words if reflective of English fluency level or cultural thought patterns; words may align to letter sounds or patterns of L1 (sight words may be spelled phonetically based on L1)	The student makes letter sequencing errors such as letter reversals that are not consistent with L1 spelling patterns; may be due to a processing deficit

Mathematics

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student manifests difficulty learning math facts and/or math operations	Student lacks comprehension of oral instruction in English; student shows marked improvement with visual input or instructions in L1	Student has difficulty memorizing math facts from one day to the next and requires manipulatives or devices to complete math problems; may have visual memory or processing deficits
Student has difficulty completing multiple-step math computations	Student lacks comprehension of oral instruction in English; student shows marked improvement with visual input or instructions in L1	Student forgets the steps required to complete problems from one day to the next, even with visual input; student reverses or forgets steps; may be due to a processing or memory deficit
Student is unable to complete word problems	Student does not understand mathematical terms in L2 due to English reading proficiency; student shows marked improvement in L1 or with visuals	Student does not understand how to process the problem or identify key terms in L1 or L2; may be a processing deficit/reading disability

**TOOL #2: CONSIDERING THE INFLUENCE OF LANGUAGE DIFFERENCES
AND DISABILITY ON LEARNING BEHAVIORS (CONTINUED)**

Handwriting

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student is unable to copy words correctly	Lack of experience with writing the English alphabet	Student demonstrates difficulty copying visual material to include shapes, letters, etc. This may be due to a visual/motor or visual memory deficit

Behavior

Learning Behavior Manifested	Indicators of a Language Difference due to 2nd Language Acquisition	Indicators of a Possible Learning Disability
Student appears inattentive and/or easily distracted	Student does not understand instructions in English due to level of proficiency	Student is inattentive across environments even when language is comprehensible; may have attention deficits
Student appears unmotivated and/or angry; may manifest internalizing or externalizing behavior	Student does not understand instruction due to limited English and does not feel successful; student has anger or low self-esteem related to 2nd language acquisition	Student does not understand instruction in L1 or L2 and across contexts; may be frustrated due to a possible learning disability
Student does not turn in homework	Student may not understand directions or how to complete the homework due to lack of English proficiency; student may not have access to homework support at home	Student seems unable to complete homework consistently even when offered time and assistance with homework during school; this may be due to a memory or processing deficit

TOOL #3

DEVELOPING AN IEP FOR AN ENGLISH LEARNER WITH A DISABILITY

The following list of questions is included as part of a National Dissemination Center for Children with Disabilities (NICHCY) training tool on IDEA. It is a tool to assist educators in developing IEPs for an EL student with a disability.

A CHECKLIST FOR IEP TEAMS: CONSIDERING LIMITED ENGLISH PROFICIENCY—DEVELOPING THE IEP

In developing an IEP for a student with limited English proficiency, the IEP Team must consider the student's level of ELP, this includes both second language conversational skills as well as academic language proficiency. Therefore, the IEP Team must consider the student's level of ELP in listening, speaking, reading and writing, to support and strengthen implementation of the IEP goals. The IEP Team may find it helpful to ask the following framing questions:

Framing Questions	Yes	No
1. Has the dominant language in the home been considered?		
2. Has the child's primary language of communication been considered?		
3. Have the cultural values and beliefs of the parents been considered in planning for the child's education?		
4. Does the instructional plan incorporate a variety of instructional strategies?		
5. Is there a member of the IEP Team who has expertise regarding the student and understands how language develops as well as strategies that can be used when educating a student with English as a second language?		
6. Does the IEP Team have access to assessment data that is accurate and unbiased?		
7. Does the assessment information use a variety of methods and environments?		
8. Does the "present levels" statement in the IEP address both how the student uses his or her native language and how the student uses English?		
9. Do progress monitoring activities measure progress toward the mastery of English?		
10. Do the goals delineate in which language they will be addressed and who will be responsible for measuring the outcomes?		
11. Is there collaboration between general and special education as well as English as a Second Language and bilingual education if appropriate?		
12. Is an interpreter for the parents and the student present at the IEP meeting?		

TOOL #3: DEVELOPING AN IEP FOR AN ENGLISH LEARNER WITH A DISABILITY (CONTINUED)

Framing Questions	Yes	No
13. Are the IEP Team members trained in how to use an interpreter?		
14. Is the evaluation process that will be used carefully defined in the native language and in English during the reviews and reevaluations?		
15. Are the behaviors that are being measured carefully defined in the native language and in English during the reviews and reevaluations?		
16. Is the setting that the language is being measured in defined?		
17. Is the type of language that is being measured defined?		



TOOL #4

HOW TO USE DATA FROM THE OFFICE FOR CIVIL RIGHTS' CIVIL RIGHTS DATA COLLECTION (CRDC)

In analyzing school and LEA services to ELs, educators may begin with a review of the educational data available through multiple local, state, and national resources. One such resource is the CRDC website, which provides data collected from schools and LEAs on key education and civil rights issues in our nation's public schools—including student enrollment and educational programs and services—disaggregated by race/ethnicity, sex, EL status, and disability. The website presents this data using various reports and tools. It also provides school- and LEA-level summaries of the CRDC in its “Summary of Selected Facts” charts, and allows users to “drill down” into disaggregated data displays for all of the civil rights data from the 2011–12 school year for a school or LEA. The data can be an indicator of potential equity and opportunity gaps that may exist between ELs (or limited English proficient [LEP] students, as they are referred to here) and non-ELs. The data, however, does not disaggregate between ELs, former ELs, and never-ELs.

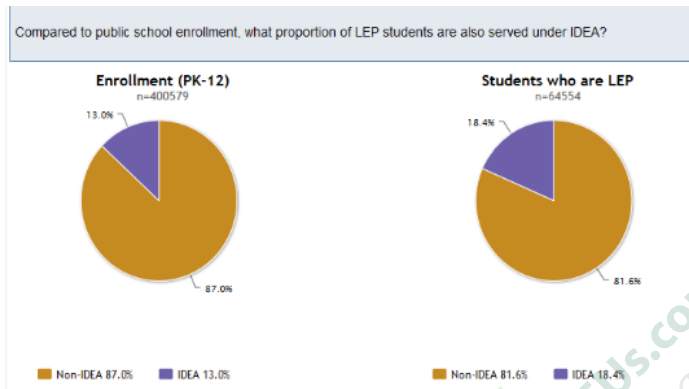
TIPS FOR FINDING CRDC DATA ON ENGLISH LEARNERS WITH DISABILITIES

To investigate a school's or LEA's EL and non-EL enrollment rates, including race/ethnicity and proportions served under the Individuals with Disabilities Act (IDEA) or Section 504, follow these steps:

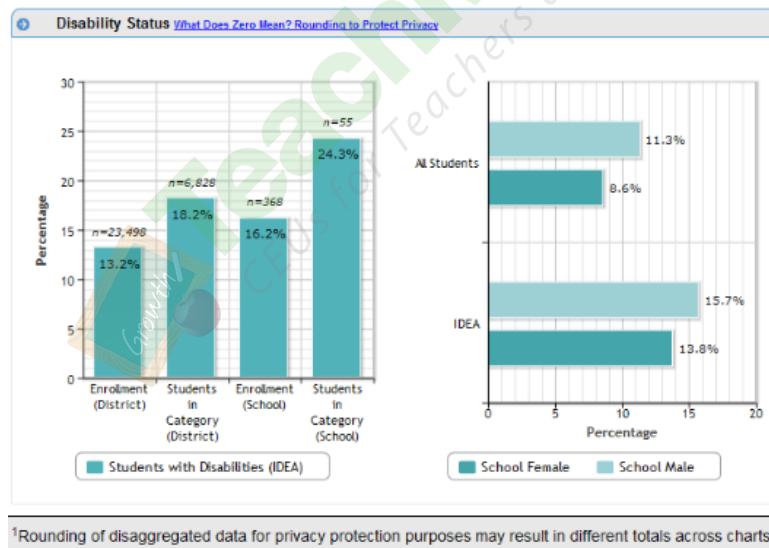
1. Visit OCR's CRDC website at <http://ocrdata.ed.gov>.
2. Click on “School and District Search” on the left-hand navigation menu or on “2009–10 and 2011–12 District or School Reports” in the center of the page.
3. Click on “Find School(s)” or “Find District(s),” depending on your search.
 - To search for a school by name, enter its name into the “School Name” field, and click “School Search.” To focus on a particular state, select the state before clicking “School Search.”
 - To search for a district, click on the “Find District(s)” tab, enter the name into the “District Name” box, and click “District Search.”
 - Users can also search for a school or district by name, address, city, NCES ID, distance from zip code, state, or regional office. Please note that searches are limited to 200 results.
4. Search results will appear below the “Additional Search” options. Click the school or district link from the list of results. Clicking on the name of a school will take you to the “School Summary” page, while clicking on the name of a LEA will take you to the “District Summary” page.
5. The “Summary of Selected Facts” page displays overview information about the chosen school or district. Selected data are displayed in five categories: (1) Characteristics and Membership, (2) Staffing and Finance, (3) Pathways to College and Career Readiness, (4) College and Career Readiness, and (5) Discipline, Restraint/ Seclusion, Harassment/Bullying.
6. To look into more detailed EL data, use the links in the light blue box called “Additional Profile Facts Available.” Users can choose to view the data as charts or tables (counts or percentages). OCR has compiled many pertinent EL facts into EL reports. Click on “English learner (EL) report” to review the main report, or on the plus sign to view an expanded menu that includes “Total LEP students” or “LEP students enrolled in LEP programs” sub-reports. Users can choose to view the data as charts or tables (counts or percentages).
 - The main EL report includes data on the following topics:
 - Race/ethnicity of ELs
 - Sex of ELs
 - Proportions of ELs served under IDEA.

TOOL #4: HOW TO USE DATA FROM THE OFFICE FOR CIVIL RIGHTS' CIVIL RIGHTS DATA COLLECTION (CRDC) (CONTINUED)

- Users can find information on the percentage of ELs enrolled in IDEA compared to overall enrollment in the LEA in two locations:
 - If the user clicks “English Learner (EL) Report” without expanding the menu, and scrolls down, the user will see pie charts similar to the one below:



- If the user expands the “English Learner (EL) Report” tree and then clicks on “Total LEP Students” or “LEP Students Enrolled in LEP Programs” and then scrolls down the page, the user will see bar charts similar to the one below:



- The sub-reports compare overall enrollment to the race/ethnicity, sex, and disability status of total LEP students in the school or those enrolled in LEP programs.
 - For additional data on ELs with disabilities, click “Students with Disabilities (IDEA)” or “Students with Disabilities (504)” in the blue box on the right-hand side of the screen. At the bottom of the page are data comparing rates of all students with those of ELs in a school or district who are served under IDEA or Section 504 of the Rehabilitation Act of 1973, as amended. Under “EDFacts IDEA” are data by type of disability.
7. Using the “Detailed Data Tables” under “Custom Chart & Detailed Data Tables” in the left-hand navigation menu of the homepage (or in the main menu in the center of the page) allows users to view and compare data across multiple years and schools. Users can access and customize detailed data tables.

TOOL #5

SELECTING APPROPRIATE ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

ELs with disabilities may need accommodations for instruction and assessment. Decisions about whether to use accommodations, and what accommodations to use, should be made on an individual student basis and consider each student’s needs and past and present level of performance. Accommodations should also be written in the IEP.

“DOS” AND “DON'TS” WHEN SELECTING ACCOMMODATIONS

The following table lists common “dos” and “don’ts” for selecting appropriate accommodations for students with disabilities. This table is from the *Accommodations Manual: How to Select, Administer, and Evaluate Use of Accommodation for Instruction and Assessment of Students with Disabilities*, produced by the Council of Chief State School Officers (CCSSO) State Collaborative on Assessment and Student Standards Assessing Special Education Students. According to this document, “the guidance in the manual pertains to students with disabilities who participate in large-scale assessments and the instruction they receive.” This list, while generic to all students with disabilities, can be adapted for ELs based on SEA and LEA policies and requirements.

Do...make accommodation decisions based on individualized needs.	Don't...make accommodations decisions based on whatever is easiest to do (e.g., preferential seating).
Do...select accommodations that reduce the effect of the disability to access instruction and demonstrate learning.	Don't...select accommodations unrelated to documented student learning needs or are intended to give students an unfair advantage.
Do...be certain to document instructional and assessment accommodation(s) on the IEP or 504 plans.	Don't...use an accommodation that has not been documented on the IEP or 504 plans.
Do...be familiar with the types of accommodations that can be used as both instructional and assessment accommodations.	Don't...assume that all instructional accommodations are appropriate for use on assessments.
Do...be specific about the “Where, When, Who, and How” of providing accommodations.	Don't...simply indicate an accommodation will be provided “as appropriate” or “as necessary.”
Do...refer to state accommodations policies and understand implications of selections.	Don't...check every accommodation possible on a checklist simply to be “safe.”
Do...evaluate accommodations used by the student.	Don't...assume the same accommodations remain appropriate year after year.
Do...get input about accommodations from teachers, parents, and students, and use it to make decisions at IEP team or 504 planning committee meetings.	Don't...make decisions about instructional and assessment accommodations alone.
Do...provide accommodations for assessments routinely used for classroom instruction.	Don't...provide an assessment accommodation for the first time on the day of a test.
Do...select accommodations based on specific individual needs in each content area.	Don't...assume certain accommodations, such as extra time, are appropriate for every student in every content area.

ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

RESOURCES

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Abadeh, H. (2015). Home-school communications: Multicultural parents of children with disabilities. *NABE Journal of Research and Practice*, 6. Retrieved from <https://www2.nau.edu/nabej-p/ojs/index.php/njrp/article/view/91/73>

This study examines “the role of communication between parents of children with special needs and schools.” The study uses a survey as the data collection tool to “determine perceptions of Arab American parents of children with special needs regarding communications between the home and school. Findings...indicated that parents born in the United States had more positive perceptions regarding communications with teachers.”

Abedi, J. (2006). Psychometric issues in the ELL assessment and special education eligibility. *Teachers College Record*, 108(11), 2282–2303. Retrieved from http://www.ncaase.com/docs/Abedi_TCRE782_2006.pdf

This article discusses the challenges involved with (1) content assessments for ELs; and (2) misclassifying ELs as students with learning disabilities. The author claims that “[a]ssessments in English that are constructed and normed for native English speakers may not provide valid inferences about the achievement of English language learners.”

Abedi, J. & Ewers, N. (2013, February). *Accommodations for English language learners and students with disabilities: A research-based decision algorithm*. Davis, CA: University of California, Davis: Smarter Balanced Assessment Consortium (SBAC). Retrieved from <http://www.smarterbalanced.org/wordpress/wp-content/uploads/2012/08/Accommodations-for-under-represented-students.pdf>

This paper provides context and recommendations related to selecting accommodations for ELs and students with disabilities. Under this framework an accommodation must be feasible to implement; appropriate for the student; sensitive to a student's background; not alter the assessment; and make the assessment more accessible. The authors offer research to support these conditions.

Adelson, V., Geva, E., & Fraser, C. (2014). *Identification, assessment, and instruction of English language learners with learning difficulties in the elementary and intermediate grades: A guide for educators in Ontario school boards*. Toronto, Ontario: University of Toronto, Ontario Institute for Studies in Education, Applied Psychology and Human Development. Retrieved from <http://www.ctserc.org/assets/documents/initiatives/specific-learning-disabilities-dyslexia/archive/ELLs-with-special-needs.pdf>

This resource guide was written as a tool for educators who work with ELs and/or students with disabilities in Canada. Focused mainly on reading and writing in lower grades, it includes practical information and guidance on the identification, assessment, and instruction of ELs with disabilities.

Albus, D. A., & Thurlow, M. L. (2007). *English language learners with disabilities in state English language proficiency assessments: A review of state accommodation policies* (Synthesis Report 66). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes (NCEO). Retrieved from <http://www.cehd.umn.edu/NCEO/OnlinePubs/Synthesis66/Synthesis66.pdf>

This report discusses “states’ participation and accommodation policies for [ELs] with disabilities on their English language proficiency (ELP) assessments.... The summary of findings suggests a number of promising practices and issues to be addressed.”

Albus, D., Thurlow, M., & Clapper, A. (2007). *Standards-based instructional strategies for English language learners with disabilities* (ELLs with Disabilities Report 18). Minneapolis, MN: University of Minnesota, NCEO. Retrieved from <http://www.cehd.umn.edu/NCEO/Onlinepubs/ELLsDis18/ELLsDisRpt18.pdf>

This study reviews and reports state standards, strategies, and supplementary instructional documents for the instruction of ELs with disabilities. The authors state that more research on instructional strategies is needed with students across a range of language and cultural backgrounds and with diverse types of disabilities.

Artiles, A. J., Rueda, R., Salazar, J. J., & Higuera, I. (2005). Within-group diversity in minority disproportionate representation: English language learners in urban school districts. *Exceptional Children*, 71(3), 283-300. Retrieved from http://educationforall.lmu.edu/speakerdocs/Artiles_et_al_EC.pdf

This article examines the weakness of research on minority students’ placement in special education due to many studies defining minority populations too broadly. According to the article, this can be due to a failure to disaggregate such factors as language proficiency or a failure to consider other relevant variables such as social class or program type. The

authors reviewed placement patterns of ELs, an identified understudied group, in California urban districts. They found “disproportionate representation patterns relating to grade level, language proficiency status, disability category, type of special education program, and type of language support programs.” The authors discuss implications for further research and practice.

Burr, E., Haas, E., & Ferriere, K. (2015, July). *Identifying and supporting English learner students with learning disabilities: Key issues in the literature and state practice*. Washington D.C.: U.S. Department of Education. Retrieved from http://ies.ed.gov/ncee/edlabs/regions/west/pdf/REL_2015086.pdf

This report reviews research and policies about ELs with learning disabilities. The report is based on the premise that “two factors have been identified that lead to inconsistent identification of students who may have learning disabilities: a lack of understanding among teachers about why English learner students are not making adequate progress, and poorly designed and implemented referral processes.” There are two report components: (1) research on literature consisting of 52 articles or reports discussing the topic of EL and learning disability identification, and (2) an analysis of EL procedures from the 20 states with the largest population of ELs.

Center for Parent Information and Resources (2010, December). Considering limited English proficiency: Developing the IEP. Retrieved from <http://www.parentcenterhub.org/repository/considering-lep/>

This checklist is included as part of a National Dissemination Center for Children with Disabilities (NICHCY) training tool on IDEA. It presents framing questions to be considered when writing an IEP for an EL, on topics that include assessments, home languages, communication methods, and instructional goals.

Collier, C. (2014). *What every administrator should know about separating differences and disabilities: A webinar for school administrators*. Retrieved from <http://www.doe.in.gov/sites/default/files/elme/schadmins-2014.pdf>

In this webinar, Collier outlines the current legislative context and cultural assumptions related to ELs with disabilities. She also offers seven pillars of appropriately serving ELs with disabilities in a way that distinguishes language difference from learning difference: (1) providing adequate and appropriate staff and resources to support ELs with disabilities and their families; (2) implementing strategies to support student resilience; (3) differentiating instruction from intervention; (4) monitoring classroom instruction and intervention; (5) referring students for special education services when appropriate; (6) ensuring an IEP is cross-cultural and responds to a student's learning and language needs; and (7) promoting staff collaboration and multi-dimensional school support systems.

Council of Chief State School Officers. (2011). *Accommodations manual: How to select, administer, and evaluate the use of accommodations for instruction and assessment of students with disabilities*. Washington, DC: Author. Copies may be downloaded from the Council's website at <http://www.ccsso.org/>

"The guidance in the manual pertains to students with disabilities who participate in large-scale assessments and the instruction they receive." This manual, while generic to all students with disabilities, can be adapted for ELs based on SEA and LEA policies and requirements. It includes recommended steps to select, administer, and evaluate the effectiveness of accommodations for students with disabilities.

Echevarria, J. (2009). The role of professional development in helping English learners with disabilities achieve high standards. *AccELLerate*, 1(3), 6-9. Retrieved from http://ncela.ed.gov/files/uploads/17/Accellerate_1_3.pdf

This article describes the elements of an effective professional development program that was used successfully with ELs with disabilities (Echevarria & Short, 2009). The case study shows that research-based practices coupled with effective professional development ensure high levels of implementation.

Guzman-Orth, D., Laitusis, C., Thurlow, M., & Christensen, L. (2014, October). *Conceptualizing accessibility for English language proficiency assessments*. Princeton, New Jersey: Educational Testing Service (ETS). Retrieved from <http://www.cehd.umn.edu/NCEO/OnlinePubs/K12ELAccessibilityPaper.pdf>

This white paper discusses English language proficiency assessments (ELPAs) and how to make them more accessible for ELs with disabilities. The paper discusses the accessibility measures currently available for ELs with disabilities; the challenges associated with ELPAs for ELs with disabilities; recommendations for practice; and research considerations. This is the second in a series of ETS papers related to improving ELPAs for ELs.

Hamayan, E., Marler, B., & Damico, J. (2013). *Special education considerations for English language learners: Delivering a continuum of services* (2nd ed.). Caslon Publishing: Philadelphia, PA. Retrieved from <http://caslonpublishing.com/titles/1/special-education-considerations-english-language-/>

This book is written for special education professionals who work with ELs. It provides guidance on the unique needs of ELs with disabilities and how to design appropriate interventions. It includes professional development activities and discussion questions as well as graphic organizers.

Keller-Allen, C. (2006). *English language learners with disabilities: Identification and other state policies and issues*. Alexandria, VA: National Association of State Directors of Special Education (NASDSE). Retrieved from http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/31_37349382-317f-47d9-aefc-7a2c0636eb11.pdf

For this publication, which is dedicated to policies related to ELs with disabilities, researchers interviewed SEA staff members from seven states that were selected because they had a large or rapidly growing EL population. The states included were Alaska, Arkansas, California, Florida, Kansas, New Mexico, and Texas. SEAs can review the policies and recommendations included in this publication to see if their own policies for ELs with disabilities align.

Klingner, J. K., & Harry, B. (2006). The special education referral and decision-making process for English language learners: Child study team meetings and placement conferences. *Teacher College Record*, 108(11), 2247-2281. Retrieved from http://www.colorado.edu/UCB/AcademicAffairs/education/faculty/janetteklingner/Docs/Klingner%20&%20Harry_The%20Special%20Education%20Referral%20and%20Decision-Making%20Process.pdf

This study was completed to examine “the special education referral and decision-making process for English language learners (ELLs), with a focus on Child Study Team (CST) meetings and placement conferences/multidisciplinary team meetings”. Observation of CST meetings revealed that in practice, “only cursory attention was given to pre-referral strategies” and that “most students were pushed towards testing.”

Lazarus, S. S., Kincaid, A., Thurlow, M. L., Rieke, R. L., & Dominguez, L. M. (2014). *2013 state policies for selected response accommodations on statewide assessments* (Synthesis Report 93). Minneapolis, MN: University of Minnesota, NCEO. Retrieved from <http://www.cehd.umn.edu/NCEO/OnlinePubs/Synthesis93/SynthesisReport93.pdf>

This report provides an overview of the testing accommodations available for students with disabilities for content assessments according to state policies. It also includes an analysis of how those policies have changed over time since 1992. The accommodations considered in this report include human scribe, speech to text, audio transcription, word prediction, grammar checker, spell checker, and calculator.

National Joint Committee on Learning Disabilities. (2005). *Responsiveness to intervention and learning disabilities*. Retrieved from the American Speech Hearing Association website: <http://www.asha.org/policy/TR2005-00303/>

This report “examines the concepts, potential benefits, practical issues, and unanswered questions associated with responsiveness to intervention (RTI) and learning disabilities (LD). A brief overview of the approach is provided, including attributes, characteristics, and promising features, as well as issues, concerns, unanswered questions, and research needs.”

Nguyen, H. (2012). General education and special education teachers collaborate to support English language learners with learning disabilities. *Issues in Teacher Education*, 21(1), 127-152. Retrieved from <http://files.eric.ed.gov/fulltext/EJ986820.pdf>

This paper describes the need for general education and special education teachers to collaborate to meet the needs of ELs with learning disabilities; discusses research-based approaches for teaching these students; and suggests effective and appropriate methods and strategies for use in least restrictive environments.

Butterfield, J. (2014). *Meeting the needs of English learners with disabilities: Resource book*. Goleta, CA: Santa Barbara County SELPA, on behalf of the SELPA Administrators of California Association. Retrieved from <http://www.sbcselfa.org/wp-content/uploads/2014/06/EL-Resource-Book-Revised-6-14.pdf>

“This resource book has two primary focus areas: (1) understanding the requirements for EL assessment, identification, and program requirements, and (2) how these processes are expanded to incorporate special education procedures when an EL is suspected of having a disability. As such, it is intended as a tool to assist general and special education administrators, teachers, special education staff, and English language support staff to better understand the needs of K-12 ELs with disabilities.”

Sánchez, M. T., Parker, C., Akbayin, B., & McTigue, A. (2010). *Processes and challenges in identifying learning disabilities among students who are English language learners in three New York State districts* (Issues & Answers Report, REL 2010–No. 085). Washington, DC: U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Northeast and Islands. Retrieved from <http://ies.ed.gov/ncee/edlabs/projects/project.asp?ProjectID=116>

This study examines practices and challenges in the processes applied in three New York State districts in identifying learning disabilities among EL students. Analysis suggests five interrelated elements that appear to be important for avoiding misidentification of learning disabilities among students who are ELs: (1) adequate professional knowledge, (2) effective instructional practices, (3) effective and valid assessment and interventions, (4) interdepartmental collaborative structures, and (5) clear policy guidelines.

Schilder, D. (2013). *Training to screen young English language learners and dual language learners for disabilities* (CEELO FASTfacts). New Brunswick, NJ: Center on Enhancing Early Learning Outcomes (CEELO). Retrieved from <http://ceelo.org/wp-content/uploads/2013/08/Training-to-Screen-Young-ELLs-and-DLLs-for-Disabilities.pdf>

This brief outlines some of the challenges associated with identifying young ELs with disabilities and offers research-based recommendations for policy and practice; considerations for selecting assessment tools; recommendations for training practices; contact information for national experts in the field; and resources on assessing ELs.

Spear-Swerling, L. (2006). Learning disabilities in English language learners. Retrieved from http://www.idonline.org/spearswerling/Learning_Disabilities_in_English_Language_Learners

This article examines identification of and remediation for ELs with possible LDs. Identification methods include assessments and information obtained from the parents about the prior history of the child and family. The article concludes that further research on identifying and teaching is needed for ELs with LDs.

Sullivan, A. (2011). Disproportionality in special education identification and placement of English language learners. *Exceptional Children*, 77(3), 317-334. Retrieved from <http://debdavis.pbworks.com/w/file/attach/81120626/journal%202.pdf>

“This study explores the disproportionality in the identification and placement of culturally and linguistically diverse...ELs in special education.” Descriptive analysis and regression analyses results indicate that ELs “are increasingly likely to be identified as having learning disabilities or mental retardation, and less likely to be served in either the least or most restrictive educational environment relative to their white peers.... The study presents implications for further research and practice.”

Thurlow, M., Liu, K. Ward, J., & Christensen, L. (2013). *Assessment principles and guidelines for ELLs with disabilities*. Minneapolis, MN: University of Minnesota, Improving the Validity of Assessment Results for English Language Learners with Disabilities (IVARED). Retrieved from <http://www.cehd.umn.edu/nceo/onlinepubs/ivared/IVAREDPrinciplesReport.pdf>

This report identifies five core principles of inclusive and valid assessment for ELs with disabilities. A brief rationale and specific guidelines that reflect each principle are also provided.

Understood. (2014). Accommodations: What they are and how they work. Retrieved from <https://www.understood.org/en/learning-attention-issues/treatments-approaches/educational-strategies/accommodations-what-they-are-and-how-they-work>

This article defines accommodations and identifies four types: (1) presentation, (2) response, (3) setting, and (4) timing and scheduling. The authors state that accommodations should be tailored to the child's specific needs and should be regularly monitored and evaluated.

University of Minnesota, NCEO. (2014, May). *Participation of ELLs with disabilities in ELP assessments* (NCEO Brief #8). Minneapolis, MN: Author. Retrieved from <http://www.cehd.umn.edu/NCEO/OnlinePubs/briefs/brief08/NCEOBrief8.pdf>

This brief focuses on the rate and type of participation of ELs with disabilities in state English language proficiency assessments. The topics included in the brief are: “(a) state policies on participation, (b) use and reporting of data on participation in ELP assessments, (c) experts' recommendations about assessment participation, and (d) the understanding of practitioners about the participation of ELLs with disabilities in ELP assessments.” The brief also includes recommendations for practice.

University of Minnesota, NCEO. (2014, June). *State assessment decision-making processes for ELLs with disabilities* (NCEO Brief #9). Minneapolis, MN: Author. Retrieved from <http://www.cehd.umn.edu/NCEO/OnlinePubs/briefs/brief09/NCEOBrief9.pdf>

This brief reviews how decisions are made about what assessments and what accommodations are appropriate for ELs with disabilities. The topics addressed include: “(a) required assessment decision-making processes, (b) experts' recommendations about assessment decision making for ELLs [English language learners] with disabilities, (c) resources available to guide assessment decision making, (d) standards-based IEPs, and (e) recommended participants on the decision-making team.” The brief also includes policy recommendations.

U.S. Department of Education, Office for Civil Rights. *The Civil Rights Data Collection: 2011-12* [Online database]. Retrieved from <http://ocrdata.ed.gov/>

The Civil Rights Data Collection (CRDC) is a biennial (i.e., every other school year) survey required by the U.S. Department of Education's Office for Civil Rights (OCR). Since 1968, the CRDC has collected data on key education and civil rights issues in our nation's public schools for use by OCR in its enforcement and monitoring efforts regarding equal educational opportunity. The CRDC is also a tool for other department offices and federal agencies, policymakers and researchers, educators and school officials, and the public to analyze student equity and opportunity.

U.S. Department of Education, Office for Civil Rights. (2014, October). Dear colleague letter: Resource comparability. (Guidance to ensure all students have equal access to educational resources.) Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>

This document provides detailed and concrete information to educators on the standards set in *Title VI of the Civil Rights Act of 1964*, including information on the requirements for educational resources; how OCR investigates resource disparities; and what SEAs, LEAs, and schools can do to meet their obligations to all students. Under *Title VI*, SEAs, LEAs, and schools must not intentionally treat students differently based on race, color, or national origin in providing educational resources. In addition, they must not implement policies or practices that disproportionately affect students of a particular race, color, or national origin, absent a substantial justification. The law does not require that all students receive exactly the same resources to have an equal chance to learn and achieve. It does, however, require that all students have equal access to comparable resources in light of their educational needs.

U.S. Department of Education, Office for Civil Rights, and U.S. Department of Justice (DOJ). (2015, January). *Dear colleague letter: English learner students and limited English proficient parents*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

This document provides guidance to assist SEAs, LEAs, and all public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs

and services. This guidance provides an outline of the legal obligations of SEAs and LEAs to ELs under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under *Title VI* of the *Civil Rights Act of 1964* and the *Equal Educational Opportunities Act*, and offers approaches that SEAs and LEAs may use to meet their federal obligations to ELs. A discussion of how SEAs and LEAs can implement their *Title III* grants and subgrants in a manner consistent with these civil rights obligations is included. Finally, the guidance discusses the federal obligation to ensure that limited English proficient parents and guardians have meaningful access to SEA-, LEA-, and school-related information.

U.S. Department of Education, Office of English Language Acquisition. (2015, March). *Assessing the English language proficiency of English learners with disabilities* (Panel presentations). Retrieved from http://ncela.ed.gov/files/15_2037_QELPA_ELSWD_Summary_final_dla_5-15-15_508.pdf

In March 2015, OELA hosted a series of panel presentations on assessing the ELP of ELs with disabilities. Experts in the field provided background information, context, and current data related to distinguishing language difference from disability; using valid and reliable assessments for ELs with disabilities; and assessing ELs with significant cognitive disabilities. This document summarizes all the papers.

U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2014). *Questions and answers regarding the inclusion of English learners with disabilities in English language proficiency assessments and Title III annual measurable achievement objectives*. Retrieved from <http://www2.ed.gov/about/offices/list/osers/osep/policy.html#elp-qa>

This document provides guidance on the inclusion of ELs with disabilities in ELP assessments under *Titles I and III* of the *Elementary and Secondary Education Act of 1965*, as amended. These are assessments designed to measure the progress of ELs in attaining English language proficiency. (An addendum was released in July, 2015).

U.S. Department of Education, Office of Special Education and Rehabilitative Services. (2014). 36th annual report to Congress on the implementation of the Individuals with Disabilities Education Act, 2014. Retrieved from <http://www.ed.gov/about/reports/annual/osep>

This annual report provides various data on assessments, child counts, and educational environments for IDEA Parts B and C. Part B of IDEA provides funds to states to assist them in providing FAPE to children with disabilities, ages three through 21, who are in need of special education and related services.

Zehler, A., Fleischman, H., Hopstock, P., Stephenson, T., Pendzick, M., & Sapru, S. (2003). *Policy report: Summary of findings related to LEP and SpEd-LEP students*. Arlington, VA: Development Associates, Inc. (Contract No. ED-00-CO-0089, U.S. Department of Education, Office of English Language Acquisition, Language Enhancement, and Academic Achievement of Limited English Proficient Students). Retrieved from http://www.ncela.us/files/rcd/BE021195/policy_report.pdf

This study provides findings on the number of ELs, their backgrounds, and the “instructional services they received in grades K–12 in public schools in the United States for SY 2001-02.” This study includes a special focus on ELs with disabilities who are identified as being in need of special education services (SpEd-LEP), national estimates on the number of SpEd-LEP students, identified disability categories, nature of instructional services they receive, and “information on policy and practice related to ELs participation in standards and assessments.”

Zhang, C. & Cho, S. (2010). The development of the bilingual special education field: Major issues, accomplishments, future directions, and recommendations. *Journal of Multilingual Education Research*, 1(1), 45–62. Retrieved from <http://fordham.bepress.com/cgi/viewcontent.cgi?article=1012&context=jmer>

This paper reviews challenges in educating children “with and without disabilities from culturally and linguistically diverse (CLD) backgrounds. The challenges discussed include (1) biased assessment that results in mis- or over representing CLD students in special education, (2) difficulty distinguishing between disability and differences, and (3) lack of competent bilingual special educators.” The authors recommend the use of “the response to intervention (RTI) model in identifying and instructing CLD children with and without disabilities.” Future research should (1) “examine how collaborative service delivery models contribute to referrals of CLD children” with and without disabilities and to their instruction, and (2) “focus on how to expand teachers’ knowledge about both the sociocultural and learning contexts to aid in producing positive outcomes for CLD children both with and without disabilities.”

TOOLS AND RESOURCES FOR SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

This is the seventh chapter of the English Learner Tool Kit, which is intended to help state and local education agencies (SEAs and LEAs) meet their obligations to English Learners (ELs). This tool kit should be read in conjunction with the U.S. Department of Education Office for Civil Rights' and the U.S. Department of Justice's Dear Colleague Letter, "English Learner Students and Limited English Proficient Parents," published in January 2015, which outlines SEAs' and LEAs' legal obligations to ELs under civil rights laws and other federal requirements.

SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

KEY POINTS

- Parents have the right to opt their children out of EL programs or particular EL services. This decision must be voluntary and based on a full understanding of the EL child's rights, the range of services available to the child, and the benefits of such services to the child.
- If a parent decides to opt his or her child out of EL programs or particular EL services, that child still retains his or her status as an EL.
- LEAs must continue to monitor the English language proficiency (ELP) and academic progress of students who opt out of EL programs and services. If a student does not demonstrate appropriate growth in ELP or maintain appropriate academic levels, the LEA must inform the parents in a language they understand and offer EL services.



Any parent whose child is receiving or is eligible to receive EL programs or services has the right to decline or opt his or her child out of the EL programs or particular EL services being offered. **LEAs may not recommend that a parent opt a child out of EL programs or services for any reason.**

The LEA must provide guidance in a language parents can understand to ensure that parents understand their child's rights, the range of EL services that their child could receive, and the benefits of such services. This is to ensure that the parent's decision to opt out is knowing and voluntary. LEAs that receive *Title I* or *Title III* funds must provide written notification to parents of their children's recommended placement in an EL program within 30 days of the start of the school year (or within

two weeks for later-arriving students). The notification must include all of the statutorily-required elements, including the right to opt out (See Tool #1, attached). The LEA should retain appropriate documentation to demonstrate that a parent knowingly and voluntarily opted his or her EL child out of EL programs or particular EL services. It is important to note that opting out of EL programs or particular EL services does not affect a student's ability to participate in any other programs or services, such as special education services.

If a parent decides to opt his or her child out of EL programs or particular EL services, that child retains his or her status as an EL. The LEA remains obligated to take affirmative steps and appropriate action required by civil rights laws to provide the EL student meaningful access

to its educational program. Thus the LEA must continue to monitor periodically the opted-out student's academic progress.

Specific monitoring practices will vary from LEA to LEA. They should include a combination of performance data, such as information on assessment results, grades, courses taken, observations, attendance, and parent meeting notes, along with possible comparisons to other EL students of similar ELP levels. Appropriate personnel should analyze this information throughout the year and make recommendations based on the student's current ELP level and ability to perform at grade level.

If an LEA finds that a student is struggling, it should take appropriate steps to assist the student. These steps may include, but are not limited to, further assessing the student's ELP; notifying the student's parent about his or her child's lack of progress, and encouraging him or her to opt the child into EL programs and services; and providing supports for the student's language acquisition, such as offering professional development in second language acquisition to the student's core curriculum teachers.

ELs who opt out of services must, like those receiving programs or services, have their ELP reassessed a minimum of once per year until they exit EL status. After it is determined that the EL no longer qualifies as an EL, the LEA must continue to monitor the student for at least two years, just as it would an EL who has received EL programs and services.

The following checklist is intended to assist with developing processes and providing support for ELs whose parents choose to opt them out of EL programs or particular EL services. The checklist provides suggested questions only. LEAs and schools should check their SEA's policies and other federal guidance to ensure compliance.

Communicating with Parents

- ★ How are parents informed of their children's EL status and the right to opt their children out of the EL programs or particular EL services being offered?
- ★ Are there procedures in place to ensure that parents do not opt their children out of any EL programs or services based on inadequate information about those programs or services, or on unanswered questions about their children's EL status?
- ★ Are there procedures in place to ensure that parents do not opt their children out of any EL programs or services based on schedule conflicts with other programs (such as special education programs); insufficient space in the available EL programs; or insufficient offerings within the EL program?
- ★ Are there procedures in place to address parental concerns about the quality of the EL services and programs being offered?
- ★ Is information provided in a language that parents understand?
- ★ Does the LEA have a formal mechanism for documenting which students opted out of services, including tracking communications to and from the ELs' parents in the appropriate languages?
- ★ Is there a process (perhaps during parent-teacher conferences or after report cards are issued) for informing parents who opted their children out of EL programs or services that their children are not making progress in ELP or academic content areas, when applicable?
- ★ Is there a process for parents to revisit their opt-out decision and opt their children back into EL programs or particular EL services?
- ★ Is there a process for SEAs and LEAs to explore the cause of high opt-out rates for EL services if and when they occur?

Addressing ELs' Needs

- ★ If a parent opts his or her child out of EL services, is there a process to ensure and monitor that (1) the child maintains his or her EL status; (2) the LEA is fulfilling its obligation of meeting the child's language and academic needs; and (3) the child still has appropriate access to the general curriculum?
- ★ Are ELs who have opted out being assessed for ELP at least annually?
- ★ If a parent continues to opt his or her child out of EL programs and services after being notified of that child's insufficient progress, is the LEA providing additional training to the student's classroom teacher(s) in EL instructional strategies?

SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

TOOLS

The U.S. Department of Education does not mandate or prescribe particular curricula, lesson plans, assessments, or other instruments in this tool kit. This tool kit contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other concerned parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items does not reflect their importance, nor is it intended to endorse any views expressed, or materials provided. All links included here were verified September 9, 2015.

The following set of tools is intended to assist schools, LEAs, and SEAs in developing processes to assist in meeting legal requirements when parents of ELs choose to opt their child out of EL programs or particular EL services. LEAs are reminded to check with their SEAs to see if a particular parent notification letter is required, and, if so, what the current version is.

Tool #1, Statutorily Required Elements of Parent Notification Letter, cites relevant *Title III* requirements for notifying parents of their children's EL status and their right to opt their children out of EL programs or particular EL services.

Tool #2, Sample Parent Notification Letter for a Child's Placement in English Learner Programs and Services, provides one example of a parent notification letter that LEAs could use to notify parents of their children's EL status and their right to opt their children out of EL programs or particular EL services.

Tool #3, Sample English Learner Programs and Services Opt-Out Notification, provides one example of a form that LEAs could use to provide documentation for legal compliance when a parent has expressed the desire to opt his or her child out of EL programs or particular EL services.

Tool #4, Sample Notification to Opt a Child Back into English Learner Programs or Services, provides one example of a form that LEAs could use to provide documentation when a parent revisits his or her decision and decides to opt the child back into EL programs or particular EL services.



TOOL #1

STATUTORILY REQUIRED ELEMENTS OF PARENT NOTIFICATION LETTER

This tool cites the relevant *Title III* requirements for notifying parents of their children's EL status and their right to opt their children out of EL programs or particular EL services. SEAs and LEAs that receive *Title I* or *Title III* funds should be familiar with the requirements of *Title I* and *Title III* and ensure parental notification letters include all statutorily required elements.

TITLE III: SECTION 3302 OF THE ESEA (20 USC 7012)

[See same provision in *Title I*: Section 1112(g) of the ESEA (20 USC 6312(g))]

(a) IN GENERAL—each eligible entity using funds provided under this title to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform a parent or the parents of a limited English proficient child identified for participation in, or participating in, such program of

- (1) the reasons for the identification of their child as limited English proficient and in need of placement in a language instruction educational program;
- (2) the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement;
- (3) the method of instruction used in the program in which their child is, or will be, participating, and the methods of instruction used in other available programs, including how such programs differ in content, instruction goals, and use of English and a native language in instruction;
- (4) how the program in which their child is, or will be participating will meet the educational strengths and needs of the child;
- (5) how such program will specifically help their child learn English, and meet age appropriate academic achievement standards for grade promotion and graduation;
- (6) the specific exit requirements for such program, the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary school for such program if funds under this title are used for children in secondary schools;
- (7) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child; and

TOOL #1: STATUTORIALLY REQUIRED ELEMENTS OF PARENT NOTIFICATION LETTER (CONTINUED)

(8) information pertaining to parental rights that includes written guidance

(A) detailing—

(i) the right that parents have to have their child immediately removed from such program upon their request; and

(ii) the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available; and

(B) assisting parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the eligible entity.

(b) *

(c) Receipt of information

The information required to be provided under subsections (a) and (b)* of this section to a parent shall be provided in an understandable and uniform format and, to the extent practicable, in a language that the parent can understand.

(d) Special rule applicable during school year

For a child who has not been identified for participation in a language instruction educational program prior to the beginning of the school year, the eligible entity shall carry out subsections (a) through (c) of this section with respect to the parents of the child within 2 weeks of the child being placed in such a program.



TOOL #2

SAMPLE PARENT NOTIFICATION LETTER FOR A CHILD'S PLACEMENT IN ENGLISH LEARNER PROGRAMS AND SERVICES

The following tool provides one example of a parent notification letter that LEAs could use to notify parents of their children's EL status and their right to opt their children out of EL programs or particular EL services. The tool is based on forms currently used by SEAs and LEAs. The form would need to be provided in a language that the parent understands.

PARENT NOTIFICATION LETTER FOR PLACEMENT IN ENGLISH LEARNER PROGRAMS AND SERVICES

[SCHOOL NAME, ADDRESS, CONTACT INFORMATION]

Date:

Dear Parent,

When you enrolled your child in school this year, you noted on the home language survey that he or she may use a language other than English. Based on this response, the law requires us to test your child's English language proficiency to determine if s/he is legally entitled to English Learner (EL) support services. We used this test to determine the best educational program placement for your child. We are required to inform you of the test results, our program recommendation, and all of the placement options available for your child. That information appears below, along with information our school district uses to determine when a student is ready to exit the EL program.

Based on your child's test results, your child qualifies for EL support services. Additional English language instruction is instrumental in increasing a student's English language proficiency and ability to acquire grade-level academic content. We highly recommend that your child participate in and receive the benefits from an EL program.

1. Your child's English language assessment scores for this school year are as follows:

Area	Level/Score
Listening	
Speaking	
Reading	
Writing	
Overall	

TOOL #2: SAMPLE PARENT NOTIFICATION LETTER FOR A CHILD'S PLACEMENT IN ENGLISH LEARNER PROGRAMS AND SERVICES (CONTINUED)

2. Your child's EL programs and services will entail the following types of instruction:

Insert available EL programs and services here

3. The overall goal of the EL program is for students to become fully proficient in English and to master state standards for academic achievement as rapidly as possible. The exit criteria are as follows:

Insert exit criteria here

4. If your child has an Individualized Education Program (IEP), the EL program will assist in meeting the IEP goals in the following ways:

Insert description here

As mentioned, we highly recommend that your child participate in and receive the benefits from this program; however, you have the right to decline your child's participation in or 'opt your child out' of the EL program or particular EL services. Please telephone the school at *[Insert telephone number.]* or contact your child's teacher if you would like to schedule a parent conference to discuss your child's options for program placement and/or if you wish to opt your child out of the EL program or particular EL services within the EL program.

Sincerely,

TOOL #3

SAMPLE ENGLISH LEARNER PROGRAMS AND SERVICES OPT-OUT NOTIFICATION

The following tool provides one example of a form that LEAs could use to provide documentation for legal compliance with the requirements of the EL opt-out decision-making process when a parent chooses to opt his or her child out of the EL program or particular EL services. The tool reflects forms currently used by LEAs to document that parents have been notified of their child's rights, the range of EL services that their child could receive, and the benefits of such EL services, before voluntarily waiving them. The form would need to be provided in a language that the parents understand.

NOTIFICATION TO OPT A CHILD OUT OF EL PROGRAMS OR PARTICULAR EL SERVICES

[SCHOOL NAME, ADDRESS, CONTACT INFORMATION]

Date:

Dear Parent,

We understand that you would like to decline the English Learner (EL) program or particular EL services proposed for your child _____ (*insert child's name*). EL services are specifically designed to help your child obtain English language proficiency as well as acquire grade-level content. However, as stated in our conversation, you have the legal right to opt your child out of the program or particular services.

If you still wish to opt your child out of the EL program or particular EL services, please initial next to each item on the checklist below. Doing so will indicate that you fully understand and agree with each statement. After you have initialed next to each of the statements, please sign, date, and return the form to your child's school. We will keep this document on file stating that you have declined or do not want these indicated EL services for your child.

- I am aware of my child's English language assessment score and other information about my child's current academic progress, and understand why he/she was recommended for additional English language instruction.
- I am familiar with the EL programs and services the school has available for my child.
- I have had the opportunity to discuss the available EL programs and services with the school.
- I understand that the school believes its recommendation is the most academically beneficial for my child.
- I understand that my child will still be designated an "English Learner" and have his or her English proficiency assessed once per year until he/she no longer meets the definition of an English Learner.
- All of this information has been presented to me in a language I fully understand.

**TOOL #3: SAMPLE ENGLISH LEARNER PROGRAMS AND SERVICES
OPT-OUT NOTIFICATION (CONTINUED)**

I, _____ (*insert name*), with a full understanding of the above information, wish to

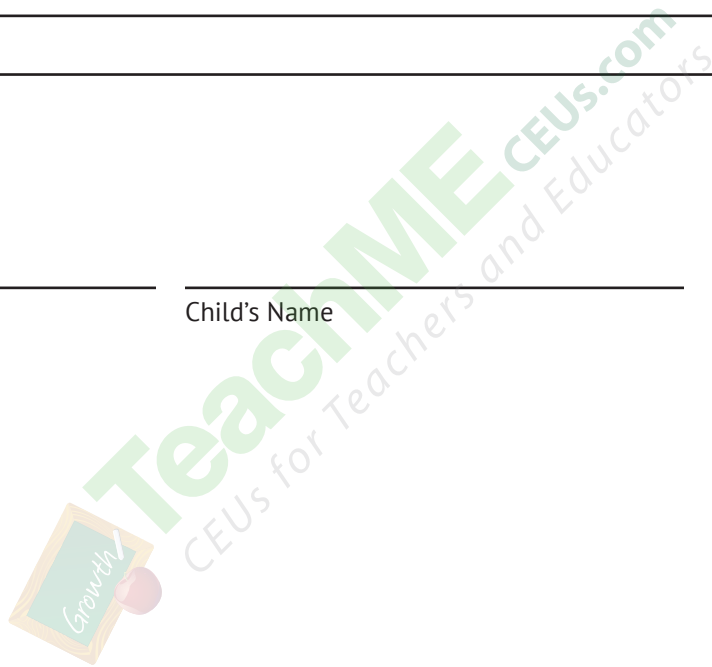
- decline **all** of the EL programs and EL services offered to my child.
- decline **some** of the EL programs and/or particular EL services offered to my child.

I wish to decline (*List program/services*)

Parent's Signature

Child's Name

Date



TOOL #4

SAMPLE NOTIFICATION TO OPT A CHILD BACK INTO ENGLISH LEARNER PROGRAMS OR SERVICES

The following tool provides one example of a form that LEAs could use to provide documentation when parents decide to opt their children back into EL programs or particular EL services. This form would only be used if/when a parent revisited his or her initial decision to opt his or her child out of EL programs or particular EL services. The form would need to be provided in a language that the parent understands.

NOTIFICATION TO OPT A CHILD BACK INTO EL PROGRAMS OR PARTICULAR EL SERVICES

[SCHOOL NAME, ADDRESS, CONTACT INFORMATION]

Date:

Dear Parent:

On _____ (*insert date of Notice to Opt-Out*), you notified us of your desire to decline the English Learner (EL) program or particular EL services proposed for your child _____ (*insert name*).

We understand that you have revisited your previous decision and would now like to accept the EL program or particular EL services proposed for your child. EL services are specifically designed to help your child obtain English language proficiency as well as acquire grade-level academic content. We believe these services will be a tremendous benefit to your child.

Please indicate below the EL program or particular EL services you would like your child to participate in. We will keep this form on file indicating that you have revisited your previous decision and do indeed want EL services for your child.

I, _____ (*insert name of parent*), wish to

- opt my child back into all of the EL programs and services offered to my child.
- opt my child back into some of the EL programs or particular EL services offered to my child.

I wish to accept (*List program/services*)

Parent's Signature

Child's Name

Date

SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

RESOURCES

The U.S. Department of Education does not mandate or prescribe particular curricula, lesson plans, assessments, or other instruments in this tool kit. This tool kit contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other interested parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to resources does not reflect their importance, nor is it intended to endorse any views expressed, or materials provided. All links included here were verified on September 9, 2015. The list of resources will be updated and revised in the future.

Bell, T., & Zantal-Wiener, K. (2015). *Sample parent notification letter for a child's placement in English learner programs and services*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from http://ncela.ed.gov/files/forms/sample_parent_notification_letter_for_el_placement.pdf

This tool is one example of a parent notification letter that LEAs could use to notify parents of their children's EL status and their right to opt their children out of EL programs or particular EL services. The tool reflects forms currently used by SEAs and LEAs.

Bell, T., & Zantal-Wiener, K. (2015). *Sample notification to opt a child back into English learner programs or services*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from http://ncela.ed.gov/files/forms/sample_notification_to_opt_in.pdf

This tool provides one example of a form that LEAs could use to provide documentation when a parent decides to opt his or her child back into EL programs or particular EL services. This form would only be used if/when a parent changes his or her initial decision to opt out of EL programs or particular EL services.

U.S. Department of Education, Office for Civil Rights (OCR), and U.S. Department of Justice (DOJ). (2015, January). *Dear colleague letter: English learner students and limited English proficient parents*. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

This document provides guidance to assist SEAs, LEAs, and all public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs

and services. This guidance provides an outline of the legal obligations of SEAs and LEAs to ELs under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under *Title VI* of the *Civil Rights Act of 1964* and the *Equal Educational Opportunities Act* and offers approaches that SEAs and LEAs may use to meet their federal obligations to ELs. A discussion of how SEAs and LEAs can implement their *Title III* grants and subgrants in a manner consistent with these civil rights obligations is included. Finally, the guidance discusses the federal obligation to ensure that limited English proficient parents and guardians have meaningful access to SEA-, LEA-, and school-related information.

Zantal-Wiener, K., & Bell, T. (2015). *Sample English learner programs and services opt-out notification*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from http://ncela.ed.gov/files/forms/sample_notification_to_opt_out.pdf

This tool is one example of a form that LEAs could use to provide documentation for legal compliance with the requirements of the EL opt-out decision-making process when a parent wishes to opt his or her child out of the EL program or particular EL services. The tool reflects forms currently used by LEAs to document that a parent has been notified of his or her child's rights, the range of EL services that the child could receive, and the benefits of such EL services, before voluntarily waving them.



"This course was developed from the public domain document: Tools and Resources for Creating an Inclusive Environment for English Learners – U.S Department of Education."