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English Learners
Program Guide

**Oregon Department of Education**

**Revised August 2023**

**This is a living document and subject to frequent updates. We recommend reviewing the document online rather than printing a hard copy.**

**Note: All yellow highlighted text reflects new information for 2023-24 SY.**

***This document includes information from the Elementary and Secondary Education Act; it is subject to change when additional guidance is received from the US 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. 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.

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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) - Facts Of The Case](http://usedulaw.com/362-lau-v-nichols.html)

# Oregon State English Learner Program Goals

English learner programs are expected:

* To help ensure that ELs, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English;
* To assist all ELs, including immigrant children and youth, to achieve at high levels in academic subjects so that all ELs can meet the same challenging State academic standards that all children are expected to meet;
* To assist teachers (including preschool teachers), principals and other school leaders, State educational agencies, local educational agencies, and schools in establishing, implementing, and sustaining effective language instruction educational programs designed to assist in teaching ELs, including immigrant children and youth;
* To assist teachers (including preschool teachers), principals and other school leaders, State educational agencies, and local educational agencies to develop and enhance their capacity to provide effective instructional programs designed to prepare ELs, including immigrant children and youth, to enter all-English instructional settings; and
* To promote parental, family, and community participation in language instruction educational programs for the parents, families, and communities of ELs.

## Acronyms, Common Vocabulary, and Frequently Used Terminology

| Acronym | What it stands for: | What it means: |
| --- | --- | --- |
| AI/AN | American Indian/Alaska Native | Aka: Native American/Alaska Native |
| Alt ELPA | Alternate English Language Proficiency Assessment  | Summative assessment specifically designed for students with English learner status and who experience the most significant cognitive disabilities. This assessment was implemented in the 2022-23 school year. |
| BICS | Basic Interpersonal Communication Skills | The language ability required for verbal face-to-face communication. |
|  | Castañeda v. Pickard - United States Court of Appeals decision**:** | 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 ELs: (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)]  |
| CBELD | Content-Based English Language Development | This is an instructional program that individuals may see referred to in some research articles. This is currently not an Oregon approved instructional model. |
| CALP | Cognitive Academic Language Proficiency | The language ability required for academic achievement. |
| CM | Constructing Meaning | Sheltered English instruction methodology - created by Susanna Dutro. |
|  | Culturally Responsive | Refers to the implicit use of the cultural knowledge, prior experiences, frames of reference, and performance styles of diverse individuals (students) in order to make learning more appropriate and effective for them. |
|  | Current ELs | These are students who are identified ELs that have not exited the program as proficient. They are included in the EL and the Ever-EL accountability calculations. |
| DB | Developmental Bilingual | Like Two-Way Immersion programs, these programs share the goals of bilingualism and biliteracy, and thus typically last through elementary school or longer (preferably through high school). Also, referred to Dual Language Immersion, Maintenance Bilingual or Late-Exit Bilingual Education programs, these are programs that use two languages, the EL 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. These programs are designed for and typically enroll only ELs. |
| DL | Dual Language | Another name for Dual Language Programs |
| DLI | Dual Language Immersion | Another name for Dual Language Programs |
| DLP | 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. |
| 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 and TA users within their district. DTSAs can set student test restrictions and access reports within their district. |
| EA | Educational Assistant | (aka: Instructional Assistant) Educational assistants who work under the supervision of an appropriately licensed teacher may provide instructional support pursuant to OAR 581-038-0005-0025. |
| EB | Emergent Bilingual | Another name for English learner |
| EL | English Learner | An identified student who qualifies for additional support in school in acquiring academic English proficiency. |
| ELD | English Language Development | A program of techniques, methodology, and special curriculum designed to teach EL students English language skills, including listening, speaking, reading, writing, study skills, content vocabulary, and cultural orientation. ELD instruction is in English with little or no use of native language. |
| ELL | English Language Learner | Another term for English Learner. |
|  | EL Plan  | **(aka Local Plan or Lau Plan) From Federal** [Title III Statutes: SEC 3116 Local Plans](https://www2.ed.gov/policy/elsec/leg/esea02/pg41.html)Each eligible entity desiring a subgrant from the State educational agency (SEA) under section 3114 shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the SEA may require. The Office for Civil Rights uses the phrase “Lau Plan”. |
| ELP | English Language Proficiency | Typically used to describe the state standards for English language acquisition. |
| ELPA Summative | English Language Proficiency Assessment  | **Oregon’s annual summative assessment for all students who have been identified as ELs. This annual assessment is required whether the student received EL services or not. ELs participate in this assessment each year until they obtain proficiency on the assessment and exit EL status. (note this assessment is administered in-person or remotely)** |
| ELPA Screener | English Language Proficiency Assessment identification Screener | **Oregon’s identification screener assessment used by all Oregon districts. This assessment is given to students to determine if the student will have EL status.** |
| ELPA21 | English Language Proficiency Assessment for the 21st Century | **An assessment consortium that Oregon belongs to provide appropriate assessments for ELs.** |
| ELSWD | English Learner Students with Disabilities | An EL who also has a disability. These students have an Individual Education Plan (IEP) or 504 Plan. |
| ESEA | Elementary and Secondary Education Act | Federal Education Law – last amended December 10, 2015 |
| EEOA | [Equal Education Opportunities Act of 1974](http://www.justice.gov/crt/about/edu/types.php)  | 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)]  |
|  | Equity (Education Equity) | Refers to the transformed ways in which systems and individuals habitually operate to ensure that every individual (learner) in whatever environment (learning) has the greatest opportunity to work (learn) enhanced by the resources and supports necessary to achieve competence, excellence, independence, responsibility and self-sufficiency for life (school). |
|  | Ever-EL | These students are students who were identified as an EL at any time since 2006-07. This group includes current, monitor and former ELs and is used for accountability calculations. |
|  | Exiting | When a student obtains academic English proficiency, the student is exited from ELD services. The federal term for this process is exiting or reclassification. Oregon typically refers to this process as exiting. See [Numbered Memorandum 004-2018-19](https://www.google.com/url?q=https://www.oregon.gov/ode/about-us/Documents/Executive%2520Numbered%2520Memo%2520004-2018-19%2520Exiting%2520ELs%2520as%2520Proficient.pdf&sa=U&ved=0ahUKEwjw9rzbt5PhAhVoITQIHWqWAV0QFggFMAA&client=internal-uds-cse&cx=017270664345420165392:sia_fbfaeds&usg=AOvVaw0QqPZLSNu4HoAC39Wlr8J2) for specific guidance.  |
| FEP | Fluent (or Fully) English Proficient | (aka: IFEP – Initially Fluent English Proficient)  |
|  | Former ELs | These students have completed the four years of monitoring post exit. They are included in the Ever – EL calculations. |
| GLAD | Guided Language Acquisition Design (Project GLAD) | Sheltered English instruction methodology. |
| HLS | Home Language Survey | (aka: Language Use Survey, or Oregon Language Use Survey) |
|  | HB 3499 | Adopted by the 2015 Legislature as a comprehensive approach to improving educational opportunities for students who are English language learners (ELLs). This historical legislation is the first time that Oregon has specifically supported ELL students through General Fund appropriations. [Enrolled House Bill 3499](https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3499). ODE Office of Equity, Diversity, and Inclusion is responsible for implementation of this statue. |
|  | Immigrant Children (Recent Arrivers) and Youth  | Immigrant Children (Recent Arrivers) and Youth are defined in[**Section 3301 of ESSA- Title III**](https://www2.ed.gov/policy/elsec/leg/esea02/pg50.html)(a) Are aged 3 through 21(b) Were not born in any State (or Puerto Rico) and(c) Have not attended 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 | Parental Notification letters are sent within 30 days of the beginning of the school year, **or** within 2 weeks after the school year has begun. These letters inform parents of a student’s language proficiency, core content knowledge, EL program placement with information on how parents can waive a student from participating in an EL program.  |
| IA | Instructional Assistant | aka: Educational Assistant |
| IPT | IDEA Language Proficiency Tests | IPT is one of the identification screeners used in Oregon prior to the 2019-20 school year. Some districts may use this for district level progress monitoring. |
| JDEP | Juvenile Detention Education Program |  |
| LAS | Language Assessment Scales | LAS is one of the identification screeners used in Oregon prior to the 2019-20 school year. Some districts may use this for district level progress monitoring. |
|  | Language Dominance | Refers to the measurement of the degree of bilingualism, which implies a comparison of the proficiencies in two or more languages. |
|  | Language Minority Student(s) | Another way that ELs might be referred to in older legislation or documentation.  |
|  | 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, ELL Plan or EL Plan.  |
|  | [Lau v Nichols (1974) Ruling](http://caselaw.findlaw.com/us-supreme-court/414/563.html)  | 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)]  |
| LEA | Local Education Agency, or Local Educational Agency | (aka: School District) |
| LIEP | Language Instruction Educational Program | An instructional program: SEC. 3201[20 U.S.C. 7011] (7) Language Instruction Educational Program -- The term “language instruction educational program’ means an instruction course— (A) In which an English learner is placed for the purpose of developing and attaining English proficiency. While meeting challenging State academic standards; and (B) That may make instruction use of both English and a child’s native language to enable the child to develop and attain English proficiency and may include the participation of English proficient children if such course is designed to enable all participant children to become proficient in English and a second language.[ESSA Law](https://www2.ed.gov/documents/essa-act-of-1965.pdf). |
|  | Local Plan  | (aka EL Plan or Lau Plan) From Federal [Title III Statutes: SEC. 3116 Local Plans](https://www2.ed.gov/documents/essa-act-of-1965.pdf): SEC. 3116. [20 U.S.C. 6826]  (a) Plan Required.—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. |
| LTCT | Long-Term Care and Treatment Education Programs |  |
| LTEL | Long-Term English Learners | A student who has been identified as an EL for several years. Some researchers use 5 or more years as their measure for LTELs. |
| LUS | Language Use Survey (Oregon Language Use Survey) | (aka: Home Language Survey) Specific questions asked during enrollment to determine which language(s) are used by students and families to determine which students are ELs. Oregon implemented a state LUS on 1/1/23 |
| MBE | Maintenance Bilingual Education | 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 | A signed document between two or more parties. |
|  | Monitored EL | These students have exited the EL program within the past 4 years, they are included in the Ever-EL and EL accountability calculations. |
|  | [The May 25 Memorandum](https://www2.ed.gov/about/offices/list/ocr/ell/may25.html) | 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." |
| ML | Multilingual Learner | A term for English Learner that is being used more frequently beginning in 2021-22 nationally. This term is more inclusive of Oregon’s students who have more than more than more one language. |
| NEP | Non-English-proficient | A student who was found to be an identified EL based on an identification screener. |
|  | 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 ELD instruction). |
| NCELA | National Center English Language Acquisition | A federal organization providing support for SEAs and LEAs regarding ELs. [www.ncela.ed.gov](http://www.ncela.ed.gov)  |
| OCR | Office of Civil Rights | Federal office of civil rights  |
| OELA | Office of English Language Acquisition | A federal office in the US Department of Education providing support/guidance regarding ELs. www.oela.ed.gov |
| Code 2-J | Potential EL (Code 2-J) | These are students having a disability or suspected of having a disability who could not be screened by the EL identification screener because the ELPA screener is not yet accessible to the students with any available accessibility supports. These students are not current ELs but will be identified as soon as the identification screener is accessible to the student. |
| RAEL | Recently-Arrived English Learner | An English learner who has recently arrived in the US from another country, typically within the last 3 years. |
|  | Recent Arrivers  | Immigrant Children (Recent Arrivers) and Youth are defined in [**Section 3301 of ESSA- Title III**](https://www2.ed.gov/policy/elsec/leg/esea02/pg50.html)(a) Are aged 3 through 21(b) Were not born in any State (or Puerto Rico), 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.  |
| 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 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. Some examples of sheltered instructional model may include SIOP, GLAD, SDAIE, Constructing Meaning. |
| SIFE | Students with Interrupted Formal Education | SIFE students are those who meet at least one of the following two categories:1. Come from a home where a language other than English is spoken and enter a school in the US after grade two; OR2. Are immigrant students who enter a school in the United States after grade 2;And meet the following conditions:a. Have had at least two years less schooling than their peers; and, b. Function at least two years below expected grade level in reading and in mathematics; and,c. May be pre-literate in their native language. |
| SIOP | Sheltered Instruction Observation Protocol | Sheltered English instruction methodology. |
| SLIFE | Students with Limited or Interrupted Formal Education | AKA as SIFE (see SIFE above) |
| 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, please [visit the U.S. Department of Education’s Individuals with Disabilities Education Act website](https://sites.ed.gov/idea/). |
| SPELL | Special Education English Language Learner | Another term for ELSWD used by some districts and researchers |
| Stanford | Stanford ELP | Stanford is one of the identification screeners used in Oregon prior to the 2019-20 school year. Some districts may use this for district level progress monitoring. |
| STC | School Test Coordinator | A person responsible to ensure test security at the local school level. |
| TA | Test Administrator | A person who administers the state assessments to students. |
| TAG | Talented and Gifted | **Talented and Gifted Students in Oregon**: Students 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. These are students who demonstrate outstanding ability or potential in one or more of the following areas:(a) General intellectual ability (often referred to as, Intellectually Gifted).(b) Academic ability (often referred to as, Academically Talented) in one or more academic areas (including, but not limited to: reading, mathematics, science, and social science).(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 noneducational settings.(e) Ability in the visual or performing arts, such as dance, music, or art. |
|  | [Title VI of the 1964 Civil Rights Act](https://www.justice.gov/crt/title-vi-1964-civil-rights-act) | 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.  |
| TBE | Transitional Bilingual Education Program | The primary goal of a Transitional Bilingual 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. 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. Typically, transition to all English occurs by mid- to late elementary school. These programs are designed for ELs. |
| TWI | Two-Way Immersion | Also referred to as Dual Language Immersion, this is a program in which the language goals are full bilingualism and biliteracy in English and a partner language. Students study language arts and other academic content (math, science, social studies, arts) in both languages over the course of the program, and the program lasts at least through elementary school (and many programs continue through high school). These programs use an immersion approach (maximizing the teacher’s use of the target language during the target language’s instructional time) and enroll both native English speakers and native speakers of the partner language, with neither group making up more than two-thirds of the student population. Because of this student composition, these programs also emphasize cross-cultural awareness as a key goal of the program. If your program enrolls primarily ELs, it should be coded as a Developmental Bilingual program. |
|  | Tutor | In the context of [OAR 581-023-0100](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html), the definition of tutors are educational assistants/instructional assistants providing tutoring services who meet the requirements of [OAR 581-037-0005](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_023.html) to 0025. According to [ORS 342.120](http://www.oregonlaws.org/ors/342.120), educational/ instructional 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.  |
|  | Waivered EL student | When an identified EL’s parent/guardian decides that the student will not participate in the language development program. Waivered students are required to participate in the annual summative assessment (ELPA summative) until they score proficient on the assessment.  |
| W-M | Woodcock-Muñoz Language Survey | W-M is one of the identification screeners used in Oregon prior to the 2019-20 school year. Some districts may use this for district level progress monitoring. |
| YCEP | Youth Corrections Education Program |  |

# Title III Program Administration Procedures and Requirements

## Purpose

Sec. 3102. [20 U.S.C. 6812] Purposes. (ESSA Law)

The purposes of this part are—

1. to help ensure that English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English;
2. to assist all English learners, including immigrant children and youth, to achieve at high levels in academic subjects so that all English learners can meet the same challenging State academic standards that all children are expected to meet;
3. to assist teachers (including preschool teachers), principals and other school leaders, State educational agencies, local educational agencies, and schools in establishing, implementing, and sustaining effective language instruction educational programs designed to assist in teaching English learners including immigrant children and youth;
4. to assist teachers (including preschool teachers), principals and other school leaders, State educational agencies, and local educational agencies to develop and enhance their capacity to provide effective instructional programs designed to prepare English learners, including immigrant children and youth, to enter all-English instructional settings; and
5. to promote parental, family, and community participation in language instructional educational programs for the parents, families, and communities of English learners.

Title III does not require sub-grantees to use a specific or particular curriculum or approach to language instruction, but it does require the use of a **high quality, effective language instruction curriculum** for teaching ELs; and in the manner the eligible entity determines to be the most effective as required in SEC 3113 [20 U.S.C. 6832] (5)(A)(B) and SEC 3124(2).

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 ELs meet state academic content and student achievement standards.

## 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 EL 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.
* Provide outreach to parents of EL children.

## EL Plan (aka: Local Service Plan, Local Plan, Lau Plan)

## Districts should review/revise their EL Plans on a regular basis. ODE has not determined if districts will be submitted updated plans in the 2023-24 school year.

Districts submit updated EL Plans as required by ODE, typically in the spring. District plans are reviewed, and feedback is provided back to districts. The [ODE District Local Plans for Title III](http://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/District-Local-Plans.aspx) web page includes documents to assist with EL Plan development.

To be effective, an EL Plan needs to be comprehensive. It must address each aspect of the district's program for all ELs, 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 EL Plans most useful when they contain sufficient detail to inform staff fully of each action step in the EL Plan.

Does your plan answer the following questions:

* 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?

[Office for Civil Rights - Developing Programs for English Language Learners: Plan Development](http://www2.ed.gov/about/offices/list/ocr/ell/plandev.html)

Many districts have found it is useful, when developing or revising an EL program, to establish a committee or work group that includes administrators, teachers (both EL program teachers and regular classroom teachers), educational assistants, school counselors, and other staff who work with the district's EL 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 EL 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 EL 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 EL program;
* The specific components of the district's program of ELD and academic services for ELs;
* The specific staffing and other resources to be provided to ELs under the district's EL program;
* The district's method and procedures for transitioning and/or exiting students from its EL program, and for monitoring their success afterward; and
* The district's method for evaluating the effectiveness of its program for ELs (discussed in the [U.S. Department of Education’s Developing Programs for English Language Learners: Introduction website materials, Part III](https://www2.ed.gov/about/offices/list/ocr/ell/programeval.html)).

**How to Develop an EL Plan**

* Consult with stakeholders and form a work group that includes:
* Parents, teachers, building administrators, community members, as well as other people having interest in EL student success.
* Describe the EL program, addressing the eight requirements for an EL program as outlined by the USDOE OCR.
* Describe how the EL program will ensure ELs develop English proficiency.
* Describe how parental and community participation in the EL 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 is a chart of the program model codes used to describe the specific ELD program for each EL. These codes explain the types of programs provided to assist the student in acquiring the English language. These codes are used in the EL data collection (see data collection section).

## English Language Development Programs

| Program ModelCode 1(ELPrgMdl-YpeCd1)Valid Values | Description |
| --- | --- |
| 21 | **ELD Push-in** ELD instruction is provided within the student’s mainstream or content-area classroom. |
| 22 | **ELD Pull-out** ELs spend part of the day in a mainstream classroom and are “pulled out” for a portion of the day to receive ELD instruction. This approach is more common in elementary school settings (Pull-out could also be a Pull-aside to a nearby table in the student’s classroom). |
| 23 | **ELD Class Period** ELs receive their ELD instruction during a regular class period, and also receive course credit for the class. This approach is more common in middle schools and high schools. |
| 41 | **Newcomer Program – ELD** Separate, relatively self-contained educational interventions designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs on a short-term basis (usually no more than two years) before they enter more traditional programs (e.g., Bilingual, English language development, and/or Sheltered Instruction courses or programs). ELs receive their ELD in this program. |
| 51 | **Not participating in a ELD program** NOTE: Used only for students in:Category 3 – EL Placement score excludes ELD program eligibility (3-H), orCategory 4 – ELD Program eligible but declined services (4-N, 4-O, 4-P) |
| 60 | **Monitored year 1 –** Exited as proficient in the prior school year – Category 5-M |
| 61 | **Monitored year 2 –** Exited as proficient two school years prior – Category 5-M |
| 62 | **Monitored year 3 –** Exited as proficient three school years prior – Category 5-M |
| 63 | **Monitored year 4 –** Exited as proficient four school years prior – Category 5-M |
| 70 | **Former EL –** Exited as proficient more than 4 school years prior – Category 5-F |

Following are the program model codes used to describe the specific sheltered content programs for each EL. These codes are used for the EL 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.

## Access to Core Content Program Models

| ELPrgMdlTypCd2)Program Model Code 2Valid Values | Description |
| --- | --- |
| 12 | **Two-Way Immersion** Also referred to as Dual Language Immersion, this is a program in which the language goals are full bilingualism and biliteracy in English and a partner language. Students study language arts and other academic content (math, science, social studies, arts) in both languages over the course of the program, and the program lasts at least through elementary school (and many programs continue through high school). These programs use an immersion approach (maximizing the teacher’s use of the target language during the target language’s instructional time) and enroll both native English speakers and native speakers of the partner language, with neither group making up more than two-thirds of the student population. Because of this student composition, these programs also emphasize cross-cultural awareness as a key goal of the program. If your program enrolls primarily ELs, it should be coded as a Developmental Bilingual program. |
| 13 | **Transitional Bilingual (13)** The primary goal of a Transitional Bilingual 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. 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. Typically, transition to all English occurs by mid- to late elementary school. These programs are designed for ELs. |
| 14 | **Developmental Bilingual (14)** Like Two-Way Immersion programs, these programs share the goals of bilingualism and biliteracy, and thus typically last through elementary school or longer (preferably through high school). Also referred to Dual Language Immersion, Maintenance Bilingual or Late-Exit Bilingual Education programs, these are programs that use two languages, the EL 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. These programs are designed for and typically enroll only ELs |
| 15 | **Other Bilingual (15**) This could include Heritage language preservation or other bilingual program models that are not easily classifiable into another program definition. You must have prior approval to use this code and will need to include a description of your program’s goals, instructional approach, duration of the program, and target population when this code is used. |
| 30 | **Sheltered Instruction** Teacher provides instruction that simultaneously introduces both language and content, using specialized techniques to accommodate ELs’ linguistic needs. Instruction focuses on the teaching of academic content rather than the English language itself, even though the acquisition of English may be one of the instructional goals. Some examples of sheltered instruction models may include SIOP, GLAD, SDAIE, and CM. Classes using a Sheltered Instruction approach can be designed exclusively for ELs or for a mixture of ELs and non-ELs. |
| 31 | **Newcomer Program – Core Content instruction** Separate, relatively self-contained instructional program designed to meet the academic and transitional needs of newly arrived immigrants. Typically, students attend these programs on a short-term basis (usually no more than two years) before they enter more traditional programs (e.g., Bilingual, English language development and/or Sheltered Instruction courses or programs). ELs receive their core content instruction in this program. These programs enroll ELs exclusively. |
| 60 | **Monitored year 1 –** Exited as proficient in the prior school year - Category 5-M |
| 61 | **Monitored year 2 –** Exited as proficient two school years prior - Category 5-M |
| 62 | **Monitored year 3 –** Exited as proficient three school years prior - Category 5-M |
| 63 | **Monitored year 4 –** Exited as proficient four school years prior - Category 5-M |
| 70 | **Former EL –** Exited as proficient more than 4 school years prior - Category 5-F |
| 51 | **Not participating in a program. NOTE: Used only for students in** Category 3 – EL Placement score excludes ELD program eligibility (3-H) orCategory 4 – ELD Program eligible but declined services (4-N,4-O, 4-P)Category 1-E – only if the student exited as proficient at the beginning of the academic year. |

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 EL data collection. Districts may opt to select a third program model using any of the codes in program model 1 or 2.

# Program Requirements

## Identifying a Student as an EL

## Language Use Survey (LUS)

The LUS and rubric are available for districts on the ODE Title III [Language Use Survey](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/LanguageUseSurvey.aspx) page.

Districts must:

* Identify the Primary Home Language Other than English (PHLOTE) of *all* students.
* Using Oregon’s LUS to identify students as potentially eligible for ELD services.
* Then the child qualifies for initial program assessment.(ELPA Screener) As such, the child is classified as a primary home language other than English PHLOTE student.

The purpose of the LUS is to determine if the student’s current language exposure and use might make the student eligible to receive support in academic English. Students who are learning a second language (i.e., bilingual preschool, enhancing cultural learning, etc.) are not students who would be given the ELPA screener.

Finally, the LUS is administered to ***all*** students after the student is registered in a district, rather than each year the student is enrolled in the same district.

Once a student is identified as an EL by the scores received on the ELPA screener assessment, the district must notify parents within the 30 calendar days of the student’s enrollment in the district. (forms are available through [www.TransACT.com](http://www.TransACT.com) at no cost to Oregon educators).

## Notifications to Parents/Option to Waive Services

Parents can choose to remove their children from an EL program. This decision must be an independent decision of the parent/guardian. Districts are required to provide parents with:

* Student English proficiency levels
* Describe what educational supports the student is eligible to receive.

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). For more information please visit the [U.S. Department of Education – Questions and Answers on the Rights of Limited-English Proficient Students](https://www2.ed.gov/about/offices/list/ocr/qa-ell.html) web page.

Students not served by district programs **are required** to participate in all state-required assessments, including ELPA21, and are counted in the district’s accountability requirements.

Students with a waiver for services are reported annually to the district’s EL Collection, and they are coded 4-N (waiver and participated in ELPA summative); 4-O (waiver and not enrolled during the ELPA summative testing window); 4-P (waiver returned to EL status after exiting for proficiency). The State uses these codes to review trend data for ELs regardless of participation in a district’s EL program.

**Foreign Exchange Students**

**J-1 Visa, Foreign Exchange Students**

According to CFR 22 § 62.10 Program administration, J-Visa student sponsors are responsible to “establish and utilize a method to screen and select prospective exchange visitors to ensure that they are eligible for program participation”, and that the foreign exchange visitor “possesses sufficient proficiency in the English language, as determined by an objective measurement of English language proficiency, successfully to participate in his or her program and to function on a day-to-day basis.”

A sponsor must verify an applicant's English language proficiency through a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

Thus, it is expected that all J-1 exchange visitors are proficient enough in English to participate successfully in their exchange program and to function on a day-to-day basis in U.S. schools. Whether to follow statewide, standardized EL Entrance Procedures and possibly provide English language services or not to exchange students can be a local decision if sponsors provide the LEA with evidence of English proficiency in one of the following ways:

* + - * Results of a recognized English language test;
			* Signed documentation from an academic institution or English language school or documented interview conducted by the sponsor.

**Program Exit Criteria**

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. ODE [Executive Numbered Memo 004-2018-19](https://www.google.com/url?q=https://www.oregon.gov/ode/about-us/Documents/Executive%2520Numbered%2520Memo%2520004-2018-19%2520Exiting%2520ELs%2520as%2520Proficient.pdf&sa=U&ved=0ahUKEwjw9rzbt5PhAhVoITQIHWqWAV0QFggFMAA&client=internal-uds-cse&cx=017270664345420165392:sia_fbfaeds&usg=AOvVaw0QqPZLSNu4HoAC39Wlr8J2) states the only allowable exit process for ELs is by scoring proficient on the ELPA summative assessment. This policy change is based on the January 2015 ‘Dear Colleague’ Letter by the US Office for Civil Rights.

## Monitored Students

A student is monitored for four years from the date the student is 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 with parent/guardian consent. 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 EL program.

***Ideally, students would be monitored frequently enough so that the district can address any necessary remediation needed for the student to be successful in school. Monitoring only on the semesters may not provide for needed support in a timely manner.***

***Districts are expected to provide monitored students with any inventions the student may need; academic or linguistic).***

## 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 EL 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 ELs 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.
* 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 the end of May, 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 on the [Funding & Grant Information for Title III web page](http://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Funding-Grant-Information.aspx).

## Sub-grantee Allocations

Sub-grantees receive allocations based on a per-pupil basis following the approval of their budget narrative outlining how they plan to expend the available funds. Budget narratives include questions on the program of service, improvement plans, parent involvement, immigrant youth, 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 Web Site](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. School year budget narrative submissions are due in October of each school year.

## Carryover Budget Narratives

Sub-grantees not expending the previous school year’s allocations may apply for a no-cost extension for one additional year. Carryover budget narratives open in mid-November and are due in mid-January. All carryover funds must be claimed by the following September 30th.

**Consortia Allocations**

Districts serving ELs who do not qualifying for a minimum of a $10,000 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 ELs. 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 ELs. 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. 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 [Funding & Grant Information for Title III web page](http://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Funding-Grant-Information.aspx).

## Immigrant Sub-grant Allocation

Up to 15% of the total Title III allocation is required to be distributed to the EL 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 for the 2023-24 school year.

## Oregon Definition of Significant Increase (Oregon may change the calculation for the 23-24 school year based on the change in the Immigrant set-aside).

**LEAs must have at least a 0.5% increase of immigrant students over the prior two academic school years, and a minimum of 10 immigrant students, as identified on the current year’s Recent Arrivers Data Collection.**

LEAs meeting the above criteria will be notified and invited to participate and will be given a preliminary immigrant allocation amount (per student allocation and guidance on allowable expenditures). Upon acceptance from the LEAs, the allocation amount will be divided on a per-student basis based on the number of immigrant students in the participating LEAs.

Immigrant grants will be entered into EGMS and managed through that system. Immigrant fiscal records will be reviewed when the LEA participates in Title III monitoring or on a 3-year cycle.

(See the Recent Arrivers in this document, under State Data Collections section for more information on this collection.)

The districts receiving this allocation must complete the Title III Immigrant Budget Narrative and submit that budget within 45 days of the allocation being disseminated. The narrative must include a description of each activity and the budget for each activity. As with all Title III sub-grants, the districts must consult with local private schools to ensure recent arrivers enrolled in private schools participating in Title III are included in all activities.

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

**Immigrant grants can be carried over just like the Title III Regular School Year grant.**

ODE staff monitor district grant usage during Title III monitoring. Districts are expected to revise budget narratives when either:

* The district adds in a new activity (not previously approved);
* An approved activity will cost 10% or more than what the activity cost was approved.

## Indirect/Administrative Rate

All Title III sub-grants are subject to a maximum 2% of the allocation for direct administration per ESSA Title III requirements. Beginning in the 2022-23 school year, sub-grantees can also claim their negotiated indirect rate to the Consolidated Spending Page on the Budget Narrative application, **as long as the combined direct administration and negotiated indirect rate percentages does not exceed the approved negotiated indirect rate.**

## 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 ([ESSA Law](https://www2.ed.gov/documents/essa-act-of-1965.pdf)):

(g) 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 English learners 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.

**Possible requests from ODE staff to address possible supplanting concerns include:**

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

## EL Program 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 ELs. Monitoring documents and guidance is available on the [Monitoring for Title III web page](http://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Monitoring.aspx) .

Generally, all districts and consortia are monitored by the ODE every three years, as required by USDOE program requirements. ODE staff are required to use a Risk Assessment to determine which districts/consortia are to be monitored. Districts identified on the Risk Assessment may be added to the monitoring cycle regardless of the timeline the district was recently monitored.

Occasionally, districts may be selected for a targeted monitoring. Targeted monitoring allows the State to focus attention on specific areas for careful review. Targeted monitoring typically includes an on-site visit specifically designed based on the area(s) of review. Districts are notified by official letter, required to submit documentation, and coordinate the on-site visit with the State.

# Data Collection and Analysis

Several data elements should be tracked by EL program staff to meet legal requirements, and to evaluate EL programs. Many of these elements are listed in the table below. Due to the complexity of the data process, EL program 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 ELs. Additional information relating to data collections can be found on the [Data Collections for Title III web page](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Data-Collections.aspx).

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 Arrivers | Identify the number of qualifying recent arrivers a district has to calculate the rate of growth. | Yes | Recent Arrivers Collection |
| EL Start Date | Represents the date on which the student was first identified as an EL. | Yes | EL Collection – **ELStrtDt** |
| EL Program Code | Identifies the type of ELD class instruction provided for the student. | Yes | EL Collection – **ELProgCd 1** (ELD class) **ELProgCd 2** (access to core content)**ELProgCd 3** (optional can pull from both list 1 and 2) |
| EL Identification Assessment Data | District-level assessment data for the purpose of identifying student’s ineligible to receive ELD services. | Yes | Students found ineligible are reported the year the student is assessed (LEP Record Type code 3-H)Students identified in the current school year have this data reported (EL Record Type 1-A, 1-E, 4-N, or 4-O) |
| EL Record Type | Identifies the specific code defining the status of an EL. | Yes | EL Collection – **ELRecTypCd** – identifies the status of an EL in the district program (first year, continuing, exiting as proficient, waiver for ELD services, did not participate in ELPA21, or not eligible for services)Students on monitor status and Former ELs are also identified. |
| EL Exit Date | Specifies the date the district determines the student has obtained academic English proficiency. | Yes | EL Collection – **ELExtDt** |

**It is recommended that the district collect and store the following data elements 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 screener and summative scores | The statewide assessment for ELP (Oregon is ELPA) – districts should track the progress of students from year to year. (**Summative includes in-person ELPA, Remote ELPA and Alt-ELPA)** |
| Oregon content assessment scores | The statewide assessments for Language Arts, Math, and Science taken by all students – districts need to track the progress of former and monitored ELs to ensure the students continue to make academic progress.**New guidance from DC encourages districts to track the academic progress of all former ELs in addition to monitored ELs (ESSA allowable – 4 years of monitoring).** |
| Years identified as EL | The number of years a student has been identified as an EL – ESSA requirement. Typically, the EL Start Date is the key data element for determining years identified as an EL. |
| ELSWD | Progress of English Learner Students with Disabilities making gains in English proficiency, obtainment of English proficiency, and progress on academic core content. |
| 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 EL 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 EL Collection is a part of the consolidated collections application located on the [ODE District Web Site](https://district.ode.state.or.us/home/). This collection represents an annual count of all ELs enrolled at any time during the school year. This collection is also used for districts to report any potential ELs found ineligible for services as defined by the district’s chosen EL identification assessment.

The EL Collection opens in the fall and spring of each year and is used to determine the:

* EL sub-group used to calculate academic and linguistic progress
* EL count reported by each district used to determine Title III allocations;
* EL count used for 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 EL Collection can be found at the ODE District Secure web page, schedule of due dates or the [Data Collections for Title III web page](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Data-Collections.aspx). On the schedule of due dates, look for the ESEA: EL Collection - opening in October (fall collection) and April (spring collection). From that page, documents to assist districts are located under the Help menu.

The Recent Arrivers Data Collection is part of the consolidated collection located on the [ODE District 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 who have not been enrolled in school in the U.S. for more than three cumulative years (540 days).

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.

# Equal Access

In 1970, the federal [Office for Civil Rights (OCR)](http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html) 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; or
* National origin minority students are inappropriately assigned to special education classes because of their lack of English skills; or
* 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 (1974) Ruling](http://caselaw.findlaw.com/us-supreme-court/414/563.html) 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 (1974) Ruling](http://caselaw.findlaw.com/us-supreme-court/414/563.html), Congress passed the [Equal Educational Opportunity Act (EEOA)](http://www.justice.gov/crt/about/edu/types.php) 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 educational 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 EL 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](http://www.ed.gov/about/offices/list/ocr/index.html) 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

(If need more clarity on Private School participation, please contact Janette Newton, the Private School Ombuds, at Janette.Newton@ODE.Oregon.Gov )

Districts must annually contact every private school within their geographic boundaries to offer equitable services. This is generally done in the spring or early summer before the school year begins and must occur before any decisions are made by the district. The district can notify private schools by sending an Intent to Participate form. The Intent to Participate form can be a physical letter or an email, but the district should obtain evidence that the private school did indeed receive the form. This can be done by sending the form through certified mail or requesting a ready receipt.

The ODE provides a [sample Intent to Participate form](file:///J%3A/A-6%20School%20Improvement%20%26%20Accountability/Private%20Schools%20%26%20ESSA/Webwork/Changes%202.2022/ODE%20-%202022%20-%20Intent%20to%20Partcipate%20Letter%20-%20Toolkit.docx). A district can use this form or create their own. It is recommended that the form include the following.

* Brief description of the Title program(s) available to provide equitable services.
* A short list of allowable activities, services, and benefits that may be provided by each Title program.
* A suggested meeting date for consultation on services for the upcoming school year.
* District contact information and instructions on how to ask questions or reschedule consultation, if needed.
* A reasonable deadline that provides clear, sufficient, and adequate notice for the private school to indicate its intent to participate in equitable services.
* Identify possible consequences that will occur if the private school does not meet the deadline.

If the private school indicates that they intend to accept equitable services, the district must begin consultation meetings with the private school. These meetings must be ongoing throughout the school year. Districts that 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.

ESEA requires school districts to maintain all documentation of consultations with private schools. It is required that districts have private schools affirm in writing that consultation has occurred. The Affirmation of Consultation is a form that can be used for this purpose. ***The Affirmation of Consultation must be emailed to the Private School Ombudsman within 30 days of signing***. The ODE provides an [Affirmation of Consultation form](file:///J%3A/A-6%20School%20Improvement%20%26%20Accountability/Private%20Schools%20%26%20ESSA/Webwork/Changes%202.2022/ODE%20-%202022.2023%20Affirmation%20-%20Form%20Toolkit.docx) which districts may use, or they may create their own. The Affirmation must include:

* The school year for which the services will be provided;
* The name of the private school and the district;
* Contact name and email for the private school and district;
* The results of the consultation (e.g., what services were declined and/or accepted);
* A method for the private school to indicate whether or not they believe consultation was timely and meaningful;
* A method for the private school to indicate whether or not they believe the program design is equitable with respect to eligible private school students;
* Signatures of the private school and the district;
* Date of the signatures.

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

* How the EL 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.
* The amount of funds will be available for those services.
* How and when the district 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.
* Districts may serve private school EL 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 district.
* Services for private school children and educational personnel must be provided by employees of the district, or through a contract made by the district 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 district.
* Funds used to provide services to private school children and educational personnel must follow the Title III supplement not supplant requirements.
* Whether to provide equitable services to eligible private school children and educators (1) by creating a pool(s) of funds with all of the funds allocated under a program, or (2) on a school-by-school basis based on the proportionate share of funds available to provide services in each school.
* The option for private school officials to indicate such officials’ belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.
* How, if the district disagrees with the views of the private school officials on the provision of services, it will provide in writing to private school officials an analysis of the reasons why it has chosen not to provide the services.
* How district administrative costs and indirect costs were determined.
* Any funds available for carryover.

The LUS and ELP assessment should be decided during consultation. Private schools may use the ELP summative and screening instruments of their choice and are not subject to state ELP testing participation requirements. However, an alternative assessment should be valid and reliable and should utilize objective criteria that would be comparable to an ELP assessment used by the State to identify public school ELs.

An Affirmation of Consultation between the district and private school should be developed as a result of initial consultation, and address the items listed above. **This form is available on the** [TransACT Website](http://www.transact.com/). 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 the 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 necessary:

* Spring consultation for participation the following school year.
* Fall consultation regarding possible ELs.
* 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 that 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.

* [ODE's Private School Participation under ESEA web page](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/Pages/Private-Schools.aspx)
* [U.S. Department of Education Private School Participation, Sec. 9501 web page](https://www2.ed.gov/policy/elsec/leg/esea02/pg111.html)
* [Non-Regulatory Guidance for ESEA 9501 document](http://www2.ed.gov/programs/titleiparta/psguidance.doc)

# English Language Proficiency Standards

In October 2013, the Oregon State Board of Education adopted new ELP standards that correspond to the Common Core. These standards are assessed on the ELPA Summative and Screener tests, developed by ELPA21 at CRESST. Please [visit the English Language Proficiency Standards web page](https://www.oregon.gov/ode/students-and-family/equity/EngLearners/Pages/EnglishLanguageProficiencyStandards.aspx).

*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. ELs 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.

# Assessment of English Learners

## English Language Proficiency Assessment (ELPA) Screener/Summative

The Oregon Statewide Assessment System currently offers three English language proficiency assessment instruments:

* ELPA Screener: the final step in confirming whether a student qualifies for English learner status
* ELPA Summative: annual English proficiency measurement for students with English learner status
* Alt ELPA: annual English proficiency measurement for students with English learner status *and* who experience the most significant cognitive disabilities

All students with English learner status are required to participate annually in English Language Proficiency (ELP) testing. The ELPA Summative is a single test that contains a reading, writing, and listening segment, and a speaking segment. While both segments are part of the same test, students will require Test Administrator (TA) approval to begin each segment. The 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 continuing to the speaking segment. After reviewing their responses for the first segment, the student will need TA approval to start the speaking segment.

The Alt ELPA is an individually administered test for students with English learner status who experience the most significant cognitive disabilities. The Alt ELPA is a single test that contains four segments including reading, writing, listening, and speaking. Participation in the Alt ELPA is a decision made by the student’s IEP team and must be documented on the student’s IEP prior to participation.

A student’s IEP or 504 Plan might exempt the student from responding to a particular domain of the ELPA Summative or Alt ELPA (reading, writing, speaking, or listening). **Domain exemptions are for students with a documented disability that prevents them from showing what they know and can do in one or domains on the ELPA Summative, Screener, or Alt ELPA. There should be very few domain exemptions.**

**Title III monitors the implementation of Testing Accessibility supports and domain exemption use as part of the regular Title III monitoring.**

Please review the final version of the Test Administration Manual (TAM) for information on domain exemption policies for ELPA, and the Oregon Accessibility Manual (OAM) for information regarding: Universal supports, designated supports and accommodations for ELPA.

Additional information is available in the guidance document [Domain Exemptions on ELPA: Definitions and Examples​​](https://www.oregon.gov/ode/educator-resources/assessment/Documents/Domain_Exemptions_on_ELPA.pdf). TAs who need to administer any of the ELPA instruments must be officially trained for that assessment. Please see the TAM and the ELPA Screener Administration Manual (ESAM) for details.

The ELPA Summative assessment has several options to support students, these include:

* ELPA Summative in-person
* ELPA Remote Summative – online option for students
* Alt-ELPA Summative - for students with the most significant cognitive disabilities

Please contact **Ben Wolcott**, ELPA Specialist, with questions regarding ELPA testing.

Please contact Mason Rivers, Special Education Assessment Specialist, with question regarding Alt ELPA testing.

* [ODE's Test Administration web page](https://www.oregon.gov/ode/educator-resources/assessment/Pages/Assessment-Administration.aspx) contains links to the Test Administration Manual and the Oregon Accessibility Manual.
* Additional resources for the ELPA can be found on [ODE's English Language Proficiency Assessment web page](https://www.oregon.gov/ode/educator-resources/assessment/Pages/English-Language-Proficiency.aspx) and the OSAS Portal

## English Learner Students with Disabilities (ELSWD)

Please [visit the English Learner Students with Disabilities (ELSWD) web page](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/ELSWD.aspx) for additional guidance and support. Resources and information regarding the Alt ELPA can be found on the ELP Assessment page.

If you suspect that an EL has a disability, referral and evaluation should happen in a timely manner, as it does for all students.

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 translate all other information.

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 the [Individuals with Disabilities Education Act (IDEA) web page](https://sites.ed.gov/idea/) and the [Section 504 – Protecting Students With Disabilities web page](https://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 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.

Additional support is available through the ODE - Office of Enhancing Student Opportunities – [County Contacts](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Documents/countycontacts.docx)

## Special Education

The disproportionate representation of ethnically and linguistically diverse students in high incidence special education programs, intellectual disabilities, learning disabilities, and emotional disturbance has been a concern for over three decades ([Artiles, Trent, & Palmer, 2004; Donovan & Cross, 2002; Dunn, 1968](http://www.ode.state.or.us/teachlearn/testing/admin/alt/ea/ed_policy_analysis_archives-disproreparticle_2.pdf)).

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](https://www.questia.com/magazine/1P3-2038869681/culturally-competent-assessment-of-english-language), 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 ELs 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). However, when ELs 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 multi-dimensional, 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 ELs. As ELs 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 ELs 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 ELs’ 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 ELs’ instructional experience and test formats are often unfamiliar and confusing to the student.

To ensure ELs 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 ELs; and
* Working with interpreters (oral communication) and translators (written communication).

ELs 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 ELs 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 (CLD) Students (2015 Update)](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Documents/SPED-Assmnt-Proc-for-Culturally-Linguistically-Diverse-Students-2015.pdf) 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.

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

* 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.

[Visit the Macome Intermediate School District - Alfredo J. Artiles and Alba A. Ortiz (2002) Web page](http://www.misd.net/Bilingual/ellsandspedcal.pdf) for more information.

The [National Joint Committee on Learning Disabilities (NJCLD)](http://www.ldonline.org/about/partners/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 statewide 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 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.

**IEP Team**

* Group described in [SEC 34 CFR 300.306](https://www.gpo.gov/fdsys/pkg/CFR-2010-title34-vol2/pdf/CFR-2010-title34-vol2-sec300-306.pdf) and [OAR 581-015-2210](https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=143373)
* 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 students 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 Summative or Alt 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 ELs.
* The ELPA is the primary criterion to determine the student’s level of English proficiency, unless the IEP Team determines that the student should participate in the Alt ELPA.
* Should ELPA be given with or without accommodations?
* What universal or designated support will the student have?
* The need to use alternate assessment in one or more required domains.

**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

(If anyone needs more information on 504 Accommodation Plans, please see this web page <https://www.oregon.gov/ode/students-and-family/equity/civilrights/pages/section504.aspx>)

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/their 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.”*

Section 504 protects all public school students experiencing disabilities. 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 local government entities covered by Title II of the Americans with Disabilities Act of 1990 (ADA), a federal law. This information 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, Title II of the Americans with Disabilities Act, and state nondiscrimination requirements for schools, school districts with more than 15 employees must do the following:

1. Designate an employee or employees to coordinate compliance with Section 504 and Title II of the Americans with Disabilities Act.
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, access to, treatment, or employment in any of its programs, benefits, or activities.
5. Provide notice of the designated employee or employees, how to obtain information about access, the grievance procedures, and the district’s statement of nondiscrimination to students, parents, employees, unions, the public, and professional organizations. These notices should be included in student/parent handbooks and on the district’s website, among other locations available to all parties.

Taken from: [Student Access – Section 504 of the Rehabilitation Act of 1973](https://www.google.com/url?q=https://www.oregon.gov/ode/students-and-family/childnutrition/Documents/sec504info.doc&sa=U&ved=0ahUKEwjyy_rMjbfhAhVpT98KHUkrA7UQFggGMAE&client=internal-uds-cse&cx=017270664345420165392:sia_fbfaeds&usg=AOvVaw3L5Z6NNo2xaTfmpMlkcI02)

## Talented and Gifted (TAG) Identification

(If need more clarity on TAG identification, please contact Angela Allen

Identifying ELs for gifted programming begins with collaboration among classroom teachers, gifted/talented educators, and EL educators, and is supported by ORS and OAR: please [visit ODE’s Talented and Gifted (TAG) Education web page](https://www.oregon.gov/ode/learning-options/TAG/Pages/default.aspx).

[Oregon Revised Statutes (ORS) 343.395 (4)](http://www.oregonlaws.org/ors/343.395) 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.

# Rule 581-022-2325Identification of Academically Talented and Intellectually Gifted Students

1. Each school district shall have local district policies and procedures for the identification of talented and gifted students as defined in [ORS 343.395 (Definitions for ORS 343.391 to 343.413)](https://oregon.public.law/statutes/ors_343.395) who demonstrate outstanding ability or potential in one or more of the following areas:
2. General intellectual ability as commonly measured by measures of intelligence and aptitude.

### Unusual academic ability in one or more academic areas.

(2) The policies and procedures must meet the following requirements:

1. Districts shall use research based best practices to identify students from underrepresented populations including ethnic minorities, students with disabilities, students who are culturally and/or linguistically diverse, or economically disadvantaged.
2. A team shall make the final decisions on the identification of students using the information collected under paragraphs (c) and (d) of this section. No single test, measure or score shall be the sole criterion. A record of the team’s decision, and the data used by the team to make the decision, shall become part of the education record for each student considered.
3. Districts shall collect behavioral, learning and performance information and include the information in all procedures for the identification of students.
4. The following measures and criteria for identifying g the intellectually gifted and the academically talented shall be used by the team:
5. Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and
6. Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total English Language Arts/Literacy or total mathematics on the Smarter Balanced Assessment.
7. Despite a student’s failure to qualify under paragraphs (d) (A) and (B) of this subsection, districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.

(3) School districts may identify additional students who are talented and gifted as defined in [ORS 343.395 (Definitions for ORS 343.391 to 343.413)](https://oregon.public.law/statutes/ors_343.395), as determined by local district policies and procedures, if the students demonstrate outstanding ability or potential in one or more of the following areas:

### (a) Creative ability in using original or nontraditional methods in thinking and producing.

### (b) Leadership ability in motivating the performance of others either in educational or non-educational settings.

### (c) Ability in the visual or performing arts, such as dance, music, or art.

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.

* [National Association for Gifted Children (NAGC) position paper on Identifying Culturally and Linguistically Diverse Learners](http://www.nagc.org/sites/default/files/Position%20Statement/Identifying%20and%20Serving%20Culturally%20and%20Linguistically.pdf)

Recommended Reading:

* *Special Populations in Gifted Education: Understanding Our Most Able Students from Diverse Backgrounds* by Jaime Castellano

*Additional information is available on the ODE –*[*TAG webpage*](https://www.oregon.gov/ode/learning-options/TAG/Pages/default.aspx)*.*

## Foster Care

(If need more clarity on Foster Care, please contact Marlie Magill

Some students in foster care are also English learners (ELs) - students identified as needing additional support with their English proficiency in speaking, listening, reading, or writing English through EL identification procedures required by ESSA and OAR. Title VI (Civil Rights) and the Equal Educational Opportunities Act of 1974 (EEOA) require public schools to ensure that all EL students, including EL students in foster care, can participate meaningfully and equally in educational programs. In order to meet their obligations under Title VI and the EEOA, LEAs must:

* Identify and assess all potential EL students in a timely, valid, and reliable manner;
* Provide EL students with a language assistance program that is educationally sound and proven successful;
* Sufficiently staff and support the language assistance programs for EL students;
* Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
* Avoid unnecessary segregation of EL students;
* Ensure that EL students with disabilities are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in these evaluations and delivery of services;
* Meet the needs of EL students who opt out of language assistance programs;
* Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
* Evaluate the effectiveness of a school district’s language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program was reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and
* Ensure meaningful communication with limited English proficient (LEP) parents.

Please [visit the ODE Foster Care web page](https://www.oregon.gov/ode/students-and-family/fosteringconnections/Pages/default.aspx) for more information.

## Charter Schools

(If need more clarity on Charter Schools, please contact Kate Pattison

Public charter schools must appropriately identify and serve students who qualify for English language development. If a public charter school claims additional ADM weighting for EL students, the charter school is required to have an EL Plan. The charter school’s plan could be included in the sponsoring district’s EL Plan or submitted as a separate plan. The plan addresses the federal requirements on services for ELs (Title VI), as well as Oregon’s ELL weighted funding requirements.

Although public charter schools are exempt from [ORS 336.079](http://www.oregonlaws.org/ors/336.079) requiring districts to develop EL plans, applicable state and federal anti-discrimination laws do 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 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 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 ELD or bilingual education, 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 EL 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. 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 EL students. This requirement is not, in itself, sufficient to meet the public charter school's obligations under the Title VI regulation. To ensure that EL 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.

1. **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:

[OAR 581-021-0046(8)](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html) 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 charter school 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)](http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html) has provided non-formal general guidelines for districts to ensure that they meet the needs of EL's.

## Oregon Diploma Requirements

[Please feel free to visit the Oregon Diploma web page for more information.](http://www.oregon.gov/ode/students-and-family/OregonDiploma/Pages/default.aspx)

# The Oregon State Seal of Biliteracy Seal

## Background and Purpose

(If need more clarity on Biliteracy Seal, please contact Ben Wolcott )

Oregon is one of 50 states, plus the District of Columbia, that have adopted State Seals of Biliteracy. The Oregon State Seal of Biliteracy (OSSB) was approved by the State School Board in 2016 and updated in 2022 to include the Oregon State Seal of Multiliteracy (OSSM). It is designed to provide a rigorous, proficiency-based recognition of the linguistic abilities and academic skills of students with high literacy in any two or more languages. The Seal was initially created to honor the language students bring from home to their English academic experience, as well as recognizing academically learned language proficiency. There are multiple pathways for students to demonstrate their proficiency in the claimed languages.

The Seal of Biliteracy recognizes and values language and culture and is an honor many Oregon students strive to earn. With the Seal in hand, students will have a standardized measure of Biliteracy/ Multiliteracy that demonstrates their advanced skills to colleges and employers.

## Criteria for the Biliteracy Seal

* Students must be on track to meet all state and district graduation requirements during the year the Seal is requested or have met those requirements up to two years prior.
* Students must meet the Intermediate High proficiency level via one or more sources in the Approved Evidence List of the OSSB/M Manual, found on the [Biliteracy Initiatives page](https://www.oregon.gov/ode/students-and-family/equity/EngLearners/Pages/BiliteracyInitiatives.aspx).

**Award details**

* Pending OSSB/M requests are processed three times each year.
* A printing vendor mails certificates and seal directly to districts after each processing date.
* Materials include a certificate with an embossed gold Seal, and a sticker Seal which may be affixed to the student’s diploma.
* Award may also be documented on the student’s transcript.
* See OSSB/M Manual, found on the [Biliteracy Initiatives page](https://www.oregon.gov/ode/students-and-family/equity/EngLearners/Pages/BiliteracyInitiatives.aspx), for full details.

# Essential Skills

The Essential Skills Assessment are suspended through 2023-24. For more information, see this <https://www.oregon.gov/ode/educator-resources/essentialskills/Pages/default.aspx>

**Essential Skills include:**

1. Read and comprehend a variety of text.

2. Write clearly and accurately.

3. Apply mathematics in a variety of settings.

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.

For comprehensive information about the Essential Skills the web page:

<https://www.oregon.gov/ode/educator-resources/essentialskills/Pages/default.aspx>

*The following Essential Skills are not currently graduation requirements, but may be phased in for students enrolled in grade 9 in 2017-18 or later:*

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.

# Additional Resources

Please feel free to visit the following resource links:

* **[Oregon’s Office of Civil Rights web page](https://www.oregon.gov/ode/students-and-family/equity/civilrights/Pages/default.aspx)**

* **[Title III English Learners and Immigrant Youth web page](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/default.aspx)**
* **Title III Directors Meetings and Events for Title III web page to** [**view the Title III District Contact List**](https://www.oregon.gov/ode/schools-and-districts/grants/ESEA/EL/Pages/Directors.aspx)

# 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 on the [U.S. Department of Education’s Title III – Language Instruction for Limited English Proficient and Immigrant Students web page](https://www2.ed.gov/policy/elsec/leg/esea02/pg39.html).

Please feel free to [visit the ESEA as amended by ESSA Law](http://legcounsel.house.gov/Comps/Elementary%20And%20Secondary%20Education%20Act%20Of%201965.pdf) First year of implementation 2017-2018.

# Legal References

There are both Federal and State Laws governing the implementation of EL 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)](http://www.ncela.us/files/rcd/BE017100/Fall88_7.pdf) - "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."

Please feel free to [visit the United States Office of Civil Rights (OCR) Website.](https://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 EL program.

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

Step 7: Monitoring.

* Monitor the success of former ELs 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 ELs.

## Oregon State Laws

Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) for Education related to ELs are listed on page 48 in the Appendix section of this guide. The Appendix lists the sections in [OAR](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=137) and [ORS](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx) that pertain to ELs, with hyperlinks to specific sections for viewing of complete text.

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

**HB 3499** came into law in 2015 – this is a state initiative to improve outcomes for ELs. This language can be found in the [Oregon Laws 2015 – Chapter 604 document](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0604.pdf).

[**ORS 336.079 Special English Courses for Certain Children**](http://www.oregonlaws.org/ors/336.079) 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 benefit 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.**](http://www.oregonlaws.org/ors/659.850)

(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**](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html). 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.

The following OAR is under review for updated language, this OAR is subject to change during the 2017-18 school year due in part to ESSA requirements.

[**OAR 581-023-0100 (4)**](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_023.html)

(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](http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr100.html) - "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](http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html) - 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 (1974) Ruling](http://caselaw.findlaw.com/us-supreme-court/414/563.html) - 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) Ruling](http://web.stanford.edu/~hakuta/www/LAU/IAPolicy/IA1bCastanedaFullText.htm), the5th 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”.

## State Archiving (Retention) Requirements

[Visit the OAR for Educational Service Districts, School Districts, and Individual School Records, Division 400](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=175) for more information.

## Oregon Administrative Rules (OAR) and Oregon Revised Statues (ORS)

Visit the [OAR Website](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=137) and [ORS Website](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)

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

### Oregon Revised Statues and Oregon Administrative Rules

(Additional links will be added as they become available.)

| Type | Number | Title | Click on Link, then scroll down to specific number |
| --- | --- | --- | --- |
| OAR | **581-021-0580 through 581-021-0584** | **Oregon State Seal of Biliteracy** | [OAR 581-021-0580](http://www.ode.state.or.us/superintendent/priorities/581-021.0580-582-584-final-4-18-16.docx) |
| OAR | **581-022-1310** | **Identification of Academically Talented and Intellectually Gifted Students** | [OAR 581-022-1310](http://www.ode.state.or.us/policy/state/rules/tagoar.pdf) |
| OAR | **581-022-0617** | **Essential Skills for English Language Learner Students (ELLs)** | OAR [581-022-0617](http://www.ode.state.or.us/superintendent/priorities/581-022-0617-final-3-1-16.doc) |
| OAR | **581-021-0030** | **Limitation on Administration and Utilization of Tests in Public Schools** | [OAR 581-021-0030](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html) |
| OAR | **581-021-0045** | **Discrimination Prohibited** | [OAR 581-021-0045](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html) |
| OAR | **581-021-0046** | **Program Compliance Standards** | [OAR 581-021-0046](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html) |
| OAR | **581-021-0260** | **An Educational Agency or Institution's Annual Notification** | [OAR 581-021-0260](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html) |
| OAR | **581-022-0610** | **Administration of State Assessments** | [OAR 581-22-0610](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_022.html) |
| OAR | **581-022-0615** | **Assessment of Essential Skills** | [OAR 581-22-0615](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_022.html) |
| OAR | **581-022-0617** | **Essential Skill Assessments for English Language Learners** | [OAR 581-22-0617](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_022.html) |
| OAR | **581-022-1140** | **Equal Educational Opportunities** | [OAR 581-22-1140](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_022.html) |
| OAR | **581-022-1363** | **Expanded Options -- Definitions** | [OAR 581-22-1363](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_022.html) |
| OAR | **581-023-0100** | **Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution** | [OAR 581-023-0100](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_023.html) |
| ORS | **327.013** | **State School Fund distribution computations for school districts** | [ORS 327.013](http://www.oregonlaws.org/ors/327.013)  |
| ORS | **327.345** | **Grants for training English as second language teachers; qualifications; use; rules** | [ORS 327.345](http://www.oregonlaws.org/ors/327.345) |
| ORS | **336.074** | **Teaching in English required; exceptions** | [ORS 336.074](http://www.oregonlaws.org/ors/336.074)  |
| ORS | **336.079** | **Special English courses for certain children** | [ORS 336.079](http://www.oregonlaws.org/ors/336.079) |
| ORS | **336.081** | **Opportunity to qualify to assist non-English-speaking students** | [ORS 336.081](http://www.oregonlaws.org/ors/336.081) |
| ORS | **339.351** | **Definitions for ORS 339.351 to 339.364.** | [ORS 339.351](http://www.oregonlaws.org/ors/339.351)  |
| ORS | **659.850** | **Discrimination in education prohibited; rules** | [ORS 659.850](http://www.oregonlaws.org/ors/659.850)  |
| ORS | **659.855** | **Sanctions for noncompliance with discrimination prohibitions** | [ORS 659.855](http://www.oregonlaws.org/ors/659.855)  |

### Executive Numbered Memoranda Pertaining to English Learners

| Numbered Memorandum | Pertaining to: | Link |
| --- | --- | --- |
| 004-2018-19 | Exiting EL Policy Change | [Exiting policy change](https://www.google.com/url?q=https://www.oregon.gov/ode/about-us/Documents/Executive%2520Numbered%2520Memo%2520004-2018-19%2520Exiting%2520ELs%2520as%2520Proficient.pdf&sa=U&ved=0ahUKEwjw9rzbt5PhAhVoITQIHWqWAV0QFggFMAA&client=internal-uds-cse&cx=017270664345420165392:sia_fbfaeds&usg=AOvVaw0QqPZLSNu4HoAC39Wlr8J2) |
| 005-2017-18 | Identification of English Learners (ELs) under Every Student Succeeds Act (ESSA) | [Identification of English Learners (EL) under the Every Student Succeeds Act (ESSA)](http://www.oregon.gov/ode/about-us/Pages/Executive-Numbered-Memos-2017-18.aspx) |
| 003-2017-18 | Update to Executive Numbered Memo 006-2016-17 Reclassification/Retention for English Learners | [Reclassification/Retention for English Learners (EL)](http://www.oregon.gov/ode/about-us/Pages/Executive-Numbered-Memos-2017-18.aspx) |
| 003-2016-17 (Revised) | Identification of English Learners | [Executive Numbered Memo 003-2016-17 Identification of English Learners](http://www.oregon.gov/ode/about-us/Documents/Numbered%20Memo%20003-2016-17%20EL%20Identification.pdf) |
| 006-2015-16(Revised/Out of date) | Reclassification of English Learners as Proficient | [Executive Numbered memorandum 006-2015-2016](http://www.ode.state.or.us/news/announcements/announcement.aspx?id=13667)  |
| 005-2015-16 | Protecting Personally Identifiable(PPI) Student Assessment Data | [Executive Numbered Memorandum 005-2015-16 Student PII Assessment Data](http://www.ode.state.or.us/news/announcements/announcement.aspx?id=13320&typeid=4) |
| 001-2014-15 | English Learner Students with Disabilities | [Executive Numbered Memorandum 001-2014-15 English Learner Students with Disabilities](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=10106&TypeID=4http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=10106&TypeID=4) |
| 009-2013-14 | Proper Identification of Spanish-Speaking English Learners for the Kindergarten Assessment | [Executive Numbered Memorandum 009-2013-14 – Proper Identification of Spanish-Speaking English Learners for the Kindergarten Assessment](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=9831) |
| 007-2013-14(Revised/Out of date) | Reclassification and Retention Procedures for English Learners (ELs) (Revision to Memo #002-2008-09) | [Executive Numbered Memo 007-2013-14 – Reclassification and Retention Procedures for English Learners](https://www.oregon.gov/ode/rules-and-policies/StateRules/Documents/Executive%20Numbered%20Memo%20007-2013-14.pdf)  |
| 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)](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=9019&TypeID=4)  |
| 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)](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=8163&TypeID=4)  |
| 007-2009-10(Note: An updated OAR has been issued in the 2015-16 SY) | Assessment of Essential Skills Options for EL Students | [MEMORANDUM NO. 007-2009-10 – Assessment of Essential Skills Options for EL Students](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=5339&TypeID=4)  |
| 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)](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=5318&TypeID=4)  |
| 002-2008-09(Revised/Out of date) | 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](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=3994&TypeID=4)  |
| 010-2006-07 | New federal regulations and assessment options for EL | [Memo # 010-2006-07 New federal regulations and assessment options for EL](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=2503&TypeID=4)  |
| 024-2005-06 | Meeting State Annual Measurable Achievement Objectives (AMAOs) | [Memo # 024-2005-06 Meeting State Annual Measurable Achievement Objectives (AMAOs)](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=1706&TypeID=4)  |
| 005-2005-06 | Oregon’s New English Language Proficiency Assessment (ELPA)**(Note: This memorandum is under review for archiving).** | [Memo # 005-2005-06 Oregon's New English Language Proficiency Assessment (ELPA)](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=1727&TypeID=4)  |
| 029-2003-04Revised 2017-18 | Assessing New EL students – state assessments | [Memo # 029-2003-04 Assessing New Limited English Proficient Students](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=1778&TypeID=4)  |
| 001-2003-04 | English Language Proficiency Testing – identification | [Memo # 001-2003-04 English Language Proficiency Testing](http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=1806&TypeID=4) |

# EL Required Documents

The following is a list of documents that provide evidence of district compliance with Title I and III program requirements. Additional documents may be added as required by guidance from the U.S. Department of Education. Oregon Department of Education (ODE) staff may require districts to submit evidence of compliance as part of on-going required federal monitoring for Title I and/or III.

ODE has contracted with TransACT Communications, Inc. to provide translated templates for many compliance related forms. These forms, translated into several languages, are available on the [TransACT Website](http://www.transact.com/). 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 original samples of these forms as evidence of program implementation, including signatures will result in program monitoring findings at both the local and state levels.

## Title III Documents

| Document | Description | Required by: | Timeline |
| --- | --- | --- | --- |
| Initial Identification/ program placements – Parent Notification letter | Letter informing parent that their student has qualified as an EL and been placed in an appropriate level of service must contain all elements listed in (Sec. 1112) and must be signed by district personnel and include the specific date sent (mm/dd/yyyy). | Local Service Plan – Title VITitle I – Sec. 1112 | Within the first 30 calendar days of the school year, OR within 14 calendar days of enrollment after the start of the school year. Original letter filed in student permanent file (cum). |
| Continuing Program Placement letter | Letter informing parents that their EL student is continuing in the district EL program must contain all elements listed in (Sec.1112) and must be signed by district personnel and include the specific date sent (mm/dd/yyyy). | Local Service Plan – Title VITitle I – Sec. 1112 | Within the first 30 calendar days of the school year, OR within 14 calendar days of enrollment after the start of the school year. |
| Language Use Survey | Questionnaire assisting in identification of potential EL students; must be given to all students. | Local Service Plan – Title VIExecutive Numbered Memo | When any student enrolls in a district. Based on response, student is screened to determine if student is an EL. Original copy filed in student permanent file (cum). |
| Waiver | Signed documentation that a parent has been informed that their student has qualified for EL services and the parent has decided to waive/refuse services.**There is no federal or state requirement for parents/guardians to annually fill on this form.** | Title III | File original in student permanent file (cum). |
| Consultation with Private Schools | Signed documentation that the district has met with private schools within the district boundaries, addressing Title III services and identification EL students. Must be signed and dated by both private school and district personnel. | Title III & Title I | Annual consultations are conducted with private schools; all potential EL and Recent Arriver should be included in consultation. |
| EL Parent Meeting | Agendas and sign-in sheets available for monitoring. | Title III & Title I | As necessary |
| Recent Arrivers Student Count for Private Schools | Documentation of the number of Recent Arrivers enrolled in local private schools; all documents must be signed and dated. | Title III | Included in ODE Title III Grant Intent – submitted count each spring. |
| EL Exit Notification | Letter informing parents that their student has exited from the English Language Development Program; should be signed and dated. | Title III & OCR | Sent to parents when student has score proficient on the ELPA summative assessment (in-person, remote or Alt ELPA). |
| Returning a monitoring EL back into EL program | Communication with EL parents regarding a decision to return a monitoring EL to the EL program. This must be done with parent/ guardian consent. | Title III & OCR | As necessary |