



Eligibility Considerations for English Learners with Disabilities Critical Fact Sheet

Overview/Background: English learners (EL's) with disabilities are a diverse, heterogeneous group of students with unique educational needs. The proper identification of this group is necessary for maintaining civil rights. The [2015 "Dear Colleague" letter](#) released by the U.S. Departments of Education and Justice emphasizes that the State Education Agency and Local Education Agencies, "must ensure that all [English learner] students who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner". However, discerning between language ability and disability can be a complex task, especially since no definitive process exists for identifying ELSWD. Nevertheless, by adopting and utilizing some key processes and considerations, the Admissions and Release Committee (ARC) can make informed decisions about English learner students suspected of having a disability.

Key Elements of an Appropriate, Comprehensive Special Education Evaluation for EL Students with (suspected) Disabilities and [The Kentucky Administrative Regulations \(KAR\) for Special Education Programs \(KARs\)](#)

- ***Multi-disciplinary Teams:*** Collaboration of a multi-disciplinary team is a key element in a comprehensive evaluation (707 KAR 1:320). Multi-disciplinary collaboration brings together diverse perspectives and expertise from ARC team members that may include, but are not limited to: parents and family members, general and special education teachers, the EL teacher, interventionists, the school psychologist, bilingual evaluators, trained and qualified interpreters, the student (when appropriate), and school administrators.
- ***Culturally and linguistically responsive practices:*** Culturally and linguistic responsive practices should begin in core instruction and continue through intervention and evaluation measures. This includes considerations for a student's sociocultural/sociolinguistic factors, as well as other exclusionary factors that might otherwise negatively impact the student's performance and behavior (707 KAR 1:310). These factors may include but are not limited to: English Language Proficiency (ELP), home language, previous and current learning environments, physical, psychological and social emotional health, and socioeconomic status.
- ***Quality, evidence-based practices and interventions:*** Quality, evidence-based interventions may help to prevent an inappropriate special education referral. These interventions should consider the unique needs of an EL student. It is important to note that English language development (ELD) instruction is not an intervention and is instead an element of general education practices that all ELs should receive.
- ***Comprehensive evaluation processes:*** When developing the plan for a student's multidisciplinary evaluation, the ARC should carefully select measures that consider the student's cultural and linguistic background, and results should be analyzed and interpreted in light of those factors. Additionally, the



ARC team should be consistent with the KARs' evaluation procedures. The KARs mandate local school districts to conduct a full and individual evaluation utilizing a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, as well as ensuring the following requirements:

- a. Non-discriminatory evaluation measures: District must administer evaluation materials that are non-discriminatory on a racial or cultural basis. [707 KAR 1:300, Section 4(2)]. This may mean administering assessments in the child's native language (unless it is clearly not feasible to do so) and utilizing evaluative procedures and tools that measure the extent to which the child has a disability, rather than measuring the child's English language skills.
- b. Special Factors: The ARC must consider and document how the language needs of the student relate to the student's IEP [707 KAR 1:320, Section 5(2)(b)]. This consideration may include documented discussions of growth, peer comparisons, and strengths/weaknesses of the students ACCESS scores. This analysis can assist ARC teams in ascertaining the student's language needs and ensuring that the student receives appropriate services.
- c. Meaningful Parent Input: (707 KAR 1:340): ARC teams shall take whatever action is necessary to ensure that the parents are notified of ARC meetings in the native language of the parent and that parents understand the ARC proceedings. This *includes arranging for an interpreter* for an ARC meeting for parents whose native language is anything other than English, unless it is clearly not feasible to provide one.

Resources:

- [Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\)](#)
- [Addendum to Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives Issued July 18, 2014 \(2014 Qs and As\)1](#)
- [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#)
- [WIDA: Identifying ELLs with Specific Learning Disabilities: Facts, Advice, and Resources for School Teams](#)
- [When an English Learner Struggles Academically: Telling the Difference Between Second Language Acquisition and a Possible Learning Disability \(Webinar with materials\)](#)
- [KDE English Learners Contact Guide](#)

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