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ENGLISH LEARNERS: MEETING STUDENT NEEDS AND SUPPORTING STUDENT LEARNING

"It is time that we moved away from the notion that we must do things only because we are obligated to do so by law, and that we shift to a paradigm of what is best for all students.

Creating schools that do so is good for all. This is the kind of education required for a better democracy and a better world."

*Dr. Tony Baez
Milwaukee School
Board Member
and WASB
Region 14 Director*

School districts around the state are reviewing and adapting district policies and practices to better serve their changing student populations and the specific educational needs and interests of students in their local communities.

The demographics in school districts around the state and country have changed in recent years. More districts have seen a growth in the number of children coming to school who speak little or no English, or they are experiencing it for the first time. While some Wisconsin school districts have had experience providing programs and services for limited English-speaking students and serving a more diverse student body, it is a relatively new experience for many other districts.

According to data collected by the Department of Public Instruction (DPI) and reported to the Wisconsin State Legislature in December 2019, 365 school districts in Wisconsin had one or more English learners in the 2018-19 school year, totaling 51,825 English learners. Fifty-three school districts from all over the state – small and large and rural and urban, had a sufficient number of English learners at particular grade levels to receive state categorical aid for their bilingual-bicultural programs. Such bilingual-bicultural programs supported students who spoke nine languages: Spanish, Arabic, Chinese, Hmong, Korean, Mandinka, Nepali, Somali, and Telugu. Districts around the state are also supporting students who are coming to school speaking many other languages as well.

State and federal education laws require districts to give all students a fair and equal opportunity to obtain a high-quality education.

Districts also have specific legal responsibilities to help ensure that students with limited English-proficiency (now referred to as English learners – EL students) master English and meet the same rigorous standards for academic achievement as all students are expected to meet. Districts are required to keep track of EL student progress toward English proficiency annually and include such information, along with student achievement and other data, in their yearly progress reports to the DPI and to the public as required by law.

Districts are also recognizing their legal and other responsibilities to provide a positive and supportive learning environment for all students, EL students and non-EL students, where diversity and cultural differences are recognized, appreciated and respected. They are doing this by:

- Developing a curriculum that embraces cultural diversity and informs students of its many forms.
- Maintaining an ongoing effort to promote cultural competency among faculty and staff so they can better instruct and serve students of all backgrounds. By promoting cultural competencies, districts can significantly limit cultural conflicts and more effectively address those conflicts that do occur.
- Having policies in place that effectively protect students and faculty alike from harassment and/or discrimination motivated by racial, ethnic and cultural differences and address and resolve instances in which such harassment and/or discrimination occurs.

- Recruiting and developing more bilingual personnel.
- Expanding opportunities for district students, EL students and non-EL students, to enroll in dual language schools and programs.
- Effectively communicating with parents and community members to create an environment where individuals of all backgrounds feel included and invested in the success of their public schools.

Providing students with multicultural educational opportunities, helping students understand and appreciate cultural differences, and helping students develop effective social and communication skills better prepares them for work and life in the 21st century.

According to Multicultural and Bilingual Education Advocate and Milwaukee School Board Member Dr. Tony Baez, “We should see all students who come from ethnic national origin groups as assets that can highly benefit the schools and the community. . . It is time that we moved away from the notion that we must do things only because we are obligated to do so by law, and that we shift to a paradigm of what is best for all students. Creating schools that do so is good for all. This is the kind of education required for a better democracy and a better world.”

This issue of *The FOCUS* is intended to help school districts update their district policies and procedures related to programs and services for English learners to correspond with current legal requirements and meet the needs of all students in their own school communities. School officials should refer to the DPI’s [English Learner Policy Handbook](#), found on DPI’s website, for additional information on identifying, classifying/reclassifying, and providing services and support for EL students. The handbook documents Wisconsin’s collective best practices to serve and support EL students and their families and is updated periodically.

Also, school officials should keep in mind that while their legal and other responsibilities regarding English learners still generally apply during the COVID-19 pandemic, some special considerations and accommodations may come into play. Refer to the “*Policy Processes at Work*” section of this publication for additional information.

GENERAL LEGAL CONSIDERATIONS AND REQUIREMENTS

Policy/Procedure Requirements – Each school board whose student population includes **one or more** limited-English proficient students (EL students) is required by [PI 13.05](#) of the Wisconsin Administrative Code to adopt a policy regarding the following:

- the identification, language assessment, classification and reclassification of EL students;
- the design of the educational program and support for EL students;
- support services; and
- academic achievement and assessment of EL students, including parental notification of testing and procedures for testing EL students. According to [PI 13.09\(1\)](#) of the Wisconsin Administrative Code, the policy must include all of the following assurances: (a) test administration to an EL student shall be made on an individual basis and information on both academic and English proficiency data shall be documented, (b) test results may not be used as the sole criterion in re-classifying an EL student from a bilingual-bicultural education program or in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for participation in postsecondary education opportunities, and (c) exemption of an EL student from taking a test may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for participation in postsecondary education opportunities. [PI 8.01\(2\)\(r\)1](#) of the Wisconsin Administrative Code also requires each school district to develop and adopt a district policy related to the testing and exclusion from testing of EL students.

State law ([section 115.955\(7\)](#) of the state statutes) defines a limited-English proficient student as a student whose ability to use the English language is limited because of the use of a non-English language in his/her family or in his/her daily, nonschool surroundings, and who has difficulty in performing ordinary classwork in

English as a result of such limited English proficiency (i.e., difficulty with reading, writing, speaking or comprehending in English within the academic classroom setting).

School districts required to offer a bilingual-bicultural education program under [section 115.97](#) of the state statutes (*refer to the “Educational Programs and Supports” section below for additional information*) are also required to include the following assurances in policy, according to [PI 13.12](#) of the Wisconsin Administrative Code:

1. The school board shall provide each EL student with an effective instructional program and supportive services appropriate to meet the needs of the student.
2. The school board shall provide each EL student with full access to supportive services, such as language development and speech therapy available to other students in the school district as such services are appropriate to the individual needs of the student.
3. The district shall provide programs and services that reflect the cultural background of the EL students and may include instruction intended to improve the skills of such students in the use of their native language for the purpose of enabling them to become proficient or advanced in all subject areas.

Equal Educational Opportunities and

Nondiscrimination – School districts are required by state and federal nondiscrimination laws to provide equal educational opportunities for all students. Districts may not unlawfully discriminate against students in admission to any school, class, program or activity on the basis of, among other factors, a student’s race, color, ancestry or national origin. Complaints regarding student discrimination may be filed in accordance with the district’s discrimination complaint procedures.

The student discrimination prohibition includes any action, policy or practice, including bias,

stereotyping and student harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles or rewards based on any of the protected factors, or which perpetuates the effects of past discrimination. According to [PI 9.02](#) of the Wisconsin Administrative Code:

- **Bias** means the inclination for or against a person or group of persons based in whole or in part on any of the factors outlined above, that inhibits impartial or objective judgment affecting students.
- **Stereotyping** means attributing behaviors, abilities, interests, values and roles to a person or group of persons based in whole or in part on any of the factors outlined above.
- **Harassment** means behavior towards students based in whole or in part on any of the factors outlined above which substantially interferes with a student’s school performance or creates an intimidating, hostile or offensive school environment.

The state’s student nondiscrimination law does not prohibit the provision of special programs or services based on objective standards of individual need or performance to meet the needs of students, including, for example, bilingual-bicultural education programs. [Section 115.95\(2\)](#) of the state statutes specifically states that it is the policy of the State of Wisconsin to provide equal educational opportunities by ensuring that necessary programs are available for limited-English proficient students while allowing each school district maximum flexibility in establishing programs suited to its particular needs.

School officials should also be aware that the amended Elementary and Secondary Education Act (ESEA) [[20 U.S.C. § 6312\(e\)\(3\)D](#)] specifically states that a student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

School officials should make sure that EL students are not misidentified as students with disabilities and

placed in special education programs because of their English language limitations. According to guidance issued by the U.S. Departments of Justice and Education Offices for Civil Rights, school districts must ensure that all EL students who may have a disability, like other students who may have a disability and need services under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluations, districts must consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.

EL students also cannot be categorically excluded from gifted and talented or other specialized programs or courses (e.g., Advanced Placement courses) in the district, according to OCR guidance. Unless the particular program or course is demonstrated to require proficiency in English language skills for meaningful participation, the district must ensure that evaluation and testing procedures do not screen out EL students because of their limited English proficiency.

School officials should also be aware that undocumented immigrant children in the United States are entitled to the same free K-12 public school education that is provided to children who are citizens or legal residents, according to a 1982 U.S. Supreme Court decision. This right to a free public education likely includes other secondary benefits of public education including participation in extracurricular activities and access to other services that students receive from school districts, such as free and reduced-price meals and special education programming.

School officials should be careful not to take any action that would deter non-documented children from exercising their rights to a public education. For example, school officials should avoid asking children about their immigration status or requiring children to

provide visa information as a condition of enrollment, test taking or participation in school activities. They also should be cautious in denying enrollment to undocumented children who are residents of the district but are not able to establish their parents or guardians as residents of the school district.

District policies and legal requirements related to the education of homeless children and youth, migrant students, and students living in out-of-home placements (foster children) should also be kept in mind when providing programs and services and equal access to EL students.

Multicultural Education and Awareness for Students and Staff – Section 118.01 of the state statutes defines educational goals and expectations for instructional programs in Wisconsin public schools. Schools are expected to provide instructional programs designed to give students, for example:

- An appreciation and understanding of different value systems and cultures.
- At all grade levels, an understanding of human relations, particularly with regard to American Indians, Black Americans and Hispanics.
- The skills needed to cope with social change.

School boards are required to provide curriculum, course requirements and instruction consistent with these and other educational goals and expectations.

School administrators, teachers, pupil services staff and other school personnel licensed by the DPI must meet specific professional standards outlined in Chapter PI 34 of the Wisconsin Administrative Code in order to receive a license. These professional standards include, for example, the following related to inter-personal communications and creating positive school environments for student learning:

Teacher Standards

- The teacher uses his/her understanding of individual student differences and diverse cultures and communities to ensure inclusive learning environments that enable each student to meet high standards.

- The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.
- The teacher understands how to connect concepts and uses differing perspectives to engage students in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

Administrator Standards

- **Equity and Cultural Responsiveness.** Effective educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student’s academic success and well-being.
- **Care and Support.** Effective educational leaders cultivate an inclusive, caring, and supportive school community to promote each student’s academic success and well-being.
- **Professional Capacity of School Personnel.** Effective educational leaders develop the professional capacity and practice of school personnel to promote each student’s academic success and well-being.
- **Meaningful Engagement.** Effective educational leaders engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student’s academic success and well-being.

These professional standards should be kept in mind, along with local requirements for district staff, when developing staff job descriptions, determining staff performance expectations, and developing staff professional development and improvement plans.

IDENTIFYING EL STUDENTS, LANGUAGE ASSESSMENT AND CLASSIFICATION

Each school district is required by [section 115.96\(1\)](#) of the state statutes and [Chapter PI 13](#) of the Wisconsin Administrative Code to conduct a count of

the EL students in the public schools of the district, assess the language proficiency of such students and classify such students by language group, grade level, age and English language proficiency. This count must be done annually on or before March 1.

Students meeting any of the following criteria should be identified: (1) students who communicate in a language other than English, (2) students whose families use a language other than English, and (3) students who use a language other than English in daily non-school surroundings.

Districts must now identify potential EL students using a standard, DPI-approved home language survey. Previously, districts had more local discretion on what questions could be asked on the home language survey used in the district. This change was made to provide for compliance with the revised ESEA state plan approved by the U.S. Department of Education. The change was made to ensure that all students are asked the same questions.

In order to accurately and efficiently identify students who are potential English learners, districts are required to administer the Wisconsin home language survey to all newly enrolling students. According to the DPI, the requirement that this be given to all students is to prevent discrimination, and to create a unified entry procedure that will be more likely to identify potential ELs. The home language survey can be implemented online, on paper, or a combination of the two. In general, it is expected that districts will use the DPI-approved home language survey without modification. Occasionally, special circumstances within a district may make it necessary to modify the home language survey in order to ensure that appropriate decisions are made. Districts wishing to alter their home language survey may do so only with the approval of the DPI.

According to information found in DPI’s English Learner Policy Handbook, when the home language survey indicates that a student is exposed to languages other than English at home, districts must administer a DPI-approved English language proficiency screener. This screener identifies the approximate level of English proficiency of a potential EL student

and gives the district important information with which to make a final EL status determination.

Students are eligible for English language proficiency screening upon enrollment only when the results of the home language survey indicates that they should be screened. Students who have not been administered a home language survey are not eligible for English language proficiency screening, according to the DPI. Students whom the home language survey indicated should not be screened are also not eligible for English language proficiency screening. Students transferring from out-of-state schools and who come with English language proficiency assessment records may or may not need to be screened. Such decisions should be made in accordance with procedures outlined in DPI's English Learner Policy Handbook.

Other supplemental indicators or data such as the following may also be used by school districts in assessing a student's English proficiency level, according to PI 13.07 of the Wisconsin Administrative Code: (1) prior academic records from within or outside the United States, (2) course grades which, in relation to the student's grade level, indicate that lack of progress is due to limited English language skills, and (3) information on everyday classroom performance.

While the English language proficiency screener results form the core of EL status determinations, DPI encourages districts to gather supplemental evidence of student language use prior to making an EL determination. According to DPI, these supplemental observations are not designed to override definitive screener results but are instead intended to provide additional evidence for students who are on the borderline of English proficiency.

Students for whom the home language survey indicates a need for screening must be screened and a final EL determination made within 30 days of their enrollment in the school district. DPI defines enrollment as "the day a district begins providing academic services to a student." Districts must notify a student's parents/guardians of this determination in a timely fashion. For students enrolling mid-year, districts have two weeks to notify parents/guardians

once they have made the EL determinations. (*Refer to the "Home-School Communications" section of this publication for additional information regarding required parent/guardian notifications.*)

Under federal law (the ESEA), all students who have EL status must be annually assessed for English language proficiency using a state-defined English language proficiency assessment. In Wisconsin, the DPI-approved English language proficiency assessment instrument is the ACCESS for ELLS® or, for students in grades 1-12 with the most significant cognitive disabilities, the Alternative ACCESS for ELLS®. According to the DPI, a student with the most significant cognitive disabilities:

- (1) is typically characterized as functioning at least two and a half to three standard deviations below the mean in both adaptive behavior and cognitive functions; **and**
- (2) performs substantially below grade level expectations on the academic content standards for the grade in which they are enrolled, even with the use of adaptations and accommodations; **and**
- (3) a student who requires extensive, direct individualized instruction and substantial supports to achieve measurable gains, across all content areas and settings.

Each EL student assessed is to be classified according to the following English proficiency level classifications included in PI 13.08 of the Wisconsin Administrative Code:

- Level 1 – Beginning Preproduction
- Level 2 – Beginning Production
- Level 3 – Intermediate
- Level 4 – Advanced Intermediate
- Level 5 – Advanced
- Level 6 – Formerly Limited-English Proficient

Proper records shall be maintained regarding the identification, assessment of English language proficiency, classification and reclassification of EL students.

It is important that all district staff involved in enrolling students in school and assigned responsibilities for administering home language surveys and English language proficiency screeners and assessments to students understand district protocols and legal requirements for identifying, classifying and reclassifying EL students.

According to the DPI, all district and school staff guiding families as they complete the home language survey process should be able to clearly explain to parents/guardians (1) the purpose of the survey, (2) how the results are used, (3) how providing accurate information will ensure students receiving services for which they are eligible, and (4) the parents/guardian's right to decline EL services. Districts will be required to provide evidence that these requirements have been completed as part of ESEA monitoring.

All staff who administer or score the English language proficiency assessment/screener must complete specific training and pass required certification tests. Information on these staff training and certification requirements, as well as other information regarding the administration and use of the home language survey and English language proficiency screeners/assessments, can be found in DPI's English Learner Policy Handbook.

EDUCATIONAL PROGRAMS AND SUPPORTS

EL students should be placed in an appropriate educational program and receive appropriate support so that they can acquire English proficiency and meaningfully participate in the standard educational program comparable to their never-EL peers. Both state and federal laws give school districts considerable flexibility in determining the particular educational program and language assistance services that are provided to EL students provided they are educationally sound in theory and effective in practice.

Although districts have the flexibility to choose the programming and supports that work best for their district and their students, they are required to

have the personnel and resources necessary to effectively implement the chosen EL program(s). This obligation includes having an adequate number of highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the EL program(s). According to research, highly effective programming takes into account language, literacy and content instruction, family engagement, school climate and culture (including first language support), and staffing.

When planning educational programs and services for EL students, school officials should keep in mind that districts generally may not segregate students on the basis of national origin or EL status. Although certain EL programs may be designed to require EL students receive separate instruction for a limited portion of the day or period of time, districts are expected to carry out their chosen program in the least segregative manner consistent with achieving the program's stated educational goals.

Districts receiving federal education funds (i.e. Title I or Title III funds) are required to have a plan supporting EL students. The district's plan for EL students can differ by school, and may differ within a school, according to the DPI. When designing or assessing a language education program, school officials may want to consider questions such as the following:

- Is the program results-focused?
- Is the program focused on moving the student towards English proficiency?
- Is the program based on research and evidence?
- Does the program meet state and federal law?
- Is the program culturally and linguistically responsive?
- Is there meaningful engagement with EL students' parents/guardians?
- How is the program's effectiveness measured?

While different types of EL programs have differing documentation needs, in general, districts should capture a student's linguistic supports in an

EL plan, an individualized learning plan (ILP), or other such document. An ILP is a written plan for an EL student that helps districts support their EL students as they grow in their English proficiency and work to meet Wisconsin's and the district's academic standards. It details strategies, accommodations and supports to be implemented in the classroom and on assessments. An EL student's ILP can be combined with other related plans.

Districts are legally required to notify the parents/guardians of EL students, in a language that they can understand, about their child's rights, the range of EL services that their child could receive, and the benefits of such services. (*Refer to the "Home-School Communications" section of this publication for additional information regarding required parent/guardian notifications.*)

All EL students are entitled to appropriate EL programming and services; however, parents/guardians have the right to opt their child(ren) out of a district's EL program or out of particular EL services within an EL program. School officials may not recommend that parents/guardians opt out for any reason. If an EL student's parent/guardian opts them out of participating in an EL program or services, districts should appropriately document in the student's school records that the parents/guardian made a voluntary, informed decision to opt their child out.

If an EL student's parent(s)/guardian opts their child out of a district's EL program or out of particular EL services, the student still retains their EL status. The district must still take steps to provide opted-out EL students with access to its educational programs, monitor their progress toward English language proficiency and academic standards, and offer EL services again if the student is struggling.

Districts are required to evaluate EL programs and services using accurate data to assess the educational performance of current and former EL students in a comprehensive and reliable way and must modify their programs and services when needed in a timely manner.

School officials should keep in mind the following specific requirements when providing programs and services for EL students:

- **Bilingual-Bicultural Education Programs.** Wisconsin school districts that have the following specific numbers of EL students are required by [section 115.97](#) of the state statutes to establish a bilingual-bicultural education program for such students:
 - There are 10 or more EL students in a language group (e.g., Spanish or Hmong) in kindergarten to grade 3 in attendance at a particular elementary school and whose parents or legal custodians give written consent to the student's placement in the program.
 - There are 20 or more EL students in a language group in grades 4 to 8 in attendance at a particular elementary, middle or junior high school and whose parents or legal custodians give written consent to the student's placement in the program.
 - There are 20 or more EL students in a language group in grades 9 to 12 in attendance at a particular high school and whose parents or legal custodians give written consent to the student's placement in the program.

A school district may combine students in attendance at separate schools in its bilingual-bicultural education program. In addition, a district may establish a bilingual-bicultural education program by contracting with other school districts or with a cooperative educational service agency (CESA).

Bilingual-bicultural education programs must be taught by a licensed bilingual teacher. If a district is required to establish a bilingual-bicultural education program but bilingual teachers for the language groups are unavailable,

the program may be taught by certified teachers of English as a second language with the approval of the state superintendent under the conditions outlined in section 115.97(5) of the state statutes. This bilingual teacher exception does not apply to a program for Spanish-speaking students. Bilingual counselors must be made available for bilingual-bicultural education programs for EL students in grades 9-12.

State aid is available for bilingual-bicultural education programs as outlined in state law.

Bilingual-bicultural education programs required under state law must be established annually on or before July 1 and must provide: (1) instruction in reading, writing and speaking of the English language and (2) through the use of the native language of the EL student, instruction in the subjects necessary to permit the student to progress effectively through the educational system. Each district establishing a bilingual-bicultural education program is required to provide the DPI with a written description of the program that addresses requirements outlined in PI 13.13 of the Wisconsin Administrative Code.

As noted above, written consent of an EL student's parent/legal custodian is required before a student is placed in a bilingual-bicultural education program. Parents/legal custodians may appeal placement decisions to the school board and if they are not satisfied with the board's decision may appeal to the state superintendent of public instruction.

A student is eligible for a bilingual-bicultural education program only until he/she is able to perform ordinary classwork in English. Non-EL students may participate in a bilingual-bicultural education program; however, school districts must give preference to EL students when admitting students to such a program.

School districts operating bilingual-bicultural education programs required by state law are required by section 115.993 of the state statutes and PI 13.15 of the Wisconsin Administrative Code to report to the state superintendent (1) the

number of students, including both EL students and other students, instructed the previous school year in bilingual-bicultural education programs, (2) an itemized statement on oath of all disbursements on account of the bilingual-bicultural program during the previous school year and a copy of the estimated budget for that program for the current school year, (3) the number of students served in the bilingual-bicultural education program for each language group in each district in which such programs are offered, and (4) the number of students in each district and language group who as a result of participation in a bilingual-bicultural education program improved their English language ability to such an extent that the program is no longer necessary for such students. This report must be provided to the DPI on or before August 15 annually.

The DPI is required to, at least annually, review, approve and evaluate the bilingual-bicultural education programs conducted by districts. This shall include reviewing and evaluating all of the following: (a) the school board policies and procedures used for identifying, counting, classifying and placing eligible EL students in an appropriate educational program; (b) the parent/legal custodian/guardian notification statements sent out regarding the bilingual-bicultural program, including the initial written parental consent statements for their child's participation in the program; (c) the procedures used for the establishment of the bilingual-bicultural education program; (d) the procedures to be used for parent/legal custodian/guardian complaints; (e) the curriculum, instruction and materials being offered in the district; (f) the English language proficiency and academic progress of EL students in the program; (g) the program evaluation design, results, and use of the results; and (h) the extent to which any existing gaps in achievement or English proficiency are reduced and eliminated over time.

The DPI is also required to submit an annual report to the State Legislature regarding the status of bilingual-bicultural education programs.

- **Programs and Services for EL Students with Disabilities.** As noted above, EL students have the same rights as all students to a free and equitable education, including special education services when appropriate. When an EL student is determined to also be a student with a disability, as defined by the IDEA or Section 504, the student's EL and disability-related educational needs must both be met. This requires clear communication and cooperation between staff on both the special education and EL teams. It is important that the student's individualized education program (IEP) team include educators who have knowledge of the student's language needs and expertise in second language acquisition. Within the IEP process, districts are required to provide qualified translators and interpreters for an EL student's parent(s)/guardian. According to the DPI, a district must take whatever action is necessary to ensure that the EL student's parent(s)/guardians understand the proceedings of the IEP team meeting.

If an EL student's parent(s)/guardian decline disability-related services, districts are still required to provide appropriate language assistance services to EL students. If parents/guardians opt out of specific EL programs and services while accepting disability-related services for their child, districts are required to provide the services listed in the student's IEP or Section 504 plan. According to the DPI, the requirement to annually assess the EL student's English language proficiency growth remains, as does the requirement to support student language growth outside of a formal EL program.

ACADEMIC TESTING AND ACCOUNTABILITY

The Elementary and Secondary Education Act (ESEA) and state laws and regulations require that all students participate in statewide assessments to be used for accountability. This includes EL students.

The ESEA mandates that all students in grades 3-8 and one high school grade be annually assessed in mathematics and reading/language arts and that all students be assessed in science once in grades 3-5, once in grades 6-9 and once in grades 10-12. Wisconsin has chosen to meet these requirements with the Forward Exam in grades 3-8, and the ACT in grade 11. Science is assessed in grades 4, 8 and 11. In addition, the Dynamics Learning Maps (DLM) is administered to students in these grades who have the most significant cognitive disabilities and who, as a result, are unable to meaningfully participate in the Forward or ACT exams. In addition to meeting ESEA requirements, state law requires that a 9th and 10th grade assessment also be administered, and the ACT ASPIRE has been chosen to meet this requirement.

Federal regulations provide some flexibility related to the assessment and accountability for recently arrived EL students only. Districts will need to first determine if the student has recently arrived in the United States before making assessment and accountability decisions. Recently arrived refers to a student that has attended a U.S. school for less than 12 months. According to the DPI, a recently arrived EL with limited English language proficiency (classified as ACCESS level 1 or 2) may be exempt from one required administration of the state's English/language arts assessment. Recently arrived students must participate in all other content areas, with or without accommodations.

Separate from any lawful testing exemptions that are based on a student's recently arrived status or the validity and reliability of the assessment results, if the parent/guardian of an EL student decides to opt their child out of taking a statewide assessment under section 118.30(2)(b)3 of the state statutes, the district should accept such decisions to the same extent that state law or board policy allows parent-initiated opt-out decisions for students who are non-EL students.

A school district may not exempt EL students from state or federally required tests based solely on their EL status. However, testing accommodations must be provided if the student needs such accommodations. According to the newly revised PI 13.09(3) of the Wisconsin Administrative Code, any accommodations

made shall maintain the validity of the test, as determined by the DPI, and may include, but not be limited to, one or more of the following:

- a. for tests that do not assess English language competency, provide translations in a student's native language or the assistance of a qualified translator to translate instruction or read test items;
- b. provide small group or individual testing opportunities;
- c. provide more practice tests or examples before the actual test is administered;
- d. allow EL students to use dictionaries and other educational aids while taking the test unless this use would invalidate the test;
- e. allow students as much time as necessary to complete the test; and
- f. allow any other method approved by the DPI.

EL students must be given meaningful supports to enable them to participate in these assessments.

EXITING EL STUDENTS FROM ENGLISH LEARNER PROGRAMS

An EL student, including an EL student with a disability, must be exited from EL status when the student satisfies the state's standardized statewide exit procedures. The DPI recently revised these procedures to correspond with the revised ESEA state plan approved by the U.S. Department of Education.

The changes were made to help ensure that a student "is not maintained in an English language instruction program longer than is necessary." Research studies have indicated that reclassification generally has a positive effect on EL students, and that earlier reclassification is likely more beneficial than a delayed reclassification. According to the DPI, a student exited from an EL program and reclassified to former EL status is expected to be able to engage with content in English and demonstrate sufficient command of English to be socially and academically successful. A reclassified student should be able to

work independently, provided they have the same access to universal supports as non-EL students.

According to the new DPI requirements for exiting students from EL programs and services, a student **must** be exited from the EL program and services and reclassified as fully English proficient when the student achieves an overall composite score of 5.0 or greater on Wisconsin's English language proficiency assessment (ACCESS for ELLs®). Previously, students in grades K-12 were automatically exited from an EL program if they achieved a composite score of 6.0 on ACCESS for ELLs®, and students in grades 4-12 were automatically exited from an EL program if they achieved a composite score of 5.0 or above **plus** a minimum literacy sub score of 5.0 or above on the ACCESS for ELLs®.

A student **may** be exited from the EL program and services when (1) the student achieves an overall composite score of 4.5 or greater on the ACCESS for ELLs® and (2) additional evidence, gathered using a Multiple Indicator Protocol (MIP), demonstrates that the student has become fully English language proficient. Evidence should include demonstrations of the student's reading, writing, speaking and listening skills in English through observation in classroom activities or through a portfolio of student work (examples of language use over time – e.g., writing assignments, book reports, audio or video projects, etc.).

According to the DPI, MIP processes should be formalized, captured in district EL plans, and communicated both to staff and to parents/guardians. The timing for when a district begins collecting MIP data depends on what type of MIP the district wishes to use (classroom observation or portfolio of student work).

The DPI has established a standardized MIP tool that school districts can use in collecting evidence of the student's English language use through classroom observation or student language artifact portfolios. The tool includes forms and scoring rubrics.

The *Classroom Observation MIP* is designed to assess an individual student's holistic English use while engaged in classroom activities. There are two versions of the classroom observation MIP – one for use in K-3 settings and the other for use in grades 4-12. According

to the DPI, districts can wait until a student reaches an overall composite score of 4.5 – 4.9 on the ACCESS for ELLs® to administer the *Classroom Observation MIP*.

The *Language Artifact Portfolio MIP* is designed to assess an individual student’s holistic English use on grade-level, age appropriate classroom activities over a period of time. A minimum of one unique artifact of a student’s work should be collected from each domain scored (reading, writing, speaking and listening skills). For a language artifact portfolio of a student’s work, DPI encourages districts to start collecting data once a student reaches an overall composite score of 4.0 or greater on the ACCESS for ELLs®.

DPI’s MIP tool can be found in DPI’s [English Learner Policy Handbook](#), which is located on DPI’s website.

Previously, a student was considered eligible for exiting the EL program and services if all of the following conditions were met: (1) the student had completed fourth grade; (2) the student had attained an English level proficiency of level 5, including a composite score of 5.0 on the ACCESS for ELLs®; (3) two or more additional pieces of evidence demonstrated that the student had become fully English proficient (e.g., state assessments at applicable grades, district benchmark examinations in multiple content areas, writing samples, etc.); and, (4) the student’s parent(s)/guardian and teachers agreed that language was no longer a barrier to the students’ ability to access academic content.

The district must notify an EL student’s parent/guardian when a decision is made to exit an EL student from an EL program. (*Refer to the “Home-School Communications” section of this publication for additional information regarding required parent/guardian notifications.*)

Former EL students (students with exited EL status) must be monitored for a two-year period following reclassification. The purpose of this monitoring period, according to the DPI, is to ensure that students are fully English proficient and that they are supported in gaining any underlying skills that might be affecting their academic progress due to a

lack of exposure or practice from being enrolled in an EL program.

For federal reporting purposes, school districts are required to report the academic progress of students that have exited EL status to the DPI for four years after their reclassification.

HOME-SCHOOL COMMUNICATIONS

All parents/guardians have a right to be involved in their child’s educational program regardless of their English proficiency. Districts must develop a means by which to effectively communicate with the parents/guardians of EL students and engage them in their child’s English language development and learning.

School officials should recognize that some parents/guardians may not be fully English proficient, even though their child is fully proficient. Districts are required to develop and implement a process for determining if parents/guardians have limited English proficiency, what their primary language is, and what their language needs are. School officials are required, to the extent practicable, to communicate with parents/guardians in a language they can understand. If a written translation is not provided, an oral interpretation should be made available when needed. This should be kept in mind when (1) providing required annual notices to parents/guardians (e.g., notices of nondiscrimination policies and grievance procedures, FERPA and student record notices, Title I-related notices, notices regarding school meal programs, special education notices, etc.) and (2) providing other communications about district programs, services or activities (e.g., student progress reporting, student discipline policies/procedures, etc.). Refer to WASB’s Hot Policy Topics page on WASB’s website for a current list of required annual parent notices.

In addition to providing the above general notifications and communications, school districts are required to provide the following specific notifications to the parents/legal custodians/guardians of EL students.

- **Notice of EL Identification and EL Programs and Services.** According to the current ESEA [20 U.S.C. § 6312(e)3], a school district that uses federal education funds to provide a language instruction educational program for English learners must, no later than 30 days after the beginning of the school year, inform parents of an English learner identified for participation or participating in such a program the following information:

1. the reasons for the identification of their child as an English learner and in need of placement in a language instruction educational program *{NOTE: As stated above, the ESSA specifically states that a student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.}*;
2. the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement;
3. the methods of instruction used in the program in which the child is, or will be, participating and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction;
4. how the program in which their child is, or will be, participating will meet the educational strengths and needs of their child;
5. how the program will specifically help their child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation;
6. the specific exit requirements for the program, including the expected rate of transition from the program into classrooms that are not tailored for English learners, and the expected rate of graduation from high school (including four-year adjusted cohort graduation rates for the program) if federal

education funds are used for children in high schools;

7. in the case of a child with a disability, how the program meets the child's individualized education program (IEP) objectives; and
8. information pertaining to parental rights that includes written guidance: (a) detailing the right that parents have to have their child immediately removed from the program upon their request; (b) detailing the options that parents have to decline to enroll their child in the program or to choose another program or method of instruction, if available; and (c) assisting parents in selecting among various programs and methods of instruction, if more than one program or method is offered by the district.

The above notice and information must be provided in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand. For students not identified as English learners prior to the beginning of the school year but are identified as English learners during the school year, the district must notify the students' parents within the first two weeks of the child being placed in the language instruction educational program.

A school district that uses federal education funds to provide a language instruction educational program for EL students is also required by the ESEA to implement an effective means of outreach to parents of English learners to inform the parents regarding how the parents can: (1) be involved in the education of their children, and (2) be active participants in assisting their children to attain English proficiency, achieve at high levels within a well-rounded education, and (3) meet the challenging academic standards expected of all students. Implementing an effective means of outreach to parents shall include holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of students

assisted by a language instruction educational program for English learners funded with federal education funds.

- **Bilingual-Bicultural Education Program**
Notice. According to section 115.96(2) of the state statutes, school districts that are required to offer a bilingual-bicultural education program under state law must annually notify the parents, legal custodian or guardian of every identified EL student of the district's bilingual-bicultural program, of the procedures for registering a student in such a program and of the parental consent requirement for student placement in the program. This notice must be given on or before April 1 and must be in English and in the non-English language of the limited English proficient student.
- **Notice of Exiting an EL Student from an EL Program.** When a decision is made to exit an EL student from the EL program based on current-year ACCESS test results and any current-year MIP results, the district must notify the student's parent/guardian of the reclassification decision and communicate information about any changes in programming or supports. The relevant data and other information used in the decision-making process, along with the resulting decision, must be maintained as part of the student's academic record.

It is important for the above parent/guardian notifications to be provided in a uniform format that is comprehensible to EL families and, to the extent possible, in a language that can be understood by families.

Wisconsin school districts provide the required parent/guardian notices and other home-school communications in a variety of ways. Some of those ways are outlined below:

- Direct mailings and newsletters translated in the native language of EL students

- Parent conferences with an interpreter present
- Phone calls and home visits by bilingual translators or bilingual community liaisons
- Translated comments on report cards

In addition, some districts post translated notices and school district information and communications on the district's website.

POLICY CONSIDERATIONS

School boards and school administrators should keep in mind related district policies when developing policies and procedures addressing programs and services for EL students. For example, policies on such topics as the following may be relevant: school district mission and goals, equal educational opportunities, curriculum development and improvement, multicultural education, bilingual-bicultural programs, programs and services for students with disabilities, gifted and talented programs, Title I programming, student progress reporting, student assessments, student records management, student conduct, anti-harassment and anti-bullying, student discipline, student guidance and counseling services, response to intervention, student involvement in decision making, and parent and family engagement.

Keeping in mind legal considerations and related district policies, school officials may want to consider questions such as the following when making policy and procedure determinations:

- What expectations does the board have for the district and district staff in meeting the educational and other needs of English learners (EL students) in the district and providing a positive environment for student learning?
- Who will have primary responsibility for the administration of district services and programs for EL students, including recordkeeping and reporting?
- Who is assigned responsibility for identifying EL students (administering the required home

- language survey and English proficiency screeners/assessments to students) and making English language proficiency classification and reclassification decisions?
- Will the district utilize authorized supplemental evidence of student English language use, in addition to the English language proficiency screening and/or assessment results, in making decisions regarding EL status and EL classification and reclassification? If so, to what extent?
 - In addition to exiting an EL student from EL programs when required by law, will the district exit an EL student from EL programs when (1) the student achieves an overall composite score of 4.5 or greater on the ACCESS for ELLs® and (2) additional evidence, gathered using a Multiple Indicator Protocol (MIP), demonstrates that the student has become fully English language proficient? If so, what MIP will the district use (*the Classroom Observation MIP*, the *Language Artifact Portfolio MIP*, or both)?
 - What academic testing accommodations/supports will the district provide to an EL student if the student needs such accommodations/supports to participate in required academic assessments? (The accommodations must maintain the validity of the tests.)
 - Does the district have a plan in place for (1) engaging the parents/guardians of EL students in educational program planning and student learning and (2) providing required notices and other information regarding district programs, services and activities in a language they can understand? If so, what is that plan?
 - What training and support will the board provide to administrators and staff members who are responsible for carrying out specific tasks related to the identification, assessment and classification/reclassification of EL students and providing programming and support services to EL students?
 - Does the district’s curriculum development process, and related district policies/procedures, ensure culturally relevant learning experiences for district students? If not, what needs to be done to make that happen?
 - Do EL students have an equal opportunity to participate in advanced coursework, extracurricular activities, and other district programs and activities at the same level as non-EL students in the district? If not, what barriers may be standing in their way and what might the district do to eliminate such barriers? What district policies, procedures and practices may need to be revised to ensure there are no barriers to equitable educational opportunities for all students, including EL students?
 - How will the school board monitor district compliance with district policies/procedures governing programs and services for EL students? Who will be responsible for overseeing compliance?
 - What are the board’s expectations for keeping the board informed of EL student progress, student needs and accomplishments, recommendations for improvement in EL programs/services, and changes in district policies/procedures?



PROVIDING EDUCATIONAL PROGRAMMING AND SERVICES FOR ENGLISH LEARNERS DURING COVID-19 PANDEMIC

The COVID-19 pandemic has already had a significant impact on school districts and student learning and will continue to affect district decision making and educational program planning and implementation in the next school year. School officials should keep in mind information included in DPI's [Education Forward](#) guidance document when planning for a safe, efficient and equitable return to school for the 2020-21 school year amid the pandemic. Within that guidance document are specific considerations related to English Learners (EL students).

In addition, school officials should keep in mind DPI's [English Learners COVID-19 Resources](#), found on DPI's website, and information found in a U.S. Department of Education [guidance document](#) when providing services to EL students during the pandemic. These resources outline some special considerations when school is closed due to an outbreak and the district is operating via remote learning. The following are a couple of examples of such considerations:

Identifying New Students for EL Status. If the district is operating via remote learning and continuing to enroll new students, the district must screen new students to determine EL status in accordance with legal requirements to the extent possible. The home language survey is to be administered to new students. The home language survey can be implemented online. According to the U.S. Department of Education, the district may also communicate with the student's parent(s)/guardian by telephone, with interpreters as needed, to conduct an oral home language survey in the parent/guardian's native language to identify potential EL students.

If the home language survey was answered in a manner that indicates an English language proficiency screening/assessment is needed and the

student does not enroll with information about their English language proficiency, then the school needs to administer a DPI-authorized English language proficiency screener to the student within 30 days of the student's enrollment in the district. According to the DPI, individual determinations may be made to delay the administering of the screener based on public health considerations for the student and staff.

Providing Services to EL Students. If a district is providing remote learning for its students, the district must ensure that services for EL students are provided to the greatest extent possible. This includes providing language learning supports. According to the DPI, the district must also determine if the student needs additional supports to access remote learning. School administrators, educators and parents are encouraged to collaborate creatively to meet the needs of EL students. Non-technology-based strategies might also be considered.

If some services cannot be provided for EL students, the district must consider, whether and to what extent, compensatory services are required once school reopens and students are physically back at school. These determinations must be made on an individual student basis.

Individual language plan (ILP) team meetings may be conducted virtually or through conference calls. Family involvement should be included to the extent possible as revisions are made to students' ILPs. Any revisions to a student's ILP should be communicated to the student's family.

School officials must ensure that, to the greatest extent possible, EL students with disabilities can be provided the special education and related services identified in the student's individualized education program (IEP) developed under the Individuals with Disabilities Education Act (IDEA), or a plan developed under Section 504. Refer to DPI's Special Education Team's [COVID-19 Special Education Updates and Resources](#), including the ["Teleservice Considerations for Related Services During the Current Public Health Emergency"](#) document (updated regularly).