

# Basic Education Circulars (Pennsylvania Code) Educating Students With Limited English Proficiency (LEP) and English Language Learners (ELL)

## 22 Pa. Code §4.26

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### PURPOSE

The purpose of this circular is to provide local education agencies (LEAs) with the requirements and interpretations of the legal mandates governing the education of students with Limited English Proficiency (LEP), also known as English Language Learners (ELLs). The information included will be useful in designing, staffing, and evaluating effective programs for ELLs. These mandates and interpretations are based on the Pennsylvania Regulations, Chapters 4 and 11; and on federal law, including Title VI of the Civil Rights Act, the Equal Educational Opportunity Act (EEOA), the No Child Left Behind Act (NCLB), and regulations and case law under those statutes. Citations to these sources are found at the end of this circular.

### OVERVIEW

State regulation, 22 Pa. Code § 4.26, declares:

*Every school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student's achievement of English proficiency and the academic standards under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction.*

As used here, the term *program* refers to: (1) planned instruction by a qualified ESL/Bilingual teacher, (2) adaptations/modifications in the delivery of content instruction by all teachers based on the student's language proficiency level and the Pennsylvania Language Proficiency Standards (PA ELPS) for ELLs as well as the Pennsylvania academic standards.

Key components of the program that an LEA must provide to every ELL are addressed below. In addition, this BEC also sets out the PDE's interpretation of legal requirements on a number of related issues.

### IDENTIFICATION OF ELLs

#### Enrollment

For specific enrollment requirements and procedures, including those pertaining to the enrollment of ELLs, see the Enrollment of Students BEC. <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=84241>

#### Student identification for placement in an instructional program for ELLs

- Based on the responses to the home language survey (HLS), students must be assessed for potential placement in a program unless they meet the criteria outlined below. *There are certain scenarios that may preclude assessment if a student can demonstrate English language proficiency (ELP).*

*Students should meet two of the following three criteria to be exempted from a formal ELP assessment. Student records for children from other states or school systems can be considered as part of the criteria.*

- Final grades of B or better in core subject areas (Mathematics, Language Arts, Science and Social Studies);
- Scores on district-wide assessments that are comparable to the Basic performance level on the PSSA;
- Scores of Basic in Reading, Writing and Math on the PSSA or an equivalent assessment from another state.

- Newly enrolling students without academic records must be assessed for their ELP.
- LEAs must use the WIDA ACCESS PLACEMENT TEST (W-APT), which is aligned to the required annual State ELP assessment, ACCESS for ELLs, to assess students for placement in language instructional programs for ELLs.
  - \* LEAs may choose to use other formal, standardized ELP assessments for additional information BUT identification and placement must be based on the W-APT and the multiple criteria outlined above.
- The W-APT results are one of the indicators for placement in ESL/Bilingual programs and must be used in combination with the above multiple criteria, if available, to determine placement in an ESL program.
- Educators must take into consideration the State's ELP levels described within the PA ELPS standards when placing students in an instructional program for ELLs.
- Instructional placement of ELLs must be age and grade appropriate. Additionally, ELLs must be given equal access to all educational programs, opportunities, and extra curricular activities in the same manner as for all students.
- Parent permission to assess IS NOT REQUIRED.
- Parent notification of student assessment results and placement in an ESL/Bilingual program is required.

#### **Parents' Limited Right to Opt Out of ESL/Bilingual Programs**

22 Pa. Code § 4.4(d)(3) of the Pennsylvania State Board of Education regulations requires school entities to adopt policies that permit parents to have their children excused from specific instruction only in the limited circumstance described below:

*(3) The right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parents or guardians.*

Consequently, a parent may not seek to have his or her child excused from a LEA's ESL/Bilingual program unless the instruction conflicts with the family's religious belief.

#### **THE LANGUAGE INSTRUCTIONAL PROGRAM**

Each LEA must have a written program plan that includes:

- a detailed description of the instructional models implemented by the LEA,
- the process for identification of ELLs,
- the criteria for program exit, and
- the monitoring process after exit from a language instructional program.

The description must be sufficient to provide guidance to school personnel and families regarding the programs and services that students will receive. The language instructional program must include:

#### **Instructional Models**

The Program model(s) that the LEA adopts for ELLs must be:

- 1) based on an educational theory recognized as sound by some experts in the field or considered by experts as a legitimate experimental strategy;
- 2) reasonably calculated, including provisions for resources and personnel, to implement the theory effectively; and
- 3) evaluated and adjusted where needed to ensure language barriers are actually being overcome.

Castañeda v. Pickard, 648 F.2d 989 (1981)

Program administrators planning the instructional models should consider LEA demographics, and student characteristics. Program administrators may choose between an ESL-only and a bilingual education with ESL model.

**Options for English language instructional programs are charted in the following [Characteristics of the Major Program Models for LEP Students](#) (PDF)**

### **Planned Instruction for English language acquisition (ESL) classes**

- Direct English language instruction may not take place during other content classes which are required under 22 Pa Code § 4.
- Planned Instruction in the ESL Program must include daily instruction supporting the program model chosen by the LEA.
- Language instruction must be commensurate with the student's proficiency level (i.e. students at levels 1-3 require a greater amount of language instruction than students at levels 4 and 5). *This includes both direct language instruction and adaptations to instruction/assessment in all content areas.*
- Exact hours of direct language instruction by proficiency level must be determined based on student need and program/instructional delivery model. Instruction must meet all requirements under *Lau v Nichols*, 414 U.S. 563 (1974) and *Castañeda v. Pickard*, 648 F.2d 989 (1981).
- Guidelines to consider when planning *direct instruction* of ESL:
  - Entering (level 1) / Beginning (level 2) students: 2 hours
  - Developing (level 3): 1-2 hours
  - Expanding (level 4): 1 hour
  - Bridging (level 5): up to 1 hour or support dictated by student need*Levels are defined by the PA ELPS*
- ESL must be delivered via curriculum aligned with Pennsylvania's Reading, Writing, Speaking, and Listening Standards, and the PA ELPS for ELLs.
- In order to acquire English, students with LEP must receive instruction the same as they would receive instruction for other curricular areas. In other words, ESL/Bilingual classes must be part of the daily schedule and thoughtfully planned from the administrative level so that students are not removed from other content classes to receive instruction for English language acquisition.
- As the proficiency of a student advances into the upper levels (i.e. Expanding/Bridging), a student may require only minimal instructional time, which may be in the form of ongoing support as needed. **HOWEVER**, this support must be planned, structured time within the school day.

### **Planned Instruction in Academic content areas (content area classes)**

- The language instructional program must also provide ELLs with meaningful, comprehensible access to instruction in all content areas required by Pennsylvania academic standards.
- The PA ELPS PreK–12 are an overlay to the academic standards and must be incorporated in planned instruction for ELLs by all teachers.
- The LEA must support instructional planning and evaluation efforts between the ESL/Bilingual teachers and the content-area teachers by providing common planning time as appropriate.
- *To access the PA ELPS PreK-12, visit [www.pde.state.pa.us/esl](http://www.pde.state.pa.us/esl). For information on research-based techniques and models for adapting content instruction delivered in English to meet the needs of ELLs, and information about bilingual education, visit <http://www.ed.gov/about/offices/list/oela/index.html>.*

### **Grading of ELLs**

ELLs must be graded using the same grading system as all other students.

### **Annual assessment of ELLs**

- Assessment processes must align to the academic standards and PA ELPS.
- The annual state ELP assessment of ELLs is required by federal law. 20 U.S.C. §§ 6311(b)(7), 6826(b)(3)(C),(d)(2)
- The State ELP assessment must be administered annually to measure progress and/or attainment of the student's English language proficiency for each language domain, i.e., reading, writing, speaking and listening/understanding. These score results are maintained in the student's permanent record folder.
- The PSSA accommodations allowable for ELLs are published annually by PDE. Visit the PDE website for the information on testing accommodations. <http://www.pde.state.pa.us/a> and [t/cwp/view.asp?a=108&Q=45132&a](http://www.pde.state.pa.us/t/cwp/view.asp?a=108&Q=45132&a) and [tNav=678&a](http://www.pde.state.pa.us/t/Nav=678&a) and [tNav=](http://www.pde.state.pa.us/t/Nav=)

### **Language Instructional Program Exit Criteria**

All LEAs must apply Pennsylvania's required exit criteria when exiting ELLs from the language instructional program. Students may not be exited from the language instructional program based only on their oral proficiency; proficiency in academic reading and writing must also be assessed. These criteria can be found on the PDE website.

<http://www.pde.state.pa.us/esl/cwp/view.asp?a=3&pm=1&Q=121663&eslNav=4974>.

### **Monitoring of ELLs after language instructional program exit**

Monitoring is required for two years after a student exits an ESL/Bilingual program and appropriate records of student progress must be maintained.

20 U.S.C. § 6841(a)(4)

- Monitoring may include any or all of the following:
  - Periodic review of grades
  - Local assessments
  - Required state assessments
  - Teacher observation
- Teachers may offer support to monitored students as they would for any student seeking additional assistance with classroom work, instruction, or assessment.
- Monitoring is NOT an extension of the language instructional program.
- Students who are monitored CANNOT be counted as ELLs in any state or federal data collection systems for the purpose of acquiring state or federal funding.

Monitoring guidance and forms can be found on the PDE website.

<http://www.pde.state.pa.us/esl/cwp/view.asp?a=3&pm=1&Q=148067&eslNav=4974>

### **Area Vocational-Technical Schools (AVTSs)/ Career and Technical Centers (CTCs)**

- ELLs may not be denied access to participate in programs at AVTSs/CTCs based solely on English language proficiency.
- ELLs participating in vocational programs must be provided ESL instruction appropriate to their level of proficiency and properly adapted content-area instruction.
- Comprehensive AVTS/CTC schools are responsible for providing ESL programs and staffing for students identified as ELLs as outlined in this document.

### **Retention/Promotion**

A student may not be retained in a grade based solely on his/her lack of English language proficiency.

*If an ELL is retained in a grade, the LEA must be able to demonstrate that all appropriate modifications were made to instruction and assessment in order to allow ELLs meaningful access to the general curriculum as well as to promote second language learning. Lau v Nichols, 414 U.S. 563 (1974)*

### **ELLs with Disabilities**

ELLs may be eligible for Special Education. The IEP team must consider the need for ESL instruction as they address all students' needs related to the provision of Free Appropriate Public Education (FAPE). In determining the student's needs, IEP teams must consider both special education services and ESL instruction simultaneously, as appropriate.

All procedures for the screening, evaluation, IEP, and the provision of services and/or instruction must be in compliance with the Individuals with Disabilities Education Act (IDEA) and PA Chapter 14 Regulations.

#### The IEP team

It is highly recommended that the IEP team for an ELL with disabilities include an ESL professional familiar with the student's language needs as well as the nature of his/her disability or, at a minimum, that the IEP team receive input from an ESL professional when appropriate. If a student is identified as an ELL, then the IEP team will check the Limited English proficiency under special considerations on Part I of the IEP. Any special considerations identified must be addressed in the IEP.

#### The academic program

ESL/Bilingual programs are identified in The Pennsylvania School Code of 1949, Chapter 4, Section 4.26, as general curriculum. The academic program for an ELL with a disability must consider ESL just as it must consider any other general curriculum services available to non-disabled students. Programmatic decisions regarding ELLs with disabilities should be made

by the IEP team with appropriate representation. It is not appropriate for an ELL with a disability to be denied access to general curriculum including an English language instructional program as defined above. Special education services do not replace an English language instructional program.

#### Requirement for annual English language proficiency assessment

Both Titles I and III of NCLB require LEAs and state educational agencies (SEAs) to provide an annual assessment of English language proficiency for all ELLs in the state enrolled in public schools in grades Kindergarten through twelve in the domains of speaking, listening, reading, and writing. This includes students with disabilities.

Even though ELLs with disabilities may always achieve depressed scores in particular domains of language as a result of their specific disability, they must be given the opportunity to demonstrate their level of proficiency in English and be included in the annual state ELP assessment in all domains.

#### Participation in assessments

ELLs with disabilities participate in all assessments, including the annual state ELP assessment and PSSA (or PASA, if appropriate) in accordance with 34 CFR § 300.160. Participation in state and local assessments is documented in Part III of the IEP. An ELL student with a disability may participate in assessments through the use of one or more state-approved accommodations appropriate for his/her disability.

#### Rules governing assessment accommodations

The IEP team, with appropriate representation, may make decisions regarding assessment accommodations for ELLs with disabilities as they would for any student with a disability. The following rules govern assessment accommodations for ELLs:

- Accommodations must not invalidate the results of the assessment.
- Accommodations may be used for the entire assessment or only for part/parts of the assessment.
- Determinations of any accommodations used must be:
  - based on a student’s disability,
  - made by the student’s IEP team,
  - properly documented in the student’s IEP, and
  - properly coded on the assessment.

For PSSA accommodations guidelines, reference the appropriate documents on the following website:  
[http://www.pde.state.pa.us/a\\_and\\_t/cwp/view.asp?a=108&Q=45132&a\\_and\\_tNav=678&a\\_and\\_tNav=](http://www.pde.state.pa.us/a_and_t/cwp/view.asp?a=108&Q=45132&a_and_tNav=678&a_and_tNav=)

For WIDA ACCESS for ELLs® accommodations guidelines, refer to the information contained on the following website:  
<http://www.wida.us/FAQs/accommodations.aspx>

#### Program exit for LEP students

In accordance with federal guidance outlined in the document, *Questions and Answers Regarding Inclusion of Limited English Proficient Students with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives*, U.S. Department of Education, March 2006, the LEP designation cannot be removed from a student unless that student has met all of the required state exit criteria. Refer to the current Pennsylvania state required exit criteria document - <http://www.pde.state.pa.us/esl/cwp/view.asp?a=3&pm=1&Q=121663&eslNav=4974>].

### **SUPPORT/SUPPLEMENTAL PROGRAMS AND SERVICES**

ELLs shall participate in all federal and other programs for which they are identified and/or qualify that are available within the school.

### **OTHER PROGRAM COMPONENTS**

#### **Program evaluation**

Each LEA must periodically evaluate its language instructional program to ensure all components are aligned and working effectively to facilitate the acquisition of the English language and academic achievement defined by the PA academic standards.

22 Pa. Code § 4.52, *Castañeda v. Pickard*, 648 F.2d 989 (1981) and 20 U.S.C. § 6841

Data reported to LEAs from state level assessments of ELP and academic achievement (ACCESS for ELLs® and PSSA) must be used in program review and improvement.

#### **Communication with Parents**

- Communication with parents must be in the parent’s preferred language

and mode of communication. Civil Rights Act of 1964, Title VI

- It is the LEA's responsibility to provide for translation (written) and/or interpretation (oral) services. In order to do this, LEAs must determine the preferred mode of communication of the parent and develop a plan for translation and interpreter services.
- PDE provides translated documents necessary for communication with parents and students regarding general education and NCLB requirements via TRANSACT at [www.transact.com](http://www.transact.com).
- Other translated PA forms for special education can be found at the Pennsylvania Training and Technical Assistance Network (PaTTAN) website at [www.pattan.net](http://www.pattan.net).
- Individualized LEA documents must be provided by the LEA and must be part of the regular budget planning of the LEA for core language instructional programs.

### **Staffing**

All teachers in language instructional programs must hold the certification and endorsements required by PDE. For current requirements, visit [www.pde.state.pa.us/teaching](http://www.pde.state.pa.us/teaching).

Bilingual teachers teaching in a bilingual program of instruction must demonstrate academic language proficiency both in English and in the language used for instruction in their classroom.

### **Professional Development**

All LEAs with ELLs enrolled must offer staff development related to ESL for all LEA personnel as part of the Professional Development Act 48 Plan.

### **Migrant Education**

Students identified as migrant and who are determined to be ELLs must be provided language instructional programs as outlined in this document.

### **Funding**

- The LEA budget must include provision for resources/materials, staffing for language instructional programs, and professional development for all school personnel as part of core programming outlined in 22 Pa Code § 4.26.
- Federal funds can be used to supplement local funding for language instructional programs, but not to supplant state/local funds.

### **Title III of the No Child Left Behind Act of 2001**

- Title III funding may be used by LEAs to enhance existing ESL/Bilingual programs.
- NCLB makes it clear that Title III funding is to be used to *supplement*, not supplant, existing programs.
- Title III funded enhancements may include, but are not limited to
  - after-school programs
  - summer programs
  - tutorial programs, or
  - additional supports funded by Title III
- Parents may opt out of Title III services that support a LEA's ESL/Bilingual program per the NCLB Act, 20 U.S.C. § 7012.
- Written parent notification for student placement in Title III programs/services is required along with written guidance pertaining to parental rights, including the right to have the child immediately removed from or decline enrollment in such a program. 20 U.S.C. § 7012 (a)(8)(A)(i) and (ii).

### **Reporting Requirements**

LEAs are required to complete the Pennsylvania Information Management System (PIMS) and the Limited English Proficient (LEP SYTEM) annually. PIMS and the LEP SYSTEM provide data and information on student numbers, teachers, 22 Pa. Code §4.26, and Title III.

### **ATTACHMENT:**

[Characteristics of the Major Program Models for LEP Students](#) (PDF)

**REFERENCES:**

**State Regulation**

[22 Pa. Code §4.4](#)

[22 Pa. Code § 11.11](#)

[22 Pa. Code § 11.12](#)

[22 Pa. Code §4.26](#)

43 P.S. §§951-963

**Federal Statutes**

Civil Rights Act of 1964, Title VI

Equal Educational Opportunities Act of 1974

NCLB Title I 20 U.S.C. § 6301 et seq., Title III, 20 U.S.C. § 6801 et. seq.

P.L. 105-17 (IDEA)

**Other**

Castañeda v. Pickard, 648 F.2d 989 (1981)

Lau v Nichols, 414 U.S. 563 (1974)

Plyler v Doe, 457 U.S. 202 (1982)

Certification and Staffing Policies and Guidelines (CSPG) No. 68

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