



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

### FACT SHEET

## PROVIDING SERVICES TO ENGLISH LEARNERS DURING THE COVID-19 OUTBREAK

May 18, 2020

This fact sheet outlines States' responsibilities to English learners (ELs) and their parents<sup>1</sup> during the extended school closures and, in some cases, the move to remote learning<sup>2</sup> due to the national emergency caused by the novel Coronavirus disease 2019 (COVID-19). A local educational agency (LEA) should collaborate with its State educational agency (SEA) and local public health department, as appropriate, in implementing the guidance provided below. This document does not create any rights for any person and does not impose any additional requirements beyond those included in applicable law and regulations. It is intended to provide additional information about requirements in the Elementary and Secondary Education Act of 1965 (ESEA) and other Federal laws related to ELs in light of COVID-19 and this specific situation.

### Annual ELP Assessment

1. In a situation where the SEA cannot administer English language proficiency (ELP) assessments in spring 2020 because of school closures due to the COVID-19 national emergency, will the U.S. Department of Education (Department) waive the ESEA requirement to administer ELP assessments to all ELs?

Yes. On March 20, 2020, the Secretary invited requests for waivers of assessment, accountability, and related reporting requirements in the ESEA for the 2019-2020 school year. With respect to assessments specifically, the Secretary invited requests to waive the requirements in Section 1111(b)(2) of ESEA, including the requirement in Section 1111(b)(2)(G) of ESEA to administer an ELP assessment in school year 2019-2020. All SEAs have requested and been granted this waiver for the 2019-2020 school year. Some SEAs have already administered some of their assessments to some of their students, and an SEA may elect to continue administering some portion of their State assessments.

Under the waiver discussed above, an SEA that was unable to complete assessments for all ELs in school year 2019-2020 does not need to administer ELP assessments to the remaining ELs who were not assessed this year. If an SEA was unable to complete assessing all ELs in the school year 2019-2020, the SEA has the option to administer the ELP test in the fall of 2020, where possible, consistent with the State's ELP exit procedures. For specific questions relating to exit procedures tied to the annual ELP assessment, please see the section below on "Exit

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<sup>1</sup> The term "parent" includes a legal guardian or other person standing *in loco parentis* (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). (Section 8101(38) of ESEA).

<sup>2</sup> In this document the term "remote learning" and "distance learning" are used interchangeably and for purposes of this document the terms mean the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications. (Section 8101(14) of ESEA).

Procedures.” All States are required to administer ELP assessments in the 2020-2021 school year.

2. How should an SEA that receives a waiver of the requirement to administer the ELP assessment make decisions regarding the instruction and placement of ELs without data from the ELP assessment?

An SEA and its local educational agencies (LEAs) typically use the annual ELP assessment to inform instruction and placement of ELs, in addition to decisions on exiting students from EL status. If the SEA could not complete the annual ELP assessment for some or all of its ELs, the SEA and its LEAs could schedule the ELP assessment if schools reopen in the 2019-2020 school year or early in the 2020-2021 school year, if possible, in order to use ELP assessment results for instruction and placement decisions, as well as for exit determinations. If that is not possible, an LEA could use other resources to make instructional and placement decisions for its ELs when school resumes. Some LEAs may use formative assessments and/or EL specialists and teacher input to help inform instruction and placement decisions. For example, if an LEA normally uses a team comprised of EL specialists and content teachers to determine when an EL no longer needs a sheltered classroom setting and can be placed in content classrooms with support from an EL teacher, the LEA can continue to do so, either during remote operation in the 2019-2020 school year or in-person or remotely during the 2020-2021 school year. For exit from EL status in the absence of the annual ELP assessment, see the section below on exit procedures.

For those students for whom the SEA has ELP assessment data from the 2019-2020 school year, the SEA should use those results to inform instruction, placement, and exit of ELs. Note, however, that it may be the case that some ELs’ English proficiency may have decreased since they were assessed because they may have experienced limited instruction for an extended time during the school closures. Therefore, schools should closely monitor ELs, including those students who have been exited from EL status based on the 2019-2020 ELP assessment, to evaluate whether such students need additional services or should be re-classified as ELs.

### **Entrance Requirements**

3. If a student moves into a new LEA that is currently closed due to the COVID-19 national emergency, must staff at the enrolling LEA screen the student for EL identification within 30 days?

If an LEA’s schools are physically closed and it is not providing any educational services to students, there is no obligation to screen new students for EL status. However, if the LEA is operating via remote learning, the LEA must screen new students to determine EL status to the extent possible. Sections 1112(e)(3) and 3113(b)(2) of ESEA require that students be identified for EL status within 30 days of enrollment in a school in a State; for students who enroll after the beginning of the school year, the LEA must send the required parent notice within two weeks of a student being placed in a language instruction educational program (LIEP).

However, the Department recognizes that, during the COVID-19 national emergency, many facilities are physically closed, including those normally used for registration and screening. An

LEA that is continuing to enroll new students during the COVID-19 national emergency should attempt to identify ELs remotely to the greatest extent possible. For example, the LEA's online registration process could include a home language survey for parents, and the LEA may be able to conduct a version of its screening assessment online. Funds received under the Elementary and Secondary School Emergency Relief Fund (ESSERF) or the Governor's Emergency Education Relief Fund (GEERF) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)<sup>3</sup>, enacted on March 27, 2020, can generally be used for these purposes.

An LEA may also communicate with parents by telephone, with interpreters as needed, to conduct an oral home language survey in the parent's native language to identify potential ELs and may explain to parents orally the information required by Section 1112(e)(3) of ESEA to be included in the parent notice<sup>4</sup> in order to start providing EL services remotely to those students. When the school physically reopens, the LEA would complete the full identification procedures to promptly ensure proper identification and placement for new ELs.

4. May an LEA presumptively identify an EL based on an oral home language survey alone, even if the statewide standardized entrance procedures require additional criteria (e.g., a screener assessment) for identification?

The Department recognizes that extended school closures have made it difficult for SEAs to implement their statewide, standardized entrance procedures. SEAs and LEAs may need to adjust their statewide, standardized entrance procedures temporarily to allow for the use of available online resources and other options (see question 3 above) to identify EL students as quickly as possible in order to start services for those students. SEAs and LEAs could apply temporary entrance procedures that permit the presumption of EL identification based on a home language survey and rely on appropriate follow up, including but not limited to, discussion with parents and/or students (as appropriate) in order to provide needed language services, if the alternative is failing to provide any English language services to students in need of them. An SEA must ensure statewide communication of, and maintain documentation of, any temporary change in its entrance procedures for the 2019-2020 school year due to the COVID-19 national emergency.

### **Providing Services to ELs<sup>5</sup>**

5. Must an LEA providing remote learning provide language instruction services to ELs?

Yes, if an LEA is providing remote learning for its students, the LEA must provide language instruction services to ELs. However, during the COVID-19 national emergency, the Department recognizes that physical school closures may affect how services are provided to ELs. EL services may be provided virtually, online, or via telephone. The Department understands that,

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<sup>3</sup> Pub. L. No. 116-136 (March 27, 2020).

<sup>4</sup> See question E-1 of the 2016 EL guidance, found at <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidentenglishlearners92016.pdf>, and Section 1112(e)(3)) of ESEA.

<sup>5</sup> These responses to questions under this section pertain only to the current exceptional circumstances created by COVID-19, including this period of rapid transition to remote learning.

during this national emergency, schools may not be able to provide all services in the same manner they are typically provided.

The Department recommends that during remote learning, EL teachers continue to provide instruction to students who were previously in self-contained EL classrooms or in pull-out models. For classes in which ELs participated in mainstream classrooms with both a content teacher and an EL teacher, the EL teacher should continue to collaborate with the content teacher to ensure that the appropriate supports and accommodations are provided to the ELs in that class through remote learning. Additionally, during remote learning, teachers should continue to provide appropriate supports and accommodations to EL students who were previously in mainstream classrooms with only a content teacher to the greatest extent possible.

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of ELs. Consider practices such as remote instruction, telephone calls, meetings held on digital platforms, online options for data tracking, and documentation of services, supports, and accommodations provided. In addition, an LEA might consider non-technology-based strategies, such as providing instructional packets or assigning projects and written assignments to EL students. In each instance, the Department recommends continuity in providing language services to ELs to the greatest extent possible under the current circumstances.

6. If operating remotely, what is the minimum number of hours or days in a week that an LEA or school must provide English language services to ELs?

Under the ESEA, there is no particular program or method of instruction for EL students that is required, nor is there a standard amount of time that must be allocated to English language services. Further, the Department recognizes that the determination of how EL services are to be provided may need to be different during the COVID-19 national emergency. Please see also the response to question 5.

7. Must an LEA that is operating remotely provide language accommodations for ELs in content classes?

Yes. The LEA is required to provide language accommodations for ELs for content classes that are held remotely. Many accommodations may be effectively provided online. These may include, for example, extensions of time for assignments, videos with captioning or embedded interpreting, accessible or translated reading materials, other language services provided through video conferencing, an online translation dictionary, or other technological solutions. Funds under Title III of ESEA can be used for that purpose, provided they do not supplant State, local, or other Federal funds (see “Use of Title III Funds” section below). Funds received under the ESSERF or the GEERF of the CARES Act can generally be used for these purposes and are not subject to supplement- not- supplant requirements.

Although Federal law requires meaningful access to remote instruction, it does not mandate specific methodologies for providing that access. Where technology itself poses a barrier to access or where educational materials simply are not available in an accessible format, educators

may still meet their legal obligations by providing ELs equally effective alternate access to the curriculum or services provided to other students. In some cases, this may be accomplished, for example, through hard copy packets, teacher check-ins, or tutorials.

8. How can an LEA continuing to provide instruction remotely ensure that ELs have access to grade-level content in a platform without typical scaffolds and supports?

See response to question 7. SEAs, LEAs, schools, and teachers should use all available resources to meet EL students' needs while operating remotely. If the LEA's platform does not provide the EL supports it typically provides to its students, groups of educators could work together to craft relevant tools and resources for EL students. If remote education is continuing, ELs must receive appropriate language services and supports to the greatest extent possible.

9. Is an LEA required to continue to provide a free appropriate public education (FAPE) to ELs with disabilities during a school closure due to the COVID-19 national emergency?

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that ELs with disabilities also have equal access to the same opportunities, including the provision of FAPE.<sup>6</sup> SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability, including each EL with a disability, 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.<sup>7</sup> The following resources outline a state's responsibility to infants, toddlers, and children with disabilities and their families, and to the staff serving these children. As additional resources become available they will be posted at [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus).

- [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf) (March 12, 2020) [available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>].
- [Supplemental Fact Sheet \(Español\)](https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf) Addressing Serving Children with Disabilities during COVID-19 national emergency (March 21, 2020) [available at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>].

10. Must an LEA operating remotely continue to provide equitable services to eligible ELs enrolled in private schools?

Yes, the LEA has an obligation to provide equitable services to eligible private school ELs and their teachers as agreed upon during the consultation process between LEAs and private school officials (Section 8501 of ESEA). However, due to school closures, additional consultation with private school officials may be required to determine if there are potential barriers to students receiving services via remote learning and how such barriers might be overcome. This discussion

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<sup>6</sup> See the regulations for Section 504 of the Rehabilitation Act of 1973 (Section 504) at 34 CFR §§ 104.4, 104.33; and the regulations for Title II of the Americans with Disabilities Act at 28 CFR § 35.130.

<sup>7</sup> See the IDEA regulations at 34 CFR §§ 300.101, 300.201; and the Section 504 regulations at 34 CFR § 104.33.

might also include the option of temporarily suspending equitable services during school closures. Services could then resume once schools reopen and possibly extend into the summer. If funds allocated for equitable services in the 2019-2020 school year remain unobligated they must be carried over to provide services in the next academic year in addition to services the students otherwise would receive based on the 2020-2021 school year allocation.

### **Use of Title III Funds**

11. If an LEA is providing remote learning, may funds under Title III of ESEA provide support for ELs by purchasing software for ELs in the content areas, or would that be considered supplanting?

The supplement-not-supplant<sup>8</sup> requirement applies to funds under Title III of ESEA even when an LEA is conducting remote learning. However, while schools are operating via remote learning, Title III funds may be used to supplement the basic instruction or support that must be provided to ELs (i.e., to supplement the LIEP). For example, if an LEA purchases software for high school reading/language arts courses that includes embedded supports for ELs, such as pop-up translations or images to support instruction, then for those ELs in those courses, this could provide their “core” LIEP due to the embedded supports, and Title III funds could not be used for that software. The LEA may, however, choose to supplement, using Title III funds, that coursework with additional online resources and software for ELs or it may wish to add an EL support teacher, using Title III funds, to provide online support or support via telephone calls to students for additional assistance.

12. If an LEA provides for internet access, hotspots, and tablets or other devices for low-income students who do not have access to technology, may Title III funds provide similar resources for those low-income students who are ELs to enable their internet access?

No. If an LEA provides remote learning for everyone, including internet access or educational technology for low-income students, then the LEA cannot use Title III funds for that purpose for the low-income students who are ELs, because that would violate the supplement-not-supplant requirement in section 3115(g) of ESEA. The LEA may use Title III funds for supplemental hardware or software that is designed specifically for ELs (e.g., software to provide language accessibility features or tools) and that supplement the LIEP.

For general internet access and educational technology to other students, States and LEAs should use State, local, and other Federal funds to provide the same access for ELs. For example, recipients of subgrants under the CARES Act ESSERF and GEERF can generally use those grants for student internet access and devices to enable online learning as well as accessible technology for ELs with disabilities, among other uses of funds. While short-term connectivity support may be necessary in some situations, the Department encourages SEAs and LEAs to consider ways to invest CARES Act funds in technology infrastructure and professional

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<sup>8</sup> Section 3115(g) of ESEA requires Federal funds made available under Title III to be used 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 ELs and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

development and training that will improve long-term capacity for remote learning. Information on using Federal education funds to support technology can be found at <https://tech.ed.gov/funding/> and <https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/student-support-and-academic-enrichment-program/>. In addition, the following are examples of Department programs under the ESEA that provide funds that may be used to support access to devices for students (e.g., tablets, computers) and mobile hotspot devices and data plans:

- Title IV, Part A, Student Support and Academic Enrichment Grants (SSAE);<sup>9</sup>
- Title V, Part B, Subpart 1, Small, Rural School Achievement Program (SRSA);
- Title V, Part B, Subpart 2, Rural and Low-Income School Program (RLIS);
- Sections 7002 and 7003(b), Impact Aid; and
- Section 4624, Promise Neighborhoods.

Note that the allowability of costs is always situation- and program-specific. For that reason, if an LEA decides to use funds under one of these programs for costs related to device or mobile hotspot access, the LEA must be sure that the use of the funds is, under the specific circumstances of the expenditure and the program authority selected, reasonable and necessary for the purposes of that program, and does not violate other program requirements, such as supplement-not-supplant, if applicable. While funds under these programs may be used on device or mobile hotspot access in some appropriate circumstances, each program's purpose is not primarily focused on that issue.

13. May Title III funds be used to train teachers to use new online platforms and software designed for ELs? Does that training need to be limited to training EL teachers or may the LEA include all teachers who have ELs in their classes?

An LEA may use Title III funds for teacher training if it is specific to EL needs. The training could include all teachers if it is geared towards meeting the needs of ELs or if it relates to software or embedded supports for ELs. However, if the training is for the same online platform that all teachers will use for all classes, and does not address EL needs, then the use of Title III funds for such training would not be permitted, as it would be supplanting, rather than supplementing, other available funding sources. For more information about the ability to use Title III funds to provide supplemental supports for ELs, see the response to question 11.

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<sup>9</sup> Section 4109(b) of ESEA requires that, for LEAs receiving \$30,000 or more in Title IV, Part A funds, no more than 15 percent of those funds for activities to support the effective use of technology may be used “for purchasing technology infrastructure.” Under the authority in section 3511 of the CARES Act, on April 3, 2020, the Secretary invited a waiver of this 15 percent spending limitation and subsequently approved a waiver in all 50 States, the District of Columbia, Puerto Rico, and the Bureau of Indian Education.

## **Exit Procedures**

14. If an LEA is not able to complete the ELP assessment for all ELs in spring 2020, should all ELs be kept in EL status for the fall, even if some of them may be proficient in English according to their teachers? May an LEA exit such students without administering the ELP assessment?

An LEA may not exit an EL from EL status unless the student has demonstrated proficiency on a valid and reliable assessment that includes the four domains of listening, speaking, reading, and writing. There is an exception for an EL with a disability whose disability makes it impossible for the student to be assessed in a particular domain because there are no appropriate accommodations for assessing the student in that domain; such an EL can be exited from EL status based on the student's score on the remaining domains in which the student was assessed.<sup>10</sup>

An LEA that is not able to complete its ELP assessment for all ELs during the 2019-2020 school year due to the COVID-19 national emergency may elect to try to complete that ELP testing in the fall of 2020 when possible. Doing so may assist the LEA in implementing ELP exit procedures. If assessing ELs in the fall is not possible, an LEA should give particular attention to individualized determinations for the instruction and placement of each EL when schools reopen. Note, however, that it may be the case that an EL's English proficiency may have decreased because they may have experienced limited instruction for an extended time during the school closures. Therefore, schools should closely monitor each EL to evaluate whether they need additional EL supports. For example, an EL that may have been close to proficient in spring may need more English language development supports than the student was receiving immediately before the school's closure to ensure access to the general curriculum. An EL at the lower end of the proficiency spectrum may also have lost some English language skills during the COVID-19 national emergency and may need additional supports.

15. If an SEA has additional requirements for exit in addition to the ELP assessment (e.g., a teacher rubric) may the SEA change its exit procedures and exit ELs based only on the ELP assessment during the COVID-19 national emergency?

Yes, due to the extended school closures caused by the COVID-19 national emergency, an SEA may adjust its statewide exit procedures for the 2019-2020 school year to eliminate any additional criteria beyond the ELP assessment. An SEA may want to consider this option if, for example, it used teacher input as an additional exit criterion, but it expects that many of the teachers may be unavailable to complete such input when schools reopen because they have moved to a new school or LEA. In this situation, the SEA could instruct all LEAs to exit students based on the proficient score on the spring 2020 ELP assessment only (if it has that data). When the SEA administers the ELP assessment in spring 2021 on the State's usual schedule, the SEA would revert to the SEA's usual exit procedures that include other measures. By adjusting its statewide exit procedures temporarily to include only the ELP assessment, the SEA would help to ensure that a student in EL status who is proficient in English is able to exit, especially if, by not exiting, the student would be denied access to the full curriculum, e.g., by being in a self-

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<sup>10</sup> See 34 C.F.R. § 200.6 (h)(4)(ii).



contained classroom. An LEA should give careful consideration to the individualized EL instructional and placement decisions when schools reopen, to ensure that all ELs are receiving services appropriate for their EL needs (see questions 2 and 14 above). An SEA must ensure statewide communication of, and maintain documentation of, any temporary change in its exit procedures for the 2019-2020 school year due to the COVID-19 national emergency.

## **Parents of ELs**

16. How should SEAs and LEAs ensure meaningful communication with parents of ELs in a language and format they can understand and access?

SEAs and LEAs have an obligation to ensure meaningful communication with parents of ELs in a language they can understand and to adequately notify limited English proficient (LEP) parents of information about any program, service, or activity of an SEA or LEA that is called to the attention of non-LEP parents. Many LEAs are sending crucial information to parents during this time regarding, for example, the expectations for parents to pick up or set up new technology, new enrollment protocols, and how to support their students at home. SEAs and LEAs should consider all possible methods in order to ensure meaningful communication with LEP parents of all students, including EL students. For example, an LEA should translate all mailings and emails to parents to ensure parents have access to the information in a language they understand. For parents who are not literate, some LEAs are using recorded telephone calls that go to families, which include several different recorded language options that parents can choose, but these recorded telephone calls should be developed carefully to help ensure that they are understandable. SEAs and LEAs can generally use CARES Act funds under the ESSERF and GEERF for communications with parents, including translation and interpretation services.

For information on various uses of Title III funds for parent and family engagement, see question E-4 of the 2016 EL guidance.<sup>11</sup>

## **Resources**

U.S. Department of Education website on COVID-19: <https://www.ed.gov/coronavirus>

U.S. Department of Education Title III, Part A website: <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/english-language-acquisition-state-grants/>.

National Clearing House on English Language Acquisition (NCELA): <http://ncela-stg.it-msg.com/>.

If you have questions for the U.S. Department of Education related to school closures and Covid-19, please email us at [COVID-19@ed.gov](mailto:COVID-19@ed.gov).

If you have questions for the Office for Civil Rights (OCR), want additional information or technical assistance, or believe that a school is violating federal civil rights law, call your regional office or visit the website of the U.S. Department of Education's OCR at

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<sup>11</sup> See <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiii-guidenglishlearners92016.pdf>.

[www.ed.gov/ocr](http://www.ed.gov/ocr). You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), at [ocr@ed.gov](mailto:ocr@ed.gov), or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at [OPEN@ed.gov](mailto:OPEN@ed.gov). You may also fill out a complaint form online at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html).