

## Missouri Department of Elementary and Secondary Education

### Special Education and English Language Learners: Guidance for LEA Staff An Overview of the ELL/SPED Programs and the Identification Process (Webinar #1)

#### Questions & Answers

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1. **Is there any guidance from the Department on how long an ELL student must be in this country before a referral to special education can be made?**

**Answer:** There is no required “waiting period” prior to making a request for consideration of a referral for special education. The key is that once a disability is suspected by the school district, the special education process must be followed, including all timelines. ESL teachers should use the pre-referral flowchart introduced in this webinar to assist in determining whether a disability is suspected and a referral is warranted for the student.

2. **I want to make sure I understand this. You said that parental consent is not required to assess a student for ELL identification. But parental consent is required to assess for special education identification. Is that right? Why?**

**Answer:** That is correct. The No Child Left Behind Act (NCLB) and the Civil Rights Act of 1964 requires school districts to identify language minority students, to assess progress in English proficiency, and to provide eligible students with services that will increase their English proficiency and their academic achievement. Identification and proficiency assessment do not require parental consent; however, parental notification of student’s English proficiency level and how the district will address the student’s English language development needs is required. There is a sample letter available on the Department’s website to assist school districts in meeting this requirement under NCLB and the Civil Rights Act of 1964.

In contrast, the Individuals with Disabilities Education Act (IDEA) requires both prior written notice and parental consent when a student is evaluated for special education.

3. **I thought students who were identified as ELL could not receive special education services; however, you said in this webinar that wasn’t true. Please explain.**

**Answer:** If a school district suspects that an ELL student has a disability the special education process must be followed, including all timelines. ESL teachers should use the pre-referral flowchart introduced in this webinar to assist in determining whether a disability is suspected and a referral is warranted for the student. If the ELL student is found eligible for special education services, an IEP is developed to provide appropriate specialized instruction based upon the impact of the student’s disability on his or her learning.

4. **If an ELL student is found eligible for special education, would the ELL services have to stop or can the student receive services in both areas?**

**Answer:** It depends on the needs of the individual student. It is the responsibility of the IEP team to determine, on an individual basis, if both ELL and SPED services are required for the ELL with a disability to receive a free appropriate public education (FAPE).

5. **My school district has a small percentage of ELLs. We have not been including the ESL teacher in IEP meetings for ELLs with disabilities who are found eligible for special education services. Should we?**

**Answer:** Including the ESL teacher in the IEP team meeting would be best practice. IDEA has very specific requirements for mandatory members of the IEP team. The special education teacher and general education teachers are both required IEP team members. If the ESL teacher solely provides instruction to the ELL, they would be considered the general education teacher. However, in most instances, the ESL teacher supplements instruction to ELLs. In this case, while the ESL teacher is not a mandatory team member, it would be a best practice to include this person on the IEP team because he or she will have important insights that can add to the development of an appropriate IEP for the student.

6. **Using the pre-referral flow chart you referred to in this webinar, please describe the type of intervention strategies that the Department recommends for ELL students.**

**Answer:** The interventions should be comprehensible and culturally responsive. They should be contextualized and use authentic language in order to actively engage the students. The interventions should facilitate transfer of concepts, language, and skills across contexts and languages. They should be provided at the student's language proficiency level and should employ the students' conversational and academic proficiency in home language(s) and English.

For child specific questions please contact Lori Hanna at 573-751-3926 and/or your RPDC MELL Coordinator for assistance.

7. **On the back of the pre-referral flow chart, the last box in grey, states interventions should be repeated until data suggests there is a reason to suspect an educational disability or the problem has been solved. Are there any recommendations at the Department about how many interventions should be used and for how long before we can honestly say that we suspect a disability?**

**Answer:** It is the responsibility of the school district to determine when a disability is suspected. The student's teacher should utilize the interventions and collaborate with the ESL teacher to determine if the appropriate interventions are being used prior to deciding to initiate a request for a special education evaluation. Keep in mind, once agency staff suspect an educational disability, the district must proceed with the special education referral.

- 8. The pre-referral flow chart asks if the student has any untreated health issues. If I do suspect an untreated health issue, what do I do if the parents choose not to provide me with medical information?**

**Answer:** Parents may choose to share confidential medical information, but they are not required to do so. Keep in mind that there are multiple sources of information about health issues for a student; information from the parent regarding a suspected untreated health issue is just one source. It is very important to also review health screening records as well as vision and hearing screenings which should be on file with the school nurse. Through this review, if concerns are identified, the health issues must be addressed by assisting the parents with locating resources to help them with this matter.

- 9. Can an ELL be exempt from taking the MAP (Missouri Assessment Program)?**

**Answer:** Student progress toward attaining academic standards is primarily measured by the MAP tests and the MAP tests should be administered to ELLs to provide instructionally useful information. There is only one exception which allows for ELLs who have been in the United States for less than one calendar year to be exempted from taking the communication arts test on the state-wide assessment. In all other instances, no ELL should be exempted from taking the MAP after enrolling in a Missouri school.

- 10. How do we count immigrant students in the State Data Base system when a MOSIS number is required and a Social Security number is required to get a MOSIS number?**

**Answer:** MOSIS does not require a social security number in order for a student to be entered into the MOSIS system because the Plyer vs Doe Supreme Court case and the Privacy Act of 1974 both prohibit any state from requiring a student to have a social security number for enrollment into a school district. When a student does not have a social security number, the school district can create a random 9 digit number. More information is available at the following link:

<http://dese.mo.gov/schoollaw/freqaskques/SSNUsage.htm>

- 11. At the preschool level, when moving through the flow chart to determine if a disability is suspected, it is very difficult to determine if effective instruction has been provided to a student since there is no requirement for universal preschool. How do we proceed knowing that caveat?**

**Answer:** World-Class Instructional Design and Assessment (WIDA) has created early learning English proficiency standards. School districts will want to use these standards to assist in determining a student's English proficiency and eligibility for ELL designation. From the special education perspective, children ages 3 – 5 (not kindergarten age eligible) are suspected of having a

disability when a developmental delay is suspected in physical development, cognitive development, communication development, social or emotional development, or adaptive development as compared to same-age typically developing peers and who may be in need of special education and related services. There is no requirement that children age 3-5 (not kindergarten age eligible) receive preschool instruction prior to being suspected of having a disability.

- 12. A child comes from a non-English speaking home, is eligible for special education in the category of Young Child with a Development Delay (YCDD), and attends a center based ECSE program through the IEP. Should the district be providing ELL services or can the district wait until they enter Kindergarten to determine need for ELL services?**

**Answer:** Generally, ELL services are not required for preschoolers. ELL services are required for Kindergarten through 12<sup>th</sup> grade or till age 21. Remember that once a student is determined eligible for ELL services, those services should be provided by the school district.

- 13. Why is parental notification required for ELL services but parental consent is not? Aren't school districts required to provide services to all identified ELLs regardless of parental permission and input?**

**Answer:** School districts are required to provide a free appropriate public education (FAPE) to ALL students. Parents must be notified of ELL services but consent to provide those services is not required. This is because school districts are held accountable for an ELL's English language development. However, it is important to remember that school districts have to take parental input into consideration when developing those ELL services so it is necessary to develop a means to provide English language development services that the parent can agree with.

- 14. How does RtI or RtI<sup>2</sup> relate to the SPED referral process?**

**Answer:** RtI stands for Response to Intervention. Interventions are provided on three tiers beginning with those provided for all students in tier 1 and then progressively becoming more differentiated based on a student's response to the interventions. Many school districts use RtI as a pre-referral strategy to avoid over identification of students with disabilities. In addition, if a school district gets school board approval, RtI is a method that can be used to determine eligibility for a Learning Disability. The Department has developed guidance on the use of RtI at the following link: <http://dese.mo.gov/3tieredmodels/rti/>

RtI<sup>2</sup> stands for Response to Instruction and Intervention. This is a framework to determine the effectiveness of tier 1 instruction and interventions for ELLs and to assist school districts in the determination of the suspicion of a disability. In terms of a referral for special education, RtI<sup>2</sup> is considered pre-referral strategies that should be used prior to making the decision of whether or not to suspect a student of having a disability and being in need of special education and related services.

**15. How do you address the exclusionary factor that a student's disability is not primarily the result of Limited English Proficiency (LEP)?**

**Answer:** This would be a decision made the eligibility determination team. The IDEA requires a team of qualified professionals to make eligibility determinations. In the case of an ELL, the team would likely require an ESL teacher or other qualified professional to participate in the eligibility determination process. The team would need to carefully examine the data to determine if the disability is primarily caused by the LEP rather than the disability itself. If a child is not making progress in their language proficiency in comparison to their LEP peers, that would be an indication that there may be a learning disability. Also, if a child has the same difficulties in both their native language and English then there would also be reason to suspect a disability. This factor must be ruled out in order for a student to meet the eligibility criteria for any disability category and then documented in the Evaluation Report. If LEP cannot be ruled out, the team will have to determine that the student is ineligible for special education.

**16. The special considerations page of the IEP asks the question "Does the student have Limited English Proficiency?" How is this marked for an ELL?**

**Answer:** For students identified as ELL, the answer to this question would be "yes."

**17. Our district does not provide any ELL services. How do we answer that question on the IEP's special considerations page since marking "yes" requires the student to receive ELL services?**

**Answer:** All districts must provide English language development services for any student that is identified as an ELL. It is a requirement under the Civil Rights Act of 1964 to provide a student with an appropriate education regardless if those services have provided in the past or if there is no ESL teacher in the district.

Note that the IDEA does not require that ELL services be provided. However, the IDEA does require a student's language needs be addressed in the IEP. How these language needs are addressed are IEP team decisions.

**18. How will students ever test "out" (become proficient) on the ACCESS test if they have an IEP in "language based" disabilities such as Language Disorders or Learning Disabilities?**

**Answer:** It is possible that a child may never "test out" based on the state guidance for exiting a program. Best practice would indicate each district have a team of experts in the fields of English language development and Special Education, along with the parents, working together to determine if a child has reached the same levels of English proficiency as a native English speaker with the same or similar learning disability.

**19. For a student receiving both ELL and SPED services...if the ELL teacher feels that the student no longer needs ELL services, how is this decision made? Is it a decision made by the IEP team? Or by the student's testing through WIDA? Or simply the teacher's recommendation to stop services?**

**Answer:** Missouri has developed criteria for an ELL to move from being identified as "LEP" to "Not LEP". This criterion considers the student's scores on the ACCESS for ELLs state-wide proficiency test as well as teacher recommendations, grades, and samples of school work. Two years of monitoring must be provided prior to a student being moved to "Not LEP" status. Questions about the ELL exit criteria should be addressed to the ELL program staff at the Department.