1. **If English learners (ELs) are failing in general education, is there harm in placing them in special education, where they will receive individualized instruction?**

   Yes, there is harm. Being an English learner is not a disability. It is inappropriate to place an EL in special education for individualized instruction without making sure that the problem is not related to the second language acquisition process. The Language Instruction Educational Program (LIEP) must provide for the language needs of ELs. Research demonstrates that ELs with the least amount of language instruction (i.e., English Language Development (ELD) instruction, strategic use of L1 and/or Bilingual Education) are most likely to be referred for an evaluation for special education (Artiles and Ortiz, 2007). The largest numbers of ELs who receive special education services are identified as students in learning support. The percentages of ELs with IEPs are greater in districts with fewer than 20 ELs.

2. **Is there a "three-year rule" before we can refer an EL for evaluation**?

   No. There is no time requirement for referring an EL for an evaluation.

   SEAs and school districts must ensure that all EL students who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.

   (*Dear Colleague Letter*, January 2015, p.24; ESSA December 10, 2015 https://www.ed.gov/esea)

3. **Do we have to wait five to seven years for ELs to develop their English language skills before we can rule out language as a cause for the student's difficulty**?

    No. There is no time requirement for referring an EL for a special education evaluation. However, the Multidisciplinary Team will have to consider the implications of the level of English proficiency of the student as part of the evaluation for special education eligibility.

    The Departments are aware that some school districts have a formal or informal policy of "no dual services," i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA and Federal civil rights laws, and the Departments expect SEAs to address these policies in monitoring districts' compliance with Federal law. Further, even if a parent of an EL student with a disability declines disability-related services under the IDEA or Section 504, that student with a disability remains entitled to all EL rights and services as described in this guidance.

    (ESSA December 10, 2015 https://www.ed.gov/esea)

4. **Once the EL has an IEP, does s/he need to have ELD instruction because the student is getting individualized instruction in a small group?**

    In Pennsylvania, ELD instruction is content instruction provided to all students who qualify. ELD instruction is not an intervention. The IEP Team should provide recommendations to the ESL teacher regarding the student's continued participation in the ELD program (see *PennLink on Guidelines for ELs with IEPs* for additional information).

    To ensure that EL children with disabilities receive services that meet their language and special education needs, it is important for members of the IEP team to include professionals with training, and preferably expertise, in second language acquisition and an understanding of how to differentiate between the student's limited English proficiency and the student's disability.

    (ESSA December 10, 2015 https://www.ed.gov/esea)

5. How do we determine whether it is a language barrier or a disability?

There is no easy answer, but asking the right questions will help:

- **Education**: Has the student been in school before? In what language(s) of instruction? Are there gaps in the student's education experiences? Is there sufficient intensity of instruction?
- **Home language**: Are languages other than English spoken in the student's home? What languages other than English does the student speak? Is the student maintaining an ability to communicate with his/her family members?
- **Language proficiency**: What is the student's language proficiency and literacy in English and the native language? Is the student developing the home language at a normal rate?
- **English**: Is the student receiving ELD instruction? Is the student acquiring English at a similar rate as other ELs with similar ecologies?
- **Achievement**: What is the student's level and rate of academic achievement? Is the student's academic achievement increasing at a similar rate as other ELs with similar ecologies? Specific population such as refugees, students with interrupted education, long-term ELs?
- **Behavior**: Is the student's emotional stability developmentally and culturally appropriate? Are there individual or family circumstances that may explain the observed behavior?
- **Adaptation**: What is the student's level of acculturation? Is the student at-risk for culture shock? Is the student adapting to our school at a normal rate?

6. How can we identify a nonbiased test for ELs?

Probably no test can be created that will entirely eliminate the influence of cultural and linguistic bias. The test content and materials, the language in which questions are phrased, the test directions, the categories for classifying the responses, the scoring criteria, and the validity criteria are all culture bound.

Two dimensions of standardized tests that influence performance and may undermine validity are:

- Tests are culturally loaded: the majority of tests used by LEAs were developed and normed in the U.S. and inherently reflect native anthropological content as well as the culturally bound conceptualizations of the test developers themselves. Many tests require specific prior knowledge of and experience with mainstream U.S. culture.
- Tests require language (communication): linguistic factors affect administration, comprehension, responses, and performance on virtually all tests. Even nonverbal tests that reduce oral language requirements continue to rely on effective communication between examiner and examinee in order to measure optimal performance.

7. **Should a bilingual psychologist conduct testing for ELs?**

Reliable and valid testing of culturally and linguistically diverse students requires specialized training and knowledge in the application of systematic, theoretically-based, and empirically grounded procedures in all aspects of the evaluation process, especially in testing.

Being able to communicate in an individual's native language is valuable, but secondary consideration. Simple language matching does not ensure fair or equitable assessment. (Rhodes, R., Ochoa, S. H. & Ortiz, S. O., 2005)

A bilingual psychologist will help determine if problems are related to second language acquisition or a possible disability. The bilingual psychologist has been trained in the assessment of ELs at all levels of English language proficiency and understands the process of second language acquisition. A bilingual psychologist is not just a psychologist who happens to be bilingual, but one who is trained to assess ELs and understand their linguistic, academic, cultural, and social needs.

8. **Should we use an IQ test to determine eligibility for the gifted program?**

In the absence of standardized assessments that are culturally and linguistically appropriate for and normed on ELs, evaluation teams must consider multiple data sources (e.g., years in the US, years of instruction in English, level of English language proficiency per *WIDA Screener* and/or *ACCESS 2.0*) to determine eligibility for the Gifted Program.

Definition of Mentally Gifted:

Mentally gifted is defined as outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program. (22 Pa. Code §16.1) Intellectual ability is not equated with an IQ score alone. Intellectual ability is and should be a reflection of a range of assessments including a student's performance and potential.

If a student's IQ is less than 130, other factors, such as academic performance, demonstrated achievement or other observed skills must strongly indicate gifted ability in order for that student to be identified as gifted and admitted to a gifted program. Because disabilities and bias factors may mask gifted abilities, districts are required to examine discrepancies between ability assessment results and academic achievement or demonstrated skills, and discrepancies among ability subtests.

Multiple Criteria

Criteria, other than IQ score, which indicate gifted ability include but are not limited to: Achievement, Rate of Acquisition/Retention, Demonstrated Achievement, Early Skill Development and Intervening Factors Masking Giftedness. (*PDE Gifted Education Guidelines*, May 2014, p.7-8)

Please note that a pre-requisite for giftedness is not language-based (i.e., English proficiency). The same safeguards that we have for evaluating students for special education services should also be followed for evaluating students for gifted education.

9. **What information should be attained from the *ACCESS 2.0* scores?**

All educators and professional staff supporting ELs should be familiar with *ACCESS 2.0* and its annual *Interpretive Guide for Score Reports. WIDA ACCESS 2.0,* and *WIDA Screener* Scale Scores are psychometrically derived measures of English proficiency. A single vertical scale applies to all grades and all test forms. Scale scores are ideal for tracking student growth. The student's performance in individual domains (i.e., *Listening, Speaking, Reading* and *Writing*) should be examined to determine the relative strength of each language domain and its contribution to the varying composites (*Oral Language, Literacy,* and *Comprehension*). As with any assessment, *ACCESS 2.0* scores should be considered one of multiple criteria used in educational decision-making.

10. **What tools can support the writing of an IEP for an EL**?

Grade level *PA Core Standards* and *WIDA Performance Definition* statements could be used to support the writing of the IEP goals. Additional information may include *WIDA Performance Definitions* and the *WIDA Can Do Key Uses,* which can be downloaded at www.wida.us

11. **If parents are limited English proficient, what are the LEA's obligations to bridge the language gap? Do we have to provide an interpreter/translator?**

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 (LEP) 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 English Learner Tool Kit for SEAs and LEAs, November 2016

For special education forms in multiple languages, please visit the PaTTAN website at www.pattan.net.

12. **What do we do when parents opt-out of the ELD instruction?**

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 ELD instruction, 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.

> *Educating English Learners (ELs) State regulation 22 Pa.Code §4.26,* Date of Review: July 1, 2017.

If you have any further questions, please contact Bob Measel romeasel@pa.gov at the PA Department of Education.

13. **Can students with interrupted or no formal education be placed in special education based on the discrepancy model?**

Lack of opportunity to learn is not a disability. Students with interrupted or no formal education need to follow an educational plan designed to close their academic gaps.

The LIEP must include content and ESL teacher collaboration focused on the development of language and academic content with the purpose of attaining the high school graduation diploma. This plan should include the student's personal academic goals and input from their families. Schools must provide information to students and families about the educational opportunities available to all students.

14. **When ELD instruction is recommended as consultative support, how is the consultative support implemented?**

The following guidelines are recommended for consultative support:

- schedule collaborative meetings regularly between the ESL teacher and the special education teacher,

- plan language and content supports,
- provide language accommodations based on the English language proficiency of the student,
- consider culturally-responsive practices, including family communication,
- progress monitor the language development of the student,
- share current research-based resources and publications to advance effective language instruction,
- share data relevant to second language acquisition. Both ESL and special education teachers should share student progress during IEP Team meetings.

15. What should be considered in developing an IEP for a student with limited English proficiency?

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

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 limited English proficiency?
6. Does the IEP Team have access to assessment data that is accurate and unbiased?
7. 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?
8. Do progress monitoring activities measure progress toward English language proficiency?
9. Does the IEP delineate in which language the instruction will occur, and who will be responsible for measuring the outcomes?
10. Is there collaboration between general and special education, as well as English as a Second Language and bilingual education, if appropriate?
11. Is a qualified interpreter for the family and the student present at the IEP meeting?
12. Are the IEP Team members trained in how to use an interpreter?

<div align="right">(EL Tool Kit for SEAs and LEAs, Chapter 6, p.11)</div>

Resources:

- Pennsylvania Department of Education, Guidelines for English Learners with Individualized Education Programs, www.education.pa.gov, www.pattan.net

- Council of Chief State School Officers ESSA Resource Page http://www.ccsso.org/Resources/Programs/Every_Student_Succeeds_Act. html

- ESSA December 10, 2015 https://www.ed.gov/esea

- Frequently Asked Questions titled, *FAQs - Instructional Guidelines for English Language Learners with IEPs* http://www.pattan.net

- *Educating English Learners (ELs) State regulation 22 Pa. Code §4.26* Date of Review: July 1, 2017

- U.S. Department of Education ESSA Website http://www.ed.gov/essa?src=rn

- U.S. Department of Education and Department of Justice Dear Colleague Letter on Obligations to English Learners http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

- U.S. Department of Education *English Learner Tool Kit for State and Local Education Agencies*
  The tool kit is designed to help state and local education agencies (SEAs and LEAs) in meeting their legal obligations to ELs, including ELs with IEPs, and in providing all ELs with the support needed to attain English language proficiency while meeting college- and career-readiness standards http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html

- U.S. Department of Education Newcomer Toolkit http://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/index.html

- U.S. Department of Education Office of English Language Acquisition (OELA) http://www2.ed.gov/about/offices/list/oela/index.html

- U.S. Department of Education Office of Special Education Programs website http://www2.ed.gov/about/offices/list/osers/osep/index.html

- U.S. Department of Education Resource Guide: Supporting Undocumented Youth http://www2.ed.gov/about/overview/focus/supporting-undocumented-youth.pdf p