



U.S. Department of Justice  
Civil Rights Division

U.S. Department of Education  
Office for Civil Rights



January 7, 2015

Dear Colleague:

Forty years ago, the Supreme Court of the United States determined that in order for public schools to comply with their legal obligations under Title VI of the Civil Rights Act of 1964 (Title VI), they must take affirmative steps to ensure that students with limited English proficiency (LEP) can meaningfully participate in their educational programs and services. That same year, Congress enacted the Equal Educational Opportunities Act (EEOA), which



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Dear Colleague Letter: English Learner Students  
and Limited English Proficient Parents

TABLE OF CONTENTS <sup>8</sup>

I.	State Educational Agency and School District Obligations to EL Students.....	5
II.	Common Civil Rights Issues.....	8
	A. Identifying and Assessing All Potential EL Students.....	10
	B. Providing EL Students with a Language Assistance Program.....	12
	C. Staffing and Supporting an EL Program.....	14
	D. Providing Meaningful Access to All Curricular and Extracurricular Programs	

I. State Educational Agency and School District Obligations to EL Students



standards.<sup>16</sup> Not all school districts that enroll EL students receive such subgrants from their SEA under Title III, Part A. Some school districts have too small a population of EL students to meet the minimum subgrant requirement and are not members of a consortium of districts that is receiving a subgrant.<sup>17</sup>

academic content and student academic achievement standards.<sup>21</sup> SEAs have a responsibility to assess whether and ensure school districts receiving Title III subgrants comply with all Title III requirements.<sup>22</sup>

## II. Common Civil Rights Issues

Through OCR's and DOJ's enforcement work, the Departments have identified several areas that frequently result in noncompliance by school districts and that SEAs at times encounter while attempting to meet their Federal obligations to EL students. This letter offers guidance on these issues and explains how the Departments would evaluate whether SEAs and school districts met their shared obligations to:

- A. Identify and assess EL students in need of language assistance in a timely, valid, and reliable manner;
- B. Provide EL students with a language assistance program that is educationally sound and proven successful;
- C. Sufficiently staff and support the language assistance program for EL students;
- D. Ensure EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum, graduation requirements, specialized and advanced courses and programs, sports, and clubs;
- E. Avoid unnecessary segregation of EL students;
- F. Ensure that EL students with disabilities under the Individuals with Disabilities Education Act (IDEA) or Section 504 are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in evaluations and delivery of services;
- G. Meet the needs of EL students who opt out of language assistance programs;
- H. Monitor and evaluate EL students' language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;

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<sup>21</sup> Id. § 6841(b)(2) (requiring every school district receiving Title III, Part A funds to engage in evaluation every two years and provide it to the SEA to determine the effectiveness of and improve the LEA's programs and activities).

<sup>22</sup> Id. §§ 6823(b)(3)(C) & (D), (b)(5), 6841(b)(3), 6842. See also *supra* note 9 (quoting regulations regarding SEA's obligations as recipient of any Federal funds to oversee subgrantees).



- I. Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program was reasonably calculated to allow EL students to attain parity of participation in the

Although these issues are outside the primary focus of this guidance, the Departments strongly encourage SEAs and school districts to review these and other discrimination requirements to ensure that EL students, and all students, have access to equal educational opportunities.

#### A. Identifying and Assessing All Potential EL Students

One of the most critical “affirmative steps” and “appropriate action[s]” that school districts must take to open instructional programs to EL students and to address their limited English proficiency is to first identify EL students in need of language assistance services in a timely manner.<sup>28</sup> School districts must provide notices within thirty days from the beginning of the school year to all parents of EL students regarding the EL student’s identification and placement in a language instruction educational program.<sup>29</sup> School districts must, to the extent practicable, translate such notices in a language that the parent can understand and written translations are not practicable, school districts must offer LEP parents free oral interpretation of the written information.<sup>31</sup> In light of these obligations and the duty to timely identify all EL students, school districts will need to assess potential EL students’ English proficiency and identify non-proficient students as EL as soon as practicable and well before the 30-day notice deadline.

Most school districts use a home language survey (HLS) at the time of enrollment to gather information about a student’s language background (first language learned, language the student uses most often, and languages used in the home). The HLS identifies those students who should be referred for an English language proficiency (“ELP”) assessment to determine whether they should be classified as EL students, who are entitled to language assistance services. Students initially identified by an HLS or other means for English proficiency testing





To provide appropriate and adequate EL program services based on each EL student's individual needs, and to facilitate transition out of such services within a reasonable time period, a school district will typically have to provide more EL services for the least English proficient EL students than for the more proficient ones. In addition, districts should provide designated English Language Development (ELD)/English as a Second Language (ESL) services for EL students at the same or comparable ELP levels to ensure these services are targeted and appropriate to their ELP levels.

x Example 2: A beginner

integrated ELD instruction in their grade-level content classes from content-certified teachers who are adequately trained in ELD and sheltering techniques.

Some examples of when the Departments have identified compliance issues include when school districts: (1) exclude kindergarteners, or EL students with scheduling conflicts, from their EL program; (2) supplement regular education instruction with only aides who tutor EL students as opposed to teachers adequately trained to deliver the EL program; (3) fail to offer an EL program to a certain subset of EL students, such as students with disabilities or students speaking particular languages; (4) stop providing language assistance services when EL students reach higher levels of English proficiency but have not yet met exit criteria (including proficiency on a valid and reliable ELP assessment); or (5) fail to address the needs of EL students who have not made expected progress in learning English and have not met exit criteria despite extended enrollment in the EL program.

In their investigations, the Departments consider, among other things, whether:

- 9 Schools provide all EL students with language assistance services that address their level of English language proficiency and give them an equal opportunity to meaningfully and equally participate in the district’s programs;
- 9 Each language assistance program for EL students that a school district provides meets the Castañeda standards described throughout this document; and
- 9 When SEAs mandate the manner in which school districts provide EL programming, the State-imposed requirements meet the standards described in this subsection.

### C. Staffing and Supporting EL Programs

School districts have an obligation to provide the personnel resources necessary to effectively implement their chosen EL programs. This obligation includes having highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the EL programs.

At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district’s program for EL students.<sup>39</sup> Where formal qualifications have

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<sup>39</sup> SEAs that receive ESEA Title I funds, which is currently all SEAs, must ensure that all teachers in core academic subjects, including teachers of EL students, are “highly qualified.” 20 U.S.C. § 6319(a). Being highly qualified means (1) holding at least a bachelor’s degree, (2) obtaining full State certification or licensure, and (3) demonstrating subject-matter competency. Id. § 7801(23). If an SEA or school district uses a sheltered instruction model for serving EL students that includes core academic subjects at the secondary school level (“ESL math” or “ESL science”), the teacher must be adequately trained in the sheltering techniques, meet any State requirements for EL teachers, and be highly qualified in the core academic subject (math or science) as well. If

been established, e.g., the SEA requires authorization or certification to teach in particular EL programs, or a school district generally requires its teachers in other subjects to meet formal requirements, a school district must either hire teachers who already have the necessary formal qualifications to teach EL students or require that teachers already on staff be trained or work towards attaining the necessary formal qualifications ~~and~~ obtain the formal qualifications within a reasonable period of time.

In some instances, however, SEA endorsements or other requirements may not be rigorous enough to ensure that teachers of EL students have the skills necessary to carry out the school district's chosen EL program. For example, in





teachers, it may do so only if the paraprofessional is trained to provide services to EL students and instructs under the direct supervision of a qualified teacher.<sup>45</sup>

Some examples of when the Departments have identified compliance issues in staffing and resourcing an EL program include when school districts: (1) offer language assistance services based on staffing levels and teacher availability rather than student need; (2) mainstream teachers, paraprofessionals, or tutors rather than fully qualified ESL teachers for instruction; or (3) provide inadequate training to general education teachers who provide core content instruction to EL students.

In their investigations, the Departments consider, among other things, whether:

- 9 School districts provide qualified staff and sufficient resources, including adequate and appropriate materials, to effectively implement their chosen program, and if they lack either, they are taking effective steps to obtain them within a reasonable period of time;
- 9 School districts regularly and adequately evaluate whether EL program teachers have met the necessary training requirements, and if not, ensure that they meet them in a timely manner;
- 9 A school district's training requirements adequately prepare EL program teachers and administrators to effectively implement the district's program and provide supplemental training when necessary; and
- 9 SEAs ensure, through guidance, monitoring, and evaluation, that school districts have qualified teachers to provide their EL programs to all EL students.

#### D. Providing Meaningful Access to All Curricular and Extracurricular Programs

To be able to participate equally and meaningfully in instructional programs, students have to acquire English proficiency and recoup any deficits that they may incur in other areas of the curriculum as a result of spending extra time on ELDT.<sup>46</sup> Thus, SEAs and school districts share a

In addition to ensuring EL students ~~have~~ access to the core curriculum, SEAs and school districts must provide EL students equal opportunities to meaningfully participate in all programs and activities of the SEA or school district—whether curricular, ~~curricular~~, or extracurricular.<sup>49</sup> Such programs and activities include ~~pre~~ kindergarten programs, magnet programs, career and technical education programs, counseling services, Advanced Placement and International Baccalaureate courses, gifted and talented programs, online and distance ~~learning~~ opportunities,

students should offer the same content and the same access to laboratories as the general education science class. And while a ninth grade EL student with interrupted formal education may need targeted help in math to catch up to his grade level math curriculum, his EL program should provide access to that curriculum and not be restricted to an elementary grade math curriculum.

Alternatively, school districts may use a curriculum that temporarily emphasizes English language acquisition over other subjects, provided that any interim academic deficits in other subjects are remedied within a reasonable length of time.<sup>51</sup> If districts choose to temporarily emphasize English language acquisition, they retain an obligation to measure EL students' progress in core subjects to assess whether they are incurring academic deficits and to provide assistance necessary to remedy content area deficits that were incurred during the time when the EL student was more focused on learning English.<sup>52</sup> To ensure that EL students can catch up in those core areas within a reasonable period of time, such districts must provide compensatory and supplemental services to remedy academic deficits that the student may have developed while focusing on English language acquisition. Similarly, SEAs must ensure through guidance and monitoring that school districts' EL programs (whether state mandated or not) are designed to enable EL students to participate comparably in the core curriculum within a reasonable time period and that school districts timely remedy any academic deficits resulting from focusing on English language acquisition.<sup>53</sup>

For an EL program to be reasonably calculated to ensure that EL students attain equal participation in the standard instructional program within a reasonable length of time, if an EL student enters the ninth grade with beginner level English proficiency, the school district should offer EL services that would enable her to earn a regular school diploma in four years.<sup>54</sup> In addition, EL students in high school, like their native English speaking peers, should have the opportunity to be competitive in meeting college entrance requirements. For example, a school district should

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<sup>51</sup> See *Castañeda*, 648 F.2d at 1011 (“[A] curriculum, during the early part of [EL students’] school career, which has, as its primary objective, the development of literacy in English is permissible] even if the result of such a program is an interim sacrifice of learning in other areas during this period” provided “remedial action is taken to overcome the academic deficits” incurred during participation in this curriculum in ways that enable the “students’ equal participation in the regular instructional program.”).

<sup>52</sup> See *id.* at 1011-14 (recognizing that school districts may choose to “focus on the development of English language skills and then later provid[e] students with compensatory and supplemental education to remedy deficiencies in other areas which they may develop during this period” as long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.”).

<sup>53</sup> See *supra* notes 9, 12, 14 & 15; see also 20 U.S.C. § 6841 (Title III requires LEAs to provide SEAs with an evaluation including, among other things, the number and percentage of children in programs and activities attaining English proficiency at the end of each school year; and SEAs to use the evaluation to determine the effectiveness of and improve the LEA’s programs and activities).

<sup>54</sup> See *Castañeda*, 648 F.2d at 1011 (requiring that districts “design programs which are reasonably calculated to enable [EL] students to attain parity of participation of the standard instructional program within a reasonable length of time after they enter the school system”).

ensure that there are no structural barriers within the design of its academic program that would prevent EL students who enter high school with beginner-level English proficiency from graduating on time with the prerequisites to enter college.

To meet their obligation to design and implement EL programs that enable EL students to attain English proficiency and equal participation in the standard instructional program, school districts must use appropriate and reliable evaluation and testing methods that have been validated to measure EL students' English language proficiency and knowledge of the core curriculum. Only by measuring the progress of EL students in the core curriculum during the EL program can districts ensure that students are not incurring comparable academic deficits.<sup>55</sup> If EL students are receiving instruction in a core content subject in their primary language, the school's assessments of their knowledge of that content area must include testing in the primary language.<sup>56</sup>

- x Example 9: A district has a Structured English Immersion (SEI) program, in which 20 percent of its EL students receive only part of their grade-level social studies and science curricula in their intensive ESL courses while the other 80 percent of EL students received their full grade-level science and social studies curricula in sheltered classes with non-EL students. The district finds that the 20 percent are not performing as well as the 80 percent on the third-grade assessments in social studies and science or on the annual ELP test. In light of this data, the district provides intensive, supplemental instruction in science and social studies during the school day to the performing 20 percent of EL students when they start fourth grade. To further address their academic deficits, their period of designated ESL incorporates grade-level science and social studies texts in ESL exercises focused on the reading and writing domains. The district also adjusts its SEI program so that when EL students in grades 3-5 reach an intermediate level of English proficiency, they transition out of the second period of ESL incorporating only some science and social studies into the sheltered classes of the full science and social studies curricula with non-EL students.

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<sup>55</sup> Id. at 1014.

<sup>56</sup> Id. (holding that it was not appropriate to test EL students in a bilingual program with only English language achievement tests and that “[t]he progress of students in these other areas must be measured by means of a standardized test in their own language because no other device is adequate to determine their progress vis-à-vis of their English speaking counterparts”). SEAs must provide reasonable accommodations on assessments administered to EL students, including, to the extent practicable, providing assessments in the language most likely to yield accurate data on what such students know and understand in academic content areas. 20 U.S.C. § 6311(b)(3)(C)(ix)(III). SEAs also must make every effort to develop academic assessments in languages other than English that are needed and are not already available. § 6311(b)(6), and SEAs may not unduly postpone assessing EL students in reading/language arts in English. § 6311(b)(3)(C)(x).

In their investigations, the Departments consider, among other things, whether:

- 9 SEAs and districts design and implement EL programs that are reasonably calculated to enable EL students to attain both English ~~proficiency~~ and parity of participation in the standard instructional program within a reasonable period of time;
- 9 SEAs and districts provide EL programs that ensure EL students' access to their grade level curricula so that they can meet promotion and ~~graduate~~ requirements;
- 9 SEAs and districts provide EL students equal opportunities to meaningfully participate in specialized programs whether curricular, ~~co~~curricular, or extracurricular; and



shorter than necessary to achieve the program’s educational goals; nor should districts retain EL students in EL-only classes for periods longer or shorter than required by each student’s level of English proficiency, time and progress in the EL program, and the stated goals of the EL program.

- x Example 12: The goals of a Spanish transitional bilingual education program are to teach EL students English and grade-level content in Spanish so that they do not fall behind academically as they transition to proficiency in English and more content classes in English over time. This program may segregate beginning-level EL students for their ESL instruction and their content classes that are taught in Spanish. As the EL students acquire higher levels of English proficiency, the program should transition them from EL-only content classes in Spanish to integrated content classes in English with continuing primary language or other support needed to access the content.

In evaluating whether the degree of segregation is necessary in EL programs, the Departments consider whether entry and exit into a segregated EL program model are voluntary, whether the program is reasonably designed to provide EL students comparable access to the standard curriculum as never-EL students within a reasonable length of time, whether EL students in the program have the same range and level of extracurricular activities and additional services as do students in other environments, and whether the district at least annually assesses the English proficiency and appropriate level of language assistance services for its EL students and determines their eligibility to exit from the EL program based on valid and reliable exit criteria.

Some districts use newcomer programs as a bridge to general education classrooms. Districts operating newcomer programs or schools should take particular care to avoid unnecessary segregation. For example, it is unlikely the Departments would find a violation in the area of EL student segregation by a school district that offers a voluntary newcomer EL program with self-contained EL programs for a limited duration (generally for one year) so long as it schedules the newcomer EL students’ nonacademic subjects, lunchtime, and recess with students; encourages newc

In their investigations, the Departments consider, among other things, whether:

- 9 SEAs and school districts educate EL students in the least segregative manner consistent with the goals of the educationally sound and effective program selected by the SEA or the district; and
- 9 SEAs' monitoring of school districts' EL programs assesses whether the programs unnecessarily segregate EL students and, if so, rectifies this noncompliance.

#### F. Evaluating EL Students for Special Education Services and Providing Special Education and English Language Services

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) address the rights of students with disabilities in the education context.<sup>60</sup> The Department of Education's Office of Special Education Programs, a component of ED's Office of Special Education and Rehabilitative Services, administers the IDEA. OCR and DOJ share authority for enforcing Section 504 in the educational context, and DOJ coordinates enforcement of Section 504 across Federal agencies.<sup>61</sup>

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.

School districts must provide EL students with disabilities with both the language assistance and disability-related services<sup>62</sup> to which they are entitled under Federal law. Districts must also

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<sup>60</sup> 20 U.S.C. § 1400-1419; 34 C.F.R. pt. 300 (IDEA, Part B implementing regulations); 29 U.S.C. § 794 and 34 C.F.R. pt. 104 (Section 504 implementing regulations).

<sup>61</sup> Any Federal agency, such as the Department of Education or Justice, that provides Federal funds to a school district may initiate a compliance review to ensure compliance with, or investigate a complaint alleging a violation of, Section 504 and its implementing regulations. DOJ may also initiate a Section 504 or IDEA suit if, after notice of violation from the Federal funding agency, a recipient of Federal funds fails to resolve noncompliance with Section 504 or IDEA voluntarily and the agency refers the case to DOJ. Furthermore, DOJ can participate in private litigation involving Section 504/IDEA.

<sup>62</sup> The term "disability-related services" is intended to encompass either special education and related services provided to children with disabilities who are eligible for services under the IDEA or regular or special education and related services provided to qualified students with disabilities under Section 504.





to determine if a child is a child with a disability under the IDEA, a school district must ensure that assessments and other evaluation materials used to evaluate a child with a disability are “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.”<sup>70</sup> This is true even for those EL students whose parents have opted their children out of EL programs.<sup>71</sup> A student cannot be determined to be a child with a disability if the “determinant factor” is limited English proficiency and if the student does not otherwise meet the definition of a “child with a disability” under the IDEA.<sup>72</sup>

- x Example 13: A teacher thinks that a Spanish-speaking EL student with beginner level English has a learning disability. She would like to have the student evaluated for a disability, but believes that the student must complete one year in the EL program or achieve intermediate proficiency in English before being evaluated for a disability or receiving special education and related services. She is incorrect. The principal explains to her that if she believes the student has a disability, the school district must seek parental consent for an initial evaluation and once consent is granted must evaluate the student in a timely manner. After the parents consent, the district arranges for a bilingual psychologist to conduct the evaluation in Spanish, given the EL student’s ELP level and language background.

Once a school district determines that an EL student is a child with a disability under the IDEA and needs special education and related services, the school district is responsible for determining, through the development of an IEP at a meeting of the IEP Team (which includes the child’s parents and school officials), the special education and related services necessary to make FAPE available to the child.<sup>73</sup> As part of this process, the IDEA requires that the IEP team consider, among other special factors, the language needs of a child with limited English

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education and related services. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.301. See also note 77 for the definition of an individual with a disability under Section 504.

<sup>69</sup> 34 C.F.R. § 300.301(b). Once parental consent, as defined in 34 C.F.R. § 300.301, is obtained, the evaluation must be conducted within 60 days from the date that parental consent is received, or if the SEA has established a timeframe within which the evaluation must be conducted, within the established timeframe. 34 C.F.R. § 300.301(c)(1) see also 34 C.F.R. §§ 300.300-300.311.

<sup>70</sup> 34 C.F.R. § 300.304(c)(1)(ii); 20 U.S.C. § 1414(b)(3)(A)(ii). For the purposes of this document, native language and primary language are interchangeable terms. In determining whether an EL student is a child with a disability under the IDEA, the school district must draw upon information from a variety of sources (e.g., aptitude and achievement tests and social and cultural background), and ensure that all of this information is documented and carefully considered. 34 C.F.R. § 300.306(c)(1).

<sup>71</sup> See discussion infra in Part II. G, “Meeting the Needs of EL Students Who Opt Out of EL Programs or Particular EL Services.”

<sup>72</sup> 20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)(1)(ii)(2).

<sup>73</sup> 20 U.S.C. § 1414(b)(4); 34 C.F.R. §§ 300.306(c)(2) and 300.323(c). For more information about IEPs, see 20 U.S.C. § 1414(d) and 34 C.F.R. §§ 300.320-300.324.

74 proficiency as those needs relate to the child's IEP. To implement this requirement, it is essential that the IEP team include participants who have the requisite knowledge of the child's language needs. 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.<sup>75</sup> Additionally, the IDEA requires that the school district "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 with deafness or whose native language is other than English."<sup>76</sup>

## 2. Section 504 of the Rehabilitation Act (Section 504)

Section 504 is a Federal law that prohibits disability discrimination by recipients of Federal financial assistance. Section 504 covers not only students with disabilities who have been found to be eligible for services under the IDEA but also students with disabilities who are not IDEA eligible, but meet Section 504's broader definition of disability.<sup>77</sup>

services that are designed to meet the individual educational needs of the student as adequately as the needs of nondisabled students are met. While Section 504 and the IDEA are separate statutes that contain different requirements, as reflected in ED's regulations, one way to meet the requirements of Section 504 FAPE is to implement an IEP developed in accordance with the IDEA.<sup>79</sup>

As with evaluations under the IDEA, Section 504 evaluations of EL students must measure whether an EL student has a disability and not reflect the student's lack of proficiency in English. When administering written or oral evaluations to determine whether an EL student has a disability under Section 504, school districts must administer those evaluations in an appropriate language to avoid misclassification.<sup>80</sup> This is true even for those EL students whose parents have opted their children out of EL programs.<sup>81</sup> Prior to evaluating an EL student, school districts should, to the extent practicable, gather appropriate information about a student's previous educational background, including any previous language interventions.<sup>82</sup>

- x Example 14: An EL student whose parents declined her school's EL services apper4.04 backg

speaker, and that he was provided EL services, but was not evaluated to determine if he needed special education or related aids and services. The school district determines that its disability evaluation of this student should be provided in Spanish.

Some examples of when the Departments have identified compliance issues regarding EL students with disabilities eligible for services under Section 504 or the IDEA include when school districts: (1) deny English language services to EL students with disabilities; (2) evaluate EL students for special education services only in English when the native and dominant language of the EL student is other than English; (3) fail to include staff qualified in EL instruction and second language acquisition in placement decisions under the IDEA and Section 504; or (4) fail to provide interpreters to LEP parents at IEP meetings to ensure that LEP parents understand the proceedings.

When the Departments conduct investigations, compliance reviews, or monitoring activities to determine if an SEA or school district has met its obligations under the civil rights laws and to provide FAPE to an EL student with a disability, the Departments consider, among other things, whether:

- 9 The evaluations used to determine whether an EL student has a disability were conducted in the appropriate language based on the student's needs and language skills, and whether the special education and EL services were determined in light of both the student's disability and language-related needs;
- 9 The disability determination of an EL student was based on criteria that measure and evaluate the student's abilities and not the student's English language skills;
- 9 The EL student was promptly evaluated for disability-related services, or whether there was an impermissible delay on account of his or her EL status and/or level of English proficiency;
- 9 Language assistance services and disability-related services are provided simultaneously to an EL student who has been evaluated and determined to be eligible for both types of services; and
- 9 The individualized plans for providing special education or disability-related services address EL students' language-related needs.

G.



steps” required by Title VI and the “appropriate action” required by the EEOA to provide these EL students access to its educational programs. Thus, the Departments expect school districts to meet the English language and other academic needs of their opt-out EL students under the civil rights laws.<sup>86</sup> To ensure these needs of opt-out EL students are being met, school districts must periodically monitor the progress of students who have opted out of EL programs or certain EL services.<sup>87</sup> If an EL student who opted out of the school district’s programs or services does not demonstrate appropriate growth in English proficiency, or struggles in one or more subjects due to language barriers, the school district’s affirmative steps include informing the EL student’s parents of his or her lack of progress and offering the parents further opportunities to enroll the student in the EL program or at least certain EL services at any time.

- x Example 16: A student is tested and determined to be an EL student. The parent initially refuses EL program services because the parent believes her child speaks fluent English. After the first quarter, the student’s teacher contacts the parent to discuss that the EL student is struggling with reading and writing assignments despite her strong English-speaking skills. The teacher offers a period of ELD and sheltered content classes, explaining how both can improve the student’s proficiency in reading and writing. The parent accepts the ELD services and agrees to reevaluate the placement at the end of the school year.

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who do not receive EL services.<sup>88</sup> Once opted out EL students meet valid and reliable criteria for exiting from EL status, the district should monitor their progress for at least two years, along with other exited EL students (see Part II. H immediately below).

In their investigations, the Departments consider, among other things, whether:

- 9 School districts encourage parents or students to accept the EL services offered and respond appropriately when parents decline any or all EL services;
- 9 School districts maintain appropriate documentation demonstrating that a parent made a voluntary, informed decision to decline EL services; and
- 9 SEAs and school districts explore the causes of high opt-out rates for EL services, address any underlying cause(s) of opting out, and ensure that the academic and English language proficiency needs of the EL students who have opted out are being met.

#### H. Monitoring and Exiting EL Students from EL Programs and Services

School districts must monitor the progress of all of their EL students in achieving English language proficiency and acquiring content knowledge. Monitoring ensures that EL students are making appropriate progress with respect to acquiring English content knowledge while in the EL program or, in the case of opted-out EL students, in the regular educational setting.

With respect to monitoring EL students' acquisition of content knowledge, school districts must at a minimum validly, reliably, and annually measure EL students' performance in academic content areas, including through tests in a language other than English where appropriate as stated in Part II.D above.<sup>89</sup> School districts should also establish rigorous monitoring systems that include benchmarks for expected growth in acquiring academic content knowledge during the academic year and take appropriate steps to assist students who are not adequately progressing towards those goals. SEAs also have a role to play in ensuring EL students acquire content knowledge by monitoring whether school districts are providing EL students with meaningful access to grade-appropriate core content instruction and remedying any content deficits in a timely manner.<sup>90</sup>

With respect to monitoring EL students' acquisition of English proficiency, SEAs must develop ELP standards to inform EL programs, services, and assessments that are derived from the four domains of speaking, listening, reading, and writing, and that are aligned to the State's content

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<sup>88</sup> All students who meet the definition of LEP under ESEA, see 20 U.S.C. § 7801(25), must be tested annually with a State-approved ELP assessment. §§ 6311(b)(7) (Title I), 6823(b)(3)(D) (Title III), 6826(b)(3)(C) (Title III).

<sup>89</sup> Castañeda 648 F.2d at 1014 (“Valid testing of student's progress in the area is, we believe, essential to measure the adequacy of a language remediation program” and requiring that a district's assessments of the progress of LEP students in a subject taught in their primary language must include testing in the primary language).

<sup>90</sup> Id. at 1011; see also Gomez 811 F.2d at 1042; Idaho Migrant Council 647 F.2d at 71; supranotes 9, 14 & 15.





After students have exited an EL program, school districts must monitor the academic progress of former EL students for at least two years to ensure that: the students have not been prematurely exited; any academic deficits they incurred as a result of participation in the EL program have been remedied; and they are meaningfully participating in the standard instructional program comparable to their new peers.<sup>95</sup> When a school district's monitoring of an exited EL student indicates that a persistent language barrier may be the cause of academic difficulty because general education and remediation services have proven inadequate, school districts should retest the student with a valid and reliable, grade-appropriate ELP test to

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SEAs may exit an EL student from EL status or services based on time in the program if the student has yet to achieve English proficiency.

To assess whether an EL program is succeeding in overcoming language barriers within a reasonable period of time, school districts must consider accurate data that permit a comprehensive and reliable comparison of how

whether it is possible to attribute earlier exits and disparate performance data of exited EL students in the content area to a specific program design, teacher training, or differences in programming across grade levels. The district disaggregates the average rate of EL program exit and the average standardized test performance by program, school, content areas, years in programs, and grade to determine which EL programs and services require modification.

- x Example 21: Some school districts have updated or modified their existing data systems for the purpose of collecting and analyzing complete and accurate information about EL and former EL student data relative to never-EL student data. Such data include standardized tests, district assessments, participation in special education and gifted programs, enrollment in AP classes, and graduation, dropout, and retention-in-grade rates. For example, when a district's five-year longitudinal cohort analysis data revealed higher dropout rates for EL students and exited EL students than never-EL students, the district revised its grade 6-12 ESL curriculum with the help of its ESL teachers and mandated more training for secondary sheltered content instructors.

In addition, as stated in sections II.D and H above, school districts must monitor EL students' progress from grade to grade so that districts know whether the EL programs are addressing academic content area deficits that require remediation and whether EL students are on track to graduate and have comparable opportunities to their never-EL peers to become college and career ready. Other important indicators of program success include whether the achievement gap between EL students and never-EL students is declining over time and the degree to which current and former EL students are represented in advanced classes, special education services, gifted and talented programs, and extracurricular activities relative to their never-

school and district levels, this essential information includes but is not limited to information regarding: language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options.<sup>102</sup>

School districts must develop and implement a process for determining what parents are LEP and what their language needs are. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. For example, a school district may use a student registration form, such as a home language survey, to inquire whether a parent or guardian requires oral and/or written communication in a language other than English. The school's initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that the inquiry is designed to reach parents in a language they are likely to understand. For LEP parents who speak languages that are less common at a particular school, the school may use a cover page explaining in those languages how a parent may receive oral interpretation of the form and should offer interpreters to ensure parents accurately report their language communication needs on the form. Schools may also use other processes reasonably calculated to identify LEP parents, and should identify the language needs of LEP parents whenever those needs become apparent. It is important for schools to take parents at their word about their communication needs if they request language assistance and to keep in mind that parents can be LEP even if their child is proficient in English.

SEAs and school districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources<sup>103</sup> – if this is not sufficient for the staff merely to be bilingual. For example, some bilingual staff and community

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<sup>102</sup> In addition to the general requirement under the civil rights laws described in the text, LEP parents are also entitled to translation and interpretation of particular information under Titles I and III and the IDEA, as noted in Parts II.A, F.1, and G.

<sup>103</sup> Some school districts have used web-based automated translation to translate documents. Utilization of such services is appropriate only if the translated document accurately conveys the meaning of the source document, including accurately translating technical vocabulary. The Departments caution against the use of web-based automated translations; translations that are inaccurate are inconsistent with the school district's obligation to communicate effectively with LEP parents. This ensures that essential information has been accurately translated and conveys the meaning of the source document, the school district would need to have a machine translation reviewed, and edited as needed, by an individual qualified to do so. Additionally, the confidentiality of documents may be lost when documents are uploaded without sufficient controls to a web-based translation service and stored in their databases. School districts using(r)-3(aPcn /TT0/8.)-2( 8.(h)2(as)5( )54)-4(-2(i)1(n)1(go76( )1(di)2se)10(d6(o )7(ha

volunteers may be able to communicate directly with LEP parents in a different language or be competent to interpret in and out of English (consecutive or simultaneous interpreting), or to translate documents. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, school districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

- x Example 22: A district captures parents' language needs on a home language survey and stores these data electronically in its student information system. The district analyzes the parent language data to identify the major languages, translates essential district level documents into the major languages, assists schools with translating essential school level documents into the major languages and other languages, and stores these translated documents in a database that all schools can access electronically. For less common languages, the district ensures that LEP parents are timely notified of the availability of free, qualified interpreters who can explain district and school related information that is communicated in writing to parents. The district also canvasses the language capabilities of its staff, creates a list of staff who are trained and qualified to provide interpreter and/or translation assistance, contracts out for qualified interpreter and translation assistance in languages that are not represented on this list, and trains all schools on how to access these services.

Some examples of when the Departments have found compliance issues regarding communication with LEP parents include when school districts: (1) rely on students, siblings, friends, or untrained school staff to translate or interpret for parents; (2) fail to provide translation or an interpreter at IEP meetings, parent teacher conferences, enrollment or career fairs, or disciplinary proceedings; (3) fail to provide information notifying LEP parents about a school's programs, services, and activities in a language the parents can understand; or (4) fail to identify LEP parents.

9 SEAs and school districts provide free qualified language assistance services to LEP parents.

### Conclusion

We look forward to working with SEAs and school districts to ensure their services for EL students provide those students with a firm foundation for success in their schools and careers. We also encourage SEAs and school districts to reevaluate policies and practices related to their EL programs in light of this guidance to ensure compliance and improve access to educational benefits, services, and activities for all students. Together, through our collaborative efforts, the Departments, SEAs, and school districts can help ensure that all EL students receive equal educational opportunities and that the diversity they bring to our nation's schools is valued.

Thank you for your efforts to meet the educational needs of EL students. If you need technical