

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
BUREAU OF TEACHING AND LEARNING SUPPORT

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SUBJECT: Parental consent for English language instruction programs

TO: Superintendents
Chief Executive Officers
Principals
Intermediate Unit ESL Program Coordinators
School District ESL Program Coordinators

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The following information explains the obligations of LEAs providing ESL/Bilingual programs to students identified as English language learners (ELLs) as they relate to parents requests to opt their children out of such instruction.

LEAs Obligation to Provide ESL/Bilingual Programs

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Title VI), requires school districts to provide equal educational opportunity to language minority students. Pursuant to Title VI, each district must identify which of its students have limited English proficiency and provide an effective program that affords meaningful access to the district's educational program.

Section 4.26 of the Pennsylvania State Board of Education regulations, 22 Pa. Code 4.26, codifies this requirement as follows:

Every school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student's achievement of English proficiency and the academic standards under 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction.

Therefore, ESL/Bilingual programs are mandated. School districts may choose to implement an ESL/Bilingual program based upon a variety of models to address their districts' specific needs. Regardless of the manner in which a school district chooses to operate its ESL/Bilingual program, the district remains responsible to provide a core program to ensure that each limited English proficiency (LEP) student's English proficiency and academic needs are met.

Parents' Limited Right to Opt Out of ESL/Bilingual Programs

Section 4.4 (d)(3) of the Pennsylvania State Board of Education regulations, 22 Pa. Code 4.4(d)(3), requires school districts to adopt policies that permit parents to have their children excused from specific instruction only in the limited circumstance described below:

School districts (including charter schools), AVTSs and intermediate units shall adopt policies to assure that parents or guardians have the following:

The right to have their children excused from specific instruction which conflicts with their religious beliefs, upon receipt by the school district (including charter schools), AVTS or intermediate unit of a written request from the parents or guardians.

Consequently, a parent may not seek to have his or her child excused from a district's ESL/Bilingual program unless the instruction conflicts with the family's religious belief.

Title III of the No Child Left Behind Act of 2001 (NCLB)

Title III funding may be used by school districts to enhance existing ESL/Bilingual programs. NCLB makes it clear that Title III funding is to be used to supplement, not supplant, existing programs. Title III funded enhancements may include, but are not limited to, after-school programs, summer programs, tutorial programs or additional supports funded by Title III. Parents may opt out of Title III services that support a district's ESL/Bilingual program per the NCLB Act, 20 U.S.C. 3302.

Summary of LEA Requirements Regarding ELLs

All students entering the district must be given a Home Language Survey (HLS). THERE ARE NO EXCEPTIONS for the HLS. It is part of the enrollment process. Based on the responses to the HLS, students must be assessed for potential placement in a program unless they meet the criteria outlined in the PENNLINK entitled LEP ASSESSMENT dated September 24, 2004. There are certain student scenarios that may preclude assessment if a student can demonstrate English language proficiency.

Students should meet two of the following three criteria to be exempted from a formal English language proficiency assessment.

Final grades of B or better in core subject areas (Mathematics, Language Arts, Science and Social Studies);

Scores on district-wide assessments that are comparable to the Basic performance level on the PSSA;

Scores of Basic in Reading, Writing and Math on the PSSA.

Newly enrolling students completing the HLS with previous school records indicating that they meet two of the three criteria above may also be exempt from formal assessment for placement in ESL/Bilingual programs. However, newly enrolling students without such records must be assessed for their English language proficiency.

The formal English language proficiency assessment results are the indicator for placement in ESL/Bilingual programs and can be used in combination with the criteria above to determine the best instructional placement for students.

Student records for children from other states or school systems can be considered as part of the criteria.

Parent permission to assess IS NOT REQUIRED.

Parent notification of student assessment results and placement in an ESL/Bilingual program is required.

Written parent notification for student placement in Title III programs/services is required along with written guidance pertaining to parental rights, including the right to have the child immediately removed from or decline enrollment in such a program. 20 U.S.C. 3302 (a)(8)(A)(i) and (ii).

Non-English speaking parents must be provided communications in a language they understand to the extent practicable. Using a student or a minor to provide translation is inappropriate.

English language proficiency assessment results, for both district and state assessment, are placed in the student's permanent records.

LEAs must present the ESL/Bilingual Program Plan that defines the core program for all students to parents/students. Individualized plans are not required.

LEAs may choose to list Title III funded programs/opportunities for students so that parents may decide if they want their child to be included in the instructional program(s)/service(s).

LEAs must inform parents of the criteria to exit an ESL/Bilingual program.

It is important to note that the hallmark of a successful ESL/Bilingual program is student progress toward English language proficiency and the PA Academic Standards.

Placement in an ESL/Bilingual program is not a permanent placement or label. The goal is to exit the child as soon as he/she is able to meet the exit criteria.

Monitoring is required for two years after a student exits an ESL/Bilingual program and appropriate records must be maintained on student progress.