Pennsylvania
Department of Education

English Learners (ELs) with Disabilities Guidance

Purpose and Scope

This document is intended for local educational agencies, including school districts, charter schools, and intermediate units, serving English learners who are suspected of having or identified with a disability. It addresses the identification and evaluation of English learners for special education, the provision of English language development and special education services concurrently, participation in annual English language proficiency assessment, reclassification, and communication with families whose preferred language is not English.

English learners with disabilities are entitled to the full protections of the Individuals with Disabilities Education Act and Chapter 14 as well as the language assistance required under Title VI of the Civil Rights Act, the Equal Educational Opportunities Act, and 22 Pa. Code §4.26. This document explains how those obligations apply together. It does not replace special education regulations, policies, or guidance, and readers should consult the Bureau of Special Education for requirements that apply to all students with disabilities.

Citations to Pennsylvania special education regulations in this document are to 22 Pa. Code Chapter 14. Charter schools and cyber charter schools are governed by 22 Pa. Code Chapter 711, which contains corresponding provisions.

Identification and Evaluation

Child find and Timely Evaluation

Local educational agencies must ensure that all children with disabilities residing in their jurisdiction who are in need of special education and related services are identified, located, and evaluated, regardless of the severity of the disability (34 C.F.R. §300.111; 22 Pa. Code §14.121). This obligation applies to English learners on the same terms as all other students.

22 Pa. Code §14.121 (b) and (c) require districts to publish child find information in the district handbook and on the district website and to provide annual public notification with circulation adequate to notify parents throughout the district. Districts serving families whose preferred language is not English should consider whether their child find notices reach those families effectively.

The evaluation timeline is not suspended by a student's English language proficiency. An initial evaluation must be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the agency receives written parental consent for evaluation, excluding the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term (22 Pa. Code §14.123(b); 34 C.F.R. §300.301(c)(1)). The exceptions to that timeline at 34 C.F.R. §300.301(d) are limited to a parent's repeated failure or refusal to produce the child for evaluation and a child's enrollment in another public agency after the timeline has begun. English learner status is not among them.

IDEA anticipates the evaluation of students whose native language is not English and directs how assessments are to be administered in those circumstances (34 C.F.R. §300.304(c)(1)(ii)). That provision governs the method of evaluation. It is not a basis for delaying or declining to evaluate.

Parents may request an evaluation at any time, and the request must be in writing. If a request is made orally to any professional employee or administrator of the school entity, that individual must provide the parents with a copy of the permission to evaluate form within 10 calendar days of the oral request (22 Pa. Code §14.123(c)). LEAs should ensure that this obligation is met when a parent whose preferred language is not English raises a concern orally, including through an interpreter.

The group of qualified professionals that reviews evaluation materials to determine whether a child is a child with a disability must include a certified school psychologist when the evaluation concerns autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairments, specific learning disability, or traumatic brain injury (22 Pa. Code §14.123(a)).

Eligibility Determination

Under 34 C.F.R. §300.306(b) and 20 U.S.C. §1414(b)(5), a child must not be determined to be a child with a disability if the determinant factor for that determination is lack of appropriate instruction in reading, including the essential components of reading instruction, lack of appropriate instruction in math, or limited English proficiency, and the child does not otherwise meet the eligibility criteria under 34 C.F.R. §300.8(a). This provision governs the eligibility determination. It does not limit the LEA's obligation to conduct an evaluation, and a team cannot determine whether limited English proficiency is the determinant factor without first evaluating the student.

Evaluations must be comprehensive and multidisciplinary. LEAs must use a variety of assessment tools and strategies, must not use any single measure or assessment as the sole criterion for determining eligibility, and must assess in all areas related to the suspected disability (34 C.F.R. §300.304(b)(1), (b)(2), and (c)(4)). Eligibility determinations must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, and information about the child's physical condition, social or cultural background, and adaptive behavior (34 C.F.R. §300.306(c)(1)(i)). Information from all sources must be documented and carefully considered (34 C.F.R. §300.306(c)(1)(ii)).

Assessments and other evaluation materials must be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer (34 C.F.R. §300.304(c)(1)(ii)). This requirement applies to all ELs, including students whose parents have declined participation in the LIEP. A parent's refusal of language instruction educational program services does not change the student's EL status or the LEA's obligation to evaluate in the student's native language where feasible.

Key Contextual Factors

Distinguishing typical second language acquisition from a disability requires information that standardized assessments may not supply. The factors below help teams interpret evaluation data in light of a student's language and educational history and support a defensible determination of whether limited English proficiency is the determinant factor under 34 C.F.R. §300.306(b)(1)(iii).

Teams should consider:

- Comparative performance and progress relative to true peers, meaning students with similar linguistic, cultural, and educational backgrounds
- Parent and family report of native language development, early milestones, and prior schooling
- Length of time in the United States and U.S. schools
- Educational history, including instruction in the native language and in English
- Native language literacy skills
- Interrupted or inconsistent formal education
- Attendance patterns and migration history
- English language proficiency levels and growth over time
- Response to instruction and intervention, including data from classroom observation across settings

Information reported by parents and families is often the only available source of native language developmental history and should be gathered through a structured interview conducted with a qualified interpreter rather than through a translated form alone. This can be collected as part of the family interview step in the K-12 identification process.

Screening Considerations at Enrollment

Having a disability does not exempt a student from the EL identification procedure. A student who arrives with an IEP, or who is suspected of having a disability at the time of enrollment, must still be screened and identified according to PDE's Identification of ELs guidance, which sets out the procedure, timelines, and screening requirements. This subsection addresses the additional considerations that apply when a student in either of those circumstances is screened.

When a student arrives with an IEP, or when enrollment personnel are informed that a student has or is suspected of having a disability, enrollment personnel should coordinate with special education staff to complete the screening, identification, and placement procedure.

If EL screening is required for a student who arrives with an IEP, the screening must be completed with the accommodations documented in the student's IEP, and the results must be interpreted in consultation with special education personnel.

If a disability is suspected but no formal determination has been made before the identification procedure is completed, screening should proceed using any administrative considerations, universal tools, or accommodations that the ESL specialist and special education professionals determine to be necessary. The student must be placed in the appropriate language instruction educational program based on all available information at the time of the identification procedure. If the student is subsequently determined to have a disability that may have affected the screening, the student may be rescreened using appropriate accommodations.

If a student cannot complete all domains of the screener as a result of a disability, the identification decision must be based on the domains the student can complete, applying the appropriate cutoff score to each completed domain individually. If a student cannot complete any domains of the screener as a result of a disability, the identification decision must be based on the available evidence gathered from the home language survey, the family interview, and the records review.

See the Identification of ELs guidance on the PDE EL webpage for more information.

Children Transitioning from Preschool Early Intervention

Preschool programs identify children whose home language is not English as dual language learners (DLLs) and provide language supports following PDE's Dual Language Learner Identification Procedure for Pre-K.

Evaluation of a child for preschool early intervention is governed by 22 Pa. Code §14.153, which requires that evaluations be sufficient in scope and depth to investigate the child's communication development and learning strengths and needs, and includes an assessment of the family's perceived strengths and needs. Under 22 Pa. Code §14.153(5), evaluations are conducted in accordance with the requirements at §14.123, excluding the certified school psychologist provision at §14.123(a). The native language and family communication

requirements described in this document apply. The evaluation must be completed and the evaluation report provided to parents within 60 calendar days of written parental consent (22 Pa. Code §14.153(4)(i)). The summer exclusion that applies to school-age evaluations under §14.123(b) does not apply to preschool early intervention.

A dual language learner identification made in a preschool early intervention program does not carry forward to kindergarten. The receiving LEA must complete the K-12 EL identification procedure regardless of whether the child was previously identified.

For a child transitioning with an IEP, the EL identification procedure and the special education transition occur together. The considerations in the preceding subsection apply, and the child's preschool early intervention record is part of the records review. That record should include the home language survey and family interview from the pre-K procedure, any English language proficiency screening results, and the language supports the child received.

22 Pa. Code §14.154(e) requires that the IEP of a child within one year of transition to a school-age program contain goals and objectives addressing the transition process. Where the child was identified as a dual language learner, the transition IEP should address the child's language development so that the receiving LEA has that information available when it conducts the K-12 EL identification procedure.

Dual Services and IEP Development

Entitlement to Both Services

English learners who are eligible for special education must receive both English language development support and special education services. These services are not mutually exclusive, and one may not be provided in place of the other (Educating English Learners (ELs) Basic Education Circular, 22 Pa. Code §4.26). 22 Pa. Code §4.26 requires school districts to provide a program for each student whose dominant language is not English and contains no exception for students with disabilities (22 Pa. Code §4.26). The obligation to provide language assistance arises independently of IDEA, under Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) and the Equal Educational Opportunities Act (20 U.S.C. §1703(f)).

This applies to all English learners with disabilities, including students with significant cognitive disabilities.

Provision of English Language Development (ELD) Instruction

English language development instruction must be provided to every English learner with a disability, including students with significant cognitive disabilities. It must be delivered by a certified ESL teacher, either directly or through collaboration with a special education teacher. ELD instruction is a required component of every language instruction educational program and is part of the student's general education program (EL BEC).

ELD Instruction Is Not a Related Service

ELD is part of the general education program and is not a related service under IDEA (20 U.S.C. §1401(26)(A)).

Because ELD is part of the general education program, the obligation to provide it does not depend on the IEP team's decisions about special education services, and reducing or discontinuing ELD instruction is not within the IEP team's authority.

IEP Team Composition

The IEP team for an English learner must include an ESL professional with expertise in English language development (EL BEC). The IEP or Section 504 team must include participants who have the knowledge necessary to recommend a program that addresses both the student's disability-related needs and the student's English language acquisition needs.

The ESL professional's role is to assist the team in accounting for the student's language needs when considering program design, accommodations, goals, and placement. This includes:

- Interpreting English language proficiency assessment results, including proficiency levels and growth calculated from scale scores
- Identifying the student's language strengths and needs
- Advising the team on second language acquisition and on distinguishing language acquisition patterns from disability-related needs
- Providing information on the student's language and educational background, including native language literacy, prior schooling, interrupted education, and time in the United States
- Identifying the conditions and settings in which the student demonstrates the greatest academic, social, and linguistic success

Considering Language Needs in the IEP

The IEP team must consider the language needs of a child with limited English proficiency as those needs relate to the child's IEP (34 C.F.R. §300.324(a)(2)(ii)). This is a required consideration, not an optional one, and it applies to every English learner with an IEP.

The IEP team is responsible for:

- Considering the student's language development needs in all aspects of IEP planning
- Determining how ELD instruction and special education services will be provided and coordinated

- Ensuring that services are delivered in the least restrictive environment and in a manner that supports both language acquisition and academic progress
- Documenting accommodations for the annual English language proficiency assessment, or the rationale for administering the Alternate ACCESS, in Section IV of the IEP (see Annual English Language Proficiency Assessment)

ELD Instruction and Least Restrictive Environment

Least restrictive environment requirements govern the removal of children with disabilities from the regular educational environment and permit such removal only when the nature or severity of the disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. §300.114(a)(2)). English language development instruction is a component of the general education program and is not special education or a related service. Time a student spends receiving ELD instruction outside the regular classroom is therefore not removal on account of a disability and is not counted for purposes of the least restrictive environment analysis.

Language Goals

IDEA requires that each IEP includes measurable annual goals, academic and functional, designed to meet the child's disability-related needs and enable the child to be involved in and make progress in the general education curriculum (34 C.F.R. §300.320(a)(2)). IDEA does not require that every English learner with a disability have English language development goals.

Whether a language development goal is appropriate is an individual determination for the IEP team, based on how the student's English language proficiency affects access to and progress in the curriculum.

Language development needs may also be addressed through accommodations, specially designed instruction, and collaboration between ESL and special education staff. The absence of a language goal in the IEP does not affect the student's entitlement to ELD instruction, which is provided as part of the general education program.

Coordinating Service Delivery

The IEP team must consider how ELD instruction and special education services will be delivered together so that the student can be involved in and make progress in the general education curriculum. Coordination should be ongoing among ESL teachers, special education teachers, and content teachers rather than limited to the annual IEP meeting.

An LEA's obligation to provide English language development instruction is not affected by the location in which a student receives special education services. An LEA that enrolls an English learner retains that obligation when the student is placed in a program operated by another entity, including an intermediate unit special education program or an alternative education

program such as AEDY. LEAs must address how ELD instruction will be provided in those settings (22 Pa. Code §4.26).

Annual English Language Proficiency (ELP) Assessment

All English learners in grades K-12 must participate in the annual state English language proficiency assessment, including English learners with disabilities (ESEA §1111(b)(2)(G); IDEA §612(a)(16)(A)). English learners with the most significant cognitive disabilities may be eligible for the Alternate ACCESS. Eligibility criteria, accommodations, domain exemption procedures, and test administration requirements are published on PDE's Annual ELP Assessment page.

The IEP team is responsible for documenting, in Section IV of the IEP, the accommodations the student will receive on the ACCESS by domain, or the rationale for administering the Alternate ACCESS in place of the ACCESS.

If a student's disability precludes assessment in one or more domains because no appropriate accommodation is available for that domain, that determination is made by the IEP team (34 C.F.R. §200.6(h)(4)(ii)). LEAs must ensure the student is assessed in the remaining domains and must apply the appropriate Do Not Score code to the affected domain. See PDE's Annual ELP Assessment page for the procedure.

Accommodations for the ACCESS and Alternate ACCESS are drawn from the WIDA Accommodations Guidelines, which Pennsylvania uses without addition or modification. IEP teams should select from those guidelines rather than developing assessment accommodations independently.

Reclassification

English learners with disabilities are eligible for reclassification from the language instruction educational program (LIEP). A disability neither qualifies nor disqualifies a student, and reclassification decisions are made using the state reclassification criteria published on PDE's Reclassification, Monitoring, and Re-designation of English Learners page.

Pennsylvania provides three pathways. An EL with a disability who meets the standard state reclassification criteria is reclassified in the same manner as any other EL. An EL with a disability who takes the ACCESS but has not met the standard criteria may be considered under the alternate criteria for ELs with disabilities. An EL who takes the Alternate ACCESS may be considered under the criteria applicable to that assessment.

Reclassification of an EL with a disability who takes the ACCESS is determined by a school-based team, not by the IEP team alone. Required team composition, the body of evidence the team must consider, the questions the team must address, and the documentation requirements are published on the reclassification page.

Reclassification of an EL who takes the Alternate ACCESS is determined by the IEP team with input from an ESL or bilingual education professional and is documented through the IEP process. A reclassification cover sheet is not required for these students.

Where a student's disability prevented participation in one or more domains, the overall composite score must be calculated using the applicable PDE calculation tool. Separate tools apply to the ACCESS and the Alternate ACCESS, and each is limited to students prevented from participating in up to two domains. LEAs must use the current version of each tool.

Family Communication and Language Access

LEAs must provide important information to parents who are not proficient in English in a language or mode of communication they understand (EL BEC). Notices required by special education laws and regulations are among the information that must be provided in this manner. For guidance on interpreters, translators, and cultural liaisons, including selection, ethical standards, interpreting styles, use of technology, and documentation, see PDE's Communication with Families page.

IDEA imposes its own native language requirements that apply independently of the obligations above.

The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English or who are deaf (34 C.F.R. §300.322(e)).

Parental consent is not valid unless the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication (34 C.F.R. §300.9). This applies to consent for initial evaluation, reevaluation, and initial provision of special education services.

Prior written notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so (34 C.F.R. §300.503(c)(1)). Where the parent's native language or other mode of communication is not a written language, the LEA must take steps to ensure that the notice is interpreted orally or by other means, that the parent understands the content, and that there is written evidence these requirements have been met (34 C.F.R. §300.503(c)(2)). The same requirements apply to the procedural safeguards notice (34 C.F.R. §300.504). LEAs should follow the documentation practices described on PDE's Communication with Families page.

Special education evaluation activities that involve the family, including interviews and questionnaires, should be conducted by the evaluating professional working with an interpreter rather than by an interpreter working independently. Where possible, LEAs should use the same interpreter throughout an evaluation so that the interpreter becomes familiar with the assessment materials and procedures.

Related PDE EL Guidance

- Identification of English Learners
- Annual English Language Proficiency Assessment
- Reclassification, Monitoring, and Re-designation of English Learners
- Communication with Families: Interpreters, Translators, and Liaisons
- Educating English Learners Basic Education Circular

Related Organizational Contacts

- Bureau of Special Education
- Pennsylvania Training and Technical Assistance Network