

The Rights of English Learner Students and Limited English Proficient Parents During the COVID-19 Pandemic

This short fact sheet describes some of the basic rights of English Learner (EL) students and Limited English Proficient (LEP) parents¹ in the State of New Jersey during the COVID-19 pandemic.

Students Have the Right to Be Screened and Identified for EL Status During Remote Learning.

Even if schools are operating by remote instruction, students, between the ages of 3 and 20, have the right to be screened and to be identified as an EL within 30 days of enrollment. Screening is conducted by a bilingual, English as a Second Language (ESL), or other certified teacher and is initiated by a home-language survey to determine which students must be tested to determine English language proficiency. If the home-language survey indicates the need for testing, schools administer a state-approved English language proficiency test. Test results plus other criteria² are used to determine EL identification.³ If no state-approved language proficiency test (such as the WIDA Remote Screener) is available for formal EL identification, then EL identification may be informal - based on 1) parent and student interviews conducted by phone or virtually and 2) a review of past school records, if available. Upon return to in-person instruction, informally identified students must be formally identified. Parents must be informed in writing in English and their native language within 30 days of their student's informal or formal EL identification.

Parents Have the Right to Receive Communications from Their Student's School in a Language They Can Understand.

Schools have an obligation to ensure meaningful communication with parents who do not speak English (LEP parents) in a language they can understand. During this time, critical information that should be provided via written translation or oral interpretation includes: the expectations for parents to pick up or set up new technology, new enrollment protocols, and information on how to support students at home.

EL Students Have the Right to Language Instruction Programming During Remote Learning.

EL language instruction programming varies by type and intensity depending on the number of EL students in a school district.⁴ To the greatest extent possible, districts must ensure that EL teachers and content teachers are

¹ The population of LEP parents includes parents of non-EL students.

² In addition to testing, schools assess the level of reading in English, review the previous academic performance of students, including their performance on standardized tests in English, and review the input of teaching staff members responsible for the educational program for EL students.

³ To identify preschool EL students, schools should use age-appropriate methodologies to determine their individual language development needs.

⁴ **Districts with fewer than 10 EL students** are required to provide English Language Services (ELS). These services are additional to the regular school program and taught by a certified teacher (for example, 90-100 minutes weekly of ELS instruction).

able to provide appropriate supports and accommodations to EL students through remote learning. Remote EL language instruction services may be provided virtually, online, or via telephone. Where technology itself poses a barrier or educational materials are not available in an accessible format, EL students must be provided equally effective alternate access to the curriculum or services provided to other students (for example, teacher check-ins or tutorials).

Federal law requires that schools, districts, and state education agencies take affirmative steps to address language barriers so that EL students may participate meaningfully in their schools' educational programs. During remote learning, EL students must receive appropriate language services and supports to the greatest extent possible.⁵

Paraprofessionals Can Provide Support During Remote Learning.

Paraprofessionals, who usually work in physical classrooms supporting students and teachers, may also provide support in the virtual environment to EL students. During remote learning, the State allows paraprofessionals to provide the following support: pre-record read-alouds and videos; caption prerecorded instructional videos from general education teachers; provide real-time support during virtual sessions; research websites, videos, and links for accessible activities that teachers can incorporate into lessons; support families and students in accessing and participating in remote learning; be added to online classes to assist with instruction; lead small group instruction in a virtual environment; and facilitate the virtual component of synchronous online interactions.

EL Students Should be Prioritized for In-Person Instruction.

Districts should prioritize safely returning students who are most in need of, and better served by, in-person instruction, especially EL students.

Schools May Not Exit Students from EL Status Unless They Demonstrate Readiness to Function Successfully in an English-Only Program or Their Parent Declines Services.

Schools may not exit a student from EL status unless the student has demonstrated readiness to function successfully in an English-only program. The exit process is initiated by the student's level of English proficiency as measured by a state-established standard on a language proficiency test⁶, and student readiness is further

Districts with 10 or more EL students but fewer than 20 EL students in a single language group must provide English as a Second Language (ESL) programs. ESL programs consist of at least one period of instruction every day by a certified ESL teacher.

Districts with EL student populations of 20 or more students in any single language group are required to provide full-time bilingual or dual language programs for EL students in that language group or an alternative instructional program such as a bilingual part-time component or high-intensity ESL.

Districts with state-funded preschool programs must provide systematic support for language acquisition to help EL preschool students acquire English while maintaining their home language within their regularly assigned preschool classroom. To provide appropriate instructional programs for EL preschool students, districts should reference NJDOE guidance available here: <https://www.nj.gov/education/ece/guide/impguidelines.pdf> (pages 11 and 35-42).

⁵ <https://www2.ed.gov/documents/coronavirus/covid-19-el-factsheet.pdf>

⁶ There is a limited exception for some EL students with a disability.

assessed on the basis of additional indicators.⁷ However, parents of EL students have the right to opt out of an EL program or particular EL services. Because EL students' English proficiency may have decreased during in-person school closures, schools should closely monitor each EL student to assess the need for additional supports.

EL Students with Disabilities Have the Right to Be Evaluated and Provided with Appropriate Special Education and Related Services or Accommodations.

Even if schools are operating by remote instruction, they must ensure that EL students with disabilities, ages 3 through 21⁸, are evaluated, classified, and provided with special education and related services or appropriate accommodations under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973, in accordance with the rules for those services. An EL student with a disability may receive both EL services and disability-related services, and in fact must receive all services due under relevant law. LEP parents retain their right to participate in the special education process during the COVID-19 pandemic, including their rights to receive written translation of notices and to have an interpreter present at meetings.

Assistance and Resources

If a school district is not providing the services described in this fact sheet, parents should contact their school district's English as a Second Language (ESL) or Bilingual Education Administrators for assistance related to English Learners or their school district's special education office, child study team, or case manager for assistance related to students with disabilities. For a comprehensive guide to special education rights, see ELC's publication *The Right to Special Education in New Jersey*.⁹ ELC also recently released an FAQ called *COVID-19 and Students with Disabilities*.¹⁰

Parents who are seeking legal assistance related to these issues or have questions concerning this fact sheet should contact Education Law Center at 973-624-1815, ext. 30. The call will be entirely confidential, and our advice is free of charge.

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⁷ Readiness must be assessed based on additional indicators including, at a minimum: classroom performance; reading level in English; the judgment of the teaching staff member(s) responsible for the student's educational program; and performance on achievement tests in English.

⁸ Students with disabilities are entitled under federal law to educational services through the school year in which they turn 21 if they have not yet qualified for high school graduation.

⁹ English version: https://edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf
Spanish version: <https://edlawcenter.org/assets/files/pdfs/publications/The%20Right%20to%20Special%20Education%20-%20Spanish%20Translation%20TL.pdf>

¹⁰ https://edlawcenter.org/assets/files/pdfs/publications/COVID_19_and_SWD_FAQ_3rd_Ed_Dec.pdf