Differently-abled Multilingual Language Learners/

English Learners with Disabilities (ELSWD)

The Role of Individualized Education Program (IEP) Teams and Participation in English Language Proficiency (ELP) Assessments

(Updated 2023)

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A. Background

The United States Department of Education (DOE) has issued guidance on the role of IEP Teams in determining the inclusion of English Learners (MLL/ELs) with disabilities in English language proficiency (ELP) assessments. In order for the IEP Team to determine student participation there are several components that must be in place:

(a) the IEP Team must have the right composition;

(b) parents with limited English proficiency must be able to meaningfully participate as a member of the IEP Team;

(c) the IEP Team must have information on appropriate accommodations and linguistically appropriate goals to meet the unique needs of MLL/ELs with disabilities.

The Rhode Island Department of Elementary and Secondary Education (RIDE) has compiled the US DOE guidance in the following pages to assist IEP Teams in making decisions that comply with ESSA Title I and Title III accountability measures. This document was developed using the Office of Special Education and Rehabilitative Services letter to Sate Chiefs, FAQ 2014, and the FAQ 2015 which can be found along with additional resources from the Federal DOE on ELSWD at https://osepideasthatwork.org/federal-resources-stakeholders/english-language-learners

B. Initial Identification

Providing allowable accessibility features such administrative considerations, universal features, and accommodations on the typical MLL/EL screening tool (such as the WIDA SCREENER) could be necessary to give an ELSWD, or a suspected ELSWD, a meaningful opportunity to demonstrate their English language proficiency. The accessibility options will ensure that the identification of a student as an MLL/EL is not based on a student's disability. An MLL/EL screening tool may be necessary after a child is found eligible for services under the Individuals with Disabilities Education Act (IDEA) but has not yet been determined to be an MLL/EL. An administrative consideration may include paper versions administered in conjunction with a specialist who is familiar with the child's educational needs.

Neither the Elementary & Secondary Education Act (ESEA) nor the Individuals with Disabilities Education Improvement Act (IDEA) requires that MLL/ELs wait for a certain period of time before being evaluated for special education. Child find obligations (§34 CFR §300.111; RI Reg 200-RICR-20-30-6.5.1.J) require districts to identify, locate, and evaluate all children residing in the LEA who are suspected of having disabilities and who are in need of special education and related services and must be carried out regardless of a child's ELP level. Once parental consent is obtained, the evaluation must occur in a *timely* manner. Delaying a referral for an evaluation can result in the under-identification of MLL/ELs as "children with disabilities" under the IDEA.

For students identified as MLL/EL but who don't already have an IEP or 504 plan, to ensure that special education eligibility determination is based on a student's disability and need for special education and related services, and not solely on a student's emerging English proficiency, a wide variety of culturally and linguistically appropriate data must be used in the full and individual evaluation for eligibility. Team decisions determine the comprehensive evaluation plan which would be individualized to each MLL/EL to consider important details such as access to continued instruction in the home language in recent years and how the student uses English **and** the home

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language in the 4 domains (listening, speaking, reading, writing). An evaluation plan gathers data from a variety of sources such as observations, checklists, screening and progress monitoring measures, specific assessments, or interviews of teachers, family, and the student. All measures must be examined for bias and cultural and linguistic appropriateness. If a school district incorrectly determines that students' language difficulties are due to a disability rather than a development of English language proficiency, it is possible for an LEA to over-identify MLL/ELs as having disabilities. According to federal law, English proficiency may not be the **determinant factor** in a child's disability determination (34 CFR §300.306(b)(1)(iii) and (2)).

For more information:

> DOE's Office for English Language Acquisition (OELA) Toolkit Chapter 6, Tool #2: Considering the Influence of Language Differences and Disability on Learning Behaviors, Comparison of Language Differences Versus Disabilities: www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf

> The report titled, "Identifying and Supporting English Learner Students with Learning Disabilities: Key Issues in the Literature and State Practice," prepared for the Institute of Education Sciences at the U.S. Department of Education in July 2015, available at: http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2015086

> WIDA Identifying ELLs with Specific Learning Disabilities Focus Bulletin https://wida.wisc.edu/sites/default/files/resource/FocusOn-Identifying-ELLs-with-Specific-Learning-Disabilities.pdf

> WIDA Accessibility and Accommodations page https://wida.wisc.edu/assess/accessibility

> RIDE MLL/EL Toolkit Chapter 6, Evaluation/Providing Services to Students with Disabilities Multilingual Learners | Rhode Island Department of Education (ri.gov)

> NCLD White paper: What a Specific Learning Disability Is *Not*: Examining Exclusionary Factors https://www.ncld.org/wp-content/uploads/2019/11/What-a-Specific-Learning-Disability-Is-Not-Examining-Exclusionary-Factors.12192019.pdf

C. MLL/ELs with disabilities whose parents/guardians decline MLL/EL services

A district cannot require a parent/guardian to waive MLL/EL program services in order to receive services on an IEP. If the parents/guardians of an MLL/EL with a disability refuse MLL/EL services, the student must receive the same level of analysis of need for accommodations on the ELP assessment or alternate ELP assessment as an MLL/EL with a disability that is participating in district MLL/EL programs. Parents can refuse to have their children enrolled in an MLL/EL program. This refusal is also known as waiving services. The children retain their status as MLL/EL students, and LEAs must periodically monitor the progress of students who have opted out of MLL/EL programs or certain MLL/EL services and must inform their parents if the MLL/EL student does not demonstrate appropriate growth in English proficiency or academic subjects due to language barriers. In RI, an MLL with a disability who is waived from service is still classified as an MLL on the census and is still assessed annually on the ACCESS or Alternate ACCESS. Once the student reaches English proficiency by one of the 3 possible methods in the RI Exit Criteria, they will be reclassified and marked as monitor status in the census. At that point, they will no longer take the ACCESS or

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Alternate ACCESS. However, LEAs may not recommend that parents decline all or some services within an MLL/EL program for any reason, and a parent's decision to opt out must be knowing and voluntary.

For more information:

> Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, pp 29-32,
> http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

> OELA Toolkit Chapter 7: Serving English Learners who Opt-Out of EL Programs
> https://ncela.ed.gov/files/english_learner_toolkit/7-OELA_2017_optout_508C.pdf

> RIDE MLL/EL Toolkit Chapter 7: Meeting the Needs of Opt-Out Students
> Multilingual Learners | Rhode Island Department of Education (ri.gov)

D. Role of IEP Team

The IEP Team must consider a number of special factors in developing, reviewing and revising a child's IEP. Under 34 CFR §300.324(a)(2)(ii), the IEP Team must "in 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." Therefore, to implement this requirement, the IEP Team should include participants who have the requisite expertise about the student's language needs. In this way, districts can ensure that the student's language acquisition and needs are reflected in present levels of academic and functional performance, supplementary aids and services to students, as also in culturally and linguistically appropriate goals and objectives.

> Members of the IEP Team, RI Regulations Section 6.7.4 B and 34 CFR §300.321
> The IDEA regulation in 34 CFR §300.321(a) specifies that the participants on each child's IEP Team include:
> (1) The parents of the child;
> (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
> (3) Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
> (4) A representative of the public agency who –
>> (i.) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
>> (ii.) Is knowledgeable about the general education curriculum; and
>> (iii.) Is knowledgeable about the availability of resources of the public agency.
> (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
> (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
> (7) Whenever appropriate, the child with a disability.

For MLL/ELs with disabilities, the IEP Team must 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 (34 C.F.R §300.321 (a) (4)-(6). The participation of these individuals on

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the IEP Team is essential in order to develop culturally and linguistically appropriate academic and functional goals for the child and provide specially designed instruction and the necessary related services.

It is important that IEP Teams for MLL/ELs with disabilities include a public agency representative, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of MLL/ELs with disabilities. This representative should be knowledgeable about the availability of agency resources needed to enable MLL/ELs with disabilities to meaningfully access the general education curriculum. This will ensure that the services included in the IEP are appropriate for the student who is an MLL/EL with a disability and can actually be provided.

The IEP Team makes the determination of whether a student must take state assessments, with or without appropriate accommodations, including an alternate English language proficiency assessment or the ELP assessment. This must be done within the IEP process as described in RI Regulations 200-RICR-20-30- §6.7.4 through §6.7.5. Accommodations for either the state ELP assessment (ACCESS) or the alternate English language proficiency assessment (Alternate ACCESS) must be recorded on the IEP developed with an appropriately constituted IEP team.

The IEP Team should be able to make thoughtful decisions about the content of an MLL/EL's IEP, including the manner in which the student participates in the annual Rhode Island English Language Proficiency (RI ELP) assessment beginning as early as Kindergarten. In addition, districts are encouraged to provide other IEP Team members with appropriate training in language acquisition and the unique needs of MLL/ELs with disabilities.

For more information,

> Office for English Language Acquisition (OELA) Toolkit Chapter 6 Tool #3, *Developing an IEP for an English Learner with a Disability*: http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf
>
> RI MLL/EL Toolkit, *Ensuring Appropriate Practices for IEP Teams* http://www.ride.ri.gov/Portals/0/Uploads/Documents/OSCAS/English-Learner-Pages/EL-Toolkit/VI-Ensuring-Appropriate-Practices-for-ELSWD.pdf
>
> WIDA Providing ELLs with Disabilities Access to Complex Language Focus Bulletin https://wida.wisc.edu/sites/default/files/resource/FocusOn-Providing-ELLs-with-Disabilities-Access-to-Complex-Language.pdf
>
> Using the WIDA Standards for Instruction https://wida.wisc.edu/teach/standards
>
> Self-paced eWorkshops on Instruction of MLL/Els eLearning | WIDA (wisc.edu)
>
> ALTELLA Brief No. 2: Considerations for Educators Serving English Learners With Significant Cognitive Disabilities (PDF)
>
> ALTELLA Brief No. 3: Nonverbal Communication in Diverse Classrooms: Intercultural Competence Considerations for Supporting English Learners with Significant Cognitive Disabilities (PDF)

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ALTELLA Brief No. 4: Individualized Education Programs for English Learners With Significant Cognitive Disabilities (PDF)

ALTELLA Brief No. 5: A Framework for Understanding English Learners With Disabilities: Triple the Work (PDF)

ALTELLA Brief No. 6: Case Examples of English Learners With Significant Cognitive Disabilities (PDF)

ALTELLA Brief No. 7: The Role of Language and Communication in the Education of English Learners With Significant Cognitive Disabilities (PDF)

E. Ensuring meaningful participation of parents with Limited English Proficiency (LEP)

In order for a parent whose native language is other than English to participate in IEP Team meetings, the federal and RI regulations require each public agency to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter (34 CFR §300.322; 200-RICR-20-30-6.7.4.C). In addition, Title VI of the Civil Rights Act of 1964 requires that the LEA must effectively communicate with parents in a manner and form they can understand and provide meaningful access to the same information that is provided to non-LEP parents, such as providing free interpretation and/or translation services.

For more information:

http://www.lep.gov/ is a website that supports fair, reasoned and consistent implementation of Executive Order 13166, Title VI of the Civil Rights Act of 1964, and the Title VI regulations regarding language access. See specific resources on interpretation and translation at https://www.lep.gov/interp_translation/trans_interpret.html

RIDE's list of resources for finding translators and interpreters can be found at Multilingual Learners | Rhode Island Department of Education (ri.gov)

RIDE MLL/EL Toolkit Chapter 10 Communication with Parents
Multilingual Learners | Rhode Island Department of Education (ri.gov)

OELA English Learner Toolkit Chapter 10: Ensuring Meaningful Communication with Limited English Proficient Parents: http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap10.pdf

F. Determining accommodations for an MLL/EL with disabilities taking the annual RI ELP assessment

An IEP Team must make the determination whether an MLL/EL with disabilities will need accommodations on the RI ELP assessment on a case-by-case basis beginning as early as the Kindergarten IEP. An IEP Team could determine that accommodations need to be used for the entire ELP assessment, or only for part of the assessment. The IEP

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Team will need to ensure that the student is familiar with the accommodations to be used for the ELP assessment, that the student is using similar accommodations in classroom instruction, and that the student could benefit from similar accommodations on the ELP assessment. A paper version of the assessment is one type of accommodation the IEP team can consider. Accommodations are also available on the Alternate ACCESS. IEP Teams should consult the various checklists for accommodations on the various ELP assessments provided by WIDA. Accommodations must be documented on the corresponding IEP page where other state and district assessment accommodations are documented.

For more information, the WIDA materials outline ACCESS accommodations for MLL/ELs with disabilities:

> Accessibility and Accommodations Manual | WIDA (wisc.edu)
>
> To find the Accessibility and Accommodations **Framework** and Accommodations Checklists for the SCREENER, ACCESS, and Alternate ACCESS, see Accessibility and Accommodations | WIDA (wisc.edu)
>
> Suggestions for Involving Students in Selecting and Implementing Accommodations (NCEO Brief #30) (umn.edu)
>
> Accommodations Toolkit | Accommodations Toolkit Introduction | Institute on Community Integration Publications (umn.edu)

Another helpful resource is Tool #5 of Chapter 6 in the OELA Toolkit, "Dos" and "Don'ts" When Selecting Accommodations: http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/chap6.pdf

G. Determining whether an MLL/EL with a disability should take an alternate ELP assessment

In order for an IEP Team to determine that a student cannot participate even with individual appropriate accommodations in the regular RI ELP assessment, the IEP Team would use the Alternate ACCESS for ELLs Participation Criteria to identify how an MLL/EL with a disability can be appropriately and validly assessed through an alternate ELP assessment *as early as Kindergarten.* In this situation, the Team must include in the child's IEP a statement of:

> (1) Why the child cannot participate in the regular ELP assessment; and
>
> (2) Why the particular alternate assessment selected is appropriate for the child (§300.320(a)(6)(ii)).

Title III of the ESEA requires States to develop and implement one set of ELP standards aligned to the State's academic content and student academic achievement standards (section 3113(b)(2) of the ESEA). States may not develop alternate ELP standards for MLL/ELs with disabilities. In RI, all MLL/ELs use WIDA ELP Standards, available at: https://wida.wisc.edu/teach/standards/eld

For more information,

> ALTELLA Briefs Resources: ALTELLA (wceruw.org)
>
> Alternate ACCESS for MLL/ELLs including resources such as a decision tree
> Alternate ACCESS for ELLs | WIDA (wisc.edu)

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Preparing for Alternate ACCESS including viewing sample items and training in the secure portal
[Preparing to Administer Alternate ACCESS for ELLs | WIDA (wisc.edu)](#)

Various resources to help understand results of Alternate ACCESS
[Alternate ACCESS Scores and Reports | WIDA (wisc.edu)](#)

H. Exiting an MLL/EL with a disability from MLL/EL status

According to RI MLL/EL Exit Criteria (see below), the IEP team must give input to the MLL/EL exit decision, but is not solely responsible for removing the MLL/EL designation. District and/or school personnel do not have the authority under Federal law to remove a student's MLL/EL designation before the student has been deemed proficient in English solely because the student has an IEP. ELSWD have the right to receive both special education and related services and language instruction educational programs regardless of the type or severity of disability. The IEP Team must determine whether an MLL/EL with a disability needs to receive appropriate accommodations on the state ELP assessment or needs to take an alternate assessment to ensure that the language proficiency of the student is validly and reliably assessed. ELSWD may be eligible to exit from MLL/EL status in three ways as described in the RI MLL/EL Exit Criteria:

- Overall score of 4.8 or above when assessed in all 4 domains with or without appropriate accommodations
- Overall score of P2 for two consecutive years when assessed using an alternate English language proficiency assessment
- Overall score of 4.8 or above when assessed with missing domains.

If an MLL with a disability is not demonstrating sufficient language growth to reach exit criteria, school teams may use the data-based individualization process to appropriate intensify instruction and intervention.

For more information,

[Intensive Intervention & English Learners | NCII](#)

RI MLL/EL Exit [Criteria](#) can be found under the regulations header on
[Multilingual Learners | Rhode Island Department of Education (ri.gov)](#)

[Exit Request for Missing Domain](#)

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Appendix A: Considerations and Recommendations for Screening English Learners with Significant Disabilities.

Questions to pose and discuss with the IEP team prior to screening:

- How does the student interact with technology and computers? What adaptive devices might be needed to conduct the screening?
- When considering student access, would a paper version following the accommodations recommendations be a better choice?
- How does the child use language in the home and community? Conduct an interview with parents about language use in the home to document language use in natural and home environment to help verify accuracy of language demonstration on the screening.
- How has the child used language in early childhood or school age programs?
- What questions do special education providers have about the WIDA SCREENER?

During Screening:

- Someone from the special education team should be present during the screening process to document observable behaviors for the student's file.
    - Document the type of screener (paper or online) that the student was administered as well as any accommodations per IEP/IEP team discussion.
    - Record any student response or non-response (point, eye gaze, eye contact, no response.)
- If the student is not interacting with the screener or screener administrator, screening may be ended sooner.
- If the student is able to participate in part on some domains, document what the student is able to do. Document if the disability precludes the assessment of the student in one or more domains of the English language proficiency such that there are no appropriate accommodations for the affected domain(s).
- If you have any data from special education evaluations that address the area of communication, include that in your record to help inform instructional strategies.

After Screening:

- Review the file to ensure that it contains observational, interview, and screening proficiency level data to demonstrate that the student is an MLL/EL with a disability and provide rich information for planning instructional supports for language development.

Resources:
- Slide Deck Resource: ELSWD-DLL-Accommodations-Screening
- Refer to the WIDA Accessibility and Accommodations for further details: https://wida.wisc.edu/assess/accessibility
- ALT Criteria & Resources: https://wida.wisc.edu/assess/alt-access
- ALT State Assessment eligibility criteria for RI.
- RISAP Accommodations and Accessibility Features manual

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Appendix B. Considerations and Recommendations for Screening English Learners with Sensory or Motor Impairments

Questions to pose and discuss prior to screening:

- Is a disability suspected but not yet formally documented in an IEP or 504? or has the family provided medical information that indicates a disability?
  - Districts and schools have the authority to make administrative determinations for any multilingual learner as long as test security is not compromised and the requirements are met regarding testing conditions and environment. These individualized administration procedures provide flexibility to schools and districts in determining the conditions under which ACCESS for ELLs, Kindergarten ACCESS for ELLs, WIDA Screener, and Alternate ACCESS for ELLs can be administered most effectively. Administrative considerations do not change what the test items are designed to measure or the way test scores are interpreted. Which administrative considerations might be necessary to support accessibility in the screening process?
    - adaptive and specialized equipment or furniture
    - alternative microphone
    - familiar test administrator
    - frequent or additional supervised breaks
    - individual or small group setting
    - monitor the placement of responses in the test booklet or onscreen
    - participate in a different testing format (paper vs online)
    - read aloud to self
    - specific seating
    - short segments
    - verbal praise or tangible reinforcement for on-task or appropriate behavior
    - verbally redirect student's attention to the test in L1 or English
  - Additionally, Universal tools do not need to be pre-selected for online testing in WIDA AMS and they are not an IEP accommodation. They can be applied as needed with any student. Which universal features might be warranted to support accessibility in the screening process?
    - audio aids
    - color contrast
    - color overlay
    - highlighters
    - colored pencils or crayons
    - keyboard navigation
    - line guide or tracking tool
    - low-vision aids or magnification devices
    - sticky notes
    - scratch paper

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- Does the student already have a documented disability with accommodations specified in either an IEP or a 504 plan?
    - If so, what questions do special education providers have about the WIDA SCREENER?
    - When considering student access, would a paper version following the accommodations recommendations be a better choice? For example, a student with an oral motor impairment may need a paper version with human scorer.
- Will there be domains that the learner will not be able to access due to the nature of the disability?
    - A student who is Deaf might be missing the listening domain while some students who are Hard of Hearing may be able to participate with appropriate accommodations and adaptive devices.
    - A student who is Blind but not yet able to read Braille may be missing the reading domain.
- How does the child use language (L1, sign language, or English) in the home and community?
    - Conduct an interview with parents about language use in the home to document language use in natural and home environment to help verify accuracy of language demonstration on the screening.
    - How has the child used language in early childhood or school age programs?
- How does the student interact with technology and computers?
    - What adaptive devices might be needed to conduct the screening?
- Do students with auditory impairments have needed items such as hearing aides?
- Do students with visual impairments have needed items such as glasses, screen enlargers, adaptive mouse or keyboard, etc?
- Will the student need specialized furniture, lighting, headphones, or other environmental considerations?

During Screening:

- During the MLL/EL screening process, collaborate with a special educator and or service provider who knows the child to help document and explain observable behaviors for the file.
    - Document the type of screener (paper or online) that the student was administered as well as any administrative considerations or universal features applied or IEP accommodations used.
    - Record any student response or non-response (point, eye gaze, eye contact, no response.)
    - Document the use, or non-use, of adaptive equipment.
- If the student is not interacting with the screener or screener administrator, screening may be ended sooner.
- If the student is able to participate in part on some domains, document what the student is able to do. Document if the disability precludes the assessment of the student in one or more domains of the English language proficiency such that there are no appropriate accommodations for the affected domain(s).
- If you have any data from special education evaluations that address the area of communication, include that in your record to help inform instructional strategies.

After Screening:

- Review the file to ensure that it contains observational, interview, and screening proficiency level data to demonstrate that the student is an MLL/EL with a disability and provide rich information for planning instructional supports for language development.

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Resources:

- Screening accessibility considerations
- Refer to the WIDA Accessibility and Accommodations for further details: https://wida.wisc.edu/assess/accessibility
- RIDE RISAP Accommodations and Accessibility Features manual
- Suggestions for Involving Students in Selecting and Implementing Accommodations (NCEO Brief #30) (umn.edu)

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