



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

November 15, 2021

OSEP Policy Letter 21-03

Timothy Boals, PhD
Founder and Director
WIDA
1025 West Johnson Street, MD#23
Madison, Wisconsin 53706-1706

Dear Dr. Boals:

This letter is in response to your correspondence to former Secretary Betsy DeVos. In your letter, you seek written guidance and clarification from the U.S. Department of Education (Department) on issues affecting English learners with disabilities. You referred to research released in 2018 that indicated that English learners with the most significant cognitive disabilities are not always receiving the supports they need to be successful. Your letter also states that you routinely hear from educators around the country that they lack the necessary guidance to provide both language development and disability services for their English learners with disabilities. You ask two specific questions, which we address below.

We note that section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, the Individuals with Disabilities Education Act (IDEA) without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.

In 2017-18, 680,601 students, ages 6-21, served under Part B of IDEA, were English learners, which represents 11.31 percent of all students with disabilities served under IDEA Part B (U.S. Department of Education, ED Facts Data Warehouse, "IDEA Part B Child Count and Educational

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Environments Collection,” 2018-19). Data on students with disabilities exiting IDEA Part B reported under IDEA Section 618 demonstrates that more English learners with disabilities drop out and fewer English learners with disabilities graduate from high school compared with all students with disabilities (U.S. Department of Education, EDFacts Data Warehouse, “IDEA Part B Exiting Collection,” 2017-18). The Department is dedicated to improving results for children with disabilities, including English learners with disabilities, and works closely with State educational agencies (SEAs), our technical assistance investments, and research centers to support improved outcomes for English learners with disabilities.

The specific questions you ask in your correspondence are addressed below.

Question 1: Does IDEA require language development goals be included in a student’s individualized education program (IEP) if that student is an English learner? Educators are not always clear on whether language development goals, including a student’s English language proficiency level scores, can be documented in an IEP.

Response: Under IDEA, the IEP Team *must* consider a number of special factors in developing, reviewing, or revising a child’s IEP. See 34 C.F.R. § 300.324(a)(2) and (b)(2). Specifically, under 34 C.F.R. § 300.324(a)(2)(ii), the IEP Team must “[i]n the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP.”

Section 300.320(a)(2)(i) requires that each IEP include a statement of measurable annual goals, including academic and functional goals designed to (a) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (b) meet each of the child’s other educational needs that result from the child’s disability. In addition, for children with the most significant cognitive disabilities who take alternate assessments aligned to alternate academic achievement standards, the IEP must include a description of benchmarks or short-term objectives. 34 C.F.R. § 300.320(a)(2)(ii).

It is important to clarify that IDEA does not specify what types of annual goals must be included in a child’s IEP, provided they are measurable and include academic and functional goals designed to enable the child to be involved in and make progress in the general education curriculum. Determinations as to specific IEP goals are made on an individual, fact-specific basis by the participants on the child’s IEP Team. Although the IDEA does not require specific goals for any child, there is a relationship between the statement of annual goals and the instruction and services to be included in the child’s IEP. Each child’s IEP must include a statement of the special education and related services, supplementary aids and services, program modifications, and other supports that are designed to enable the child to advance appropriately toward attaining the annual goals and to be involved in and make progress in the general education curriculum (34 C.F.R. § 300.320(a)(4)(i)-(ii)).

Therefore, while there is no specific requirement in IDEA that language development goals be included in the IEP of each English learner with a disability, including an English learner with a most significant cognitive disability, the IEP Team must ensure that the child receives special education and related services, supplementary aids and services, and program modifications and supports for school personnel that are necessary for the child to be involved in and make

progress in the general education curriculum. In this regard, consistent with 34 C.F.R. §§ 300.324(a)(2)(ii) and 300.320(a)(4), the IEP Team must consider how the child's level of English language proficiency affects the special education and related services, supplementary aids and services, program modifications, and supports for school personnel that the child needs in order to be involved in and make progress in the general education curriculum. Whether the child's IEP needs to include a language development goal in order for the child to be involved in and make progress in the general education curriculum is a determination that must be made on an individual basis by the participants on the child's IEP Team in light of the particular disability-related needs of the child. Therefore, decisions regarding the extent to which an English learner's disability affects the student's participation in the general curriculum or whether the child needs interventions related to the student's disability that impact the child's developing English language proficiency are matters that should be addressed in the child's IEP in light of the individual needs of the child. In addition, regardless of whether goals for English language development are included in a student's IEP, an English learner must receive needed English language services as a matter of civil rights law. (Jan. 7, 2015, Dear Colleague Letter issued by the [U.S. Department of Justice & U.S. Department of Education \(2015 DCL\)](#))¹

To ensure that appropriate IEPs are developed for English learners with disabilities, including English learners with the most significant cognitive disabilities, the IEP Team should include participants who have the requisite knowledge or special expertise regarding the student's language needs. These could include persons with expertise in second language acquisition and other professionals, such as speech and language pathologists, who understand how to differentiate between limited English proficiency and a disability.² The participation of these individuals on the IEP Team should help to ensure that appropriate academic and functional goals are developed for the child and the child is provided the necessary special education and related services, supplementary aids and services, program modifications, and supports for school personnel designed to enable the child to advance toward attaining these goals. An IEP Team that includes all of the appropriate members should be able to make informed decisions about the content of an English learner's IEP (34 C.F.R. § 300.321(a)(6)). In addition, SEAs and local educational agencies (LEAs) are encouraged to provide other IEP Team members with appropriate training in language acquisition and the unique needs of English learners with disabilities.

Below are a few resources³ that address best practices for developing IEPs for English learners with disabilities.

- Education Service Center, Region 20, and the Texas Education Agency. (2018). *Writing Cultural Relevant IEPs*. Retrieved from:

¹ Retrieved from: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

² Under 34 C.F.R. § 300.306(b)(1)(iii)-(b)(2), a student cannot be determined to be a child with a disability if the determinant factor is limited English proficiency and if the student does not otherwise meet the definition of "child with a disability" under IDEA.

³ The views expressed in these resources do not necessarily represent the positions or policies of the Department. No official endorsement by the Department of any product, commodity, service, or enterprise mentioned is intended or should be inferred.

<https://projects.esc20.net/upload/page/0195/docs/Writing%20Culturally%20Relevant%20IEPs%2011.05.18%20508.pdf>

- Multistate Association for Bilingual Education, Northeast, *Analyzing Linguistically Appropriate IEP Goals in Dual Language Program*. (March 19, 2016). [PowerPoint slides]. Retrieved from: <https://mabene.org/resources/What%20We%20Do/MABE%202016%20Turner%20and%20Esparza%20Brown%20Analyzing%20Linguistically%20Appropriate%20IEP%20Goals.pdf>
- Hoover, John J., Erickson, Jennifer R., Patton, James R., Sacco, Donna M., & Tran, Le M. (August 21, 2018). *Examining IEPs of English Learners with Learning Disabilities for Cultural and Linguistic Responsiveness*. Retrieved from: <https://doi.org/10.1111/ldrp.12183>
- Jozwik, Sara L., Cahill, Alice & Sánchez, Gilberto. (2018). *Collaboratively crafting individualized education program goals for culturally and linguistically diverse students, Preventing School Failure: Alternative Education for Children and Youth*. 62:2, 140-148. Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/1045988X.2017.1393791>

Question 2: If States and districts do not have the means to staff their schools with educators who are dually certified in special education and English language development, what are the recommended best practices that they can use to ensure they provide appropriate instruction and services to English learners with disabilities?

Response: English learners with disabilities, including English learners with the most significant cognitive disabilities, must receive English language development instruction ([2015 DCL](#)). SEAs, through their guidance, monitoring, and oversight responsibilities, must have policies and procedures in place for ensuring that districts have adequately trained teachers to implement their English language development programs ([2015 DCL](#)).

With respect to special education generally, in order to effectively teach children with disabilities, including children with the most significant cognitive disabilities, SEAs must establish and maintain qualifications to ensure that special education teachers are appropriately and adequately prepared and trained, including that they have the necessary subject-matter knowledge and skills in the academic subjects that they teach to help students meet challenging State academic standards (20 U.S.C. 1412(a)(14)(A)-(E); 34 C.F.R. § 300.156(a)).

While there is no Federal requirement that individuals who teach English learners with disabilities be dually certified in special education and English language acquisition, it is crucial to the success of English learners with disabilities that teachers working with English learners with disabilities, including English learners with the most significant cognitive disabilities, are trained on how to support English learners' English language development, in addition to their mastery of academic content knowledge and their specific special education and related services needs. Teachers of English learners with disabilities should have an understanding of the second language acquisition process and how this might be influenced by the child's individual

development, knowledge of effective instructional practices for English learners and, if relevant, the child's disability. We note that some States have established procedures that require specific certifications for teachers serving both English learners and students with disabilities.

There are a number of best practices that districts, schools, and teachers can use to ensure they provide appropriate instruction and services to English learners with disabilities throughout the school day. Districts and schools should provide teachers continual, up-to-date training on the best way to serve English learners with disabilities. Teachers should work towards enhancing their collaborative professional relationships across special education and English language development programs. This could include thorough cross-disciplinary professional development, team teaching, and/or collaboration on lesson development. Additionally, for a student who receives services from a speech and language pathologist, it may be beneficial for the speech and language pathologist to work with the special education teacher to support the language needs of the student based on their individual English language development. For example, the speech and language pathologist could consult with the special education teacher on embedding stronger language instruction in their delivery of reading instruction. In addition, as stated above in response to Question 1, the IEP Team for an English learner with a disability should include an English language development teacher, in addition to the special education teacher or provider required by 34 C.F.R. § 300.321(a)(3).

Below are a few resources⁴ that address best practices for teachers of English learners with disabilities:

- Shyyan, V. V., Gholson, M. L., & Christensen, L. L. (June 2018). *Considerations for educators serving English learners with significant cognitive disabilities (ALTELLA Brief No. 2)*. Retrieved from University of Wisconsin–Madison, Wisconsin Center for Education Research, Alternate English Language Learning Assessment project. Retrieved from:
https://altella.wceruw.org/pubs/ALTELLA_Brief%2002_Considerations.pdf
- Burr, E. (2019). *Guidance manuals for educators of English learners with disabilities: Ideas and lessons from the field (NCEO Report 410)*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes. Retrieved from:
<https://files.eric.ed.gov/fulltext/ED595227.pdf>
- Garcia, Shernaz & Tyler, Brenda-Jean. (April 13, 2010). *Meeting the Needs of English Language Learners With Learning Disabilities in the General Curriculum*. Retrieved from:
https://www.researchgate.net/profile/Shernaz_Garcia/publication/233354810_Meeting_the_Needs_of_English_Language_Learners_With_Learning_Disabilities_in_the_General_Curriculum/links/5682f2e408ae051f9ace88d1/Meeting-the-Needs-of-English-Language-Learners-With-Learning-Disabilities-in-the-General-Curriculum.pdf

⁴ See Footnote 4.

In order to support States in their efforts to ensure children are taught by effective teachers, the Department funds technical assistance and research centers. Centers that have a specific focus on teacher effectiveness are listed below:

- The Regional Comprehensive Centers and a National Comprehensive Center make up the Comprehensive Center Network. The Department funds 19 Regional Centers to provide high-quality intensive capacity-building services to State clients and recipients to identify, implement, and sustain effective evidence-based practices that support improved educator and student outcomes. The National Center provides high-quality universal and targeted capacity-building services to address common high-leverage problems, services to address programmatic monitoring reports and audit findings, implementation challenges, and emerging national education trends. <https://compcenternetwork.org/>
- The Collaboration for Effective Educator Development, Accountability, and Reform Center (CEEDAR) is designed to help SEAs, Institutions of Higher Education, and LEAs create aligned professional learning systems that provide teachers and leaders effective opportunities to learn how to improve core and specialized instruction in inclusive settings that enable students with disabilities to achieve college and career ready standards. Web site: <http://ceedar.education.ufl.edu>. On the CEEDAR web site, one can also find a document that addresses evidence-based practices for English learners at <https://ceedar.education.ufl.edu/wp-content/uploads/2016/11/EBP-for-english-learners.pdf>
- Supported by the Department's Office of Special Education Programs (OSEP) and located at Vanderbilt University's Peabody College, the IRIS Center develops and disseminates free, engaging online resources about evidence-based instructional and behavioral practices to support the education of all students, particularly struggling learners and those with disabilities. These resources, designed to bridge the research-to-practice gap, are intended for use in college teacher preparation programs, in professional development activities for practicing professionals, and by independent learners. The array of IRIS resources includes modules, case studies, information briefs, course/professional development activities, a high-leverage practices alignment tool, and an online glossary of disability-related terms as well as supporting products to enhance their use in coursework and professional development activities. <https://iris.peabody.vanderbilt.edu/>

On the IRIS Center's website is a module, *Teaching English Language Learners: Effective Instructional Practices*. This module helps teachers understand second language acquisition, the importance of academic English, and instructional practices that will enhance learning for English learners.

<https://iris.peabody.vanderbilt.edu/module/ell/#content>

A few resources related to serving English learners with disabilities are listed below:

- The Department's *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)* provides SEAs and LEAs with information to assist them in

meeting their obligations under Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA). This guidance also provides members of the public with information about their rights under this law and other relevant laws and regulations:

<https://www2.ed.gov/policy/elsec/leg/essa/essatitleiii-guidance-english-learners-9-2016.pdf#:~:text=Non-Regulatory%20Guidance%3A%20English%20Learners%20and%20Title%20III%20of%20Succeeds%20Act%20%28ESSA%29%20%20September%2023%2C%202016%20>

- Addendum to September 23, 2016 Non-Regulatory Guidance: English Learners and Title III of ESEA, as Amended by ESSA:
<https://www2.ed.gov/policy/elsec/leg/essa/elandtitleiiiaddendum1219.pdf>
- The Office of Elementary and Secondary Education's *English Learner Resource Page* contains information about requirements related to English learners in the ESEA, and provides links to resources to support States in developing and implementing programs and services for English learners: <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/english-language-acquisition-state-grants/>
- The Department's *English Learner Tool Kit* was developed to help SEAs and LEAs meet their obligations to English learners. Chapter 6 includes tools and resources for addressing English learners with disabilities. Specifically, the Tool Kit provides resources to assist educators in developing IEPs for English learners with disabilities.
<https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf>
- The National Center on Educational Outcomes (NCEO) is a national technical assistance center that focuses on the inclusion of students with disabilities, English learners, and English learners with disabilities in comprehensive assessment systems. <https://nceo.info/>

If you have any further questions, please do not hesitate to contact Ms. Lisa Pagano in OSEP at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

David Cantrell, PhD
Acting Director