

Introduction

During the 2019-20 school year, 8.3 percent of all Connecticut public school students were identified as English Learners (ELs).¹ Ensuring this growing population of students has full access to appropriate instructional programs and services is critical to helping ELs not only become proficient in English, but achieve at the same level as their English-proficient peers. This frequently asked questions document addresses some of the most common questions regarding federal and state law and guidance on educating ELs.

Q: Who are English Learner students?

A: English Learners (ELs) are students with limited English proficiency. As stated in the U.S. Supreme Court's 1974 opinion in *Lau v. Nichols*, ELs are protected under the Civil Rights Act of 1964, which bans discrimination based on race, color, or national origin.² In its decision, the Court ruled schools must provide adequate instructional procedures to children who do not speak English. Failure of a school to do so would be denying ELs a meaningful opportunity to participate in their public educational program, which is a violation of the Civil Rights Act of 1964.³

Q: How does federal law define an English Learner?

A: An EL student is a student who: was not born in the United States, or whose native language is a language other than English; is a Native American or Alaska Native, or a native resident of the outlying areas; and comes from an environment where a language other than English has had a significant impact on the student's level of English language proficiency.⁴

Q: What are the legal obligations of states and school districts for educating ELs?

A: Under Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA) of 1974, all states and local educational agencies (LEAs) must ensure ELs can meaningfully and equally participate in education programs and services. To meet their obligations under Title VI and the EEOA, LEAs must:

- Identify and assess all potential ELs in a timely, valid, and reliable manner;
- Provide ELs with an educationally-sound language assistance program that has been proven successful;
- Provide trained staff for ELs;
- Ensure ELs have equal opportunities for participation in extracurricular activities;
- Avoid any unnecessary segregation of ELs;
- Meet the needs of ELs who opt out of language assistance programs;
- Monitor and evaluate ELs to ensure they are progressing in English proficiency and grade level content;
- Exit ELs from language assistance programs when they are proficient in English, and monitor students to ensure they did not prematurely exit the program;
- Evaluate language assistance programs and make adjustments as necessary;
- Ensure meaningful communication with the parent(s)/guardian(s) ELs; and
- Ensure any EL student who has been identified as, or is suspected of, having a disability under the Individuals with Disabilities Education Act, or Section 504 of

the Rehabilitation Act of 1973, is identified and evaluated in a timely manner and that the student's language needs and disability related services are taken into consideration in evaluations and the delivery of services.⁵

Q: What federal law covers the obligations of states and schools when it comes to the education of EL students?

A: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, defines the obligations of state educational agencies (SEAs) and LEAs to appropriately educate ELs. While requirements are contained throughout the public law, Title I and Title III contain numerous provisions and set standards to ensure ELs are provided a meaningful opportunity to participate in schools.

Q: What is Title I?

A: The purpose of Title I is to provide all children "significant opportunity to receive a fair, equitable, and high-quality education, and to close achievement gaps."⁶ Title I requires that states adopt English language proficiency standards that: are derived from the four recognized domains of speaking, listening, reading, and writing; address the different proficiency levels of ELs; and are aligned with the state's academic standards.⁷

Q: What is Title III?

A: The purpose of Title III is to help ensure ELs, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English so they can meet the same challenging state academic standards all students are expected to meet.⁸ Title III provides formula grants to SEAs that have an English language acquisition plan approved by the secretary of the U.S. Department of Education (DOE).⁹ If a SEA receives Title III funds, the SEA is required to award at least 95 percent of the grant award to LEAs for the purpose of fulfilling the English language acquisition plan. The remaining five percent is permitted to be retained by the SEA to establish standardized statewide entrance and exit procedures, providing effective teacher and principal professional development activities, as well as other technical assistance to LEAs.¹⁰

Q: What does an English language acquisition plan need to contain?

A: In order for a SEA English language acquisition plan to be approved by the secretary of the DOE, federal law requires that the plan describe the statewide, standardized entrance and exit procedures, with an assurance that all students who may be ELs be assessed for such status within 30 days of enrollment in a school in the state.¹¹ The law further requires SEAs to make assurances that they will award grants to LEAs based on the needs of the school systems, as well as monitor LEAs to ensure each one is annually assessing English proficiency and providing effective language instruction educational programs (LIEPs) that result in the LEA making progress toward ELs meeting the SEA's English language proficiency standards, as well as the state's challenging academic standards.¹²

Q: What is required when a student is identified as an EL?

A: When a student is identified as needing an English LIEP, a LEA must, no later than 30 days after the beginning of the school year, inform the parent(s)/guardian(s) of the

student identified for participation in such a program.¹³ The LEA is required to notify the parent(s)/guardian(s) with: the reason(s) for identifying the student as an EL; the student's level of English proficiency, how such level was assessed, and the status of the student's academic achievement; the methods of instruction that will be used in the program, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction; how the program in which their student is, or will be, participating in will specifically help their student learn English and meet the educational strengths and needs of their student; the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for ELs; and in the case of a student with a disability, how such program meets the objectives of the Individualized Education Program of the student.¹⁴

For a student who has not been identified as an EL prior to the beginning of the school year, but is identified as an EL during the school year, the LEA is required to notify the parent(s)/guardian(s) of the student during the first two weeks of the student being placed in a LIEP.¹⁵ The LEA is also required to provide the student's parent(s)/guardian(s) with written information and guidance pertaining to parental/guardian rights of an EL student.¹⁶

Q: Does federal law determine the method of instruction for ELs?

A: No, federal law does not dictate the method of instruction for SEAs to require LEAs to teach ELs. Instead, federal law requires SEAs in their English language acquisition plan to describe how each LEA will be given the flexibility to teach ELs using a high-quality, effective LIEP.¹⁷ Guidance provided by the DOE and the U.S. Department of Justice (DOJ) requires that while SEAs may not directly provide educational services to ELs, they are required under federal civil rights laws to provide guidance, monitoring, and oversight to school districts to ensure the instruction provided to ELs is recognized as sound by experts in the field, or is considered a legitimate experimental strategy.¹⁸

Q: Does the federal government recommend methods of instruction that may be employed by a LEA?

A: While there are many methods EL instruction, the DOE has identified four EL programs that are widely considered educationally sound and may be employed by LEAs. These include:

- English as a Second Language (ESL), which is a method of instruction that includes using English with little or no use of the student's dominant language to increase proficiency in the four language domains of reading, speaking, listening, and writing.
- Structured English Immersion (SEI) programs, which are designed to provide students with English language skills so they can transition to an English-only, mainstream classroom once they are proficient. These programs instruct students in English only, and teachers who utilize this strategy must have specialized training.
- Transitional bilingual education instruction, which utilizes a student's primary language for academic subject instruction, while gradually developing proficiency to transition the student to all-English instruction.

- Dual language programs, which provide bilingual instruction in English and the student's primary language, while gradually phasing out the utilization of the student's primary language.¹⁹

Q: Is a private school EL student eligible to participate in a LIEP?

A: Yes, LEAs are required to provide for the equitable participation in an English instruction program for ELs who attend private schools in the area served by the LEA.²⁰

Q: How are districts supposed to assess an EL student's success in becoming proficient in English?

A: Unless opposed to by a parent/guardian, the federal government requires that SEAs demonstrate that each LEA in their state annually assesses each EL student's proficiency in English to measure the student's growth in the acquisition of English as well as the student's grade level and growth toward the state's academic standards.²¹

Q: Is it permissible for LEAs to educate EL students separately from non-EL students?

A: No. While the DOE and the DOJ acknowledge that EL programs may require ELs to receive some separate instruction for a limited period of time, it is not permissible to segregate students on the basis of national origin or EL status.²² SEAs and LEAs are expected to carry out their EL programs in the least segregated manner, which includes instructing EL and non-EL students together in subjects like physical education, art, music, and activity periods such as lunch, recess, assemblies, and extracurricular activities.²³ In addition, it is not permissible for LEAs to exclude ELs from gifted and talented education and other specialized programs, unless a particular program requires proficiency in English for meaningful participation.²⁴

Q: What accommodations must LEAs make for ELs in regards to the state's standardized academic assessments?

A: When performing the state's student academic assessments in mathematics, reading or language arts, and science, LEAs must assess ELs in a valid and reliable manner and accommodate the limited English proficiency of each EL student during such assessment.²⁵ In order to accurately assess ELs and yield accurate data on what students know in academic content areas, LEAs must, to the extent practicable, assess ELs in the appropriate language for each student rather than English.²⁶ LEAs must determine the appropriate language on a case-by-case basis, and if a language other than English is used, it cannot be utilized for more than two consecutive years.²⁷ For those students who have been enrolled in a school in the United States for less than 12 months, the LEA may choose, once, to exclude the EL student's performance from the reading or language arts assessment.²⁸ The results of these assessments are to be reported in the EL subgroup when the student is identified as an EL and for no more than four years after the student ceases to be identified as an EL.²⁹

Q: Are there specific requirements for LEAs in regard to EL student parental participation?

A: LEAs are required to implement an effective means of outreach to parents/guardians of ELs to inform them how they can be involved in the education of their student, and be active participants in assisting their student to attain English proficiency, achieve at high levels within a well-rounded education, and meet the

challenging state academic standards expected of all students.³⁰ To implement these outreach standards, LEAs are required to hold, and send notice of, regular meetings for the purpose of responding to recommendations from parents/guardians on the English language instruction provided to their students.³¹ The notice and information presented to parents is required to be in an understandable and uniform format, and to the extent practicable, be provided in a language the parents/guardians understand.³²

Q: What are the legal requirements in Connecticut as it pertains to the education of ELs?

A: Connecticut law requires that every child receive an equal opportunity to receive a suitable program of educational experiences.³³ While not explicitly stated, this requirement obligates LEAs to provide appropriate educational instruction to ELs. Appropriate instruction may include utilizing the instructional methods that have been found to be educationally sound by the DOE. Any LIEP provided by a LEA is required to meet civil rights requirements.³⁴

Q: Does the State of Connecticut require any specific method of instruction for ELs?

A: Connecticut statutes are limited to only require a “program of bilingual education”^A when there are 20 or more eligible students who have been classified as dominant in a language other than English.³⁵

Q: How long can a student participate in a bilingual education program?

A: In Connecticut, a student's participation in a bilingual education program is limited to 30 months in total, not including summer school or a two-way language program.^{36B} A LEA may request an extension to the 30-month limitation for a student for a period of up to an additional 30 months if the LEA deems additional bilingual education is necessary for the student, and when such request is approved by the Connecticut State Department of Education (CSDE).³⁷ If an EL student does not meet the English mastery standard at the end of the initial 30 months or at the end of an approved extension of the bilingual education program, the LEA is required to provide more intensive language transition and academic support services to said student. These include, but are not limited to: an English as a Second Language program, sheltered English programs, English immersion programs, or other research-based language development programs.³⁸

^A Connecticut refers to EL instructional programs as “program[s] of bilingual education.” A program of bilingual education means a program that: A) makes instructional use of both English and an eligible student's native language; B) enables eligible students to achieve English proficiency and academic mastery of subject matter content and higher order skills, including critical thinking, so as to meet appropriate grade promotion and graduation requirements; C) provides for the continuous increase in the use of English and corresponding decrease in the use of the native language for the purpose of instruction within each year, and from year to year, and provides for the use of English for more than half of the instructional time by the end of the first year; D) may develop the native language skills of eligible students; and E) may include the participation of English-proficient students if the program is designed to enable all enrolled students to become more proficient in English and a second language. Conn. Gen. Statutes ch. 164, § 10-17e(2).

^B The State of Connecticut requires local and regional boards of education to investigate the feasibility of establishing a two-way language program, starting in kindergarten, if the board of education is required to provide a bilingual education program.

Q: Does Connecticut have specific requirements for bilingual education programs?

A: Connecticut's General Statutes delegate the responsibility to establish requirements for bilingual education programs used by LEAs to the Connecticut State Board of Education (SBOE) through the adoption of regulations.³⁹ Despite this requirement, there are no regulations concerning the provision of bilingual education. The CSDE has, in lieu of regulations, provided LEAs with unenforceable programmatic requirements and best practice recommendations for educating ELs.⁴⁰ These guidelines state that bilingual education programs should:

- Instruct ELs in both English and the eligible student's dominant language;
- Enable eligible students to achieve English proficiency in order to meet grade promotion and graduation requirements;
- Provide for the continuous increase in the use of English, and corresponding decrease in the use of the dominant language, in the instruction of the student provided that by the end of the first year, English is used for more than half of the student's instructional time;
- Consider the development of the native language skills of eligible students; and
- Consider the inclusion of English-proficient students if the program is a dual language model and is designed to enable all enrolled students to become more proficient in English and a second language.⁴¹

Q: What does Connecticut require of its LEAs when a student is determined to be eligible to participate in a bilingual education program?

A: When a student is deemed to be eligible to participate in a bilingual education program, the student's LEA is required to hold a meeting with the parent(s)/guardian(s) of the eligible student to explain the benefits of the bilingual education program as well as any native language accommodations that can be made for the student during standardized testing. LEAs may place the eligible student in the bilingual education program upon the consent from the parent(s)/guardian(s).⁴² The CSDE's best practice standards recommend LEAs explain the benefits of the program in a media form to ensure parents/guardians are properly informed of their ability to choose, as well as to provide parents/guardian with strategies they can use to support their student's education.⁴³

Q: What if a bilingual education program is not available or a parent/guardian chooses to not place their student in a bilingual education program?

A: If a student is otherwise eligible for a bilingual education program but is not placed in such a program due to a lack of program availability — either because there are not 20 or more students with the same dominant language as the student in the school, or the student's parent(s)/guardian(s) opts to not place the student in a bilingual education program — the LEA is still required to offer instruction that fulfills the statutory requirement that each student in the state shall have “equal opportunity to receive a suitable program of educational experiences,” such as a SEI or ESL program.⁴⁴

Q: What happens if an eligible student for bilingual education enrolls in a school less with than 30 months to their graduation?

A: If an eligible student enrolls in a school when there is fewer than 30 months remaining before the student's graduation, the LEA is required to place the student in an ESL program, not the bilingual education program.⁴⁵ The LEA is also required to provide the

student with any other necessary intensive services that will enable the student to speak, write, and comprehend English in the short time to allow the student to meet the course requirements for graduation.⁴⁶

Q: Does the State review and approve bilingual education plans used by a LEA?

A: Connecticut only requires LEAs to prepare and submit their plan to implement a bilingual education program to the commissioner of the CSDE once when the LEA is first required to provide a bilingual education program.⁴⁷

Q: How do Connecticut schools test the progress of EL student toward English proficiency?

A: LEAs are required to annually assess the linguistic and academic progress of students participating in a program of bilingual education by September 1 utilizing a statewide English mastery standard that is developed by the SBOE. If it is determined that a student is not making sufficient progress toward meeting the state standard based on the assessment, the LEA is required to provide language support services to the student in consultation with the student's parent(s)/guardian(s). These support services may include, but are not limited to: summer school, after-school assistance, and tutoring. A student participating in a bilingual education program leaves the program when the student meets the state standard on the assessment. LEAs are required to document the student's entrance and exit date in the bilingual education program as well as the date and results of the annual assessments.⁴⁸

Q: Is information on the effectiveness of bilingual education programs available?

A: Yes, the CSDE annually collects and disaggregates EL student data on mastery examinations for the purpose of monitoring the academic progress of students in bilingual education programs, as well as to assess the quality of bilingual education programs offered by LEAs in Connecticut. The department is statutorily required to send such report annually to the Education Committee of the General Assembly by July 1.⁴⁹ Despite being an annual requirement since 2015, only one report (issued February 24, 2017) has been provided to the General Assembly.

Q: What recourse do ELs have if they believe they are not being educated pursuant to federal or state laws and regulations?

A: As previously noted, the right to receive an adequate bilingual education program is protected by Title VI of the Civil Rights Act of 1964. While an EL student, or their parent(s)/guardian(s), can bring concerns about a bilingual program they believe does not fulfill the federal or state requirements to their local board of education or the CSDE, the responsibility of enforcing Title VI, as it applies to programs and activities funded by the DOE, is the Office for Civil Rights (OCR) within the DOE. The OCR's responsibility is to ensure institutions comply with Title VI through compliance enforcement and the investigation and resolution of complaints that have been filed by people alleging discrimination on the basis of race, color, and national origin.⁵⁰ Information about filing a complaint with the OCR can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>.

Q: How do the rights of ELs differ from the rights of students with disabilities?

A: Unlike the Individuals with Disabilities Education Act, which provides students and their parents/guardians the right to individually sue in court if they believe their rights under the law are being violated, Title VI of the Civil Rights Act of 1964 has not been interpreted to allow for private rights of action.^{51,52} Instead, if an EL student and their parent(s)/guardian(s) believe their rights have been violated, the primary means of recourse available to them is filing a complaint with the OCR.⁵³

Endnotes

- ¹ Connecticut State Department of Education. (n.d.). EdSight: Public School Enrollment. Available from <http://edsight.ct.gov/SASPortal/main.do>.
- ² *Lau v. Nichols*, 414 U.S. 563 (1974).
- ³ *Ibid.*
- ⁴ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3201 (2015).
- ⁵ U.S. Department of Education. (2016). *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)*. Washington, DC: Author. Retrieved from <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>.
- ⁶ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1001 (2015).
- ⁷ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 111(b)(1)(f) (2015).
- ⁸ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3102 (2015).
- ⁹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3111(a) (2015).
- ¹⁰ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3111(b) (2015).
- ¹¹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3111(b)(2) (2015).
- ¹² Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 3113(b) (2015).
- ¹³ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(3) (2015).
- ¹⁴ *Ibid.*
- ¹⁵ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(3)(B) (2015).
- ¹⁶ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(3) (2015).
- ¹⁷ Lhamon, C.E., & Gupta, V. (2015, January 7). *Dear Colleague Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*
- ²⁰ U.S. Department of Education. (2016). *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)*. Washington, DC: Author. Retrieved from <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>.
- ²¹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(b) (2015).
- ²² *Ibid.*
- ²³ *Ibid.*
- ²⁴ *Ibid.*
- ²⁵ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1111 (b)(2)(B)(vii)(III) (2015).
- ²⁶ *Ibid.*
- ²⁷ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1111(b)(2)(B)(ix) (2015).
- ²⁸ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1111(b)(3)(A) (2015).
- ²⁹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1111(b)(3)(B) (2015).
- ³⁰ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(3)(C) (2015).
- ³¹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(3)(C)(ii) (2015).
- ³² Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814, § 1112(e)(4) (2015).
- ³³ Conn. Gen. Statutes ch. 164, § 10-4a.
- ³⁴ Lhamon, C.E., & Gupta, V. (2015, January 7). *Dear Colleague Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- ³⁵ Conn. Gen. Statutes ch. 164, § 10-17f(b).
- ³⁶ Conn. Gen. Statutes ch. 164, § 10-17f(d).
- ³⁷ *Ibid.*
- ³⁸ *Ibid.*
- ³⁹ Conn. Gen. Statutes ch. 164, § 10-17f(g).
- ⁴⁰ Connecticut State Department of Education. (2017). *Programmatic Requirements and Best Practice Recommendations for Implementation of Section 10-17 A-J, Inclusive, of the Connecticut General Statutes (CGS)*. Hartford, CT: Author. Retrieved from https://portal.ct.gov/-/media/SDE/English-Learners/Bilingual_Prog_Req_and_Best_practices.pdf?la=en.
- ⁴¹ *Ibid.*
- ⁴² Conn. Gen. Statutes ch. 164, § 10-17f(e).

⁴³ Connecticut State Department of Education. (2017). *Programmatic Requirements and Best Practice Recommendations for Implementation of Section 10-17 A-J, Inclusive, of the Connecticut General Statutes (CGS)*. Hartford, CT: Author. Retrieved from https://portal.ct.gov/-/media/SDE/English-Learners/Bilingual_Prog_Req_and_Best_practices.pdf?la=en.

⁴⁴ Conn. Gen. Statutes ch. 164, § 10-4a.

⁴⁵ Conn. Gen. Statutes ch. 164, § 10-17f(c).

⁴⁶ Conn. Gen. Statutes ch. 164, § 10-17f(d).

⁴⁷ Conn. Gen. Statutes ch. 164, § 10-17f(h).

⁴⁸ Conn. Gen. Statutes ch. 164, § 10-17f(c).

⁴⁹ Conn. Gen. Statutes ch. 164, § 10-17m.

⁵⁰ U.S. Department of Education, Office for Civil Rights. (2020, January 10). Education and Title VI. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>.

⁵¹ Individuals with Disabilities Education Act 20 U.S.C. § 1400 (2004).

⁵² Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964).

⁵³ Ibid.