

Executive Numbered Memo 010-2006-07 - New federal regulations and assessment options for LEP

January 2, 2007

ODE Executive Memorandum 010-2006-07 Replaces:

ODE Executive Memorandum 016-2003-04

ODE Executive Memorandum 029-2003-04

TO: School District Superintendents, Principals, District Test Coordinators, Title III Coordinators

RE: New federal regulations about the LEP subgroup for NCLB and assessment options for LEP students

On February 20, 2004, The Secretary of Education disseminated a Dear Colleague letter providing states with additional flexibility in assessing new Limited English Proficient (LEP) students and in measuring the Adequate Yearly Progress of the Limited English Proficient group. The provisions of the letter applied to assessments administered during the 2003-2004 school year and remain in effect until final regulations were issued by the U.S. Department of Education. The final regulations were released on September 13, 2006. This Memorandum describes changes to state policy required by the final regulations and recaps assessment options for LEP students.

A. Assessment of Beginning LEP Students

LEP students during their first year of enrollment in U.S. schools must take an English proficiency assessment, but may be exempted from participating in the state's reading and writing assessments for one testing cycle. If a student takes the state's English Language Proficiency Assessment, the student is counted as participating for the purpose of calculate participation rates for AYP, report card, and state assessment results whether or not (s)he takes the reading and/or writing assessments. If a student takes the state reading and/or writing assessments, the scores are not included in AYP, report card, or state assessment calculations of the percentage of students meeting standard.

LEP students during their first year of enrollment in U.S. schools are required to participate in the state's mathematics and science assessments. The assessment results of these students will not be included in AYP, report card, or state assessment calculations of the percentage of students meeting standard.

Changes from previous policy:

- In Oregon, consistent with the final regulations, first year LEP students are defined as those students who first enroll in a U.S. school after the first school day in May of the previous school year. (Previously the date was August 15 of the current school year.)
- Clarifies that all LEP students must take the state's mathematics and science assessments.
- Requires the number of first year LEP students exempted from the state's English/Language Arts assessment to be reported on school and district report cards.

B. Definition of the LEP Subgroup

States may include "former LEP" students in the Limited English Proficient group when reporting AYP results. "Former LEP" are LEP students who demonstrated fluency in English and were exited from an English Language Development program in either of the prior two school years.

Changes from previous policy:

- Under the new Regulations, former LEP students are defined as students identified as exiting an LEP program in either of the two previous school years. (Previously former LEP students were students exiting in the current school year or the prior school year.)
- “Former LEP” students are included in the Limited English Proficient subgroup for AYP reporting, but are not to be included in the LEP subgroup when reporting state assessment results, including state assessment results displayed on school and district report cards.
- “Former LEP” students are not included in determining AMAOs 1 and 2 for Title III and are not eligible for weighted ADM funding. Students are included in the LEP subgroup based on data received in the Title III: NCLB English Language Proficiency Collection and the results of the English Language Proficiency Assessment (ELPA). Students will not be included in the LEP subgroup unless the student is submitted in the English Language Proficiency Collection and has an ELPA score with the following exceptions:
 - Former LEP students as described in this section
 - LEP students on IEPs whose disability prevents them from completing the ELPA test

C. Assessment Options

The No Child Left Behind Act (NCLB) requires that all students participate in the Oregon Statewide Assessments in English Language Arts, mathematics, and science. In addition, it requires that students be assessed with a valid and reliable test.

To facilitate the inclusion of all students in the assessment system, NCLB allows states to offer students who are not proficient in English the opportunity to be tested in their native language in reading or English Language Arts for up to five years. These tests must be in a language and form most likely to yield accurate data about what such students know and can do in academic content areas. (Section 1111(b)(3)(C)(ix-x))

Students who are eligible are those who 1) have been educated in the United States for three or fewer consecutive years and 2) have not yet reached a sufficient level of English language proficiency such that being tested on the English version of the reading or English language arts tests would not produce a valid and reliable score.

After three years, a district may determine on a case-by-case basis that a student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such a student knows and can do on the English version of the reading or English language arts tests. At that time, the student may continue to respond in his/her native language for up to an additional two years.

Therefore, eligible students are students who 1) are identified as in the Title III English Language Proficiency Collection as first enrolling in a U.S. school after the first school day in May five years prior to the current school year and 2) do not demonstrate proficiency on the state’s English Language Proficiency Assessment (ELPA) during the current school year.

Eligible students who meet the standard on the following assessments will be reported as meeting standard in individual reports as well as in AYP, report card, and state assessment results:

- Aprenda (Spanish reading) for students enrolled in grade 3
- Responses in Spanish to the state writing prompt

Note that students who are seeking a Certificate of Initial Mastery (CIM) must demonstrate writing proficiency in English to earn the CIM in the English content area.

The results of students who do not meet the eligibility criteria on the above tests will be considered modified test administrations and will be counted as non-participants in AYP, report card, and state assessment results consistent with [Executive Memorandum 004-2006-07](#). Mathematics, Science, and Social Science assessments available in two languages side-by side are considered standard test administrations for all students.