

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 #5a

Issue: Inclusion of English learners in academic assessments

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

Regulatory Cite: n/a

Background:

Section 1111(b)(2)(B)(vii)(III) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), maintains the requirement that each State’s annual academic assessments must provide for the inclusion of English learners (ELs), who must be assessed in a valid and reliable manner and provided appropriate accommodations. This includes, to the extent practicable, assessments in the language and form most likely to yield accurate data on what ELs know and can do in academic content areas (*i.e.*, mathematics, reading/language arts, and science) until students have achieved English language proficiency. Section 1111(b)(2)(B)(ix) requires that a State use reading/language arts assessments in English for any student enrolled in U.S. schools for more than three consecutive school years, with a possible two-year delay of this timeline, on a case-by-case basis, if a student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on reading/language arts assessments written in English. Section 1111(b)(2)(F) requires that each State identify in its State plan languages other than English present to a “significant extent” in its participating student population and indicate the languages for which assessments are not available and are needed. A State must make “every effort” to develop such assessments and may request assistance from the Secretary.

In recent years, a number of States have developed or provided content assessments in the native languages of ELs. For example, in the past, Washington state provided translated versions of math and science assessments for all grades in Chinese, Korean, Russian, Somali, Spanish, and Vietnamese; Michigan provided math and science assessments for all grades in Spanish and Arabic. In school year 2013-2014, 13 States offered reading/language arts, mathematics, or science assessments in languages other than English. Two consortia of States, the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (Smarter Balanced), offered native language options during their first year of administration in school year 2014-2015. Twenty-one States, the District of Columbia, the U.S. Virgin Islands, and the Department of Defense Education Activity (DoDEA) are in one of these assessment consortia. Smarter Balanced offers a full “stacked” Spanish translation of its math assessments (*i.e.*, the complete Spanish and English versions are both provided to the student), pop-up glossaries in the ten most common languages across the States in the consortium, and word-to-word dictionaries in other languages. PARCC provides a Spanish translation of its math assessments at the discretion of a State and offers translated directions and parent reports in the most common languages, with word-to-word dictionaries available for other languages.

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:

- The statute specifies that a State must make every effort to develop assessments in languages (other than English) present “to a significant extent” in the student population of the State. What must a State do to demonstrate it has met the requirement to “make every effort?” What constitutes a language present to a “significant extent?”
- How does the need to ensure *all* ELs are assessed in the language and form most likely to yield accurate data on their knowledge and abilities interact with potential challenges a State may face in developing assessments in languages other than English?

Session 3 Update

The language below is suggested for inclusion as 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.

~~(b)f)~~ ~~Limited-English learners~~~~proficient students~~. A State must include ~~limited-English proficient students-learners~~ in its academic assessments required under §200.2~~system~~ as follows:

(1) In general. (i) Consistent with §200.2 and paragraphs ~~(b)ef)~~ (2) and ~~(b)ef)~~ (4) of this section, ~~the~~a State must assess ~~limited-English learners proficient students~~in a valid and reliable manner that includes--

(A) ~~Reasonable~~**Appropriate** accommodations with respect to a student's status as an English learner and, if applicable, the student's status under paragraph (a) of this section; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in academic content areas ~~subjects other than English~~ until the students have achieved English language proficiency.

(ii) To meet the requirements under (f) (1) (i), ~~In its State plan,~~The State must, in its State plan--

(A) Ensure that the use of appropriate accommodations under this paragraph and, if applicable, under paragraph (b) of this section does not deny an English learner the opportunity to participate in the assessment or afford any benefit from such participation that is not equal to the benefit afforded to students who do not use such accommodations;

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(~~AB~~) Provide its definition for “languages other than English that are present to a significant extent in the participating student population,” consistent with paragraph (f)(1)(iv) of this section, and identify the specific languages that meet that definition ~~other than English that are present to a significant extent in the participating student population~~ served by the SEA; and

(C) Identify any existing assessments in ~~native~~ languages other than English, and specify for which grades and content areas those assessments are available;

(~~BCD~~) Indicate the languages other than English that are present to a significant extent in the participating student population, as defined by the State, for which yearly student academic assessments are not available and are needed; and

(~~iiiE~~) ~~The State--~~

(~~A~~) ~~Must~~ Describe how it will make every effort to develop such assessments, at a minimum, ~~for~~ in languages **other than English** that are present to a significant extent in the participating student population; ~~and including by providing--~~

(1) The State’s plan and timeline for developing such assessments, including a description of how it met the requirements of paragraph (f)(1)(iv) of this section;

(2) A description of the process the State ~~will~~ used to gather meaningful input on assessments in languages other than English, collect and respond to public comment, and consult with educators, parents and families of English learners, and other stakeholders; and

(3) As applicable, an explanation of the reasons the State has not been able to complete the development of such assessments despite making every effort; ~~and~~

(~~Biii~~) A State ~~May~~ request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(iv) In determining which languages other than English are present to a significant extent in a State’s participating student population, a State must, at a minimum--

(A) Ensure that its definition of “languages other than English that are present to a significant extent in the participating student population” encompasses at least the most populous language other than English spoken by the State’s participating student population;

(B) Consider languages other than English that are spoken by distinct populations of English learners, including English learners who are migratory, English learners who were not born

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in the United States, and English learners who are Native Americans or Alaska Natives ~~English learners~~; and

(C) Consider languages other than English that are spoken by a significant portion of the participating student population in one or more of a State's LEAs as well as languages spoken by a significant portion of the participating student population across grade levels; and

~~(D) Consider languages other than English spoken by at least thirty percent of English learners in the State.~~

(2) Assessing reading/language arts in English. (i) ~~Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a~~ A State must assess, using assessments written in English, the achievement of ~~any limited English proficient student~~ an English learner in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico and, if applicable, students in Native American or Alaska Native language immersion schools or programs consistent with paragraph (g) of this section, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess an ~~limited English learner proficient student~~ under paragraph (b)(1) ~~(e)(2)(i)(f)(1)(i)(B)~~ of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph ~~(b)(2)(i)~~ and (ii) of this section do not permit an exemption from participating in the State assessment system for ~~limited English learners proficient students~~.

[Note: Paragraph (3) is addressed in issue paper 5B.]

(4) Recently arrived limited English learners ~~proficient students~~. (i) (A) A State may exempt a recently arrived ~~limited English learner proficient student~~, as defined in paragraph ~~(b)(5)(iv)~~ of this section, from one administration of the State's reading/language arts assessment under §200.2.

(B) If the State does not assess a recently arrived ~~limited English learner proficient student~~ on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the

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State's reading/language arts assessment in a native language consistent with paragraph (fe) (2) (i) of this ~~under~~ section 1111(b) (3) (C) (x) of the Act.

(C) The State and its LEAs must report on State and ~~district~~ local report cards required under section 1111(h) of the Act the number of recently arrived ~~limited-English learners~~ proficient students who are not assessed on the State's reading/language arts assessment.

(D) Nothing in this paragraph ~~(bef) (4) of this~~ section relieves an LEA from its responsibility under applicable law to provide recently arrived ~~limited-English learners~~ proficient students with appropriate instruction to assist ~~enable~~ them in ~~gaining to attain~~ English language proficiency as well as grade-level content knowledge in reading/language arts, ~~and mathematics, and science.~~

(ii) A State must assess the English language proficiency of a recently arrived ~~limited-English learner~~ proficient student pursuant to paragraph ~~(bef) (3) of this section.~~

(iii) A State must assess the mathematics and science achievement of a recently arrived ~~limited-English learner~~ proficient student pursuant to §200.2 with the frequency described in §200.5(a).

~~(5iv)~~ Definitions related to English learners.

(i) A "recently arrived ~~limited-English learner~~ proficient student" is an student with ~~limited-English learner~~ proficiency who has ~~attended~~ been enrolled in schools in the United States for less than twelve months.

(ii) The phrase "schools in the United States" includes only schools in the 50 States and the District of Columbia.

(g) Students in Native American or Alaska Native language immersion schools or programs. (1) Except as provided in paragraph (g) (2) of this section, a State is not required to assess, using assessments written in English, student achievement in meeting the challenging State academic standards in reading/language arts for a student who is enrolled in a school or program that provides instruction primarily in a Native American or Alaska Native language if--

(i) The State provides an assessment of reading/language arts in the Native American or Alaska Native language to all students in the school or program, consistent with the requirements of §200.2;

(ii) The State submits the assessment of reading/language arts in the Native American or Alaska Native language for peer

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review as part of its State assessment system, consistent with §200.2(d); and

(iii) For an English learner, as defined in section 8101(2)(C)(ii) of the Act, the State continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under §200.6(f)(3), and provides appropriate services to enable him or her to attain proficiency in English.

(2) Notwithstanding §200.2(f)(2), the State must assess under 200.5(a)(1)(i)(A), using assessments written in English, the achievement of each student enrolled in such a school or program in meeting the challenging State academic standards in reading/language arts by no later than the end of the eighth grade.

(h) Definition. For the purpose of this section, the term "Native American" means "an Indian, Native Hawaiian, or Native American Pacific Islander."

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