

Serving English Learners

Laws, Policies, and Regulations



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Written by **Dr. Debbie Zacarian**



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In addition, she has authored numerous publications, including *Transforming Schools for English Learners: A Comprehensive Guide for School Leaders* (Corwin Press, 2011); *Teaching English Language Learners Across the Content Areas* (Haynes & Zacarian, 2010, ASCD); *The Essential Guide for Educating English Learners* (Zacarian & Haynes, in press, Corwin); and *Advancing Student Achievement: A Comprehensive Framework for Transforming Classrooms* (Zacarian, in press, Corwin). Dr. Zacarian was also a columnist for TESOL's *Essential Teacher* publication throughout its tenure.

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Introduction

Rural, suburban, and urban school districts across our nation are enrolling English learners (ELs) in increasing numbers. As educators serving this diverse population, we need to know the laws, policies, and regulations governing the education of English learners so that we understand what we are required to do. We also need to be able to explain these requirements to our students, their parents, our colleagues (both teachers and administrators), and the community in ways that are meaningful and accessible.

The intent of this overview is to provide this explanation in a user-friendly way, include references for where to find this information, and describe how these regulations should be practiced in our schools. In many instances, we provide the official policy guidelines within the document, preceded or followed by a user-friendly definition.

In addition to this federal overview, we have written a separate [state overview](#) describing how the federal laws are enacted at the state level. For example, if you work in Alaska, we provide a brief description of Alaska’s laws, policies, and regulations governing the education of English learners. The state resources are available on our interactive map:

http://www.colorincolorado.org/web_resources/by_state/

We hope that you will find the federal and state overviews helpful to your work with English learners.

Key



Legislation

Excerpt or reference from official regulations



State policy

This symbol indicates policies that are determined at the state level. Check your state for related information.

Please note:

1. *Regulations and policies are updated over time. The resources, links, and explanations found in this document were written in the Fall of 2011 and Winter of 2012 based on current legislation.*
2. *“Limited English proficient” (LEP) is the term used in federal language for English learners and is interchangeable with “EL.”*

Part I

The Role of Federal Policy to Ensure a Student's Civil Right to a Quality Education

There are three governing bodies regarding public school education: federal, state, and local agencies. Local education agencies [LEAs], such as public and public charter districts, must follow their state's laws and regulations. State education agencies [SEAs] must follow or be in compliance with the federal laws and regulations, enact the laws, and monitor implementation.¹ As a result, it is critical that educators at all levels understand the ways in which federal policy and regulations impact state and local policy as represented in Table 1.1.

Table 1.1
The Relationship Between Federal, State, and Local Education Agencies



Federal Policy and EL Instruction

For more information about the way federal policy impacts EL instruction, see Debbie Zacarian's *Transforming Schools for English Learners: A Comprehensive Framework for School Leaders* (Corwin, 2011).

The Federal Definition of an English Learner

Many schools may wonder about the definition of an English learner for a variety of reasons. Some of these include the following commonly occurring questions:

- Can a student who is born in the U.S. be classified as an English learner?
- When a student can speak English, can he/she still be classified as an English learner?

The answer to both of these questions is yes!



The official federal definition of an English learner, referred to in federal language as a student who is limited English proficient, is the following ([U.S. DOE, Title IX General Provision 9101 \(25\)](#)):

(25) LIMITED ENGLISH PROFICIENT- The term 'limited English proficient', when used with respect to an individual, means an individual—

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C) (i) who was not born in the United States or whose native language is a language other than English;
- (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
- (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—
 - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);
 - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
 - (iii) the opportunity to participate fully in society.

In general terms, an English learner is a student who is in the process of acquiring English and has a first language other than or in addition to English. It is important to note that the laws **do not** place restrictions on the amount of time that is needed for an English learner to:

- be able to listen, speak, read, and write in English
- be successful in classroom settings where English is the language of instruction
- be able to participate actively in his/her classroom, school, community, and beyond.

English Learner Identification

What do federal laws require for identifying English learners?

[Federal guidelines](#), as described in a memo by the U.S. Office of Civil Rights about English learners², require schools:

- to “have procedures in place for identifying” their English learners
- to complete these procedures within a specific amount of time so that they may notify parents of students that have been identified as English learners.

Under federal law, Subsection 3302 of The Elementary and Secondary Education Act (commonly referred to as the No Child Left Behind Act), parents must be notified that their child has been identified as an English learner within 30 days of the beginning of the school year, and within 2 weeks for students that enroll during any other time during the school year.

Schools are also required to provide parents with a host of information regarding their child’s level of English proficiency and how this was determined, the type of program that their child is enrolled or recommended to participate in, the method of instruction, and more.



For more information regarding parental notification, see Part IV of this document, The Rights of Parents, and [Title III, Part A, Subpart 2, Section 3302 \(b\)](#).



Currently, there is no federal guideline mandating the use of Home Language Surveys in EL identification, nor is there an “official survey” that states are required to use. Some states provide a recommended Home Language Survey, but many allow districts to use their own. Please see our [State Overview](#) for information about Home Language Surveys used in your state.

How are ELs identified?

In practice, many states use what is called a Home Language Survey to screen the students who should be assessed as part of the process to identify English learners.

Which survey should we use?

Home Language Surveys typically include questions such as:

- What language did your child first understand or speak?
- What language do you or others use most often when speaking with your child?
- What language does your child use most often when speaking at home?
- What language does your child use most often when speaking with other family members?
- What language does your child use most often when speaking with friends?

Generally, when a parent responds that his/her child uses a language other than or in addition to English, the school is required to assess the child to determine whether the child is an English learner or is proficient in English. However, there are a number of reasons why parents may not identify their child as an English learner. For example, a parent may be concerned that the child may not be allowed to attend school if he/she does not speak English.

Case examples

In this overview, we provide a description of three hypothetical students, Juan Carlos Medina, Bao Chen, and Laura Mitchell. Our purpose is to guide us through what the federal laws require us to do to identify English learners. We also provide a diagram to support our understanding of the steps that need to occur.

Example 1

Juan Carlos was born in the United States. He lives with his parents and grandmother and is enrolling in Kindergarten at his local school. When his mother comes to enroll her son, she is given a packet of forms to complete. Included in the packet is a Home Language Survey. Juan Carlos' mother answers that the only language that Juan Carlos knows is Spanish.

Example 2

Bao Chen recently moved to the United States from Beijing. Her parents enroll her in the same school as Juan Carlos. Her parents' responses to the Home Language Survey questions are that Bao only speaks English. But when Bao begins attending school, her teacher suspects that Bao is an English learner.

Example 3

Laura Mitchell is also a new student in the same school as Juan Carlos and Bao. When her parents enroll her in school, the school office does not furnish her parents with a Home Language Survey. Because of her name, they assume that she is not an English learner and as a result, her parents are not asked to complete this survey. However, when Laura begins attending school, her teacher suspects that Laura is an English learner.

Federal laws require that schools identify all of their English learners. When we examine these three examples, however, the only one that seems clear is Juan Carlos, whose mother indicated that he spoke a language other than English on the Home Language Survey. Does this mean that we automatically identify him as an English learner? What about Bao and Laura?



Please see our [State Overview](#) for information about the procedures and assessments that are required in your particular context.

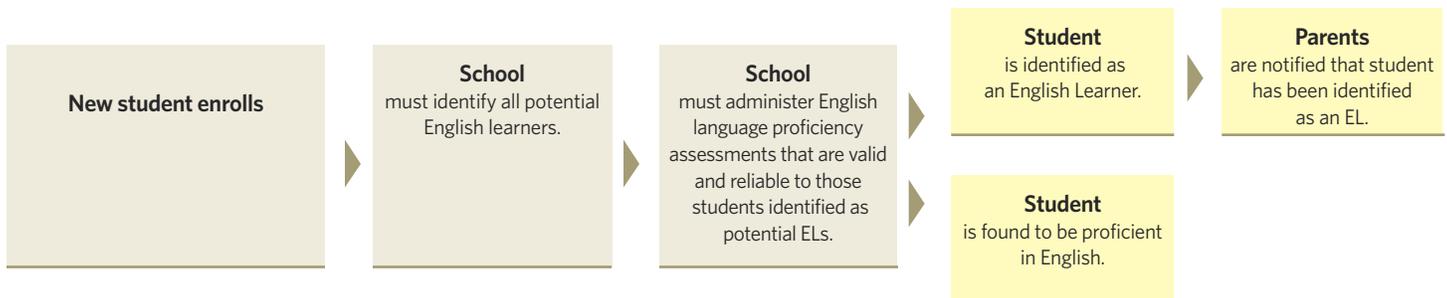
These examples underscore the point that while Home Language Surveys are required in many states and are an important first step for providing information about a student's language background, they are not intended (and should not be used) as the sole means for identifying ELs. Federal law expects that local education agencies, under direction from their state education agency, will find additional ways to identify all of their ELs, such as parent and student interviews, teacher input, and assessments.

What happens after the Home Language Survey?

Generally, when a language other than or in addition to English is stated on the Home Language Survey, or when an interview or other means indicates that a student might be an English learner, the student must be assessed. Each state provides information about the assessments that are required for this purpose, sometimes referred to as “placement” or “identification” assessments.

In summary, when a new student enrolls, local education agencies must follow federal and state regulations for identifying English learners and notify parents in a timely fashion when a student has been identified as an English learner. The identification process is summarized in Table 1.2 below.

Table 1.2
Identification Process



Part II

English Learner Instruction

The Legislation: Landmark Court Cases and No Child Left Behind

Before outlining the requirements for teaching English learners, it's important to understand the laws and regulations upon which the requirements are based. A good first step is to understand some of the key court cases that led to formation of the federal regulations regarding the education of English learners.

Landmark Court Cases and English Learners

Many of the federal regulations about ELs are the result of lawsuits filed in local courts across our country that were appealed, some all of the way to the United States Supreme Court. These regulations address a number of issues including segregation, equal access to an education, and the English language and content learning needs of students. Three landmark decisions that are important to know include the following:

- In 1973, *Keyes v. Denver* was the first *de facto* segregation case heard in the U.S. It argued that particular groups of students (Latinos and Blacks) were largely separated from their peers. The U.S. Supreme Court ruled that schools must desegregate their students. This ruling meant that English learners could not be segregated from their English fluent peers.
- In 1974, the *Lau v. Nichols* case argued that the local school district was not providing an adequate education to its English learners because ELs could not sufficiently comprehend English. The U.S. Supreme Court ruled that school districts must take the steps needed to provide ELs with an instructional program in which they can be given equal access to an education.
- In 1978, *Castañeda v. Pickard* argued that their local district was segregating students based on race and ethnicity and that the district failed to implement a successful bilingual education program in which children would learn English. The United States Court of Appeals for the Fifth Circuit ruled that districts must establish a three-prong test for ensuring that their educational program for ELs is consistent with a student's right to an education. The three prongs require educational programming for ELs to be:
 1. based on sound educational research
 2. implemented with adequate commitment and resources
 3. evaluated and proven to be effective. Alternative research-based programming must be implemented if found to not be effective.

Important Court Rulings

For more information about significant court decisions related to the education of ELs, see Wayne E. Wright's *Landmark Court Rulings Regarding English Language Learners* (Caslon, 2010) and Debbie Zacarian's *Transforming Schools for English Learners: A Comprehensive Framework for School Leaders* (Corwin, 2011).

ESEA & NCLB: What's in a name?

ESEA

The Elementary and Secondary Education Act (ESEA) was enacted in 1965.

NCLB

In 2001, ESEA was reauthorized as the No Child Left Behind Act.

ESEA Flexibility

In 2011, the U.S. Department of Education invited each state educational agency to [request flexibility](#) on behalf of itself, its local educational agencies, and schools, to better focus on improving student learning and the quality of instruction. This voluntary opportunity will provide educators and state and local leaders with flexibility regarding specific requirements of the No Child Left Behind Act of 2001 in exchange for rigorous and comprehensive state-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. (U.S. Department of Education, 2011)

No Child Left Behind Act (2001)

Federal policies for English learners follow the rulings of the United States Supreme Court, including these three seminal cases, and are governed by the No Child Left Behind Act of 2001³ [NCLB], now known as The Elementary and Secondary Education Act (ESEA). Title I and Title III of the federal ESEA regulations address the education of ELs in two distinct ways.

- Title I addresses issues of accountability and high-stakes testing.
- Title III provides us with a definition of the language instruction that English learners must receive.



The official federal definition of an English language instructional program follows:

LANGUAGE INSTRUCTION EDUCATIONAL PROGRAM- The term language instruction educational program means an instruction course—

- (A) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards, as required by section 1111(b)(1); and
- (B) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.

(Title III, Subpart 5, Part C, Section 3301 (8))

In application, this means that every local school district must provide its English learners with instruction in English language development while simultaneously ensuring that students are held to the same educational standards and outcomes as their English fluent peers. It also means that schools may make use of a student's native language for the purpose of learning English and content. As in the case of EL identification, however, the guidelines for determining which instructional programs and assessments to use and the role of a student's native language in instruction are left largely to state education agencies.



For language instruction regulations, please see our [State Overview](#) for information regarding your particular state and context.

NCLB & ELs

For more information about No Child Left Behind and the education of ELs, read Wayne E. Wright's *No Child Left Behind and English Language Learners* (Caslon, 2010).

In addition, local education agencies that receive Title III funding, following the above-mentioned ruling of *Castañeda v. Pickard*, must also submit plans to the state that describe:

- how their language instruction program will address students' English language development and academic development needs using a scientifically-based rationale
- how it will be properly resourced
- how it will be evaluated to ensure its success.

In summary, as represented in Table 2.1, federal guidelines require local schools to:

- provide a means for identifying their English learners
- place their English learners in English language development and academic achievement programming that is research-based, known to be scientifically sound, and, as we will discuss in our next section, proven to be effective based on state regulations.

Table 2.1

Federal regulations about language instruction programming



Part III

Annual Assessments for English Learners

English Language Proficiency Exams and Statewide Assessments

Under the federal laws, English learners are required to participate in statewide assessments annually. These are administered through the state education agency. Title I and Title III require three assessments (English language proficiency, reading/language arts, and mathematics) for English learners.⁴

The results of state assessments are used to measure the effectiveness of the programs that each local district implements for its identified English learners to ensure that students are being instructed in programs that are proven to work, and that alternatives are implemented when they are not. Federal laws require that this be done on an annual basis and cover the time span in which a student is identified as an English learner through two years after a student has demonstrated proficiency in English.⁵

English Language Proficiency (ELP) exams



Under federal law, “LEAs must annually assess their LEP students (K–12) in English language proficiency.”⁶ This includes assessments in the areas of listening, speaking, reading, and writing in English. The federal regulations about these assessments state:

Title I: Each State plan shall demonstrate that local educational agencies in the State will, beginning not later than school year 2002-2003, provide for an annual assessment of English proficiency (measuring students’ oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency, except that the Secretary may provide the State one additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of this paragraph by that deadline and that the State will complete implementation within the additional 1-year period. (Title I, Part A, Section 1111 (b)(7)).

Title III: The State Education Agency will ensure that eligible entities receiving a subgrant under this subpart annually assess the English proficiency of all limited English proficient children participating in a program funded under this subpart, consistent with section 1111(b)(7). (Title III, Part A, Subpart 1, Section 3113 (b) (3) (D))



Note

Appropriate and permitted accommodations for statewide reading/language arts and mathematics assessments such as translation, the use of bilingual dictionaries, and extended time are determined at the state level. Please see our [State Overview](#) for information about assessments in your particular context.

Statewide assessments of reading/language arts and mathematics

Under federal law, with few exceptions regarding English learners, state education agencies must use the same requirements that apply to all students in grades 3-8 and high school under Title I of ESEA to assess their students in the areas of reading/language arts and mathematics. SEAs must also “inform teachers, parents, and the community of a school’s/LEA’s progress toward attainment of state performance standards and provide information to improve instruction” (U.S. Department of Education, 2009).

Under Title I of the ESEA, States must include LEP students in their assessments of academic achievement in reading/language arts and mathematics, and must provide LEP students with appropriate accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what LEP students know and can do in the academic content areas until they have achieved English language proficiency.⁷

What are AMAOs?

Annual measurable achievement objectives (AMAOs) are “objectives that measure LEP students’ (English learners’) development and attainment of language proficiency in English and adequate yearly progress.”⁸ As with the statewide exams, each state is required to develop AMAOs for its English learners. There are three required AMAOs and schools must inform parents if they are not met.

1. English language development:

Progress in English language development as seen by annual increases in the percentage of students making progress learning English.

2. English language proficiency:

Proficiency in English as evidenced by annual increases in the number or percentage of students attaining English proficiency by the end of each successive year.

3. English Language Arts and Mathematics:

Adequate Yearly Progress [AYP] for English learners in meeting grade level achievement standards in Reading/Language Arts and Mathematics.

(See [Title III, Part A, Subpart 2, Section 3122](#) for more detail on AMAOs and accountability.)

To determine AMAOs, states must evaluate their students according to these objectives on an annual basis through the ELP and statewide assessments. In addition, each state must:

- report its findings
- determine whether an improvement plan is needed for a local entity (such as a school district) to improve the achievement of ELs
- determine whether technical assistance from the state is needed and what kind of assistance is most appropriate
- determine whether further accountability measures are needed to track EL progress.

Exceptions and Exclusions

Federal guidelines do include a few exceptions and exclusions for EL assessment. Further explanation about these exclusions may be found in the [Assessment and Accountability for Recently Arrived and Former Limited English Proficient Students](#).

Among these exceptions are the following:

Reading/Language Arts

- During the period within which an LEP student may be a recent arrival to the United States (during his/her first 12 months attending schools in the U.S.), a state may exempt such a student from one administration of the state's reading/language arts assessment.
- Even if LEP students do not take the reading/language arts assessment during their first year in U.S. schools, that year must be considered the first of the three years in which a student may take the reading/language arts assessment in his/her native language.

Mathematics

- The flexibility of the reading/language arts exam does not extend to state mathematics assessments. Recently arrived LEP students must take the state's mathematics assessment, with accommodations as necessary.
- States that exempt recently arrived LEP students from the reading/language arts assessment must report publicly the number of students exempted for this reason. However, a state may exclude the scores of recently arrived LEP students on state mathematics and reading/language arts (if taken) assessments from one cycle of AYP determinations.

Statewide evaluations

Federal law also requires districts who receive funding from their state department of education to complete an analysis of the success of their programming for English learners. This follows the *Castañeda v. Pickard* federal ruling that schools must provide programming that is scientifically known to be sound, properly resourced, and proven to work. Schools must show that their programming works on an annual basis and, when it is not working, must show what they have done as a scientifically research-based remedy. In addition, they must show how parents are being provided with information about their child's education in a language that parents understand. Table 3.1 on page 16 reflects the role of statewide evaluations and assessments in EL progress monitoring and instruction.

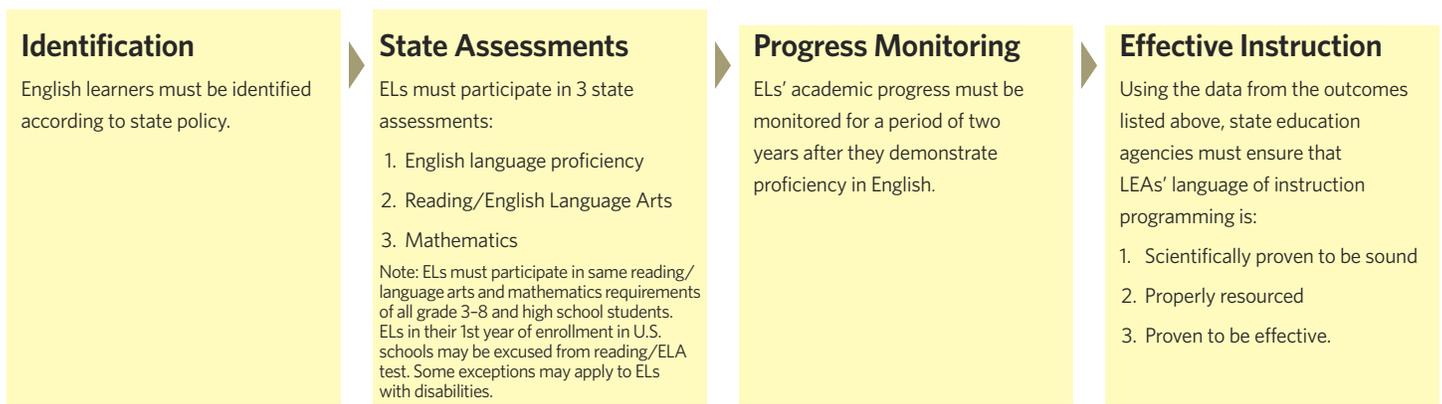


An excerpt from the federal description of the statewide evaluations follows:

SEC. 3121. EVALUATIONS.

- (a) IN GENERAL- Each eligible entity that receives a subgrant from a State educational agency under subpart 1 shall provide such agency, at the conclusion of every second fiscal year during which the subgrant is received, with an evaluation, in a form prescribed by the agency, that includes—
 - (1) a description of the programs and activities conducted by the entity with funds received under subpart 1 during the two immediately preceding fiscal years;
 - (2) a description of the progress made by children in learning the English language and meeting challenging State academic content and student academic achievement standards;
 - (3) the number and percentage of children in the programs and activities attaining English proficiency by the end of each school year, as determined by a valid and reliable assessment of English proficiency; and
 - (4) a description of the progress made by children in meeting challenging State academic content and student academic achievement standards for each of the 2 years after such children are no longer receiving services under this part.
- (b) USE OF EVALUATION- An evaluation provided by an eligible entity under subsection (a) shall be used by the entity and the State educational agency —
 - (1) for improvement of programs and activities;
 - (2) to determine the effectiveness of programs and activities in assisting children who are limited English proficient to attain English proficiency (as measured consistent with subsection (d)) and meet challenging State academic content and student academic achievement standards; and
 - (3) in determining whether or not to continue funding for specific programs or activities. (Title III, Part A, Subpart 2, Section 3121 (a) and (b))

Table 3.1
English Learners and State Assessments



Part IV

The Rights of Parents

Parent notification is an essential element of the federal regulations and it applies to EL identification, instruction, assessment, and accountability. It is important to note that federal regulations require LEAs to communicate with parents in an “understandable and uniform format and, to the extent practicable, in a language that the parent can understand.” ([Title III, Part A, Subpart 2, Section 3302 \(c\)](#))

Identification and Instruction

Parents must be informed:

- when their child has been identified as an EL
- the reasons for the identification
- their child’s level of English language development
- how the language of instruction program will help their child learn English and meet age appropriate academic achievement standards
- how the methods used in the language instruction program differ from what is used for English fluent students
- how the needs of a child with a disability will be addressed in the student’s individualized education program
- how their child will be exited from the program when he/she demonstrates proficiency in English
- what their rights are as parents of English learners.

Parents must also be notified of their right to have their child removed from the language instruction program and/or choose another model of instruction, if it is available. While the federal laws allow for thirty days after the beginning of the school year (or within 2 weeks for students that enroll during any other time during the school year) to provide this notification, state education agencies may require that this be done in less time. (See [Title III, Part A, Subpart 2, Section 3302 \(b\)](#) for more detailed information, as well as your SEA for the time span required to notify parents.)



Many states provide parental letters regarding accountability measures on their SEA websites. Some also provide translations of these letters. Please see our [State Overview](#) and your state website for more information.

Assessments and Accountability



Parents must also be informed if a program is not successful in achieving its state's accountability targets. Federal guidelines explain:

(b) SEPARATE NOTIFICATION- In addition to providing the information required to be provided under subsection (a), each eligible entity that is using funds provided under this title to provide a language instruction educational program, and that has failed to make progress on the annual measurable achievement objectives described in section 3122 for any fiscal year for which part A is in effect, shall separately inform a parent or the parents of a child identified for participation in such program, or participating in such program, of such failure not later than 30 days after such failure occurs. ([Title III, Part A, Subpart 2, Section 3302 \(b\)](#))

Part V

Summary of the Federal Overview

Educators serving English learners must comply with federal laws, policies, and regulations governing the education of public and public charter school English learners. To do this requires that local education agencies follow the federal and state regulations for:

- Identifying English learners
- Providing instructional programming that is research-based and known to be sound
- With few exceptions, providing state assessments to annually assess the English language development and reading/language arts and mathematics achievement of English learners to ensure that programming is effective and make changes when it is not
- Informing parents of the reasons for the identification of their child as an English learner, their child's level of English proficiency and how the level was assessed, the method of instruction that their child is participating or will participate in, how the program will meet the language and age appropriate academic learning needs of their child, the specific exit requirements from the program, their rights as parents of English learners, and if states are not meeting their accountability targets.

We hope that this guide will support you in providing effective programming for your English learners and will help you find the information that you need. To learn more, please see our recommended resources on page 21.

Endnotes

1. In the federal regulations, the word “State” is a term referencing the State Education Agency [SEA].
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Recommended Resources

Colorín Colorado

ELL Policy: Background and Recommended Reading

<http://www.colorincolorado.org/policy/>

ELL Resources by State

http://www.colorincolorado.org/web_resources/by_state/

U.S. Department of Education

The Elementary and Secondary Education Act

<http://www2.ed.gov/policy/elsec/leg/esea02/index.html>

Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students (OELA)

<http://www2.ed.gov/about/offices/list/oela/index.html>

Office of Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Office of Civil Rights: Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited-English Proficiency

<http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html>

National Clearinghouse for English Language Acquisition & Language Instruction Educational Programs (NCELA)

NCELA: Frequently Asked Questions

<http://www.ncela.gwu.edu/faqs/index>

