

# Educating English Learners (ELs)

## 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 who are English learners (ELs). The information included should be used in designing, staffing, and evaluating effective programs for ELs. 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 [Elementary and Secondary Education Act](#) (ESEA) as amended by the [Every Student Succeeds Act](#) (ESSA), 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 English language development instruction by a qualified ESL/Bilingual Education teacher, and
- 2) adaptations/modifications in the delivery of content instruction and assessments by all teachers based on students' language proficiency levels and the Pennsylvania English Language Development Standards (PA ELDS) Framework for ELs as well as the Pennsylvania academic standards.

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

### **DEFINITION OF ENGLISH LANGUAGE DEVELOPMENT (ELD)**

ELD is a required component of all language instruction educational programs (LIEPs). ELD takes place daily throughout the day for ELs and is delivered by both ESL teachers and non-ESL teachers.

#### **ELD delivered by ESL teachers**

English language development instruction, otherwise known as English as a second language, delivered by a licensed ESL teacher is its own content area. ELD in this context is driven by language, but it draws from general education content as a vehicle for instruction in order to contextualize language learning. It must be codified in a dedicated and planned curriculum specifically designed to develop the English language proficiency of ELs so that they are able to use English in social and academic settings and access challenging academic standards. ELD instruction provides systematic, explicit, and

sustained language instruction designed to prepare students for the general academic program by focusing, in meaningful and contextualized circumstances, on the academic language structures that underpin social and academic constructs. It can be taught as a stand-alone class or course but may also be embedded within other courses with the direct support of an ESL program specialist as appropriate based on the program design and needs of the students.

### **ELD delivered by non-ESL teachers**

ELD must be incorporated into all classes taught by non-ESL licensed teachers in which ELs are enrolled. These teachers are responsible for deliberately planning for and incorporating language instruction as well as supports, modifications, and accommodations needed to allow ELs to access the standards to which the course is aligned.

## **IDENTIFICATION AND PLACEMENT OF ELs**

### **Screening, identification, and placement**

Local education agencies (LEAs) are required to identify ELs at the time of enrollment, notify parents of the identification and programming options, and appropriately place the ELs into a language instruction educational program (LIEP). This requirement extends to pre-K students in public LEA-funded programs. This process must be completed within the first 30 days of school or within 14 days of enrollment if a student enrolls after the first day of school.

The specific requirements for carrying out this process for pre-K through 12<sup>th</sup> grade students are outlined in the "[Screening, Identification, and Placement](#)" document.

General enrollment procedures to which LEAs must adhere are contained in the Enrollment of Students BEC located on the Department's [Basic Education Circular website](#).

Parent permission to identify students as ELs, including screening for English language proficiency, is NOT required.

LEAs are required to notify parents in a timely manner of the process for identifying their children as ELs, the results of that process, and the recommended program placement. LEAs must also provide the parents with a detailed description of the LIEP, its intended benefits for their children, and an explanation of its effectiveness.

See the [Communication With Parents](#) section of this document for more information regarding parent notification requirements and the manner in which LEAs are required to communicate with parents.

### **Parent right to refuse specialized programming**

Parents of ELs have the right to refuse certain separate, specialized programs and services that may be part of the LIEP for their children. A parent's decision to refuse programs or services must be informed and voluntary. The LEA may NOT influence the decision in any way and may not make any program or placement decisions contingent on this decision.

Placement and programming decisions may not be made without notifying parents and allowing them to exercise their right to refuse part or all of the separate, specialized LIEP. LEAs should proceed with the recommended placement in the absence of a response from the parent after they have provided the parent with all of the information outlined above.

A detailed description of the parent refusal policy including all LEA obligations for students whose parents have refused services is contained in the "[Parent Refusal of LIEP Programs and Services](#)" guidance document.

See the [USED FAQ page](#) for the federal guidance regarding parental refusal of services.

## **THE LANGUAGE INSTRUCTION EDUCATIONAL PROGRAM (LIEP)**

LEAs are required to thoughtfully and deliberately plan, resource, and evaluate their LIEP. The plan and evaluation results must be made available to all staff working with ELs as well as parents of ELs.

### **Program models and program design**

ELs must have equitable access to academic content for all courses in which they are enrolled. Regardless of the program model(s) employed, the LIEP must, at a minimum:

- be aligned to state academic content standards for the appropriate grade level of the ELs;
- include ELD instruction delivered by properly certified teachers who hold an ESL program specialist certificate or who are working in conjunction with ESL certified teachers;
- incorporate the use of the PA ELDS;
- provide equitable access to content for ELs at all language proficiency levels by providing research-based bilingual or sheltered instruction with fidelity; and
- not limit the enrollment of ELs in any course or academic program for which they would otherwise be eligible.

The foregoing minimum requirements must be incorporated into the entirety of the student's daily instructional time.

A LEA may design its LIEP in many ways, but it must ensure that the program design meets the needs of its EL population and is based on research and/or a sound educational theory recognized by at least some experts in the field as legitimate.

Regardless of how the LEA chooses to organize its program, the Department requires that it be identified by one of six categories:

- Mixed Class Bilingual
- EL Bilingual
- EL-Specific Transitional Instruction
- Mixed Classes with Native Language Support
- EL Specific English Only Instruction
- Mixed Classes with English Only Support

For assistance in choosing the appropriate category for their LIEPs, LEAs may reference the "[Classifying Language Instruction Educational Programs](#)" guidance document.

### **ELD Replacement for English Language Arts**

In general, ELD instruction taught by an ESL licensed teacher should not replace ELA instruction in a student's academic program. ELD has its own curriculum that, although may incorporate elements of ELA or other content areas, is unique and aligned to the PA ELDS. ELD may replace ELA only when the instruction is aligned to the same ELA standards as the ELA course or instructional period in which a student's non-EL peers are enrolled.

ELD may not replace any other core content in a student's academic program unless it is for a limited time not to exceed one school year and the LEA has a plan for immediately mitigating any academic gaps that result (e.g. in the case of a newcomer program).

### **Appropriate resourcing of the LIEP**

LEAs are required to provide adequate resources calculated to effectively implement the LIEP chosen. A LEA is not taking appropriate action to remedy language barriers in accordance with federal and state laws and regulations if, despite the adoption of a promising or recognized LIEP, it fails to follow through with practices, resources and personnel necessary to implement the program or transform the theory into reality.

Appropriate resourcing of the program includes, but is not limited to:

- Employing an adequate number of properly licensed ESL teachers to ensure that English language development (ELD) instruction is delivered to ELs based on their needs. (see the [EDUCATORS OF ELs](#) section of this document for more information)
- Ensuring that there is a sufficient amount of time available for ESL teachers to collaborate with content teachers in order to ensure that content is made accessible to ELs and to monitor the progress of ELs in content classes.
- Purchasing and maintaining specialized materials to support ELs (native language literature, translations dictionaries, reference materials, etc.).
- Ensuring that the LIEP is provided with the same resources as other academic programs in the district/school (comparable technology, classroom spaces, consumables, a planned ELD curriculum, etc.).
- Providing for adequate professional development to ensure that all staff working with ELs are properly trained according to their role to implement supports that overcome language barriers.

### **Evaluating the effectiveness of the LIEP**

The LEA is not free to persist in an LIEP which, although it may have been "appropriate" when adopted, in the sense that there were sound expectations for success and bona fide efforts to make the program work, has, in practice, proved ineffective. To this end, LEAs must employ a method to evaluate their LIEPs for effectiveness and make any changes necessary based on the evaluation.

Evaluations of LIEPs must be conducted at least annually and the results documented and reported to the state through the English Learner Reporting System ([ELRS](#)). Determinations to make changes to an LIEP based on program evaluations may be made annually, although a LEA may allow more time for a program to produce positive results before taking action as long as that time is reasonable based on the program design and expected outcomes.

Evaluations must be based on student outcomes rather than program inputs. For example, a program evaluation may **not** be based on the number of hours that teachers collaborate each week, the amount of funds spent on resources, or the implementation of a particular intervention or support. A program evaluation should include evidence of student growth toward proficiency in English and academic achievement.

### **Implementation of the English Language Development Standards**

The Pennsylvania English Language Development Standards (PA ELDS) Framework must be utilized for planning instruction and assessment by all teachers of ELs. It is highly recommended that teachers also utilize the [WIDA English Language Development Standards](#) (ELDS) and associated support documents (Can-Do Descriptors, Performance Definitions, rubrics, etc.) in conjunction with the PA ELDS Framework for these purposes.

### **Grading of ELs**

LEAs should have a section included in their local grading policy that specifically addresses grading procedures for ELs.

LEAs must utilize the same grading system for ELs in content courses as they do for all students (e.g. pass/fail is inappropriate for ELs if other students receive a letter grade).

For ELD courses or instructional periods taught by a licensed ESL teacher in an all-EL setting, any grading system that meaningfully conveys information about progress and/or achievement may be used.

In addition to the information that is provided to all students, LEAs must communicate information related to English language proficiency and/or progress to parents at least annually.

#### Report Cards/Progress Reports

LEAs may utilize the report card/progress report to communicate English language development information to parents of ELs or they may utilize a separate communication mechanism. If a LEA chooses to include English language development information on the report card, then it must ensure that the information provided is understandable and useful to engage parents in the education of their children.

#### High School Transcripts

The English learner designation and/or English language development information must not appear on an EL's high school transcript unless it is part of a course title or code.

### **Retention of ELs**

An EL may not be retained in a grade based solely on his/her lack of English proficiency.

LEAs must provide evidence that all appropriate modifications and accommodations to instruction and assessment aligned to the student's English language proficiency to allow the EL meaningful access to the general curriculum as well as to promote second language learning were implemented and documented over time prior to considering grade retention.

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

ELs may not be denied access to participate in programs at AVTSs/CTCs based solely on English language proficiency.

ELs participating in vocational programs must receive ELD instruction appropriate to their level of proficiency and content-area instruction must be aligned to the student's English language proficiency level.

Comprehensive AVTS/ CTC schools are responsible for providing the LIEP and staffing for ELs as outlined in this document.

### **Annual assessment of ELs**

The annual state English language proficiency (ELP) assessment, ACCESS for ELLs<sup>®</sup>, is required by federal law. The results of the state ELP assessment are used to measure students' English language proficiency and progress in each of the four language domains (i.e., reading, writing, speaking and listening/understanding). The LEA must maintain these score results in the student's permanent record folder.

There is no provision that allows parents to opt their children out of annual ELP testing.

ELs participate in all other annual state-required assessments (e.g. PSSA, Keystone exams) according to those testing guidelines.

### **Testing Accommodations**

The testing accommodations allowable for ELs on state academic achievement assessments are published annually by PDE. Testing accommodations allowable for ELs on the ACCESS for ELLs® are published annually by the WIDA Consortium.

Visit the [PDE Assessment and Accountability webpage](#) for information on testing and testing accommodations.

Visit the [WIDA Assessment webpage](#) for information on testing and testing accommodations for the ACCESS for ELLs®.

## **RECLASSIFICATION, MONITORING, AND REDESIGNATION OF ELs**

LEAs must include in their LIEP uniform procedures in accordance with state requirements for:

- reclassifying ELs as former ELs (FELs) when they attain proficiency,
- actively monitoring the progress of FELs for a period of two years after reclassification and reporting students to the state in a monitor status for an additional two years, and
- re-designating FELs as active ELs if they struggle academically as a result of persistent language barriers. This procedure must include steps to ensure that the nature of the challenge for the former EL is language-based and not academic.

For detailed requirements and procedures, see the "[Reclassification, Monitoring, and Re-designation of ELs](#)" guidance document.

## **EDUCATORS OF ELs**

### **Qualifications**

A teacher who provides specialized English language development instruction (also known as English as a second language) and who provides a grade for the ELD instruction either in a content class setting or a separate setting must hold a PA Instructional I or II certificate AND the ESL Program Specialist Certificate.

Any teacher who provides instruction and a grade for any non-ELD course or class must be appropriately certified in accordance with Department requirements. More information regarding certification staffing policies can be found in the [Certification and Staffing Policy Guidelines \(CSPGs\)](#) located on the Department website.

Example: a teacher who holds an instructional certificate in English Language Arts (ELA) and an ESL Program Specialist Certificate may provide either ELD/ESL or ELA instruction to, and a grade for, an EL, but may not provide instruction in, or a grade for, any other subject. That teacher may, however, provide support or instruction in the *language* of another content area (e.g. mathematics, social studies, science, etc.), but may not provide a grade for that content. Furthermore, the language instruction may not supplant that content in the student's schedule.

### **Professional Development**

All LEAs in which ELs are enrolled must offer annual professional development related to ELD/ESL for all LEA personnel as part of the Professional Development Act 48 Plan.

## **PARENT, FAMILY, AND COMMUNITY ENGAGEMENT**

### **Communication with Parents**

LEAs are required to provide all important information to parents who are not proficient in English in a language or mode of communication that they understand. If it is not practicable for the LEA to provide a written translation because the parents' language is not a common language, then the LEA may use a cover page explaining in the parents' language how they may have the document translated orally.

To provide parents with effective communication, interpreters or translators must understand and be able to express in both languages any specialized terms or concepts used in the communication. It is also important that translators or interpreters understand the ethics of interpreting and translating and the need for confidentiality.

Relying on students, siblings, or friends is not appropriate for translations that require confidentiality (e.g. parent-teacher conferences, discipline, participation in special services, etc.). Moreover, translators and interpreters should also be competent in interpreting or translating information or documents that require the knowledge of specialized terms or concepts in both languages.

See the U.S. Department of Justice and U.S. Department of Education Office for Civil Rights fact sheet, [Information for Limited English Proficient \(LEP\) Parents and Guardians and for Schools and School Districts that Communicate with Them](#), for more information.

The following list identifies essential information that must be provided to parents:

- school registration and enrollment instructions
- a description of the EL identification process and the reason that their child was identified as an EL
- their child's current English proficiency level and a description of what that means
- a description of the LIEP as [outlined in this document](#)
- information explaining their right to refuse enrollment of their child in the LIEP (see [Parental Right to Refuse Specialized Programming](#) section)
- a description of the criteria for reclassification and an expected timeline for achieving proficiency
- notices required by [special education laws and regulations](#)
- grievance procedures and notices of non-discrimination
- student discipline policies and procedures
- report cards and progress reports
- notices of parent-teacher conferences
- information regarding gifted and talented programs
- results of the annual English proficiency assessment, ACCESS for ELLs<sup>®</sup>
- requests for parent permission for student participation in school activities
- other information provided to native English-speaking parents such as invitations to join school-related councils or groups or parent handbooks

The PDE offers some resources for LEAs related to translation of information. For more information, visit the [PDE English as a Second Language webpage](#).

### **Annual notification requirements**

Parents of currently enrolled ELs must be provided with the following information within 30 days of the start of *each* school year:

- A notification of their child's continued participation in the LIEP
- A description of the LIEP including its intended benefits for their children and an explanation of its effectiveness
- A notification of their right to refuse services as outlined [in this document](#)
- A description of any Title III supplemental services being offered by the LEA (if applicable)
- A notification of their right to refuse [Title III supplemental services](#) (if applicable)

### **Required outreach activities**

LEAs are required to implement an effective means of outreach to parents of ELs to inform the parents regarding how they can be involved in the education of their children and be active participants in assisting their children to attain English proficiency and succeed academically. This includes holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of ELs.

## **ELs SUSPECTED OF OR HAVING A DISABILITY**

Some ELs may have a disability and qualify for special education services. This could be determined at the time of enrollment if a student arrives with a valid individualized education program (IEP) or at some point during the school year.

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.

This section only describes those aspects of policy for ELs with disabilities that are not contained in special education regulations, policies, and guidance.

See the Department's [Bureau of Special Education](#) website for access to all related regulations, policies, guidance, and FAQs.

### **Right to dual services**

LIEP and special education programming are not mutually exclusive. Special education services do not replace English language development services or vice versa. ELs must be afforded all supports, resources, and programming for which they are eligible. In other words, ELs are eligible for special education services if they meet IEP eligibility criteria and, conversely, students with a disability are eligible for English language development programming if they are identified as an ELs.

### **Identification**

There is no waiting period for making a disability determination for an EL.

A child must not be determined to be a child with a disability if the determinant factor for that finding is lack of English proficiency.

### **Programming considerations**

English language development instruction or English as a second language is part of an EL's general academic program and must be included in an academic program for ELs with disabilities. This content must be delivered by a properly trained and certified [ESL teacher](#) either directly or by a special education teacher who is working in collaboration with an ESL teacher.

The IEP team, which must include an ESL professional, must take into account the language needs of an EL with a disability when considering program design and placement.

### **Reclassification**

An EL who has a disability must meet the state's definition of English proficient in order to be reclassified as a former EL. This definition and the provisions for reclassification can be found in the "[Reclassification, Monitoring, and Re-designation of ELs](#)" guidance document.

## **TITLE III SUBGRANTS AND REQUIREMENTS**

Title III funding may be used by LEAs to enhance existing ESL/Bilingual programs. It may be used only to supplement, not supplant, existing programs and sources of funding.

Parents may refuse Title III services that support an LEA 's ESL/Bilingual education program. Parents may also request reenrollment of their children in Title III services at any time after initially refusing.

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 programs.

More information, including specific requirements and guidance about Title III can be found at:

[The PDE Federal Programs Webpage for Title III](#)

[The U.S. Department of Education Laws and Regulations webpage](#)

### **Eligibility for a subgrant under Title III**

Individual LEAs that enroll a sufficient number of ELs to reach the minimum subgrant threshold of \$10,000 are eligible to apply for a subgrant under Title III. LEAs that do not enroll a sufficient number of ELs to reach this threshold can form or join a consortium of LEAs to reach the threshold. Consortia can be composed of many LEAs with one LEA acting as the fiscal lead. Intermediate Units (IUs) can also act as fiscal leads for Title III consortia.

The [Federal Programs Office](#) at the PDE notifies all eligible entities in the Commonwealth each year of their eligibility and the process for applying to receive a grant under Title III.

### **Applying for a subgrant**

To apply for Title III Funding, LEAs must complete the Consolidated Application on the [eGrants](#) system according to the [due dates](#) established by the Department.

### **Title III required and recommended activities**

There are three required activities for the use of Title III funds:

1. Provide a high-quality LIEP
2. Provide professional development to teachers, administrators, and other school-based personnel who work with ELs
3. provide and implement other effective activities and strategies that enhance or supplement LIEPs, which must include parent, family, and community engagement activities, and may include strategies that serve to coordinate and align related programs

There are also a number of permissible activities for the use of Title III funds that include, but are not limited to:

- providing community participation programs, family literacy services, and parent outreach and training to ELs and their families,
- improving the instruction of ELs, which may include English learners with disabilities, by acquiring or developing educational technology and accessing electronic networks,
- uses related to developing or implementing LIEPs in preschools that are coordinated with other relevant programs and services, or
- offering early college high school or dual or concurrent enrollment programs or courses designed to help ELs achieve success in postsecondary education

## **Immigrant subgrants**

Title III provides additional supplemental funding for LEAs that experience a significant increase in the number of immigrant children and youth (ICY).

The term “immigrant children and youth” means individuals who—

(A) are aged 3 through 21;

(B) were not born in any State; and

(C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

NOTE: Students from Puerto Rico are not considered “immigrants” under Title III.

Pennsylvania defines a “significant increase” as an increase of 10% and at least 20 students from the average of the past 2 years.

Immigrant grant funding must be held separately from other Title III funding. The two must not be comingled.

An LEA must use the immigrant subgrant to provide enhanced instructional opportunities for immigrant children and youth (ESEA Section 3115(e)).

## **DATA COLLECTION AND REPORTING REQUIREMENTS**

LEAs are required to collect certain data elements related to ELs and report that data to the PDE. Each LEA employs its own student data system, but the system must be able to export the data and report it to the Department based on uniform Department requirements and timelines.

LEAs are required to complete the Pennsylvania Information Management System (PIMS) and the English Learner Reporting System (ELRS) annually. PIMS and the ELRS provide data and information on student numbers, teachers, 22 Pa. Code §4.26 compliance, and Title III.

For more information about PIMS, see the [PDE PIMS webpage](#).

For more information about the ELRS, see the information contained on the [ESL Portal](#).

## **REFERENCES:**

### **State Regulation**

[22 Pa. Code §4.4](#)

[22 Pa. Code § 11.11](#)

[22 Pa. Code § 11.12](#)

[22 Pa. Code §4.26](#)

[22 Pa. Code §4.14](#)

### **Federal Statutes**

[Civil Rights Act of 1964, Title VI](#)

[Equal Educational Opportunities Act of 1974](#)

[The Elementary and Secondary Education Act \(ESEA\)](#)

[The Every Student Succeeds Act \(ESSA\)](#)

### **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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