Guidance for Supporting English Learners with Disabilities

February 2019

Contents

MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

1. Introduction

Meeting the language and learning needs of English learners (ELs) who may be or are eligible for special education services[1] is a challenge faced by many school districts. The Department of Elementary and Secondary Education (DESE or the Department) offers guidance and resources to support Massachusetts districts and schools in meeting their obligations to appropriately provide services to students who are eligible for both an English Learner Education (ELE) program and special education services. The content of each Quick Reference Guide described herein emphasizes the intersection of federal and state requirements regarding ELs eligible for special education and related services, offers guidance to assist districts and schools in their decision-making, and provides resources for meeting the general curriculum, English learning, and special education needs of eligible students. The guides align with Department initiatives and resources and include frequently asked questions (FAQs), evidence-based recommendations, and stories from district/school-based educators.

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[1] Special education is defined as specially designed instruction or related services to access the general curriculum. Related services are developmental, corrective and other supportive services, which may include transportation.

Quick Reference Guide A: Identifying English Learners as Students with Disabilities and Students with Disabilities as English Learners

Under federal and state special education law, districts must refer and evaluate students who have or may have a disability and provide special education and related services in a timely manner, including to English learners (ELs).[2] Additionally, districts must identify ELs and provide them with English Learner Education (ELE) services and subject matter content instruction as appropriate.[3] Appropriately identifying an EL as a student with a disability and vice versa can be challenging, particularly if the student has a disability[4] that impacts reading, writing, listening, and speaking skills. This Quick Reference Guide (QRG) offers guidance and resources to support district and school leaders in reflecting upon and improving their practices for accurately identifying ELs as students with disabilities and students with disabilities as ELs.

> **Disabilities** as defined by
> *Massachusetts Special Education Regulations*
> - *Autism*
> - *Communication Impairment*
> - *Developmental Delay*
> - *Emotional Impairment*
> - *Health Impairment*
> - *Intellectual Impairment*
> - *Neurological Impairment*
> - *Physical Impairment*
> - *Sensory Impairment: Hearing, Vision, Deaf-Blind*
> - *Specific Learning Disability*
>
> 603 CMR 28.02(07)

Ensuring ELs Receive Appropriate Instruction and Instructional Supports

It is important to consider possible external factors that may be affecting learning such as the appropriateness and effectiveness of instruction and instructional strategies based on the student's academic, behavioral, cultural, linguistic, and social-emotional needs, prior to considering a referral to evaluate an EL for special education and related services. English learners have distinct learning needs that require understanding and specialized instructional strategies. Simply exposing English learners to the English language and the school culture may not be enough for academic success. Instructional strategies need to be based on comprehension of content through meaningful activities and assignments that align to students' cultural and linguistic background. Moreover, a student's status as an EL is not, in and of itself, a basis for determining whether the student has a disability.[5] Conversely,

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[2] 20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 300.111(c)(2); G.L. c. 71B; 603 CMR 28.00.

[3] Title VI; EEOA; G.L. c. 71A, §4; 603 CMR 14.00; parents may choose to opt their child out of ELE services. Please refer to *Guidance on Identification, Assessment, Placement, and Reclassification of English Language Learners* for information regarding English learner Education (ELE) programs and services.

[4] As defined in 603 CMR 28.02(7); hereafter referred to as a "*disability*" or "*disabilities*."

[5] 20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)(1)(iii).

a student's status as an EL should not be reason to delay a special education evaluation where there is a reason to suspect the student may have a disability.

Districts must provide sound instructional practices and supports so that ELs receive appropriate instruction that enables them to make adequate progress in attaining English proficiency and academic achievement in the general curriculum. The general curriculum includes access to the content outlined in the **Massachusetts Curriculum Frameworks** and the **WIDA English Language Development (ELD) Standards.** When a student requires support, districts should attempt a variety of practices and strategies that are responsive to the student's needs and document these supports (meaningful progress data) in the student's records.

Best Practice Recommendation: Implementing a Tiered System of Support for Targeted Intervention

The implementation of a comprehensive student support system, such as the Multi-Tiered System of Support (MTSS) Blueprint,[6] assists districts in capitalizing on existing resources, identifying areas of growth, and implementing school-wide initiatives for assisting all students. The features of the MTSS Blueprint include general curriculum based on universally designed instruction (UDL);[7] school-wide behavior supports; evidence-based interventions and assessment practices; universal screening and collecting progress data; and collaborative school/family problem-solving. Culturally and linguistically responsive instruction and intervention are hallmarks of a tiered system of support and include: parent engagement; rigorous core content area instruction (including English as a Second Language [ESL]); appropriate tiered interventions; and meaningful progress data.

> **What is culturally and linguistically responsive teaching and learning?**
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> In *Culturally and Linguistically Responsive Teaching and Learning: Classroom Practices for Student Success,* Hollie (2011) defines culturally and linguistically responsive teaching and learning as:
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> "The validation and affirmation of the home (indigenous) culture and home language for the purposes of building and bridging the student to success in the culture of academia and mainstream society." *(p. 23)*

MULTI-TIERED
SYSTEM OF SUPPORT
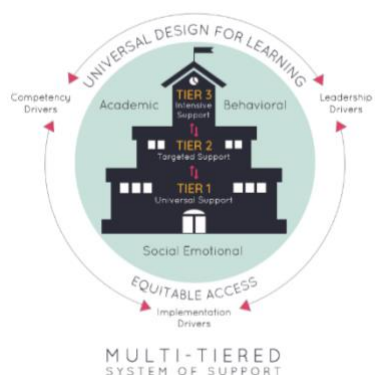
A multi-tiered system of support focuses on delivering targeted assistance to students, which can increase in intensity depending on the individual needs of learners. Districts can provide a multi-tiered method of support to assist learners by closely monitoring the progress of students to determine the need for evidence-based instruction and interventions. Additionally, a tiered system of support is an effective method for targeting students' needs and reducing the number of inaccurate referrals for an evaluation of the student for special education services.

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[6] See the Systems of Student Success (SfSS) website for additional information regarding the *MTSS Blueprint* and supporting students through tiered systems of support.

[7] See the *National Center on Universal Design for Learning* for information regarding universally designed instruction and assessment.

Although districts are required to provide supports and interventions to a student in need of assistance, no instructional support program or intervention limits the right of a parent or guardian to request a special education evaluation to determine if the child is a child with a disability. For additional guidance please refer to the US Dept. of Education *Office of Special Education Programs (OSEP) Memorandum: A Response to Intervention (RTI) Process Cannot Be Used to Delay – Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)* (01/21/2011).

The progress monitoring of ELs should be consistent with that of their peers who share similar educational and language proficiency levels, and should be comparably valid, culturally and linguistically appropriate. To support accuracy, particular consideration is given to proficiency levels in individual language domains (listening, speaking, reading, and writing). The following resources provide additional information regarding meaningful progress data and the use of a tiered system of support to assist with identifying and meeting the learning needs of all students, including ELs with and without disabilities.

- *MTSS Quick Reference Guide: Specific Learning Disability Eligibility within a Tiered System of Support*
- *Response to Intervention (RTI) for English Language Learners: Appropriately Using Screening and Progress Monitoring Tools to Improve Instructional Outcomes*
- *RTI Action Network: Considerations for English Language Learners*
- *WIDA RTI² for ELLs*

Educator Spotlight

Watch a video of a Massachusetts district leader sharing her story of her district's work in meeting the needs of English learners with disabilities through the implementation of a tiered system of support.

Ensure Equitable Access to Education Through a Tiered System of Support

Carey Reeve Hildebrant, Chief Academic Officer
Lowell Community Charter Public School (Mid)

Best Practice Recommendation: Building and Supporting Systems for Collaboration

As an element to MTSS, district and school-based educators and personnel should work collaboratively to ensure that the district is meeting its obligations to ELs with and without disabilities. The creation of student support teams (SSTs) provides a formalized structure for schools and families to collaborate to meet the needs of students.

See the *Next Generation ESL Curriculum Project: ESL Curriculum Resource Guide* for additional information regarding English language instruction and cross-disciplinary collaboration.

Moreover, research has shown SSTs to be effective in reducing the number of retentions, suspensions, expulsions, and inappropriate referrals for special education and related services[8].

SST members contribute their professional expertise and knowledge of school-/district-wide supports and services to collaborate in the coordination and implementation of culturally and linguistically responsive tiered support and collecting meaningful progress monitoring. As SST members, parents and language acquisition educators contribute their understanding of students' educational experiences and cultural, and linguistic needs to the development and implementation of appropriate instructional strategies and interventions.

Spotlight on Students and Families

Watch a video of students and families sharing stories regarding their educational experiences.
Fulfilling Our Promise: Snapshots of English Learners and their Families

Educator Spotlight

Watch a video of Massachusetts educators sharing stories of their work in identifying and implementing culturally and linguistically responsive practices to meet the needs of our English learners with and without disabilities.
A Focus on Culturally and Linguistically Responsive Practices

Identifying Students with Disabilities as ELs

Districts must identify all ELs and provide appropriate instruction that assists them in learning both English and subject matter content. The screening of English proficiency in the language domains of reading, writing, listening, and speaking is part of the initial identification process to determine whether students are ELs.[9]

Conducting an ELP Screening
To support accurate results, appropriate accommodations should be considered and implemented during the ELP screening process. *Educators should refer to IEP 2 Accommodations and IEP 7 State and District-wide Assessment sections of the Individualized Education Program for information regarding assessment and accommodations.*

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[8] Buck, G. H., Polloway, E. A., Smith-Thomas, A., & Cook, K. W, 2003; DC Public Schools, 2006

[9] Please refer to *Guidance on Identification, Assessment, Placement, and Reclassification of English Language Learners* for additional information regarding the initial process for identifying English Learners.

The screening process provides initial English language proficiency (ELP) data, which assists in determining the appropriate ELE program and services for a student identified as an EL. To measure a student's ELP and not the impact of a disability, it may be necessary to provide accommodations on an approved screening tool to ensure appropriate identification as an EL. [10] The IEP documents how a student with a disability will participate in the approved ELP screener, which may require the provision of accommodations. Providing students with disabilities appropriate accommodations assists with accurately measuring ELP rather than the impact a disability has on a student's reading, writing, listening, and speaking abilities.

Evidence-Based Practice Recommendation: Selecting Appropriate Accommodations

Establishing procedures for selecting appropriate accommodations assists districts with appropriate EL identification that is a result of a student's ELP and not the student's disability. The U.S. Department of Education offers the resource, "Tool #5: Selecting Appropriate Accommodations for Students with Disabilities" from the *English Learner Tool Kit for State and Local Education Agencies.*[11] The tool provides considerations for selecting accommodations required for students with disabilities to participate in instructional activities and assessments.

DESE Resources
- The IEP Process Guide
- DESE Memorandum on Specific Learning Disability - Eligibility Process/Forms Special education support for determining eligibility under Specific Learning Disability

Other Resources
- Dear Colleague Letter, English Learner Students and Limited English Proficient Parents (01/7/2015) Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives
- Addendum to Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives Issued July 18, 2014
- Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) September Issued September 23, 2016

Additional References
- Buck, G. H., Polloway, E. A., Smith-Thomas, A., & Cook, K. W. (2003). Prereferral intervention processes: survey of state practices. Exceptional Children, 69, 349-360.
- Hollie, Sharroky (2011). *Culturally and linguistically responsive teaching and learning*. Teacher Created Materials.

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[10] See *WIDA Accessibility and Accommodations Supplement: ACCESS for ELLs 2.0 Kindergarten ACCESS for ELLs Alternate ACCESS for ELLs* and *MCAS Accessibility and Accommodations* for information regarding the assessment of ELs with disabilities.

[11] Hereafter referred to as the "EL Tool Kit".

Professional Learning Opportunities

- *WIDA Screener Online Training*
- *ESE Comprehensive System of Personnel Development (CSPD) Training Project:* "Specific Learning Disabilities"
- *Rethinking Equity and Teaching for English Language Learners (RETELL):* "Extending the Learning"
- *Multi-Tiered System of Support*: "Multi-Tiered Systems of Support (MTSS) Academies"

Quick Reference Guide B: The Special Education Process and English Learners: Evaluation Planning to IEP Development

It may be a challenge for districts to accurately identify an English learner (EL) as a student with a disability.[12] This Quick Reference Guide (QRG) provides information to district and school leaders regarding the appropriate evaluation of English learners (ELs) to determine their eligibility for special education and related services.[13]

It is important to recognize that ELs may have additional assessment needs compared to their English-proficient peers. For example, ELs have the additional challenge of learning grade-level academic content in a new language, while simultaneously acquiring new language skills, and adapting to a new culture. Consequently, it is critical that IEP teams consider the unique context of ELs when determining whether a student has a disability and requires special education and related services to participate in the general curriculum.

Selecting Appropriate Assessments and Other Evaluation Strategies for ELs

Evaluations, when conducted appropriately, yield sufficient data to determine eligibility and specific data to develop an appropriate IEP for eligible students. Districts must use appropriate assessments and other evaluation procedures to ensure that IEP team members have a full understanding of the student and the suspected disability or disabilities. The IEP team must determine that a student's lack of effective progress in the general curriculum, including the English learner education (ELE) program, is a consequence of a disability and not the student's lack of English language proficiency (ELP).The district must ensure the IEP team includes participants who are knowledgeable of the child's language needs and who have training, preferably expertise, in second language acquisition.[14]

> "When conducting evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessment s and other evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their English language proficiency."
> *Dear Colleague Letter, 2015 (p. 25)*

These professionals can assist in differentiating between language acquisition process and disability-related issues.

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[12] As defined in 603 CMR 28.02(7).

[13] Please refer to *Is Special Education the Right Service?* for information regarding the eligibility process for special education and related services in Massachusetts.

[14] See *Dear Colleague Letter, English Learner Students and Limited English Proficient Parents (01/7/2015) page 27.*

Educator Spotlight

Watch a video of Massachusetts educators sharing stories of their work to ensure that English learners with educational disabilities are appropriately identified for special education and related services.
Focusing on Assessment and Evaluation for Special Education and Related Services

Districts must ensure that assessment tools, strategies, and evaluation procedures selected and administered to ELs accurately measure what students can do academically, functionally, and behaviorally. In selecting assessments, IEP teams must consider a student's current level of ELP.

According to 34 C.F.R. § 300.304(c) districts must ensure that assessments and other _evaluation_ materials used to assess a child for special education eligibility are…

- selected and administered so as not to be discriminatory on a racial or cultural basis;
- provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
- used for the purposes for which the assessments or measures are valid and reliable;
- administered by trained and knowledgeable personnel; and
- administered in accordance with any instructions provided by the producer of the assessments.

Teams should use ELE program data provided by a balanced assessment system, consisting of formative, interim, and summative assessments to assist in determining the appropriate assessments and other evaluation procedures.[15] Districts must assess ELs in their native language or other mode of communication and in the form most likely to yield accurate results of the student's abilities, unless it is clearly not feasible to do so. When selecting assessments in the student's native language, IEP teams should consider the formal and informal educational and cultural experiences of students and ensure that the persons administering such assessments have the appropriate qualifications and training.

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[15] *See Guidance on the Identification, Assessment, Placement, and Reclassification of English Learners, P. 24 – 25* found at: http://www.doe.mass.edu/ell/guidance/default.html.

Haymayan, Sanchez-Lopez, and Damico (2013) suggest that IEP evaluation teams may find the following prompts useful as they consider appropriate assessments and evaluation materials for ELs:

- Do assessment tools, strategies, and evaluation materials collect data that is authentic to classroom contexts?
- Do data collection procedures focus on authentic behaviors and take into consideration a student's cultural, linguistic, and experiential diversity?
- Are norms and other [standardized] procedures appropriate for ELs?
- Do procedures take into account the needs of ELs in the interpretation of data?

Developing IEPs for English Learners

If a student is determined to be eligible for special education services, the team develops an IEP. The IEP team develops the document, which includes specially designed instruction or related services that enable the student to progress in the content areas of the general curriculum, including the ELE program, as a result of the student's unique educational needs arising from a disability. Teams are also responsible for determining the accommodations a student requires to access and meaningfully participate in the general curriculum and the student's other educational needs.[16] Districts must simultaneously provide ELs with disabilities both the language program and the disability services to which they are entitled in the least restrictive environment. This means that the IEP team must consider how the student's language needs relate to the IEP.[17]

Evidence-Based Practice Recommendation: Ensuring the Development of Culturally and Linguistically Appropriate IEPs

Including on the IEP team professionals who have an understanding of the student's cultural and linguistic needs, preferably with expertise in language development, and language acquisition strategies, supports and strengthens the development and implementation of the student's IEP. These professionals contribute their understanding of stage(s) of language acquisition and cultural appropriateness to support the development of culturally and linguistically appropriate special education services.

It is important for districts to establish procedures to address the language needs of ELs when developing IEPs for students identified both as ELs and students with disabilities. The Department also encourages districts to develop policies and practices for communication and collaboration between EL and special education professionals. The U.S. Department of Education has created a resource to assist in this area: "Tool #3: Developing an IEP for an English Learner with a Disability", from the _EL Tool Kit,_ provides a checklist for developing IEPs for ELs.

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[16] See the _IEP Process Guide_ for additional information regarding IEP Development and "other educational need" found at: http://www.doe.mass.edu/sped/iep/proguide.pdf

[17] See _Dear Colleague Letter, English Learner Students and Limited English Proficient Parents (01/7/2015)_ "As part of this process, the IDEA requires that the IEP team consider, among other special factors, the language needs of a child with limited English proficiency as those needs relate to the child's IEP" (p 26).

Helping Parents Meaningfully Participate in the IEP Process

As members of the IEP Team, parents provide valuable information regarding the student's language history, cultural background, level of acculturation, prior schooling experiences, developmental milestones, medical history, and social and physical behaviors (Navarette & Watson, 2013). Districts must ensure that parents and guardians can meaningfully participate in the education of their children. As such, they should take action to ensure that parents understand the purpose and proceedings of the IEP Team meetings, including arranging for a qualified interpreter for parents and guardians whose native language is other than English. [18]

In order to provide parents and guardians meaningful participation in educational decision-making, including the development and implementation of appropriately designed IEPs, districts and schools should identify and address any potential barriers that may impact participation of parents and guardians in this process. See "*Chapter 10: Tools and Resources for Ensuring Meaningful Communication with Limited English Proficient Parents*" for additional resources related to effective family engagement practices.

DESE Family Engagement Definition

"The primary goal of family engagement is to facilitate shared responsibility that contributes to the healthy development, learning, and growth of children - from the earliest ages into young adulthood. Family Engagement builds relationships between students, families, educators, and the community. These relationships over time develop into meaningful partnerships rooted in the strengths and assets of all. Effective family engagement is culturally responsive, collaborative, equitable, and respectful of diverse languages, norms, and values. Effective engagement strives to eliminate barriers to participation. These engagement practices take place in schools, in the community, and wherever students live and learn.'

DESE Resources

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[18] 34 C.F.R. 300.322(e).

- The Basic Special Education Process Under IDEA
- Special Education Technical Assistance Documents
- Special Education Process Forms
- Special Education Assistive Technology and Accessibility
- Special Education Selected Resources on Family and Community Engagement
- DESE Family and Community Engagement

Other Resources
- *Chapter Six: Tools and Resources for Addressing the Needs of English Learners with Disabilities*: Suggested questions checklist "Identifying Whether an EL Has a Disability" and "Analyzing and Utilizing the Results of the Disability Evaluation" from the *EL Toolkit*
- WIDA Focus Bulletin: Focus on ELLs with Disabilities: Identifying ELLs with Specific Learning Disabilities
- WIDA Family Engagement: Resources to strengthen connections with families

Additional References
- Hayman, E., Marler, B., Sanchez-Lopez, C. & Damico, J. (2013). *Special education considerations for English language learners: delivering a continuum of services, second edition*. Philadelphia: Caslon Publishing.
- Navarette, L. & Watson, S.M.R. (2013). *English language learners: The impact of language and socio-cultural factors on learning.* Council for Learning Disabilities.
- A Parent's Guide to Special Education
- *Is Special Education the Right Service? A Technical Assistance Guide*

Professional Learning Opportunities
- DESE Comprehensive System of Personnel Development Training Project
- DESE Special Education Professional Development Series

Quick Reference Guide C: English Learner Education Programs and Students with Disabilities

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English learners (ELs) with disabilities are entitled to receive both English learner education (ELE) and special education services. Districts must design and implement language support programs so that ELs, including ELs with disabilities, receive effective English language development and content instruction at appropriate academic levels and that they make progress towards meeting their English language proficiency benchmarks and Individualized Education Program (IEP) goals. This Quick Reference Guide (QRG) provides districts and schools with guidance and resources for helping serve ELs with disabilities.

Providing ELE Programs and Services to ELs with Disabilities

ELs with disabilities must receive both language instruction and disability-related services concurrently and in the scope and manner necessary to meet students' needs. Districts are responsible for providing ELs with disabilities special education services and ELE programs, which may include the adaptation of content, methodology, instructional delivery, and assessments based on student's linguistic needs. Regardless of the severity of a disability, students are entitled to receive language assistance services that promote the attainment of English proficiency and that incorporate WIDA English Language Development (ELD) standards and Massachusetts Curriculum Frameworks.[19]

> WIDA's *Focus on Providing ELLs with Disabilities Access to Complex Language, Model Performance Indicators,* and *Alternate Model Performance Indicators* offers information and resources for providing targeted language instruction to students with disabilities.

English learners ordinarily receive English language instruction through a specific ELE program (e.g., Transitional Bilingual Education, Dual Language Education or Two-Way Immersion, Sheltered English Immersion). For an EL with a disability, the Individualized Education Program (IEP) team will specify which special education services are required for the student to have meaningful access to all educational programs, including the ELE program.

The language development, academic achievement, and "life of the school"[20] of an EL with a disability is the responsibility of all educators involved with the student. For this reason, districts and schools should

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[19] G.L. c. 71A, §7; Equal Educational Opportunities Act, 20 USC §1703(f); Title III of ESEA § 3102..

[20] "Life of the school" is every other part of the school experience that lies outside of the MA Curriculum Frameworks including, but not limited to: social interactions in school and school sponsored events or activities; guidance; after-school sports, activities, and clubs; post-secondary planning; dances; and student government. Life of the school applies to all students — students without and with disabilities.

provide opportunities for educators to collaborate and discuss their shared responsibility in the overall achievement of individual students.

Educator Spotlight

Watch a video of educators sharing their stories about the importance of collaboration in meeting the needs of English learners with and without disabilities.

A Focus on Collaborating for Student Success

Promote Inclusive Practice
Accessible to All Students:
A Focus on Collaborating for Student Success

Supporting the Progress of ELs with Disabilities in Language Acquisition Programs

Massachusetts law[21] requires districts to monitor ELs' progress towards proficiency in English and to identify ELs who do not meet their English proficiency benchmarks. Additionally, districts must establish a process for incorporating the input of parents and guardians[22] of ELs. See *Guidelines for the Use of Benchmarks Toward Attaining English Proficiency* for information about language proficiency targets.

When can we reclassify students with disabilities as English Proficient?

Although a disability can impact the rate of attaining English proficiency, ELs with disabilities are entitled to receive ELE services until they have met the same state-defined reclassification criteria as their non-disabled peers.[23] For this reason, it is essential to ensure that ELs eligible for special education services receive appropriate assessment and specially designed instruction that supports them to access, participate, and progress towards their individual English language proficiency targets. For information regarding language proficiency targets for ELs see *Guidelines for the Use of Benchmarks Toward Attaining English Proficiency*.

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[21] See G.L. c. 71A, § 11.

[22] See 603 CMR 28.02(15) for the definition of "parent" under Massachusetts special education regulations.

[23] See the *Guidance on the Identification, Assessment, Placement, and Reclassification of English Learners* for additional information regarding the reclassification of ELs with disabilities from English learning programs and services.

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