

## **U.S. Department of Education Issues Guidance Regarding Providing Services to English Learners During COVID-19 Outbreak**

The May 18, 2020 guidance sets forth the obligations for State and local educational agencies (SEAs and LEAs) when providing services to English learners (ELs) during COVID-19 related school closures and remote learning. The guidance, the highlights of which are summarized below, covers issues such as annual proficiency assessments, entrance requirements, accommodations, and exit procedures.

- *What if a SEA cannot administer an English language proficiency assessment, required by the Elementary and Secondary Education Act (ESEA), as a result of COVID-19 related school closures?*

The fact sheet states that the Department will waive the requirement that all SEAs to administer English language proficiency (ELP) assessments to English learners (ELs) in spring 2020 where the SEA is unable to administer the ELP as a result of the COVID-19 related school closures.

In this situation, SEAs have the option to administer the ELP assessment in the fall of 2020, where possible, in accordance with the state's exit procedures. While all SEAs were granted the waiver, a SEA may continue administering portions of their state assessments.

A SEA that completed some but not all ELPs for ELs in the 2019-2020 school year is not required to administer the ELP assessments to remaining ELs that were not assessed this year. However, all states are required to administer ELP assessments in the coming 2020-2021 school year.

- *How should SEAs make decisions regarding instruction and placement of ELs without the ELP assessment?*

In the event that a SEA cannot complete its ELP assessment for ELs, the SEA and LEAs may re-schedule the ELP assessment for the fall of the 2020-2021 school year (if school reopens) and use the results for instruction and placement decisions. Alternatively, SEAs and LEAs may use other resources to make instructional and placement decisions once school reopens, such as input from teachers and EL specialists.

The Department recommends closely monitoring EL students who have already taken the ELP assessment, including those who have exited EL status, to determine if they require additional services as their proficiency may have decreased since taking the ELP assessment because of limited instruction due to school closures.

- *What about EL students moving into a new LEA that is currently closed because of COVID-19?*

If a LEA is not providing any educational services to students because its schools are physically closed, then there is no obligation to screen new students for EL status. LEAs conducting remote learning, however, must screen new students to determine EL status. Ordinarily, the ESEA

requires new students to be screened within thirty (30) days of enrollment in a school and for students who enroll after the beginning of the school year, the LEA must send the required parent notice within two weeks of placing a student in a language instructional educational program.

However, because of the COVID-19 crisis, LEAs who continue to enroll new students should attempt to identify ELs remotely to the “greatest extent possible.” For example, the Department recommends including a home language survey as part of the student’s online registration process or conducting part of its screening assessment online. Additionally, LEAs may communicate with parents by phone using interpreters, if needed, to conduct home language surveys and to communicate the information normally required in the parent notice.

The Department notes that funding allocated to LEAs through either the Elementary and Secondary School Emergency Relief Fund (ESSERF) or the Governor’s Emergency Education Relief Fund (GEERF), which was part of the CARES Act, may be used for these purposes. Once school reopens, the LEA should complete the full screening and identification process to ensure proper identification and placement of ELs.

- *Can a LEA presumptively identify EL students based solely on an oral home language study where the state entrance procedures require additional criteria (e.g. screener assessment)?*

Recognizing the difficulties presented by COVID-19 closures, the guidance provides that SEAs and LEAs may adjust their statewide entrance procedures temporarily to identify EL students, including home language surveys and appropriate follow-up measures.

- *Are LEAs conducting remote learning required to provide language services to ELs?*

Yes, if an LEA is providing remote learning for its students then it must provide language instruction services to ELs. However, the guidance recognizes that many LEAs may not be able to provide all services in the same manner due to the COVID-19 related closures. The Department recommends providing continuity in providing language services to ELs to the greatest extent possible and encourages parents, teachers, and administrators to collaborate creatively to meet the needs of ELs.

Additionally, the Department notes that there is no particular program or method of instruction required for or a standard amount of time that must be devoted to students under the ESEA.

- *Are LEAs operating remotely required to provide language accommodations for ELs as part of content classes?*

Yes. Such accommodations may include time extensions for assignments, accessible or translated reading materials, videos with captioning, online translation dictionaries, and other language services provided through videoconferencing.

Again, funds received under the ESSERF or the GEERF may be used for these purposes. The guidance also states that LEAs may comply the requirement to provide meaningful access to

remote learning through equally effective alternative means in situations where materials are not available in an accessible format.

- *Must LEAs continue to provide a free appropriate public education to ELs with disabilities during a COVID-19 related school closure?*

LEAs that continue to provide educational opportunities to its general student population during a school closure are also required to provide equal access to the same opportunities for ELs with disabilities. SEAs, LEAs, and schools must ensure that to the greatest extent possible, each student with a disability, including ELs, can be provided with special education and related services identified in the student's IEP or plan developed under 504.

- *Must LEAs operating remotely provide equitable services to ELs enrolled in private schools?*

Yes, LEAs are obligated to provide equitable services to private school ELs and their teachers as agreed upon during the consultation process between the LEAs and private school officials. The Department, however, recognizes that additional collaboration may be needed to determine if any barriers exist to receiving services by remote learning.

- *Can an LEA exit EL students without administering the ELP assessment? Should ELs remain in that status in the fall, even if their teachers consider them proficient, when they have not completed the ELP assessment?*

LEAs may not exit an EL from such status unless the student has demonstrated proficiency on a valid and reliable assessment that includes four domains of listening, speaking, reading, and writing. LEAs that are unable to administer the ELP assessment in the spring of 2020, may administer the ELP assessment in the fall of 2020 (when possible) to determine exit procedures.

- *How can funds under Title III of the ESEA be used to support ELs?*

Title III funds may be used to only supplement the basic instruction or support that must be provided to ELs as the supplement-not supplant requirement applies to funds under Title III of the ESEA.

For example, an LEA may not use Title III funds to provide internet access and educational technology as part of remote learning for EL students, including low income EL students, if it provides similar services to other students who are not ELs. The guidance provides that LEAs should use state, local and other federal funds to provide internet access and educational technology for ELs. LEAs may use Title III funds for supplemental educational technology designed specifically for ELs.

In another example provided in the guidance, LEAs may use Title III funding to train teachers on technology that is geared toward meeting the needs of ELs, but may not use Title III funding for to train teachers on technology that would be used in all classes and does not address EL needs.

- *Can SEAs change or waive additional exit procedures for ELs during the COVID-19 crisis?*

SEAs may adjust exit procedures for the 2019-2021 school year to eliminate any additional requirements beyond the ELP assessment. However, if the SEA administers the ELP assessment in the spring of 2021 in line with the state's normal schedule, then the SEA's normal additional exit procedures would apply. SEAs must ensure that any temporary changes regarding exit procedures are communicated statewide and should also maintain appropriate documentation of any such changes.

- *How should SEAs and LEAs communicate with parents of ELs?*

The guidance states that SEAs and LEAs have an obligation to ensure meaningful communication with parents of ELs in a language that they can understand. For example, LEAs should translate all mailings and emails to parents in a language that they can understand so that parents are adequately apprised about things like expectations regarding setting up new technology, and how to support students while remote learning. SEAs may use CARES Act funding under the ESSERF and GEERF for translation and interpretation services when communicating with parents.

Should you have any questions about this guidance or your obligation to continue providing services please do not hesitate to contact our office.

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