

Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Negotiated Rulemaking Committee

Updated for Session Three, April 18-19, 2016

Issue Paper #5b

Issue: Inclusion of English learners in English language proficiency assessments

Statutory Cite(s): 1111(b)(2)(G) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)

Regulatory Cite: Proposed updates to §200.6

Background:

Section 1111(b)(2)(G) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), requires that a State ensure that each school district in the State provide for an annual assessment of English language proficiency (ELP) for all English learners (ELs). The annual ELP assessment must be aligned to the State's ELP standards (as required under section 1111(b)(1)(F) of the ESEA). Other sections of ESEA, as amended by ESSA, explicitly or implicitly indicate that the ELP assessment must be statewide.

These provisions include:

- Sections 3111(b)(2)(E)(i), 3113(b)(6)(A), 3115(g)(2)(A), 3116(b)(2)(A), and 3121(a)(3) of the ESEA refer to the *State's* ELP assessment;
- Section 1111(c)(4)(A)(ii) requires a State to establish long-term goals for increasing the percentage of students making progress in achieving English proficiency, and measures of interim progress toward meeting those goals, based on the *State's* ELP assessment;
- Section 1111(c)(4)(B)(iv) requires a State to include an indicator in its statewide accountability system that annually measures progress in achieving English language proficiency; and
- Section 3113(b)(2) requires a State to establish standardized, statewide entrance and exit procedures for ELs to identify and reclassify ELs.

Notably, each State currently administers a single, statewide annual ELP assessment. In part, this reflects recent progress in developing high-quality ELP assessments. Two consortia – WIDA and English Language Proficiency Assessments for the 21st Century (ELPA21) – have brought together 45 States plus the District of Columbia and certain outlying areas to advance language development and academic achievement for linguistically diverse students. These collective efforts have included the development of high-quality ELP standards and aligned ELP assessments. In the 2013-2014 school year, 33 States plus the District of Columbia administered the WIDA ACCESS for ELLs assessment as the State's annual ELP assessment.

Discussion Questions:

While these statutory provisions promote the purpose of Title I – to provide a fair, equitable, and high quality education for all students, including ELs – they also raise questions. For example:

- How can regulations related to ELP assessments help provide consistency and clarity that ELP assessments must be statewide?
- With performance on ELP assessments now included within school accountability under Title I, how might regulations ensure that the annual ELP assessments used to meet Federal accountability requirements fulfill the rigorous technical standards for quality under Title I?

Draft regulatory language:

Below is draft regulatory language intended to support discussions on this issue among the committee members. The existing regulations (under 34 C.F.R. §200.6 – Inclusion of all students) are provided in black text. Blue text indicates regulatory revisions that restate the new ESSA statutory language or related technicalities (i.e. renumbering). Text provided in red is offered as proposed responses to the questions above.

Session 3 Update

The language below is suggested for inclusion in paragraph (f) of §200.6. Unshaded text denotes areas of primary consideration for session 3. These sections were identified as outstanding items during session 2. Gray shaded areas are not expected to require substantial additional conversation. Underlined text has changed since session 2 (except where it is used as the title of a paragraph). As it did previously, blue text denotes statutory language, bold blue text indicates corrections to language shown as statutory in a prior version, and red text indicates proposed regulatory language.

§200.6. Inclusion of all students .

A State's academic assessment system required under §200.2 must provide for the participation of all students in the grades assessed under §200.5 in accordance with this section.

(3) Assessing English proficiency. (i) ~~Unless a State receives an extension under paragraph (b) (3) (ii) of this section, the~~ Each State must ~~require each LEA, beginning no later than the 2002-2003 school year, to assess annually the English~~

(A) ~~Develop a uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills;~~ **Develop a uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills;** ~~and~~

(B) Require each LEA to use such assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all ~~students with limited who are~~ English proficiency learners in schools ~~in~~ served by the LEA.

(ii) ~~Secretary may extend, for one additional year, the deadline in paragraph (b) (3) (i) of this section if the State demonstrates that~~

(A) ~~Full implementation is not possible due to exceptional or uncontrollable circumstances such as~~

(1) ~~A natural disaster; or~~

Key: Black text is carried over from previous regulations. Blue text comes directly from the ESEA statute, as amended by ESSA. Red text builds on the statute. Bolded items are factual corrections. Underlined text is new in session 3. Unshaded text denotes areas of primary consideration for session 3.

~~(2) A precipitous and unforeseen decline in the financial resources of the State; and~~

~~(B) The State can complete implementation within the additional one-year period.~~

The assessment under paragraph ~~(b)~~(3)(i) of this section ~~if~~ must be--

(A) Aligned with the State's English language proficiency standards under section 1111(b)(1)(F) of the Act **and provide coherent and timely information about each student's attainment of those standards, including information provided to parents consistent with §200.2(e); and**

(B) Developed and used consistent with the requirements of §200.2(b)(2), (b)(4), and (b)(5).

(iii) If a State develops a computer-adaptive assessment to measure English language proficiency, the State must ensure that the computer-adaptive assessment--

(A) Assesses a student's language proficiency, which may include growth toward proficiency, in order to measure the student's acquisition of English; and

(B) Meets all the requirements for English language proficiency assessments in this paragraph (f) of this section. ~~of section 1111(b)(2)(J)(ii)(II) of the Act.~~

(iv) A State must provide appropriate accommodations that are necessary to measure a student's English language proficiency relative to the State's English language proficiency standards under section 1111(b)(1)(F) of the Act for each English learner covered under paragraph (a)(1)(i) or (a)(3)(1)(iii) of this section. ~~and~~

(v) A State must provide for an alternate English language proficiency assessment for each English learner covered under paragraph (a)(2)(1)(ii) of this section who cannot participate in the assessment under paragraph (f)(3)(i) of this section even with appropriate accommodations.

Key: Black text is carried over from previous regulations. Blue text comes directly from the ESEA statute, as amended by ESSA. Red text builds on the statute. **Bolded** items are factual corrections. Underlined text is new in session 3. Unshaded text denotes areas of primary consideration for session 3.