ENGLISH LEARNERS

PROGRAM GUIDE

Oregon Department of Education

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INTRODUCTION

This guide is designed as a reference for District and School personnel working with English learners (ELs). The content of the guide represents a compilation of information, examples, and resources for your use. If you find an error, or feel this guide needs to be updated to reflect new or additional information, please email Leslie Casebeer at: leslie.casebeer@state.or.us. Please be sure to include appropriate documentation to support your submitted recommendation, as careful review of the document will take place prior to any changes being made.

This manual is distributed for informational and resource purposes, and does not represent legal advice.

> "There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."
>
> Lau v. Nichols (1974)

OREGON STATE ENGLISH LEARNER PROGRAM GOALS

English Learner programs are expected:

- To assist students in accessing core subject courses in their path toward graduation from high school and access to post-secondary educational opportunities.
- To provide resources and assistance to school districts in providing effective instructional programs for ELs while meeting required Federal and State regulations.
- To assist school districts in creating, implementing, and improving English language development programs that provide academically rigorous and equitable learning opportunities leading to Career and College Readiness.
- To promote culturally relevant and responsive curricula and pedagogies embracing the unique identities of those gaining proficiency in an additional languages.
- To provide and ensure access to an equitable education for ELs.

COMMON VOCABULARY AND FREQUENTLY USED TERMINOLOGY

BICS - Basic interpersonal communication skills: The language ability required for verbal face-to-face communication.

CALP - Cognitive academic language proficiency: The language ability required for academic achievement.

Castañeda v. Pickard: On June 23, 1981, the Fifth Circuit Court issued a decision that is the seminal post-Lau decision concerning education of language minority students. The case established a three-part test to evaluate the adequacy of a district's program for EL students: (1) is the program based on an educational theory recognized as sound by some experts in the field or is considered by experts as a legitimate experimental strategy; (2) are the programs and practices, including resources and personnel, reasonably calculated to implement this theory effectively; and (3) does the school district evaluate its programs and make adjustments where needed to ensure language barriers are actually being overcome? [648 F.2d 989 (5th Cir., 1981)]

Content-based English as a Second Language: This approach makes use of instructional materials, learning tasks, and classroom techniques from academic content areas as the vehicle for developing language, content, cognitive, and study skills. English is used as the medium of instruction.

Dual Language Program: Also known as two-way or developmental, the goal of these bilingual programs is for students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom usually comprised of half native English speakers and half native speakers of the other language.

Educational Assistant: Educational assistants who work under the supervision of an appropriately licensed teacher may provide instructional support pursuant to OAR 581-038-0005-0025.

English Learner (EL): A national-origin-minority student who is limited-English-proficient. This term is often preferred to limited-English-proficient (LEP) as it highlights accomplishments rather than deficits. English learners are defined as Limited English Proficient (LEP), and when used with respect to an individual, means an individual who:

- is aged 3 through 21;
- is enrolled or preparing to enroll in an elementary school or secondary school;
- was not born in the United States or whose native language is a language other than English;
- is a Native American or Alaska Native, or a native resident of the outlying areas; and
    - 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
    - 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
    - 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);the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society

English Language Learner (ELL): Another name for English Learner

English as a Second Language (ESL): As its name implies, the ESL approach focuses on instruction in English as the primary means to help ELs acquire the language and ultimately meet high academic standards. Students learn and are taught in English exclusively or primarily—certain instructional materials or instructional techniques may make use of basic L1 (first language) vocabulary, but only as a means to support the students' use of English. Models that follow the ESL approach may include both: language instruction, wherein English language is the instructional content itself; or content-based instruction, in which academic content is the object of instruction, but delivered in such a way as to also support ELs' acquisition of English.

Equal Education Opportunities Act of 1974: This civil rights statute prohibits states from denying equal educational opportunity to an individual on account of his or her race, color, sex, or national origin. The statute specifically prohibits states from denying equal educational opportunity by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. [20 U.S.C. §1203(f)]

FEP: Fluent (or fully) English proficient.

Immigrant Children (Recent Arrivers) and Youth are defined in section 3301 of ESEA-Title III:

(a) Are aged 3 through 21
(b) Were not born in any State, and
(c) Have not been attending one or more schools in any one or more States for more than three full academic years.

A required sub-grant is issued on an annual basis to qualifying school districts based on a formula measuring high rates of growth in immigrant youth.

Informed Parental Consent: The permission of a parent to enroll their child in an EL program; or, the refusal to allow their child to enroll in such a program after the parent is provided effective notice of the educational options and the district's educational recommendation.

JDEP: Juvenile Detention Education Program.

LTCT: Long-Term Care and Treatment Education Programs

Language Dominance: Refers to the measurement of the degree of bilingualism, which implies a comparison of the proficiencies in two or more languages.

Language Instruction Educational Program (LIEP): 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 L1 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 (L2).

Language Proficiency: Refers to the degree to which the student exhibits control over the use of language, including the measurement of expressive and receptive language skills in the areas of phonology, syntax, vocabulary, and semantics, and including the areas of pragmatics or language use within various domains or social circumstances. Proficiency in a language is judged independently and does not imply a lack of proficiency in another language.

Lau Plan: Another name for Local plan

Lau v. Nichols: A class action suit brought by parents of non-English-proficient Chinese students against the San Francisco Unified School District. In 1974, the Supreme Court ruled that identical education does not constitute equal education under the Civil Rights Act of 1964. The court ruled that the district must take affirmative steps to overcome educational barriers faced by the non-English speaking Chinese students in the district. [414 U.S. 563 (1974)]

LEP: Limited-English-proficient. (See ELL or EL)

Local Plan, From Federal Title III Statutes: SEC. 3116. Local Plans. Each eligible entity desiring a subgrant from the State educational agency under section 3114 shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. The Office for Civil Rights uses the phrase "ELL Plan".

Local Service Plan: This phrase is sometimes used in place of "Local Plan".

Maintenance Bilingual Education (MBE): MBE, also referred to as late-exit bilingual education, is a program that uses two languages, the student's primary language and English, as a means of instruction. The instruction builds upon the student's primary language skills, and develops and expands the English language skills of each student to enable him or her to achieve proficiency in both languages, while providing access to the content areas.

MOU: Memorandum of Understanding

The May 25 Memorandum: To clarify a school district's responsibilities with respect to national-origin-minority children, the U.S. Department of Health, Education, and Welfare, on May 25, 1970, issued a policy statement stating, in part, that "where inability to speak and understand the English language excludes national-origin-minority group children from effective participation in the educational program offered by a school district, the district must

take affirmative steps to rectify the language deficiency in order to open the instructional program to the students."

NEP: Non-English-proficient.

Newcomer Program: Newcomer programs are separate, relatively self-contained educational interventions designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs before they enter more traditional interventions (e.g., English language development programs or mainstream classrooms with supplemental ESL instruction).

Reclassification: When a student obtains academic English proficiency, the student is exited from ELD services. The federal term for this process is reclassification; Oregon typically refers to this process as exiting.

Sheltered English Instruction: An instructional approach used to make academic instruction in English understandable to EL students. In the sheltered classroom, teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in mathematics, science, social studies, and other subjects.

Specific courses: As used in ORS 336.079 mean educational units consisting of a series of instructional periods that explicitly teach speaking, reading, and writing English in a manner enabling EL students to profit from regular classroom instruction in English. Since these courses apply to students who are “unable to profit from classes taught in English”, these classes are not the same as general education content classes (reading, writing, speaking) taught in English.

Structured English Immersion Program: The goal of this program is acquisition of English language skills so the EL student can succeed in an English-only mainstream classroom. All instruction in an immersion strategy program is in English. Teachers have specialized training in meeting the needs of EL students, possessing either a bilingual education or ESL teaching credential and/or training, and strong receptive skills in the students' primary language.

Submersion Program: A submersion program places EL students in a regular English-only program with little or no support services on the theory that they will pick up English naturally. This program should not be confused with a structured English immersion program.

Title VI of the Civil Rights Act of 1964: Title VI prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance. The Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a language minority student's limited proficiency in English.

Title VII of the Elementary and Secondary Education Act (ESEA): The Bilingual Education Act, Title VII of the ESEA, recognizes the unique educational disadvantages faced by non-English speaking students. Enacted in 1968, the Bilingual Education Act established a federal policy to assist educational agencies to serve students with limited-English-proficiency by authorizing funding to support those efforts. In addition to providing funds to support services to LEP students, Title VII also supports professional development and

research activities. Reauthorized in 1994 as part of the Improving America's Schools Act, Title VII was restructured to provide for an increased state role and give priority to applicants seeking to develop bilingual proficiency. The Improving America's Schools Act also modified eligibility requirements for services under Title I so that LEP students are eligible for services under that program on the same basis as other students.

Transitional Bilingual Education (TBE) Program: This program, also known as early-exit bilingual education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. The primary purpose of a TBE program is to facilitate the EL student's transition to an all English instructional program while receiving academic subject instruction in the native language to the extent necessary.

Tutor: In the context of OAR 581-023-0100, the definition of tutors are educational assistants providing tutoring services who meet the requirements of OAR 581-037-0005 to 0025. According to ORS 342.120, educational assistant means a classified school employee who does not require a license to teach, who is employed by a school, district, or education service district, and whose assignment consists of and is limited to assisting a licensed teacher in accordance with rules established by the Oregon State Board of Education.

YDEP: Youth Correctional Education Program

Acronyms

Acronym	What it stands for	What it means
AMAO	Annual Measurement Achievement Objectives	The accountability measures for English learners. An annual report providing information on the progress EL students are learning and acquiring academic English proficiency.
AMO	Annual Measureable Objectives	Formerly known as AYP
AYP	Adequate Yearly Progress	Used prior to Oregon's ESEA waiver
CBESL	Content Based ESL	An approach to language instruction that integrates the presentation of topics or tasks from subject matter classes (e.g., math, social studies) within the context of teaching the English language
CM	Constructing Meaning	Sheltered English instruction methodology - created by Susanna Dutro.
DSA	District Security Administrators	DSAs can delegate their duties to *District Test and Security Administrators*. The only difference between DSAs and DTSAs is that DTSAs cannot create any other DTSA users. A district can only have one DSA. However, DSAs can create one or more DTSA for each district.
DTSA	District Test and Security Administrators	*District Test and Security Administrators* are responsible for creating STC, TA users within their district. DTSAs can set student test restrictions and access reports within their district.
EL	English learner	An identified student who qualifies for additional support in school in acquiring academic English proficiency.
ELD	English Language Development	The instruction provided to English learners to assist the students in acquiring academic English proficiency.
ELL	English Language Learner	Another term for English learner.
ELP	English Language Proficiency	Typically used to describe the standards for English language acquisition.
ELPA	English Language Proficiency Assessment	The annual assessment in Oregon that all English learners participate to have an annual measure of academic English proficiency.

ELPA 21	English Language Proficiency Assessment for the 21st Century	An improved language proficiency assessment in development by Oregon and 12 other states. This assessment is scheduled to be used beginning with the 2016-17 school year.
ESEA	Elementary and Secondary Education Act	
ESL	English as a Second Language	A program of techniques, methodology, and special curriculum designed to teach LEP students English language skills, including listening, speaking, reading, writing, study skills, content vocabulary, and cultural orientation. ESL instruction is in English with little or no use of native language.
GLAD	Guided Language Acquisition Design (Project GLAD)	Sheltered English instruction methodology.
IPT	IDEA Language Proficiency Tests	IPT is one of four state-approved assessments available in Oregon for the identification of ELs. Others referenced in this table include LAS, Stanford, and W-M (see references contained on this table).
LAS	Language Assessment Scales	LAS is one of four state-approved assessments available in Oregon for the identification of ELs. Others include IPT, Stanford, and W-M (see references contained on this table).
LEA	Local Education Agency, Or Local Educational Agency	
LEP	Limited English Proficient	The federal term for English learners.
LIEP	Language Instruction Educational Program	An Instructional Program : (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 L1 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 (L2).

MBE/NL	Maintenance Bilingual Education/Native Literacy	The Maintenance Bilingual Education, also known as late-exit bilingual education model, or developmental, allows students to become fully bilingual and bi-literate based on the underlying instructional principles of the program. In contrast to the Transitional Bilingual Education (TBE) Model, whose purpose is the use of the native language to transfer into total English instruction, the maintenance model seeks to maintain and continue to develop the native language as LEP as English. Native Literacy (NL) may also be included in this program model. Native Literacy, used generally in elementary school settings (but not limited to), utilizes a student's primary language in literacy instruction only.
PHLOTE	Primary Home Language Other Than English	
SDAIE	Specially Designed Academic Instruction in English	This approach consists of strategies teachers can use to make content concepts understandable to ELs, while simultaneously promoting their English language development. More specifically, sheltered instruction refers to a model of how teachers use strategies, such as visual aids, modeling, graphic organizers, vocabulary previews, adapted texts, interactional structures, and students' prior knowledge, in a systematic way to enable students to acquire content in their new language.
SEA	State Education Agency, or State Educational Agency	
SI	Sheltered Instruction	An instructional approach used to make academic instruction in English understandable to LEP students. In the sheltered classroom, teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in mathematics, science, social studies, and other subjects. Some examples of sheltered instructional model may include SIOP, GLAD, SDAIE, Constructing Meaning.
SIOP	Sheltered Instruction Observation Protocol	Sheltered English instruction methodology.
SPED	Special Education	The Individuals with Disabilities Education Act, as amended in 2004 (IDEA 2004-PL 108-446), is a federal law governing special education services and federal funding for eligible infants, toddlers, children, and youth with disabilities across the country. Children and youth (ages 3-21) receive special education and related services under IDEA, Part B. Infants and toddlers with disabilities (ages birth-2) and their families receive

		early intervention services under IDEA Part C. In Oregon, IDEA funds helped support the education of almost 83,000 children with disabilities in the past year. For more information about IDEA see the U.S. Department of Education website at http://idea.ed.gov.
Stanford	Stanford ELP	Stanford is one of four state-approved identification assessments available in Oregon for the identification of ELs. Others referenced in this table include IPT, LAS and W-M (see references contained on this table). The Stanford ELP evaluates the listening, reading, comprehension, writing, and speaking skills of English learners in Pre K–12. This assessment is developed by Pearson Assessments, see link below. http://education.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=015-8429-206
STC	Secure Test Coordinator	A person responsible for ensure test security.
TA	Test administrator	A person who administers the state assessments to students.
TAG	Talented and Gifted	"Talented and Gifted children" means those children who require educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society, and who demonstrate outstanding ability or potential in one or more of the following areas: (a) General intellectual ability as commonly measured by measures of intelligence and aptitude. (b) Unusual academic ability in one or more academic areas. (c) Creative ability in using original or nontraditional methods in thinking and producing. (d) Leadership ability in motivating the performance of others either in educational or non-educational settings. (e) Ability in the visual or performing arts, such as dance, music, or art.
TBE	Transitional Bilingual Education	This program, also known as *early-exit* bilingual education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. The primary purpose of a TBE program is to facilitate the LEP student's transition to an all-English instructional program while receiving academic subject instruction in the native language to the extent necessary.
TIDE	Test Information Distribution Engine	A system for State assessment.

TWI	Two-Way Immersion	Two-way immersion programs integrate language minority and language majority students, providing instruction in both English and the native language of the language minority students. The structure of these programs varies, but they all integrate students for most content instruction and provide this instruction in the non-English language for a significant portion of the school day. Two-way bilingual immersion programs strive to promote bilingualism and biliteracy, grade-level academic achievement, and positive cross-cultural attitudes and behaviors in all students
W-M	Woodcock-Munoz	One of four assessments available for districts to determine if a student is an English learner. Others are LAS, Stanford and IPT (see prior acronym descriptions).

TITLE III PROGRAM ADMINISTRATION PROCEDURES AND REQUIREMENTS

Purpose

To help ensure LEP children (federal term used when citing federal law), including immigrant children and youth, attain English language proficiency and meet the same standards that all children are expected to meet (section 3102, ESEA)

One of the key goals of Title III of the ESEA is to ensure LEP students attain ELP, attain high levels of academic achievement in English, and meet the same challenging State academic content and student academic achievement standards all children are expected to meet. To achieve this goal, Title III grants provide States and their sub-grantees with funds to implement language instruction educational programs to help LEP students acquire English and achieve high levels in the core academic subjects. Title III sub-grantees are required to use Title III funds to support:

- high-quality professional development designed to improve services to LEP students, and
- high-quality language instruction educational programs that are designed to increase the English proficiency and academic achievement of LEP students.

Title III does not require sub-grantees to use a specific or particular curriculum or approach to language instruction, except the language instruction must be, as required in section 3113(b)(6) of the ESEA, tied to scientifically based research on teaching LEP students and demonstrated to be effective.

Title III, like ORS 336.079, requires instructional *'courses'*, or educational units consisting of a series of instruction periods dealing with a particular subject. The difference between ORS 336.079 and Title III is that courses under ORS 336.079 are designed specifically to teach English proficiency, whereas courses under Title III must, in addition to teaching English proficiency, simultaneously ensure that EL students meet state academic content and student achievement standards.

Also, Title III requires that student progress is rigorously assessed, students meet annual measurable achievement objectives, and states hold districts accountable for meeting those objectives. Title III, §3122; § 3116(3).

Local Educational Agency (LEA) Responsibilities

- Provide high quality, research based, language instruction educational programs that are effective in increasing English proficiency and academic achievement of LEP students.
- Provide high quality, researched-based professional development to teachers, administrators, and other school/community-based organizations, of sufficient intensity and duration.
- Provide a biennial evaluation to the SEA.
- Outreach to parents of LEP children.

ELL Plan (Local Service Plan, Local Plan, Lau Plan)

To be effective, an ELL Plan needs to be comprehensive. It should address each aspect of the district's program for all EL students, at all grade levels, and at all schools in the district. To ensure its ongoing value, it needs to be viewed by district staff as containing useful information. It should contain enough detail and specificity so each staff person can understand how the plan is to be implemented, and contain the procedural guidance and forms the staff needs to use to carry out his/her responsibilities under the plan. Districts have indicated to OCR they have found their ELL Plans most useful when they contain sufficient detail to inform staff fully of each action step in the ELL plan.

Does your plan answer the following:

- Who is responsible for the step?
- When is the step expected to be completed?
- What standards and criteria are to be applied to the step?
- How will the district document implementation of the step?

http://www2.ed.gov/about/offices/list/ocr/ell/plandev.html

Many districts have found it is useful, when developing or revising an ELL program, to establish a committee or work group that includes administrators, teachers (both ELL program teachers and regular classroom teachers), educational assistants, school counselors, and other staff who work with the district's EL student population. The district may also want to include parents, students, or community representatives who work with the same students in other settings. By working with a group that includes these stakeholders, the district can receive more comprehensive input from those whose support and efforts may be important to the success of the district's ELL program. Inclusive approaches in program design and development tend to promote overall community awareness and support. In addition, these individuals will be valuable resources to draw upon during program evaluation and program improvement activities.

The questions in the ELL Plan Outline are organized around key components of a comprehensive plan:

- The district's educational theory and goals for its program of services;
- The district's methods for identifying and assessing the students to be included in the district's ELL program;
- The specific components of the district's program of English language development and academic services for EL students;
- The specific staffing and other resources to be provided to EL students under the district's ELL program;
- The district's method and procedures for transitioning and/or exiting students from its ELL program, and for monitoring their success afterward; and
- The district's method for evaluating the effectiveness of its program for EL students (discussed in Part III of the ed.gov materials).

How to Develop an ELL Plan (Local Plan, Lau Plan)

- Consult with stakeholders.
- Describe the ELL program, addressing the eight requirements for an ELL program as outlined by the USDOE OCR.
- Describe activities that will be implemented with the Title III funds.
- Describe how the ELL program will ensure EL students develop English proficiency.
    - Describe how Title III funds will be used to meet AMAOs, and how schools will be held accountable for meeting AMAOs and annually assessing EL students with ACCESS for ELs.
- Describe how parental and community participation in the ELL program will be promoted.
- Consult in a timely and meaningful manner with private schools within the district (if any) and document this collaboration with meeting agendas, etc.

TYPES OF PROGRAM SERVICE MODELS

Below are the program model codes used to describe the specific sheltered content programs for each EL student. These codes are used for the LEP data collection. Districts are required to provide the program model(s) used annually in the budget narrative with complete explanation of the district's selected program models included in the district's local plan.

Sheltered Content Program Code	Description
11	**Dual Language program (11)** Also known as two-way or developmental, the goal of these bilingual programs is for students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom that is usually comprised of half native English speakers and half native speakers of the other language.

12	**Two way immersion (12)** Two-way immersion programs integrate language minority and language majority students, providing instruction in both English and the native language of the language minority students. The structure of these programs varies, but they all integrate students for most content instruction and provide this instruction in the non-English language for a significant portion of the school day. Two-way bilingual immersion programs strive to promote bilingualism and biliteracy, grade-level academic achievement, and positive cross-cultural attitudes and behaviors in all students.
13	**Transitional bilingual (TBE) (13)** This program, also known as *early-exit* bilingual education, utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language and culture while introducing, maintaining, and developing skills in English. The primary purpose of a TBE program is to facilitate the LEP student's transition to an all-English instructional program while receiving academic subject instruction in the native language to the extent necessary.
14	**Maintenance bilingual education (MBE/NL) (14)** The Maintenance Bilingual Education, also known as *late-exit* bilingual education model, or *developmental*, allows students to become fully bilingual and bi-literate based on the underlying instructional principles of the program. In contrast to the TBE Model, whose purpose is the use of the native language to transfer into total English instruction, the maintenance model seeks to maintain and continue to develop the native language as LEP as English. *Native Literacy* may also be included in this program model. *Native Literacy***,** used generally in elementary school settings (but not limited to), utilizes a student's primary language in literacy instruction only.
15	**Heritage language preservation (15)** "Heritage language" programs are usually connected with an endangered indigenous or immigrant language.
30	**Sheltered Instruction** An instructional approach used to make academic instruction in English understandable to LEP students. In the sheltered classroom, teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in mathematics, science, social studies, and other subjects. Some examples of sheltered instructions model may include SIOP, GLAD, SDAI, Constructing Meaning.
40	**Structured English Immersion** The goal of this program is acquisition of English language skills so that the LEP student can succeed in an English-only mainstream classroom. All instruction in an immersion strategy program is in English. Teachers have specialized training in meeting the needs of LEP students, possessing either a bilingual education or ESOL teaching credential and/or training, AND strong receptive skills in the students' primary language.

51	**Not participating in a program** NOTE: Used only for students in: Category 3 – LEP Placement score excludes ELD program eligibility (3-H) or Category 4 – ELD Program eligible, but declined services (4-N or 4-O)

Below is a chart of the program model codes used to describe the specific ELD program for each EL student. These codes explain the types of programs provided to assist the student in acquiring the English language. These codes are used in the LEP data collection (see data collection section).

ELD Program Code	Description
21	**ESL** is a program of techniques, methodology, and special curriculum designed to teach LEP students English language skills, including listening, speaking, reading, writing, study skills, content vocabulary, and cultural orientation. ESL instruction is in English with little or no use of native language. This may include 'push-in' programs as determined appropriate by the district.
22	**ESL Pullout** is used generally in elementary school settings. Students spend part of the day in a mainstream classroom, and are 'pulled out' for a portion of the day to receive instruction in English as a second language.
23	**ESL Class Period** is generally used in middle schools and high schools where students receive ESL instruction during a regular class period, and also receive course credit for the class. Students may be grouped for instruction according to their ELP level.
24	**Content Based ESL** is an approach to language instruction that integrates the presentation of topics or tasks from subject matter classes (e.g., math, social studies) within the context of teaching the English language.
51	**Not participating in a ELD program** NOTE: Used only for students in: Category 3 – LEP Placement score excludes ELD program eligibility (3-H) or Category 4 – ELD Program eligible but declined services (4-N or 4-O)

Other evidence-based, researched services models can be used as determined effective at district discretion; however, one of the codes in the charts above must be used in the LEP data collection.

Bilingual Education

In Title III, Section 3301, a language instruction educational program is defined as a program of instruction:

> "…that may make instructional use of both English and the 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."

Schools offering bilingual education programs must, of course, adhere to state law regarding the placement of students in these programs, as well as meet any established academic outcome requirements.

- Early Exit Transitional
- Late-Exit Transitional/Developmental/Maintenance
- Bilingual Immersion
- Integrated TBE
- Dual Language Immersion (aka two-way Bilingual)

Immersion Education:

- English Language Development (ELD)/English as a Second Language (ESL)
- Structured Immersion
- Submersion with Primary Language Support
- Indigenous Language Immersion (e.g. a Native American Tribal Language)

PROGRAM REQUIREMENTS

Identifying a Student as an EL

There are two ways to identify potentially eligible students for ELD services – HLS and teacher referral. Both are described in this section, below.

Home Language Survey (HLS)

TransACT Communications, Inc. has created many compliance related forms, including those required for Title III. These forms, translated into several languages, are available through TransAct at: http://www.transact.com/

If a school chooses not to use the Transact forms, the forms used by the school must contain the same elements as the TransAct form in order to comply with current Federal Regulations.

Districts must:

- Identify the Primary Home Language Other than English of *all* students.
- Use a HLS. Though not required, it is the most commonly used instrument to identify students as potentially eligible for ELD services. Templates for HLS are available through TransAct at http://www.transact.com .

- Ask questions that have to do solely with home languages of the individual students. If a parent (guardian) gives a single affirmative answer to whether:
    - the child learned to speak a language other than English first,
    - the child currently speaks a language other than English, or
    - a language other than English is spoken in the home,

  then the child qualifies for initial program assessment. As such the child is classified as a primary home language other than English PHLOTE student.

Whereas such information is helpful, inquiring exclusively about home languages can be misleading. For instance, the child may have spent only his or her infancy in a foreign country, foreign-born grandparents may be living in the home, or perhaps members of the family are learning a foreign language together. Such situations may not have a negative impact on a child's ability to speak English and should not lead to have a child placed in a program for ELs.

For proper placement, the survey could include questions about the child's ability to speak English. The following questions would be reasonable in a primary home language survey:

- What language or languages are spoken in your child's home?
- What language or languages does your child speak?
- In what language does your child communicate with:
    - adults in the home?
    - with friends or peers?

Finally, the HLS is administered to ***all*** students once rather than annually.

Teacher Referral

Occasionally, the HLS may indicate a student is English speaking only and no referral is made for initial program placement assessment. However, occasionally, some students may need to be identified as potentially eligible for ELD services (for example: Native American students). In these few cases, the student's classroom teacher may complete a referral form that highlights and provides evidence (classroom work, work samples scored with appropriate rubric) of the student's linguistic needs. School team reviews the referral and may make a determination to have the student assessed for initial placement. In these cases, a notation on HLS explaining the reason(s) the student is placed in the ELD program is good practice and always helpful.

Based on the HLS, students are given an initial identification assessment. This language proficiency assessment must assess the student's academic English proficiency in all four language domains (reading, writing, speaking and listening) and needs to be given by a trained administrator. The State has approved the following initial identification assessments:

- Woodcock-Munoz
- IPT
- Stanford
- LAS

Districts are required to include their identification criteria in their ELL plan. These criteria should clarify which students are identified as ELs, and which students do not qualify based

on the identification assessment showing academic English proficiency. Once a student is identified as an EL, the district must notify parents within 30 days at the beginning of the school year and two (2) weeks after the school year has began (forms are available through TransAct.com).

Notifications to Parents/Option to Waive Services

Parents can opt to not have their children enrolled in an ELL program. When a parent declines participation, the district retains a responsibility to ensure the student has an equal opportunity to have his or her English language and academic needs met. Districts can meet this obligation in a variety of ways (e.g., adequate training to classroom teachers on second language acquisition; monitoring the educational progress of the student). http://www2.ed.gov/about/offices/list/ocr/qa-ell.html

Students not served by district programs are required to participate in all state-required assessments, including ELPA, and are counted in the district's progress towards meeting academic and graduation outcomes.

Students with a waiver for services are reported annually to the district's LEP Collection, and they are coded 4-N (waiver and participated in ELPA) or 4-O (waiver and not enrolled during the ELPA testing window). The State uses these codes to review trend data for language minority students.

Program Exit Criteria (Reclassification)

The program exit criteria must assess whether a child understands English well enough to profit from classes conducted in English. Accordingly, the exit criteria must be the student's level of English language proficiency, rather than whether the student meets state academic content standards expectations.

Acquisition of proficiency in the English language is the foundation of the English language learner program. The Oregon State Board of Education has adopted standards that describe continuous progress in the acquisition of proficiency in English. Students are expected to move through the continuum of skills reflecting increasing levels of proficiency in English. The Oregon ELPA reports five levels of proficiency in English, from Level 1 (Beginner) to Level 5 (Proficient). Although a score of 5 is the most typical indicator a student is proficient in English and ready for reclassification or exit from ESL services, some students with an ELPA score of 4 may, on other measures, show proficiency in English and be ready for exit from the program. In other cases, some students who score 5 on ELPA may need to continue in the ELL program. The procedures for reclassifying (exiting) a student with an ELPA score of 5, considering promotion (exit) of a student with an ELPA score of 4, and continuation of services (retention) of a student with an ELPA score of 5 are included in the district's ELL Plan.

Typical steps for reclassification are listed below.

Step 1: Schedule meeting to evaluate whether student potentially qualifies for exit. This process must be initiated by a team of key members of ELL staff, classroom teachers, parents, and school administrators based on key language proficiency

assessment results. The team members must be familiar with the student's current progress and needs, including one or more teachers with in-depth knowledge of the student's second language acquisition and academic achievement.

Step 2: Review evidence for reclassification, promotion, or retention.

At the meeting of the team members, the participants discuss the second language acquisition of the student within the context of the individual student's ability to perform proficiently and consider whether a reclassification is appropriate.

Evidence should include both historical formal and informal assessment data and direct teacher input. Ongoing informal assessment data may come from checklists, inventories, and other formative evaluations designed to identify the levels of English language proficiency of the student.

Examples of evidence of student's proficiency in English from multiple sources may include other assessments, work samples, teacher input, observations, etc.:

- ELPA - Report all scores available for all years including subtests on domains.
- Writing Sample – ELD Writing Sample Guidelines and ELD Writing Sample Scoring Guide (http://www.ode.state.or.us/search/page/?id=1430)
- Narrative – The following may be addressed in a paragraph:
  - A description of the student's performance on the state proficiency assessment over time;
  - The length of time the student has been in the ELD program; and
  - The reason(s) for promoting the student out of the ELD program based on the student's linguistic performance.
- Classroom teacher evaluation of student's academic language.
- Documentation of parent participation in the process (required for promotion/ retention determinations).
- Additional evidence that demonstrate student academic English acquisition.

Step 3: Specify assessments and English Language Proficiency Assessment composite score. If after reviewing the evidence, the team participants make a determination of reclassification, promotion, or retention.

Step 4: If parents are unable to attend the meeting, discuss the promotion/retention with the parents to get their input. Parent input must be considered when a student is promoted or retained. If the parents have not provided their input and do not attend the meeting, school staff should document those facts in the minutes taken during the meeting.

Step 5: ELD teacher notifies parents of the reclassification, promotion, or retention by sending a parent notification letter in the appropriate language. A copy of the parent notification letter in English shall be placed in the CUM file.

Monitored Students

A student is monitored for two years from the date the student is reclassified (exited) from the ELD program. Monitoring consists of reviewing student academic progress in class(es). Teacher observations, work samples, grades, and state assessment data may be reviewed as part of monitoring. If a student is struggling academically due to academic language, it is possible for the student to be re-entered into the ELD program. This type of determination is made by a team of educators, who review evidence of the student's academic English. The team should consider if the student is in need of assistance due to academic language needs, or if the student could benefit from core instruction interventions prior to re-entered the student in the ELL program.

Allocation of Federal Title III Funds

The ODE receives a formula allocation that is determined by the USDOE on an annual basis. This annual amount requires a percentage (up to 15%) be set aside for distribution as the Recent Arriver's (Immigrant) sub-grant. The ODE is allowed up to 5% of the total funds to be used for state administration of the program. The remainder is distributed to each ELL program participating in Title III, based on a per-pupil allocation.

Steps to Title III Allocations

Each spring districts are asked to provide a district grant intent form. This form requires the districts to provide a list of all private schools participating in Title III, and a count of all English learners enrolled in these private schools. The districts must also confirm their intent to participate in Title III for the following school year. Districts must choose between one of the following three options:

- Have a district Title III sub-grant, if the district has an allocation of at least $10,000.00.
- Continue to participate in the district's current Title III consortium.
- Join a Title III consortium.
- Decline to participate in Title III for the following school year.

District grant intents are due to the ODE in mid-June, so the State can disseminate the next year's allocations in a timely manner. Technical assistance is provided to districts in making their district grant intent and consortium membership. Funding and grant information forms are located: http://www.ode.state.or.us/search/page/?id=2597

District Allocations

Districts receive allocations based on a per-pupil basis following the approval of their district's budget narrative outlining how they plan to expend the available funds. Budget narratives include questions on the program of service, AMAO status, improvement plans, parent involvement, and private schools. Sub-grantees must respond to these questions, plus include a budget for all activities funded by Title III. The budget narrative is a secure application available through the ODE district secure web page https://district.ode.state.or.us/home/

Allocations are disseminated in August of each school year at the same time as the other Federal Title grants. Budget narrative submissions are due in mid-September of each school year.

Consortia Allocations

Districts serving ELs who do not qualifying for a minimum of a $10,000.00 Title III federal grant allocation may opt to join a Title III consortium. A Title III consortium is a group of districts working together to support EL students. Allocations generated by consortium member districts are disseminated to the consortia lead (district or ESD). The consortium members work together planning activities to assist all member districts with services to support EL students. The consortium member districts develop the consortia budget narrative and submit it to the ODE as a team with the consortium lead submitting the budget narrative on behalf of the consortia. Like districts, a consortium has access to 20% of their Title III sub-grant prior to the approval of the budget narrative.

Each consortium member district must provide a consortium membership certificate that gives ODE the authorization to transfer the Title III allocations to the consortium lead. The certificate is available on the Title III fiscal and grant information web page http://www.ode.state.or.us/search/page/?id=2597

Immigrant Sub-grant Allocation

Up to 15% of the total Title III allocation is required to be distributed to the ELL program demonstrating the highest increase in immigrant student population by Title III law. Oregon has selected to reserve .5% of the total Title III sub-grant for the Immigrant sub-grant. Beginning with the 14-15 Title III allocations, the State will use the Recent Arrivers data collection to determine the one district that has the greatest significant increase in recent arrivers over a three year average. (See the Recent Arrivers in this document, under State Data Collections section for more information on this collection.)

The district receiving this allocation must provide a detailed narrative outlining the activities to support the district's recent arrivers. The narrative must include a description of each activity and the budget for each activity. As with all Title III sub-grants, the district must consult with local private schools to ensure Recent Arrivers enrolled in private schools participating in Title III are included in all activities.

The district receiving this allocation must also respond to additional data submission questions that are used in the State's annual Immigrant EdFacts report.

Indirect/Administrative Rate

All Title III sub-grants are subject to a maximum 2% of the allocation for indirect/ administration requirements. Sub-grantees are asked to provide copies of all staffing job descriptions as part of their budget narrative to ensure that personnel funded by Title III are not performing activities that supplant other federal or state requirements.

Supplement Not Supplant

Sub-grantees will be asked to provide documentation that activities funded with Title III allocations do not supplant other state or federal-required activities in accordance with federal law:

Section 3115(g) of Title III of the ESEA (hereafter "Title III") provides as follows:

> SUPPLEMENT, NOT SUPPLANT -- Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children and immigrant children and youth, and in no case to supplant such Federal, State, and local public funds.

In practice, the prohibition against supplanting under Title III means that recipients may not use those funds to pay for services that, in the absence of Title III funds, would be necessary to be provided by other Federal, or State, or local funds. Districts provide this information annually in the Budget Narrative application.

Monitoring

Program monitoring is designed to provide technical assistance to schools, districts, and consortia, as well as ensuring compliance with federal and state laws applicable to serving English Learners. Monitoring documents and guidance is available on the web at http://www.ode.state.or.us/search/page/?id=2594.

Generally, all districts and consortia are monitored by the ODE every three years, as required by USDOE program requirements. This process will begin with a desk audit, and may include peer monitoring processes or site visits in cases where program intervention is determined to be necessary.

Districts having a focus or priority school as determined the Oregon's ESEA waiver will have an on-site technical assistance visit following desk monitoring. Any district having not met AMAOs for four or more years will also have an on-site technical assistance visit following desk monitoring. The purpose for these on-site technical assistance visits is to assist the district in implementing their improvement plan(s) to improve services for the EL.

DATA COLLECTION AND ANALYSIS

Several data elements should be tracked by EL staff to meet legal requirements and to evaluate ELL programs. Many of these elements are listed in the table below. Due to the complexity of the data process, EL staff should work closely with their district's designated data personnel to ensure a comprehensive, cohesive, and accurate school and district data plan to serve EL students. Additional information relating to data collections can be found at the following website: http://www.ode.state.or.us/search/page/?id=1223 Note: Bolded names below are the codes used in the State data system. This information may be helpful when discussing data submissions with district data personnel.

Data element	Purpose	Included in state data collection	State data collection name and field name for this element
Recent Arriver's	Identify the number of qualifying recent arrivers a district has to calculate the rate of growth.	Yes	Recent Arrivers Collection
LEP Start Date	Represents the date on which the student was first identified as an EL.	Yes	LEP Collection – **LEPStrtDt**
ELL program code	Identifies the type of ELD class instruction provided for the student.	Yes	LEP Collection – **LEPProgCd 1** (ELD class) Cd 2 (access to core content) Cd 3 (optional can pull from both list 1 and 2).
EL/LEP Identification Assessment Data	District level assessment data for the purpose of identifying students ineligible to receive ELD services.	Yes	Students found ineligible are reported the year the student is assessed (LEP Record Type code 3-H)
LEP Record Type	Identifies the specific code defining the status of an EL.	Yes	LEP Collection – **LEPRecTypCd** – identifies the status of an EL student in the district program (first year, continuing, exiting as proficient, waiver for ELD services, did not participate in ELPA, or not eligible for services)
LEP Exit Date	Specifies the date the district determines the student has obtained academic English proficiency.	Yes	LEP Collection – **LEPExtDt**

It is recommended that the district collect and store the following data elements are annually. The district does not submit this information to the state data collections; however, this information may be reviewed during Title III monitoring.	
Data Element	**Purpose**
ELPA scores	The statewide assessment for ELP – districts should track the progress of students from year to year.
OAKS assessment scores	The statewide assessments for English Language Arts and Math taken by all students – districts need to track the progress of former (monitored) EL students to ensure the students continue to make academic progress.
Years identified as EL	The number of years a student has been identified as an EL – students identified 5 or more years as an EL are included in a special cohort for AMAO 2B.
Parent Program Placement letters	Federal Requirement: Districts must provide parents with an annual notice of the placement of their student's ELD program.

State Data Collections

There are two main data collections relating to Title III: the Limited English Proficient (LEP) collection and the Recent Arriver's collection. Districts not participating in Title III are required by OAR to submit data to all ODE data collections.

The LEP collection is a part of the consolidated collections application located on the ODE District Secure website (https://district.ode.state.or.us/home/). This collection represents an annual count of all EL students enrolled at any time during the school year. This collection is also used for districts to report any potential EL students found ineligible for services as defined by the district's chosen EL identification assessment.

The LEP collection opens in the Spring each year and is used to determine the:

- LEP subgroup used to calculate AMO ;
- EL student count reported by each district used to determine Title III allocations;
- EL student count used for AMAO accountability purposes;
- State report to the USDOE;
- Verify the student's EL status to confirm the district is entitled to claim the weighted State school funding for ELs.

Additional information relating to the LEP collection can be found at the ODE District Secure web page, schedule of due dates. On the schedule of due dates, look for the NCLB: LEP Collection – typically opening in April. From that page, documents to assist districts are located under the Help menu.

The Recent Arrivers Collection is part of the consolidated collection located on the ODE District Secure web site (https://district.ode.state.or.us/home/). The purpose of this collection is to gather information related to students aged 3 – 21 who were born outside the United States and Puerto Rico, and who have not been enrolled in school in the U.S. for more than three cumulative years (540 days).

The Recent Arrivers Data Collection began during the 2011-12 school year. Districts are required to identify and report records for all recent arrivers enrolled during the academic school year. This information is submitted to the ODE for a required calculation to distribute a sub-grant of the Title III grant providing funds for districts experiencing a sudden influx of students recently arriving in the U.S. The calculation includes a three-year average of the growth of immigrants within a district. Recent Arrivers data is used to submit data to the USDOE, as well as to determine the sub-grant for Title III.

The Recent Arrivers Data Collection opens annually in the spring. This collection is a school year level collection. All students meeting the definition of a Recent Arriver are required to be reported to this collection, regardless if the student has withdrawn from the district during the school year.

Data Collection Requirements

Districts are not required to report initial assessment data for students identified as EL. Data for students not qualifying as EL (proficient on initial assessment) is reported to the LEP collection. Required data for student's found proficient include name of assessment, date of assessment, and student proficiency level.

Initial assessments: Please refer to the section on identifying an EL student for the required procedures. There are four state-approved initial placement assessments. These assessments are "off the shelf" assessments.

- IPT
- LAS
- Stanford
- Woodcock-Munoz

Districts must determine student eligibility for the ELD program using one of the four approved assessments. Identification as an EL student is required by OAR #581-023-0100 http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_023.html , and therefore, the purchase of these assessments in addition to the required training to administer the assessment is a required state activity. Title III funds may not be used for the purchase or training of these assessments. All students identified as LEP must receive instruction in ELD. Parents may complete a waiver to refuse services if they do not wish the student to be given ELD instruction.

EQUAL ACCESS

In 1970, the federal Office for Civil Rights (OCR) issued a memo regarding school districts' responsibilities under civil rights law to provide an equal educational opportunity to ELs. This memorandum stated:

> "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program

offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."

Although the memo requires school districts to take affirmative steps, it does not prescribe the content of these steps. It does, however, explain that federal law is violated if:

- Students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;
- National origin minority students are inappropriately assigned to special education classes because of their lack of English skills;
- Programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead end track; or
- Parents whose English is limited do not receive school notices or other information in a language they can understand.

In its 1974 decision in ***Lau v. Nichols***, the United States Supreme Court upheld OCR's 1970 memo. The basis for the case was the claim students could not understand the language in which they were being taught; therefore, they were not being provided with an equal education. The Supreme Court agreed, saying that:

"There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

The case reaffirmed that all students in the U.S., regardless of native language, have the right to receive a quality education. It also clarified equality of opportunity does not necessarily mean the same education for every student, but rather the same opportunity to receive an education. An equal education is only possible if students can understand the language of instruction.

Within weeks of the ***Lau v. Nichols*** ruling, Congress passed the Equal Educational Opportunity Act (EEOA) mandating no state shall deny equal education opportunity to any individual, *"by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students in an instructional program."* This was an important piece of legislation because it defined what constituted the denial of education opportunities.

The USDOE's OCR oversees school districts and has broad discretion concerning how to ensure equal educational opportunity for ELs. This means that the OCR recognizes that there is not one program model that works for all districts or all students and reviews each district individually. OCR does not prescribe a specific intervention strategy or program model a district must adopt to serve ELs.

The following guidelines have been outlined for school districts to ensure their programs are serving ELs effectively. Districts should:

- identify students as potential ELs;
- assess student's need for ELL services;
- develop a program which, in the view of experts in the field, has a reasonable chance for success;

- ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- assess the success of the program and modify it where needed.

For additional information regarding the provision of equal education opportunity to ELs, see additional resources or contact the Office for Civil Rights enforcement office at:

Phone: (800) 421-3481
Email: ocr@ed.gov
URL: http://www.ed.gov/about/offices/list/ocr/index.html

PRIVATE SCHOOL PARTICIPATION

Districts must annually consult with private schools. This consultation must include a discussion on the needs of the enrolled private school ELs and funding to ensure that equitable services under the law are provided. The ODE has provided a form that documents the required consultation with private schools. The form can be found at http://www.transact.com All school districts should store this completed form for monitoring review and complete the required private schools sections on their budget narrative.

To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the Title III program on issues such as:

- How the EL student needs to be identified.
- What services will be offered.
- How, when, and by whom the services will be provided.
- How the services will be assessed and how the results of the assessment will be used to improve those services.
- What the size and scope of the services to be provided to the private school children and educational personnel.
- What amount of funds will be available for those services.
- How and when the LEA will make decisions about the delivery of services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers.
- Title III services provided to children and educational personnel in private schools must be equitable and timely and address their educational needs.
- Funds provided for educational services for private school children and educational personnel must be equal, taking into account the number and educational needs of those children, to the funds provided for participating public school children.
- Title III services provided to private school children and educational personnel must be secular, neutral, and non-ideological.
- LEAs may serve private school LEP children and educational personnel either directly or through contracts with public and private agencies, organizations, and institutions.
- The control of funds used to provide services and the title to materials and equipment purchased with those funds must be retained by the LEA.

- Services for private school children and educational personnel must be provided by employees of the LEA or through a contract made by the LEA with a third party.
- Providers of services to private school children and educational personnel must be independent of the private school and of any religious organization, and the providers' employment or contract must be under the control and supervision of the LEA.
- Funds used to provide services to private school children and educational personnel must not be commingled with nonfederal funds.

A Memorandum of Understanding (MOA) between the LEA and private school should be developed as a result of initial consultation and address the items listed above. Subsequent meetings may be necessary between the LEA and private school to assess services and determine areas and plans for improvement. Documentation of timely and meaningful consultation with private schools should be included in the service delivery plan and is a requirement on the budget narrative submission for release of Title III funds.

Once a private school student is identified as EL, the private school may request a student continue to receive Title III services in subsequent school years until the student attains English proficiency.

It is possible that more than one consultation a year may be required:

- Spring consultation for participation the following school year.
- Fall consultation regarding possible English learners.
- Fall consultation regarding needs and funding limits for regular Title III allocations.
- Consultation regarding potential immigrant (recent arrivers) and funding support for immigrant (recent arrivers) enrolled in private schools, when the district is the recipient of the Title III – Immigrant sub-grant.

Private Schools and Title III Consortium Members

All districts are required to consult with private schools within district boundaries. Districts who are members of a Title III Consortium must inform their consortium lead if a private school has agreed to participate in Title III. The consortium lead, member district, and private school will need to consult on the services to be provided and the funding available for the identified ELs enrolled in the private school.

The link to U.S. Department of Education Private School Participation, Sec. 9501 is:
http://www2.ed.gov/policy/elsec/leg/esea02/pg111.html

The Non-Regulatory Guidance for ESEA 9501 can be found at:
http://www2.ed.gov/programs/titleiparta/psguidance.doc

PARENT NOTIFICATION REQUIREMENTS (SECTION 3302 (A), (B), (C), (D)

Districts are required to notify parents of their student's identification and placement in a language instructional program (ELD program) within the timelines listed below:

- Not later than 30 days after the beginning of the school year for EL students participating in an EL program or identified at the beginning of the school year.

- Within two weeks if the student enrolls once the school year has begun.
- If the district has failed to meet AMAOs, parents must be notified within 30 days of determination of failure.

All notifications must be in an understandable and uniform format, and to the extent practicable, in a language the parent can understand. Notification letters must be dated and signed by district or school personnel.

Templates for these letters are available through TransAct.com (www.transact.com) and are provided free of charge to Oregon schools by the ODE.

According to ***Education Code*** Section 48985, when 15% or more of the pupils enrolled in the school speak a single primary language other than English, all notices, reports, statements, or records sent by the school or district to the parent/guardian of any such pupil must, in addition to being written in English, be written in such primary language and may be responded to by the parent or guardian in English or in the primary language. In addition, federal law requires that schools and districts effectively communicate with all parents and guardians, regardless of the percentage of students that speak a language other than English (Title III, Section 3122 (c)).

English Language Proficiency Standards

The July 2012 ESEA Flexibility Waiver provided assurance to the USDOE that Oregon would adopt ELP standards reflecting the academic language skills necessary to access and meet the new college- and career-ready standards no later than the 2013-14 school year. Oregon is currently working with CCSSO and Ed Northwest on revised ELP standards. ODE anticipates draft ELP standards in the late summer of 2013 with adoption in the fall of the 2013-14 school year. Based on this timeline, the revised ELP standards would be required to be implemented in the 2014-15 school year. ELP Standards web page: http://www.ode.state.or.us/search/results/?id=36

Definition: Academic language is different from everyday speech and informal writing. It is the language of texts, of academic discussion, and formal writing. Without academic language proficiency, students will not achieve long-term success in school. EL students at the intermediate and advanced levels of ELD who receive no formal language instruction, demonstrate oral fluency, but generally show critical gaps in language knowledge and vocabulary. Academic language must be continuously developed and explicitly taught across all subject areas

Standards Documents

- **ELP Standards for ELD**
- ELP Standards Aligned to ELA Standards

ASSESSMENT AND MEASUREMENT OF ENGLISH LEARNERS

English Language Proficiency Assessment (ELPA)

All students with a primary language other than English who qualify for EL services are required to participate annually in ELPA testing, unless otherwise excluded due to documentation in their IEP. Due to the nature of some student's disability, a student's IEP or 504 Plan might exempt the student from responding to a particular domain of the ELPA (reading, writing, speaking, or listening). For instance, students with a hearing impairment might have an IEP or 504 Plan that exempts them from the listening domain.

Beginning with the 2012-13 school year, as a restricted resource, districts may code ELPA domain exemptions in TIDE. This new restricted resource will ensure the student does not receive any items from the exempted domain when taking the ELPA and will replace the need for TAs to enter false responses through the student interface as in past years. For students who test with this new restricted resource, the student's ELPA score will be generated based on the remaining domains.

Note: This restricted resource may only be entered by either the DTSA (District Test Security Administrator) or DSA (District Security Administrator) prior to approving the student to start the ELPA. Once a student has been approved to start the ELPA, the district may no longer set this restricted resource for the student. In addition to coding this restricted resource in TIDE, districts must also ensure the student's IEP code is entered correctly in Student Centered Staging using the ELPA "Only" IEP test administration codes found in Appendix J – Accessing Student Scores Online of the Test Administration Manual.

ELPA is administered as a single test that contains both the ELPA reading, writing, and listening segment and ELPA speaking segment. While both segments are part of the same ELPA test, students will require an additional TA approval to begin each segment.

The ELPA reading, writing, and listening section is the first segment presented to students. Students should review their answers upon completing all questions in this segment, as they will not be able to return to this portion of the test after they have been approved to start the ELPA speaking segment. After reviewing his or her responses for the first ELPA segment, the student will await TA approval before they can start the ELPA speaking segment.

Oregon Assessment of Knowledge and Skills (OAKS)

Students participate in the OAKS assessments for Reading, Math, Writing, and Science, depending on the assessment requirement s for each grade. OAKS is an online state assessment used to determine students' academic attainment of core content.

ELPA and Test Administration Manual websites:
www.ode.state.or.us/go/ELPA
www.ode.state.or.us/go/TAM

Test Administrator User Guide:
http://www.ode.state.or.us/wma/teachlearn/testing/oaks/oaks_ta_user-guide.pdf

Annual Measureable Achievement Objectives (AMAO)

The AMAOs are the yearly accountability report on the district's ability to meet targets for English learners. There are three targets:

- AMAO 1 – progress in learning English
- AMAO 2 – obtaining academic English proficiency
- AMAO 3 participation and achievement in Reading and Math assessments.

In Oregon AMAO 2 is broken down into two sub categories:

- AMAO 2A – obtaining academic English proficiency out of all identified ELs
- AMAO 2B – obtaining academic English proficiency out of all identified ELs having been identified for five or more years.

Districts can access the current year's AMAO report and previous year's reports from the following web page: http://www.ode.state.or.us/search/page/?id=3408

Improvement Plans

Districts not meeting the AMAO targets for two (2) or more years are in Title III improvement status. ODE provides technical assistance in writing Title III Improvement plans. ODE staff reads and reviews each improvement plan and provides feedback to districts. Any district not meeting AMAOs for four or more years will also have an on-site technical assistance visit during the year the district is monitored.

Two-Year Improvement: Districts who fail to make progress toward meeting AMAOs for two consecutive years (i.e., 2-year improvement status) are required to:

1. Develop an improvement plan.
2. Address the factors that prevented the district from meeting the AMAOs in the district's improvement plan.
3. This year, districts who do not meet AMAOs will be required to review, evaluate, and revise curriculum, program, and methods of instruction that prevent the district from meeting AMAOs.

Four-Year Improvement: A district is identified in district improvement when it has failed to meet all criteria (overall rating) of AMAOs for four or more consecutive years. Districts MUST fulfill four-year improvement requirements listed below and those under the two-year improvement plan listed above.

Title III regulations require the state to:

- Require the LEA to modify the curriculum, program, and methods of instruction, OR
- Make a determination on the continuation of funding, AND
- Require such entity to replace educational personnel relevant to the entity's failure to meet such objectives. Title III 20 USC 6842(b) (4) (A) (B) (i) (ii)

Title III regulations require the state to:

- Provide technical assistance to districts.

- In consultation with the district, develop professional development strategies and activities that the district will be required to use to meet AMAOs.
- In consultation with the district, review, evaluate, and revise curriculum, program, and methods of instruction that prevent the district from meeting AMAOs.
- In consultation with the district, develop a plan to incorporate strategies and methodologies to improve the specific ELD program or method of instruction.
- Monitor the district's implementation of all planned improvement strategies and activities.

FORMS AND CORRESPONDENCE

Home Language Survey (HLS)

- Registration cards/documents must include at least the question:
  - What is the primary language spoken in the home?
- If a response is **any** language other than English, a HLS survey must be given.
- The survey must be comprehensive.
- If a district has Native American students, more questions should be included such as:
  - Is the student's language influenced by the Tribal language through a parent, grandparent, relative, or guardian?
  - Does the student have at least one grandparent that is part of a federally-recognized tribe?
- If the survey responses indicate a student may be an EL, the student must be tested with an ELP test within 30 days of registration, or within 2 weeks of entry into the school (if during the year).
- If the student tests less than proficient on the ELP test, then a letter must go home to the parents indicating their child was identified as needing specific English language services. The parent must be given the opportunity to waive the services, if desired.
- If the parent does not waive the limited ELD services for their child, then the student must be placed in a program of "high quality language instruction, based on scientifically based research" (Section 3115(c)(1)), as determined by the individual district.
- Students placed in a program can be counted for state and Federal funding purposes.
- Once a student tests proficient on the annual ELP test, they will be exited from the ELL program and monitored for 2 years.
- Those students, whose parents waive the services, may not be considered as "LEP" for state and Federal funding purposes. However, they are still English Learners and must still be served according to their needs, according to the Office of Civil Rights. Waiver students are included in the district's accountability reports as part of the EL sub-group.

Required K-12 Parent Notices

TransACT Communications, Inc. has created many compliance related forms, including those required for Title III. These forms, translated into many languages, are available through TransAct, at: http://www.transact.com/. These forms are provided for the convenience of those responsible for EL services at the district/consortia level. Actual samples of these

forms (or district forms created with the same information) are **REQUIRED** to be maintained at the school and district level for compliance monitoring purposes. Failure to save copies of the official parent notification communication as evidence of program implementation, including the signature of a district personnel and the specific date (mm/dd/yyyy) the communication was disseminated, will result in Title III program monitoring findings for the district and the State of Oregon.

Forms used by school districts and accessible from this site include:

- AMAO Parent Notification (completed samples to ODE required for monitoring)
- Description of ELD program
- EL Parent Meeting (agendas from meetings need to be retained for monitoring)
- Home Language Surveys (English and translation samples to ODE required)
- Parent Meeting Participation
- Private School Consultation (completed forms must be submitted to ODE annually)
- Program Placement Notification (completed forms must be submitted to ODE annually)
- Waiver of services (signed, dated copies must be retained for program monitoring)
- Verification of Private School Consultation (completed forms must be retained and submitted with monitoring documentation)
- Recent Arriver's (Immigrant) Student Count required for Private schools

While districts are not required to use these specific forms, the completion and submission of forms containing this specific information is required for Federal compliance. Compliance will be confirmed with district monitoring.

Home language surveys as well as other personally identifiable information is subject to FERPA requirements, care should be taken to ensure student confidentiality and privacy.

EL STUDENTS WITH ADDITIONAL ACADEMIC NEEDS

If you suspect that an EL has a disability, referral and evaluation should happen in a timely manner, as it does for all students. A few additional considerations for ELs are highlighted below:

Designated staff in each school/district should lead this process (whether IDEA or 504) as there are very specific guidelines to be followed. Educators who are knowledgeable about and familiar with the student's language acquisition must be involved at every step throughout the process.

All notices and consents are required to be provided in the parents' native language, unless the language is not written or it is clearly not feasible to do so. Qualified interpreters should be utilized to transmit all other information. If your district does not have translators for a specific language, ODE may be able to assist.

Evaluations must be conducted by professionals who are able to select and administer procedures so that results are not biased by the child's culture or language. Both IDEA http://idea.ed.gov/ and Section 504 http://www2.ed.gov/about/offices/list/ocr/504faq.html provide

specific information, and answer common questions in order to assist school and district personnel to best serve students with special academic needs.

IDEA requires that when an EL has a disability, planning for the child's language needs and the effect of language development on the overall educational program be considered by the IEP team, which must include someone who is knowledgeable about the child's second language acquisition and level of functioning.

Once an EL has been identified with as eligible for special education, the IEP team, with appropriate representation from those knowledgeable about the child's background, culture, and language acquisition should make the decisions about the relationship between the child's disability, language needs, participation in required assessments, and educational program.

For a 504 plan implementation, the team should include a professional who is knowledgeable about the child, and someone who understands the child's language development.

It is important to maintain the perspective that if the child's disability affects his or her functioning in any academic area, it is likely it will affect their progress in learning English. As such, it is not appropriate to withdraw language instruction from a child based on limited performance consistent with their disability.

Special Education

The disproportionate representation of ethnically and linguistically diverse students in high incidence special education programs (mental retardation, learning disabilities, and emotional disturbance) has been a concern for over three decades (Artiles, Trent, & Palmer, 2004; Donovan & Cross, 2002; Dunn, 1968).

The importance of this issue is evident in the fact it has been studied twice by a National Research Council (NRC; Donovan & Cross, 2002; Heller, Holtzman, & Messick, 1982). Yet two NRC reports, resolutions, statements, and actions from major professional organizations, such as the Council for Exceptional Children (CEC) (CEC, 1997, 2002), litigation (e.g., court cases such as Larry P. vs. Riles and Diana vs. the California State Board of Education), policy and advocacy efforts (e.g., new IDEA amendments, CEC Institutes on Disproportionality), pressure from parent groups, and efforts from a relatively small group of researchers have not been sufficient to significantly reduce this problem. The recent NRC report concluded, "twenty years later, disproportion in special education persists" (Donovan & Cross, 2002, p. 1). The phenomenon of disproportionate representation becomes particularly problematic when one considers our nation's school-aged population is becoming culturally and linguistically diverse at an unprecedented rate (Smith, 2003; U.S. Department of Commerce, 2000).

Blatchley and Lau report in the National Association of School Psychologists (NASP) Communique May 2010, students who are learning English as a second or third language often lag behind native English speakers in academic skills, and may display differences in behavior or social skills compared to their native English speaking peers. These ELs are therefore at risk for referral for special services including special education.

Educators are encouraged to use appropriate, nonbiased approaches to screen EL students to determine their need for support within the general education program and to implement culturally competent instructional strategies prior to considering referral to special education (e.g., see Lau & Blatchley, 2009). But when EL students make little or no progress despite additional supports and special education services are considered, school personnel are urged to take a broad, ecological perspective, collecting data through a multidimensional, multi-task approach, and interpreting results within the context of the students' unique cultural, linguistic, and experiential backgrounds (Lau & Blatchley, 2010).

Using nationally standardized, norm-referenced test (NRT) scores to determine eligibility for special education requires considerable caution with EL students. As EL students present a continuum of English proficiency and acculturation, the appropriateness of NRTs for a given student depends on the similarity of that student's experience to that of the test's standardization population.

Tasks from standardized tests may be administered to find out what skills the learner does and does not have. However, if the learner's background experience is significantly different from the group on which the test was normed, it is inappropriate to use the normative scores to draw conclusions regarding student needs and special education eligibility. The use of native language interpreters does not negate this principle, and in fact introduces other complicating factors. For instance, current standardized tests do not involve the use of interpreters as part of their standardization procedure. Moreover, some test items just cannot be translated from English to another language without seriously distorting their original meaning or without suggesting the correct or expected response. These extraneous factors could seriously compromise the validity and utility of the assessment.

Impact of second language acquisition

A major complication of academic assessment of EL students is their varying stages of second language acquisition and academic experience. Understanding the specifics of their current and previous instructional programs is essential to accurate interpretation of EL students' academic performance. If a student has previously and recently received instruction in his or her native language, it will be important to assess those skills using appropriately trained bilingual staff to ensure these competencies are not overlooked when all current instruction is in English. However, if a student has only received instruction in English, it is not useful to evaluate academic skills in the native language, unless he or she has been exposed to these skills at home or in community settings.

Using norm referenced achievement tests

The focus in academic assessment is generally on the skill areas of reading, writing, and mathematics, and to a lesser extent, the content areas (such as science and social studies). The more unique an individual's educational experience and background, the more educators must individually tailor the assessment. Norm-referenced achievement tests are often not very useful in assessing ELs because the norms do not adequately represent EL populations. Further, test content does not adequately reflect EL students' instructional experience and test formats are often unfamiliar and confusing to the student.

To ensure EL students are appropriately identified with disabilities requiring special education services, student study teams, pre-referral teams, and RTI teams must be knowledgeable about:

- Second language acquisition,
- Culturally responsive instructional practices,
- Appropriate multicultural assessment practices,
- Linguistic and cultural challenges in using standardized test measures,
- Challenges faced by children whose L1 is not English,
- Effective instructional strategies for EL students, and
- Working with interpreters (oral communication) and translators (written communication).

EL students can be misidentified with disabilities for a huge variety of reasons. Some students with limited English exposure and knowledge have not received appropriate instruction, while others have experienced academic difficulties not related to disabilities such as:

- Interrupted schooling
- Limited formal education
- Medical problems
- Attendance problems due to family mobility
- Acculturation challenges

A resource guide is available on the ODE website to assist school district staff in managing the challenges of appropriately evaluating EL students who may have disabilities that require specialized instruction via an IEP (Special Education). The goal of the **Special Education Assessment Process for Culturally and Linguistically Diverse Students 2007 Revision** is to provide content, relevant to the challenge of deciding when academic learning difficulties are influenced by second language acquisition, the acculturation process, inappropriate instruction, or a disabling condition, as well as providing culturally responsive instructional and assessment considerations. Included in this 2007 Revision is a discussion on emerging practices on Response to Intervention (RTI) which has promising utility for CLD learners.

The following are a series of issues and requirements that student study teams should consider as they work with EL students:

- Informed parental consent for the evaluation.
- Legal timelines to develop assessment plan.
- Timeline for holding IEP team meeting.
- How much exposure to English has this child experienced?
  Where is this child and his/her family in the acculturation process?
- Immigrant or refugee status.
- The type of instruction has the student had: model of ELD or bilingual, if any.
- History of access to core curriculum.
- The student's language proficiency in the four skill areas in: L1, L2.
- How the student compares with his/her peers.
- How the student interacts with others in the home environment.

Alfredo J. Artiles and Alba A. Ortiz (2002)

The National Joint Committee on Learning Disabilities (NJCLD) strongly supports comprehensive assessment and evaluation of students with possible learning disabilities by a multidisciplinary team for the identification and diagnosis of students with learning disabilities. Comprehensive assessment of individual students requires the use of multiple data sources.

These sources may include standardized tests, informal measures, observations, student self-reports, parent reports, and progress monitoring data from RTI approaches (NJCLD, 2005). Reliance on any single criterion for assessment or evaluation is not administered the student's native language, nor is a group assessment, such as universal screening or state-wide academic assessment tests, sufficient for comprehensive assessment or evaluation.

Assessment is used to refer to the collection of data through the use of multiple measures, including standardized and informal instruments and procedures. These measures yield comprehensive quantitative and qualitative data about an individual student. The results of continuous progress monitoring also may be used as part of individual and classroom assessments. Information from many of these sources of assessment data can and should be used to help ensure that the comprehensive assessment and evaluation accurately reflects how an individual student is performing.

Evaluation follows assessment and incorporates information from all data sources. *Evaluation* refers to the process of integrating, interpreting, and summarizing the comprehensive assessment data, including indirect and preexisting sources. The major goal of assessment and evaluation is to enable team members to use data to create a profile of a student's strengths and needs. The student profile informs decisions about identification, eligibility, services, and instruction. Comprehensive assessment and evaluation procedures are both critical for making an accurate diagnosis of students with learning disabilities. Procedures that are not comprehensive can result in identification of some individuals as having learning disabilities when they do not, and conversely, exclude some individuals who do have specific learning disabilities.

Additional Resources

Language and Reading Interventions for English Learners and English Learners with Disabilities:
http://www.ode.state.or.us/opportunities/grants/nclb/title_iii/lang-and-rdng-interventions-for-ells-and-ells-with-disabilities.pdf

IEP Team

- Group described in Sec. 34 CFR 300.306.
- The IEP team considers whether the student's lack of progress is consistent with the second language acquisition process or a possible manifestation of a disability.
- The team must include a representative with knowledge of second language acquisition and ELD programs/services.
- The team also includes parents/guardians, and student when appropriate.
- The team considers the results of the assessment and whether instruments used are valid and reliable for ELs.
- IEP teams must review ELPA results to determine the student's level of English proficiency.

IEP Development for ELs - Must include:

- Current levels of performance (based on assessment results; include strengths and weaknesses).

- Assessment and classroom accommodations, program supports and modifications (including the ELPA).
- Goals should be linguistically appropriate and standards based.
- The need for special education services and ELD services; instruction could be provided by both programs.
- ELD standards when appropriate.
- Language of instruction (can be different for different subjects).
- Materials and instructional programs appropriate for EL students.
- The ELPA should be the primary criterion to determine the student's level of English proficiency, unless the IEP Team decides that the student needs an alternate English proficiency test.
- Should ELPA be given with or without accommodations.
- The need to use alternate assessment in one or more required domain.

In the IEP

- Instruction needs to address both their linguistic and cultural characteristics and their disabilities.
    - May include:
        - Sheltered academic instruction
        - Mediating scaffolds – peer support
- Task scaffolds – reduce the information students must generate independently.
- Material scaffolds – learning prompts.
- Comprehensible input – language appropriate to the student's ELP.

504 Accommodation Plans

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal civil rights statute which provides:

> "No otherwise qualified individual with disabilities in the United States…shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance."

Although Section 504 protects all individuals with disabilities – students, staff, parents, and the public – this publication addresses Section 504 as it affects students in public schools. Since all public school districts receive federal funds, all public school districts (and public charter schools) must comply with Section 504. Additionally, public school districts are government entities covered by Title II of the Americans with Disabilities Act of 1990 (ADA), a federal law. This publication is designed to assist Oregon school districts to comply with these nondiscrimination laws. Section 504 is an evolving area of law, and readers should always supplement their understanding of Section 504 with current information.

To be in compliance with Section 504 and state nondiscrimination requirements for schools, school districts with more than 15 employees must do the following:

1. Designate an employee to coordinate compliance with Section 504.

2. Adopt and implement procedures to ensure interested persons can obtain information regarding the existence and location of services, activities, and facilities accessible to and usable by persons with disabilities.

3. Provide grievance procedures that have appropriate due process standards, and provide for the prompt and equitable resolution of complaints of discrimination.

4. Provide notices that the district does not discriminate in violation of Section 504. The notification must state, where appropriate, the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity.

5. Provide notice of the designated employee, how to obtain information about access, the grievance procedures, and the district's statement of nondiscrimination to students, parents, employees, unions, and professional organizations. These notices should be included in student/parent handbooks and on the district's website.

Taken from: http://www.ode.state.or.us/policy/federal/civilrights/sec504info.doc

Additional resource, PowerPoint presentation:
http://www.ode.state.or.us/teachlearn/conferencematerials/sped/504_presentation.ppt

Talented and Gifted (TAG) Identification

In considering the pool of candidates for identification as TAG learners, it is important to note gifted students exist in all cultures, all races, all ethnicities, and all socio-economic groups. According to the Belin-Blank International Center for Gifted and Talented Education (2008), there is minimal research about the characteristics of gifted ELs. Characteristics appear in varying degrees in ELs who are identified as gifted. The following list was compiled by the Iowa Department of Education as possible giftedness indicators:

- Acquires a second language rapidly,
- Shows a high ability in mathematics,
- Displays a mature sense of diverse cultures and languages,
- Code switches easily (think in both languages),
- Demonstrates an advanced awareness of American expressions,
- Translates at an advanced level,
- Navigates appropriate behaviors successfully within both cultures (Belin-Blank, pg 12).

Identifying ELs for gifted programming begins with collaboration among classroom teachers, gifted/talented educators, and EL educators, and is supported by ORS and OAR: http://www.ode.state.or.us/search/page/?id=2309 In identifying EL students for TAG identification, educators need to be especially sensitive to cultural bias in testing instruments and in the TAG nomination processes for students who are essentially caught between two languages. (Belin-Blank, pg 16 – 17)

Oregon Revised Statutes (ORS) 343.395 (4) define Talented and Gifted Children as:

- Those children who require special educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their

contribution to self and society and who demonstrate outstanding ability or potential in one or more of the following areas:
    - General intellectual ability as commonly measured by measures of intelligence and aptitude.
    - Unusual academic ability in one or more academic areas
- Districts may also identify students in the follow areas:
    - Creative ability in using original or nontraditional methods in thinking and producing.
    - Leadership ability in motivating the performance of others either in educational or non-educational settings.
    - Ability in the visual or performing arts, such as dance, music, or art.

Oregon Administrative Rule (OAR) 581-022-1310 (2)(a) requires districts to "make efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged."

Further, this rule indicates "despite a student's failure to qualify" under the traditional methods of identification that "districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile". Once identified, OARs described under OAR 581-022-1330 (4) requires "the instruction provided to identify students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning".

Further considerations: The Oregon process for any student to be identified as TAG requires the nomination process include a "body of evidence" which should include the results of at least one nationally normed test and should also include convergent testing data, evidence of classroom performance, parent and teacher recommendations, work portfolios, and classroom observations. It is important to note the parent survey should be in the parents' native language, if possible. No single measurement, nor the results of one test, can be used as the sole criterion for TAG education identification in Oregon.

Once the student is identified, she or he should receive services in the area of identification. The testing instrument used for identification defines the student's area of identified giftedness. It is important for parents and teachers to know the student's area(s) of gifted identification so the services are accurately provided.

There are complicating factors in identifying a student who are also receiving EL services. Here are some considerations:

- For example, if the student scored at the 97th percentile on a non-verbal instrument, he or she may still be struggling with the nuances of second language acquisition. In an attempt to improve this situation, many educators assume that testing the student in his/her native language for gifted education might be the answer. An example of this would be testing a native Spanish speaker for TAG on a test that is written in Spanish. At this point, it would be extremely important to know if the student speaks and reads Spanish. This may not be the case; the student may not read or write Spanish, and may have verbal skills which only encompass "speaking Spanish".
- For some cultures, parents do not seek recognition for their child. Cultural values should be considered for TAG identification. Although TAG is a needs-based

program, it may not align to the family's cultural values to extol the abilities of one child and not all of the children in the family.

- Another consideration is the "element of expectation" once a student is identified to receive TAG education services. It is most likely important for the student to continue to receive EL services. In addition, gifted education identification can set an extraordinary learning path for a student. However, when a student is identified as gifted, both the teacher's and the family's expectations rise. In a corollary manner, the student's self-expectation also rises. While a student is still acquiring English language skills, he or she should be afforded opportunities to check-in with teachers on appropriate levels of expectation both from the student's and parent's points of view and from the teacher's point of view. This collaboration of expectations serves the newly identified EL/TAG student in the best possible way.

Below are some resources to assist parents and teachers to further understand the needs of high ability TAG students who may be culturally and linguistically diverse.

Link to Oregon Department of Education Talented and Gifted (TAG) Parent and Guardian Brochure. The TAG brochure has been translated into the five most frequently occurring languages in Oregon.
http://www.ode.state.or.us/teachlearn/specialty/tag/giftedbrochure.pdf

Link to the National Association for Gifted Children (NAGC) position paper on Identifying Culturally and Linguistically Diverse Learners:
http://www.nagc.org/uploadedFiles/PDF/Position_Statement_PDFs/Identifying%20and%20Serving%20Culturally%20and%20Linguistically%20Diverse%20Gifted%20Students.pdf

Recommended Reading: *Cultural Competence, A Primer for Educators* by Jerry V. Diller and Jean Moule, 2005, Wadsworth, Thomson Learning, Inc.

Recommended Resource: *Identifying Gifted and Talented English Language Learners*, *Grades K-12*, the Iowa Department of Education, published by the Belin-Blank International Center for Gifted Education and Talent Development (2008) Click on the following link: http://educateiowa.gov/index.php?option=com_content&task=view&id=421&Itemid=2167 , then on the embedded link, under "Gifted & Talented Connections".

CHARTER SCHOOLS

Although public charter schools are exempt from **ORS 336.079**, applicable state and federal anti-discrimination laws require public charter schools to identify ELs and provide them with appropriate programs to overcome their language barriers. Whether a particular program is appropriate under federal law depends on whether it: (1) is based on a **sound educational theory or legitimate experimental strategy**; (2) implemented effectively; and (3) produces results that demonstrate that language barriers are being overcome. Oregon requirements are, most likely, substantially the same as federal requirements.

(1) **Sound educational theory or legitimate experimental strategy –** Castañeda (see legal resources) requires districts to use educational theories that are recognized as sound

by some experts in the field, or at least theories recognized as legitimate educational strategies. Some approaches falling under this category include transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL). A public charter school using any of these approaches has complied with the first requirement of Castaneda. If a district is using a different approach, it is in compliance with Castañeda if it can show that the approach is considered sound by some experts in the field or that it is considered a legitimate experimental strategy.

(2) **Implemented effectively -** If a public charter school uses a program model such as ESL or structured immersion, the public charter school should have ascertained teachers who use those methods are effective in their implementation. This training can take the form of in-service training, formal college coursework, or a combination of the two. In addition, a public charter school should be able to show it has determined its teachers have mastered the skills necessary to teach effectively in a program for LEP students. In making this determination, the public charter school should use validated evaluative instruments -- that is, tests that have been shown to accurately measure the skills in question. The public charter school should also have the teacher's classroom performance evaluated by someone familiar with the method being used.

If a public charter school has shown it has unsuccessfully tried to hire qualified teachers, it must provide adequate training to teachers already on staff to comply with the Title VI regulation. (See Castañeda, 648 F. 2d at 1013.) Such training must take place as soon as possible. For example, public charter schools sometimes require teachers to work toward obtaining a credential as a condition of employment in a program for LEP students. This requirement is not, in itself, sufficient to meet the public charter school's obligations under the Title VI regulation. To ensure that LEP students have access to the public charter school's programs while teachers are completing their formal training, the public charter school must ensure those teachers receive sufficient interim training to enable them to function adequately in the classroom, as well as any assistance that may be necessary to carry out the public charter school's interim program.

(3) **Produces results that demonstrate language barriers are being overcome.** Programs of service for ELs are required to meet three state goals measured annually by the state assessment system: 1) demonstrate ELs have progressed one proficiency level higher at the end of each school year; 2) demonstrate that a set number and percent of ELs who have been enrolled in an ELD program for five years or more have achieved proficiency; and 3) the EL sub-group have met the AYP as required by the ESEA and as measured by OAKS reading and mathematics.

OAR 581-0210-0046(8) requires public charter schools to (1) develop and implement a plan for identifying students whose primary language is other than English, and (2) provide those students with "appropriate programs" until they are able to effectively participate in regular classroom instruction. OAR 581-021-0046(8) does not set out the requirements for "appropriate programs"' nor have Oregon courts addressed that issue. Oregon courts would likely construe the requirements of "appropriate programs"' similarly to how federal courts construe requirements for taking "appropriate action" under federal anti-discrimination laws.

If a district is using a different approach, it is in compliance with Castaneda if it can show the approach is considered sound by some experts in the field or it is at least, deemed a legitimate experimental strategy:

Also, the USDOE OCR in The Provision of an Equal Education Opportunity to Limited-English Proficient Students (2000) has provided non-formal general guidelines for districts to ensure that they meet the needs of EL's:
http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html

ALTERNATIVE SCHOOLS AND PROGRAMS

Alternative Schools

How are EL students served in alternative education settings?

- Public Alternative Schools (OAR 581-022-1350)
  Alternative programs may occur within a traditional school or public alternative school.
- Private Alternative Schools (OAR 581-021-0072, 0074)

Same lawful requirements as traditional public schools:

- Education plan and profile
- Career related learning experiences
- Transportation
- SPED
- Background checks for staff
- Comprehensive Guidance and Counseling

Additional requirements for Alternative Schools:

- Transition plan
- Transportation plan
- Special Education Transition Plan

What resources are available?

Alternative Education web site http://www.ode.state.or.us/search/results/?id=78
Oregon State School Directory http://www.ode.state.or.us/search/results/?id=227
Alternative School Evaluation Toolkits http://www.ode.state.or.us/search/page/?id=731
Comprehensive Guidance and Counseling http://www.ode.state.or.us/search/results/?id=132

How might ELD instruction in an alternative education setting be different than a traditional school?

- ELD instructional period may look different, less time, etc.
- Small group or individual instruction
- Homeroom and advisory periods to support non-academic skills
- District counts by hours of instruction “part-time”
- Drug/alcohol intervention/counseling may be included in the program

- Instructors may or may not have the same academic background and licensure as ELD instructors in traditional school:
  - public alternative schools = same licensure requirements as traditional schools
  - private alternative schools (contractors) = not required to employ only licensed teachers or administrators (see ORS 336.635 (3))

JDEP, YCEP, LCTC

JDEP - Juvenile Detention Education Program
YCEP - Youth Correctional Education Program
LCTC - Long-Term Care and Treatment Education Programs

All the Youth Correctional Education Programs (YCEP) and Juvenile Detention Education Program (JDEP) sites adhere to the current EL service and reporting requirements. The client services contracts that ODE has with each school district or educational service districts to provide the educational services have the following paragraph as a requirement.

> *Contractor's Education Program shall comply with all requirements of OAR Chapter 581, Division 22 (Standards for Public Elementary and Secondary Schools), to the extent appropriate given the student's anticipated length of stay, and OAR Chapter 581, Division 15 (Special Education) and all state and federal statutes and regulations referenced therein. Contractor shall comply with all other state and federal laws, regulations, and administrative rules applicable to the services provided under this Contract.*

The YCEP has two points of entry referred to as "intake" into the YCEP system: Farrell HS for the boys and Three Lakes HS for the girls. At each intake program, the students are assessed to determine whether they are eligible for ESL services. The student's status is designated in the statewide student information system that all the YCEP and JDEP schools utilize. Each year, the different sites administer the ELPA as appropriate for each student.

Additional information is available at:
JDEP and YCEP: http://www.ode.state.or.us/search/results/?id=158
LTCT: http://www.ode.state.or.us/search/results/?id=79

OREGON DIPLOMA REQUIREMENTS

http://www.ode.state.or.us/search/results/?id=368

ESSENTIAL SKILLS

In January 2007, the State Board adopted Essential Skills as a requirement for graduation. After public review and input, the Essential Skill definitions were adopted by the State Board of Education in March 2008. Beginning in 2012, students must demonstrate proficiency in identified essential skills to receive a high school diploma. The essential skills are process skills occurring across academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

Specific Essential Skills graduation requirements are based on the year the student first enrolled in Grade 9:

- Enrolled in Grade 9 in 2010-11 and beyond: Read and comprehend a variety of text; write clearly and accurately; and apply mathematics in a variety of settings.
- The remaining Essential Skills will be phased-in over subsequent years - timeline to be determined.

Essential Skills:

1. Read and comprehend a variety of text
2. Write clearly and accurately
3. Apply mathematics in a variety of settings

The following Essential Skills will be phased-in after 2014; timeline to be determined:

4. Listen actively and speak clearly and coherently
5. Think critically and analytically
6. Use technology to learn, live, and work
7. Demonstrate civic and community engagement
8. Demonstrate global literacy
9. Demonstrate personal management and teamwork skills

In support of the Essential Skills graduation requirement, many districts will offer work samples as an assessment option for their students. As districts build their local assessment systems, they will need to develop or acquire work sample resources such as prompts and scoring. ODE has developed a list of districts that have work sample resources in a variety of languages that are available to share with other districts in the areas of Reading, Writing, and Math. The list is located at:
http://www.ode.state.or.us/wma/teachlearn/testing/resources/work-sample-sharing.xls

Please visit the Essential Skills website for additional information:
http://www.ode.state.or.us/search/page/?id=2042

ADDITIONAL RESOURCES

Office of Civil Rights
http://www2.ed.gov/about/offices/list/ocr/qa-EL.html

Office of the State Superintendent of Education (OSSE)
http://seo.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/TA%20-%20Title_III_Part_A_8_31_09.pdf

Title III web page:
http://www.ode.state.or.us/search/results/?id=106

Title III Contact List:
http://www.ode.state.or.us/search/page/?id=2593

STATUES, RULES, AND MEMORANDUMS: SERVICES FOR ENGLISH LEARNERS

Federal Law

Each LEA receiving Title III funds is required by federal law to meet minimum program requirements. Federal laws relating to the distribution and use of Title III funds are found in the current ESEA document: http://www2.ed.gov/policy/elsec/leg/esea02/pg39.html

Title III – Language Instruction for Limited English Proficient and Immigrant Students

SEC. 3102. PURPOSES.

The purposes of this part are —

(1) to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;

(2) to assist all limited English proficient children, including immigrant children and youth, to achieve at high levels in the core academic subjects so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet, consistent with section 1111(b)(1);

(3) to develop high-quality language instruction educational programs designed to assist State educational agencies, local educational agencies, and schools in teaching limited English proficient children and serving immigrant children and youth;

(4) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;

(5) to assist State educational agencies, local educational agencies, and schools to build their capacity to establish, implement, and sustain language instruction educational programs and programs of English language development for limited English proficient children;

(6) to promote parental and community participation in language instruction educational programs for the parents and communities of limited English proficient children;

(7) to streamline language instruction educational programs into a program carried out through formula grants to State educational agencies and local educational agencies to help limited English proficient children, including immigrant children and youth, develop proficiency in English, while meeting challenging State academic content and student academic achievement standards;

(8) to hold State educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by requiring —

(A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and

(B) adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 1111(b)(2)(B); and

(9) to provide State educational agencies and local educational agencies with the flexibility to implement language instruction educational programs, based on scientifically based research on teaching limited English proficient children, that the agencies believe to be the most effective for teaching English.

Funds are directed to states and eligible local districts or consortia through a formula grant allocation to:

- develop high-quality language instruction educational programs;
- assist SEAs. LEAs, and schools to build their capacity to establish, implement, and sustain language instruction and development programs;
- promote parental and community involvement; and to
- hold SEAs, LEAs, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by:

(A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and

(B) adequate yearly progress for limited English proficient children, including immigrant children and youth, as described in section 1111(b)(2); and (B)

The link to U.S. Department of Education Private School Participation, Sec. 9501 is:
http://www2.ed.gov/policy/elsec/leg/esea02/pg111.html

The Non-Regulatory Guidance for ESEA 9501 can be found at:
http://www2.ed.gov/programs/titleiparta/psguidance.doc

SEC. 3116. LOCAL PLANS (AKA Plan of Service/Lau Plan).

(a) PLAN REQUIRED.—Each eligible entity desiring a sub-grant from the State educational agency under section 3114 shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(b) CONTENTS. Each plan submitted under subsection (a) shall—

- describe the programs and activities proposed to be developed, implemented, and administered under the sub-grant;‘‘

- describe how the eligible entity will use the sub-grant funds to meet all annual measurable achievement objectives described in section 3122;
- describe how the eligible entity will hold elementary schools and secondary schools receiving funds under this subpart accountable for—
    - meeting the annual measurable achievement objectives described in section 3122;
    - making adequate yearly progress for limited English proficient children, as described in section 1111(b)(2)(B); and
    - annually measuring the English proficiency of limited English proficient children, so that such children served by the programs carried out under this part develop proficiency in English while meeting State academic content and student academic achievement standards as required by section 1111(b)(1);
- describe how the eligible entity will promote parental and community participation in programs for limited English proficient children;
  contain an assurance that the eligible entity consulted with teachers, researchers, school administrators, and parents, and, if appropriate, with education-related community groups and nonprofit organizations, and institutions of higher education, in developing such plan; and
- describe how language instruction educational programs carried out under the subgrant will ensure that limited English proficient children being served by the programs develop English proficiency.

(c) TEACHER ENGLISH FLUENCY. Each eligible entity receiving a sub-grant under section 3114 shall include in its plan a certification that all teachers in any language instruction educational program for limited English proficient children that is, or will be, funded under this part are fluent in English and any other language used for instruction, including having written and oral communications skills.

(d) OTHER REQUIREMENTS FOR APPROVAL. Each local plan shall also contain assurances that—

- each local educational agency that is included in the eligible entity is complying with section 3302 prior to, and throughout, each school year;
- the eligible entity annually will assess the English proficiency of all children with limited English proficiency participating in programs funded under this part;
- the eligible entity has based its proposed plan on scientifically based research on teaching limited English proficient children;
- the eligible entity will ensure that the programs will enable children to speak, read, write, and comprehend the English language and meet challenging State academic content and student academic achievement standards; and
- the eligible entity is not in violation of any State law, including State constitutional law, regarding the education of limited English proficient children, consistent with sections 3126 and 3127.

Subpart 2—Accountability and Administration”

SEC. 3121. EVALUATIONS.

(a) IN GENERAL. Each eligible entity that receives a sub-grant from a State educational agency under subpart 1 shall provide such agency, at the conclusion of every second fiscal year during which the sub-grant is received, with an evaluation, in a form prescribed by the agency, that includes—

- a description of the programs and activities conducted by the entity with funds received under subpart 1 during the two immediately preceding fiscal years;
- a description of the progress made by children in learning the English language and meeting challenging State academic content and student academic achievement standards;
- 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
- 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—

- for improvement of programs and activities;
- to determine the effectiveness of programs and activities in assisting children who are limited English to attain English proficiency (as measured consistent with subsection (d)) and meet challenging State academic content and student academic achievement standards; and
- in determining whether or not to continue funding for specific programs or activities.

(c) EVALUATION COMPONENTS. An evaluation provided by an eligible entity under subsection (a) shall—

- provide an evaluation of children enrolled in a program or activity conducted by the entity using funds under subpart 1 (including the percentage of children) who—
    - are making progress in attaining English proficiency, including the percentage of children who have achieved English proficiency;
    - have transitioned into classrooms not tailored to limited English proficient children, and have a sufficient level of English proficiency to permit them to achieve in English and transition into classrooms not tailored to limited English proficient children;
    - are meeting the same challenging State academic content and student academic achievement standards as all children are expected to meet; and
    - are not receiving waivers for the reading or language arts assessments under section 1111(b)(3)(C); and
- include such other information as the State educational agency may require.

(d) EVALUATION MEASURES. A State shall approve evaluation measures for use under subsection (c) that are designed to assess—

- the progress of children in attaining English proficiency, including a child's level of comprehension, speaking, listening, reading, and writing skills in English;
- student attainment of challenging State student academic achievement standards on assessments described in section 1111(b)(3); and
- progress in meeting the annual measurable achievement objectives described in section 3122.

(e) SPECIAL RULE FOR SPECIALLY QUALIFIED AGENCIES. Each specially qualified agency receiving a grant under this part shall provide the evaluations described in subsection (a) to the Secretary subject to the same requirements as apply to eligible entities providing such evaluations to State educational agencies under such subsection.

PROGRAM EVALUATION, REVIEW AND IMPROVEMENT PLANS

ACCOUNTABILITY-ESEA 20 USC 6842 Sec. 3122

(1) FOR STATES- Each State educational agency receiving a grant under subpart 1 shall hold eligible entities receiving a sub-grant under such subpart accountable for meeting the annual measurable achievement objectives under subsection (a), including making adequate yearly progress for limited English proficient children.

(2) IMPROVEMENT PLAN- If a State education agency determines, based on the annual measurable achievement objectives described in subsection (a), that an eligible entity has failed to make progress toward meeting such objectives for 2 consecutive years, the agency shall require the entity to develop an improvement plan that will ensure that the entity meets such objectives. The improvement plan shall specifically address the factors that prevented the entity from achieving such objectives.

(3) TECHNICAL ASSISTANCE- During the development of the improvement plan described in paragraph (2), and throughout its implementation, the State educational agency shall —

(A) provide technical assistance to the eligible entity;

(B) provide technical assistance, if applicable, to schools served by such entity under subpart 1 that need assistance to enable the schools to meet the annual measurable achievement objectives described in subsection (a);

(C) develop, in consultation with the entity, professional development strategies and activities, based on scientifically based research, that the agency will use to meet such objectives;

(D) require such entity to utilize such strategies and activities; and

(E) develop, in consultation with the entity, a plan to incorporate strategies and methodologies, based on scientifically based research, to improve the specific program or method of instruction provided to limited English proficient children.

(4) ACCOUNTABILITY- If a State education agency determines that an eligible entity has failed to meet the annual measurable achievement objectives described in subsection (a) for four consecutive years, the agency shall —

(A) require such entity to modify the entity's curriculum, program, and method of instruction; or

(B)

(i) make a determination whether the entity shall continue to receive funds related to the entity's failure to meet such objectives; and
(ii) require such entity to replace educational personnel relevant to the entity's failure to meet such objectives.

LEGAL REFERENCES

There are both Federal and State Laws governing the implementation of ELL programs. In addition, there is a requirement for all public schools to follow the guidelines 1) 1868 - Fourteenth Amendment - "No state shall deny to any person within its jurisdiction the equal protection of the laws."

3) Bilingual Education Act (Amended in 1974 and 1978) - "The Congress declared it to be the policy of the United States, in order to establish equal educational opportunity for all children, (a) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods; and (b) for that purpose, to provide financial assistance to local education agencies, and to State education agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs in elementary and secondary schools, including activities at the pre-school level, which are designed to meet the educational needs of such children; and to demonstrate effective ways of providing, for children of limited English speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language."

The United States Office of Civil Rights (OCR)
http://www2.ed.gov/about/offices/list/ocr/index.html

Overview of the Agency

The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.

We serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems. An important responsibility is resolving complaints of discrimination. Agency-initiated cases, typically called compliance reviews, permit OCR to target resources on compliance problems that appear particularly acute. OCR also provides technical assistance to help institutions achieve voluntary compliance with the civil rights laws that OCR enforces. An important part of OCR's technical assistance is partnerships designed to develop creative approaches to preventing and addressing discrimination.

Step 1: Determine the planned Educational Approach.

Step 2: Have a system for identification.

Step 3: Have a planned assessment to determine students who have identified a primary language other than English on the HLS for English proficiency.

Step 4: Develop a system for placement and services.

Step 5: Provide adequate staffing and resources.

- Ensure instructional staff are appropriate to implement services, have the educational expertise, and are qualified to implement services.
- Recruit and hire qualified staff, and establish a timetable to have them in place.
- Identify and meet training needs.
- Identify and obtain resources needed to implement the ELL program.

Step 6: Develop and communicate a consistent system for transition/exiting students.

Step 7: Monitoring.

- Monitor the success of former EL students for two years after exiting bilingual/ESL program.
- Determine how often students will be monitored and what information will be reviewed to measure success.
- If a student is not successful, determine whether the causes are language, academics, or other reasons.
- Have procedures in place to assist students.
- Inform parents of service options.

Step 8: Program Evaluation.

In order to meet state regulatory requirements, LEAs should have a system of evaluating their programs in place. It will likely include:

- Description of programs and activities;
- ELs' progress in English and academic achievement;
- Determine effectiveness of programs and activities;
- Determine whether to continue funding for specific programs or activities.

State Educational Agency (SEA) Responsibilities:

- Allocate sub-grants and provide technical assistance to LEAs, creating systems to complying with federal and state program requirements.
- Participate in monitoring of LEAs.
- Establish and calculate AMAOs.
- Provide technical assistance.
- Collect and synthesize data on effectiveness of services and activities.
- Report to the USDOE on the effectiveness of services in improving the education of EL students.

Oregon State Laws

Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) for Education related to ELs are listed on page 67 in the Appendix section of this guide. The Appendix lists the sections in OAR and ORS that pertain to ELs, with hyperlinks to specific sections for viewing of complete text. Web page addresses for OAR and ORS sites are:

OAR: http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html

ORS: http://www.leg.state.or.us/ors/home.htm

The following OAR and ORS are a few, but not all, of those relating to ELs.

ORS 336.079 Special English courses for certain children. Specific courses to teach speaking, reading, and writing of the English language shall be provided at kindergarten and each grade level to those children who are unable to profit from classes taught in English. Such courses shall be taught to such a level in school as may be required until children are able to profit from classes conducted in English. [1971 c.326 §3; 1993 c.45 §77]

ORS 659.850 Discrimination in education prohibited; rules.
(1) As used in this section, "discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. "Discrimination" does not include enforcement of an otherwise valid dress code or policy, as long as the code or policy provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.
(2) A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.
(3) The State Board of Education and the State Board of Higher Education shall establish rules necessary to ensure compliance with subsection (2) of this section in the manner required by ORS chapter 183. [Formerly 659.150; 2007 c.100 §29]

OAR 581-021-0046(8) Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

OAR 581-023-0100 (4)
(4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:
(a) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;
(b) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;
(c) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;
(d) Adequate equipment and instructional materials;

(e) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.
(f) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.
(g) Process for transition from ELL Services that include procedures and criteria for determining when students no longer need those services. The criteria shall include:

(A) Achieving at the Advanced level on the State's English Language Proficiency Assessment (ELPA).
(B) The Advanced level is a culmination of progress demonstrated on the same state proficiency measure over a legitimate period of time.

Case Law and Related Statutes

Title VI of the Civil Rights Act of 1964 and its regulations at 34 CFR Part 100 2) -"No person in the U.S. shall, on the ground of race, color, national origin be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

May 25, 1970, Memorandum, Department of Health, Education, and Welfare - This memorandum interpreted the Civil Rights Act. It delineates the responsibility of school districts in providing equal education opportunity to national origin minority group students whose English language proficiency is limited. The following quotes discuss some major areas of concern with respect to compliance with Title VI and have the force of Law:

> "Where inability to speak and understand the English language exclude national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."
>
> "School districts have the responsibility to adequately notify national origin minority group parents of school activities which are called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English."
>
> "School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin minority group children access to college preparation courses on a basis directly related to the failure of the school system to inculcate English language skills."

5) 1974 - Equal Educational Opportunities Act (EEOA) - "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or nation origin, by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

Title II of the Americans with Disabilities Act of 1990, 42 USC 12131-12161
Individuals with Disabilities Educational Improvement Act (IDEIA) of 2004

Lau v. Nichols The decision stated that providing students the same desks, books, teachers and curriculum did not ensure that they had equal educational opportunity, particularly if the students did not speak English. If English is the mainstream language of instruction, then measures have to be taken to ensure that instruction is adapted to address those children's linguistic characteristics (Lau v. Nichols, 414 U.S. 563, 94 S. Ct. 786, 1974).

Castaneda v Pickard, 648 F2d 989(5th Cir 1981), the 5th Circuit set out a widely adopted three-part test to determine whether districts have taken "appropriate action" to remedy the language deficiencies of their ELs: (1) is the school "pursuing a program informed by an educational theory recognized as sound by some experts in the field, or at least, deemed a legitimate experimental strategy"; (2) are the programs and practices actually used by the school "reasonably calculated to implement effectively the educational theory adopted by the school"; and (3) does the program "produce results indicating that the language barriers confronting students are actually being overcome". Congress intended that schools make a "genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students".

OREGON ADMINISTRATIVE RULES (OAR) AND OREGON REVISED STATUTES (ORS)

Web page addresses for OAR and ORS sites are:

OAR: http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html
ORS: http://www.leg.state.or.us/ors/home.htm

The following is a list of OAR and ORS that relate to ELs, with hyperlinks to the specific section.

Oregon Department of Education			
Type	**Number**	**Title**	**Click on Link, then scroll down to specific number**
OAR	**581-021-0030**	**Limitation on Administration and Utilization of Tests in Public Schools**	OAR 581-021-0030
OAR	**581-021-0045**	**Discrimination Prohibited**	OAR 581-021-0045
OAR	**581-021-0046**	**Program Compliance Standards**	OAR 581-021-0046
OAR	**581-021-0260**	**An Educational Agency or Institution's Annual Notification**	OAR 581-021-0260
OAR	**581-022-0610**	**Administration of State Assessments**	OAR 581-22-0610
OAR	**581-022-0615**	**Assessment of Essential Skills**	OAR 581-22-0615
OAR	**581-022-0617**	**Essential Skill Assessments for English Language Learners**	OAR 581-22-0617

Oregon Department of Education			
Type	**Number**	**Title**	**Click on Link, then scroll down to specific number**
OAR	**581-022-1140**	**Equal Educational Opportunities**	OAR 581-22-1140
OAR	**581-022-1363**	**Expanded Options -- Definitions**	OAR 581-22-1363
OAR	**581-023-0100**	**Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution**	OAR 581-023-0100
ORS	**327.013**	**State School Fund distribution computations for school districts**	ORS 327.013
ORS	**327.345**	**Grants for training English as second language teachers; qualifications; use; rules**	ORS 327.345
ORS	**336.074**	**Teaching in English required; exceptions**	ORS 336.074
ORS	**336.079**	**Special English courses for certain children**	ORS 336.079
ORS	**336.081**	**Opportunity to qualify to assist non-English-speaking students**	ORS 336.081
ORS	**339.351**	**Definitions for ORS 339.351 to 339.364.**	ORS 339.351
ORS	**659.850**	**Discrimination in education prohibited; rules**	ORS 659.850
ORS	**659.855**	**Sanctions for noncompliance with discrimination prohibitions**	ORS 659.855

Numbered Memorandum Pertaining to English Learners

Numbered Memorandum	Pertaining to	Link
011-2012-13	Postponement of Materials for English Language Proficiency and Development (ELP/D)	Executive Numbered Memo: 011-2012-13 – Postponement of Materials for English Language Proficiency and Development (ELP/D)
007-2011-12	ELL participation in annual English Language Proficiency Assessment (Revision)	MEMORANDUM NO. 007-2011-12 - ELL Participation in annual English Language Proficiency Assessment (Revision to MEMORANDUM NO. 006-2009-10)
007-2009-10	Assessment of Essential Skills Options for LEP Students	MEMORANDUM NO. 007-2009-10 – Assessment of Essential Skills Options for LEP Students
006-2009-10	ELL participation in annual English Language Proficiency Assessment(original)	MEMORANDUM NO. 006-2009-10 – ELL Participation in annual English Language Proficiency Assessment (ELPA)
002-2008-09	Promoting, Retaining, and Exiting English Language Learners from English Language Development Program	Memo # 002-2008-09 Promoting, Retaining and Exiting English Language Learners from English Language Development Program
010-2006-07	New federal regulations and assessment options for LEP	Memo # 010-2006-07 New federal regulations and assessment options for LEP
024-2005-06	Meeting State Annual Measurable Achievement Objectives (AMAOs)	Memo # 024-2005-06 Meeting State Annual Measurable Achievement Objectives (AMAOs)
005-2005-06	Oregon's New English Language Proficiency Assessment (ELPA)	Memo # 005-2005-06 Oregon's New English Language Proficiency Assessment (ELPA)
029-2003-04	Assessing New LEP students (identification as English Learner)	Memo # 029-2003-04 Assessing New Limited English Proficient Students