



Guidance for English Language Learners with Disabilities

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Introduction

This section provides information and resources regarding best practices and regulatory requirements for identifying, providing services, and reclassifying English Learners (EL) with disabilities. Some of the information used in this document was gathered from the U.S. Department of Education and the California Department of Education.

The Every Student Succeeds Act (ESSA) recognizes the unique needs of EL students, including acknowledging the heterogeneity within the EL subgroup (e.g., recognizing separate groups of ELs such as English learners with disabilities, newcomer ELs, and long-term ELs). States are required to implement standardized, statewide procedures for identifying ELs and for determining when English language development services are no longer needed (reclassification). States must also monitor EL progress. To ensure ongoing monitoring of EL progress, the Title I component requires annual English language proficiency assessments (ELPAC in CA) and an accountability system that incorporates academic indicators (including English language proficiency).

1. Newly enrolled students whose primary language is not English as an Initial Assessment (IA); and,
2. Students who are English Learners annually participate in a Summative Assessment. For California's public-school students, this test is the English Language Proficiency Assessments for California (ELPAC).

The English Language Proficiency Assessments for California (ELPAC) is the required state test for English language proficiency (ELP) that must be given to students whose primary language or language spoken in the home is a language other than English.

The Initial ELPAC has one purpose:

To identify students who are ELs or are initial fluent English proficient (IFEP).

All students in transitional kindergarten through grade twelve (TK–12), whose primary language is a language other than English must take the Initial ELPAC to determine whether they are ELs. This must be done within 30 calendar days after they are first enrolled in a California public school or 60 calendar days prior to instruction, but not before July 1, per ELPAC regulations.

The Summative ELPAC has two purposes:

1. To determine the level of ELP (English Language Proficiency) of EL students
2. To assess the progress of EL students in acquiring the skills of listening, speaking, reading, and writing in English

The Summative ELPAC must be given annually to students identified as ELs until they are reclassified to fluent English proficient (RFEP), and is usually administered in a testing window running from February through May in traditional school settings.

For comprehensive ELPAC information, go to <https://www.elpac.org>

Federal Guidance for English Language Learners with Disabilities:

In accordance with the U.S. Department of Education guidance issued in July 2014, ED requires that all ELs with disabilities participate in the state's ELP (English language Proficiency) assessment. Federal law requires that all ELs with disabilities participate in the state ELP assessment in the following ways, as determined by the IEP team: [ELL Tool Kit](#)

- In the regular state ELP assessment without universal tools, designated supports, and accommodations
- In the regular state ELP assessment with universal tools, designated supports, and accommodations determined by the IEP team or Section 504 team
- In an alternate assessment aligned with the state's ELD standards, if the IEP team determines that the student is unable to participate in the regular ELP assessment with or without universal tools, designated supports, and accommodations.

Role of the IEP Team:

It is essential that the IEP team establish the appropriate academic and functional goals, determine the specifically designed instructional program to meet the unique needs of all ELs with disabilities, and make decisions about how students can participate in the state ELP assessment. In accordance with the new ED guidance, the IEP team is responsible for:

- Making decisions about the content of a student's IEP, including whether a student must take a regular state assessment (in this case, the ELPAC assessment), with or without appropriate universal tools, designated supports and/or accommodations, or the Alternate ELPAC in lieu of the regular ELPAC assessment [Alternate ELPAC](#)
- Developing an IEP for each student with a disability, including each EL with a disability, at an IEP team meeting, which includes school officials and the child's parents/guardians. The Individuals with Disabilities Education Act (IDEA) regulation in Code of Federal Regulations, Title 34, (34 CFR) Section 300.321(a) specifies the participants to be included on each child's IEP team.

IEP Team Requirements:

- It is essential that IEP teams for ELLs with disabilities include persons with expertise in English language acquisition and other professionals, such as speech-language pathologists, who understand how to differentiate between English proficiency development and a disability (ED, July 2014, FAQ #5).
- Ensuring that ELs' parents or guardians understand and are able to meaningfully participate in IEP team meetings at which the child's participation in the annual state ELP assessment is discussed. If a parent whose primary language is other than English is participating in IEP meetings, the IDEA regulations require each public agency to take whatever action necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter (34 CFR Section 300.322[e]). When parents themselves are ELs, Title VI of the Civil Rights Act of 1964 also requires that the LEA effectively communicate with parents in a manner and form they can understand, such as by providing free interpretation and/or translation services (ED, July 2014, FAQ #6).
- Ensuring that all ELs, including those with disabilities, participate in the annual state ELP assessment, with or without universal tools, designated supports, and accommodations or take the alternate ELPAC if necessary. ESSA Section 1119[b][7] and IDEA Section with a disability should not participate in the annual state ELP assessment (ED, July 2014, FAQ #7). However, IEP teams can make the determination, on a student-by-student basis, that the alternate ELPAC should be administered using the Alternate Assessment Decision Confirmation Worksheet (in SEIS).

Determining ELPAC Accommodations, Domain Waiver or Alternative Assessment: Most students with disabilities are able to participate effectively on the ELPAC. For students whose disabilities preclude them from participating in one or more domains of the ELPAC, their IEP teams may recommend accommodations or an alternate assessment (see EC Section 56385, 5 CCR 11516.5 through 11516.7). Approved universal tools, designated supports, and accommodations are listed in Matrix Four: Universal Tools, Designated Supports, and Accommodations for the ELPAC, which is found on the CDE website at:

<https://www.cde.ca.gov/ta/tg/ep/documents/elpacmatrix4.docx>

In accordance with 34 CFR sections 300.304 through 300.305, initial identification for determining whether a student is a student with a disability takes into consideration existing data, which includes LEA and statewide assessments. For those who

participate in programs for students with disabilities, the LEA may be a school district, an independent charter school, the county office of education, or a state special school.

When an ELL with disabilities is not able to access the ELPAC due to their disability (the entire test or any portion of it), that information is shared at the IEP team meeting. IEP team members may determine that a domain exemption or an alternative assessment is most appropriate for the student.

The results of alternate ELPAC and/or the ELPAC are part of the current levels of performance in the IEP. The scores or performance levels are a part of the information considered by the team to develop linguistically appropriate goals. When developing the student's level of performance, make sure to include the ELP information as it impacts the student's performance academically.

When a student's IEP or Section 504 plan specifies that the student has a disability for which there are no appropriate accommodations for assessment in one or more of the Speaking, Listening, Reading, and Writing domains, the student shall be assessed in the remaining domains in which it is possible to assess the student, per 34 CFR Section 200.6. A student may be assigned an overall score only if assessed in both oral and written language. To be considered as having been assessed in oral language, the student must have been assessed in either Speaking or Listening. To be considered as having been assessed in written language, the student must have been assessed in either Reading or Writing. On the Levels of Performance page, there is an area to document the ELPAC domain exemptions.

The Alternate ELPAC must be identified annually in a student's IEP. The LEA must ensure that the IEP team includes an individual who can interpret the instructional implications of evaluation results (e.g., an ELD specialist to interpret ELPAC results) (34 CFR Section 300.321[a][5]). Identified ELs with disabilities must take the ELPAC with any accommodations specified in their IEP or take the Alternate ELPAC (Alternate Decision Checklist in SEIS) as documented in their IEP, every year until they are reclassified.

Steps for Identification of English Learners (ELs)

Step 1. Determination of Students' Primary Language: in accordance with EC Section 60810(b), one of the purposes of the ELPAC is to identify students who are ELs.

Linguistically and Culturally Sensitive Assessments

Valid and reliable assessment results for English Learners is not an easy task. Language acquisition must be taken into account when making decisions about how best to assess an English learner to avoid language barriers or cultural bias.

The [California Practitioners' Guide for Educating English Learners with Disabilities](#) contains comprehensive guidance on the proper assessment considerations across a wide variety of topics, including:

Determining a Student's Primary Language: To determine a student's primary language, the following federal definition (34 CFR 300.29) (accessible at: <https://bit.ly/2KLEq2Q>) provides: "The language normally used by that individual, or in the case of a child, the language normally used by the parents of the child. In all direct contact with a child, the language normally used by the child in the home or learning environment. In accordance with the 5 CCR 3001(q) (accessible at: <https://bit.ly/2IBU8La>), 'primary language' means the language other than English, or other mode of communication, the person first learned, or the language that is used in the person's home."

Assessing in the student's primary language provides comparative data to the multidisciplinary team about how the student performs in the primary language versus English. Primary language assessment provides the assessor (psychologist, speech and language specialist, special educator, etc.) the opportunity to see if similar error patterns appear in both the primary language and English (listening, speaking, reading, or writing) in order to discern if the student is having academic difficulty due to a language difference or a disability. It is especially important that the school psychologist begin the assessment process of an English learner by assessing the student's cognition in both English and the primary language to determine if the student is cognitively higher in his primary language. The team should evaluate the English interpersonal communication skills (or document the current results of the ELP statewide assessment such as ELPAC) and include data from formal and informal assessments that measure the literacy-related aspects of language to determine the best language for assessment. For example, team members informally assess the language development of English learners by analyzing the student's ability to understand teacher-talk or reading comprehension through re-tell assessments. Unless these skills are analyzed and measured, teachers may attribute low achievement to learning disabilities when they may, in fact, be related to lack of academic language proficiency.

To determine the child's primary language, the following best practices can guide bilingual assessment decisions:

- An assessor fluent in both languages should determine the student's relevant strengths and weaknesses in her primary language and English to guide the assessment team regarding the types of assessment the team will perform by using like instruments in primary language and English when available. This helps to provide a more comprehensive view of what the student knows and can do.⁴
- All assessors should assess in the language of preference when possible.
- If primary language assessments are not available, use non-verbal measures with other information gathering to inform decisions.
- Assessors should be trained in English language development and assessment.
- The assessment reports should clearly document the decisions made regarding the language modality in which to assess.

Determining Language of Assessment

Many English learners have been educated overwhelmingly in English since kindergarten or upon entry in school and have received little to no formal academic instruction in their primary language. Whether to assess English learners in their primary language if they have had no academic instruction in that language is a question brought up frequently by student study teams. Knowing that a student is processing cognitively at a higher level in his primary language is highly relevant information prior to engaging in academic assessment. If an English learner is processing higher in his primary language, some level of academic assessment should be conducted to determine if the student has any academic skills in his primary language (this may be done informally). For instance, an English learner may have higher levels of verbal/oral language in his primary language than in English, and oral language is one area of academic consideration. Potential tools for making this determination for student who are primarily Spanish speakers are contained in the Consortium in Reaching Excellence in Education's Assessing Reading: Multiple Measures (available for sale at: <https://bit.ly/2VLVB5s>), which includes informal assessments in all areas of language arts in Spanish and English.

If the preliminary bilingual assessment data indicates the student has little or no skill in the primary language (in cognition, academics, or speech and language), the team may opt to continue the remainder of the assessment in part, or in whole, in English. If it is determined that a student has some level of academic skill in both languages, assessment in English and the primary language should be offered when feasible. In

some situations, it may not be feasible to assess in the student's primary language. Examples of such situations include:

The student has a disability that contributes to a lack of communication skills.

Primary language assessments are unavailable. It is best practice to interview the parent or guardian about the student's patterns of use in her primary language patterns through the use of an interpreter.

If a team is unable to assess in the student's primary language it is important to determine if an alternative assessment is available, reliable and valid for the purpose of determining eligibility. All academic assessment results are documented in the assessment report along with the rationale for assessing in English only or in both the primary language and English language, and the tools, alternative included, that were used. Additional information regarding assessment feasibility is offered later in this chapter. Appendix 4.1 offers a comprehensive list of potential bilingual assessment tools in areas of cognitive, social-emotional, language, academics, and speech and language.

Assessments must be "provided and administered in the language and form most likely to provide accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to provide or administer" (EC 56320[b][1]) (accessible at: <https://bit.ly/2V1FROH>).

Recommended Use of Interpreters for Bilingual Assessments

Ideally, when choosing an interpreter for special education assessment, the interpreter is a professional who is trained in the role of interpreter and translator and is knowledgeable of special education policy and processes. Even if the interpreter is a trained professional, the assessment for each English learner is different, so it is important to prepare the interpreter prior to the assessment.

To prepare the interpreter, best practice suggests that the assessor and interpreter:

- Know what tests are being administered; are prepared for the assessment to take extra time.
- Ensure that the interpreter speaks the same dialect as the student.
- Administer only the tests that the interpreter has been trained to assist in administering.

To prepare for the assessment, the team member and the interpreter together should meet to discuss the general purpose of the assessment session. The following steps will help the session provide valid and reliable test results.

- Describe to the interpreter the assessment instruments that will be administered.

- Provide the interpreter with information about the student.
- Review English test behavior with the interpreter, if applicable.
- Remind the interpreter to make a written note of all the behaviors she observes during the assessment.
- Allow time for the interpreter to organize materials, re-read the test procedures, and ask for clarification if needed.
- Remind the interpreter that she will need to follow the exact protocol of the test (e.g., whether she can repeat a question, cue, etc.).
- The following suggestions for debriefing with the interpreter will provide invaluable information about the assessment.
- Ask the interpreter to review each test response without making clinical judgment.
- Review any difficulties relative to the testing process.
- Review any difficulties relative to the interpretation process.
- Review any other items relevant to the assessment process

Language Assessment Options:

Based on the requirements in the regulations to assess students in their primary language, the following hierarchy of best practices is recommended when conducting assessment of English learners to determine eligibility for special education.⁵

First Best Option

- It is best practice to engage in the following steps if feasible: First administer cross-cultural, non-discriminatory assessments that align to the referral concerns regardless of language difference in a standardized manner in English. If analysis of the data indicates the student is performing in the average or above-average range, there is likely no disability; however, assess the student in her primary language in relative or suspected areas of weakness to confirm scores using fully bilingual assessors. If the student does not perform in the average or above-average range in English, engage in primary language assessment in all areas of concern.
- Engage in structured interviews with parents and staff.
- Engage in observation of the student in varied environments.
- Collect data from curriculum-based and criterion-based assessment measures to validate potential areas of concern and strength as compared to like peers. In other words, make sure that the language concern is a disability not a language acquisition issue.

Second Option

- If it is not feasible to engage in the first best assessment option for English learners because no assessor is available in the primary language: Engage in structured interviews with parents and staff using an interpreter if necessary.
- Engage in observation of the student in varied environments.
- Collect data from curriculum-based and criterion-based assessment measures to validate potential areas of concern and strength as compared to like peers.
- Using a trained interpreter, administer the primary language assessments under the supervision of a licensed assessor and document the limitations in the assessment report of the student.

Third Option

- If it is not feasible to engage in either the first or second option for assessing English learners for determining eligibility for special education because no bilingual assessor is available and no standardized assessment tools are available in the primary language: Engage in structured interviews with parents and staff using an interpreter if necessary.
- Engage in observation of the student in varied environments.
- Collect data from curriculum-based and criterion-based assessment measures to validate potential areas of concern and strengths as compared to like peers.
- Use an interpreter who speaks the primary language to provide an oral translation
- Primary language: Engage in structured interviews with parents and staff using an interpreter if necessary.
- Engage in observation of the student in varied environments.
- Collect data from curriculum-based and criterion-based assessment measures to validate potential areas of concern and strengths as compared to like peers.
- Use an interpreter who speaks the primary language to provide an oral translation of assessments normed and written in English. Be sure to document any limitations due to this condition in the assessment report and do not report the standardized test scores, but document the patterns of strengths and weaknesses.

Fourth Option

- If none of the previous three options is feasible: Engage in structured interviews with parents and staff using an interpreter if necessary.
- Engage in observation of the student in varied environments.
- Collect data from curriculum-based and criterion-based assessment measures to validate potential areas of concern and strengths as compared to like peers.

- Assess in English, to include non-verbal areas of cognition. If the student shows low cognition or there are patterns of weakness, attempt to validate with non-standardized data collection.

<https://www.cde.ca.gov/sp/se/ac/documents/ab2785guide.pdf>

(Source: California Practitioners' Guide for Educating English Learners with Disabilities, California Department of Education, 2019.)

Linguistically Appropriate IEP Goals for English Learners with Disabilities

To properly meet the complex needs of students identified as English learners with disabilities, education professionals from various disciplines must effectively collaborate and involve families in the IEP process. This requires that general education teachers, special educators, and English learner specialists consult and collaborate to design and implement effective individualized education programs (IEPs) and services for English learners with disabilities to ensure optimal educational outcomes for this diverse group of learners. This section includes information on development of linguistically appropriate IEPs, required IEP components for the English learner student and other legal requirements related to the English learners' IEP.

The IEP team must “consider the language needs of the student as these needs relate to the student’s IEP” (EC 56341.1[b][2]) (accessible at: <https://bit.ly/2UirlxH>).

Specifically, the IEP must include “linguistically appropriate goals, objectives, programs and services” as required by EC 56345(b)(2) (accessible at: <https://bit.ly/2UEfW0f>).

In the development of IEP goals, 5 CCR 3001(m) (accessible at: <https://bit.ly/2IBU8La>) identifies “linguistically appropriate goals, objectives, and programs” to mean:

- activities which lead to the development of English language proficiency;
- instructional systems either at the elementary or secondary level which meet the language development needs of the English learner; and
- for individuals whose primary language is other than English, and whose potential for learning a second language, as determined by the IEP team, is severely limited, the IEP team may determine that instruction may be provided through a language acquisition program, including a program provided in the individual’s primary language. The IEP team must periodically, but not less than annually, reconsider the individual’s ability to receive instruction in the English language.

IEP teams might find the following resources helpful in writing linguistically appropriate goals: 211-213 (email Imperial County)(link to pra. Guide) Source: California

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Practitioners' Guide for Educating English Learners with Disabilities, California Department of Education, 2019, at <https://www.cde.ca.gov/sp/se/ac/documents/ab2785guide.pdf>

American Sign Language

For purposes of ELPAC testing and Title III services, American Sign Language (ASL), in and of itself, is not considered a “language other than English,” according to the US Department of Education (ED). Students who use ASL for communication and have not been exposed to any language other than English should not be considered for ELPAC testing. For a student who uses ASL for communication because of deafness or hearing impairment, and for whom there is another primary language other than English indicated on the student’s HLS, the individualized education program (IEP) team should consider (1) ELPAC testing with appropriate universal tools, designated supports, and accommodations; or (2) alternate assessment(s).

Hearing students of deaf parents who use ASL as the primary means to communicate upon entering school and who have been exposed to a language other than English by another adult, such as a grandparent or a caregiver, may be considered for ELPAC testing. The LEA may consider ELPAC testing in addition to other appropriate language assessments to determine whether the child may benefit educationally from English language development (ELD) instruction. The LEA should base its decision to administer the ELPAC on whether the student has been exposed to another language other than English, not on the basis of whether the hearing student of deaf parents uses ASL in the home. California Legislative Information: [Assessment of Language Development](#)

Reclassification Criteria

(<https://www.cde.ca.gov/sp/el/rd/index.asp>)

The reclassification criteria set forth in California Education Code (EC) Section 313 and California Code of Regulations, Title 5 (5 CCR), Section 11303 remain unchanged. Pursuant to 5 CCR Section 11308 (c)(6), any local reclassification procedures must be reviewed by the school district advisory committee on programs and services for English learners (ELs). An English learner with a disability may be unable to meet a particular reclassification criterion due to the specific nature of his disability. For example, an English learner with dyslexia may continue to be classified as an English learner due to less than proficient ELPAC scores in reading. LEAs should continue using the following four criteria to establish reclassification policies and procedures (considerations for ELs with disabilities are provided for each):

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Criterion One: Assessment of ELP (using an objective assessment instrument, including, but not limited to, the state test of English language development [ELD])

- Assessment of ELP using an objective assessment, including but not limited to the ELPAC, is one of four criteria, in state law per EC 313(f), to be used by LEAs in determining whether an English learner should be reclassified as RFEP. The IEP team can use the scores from an alternate assessment aligned with the state 2012 CA ELD Standards for reclassification purposes. The Alternate Assessment may be used to measure the student's ELP on any or all four domains in which the student cannot be assessed using the ELPAC.
- The IEP team may use results from the alternate assessment in conjunction with the other required criteria (i.e., teacher evaluation, parental opinion and consultation, and the student's scores on an assessment of basic skills) to determine a student's eligibility for reclassification.

Criterion Two: Teacher evaluation/teachers' evaluations (including, but not limited to, a review of the student's curriculum mastery)

- The student's academic performance information, that is based on the student's IEP goals for academic performance and ELD, should be used for reclassification consideration.

Criterion Three: Parent opinion and consultation

- The parent or guardian should be encouraged to be a participant on the IEP team and in understanding and making a decision on reclassification.

Criterion Four: Comparison of student performance in basic skills (compared against an empirically established range of performance in basic skills based on the performance of English proficient students of the same age).

- The IEP team should specify in the student's IEP an assessment of basic skills to meet the guidelines for reclassification (e.g., the California Alternate Assessment for English language arts). The IEP team may consider using other assessments that are valid and reliable and designed to compare the basic skills of English learners with disabilities to primary speakers of English with similar disabilities to determine whether the English learner with disabilities has sufficiently mastered the basic skills for reclassification consideration.
- The CDE cannot make specific recommendations of alternate assessment instruments because it is the responsibility of the IEP team to gather pertinent information regarding the student and assessment needs specific to that student. The IEP team may use this comprehensive approach to make decisions regarding program supports and reclassification that will allow the student to make maximum progress, given the student's capacities.

The CDE has provided guidance to LEAs for using Smarter Balanced Summative Assessment results as a local measure of Criterion 4. LEAs also have been advised that local assessments can be used to identify ELs who meet academic measures indicating they are ready to be reclassified. This guidance can be found in “Updated Reclassification Guidance for 2018–19,” on the CDE Reclassification web page at: <https://www.cde.ca.gov/sp/el/rd/>.

Supports for English Learners within a Multi-Tiered System of Supports Framework:

California’s Multi-Tiered System of Supports (MTSS) model establishes an integrated and comprehensive framework focused on quality teaching and learning for all students in all content areas, which includes comprehensive English language development (ELD) for English learners, along with any necessary supplemental and intensive instruction students may need to be successful. Created to meet the needs of all students, this framework unifies and amplifies the range of support systems for English learners, students with disabilities, students who are identified as gifted and talented, and students who are academically underperforming and at risk of not succeeding. A key notion of the MTSS model is that all students can be academically successful and that instruction and support systems must be designed to be accessible to all learners. California’s MTSS uses a three-tiered system to encompass comprehensive and inclusive academic instruction, social-emotional learning, and behavior supports. In California, comprehensive ELD, which includes both integrated and designated ELD, has been added to the national MTSS model to emphasize that ELD is part of all English learners’ core instruction and not an intervention. Therefore, comprehensive ELD is a critical consideration in all tiers.

Tier I of the MTSS encompasses core instruction for all students. As a result of well-designed and Implemented Tier I core instruction, it is estimated that about 85 percent of students should be able to learn successfully. For English learners, Tier I planning processes systematically incorporate planning for integrated and designated ELD.

Tier II encompasses short-term supplemental instruction and strategic and targeted intervention, with clearly identified goals, for a small number of students. This instruction is provided in addition to Tier I (core) instruction and is designed to amplify learning in a diagnosed area so that students can continue to progress toward their academic and behavioral goals. Because Tier I (core) instruction should be designed to meet the needs of all students, no more than 15 percent of students should need this Tier II level of support.

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Tier III entails intensified intervention support that is longer in duration than Tier II. This intensified support addresses issues that are not met through tiers I and II. Few students (no more than 5 percent) will need Tier III support. If more than these approximate percentages of students are receiving tier II and III intervention support, school teams need to reexamine their Tier I (core) instructional program during a problem-solving process.

(Source: California Practitioners' Guide for Educating English Learners with Disabilities, California Department of Education, 2019.)

Resources:

[California Practitioners' Guide for Educating English Learners with Disabilities, The U.S. Department of Education English Language Learner Tool Kit](#)

[ELPAC Website](#)

[ELPAC information guide](#)

[Handout ELL Vs. Learning Disability Chart](#)

[OSEP Spanish Glossary](#)

[Bilingual Assessment Resources](#)