

## **Questions and Answers Regarding Inclusion of Limited English Proficient Students with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives**

### **Introduction:**

Currently, it is estimated that nearly five million students in U.S. schools, nearly ten percent of the overall student population, are limited English proficient (LEP), meaning that they have sufficient difficulty speaking, reading, writing, or listening in English to the extent that it has an impact on their academic performance. Between 1989-1990 and 2003-2004, LEP student enrollment has more than doubled, from 2,030,451 students to 4,999,481 students.<sup>i</sup>

Educational personnel in States, districts, and schools across the nation have expressed challenges in developing and applying *No Child Left Behind* (NCLB) English language proficiency (ELP) assessment and accountability provisions to those students who are both LEP and students with disabilities. During 2001-2002, the most recent years for which data were collected, there were approximately 357,325 LEP students who were also students with disabilities enrolled in U.S. public schools.<sup>ii</sup>

The term “limited English proficient,” (LEP) as it is used in this guidance, refers to students “...whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3)...” (Title IX, Section 9101). LEP students are those students who score below the proficient level on the State English language proficiency assessment.

The term "students with disabilities," as it is used in this guidance, refers to students who are eligible for services under the Individuals with Disabilities Education Act (IDEA).

This guidance is intended to assist States in understanding how Titles III and I of the NCLB Act of 2001 and the IDEA address the inclusion of LEP students who are also students with disabilities in State ELP assessments and Title III annual measurable achievement objectives (AMAOs). In the guidance, options for including students with disabilities in ELP assessments, including those students who have significant cognitive disabilities, and those who do not have significant cognitive disabilities, are discussed.

Specifically, this guidance is focused on ways of including LEP students with disabilities in ELP assessments, which are assessments designed to measure their progress in learning the English language.

States planning to develop and implement new policies for ELP assessment and accountability for LEP students with disabilities should submit this information to the Department for review as an amendment to the Consolidated State Application. The following section addresses questions received by the Department related to the ELP assessment of LEP students with disabilities and their inclusion in Title III AMAOs. Questions are listed on the following page in a Table of Contents format, followed by the actual questions and answers themselves.

## **Table of Contents:**

1. Do the requirements for assessing limited English proficient (LEP) students' English language proficiency (ELP) under Title I and Title III apply to LEP students who are also students with disabilities?
2. Is it appropriate to continue to require administration of the annual ELP assessment in all domains of language even if a child may always score as a non-reader due to his/her disability?
3. What are the ways in which LEP students with disabilities can participate in the State ELP assessment(s)?
4. What is the role of the individualized education program (IEP) team in determining accommodations for LEP students with disabilities on the State ELP assessment?
5. What should IEP teams consider when a student participates in the State ELP assessment through the use of one or more State-approved accommodations appropriate for the child's disability?
6. Under what conditions would it be permissible for a State to have LEP students with disabilities participate in a partial administration of the State ELP assessment?
7. How should States proceed in developing or revising State policies and practices for the ELP assessment of students with disabilities?
8. Is it permissible for local personnel, such as school staff members or the IEP team, to remove an LEP designation from an LEP student who is a student with a disability?
9. Must the ELP assessment results for LEP students with disabilities be included in Title III annual measurable achievement objectives (AMAOs)?

## Questions and Answers:

**1. Do the requirements for assessing limited English proficient (LEP) students' English language proficiency (ELP) under Title I and Title III apply to LEP students who are also students with disabilities?**

**Yes.** Both Titles I and III require local educational agencies (LEAs) and State educational agencies (SEAs) to provide an annual assessment of English language proficiency for all LEP students in the State enrolled in public schools in grades Kindergarten through twelve in the domains of speaking, listening, reading, and writing (Section 1111(b)(7); 3113(b)(3)(D)).

**2. Is it appropriate to continue to require administration of the annual ELP assessment in all domains of language even if a child may always score as a non-reader due to his/her disability?**

**Yes.** It is important for all LEP students, including those with disabilities, to have a full opportunity to show what they know and are able to do in English and to be included in ELP assessments in all domains of language.

**3. What are the ways in which LEP students with disabilities can participate in the State ELP assessment(s)?**

LEP students who are also students with disabilities can participate in the State ELP assessment(s) through one of the following means:

- a. Participation in the State ELP assessment without accommodations, or
- b. Participation in the State ELP assessment through the use of one or more State-approved accommodations appropriate for the child's disability, or
- c. Participation in a partial administration of the State ELP assessment, if determined appropriate by the individualized education program (IEP) team.

**4. What is the role of the IEP team in determining accommodations for LEP students with disabilities on the State ELP assessment?**

The IEP team or placement team may be the best-informed group to deliberate on decisions regarding such accommodations, though IDEA does not specifically address or prohibit the role of the IEP team in making decisions regarding accommodations for ELP assessments. Just as in determining what accommodations are needed for any student with a disability, the IEP team, with the appropriate representation, should be able to make sound decisions regarding what accommodations are needed for LEP students with disabilities.

Members of the IEP team for LEP students with disabilities should include speech language pathologists and other professionals with an understanding of how to differentiate between limited English proficiency and a disability. Team members should be provided training in this area, as well as in language acquisition and in serving students with disabilities, as needed (IDEA, Section 61(d)), or include bilingual/ESL teachers or other professionals with expertise in language acquisition as part of the team.

**5. What should IEP teams consider when a student participates in the State ELP assessment through the use of one or more State-approved accommodations appropriate for the child's disability?**

First, such accommodations must not invalidate results from the ELP assessment.

Second, decisions regarding assessment accommodations should be made by individuals familiar with a child's academic achievement and English language proficiency, such as the child's IEP team or placement team. As stated throughout, the IEP team should include professionals with expertise in language acquisition and a speech-language pathologist. Decisions must always be made on the basis of individual student needs and must be documented.

Finally, accommodations may be used for the entire ELP assessment, or for part of the assessment. For example, one option may be to use an accommodation that is appropriate for a subtest of one domain of language just for that particular subtest.

**6. Under what conditions would it be permissible for a State to have LEP students with disabilities participate in a partial administration of the State ELP assessment?**

It is permissible for a State to allow some LEP students with disabilities to participate in a partial administration of the State ELP assessment, if appropriate, due to such students' disabilities. For example, if a student is unable to produce expressive language, it may be appropriate for him/her to receive an exemption from participating in the speaking portion of the State ELP assessment.

Participation in a partial administration of the State ELP assessment would only be permitted if determined appropriate by the IEP team.

Decisions regarding which portions of an ELP assessment a student should participate in should be made by individuals familiar with a child's academic achievement, and assessment of a child's English language proficiency should be made on the basis of individual student needs, and must be documented. The decision should have the benefit of review and input of a speech and language pathologist.

**7. How should States proceed in developing or revising State policies and practices for the ELP assessment of students with disabilities?**

States are advised to consult with appropriate individuals at the SEA, LEA, and school levels with expertise in language acquisition and in the provision of services to students with disabilities, such as speech language pathologists, bilingual/ESL teachers, or other professionals with expertise in language acquisition, when developing such policies.

States are also advised to develop guidance for LEAs and schools to use with IEP teams regarding such policies, and to ensure through monitoring that policies are being implemented at the LEA and/or school levels.

**8. Is it permissible for local personnel, such as school staff members or the IEP team, to remove an LEP designation from an LEP student who is a student with a disability?**

**No.** The LEP designation cannot be removed from a child unless that child has met the criteria for “proficient” in English as defined by the State. It is important for LEP students with disabilities to have a full opportunity to show what they know and are able to do in English. Maintaining a child’s designation as LEP, as long as appropriate, may also give him/her access to services important to supporting his/her educational achievement. States submitted their definition of “proficient” in English to the U.S. Department of Education in the September 1, 2003 Submission to the Consolidated State Application. The definition of “limited English proficient” is found in Section 9101 of NCLB.

**9. Must the ELP assessment results for LEP students with disabilities be included in Title III annual measurable achievement objectives (AMAOs)?**

**Yes.** Results from ELP assessments for all LEP students should be included in both the making progress and in the proficient AMAO under Title III, as described in Section 3122(a)(3). All four domains of language (speaking, listening, reading, and writing) must be included in AMAOs.

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<sup>i</sup> National Clearinghouse for English Language Acquisition (NCELA). (May 2005). Ask NCELA No. 8. How has the English language learner (ELL) population changed in recent years? Available: <http://www.ncela.gwu.edu/expert/faq/08leps.htm>

<sup>ii</sup> Zehler, A. M., Hopstock, P.J., Flesichman, H. L., & Stephenson, T. G. (September 15, 2003). Descriptive Study of Services to LEP Students and LEP Students with Disabilities. Report submitted to the U.S. Department of Education.