Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students

Non-Regulatory Guidance

MAY 2007

Office of Elementary and Secondary Education
U.S. Department of Education

Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students Non-Regulatory Guidance

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Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students Non-Regulatory Guidance

PURPOSE AND BACKGROUND

In September 2006, the U.S. Department of Education amended the regulations governing programs administered under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), related to both the assessment of, and State, local educational agency (LEA), and school accountability for, the academic achievement of recently arrived and former limited English proficient (LEP) students.

Under Title I of the ESEA, States must include LEP students in their assessments of academic achievement in reading/language arts and mathematics, and must provide LEP students with appropriate accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what LEP students know and can do in the academic content areas until they have achieved English language proficiency. States must also annually assess LEP students for their English language proficiency. Additionally, beginning with the 2007-2008 school year, States must administer science assessments and include LEP students in those assessments.

This guidance does not impose any requirements beyond those in the regulations, which are applicable only to States that choose to implement the flexibility permitted in the regulations. This guidance provides a summary of the provisions included in these regulations related to assessment and accountability for recently arrived and former LEP students and addresses questions that may help clarify how SEAs and LEAs can implement the provisions included in the regulations.

In supporting State and local efforts toward the national goal of having all students achieve at proficient levels, the Department recognizes that LEP students bring with them unique challenges from past educational experiences and circumstances. In a diverse nation, States, districts, and schools educate students from many different countries, and LEP students who have recently arrived in the United States generally need some time to adjust to their new surroundings and become proficient in English. The Department also acknowledges that because of the transitory classification of LEP students as a subgroup under NCLB, the educational gains these students make may not always be adequately recognized by State accountability systems. This subgroup is not a discrete demographic subgroup *per se*, but rather a subgroup described by instructional needs that change as students gain English language proficiency. Its membership changes from year to year as English proficient students exit the subgroup and new students enter.

These regulations address the need for flexibility on both of these fronts – providing flexibility related to assessment and accountability for recently arrived LEP students and counting former LEP students' scores in calculating adequate yearly progress (AYP) for the LEP subgroup – while maintaining a strong commitment to the importance of assessment and accountability to drive educational improvements for all LEP students.

OVERVIEW OF REGULATIONS

A1. What are the key provisions of these regulations?

1. The regulations provide a definition of a recently arrived LEP student.

- The regulations define a recently arrived LEP student as a LEP student who has attended schools in the United States for less than 12 months.

2. The regulations include testing and accountability flexibility for SEAs and LEAs regarding recently arrived LEP students.

- During the period within which an LEP student may be a recent arrival to the United States (during his/her first 12 months attending schools in the U.S.) a State may exempt such a student from one administration of the State's reading/language arts assessment.

- For purposes of participation in a State's assessment system, recently arrived LEP students must take an English proficiency assessment. As long as these students take the English language proficiency assessment, they may be counted as participants toward meeting the 95 percent assessment participation requirement for AYP determinations for reading/language arts.

- Even if LEP students do not take the reading/language arts assessment during their first year in U.S. schools, that year must be considered the first of the three years in which a student may take the reading/language arts assessment in his/her native language.

- The flexibility does not extend to State mathematics assessments or, beginning in the 2007-2008 school year, State science assessments. Recently arrived LEP students must take the State's mathematics assessment, with accommodations as necessary. Beginning in the 2007-2008 school year, recently arrived LEP students also must take the State's science assessment, with accommodations as necessary.

- A State may exclude the scores of recently arrived LEP students on State mathematics and reading/language arts (if taken) assessments from one cycle of AYP determinations.

3. The regulations require reporting on SEA and LEA report cards on the use of testing exemptions for recently arrived LEP students.

- States that exempt recently arrived LEP students from the reading/language arts assessment must report publicly the number of students exempted for this reason.

4. The regulations emphasize that LEAs are responsible for providing appropriate instruction to recently arrived LEP students.

- Nothing about the flexibility regarding assessment or accountability for LEP students included in these regulations relieves SEAs, LEAs, or schools from their responsibilities

to serve LEP students. The regulations in no way diminish the responsibility for schools to provide appropriate instruction to recently arrived LEP students so that they can gain English language skills and master content knowledge in reading/language arts, mathematics, and science.

5. The regulations provide for the inclusion of former LEP students in the LEP subgroup for AYP calculations.

- A State may include "former LEP" students within the LEP category in making AYP determinations for up to two years after the students no longer meet the State's definition for limited English proficient.

- A State or LEA may only include the achievement of former LEP students as part of the LEP subgroup for the purposes of calculating and reporting AYP. Former LEP students may not be included in the LEP subgroup for any other purpose on State or LEA report cards.

A2. How do these regulations differ from the interim policy, established by the Department in February 2004, under which States have been operating until these final regulations?

The regulations differ from the flexibility permitted in the February 20, 2004 "Dear Colleague" letter (see http://www.ed.gov/policy/gen/guid/secletter/040220.html) by:

- Specifically defining a recently arrived LEP student as a student who has attended schools in the United States for less than one year/12 months.

- Adding a requirement for reporting data on exemptions for recently arrived LEP students. The interim policy did not include provisions for reporting the number of students exempted from State reading/language arts assessments based on a student's status as a recently arrived LEP student. The regulations require States and LEAs, on State and district report cards, respectively, to report annually the number of recently arrived LEP students exempted from one administration of the State's reading/language arts assessment. States and districts will need to specifically track the number of exemptions for recently arrived LEP students so that these students are not miscounted as non-participants during their first year in U.S. schools. Reporting exemptions is a way to monitor the use of this flexibility and safeguard students against misuse of the exemption.

A3. Do these regulations require States to submit new data to the U.S. Department of Education?

No. These regulations do not add new requirements to what data States must already submit to the U.S. Department of Education. These regulations also do not change provisions for reporting data to ED Facts for the States' Consolidated State Performance Reports or the Biennial Report under Title III.

RECENTLY ARRIVED LEP STUDENTS

Definitions

B1. Who is a "recently arrived" LEP student?

A recently arrived LEP student is defined as a LEP student who has attended schools in the United States (not including Puerto Rico) for less than 12 months. The definition of a recently arrived LEP student provides a window – the student's first 12 months attending school in the U.S. – within which time such a student is entitled to a *one-time* exemption from academic content assessments in reading/language arts.

Regardless of what point during the school year a LEP student arrives in the United States and begins to attend school, a State may exempt a recently arrived LEP student from *one, and only one*, annual administration of the State's English/language arts assessment.

The definition of a recently arrived LEP student does not necessarily require that a student be enrolled in U.S. schools for 12 consecutive months. Even if a student enters and leaves the U.S. so that a State might administer annual assessments multiple times before that LEP student has attended a full 12 months of school in the U.S., a State may only exempt a recently arrived LEP student from *one, and only one* administration of the State's English/language arts assessment during the period of time such a student has still not attended schools in the U.S. for a full 12 months.

This definition of recently arrived LEP students focuses on those students who are not proficient in English and who have had little instructional time in U.S. schools. However, the 12 month timeframe does not define a minimum number of months recently arrived LEP students must receive instruction in U.S. schools, or be enrolled or attend U.S. schools before being included in State reading/language arts assessments. Rather, the 12 months defines the window of time within which a LEP student may be eligible for the provisions of the regulations related to recently arrived LEP students.

A recently arrived LEP student is not to be confused with a recent arrival to a school, an LEA, or a State. The one-time assessment exemption provided for recently arrived LEP students in these regulations is to be used only for LEP students who have recently arrived in schools in the United States, not for those students who have lived in the United States for a number of years and attended U.S. schools but who are still limited English proficient.

The Department notes that, according to data from the Migration Policy Institute approximately two thirds of LEP students in the U.S. are American born and enter school in the U.S. in kindergarten or first grade. Approximately 80 percent of LEP students have resided in the U.S. for 5 or more years. The regulations regarding recently arrived LEP students are not intended to change assessment or accountability requirements for this vast majority of LEP students. It is the Department's expectation that the flexibility in these regulations related to recently arrived LEP students will be reserved for the portion of a State's LEP population that has attended schools in the U.S. for less than 12 months.

B2. How should an SEA or LEA determine who is a recently arrived LEP student?

The regulations do not prescribe a specific method by which States, LEAs, and schools ascertain the number of months of attendance in U.S. schools in order to identify recently arrived LEP students. However, in order to implement the flexibility related to recently arrived LEP students, States and LEAs must establish a means for identifying eligible students.

B3. What is the definition of "schools in the United States"?

The phrase "schools in the United States" means schools in the 50 States and the District of Columbia. It does not include schools in Puerto Rico, the outlying areas, or the freely associated states. Students who come to the United States from Puerto Rico, for example, where Spanish is the primary language of instruction, would not be considered to have been enrolled in U.S. schools while in Puerto Rico. Thus, LEP students from Puerto Rico would be included in the definition of recently arrived LEP students for purposes of these regulations.

Assessment Requirements

B4. What State assessments must a recently arrived LEP student take?

A recently arrived LEP student must participate in the English language proficiency assessment required under Title I of the ESEA. A recently arrived LEP student also must participate in the State's mathematics assessment, although the results of that assessment can be excluded from AYP calculations for one time (one test administration) during his/her first year in U.S. schools. Beginning in 2007-08, a recently arrived LEP student must also participate in the State's science assessments.

B5. From which State assessments may a recently arrived LEP student be exempted?

A State may exempt a recently arrived LEP student from one annual administration of the State's reading/language arts assessment during the LEP student's first 12 months attending schools in the United States. There are no circumstances related to being a recently arrived LEP student that would make him/here eligible for a second exemption from a State's annual reading/language arts assessment. Once a LEP student has been in U.S. schools for more than 12 months, that student must participate in the same assessments that all students are required to participate in under NCLB.

If a State chooses to have recently arrived LEP students participate in reading/language arts assessments during those students' first year in U.S. schools, the State may still take advantage of the flexibility in these regulations to exclude those scores from one year's AYP calculations.

B6. Why did the Department limit the number of times a State may exempt recently arrived LEP students from State reading/language arts assessments?

The Department decided to limit the number of times recently arrived LEP students may be exempted from State assessments in reading/language arts to one test administration because the

Department strongly believes that all LEP students – including recently arrived LEP students – need to be included in assessments, with necessary accommodations, and visible in accountability systems in order to improve both instruction and achievement of this population. The ability to analyze student performance data is an important vehicle for improving instruction and closing the achievement gap for English language learners and it is a basic principle of NCLB that assessment is central to identifying needs and driving educational change. Findings from the National Literacy Panel on Language Minority Children and Youth suggest that the vast majority of LEP students in the primary grades develops reading skills, for example, that are commensurate to those of their native English speaking peers. However, there can be a tendency within schools to overlook or delay addressing these issues with LEP students. In some cases, educators use a "wait and see" approach and delay academic interventions for LEP students, assuming that these skills will develop as the students acquire more proficiency in English and experience increased exposure to print (Francis, 2006).

B7. Do these regulations require recently arrived LEP students to take a State's mathematics assessment during their first year in U.S. schools?

Yes. The Department based its decision not to extend exemptions on participation in mathematics assessments during students' first year in U.S. schools on findings from rigorous research on math accommodations. For example, research has shown that the performance-gap for LEP students decreases or even disappears on math items of the same rigor when those items have relatively lower language demands, such as math computation (Abedi, Hofstetter & Baker, 2001). These regulations recognize that valuable data to inform instruction can be obtained when recently arrived LEP students take the mathematics assessment.

However, while the regulations require that recently arrived LEP students participate in mathematics assessments, the regulations allow States to exclude those scores from one year's AYP calculations, similar to the flexibility on accountability available for reading/language arts.

B8. Do recently arrived LEP students have to take State science assessments?

Yes. When science assessments are required to be in place beginning with the 2007-2008 school year, all students, including recently arrived LEP students, must participate in a State's science assessments.

B9. Do the regulations require States to develop native language assessments for recently arrived LEP students?

No. These regulations include no changes to the requirements outlined in §200.6(b) of the current Title I regulations. The current Title I regulations require States to assess LEP students in a valid and reliable manner that includes reasonable accommodations and, 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 subjects other than English.

B10. May a State exempt a recently arrived LEP student from its reading/language arts assessment if it has that assessment available in the recent arrival's native language?

Yes. The Department recognizes that LEP students who have recently arrived in the United States need some time to adjust to their new surroundings. The regulations thus allow recently arrived LEP students to be exempted from the State assessments in reading/language arts for one test administration even if the State has a native language reading/language arts assessment that might be accessible to some/many recent arrivals.

B11. How do these regulations affect the NCLB provision that, in general, allows LEP students to take a reading/language arts assessment in their native language for not more than three years?

If a State or LEA chooses not to assess a recently arrived LEP student during that student's first 12 months in U.S. schools, the exemption year counts towards the total of three years the State or LEA is permitted to administer a native language assessment to the student. The flexibility for recent arrivals does not extend the number of years before a student must be assessed in English.

AYP Calculations

B12. May a State include a recently arrived LEP student in calculating participation rate for AYP purposes if the LEP student did not take the reading/language arts assessment?

Yes. As long as a recently arrived LEP student participates in an assessment of his/her English language proficiency, the student may be counted as participating in the State's reading/language arts assessment.

B13. How does the definition of a recently arrived LEP student relate to a student being enrolled for a full academic year in order to be included in AYP determinations?

A State is required to base AYP determinations only on the assessment scores of students who have met the State's full academic year definition. If a recently arrived student meets that definition, but has not been in U.S. schools for 12 months, the State may exclude – for one time only – that student's results from reading/language arts (if taken) and mathematics assessments from AYP determinations.

Reporting Requirements

B14. If a State exempts recently arrived LEP students from its reading/language arts assessment, how are these students reported on State and LEA report cards?

If a State exempts recently arrived LEP students from its reading/language arts assessment, the State and its LEAs must report the number of such exemptions on the State and LEA report cards, respectively.

FORMER LEP STUDENTS

Definitions

C1. Who is a "former LEP student"?

A former LEP student is a student who was identified as LEP at some time in the prior two years but who no longer meets the State's definition of LEP.

Assessment Requirements

C2. Do the regulations change the assessment requirements for former LEP students?

No. The assessment requirements that apply to former LEP students are the same requirements that apply to all students in grades 3-8 and high school under Title I of ESEA. Under Title I of the ESEA, States must include all students, including LEP students and former LEP students, in their assessments of academic achievement in reading/language arts and mathematics. All students should receive all appropriate accommodations in order to yield accurate data on what students know and can do in the academic content areas. States must also annually assess LEP students for their English language proficiency. Additionally, beginning with the 2007-08 school year, States must administer science assessments and include all LEP students in those assessments.

AYP Calculations

C3. What flexibility do the regulations afford with regard to AYP calculations and former LEP students?

These regulations permit schools and LEAs to include the assessment results of a former LEP student with the LEP subgroup when determining – and only for determining – whether the LEP subgroup met the annual measurable objective in reading/language arts and mathematics for two AYP determinations after the student exits LEP status.

The performance of former LEP students may only be included in the LEP subgroup for purposes of calculating AYP, not for reporting student achievement results on report cards.

C4. Why do the regulations limit the inclusion of former LEP students to two years?

Section 3121(a)(4) of Title III of the ESEA requires an LEA that receives Title III funds to monitor the progress of students served by Title III in meeting challenging State academic content and academic achievement standards for each of the two years after such students are no longer receiving Title III services. Because of this Title III requirement, States already have data collection systems to track students in this manner. The regulations are designed to be consistent with these Title III provisions.

C5. Does counting former LEP students in the LEP subgroup for AYP purposes mask or hide the underperformance of LEP students?

No. Part of the reasoning behind the regulations is that the achievement gains of LEP students may be underestimated because the performance of students who have reached English language proficiency are no longer counted in the LEP subgroup. The two-year time frame to include former LEP students in AYP calculations mirrors the amount of time former LEP students must be tracked under Title III of the ESEA.

Note also that the performance of former LEP students may only be included in the LEP subgroup for purposes of calculating AYP, not for reporting student achievement results on report cards. For reporting achievement results on report cards, the LEP subgroup may only include students currently defined as LEP. Thus, the policy does not allow States, districts, or schools to hide LEP student performance.

C6. Must a State include former LEP students in the LEP subgroup to determine if the subgroup has a sufficient minimum group size to determine AYP for LEP students?

No. The regulations are designed to assist schools and LEAs that already have an LEP subgroup of sufficient size (without including former LEP students) to yield statistically reliable information, as determined by the State. A State that wishes to include former LEP students in the LEP subgroup to determine whether a school or LEA has a sufficient number of LEP students to yield statistically reliable information under §200.7(a) may do so.

C7. If a State includes former LEP students in determining AYP for the LEP subgroup, must this action be taken on a statewide basis?

No. The Department expects each State to have a policy governing the inclusion of former LEP students in AYP calculations. A State may certainly establish and apply Statewide a uniform policy requiring all LEAs to include or not include the scores of former LEP students in their AYP calculations. However, a State also has the discretion to give LEAs the option, based on their individual circumstances, of including the scores of former LEP students in the LEP subgroup for AYP calculations.

If a State gives each of its LEAs the option of deciding whether to include the scores of former LEP students in AYP calculations, the State must ensure that each LEA establishes a consistent policy for schools about whether the LEA and schools within the LEA will include or not include the scores of former LEP students in AYP calculations for the LEP subgroup. In a given year, an LEA may not calculate AYP with and without former LEP students and choose the calculation that is most advantageous to its schools making AYP for that particular year. Individual LEAs are expected to be consistent from year to year in including, or not including, former LEP students in their AYP calculations for the LEP subgroup.

C8. If a State or LEA chooses to include former LEP students with the LEP subgroup for AYP calculations, must it include all former LEP students?

Yes. If a State or LEA chooses to include the scores of former LEP students as part of the LEP subgroup for calculating and reporting AYP, the State or LEA must include the scores of *all* former LEP students in a given year.

The regulations are not intended to permit States and LEAs to pick and choose which former LEP students to include, or to choose a subset of former LEP students, such as only former LEP students who score proficient or higher on State assessments. In other words, if a State or LEA chooses to take advantage of this flexibility and include the scores of former LEP students in calculating and reporting AYP, the State or LEA must include *all* former LEP students.

C9. If a State or LEA chooses to include former LEP students with the LEP subgroup for AYP proficiency calculations, should it also include former LEP students with the LEP subgroup for calculating participation rates?

Under these regulations, a State may include, for a period of up to two years, the scores of students who were previously identified as LEP, but who have exited LEP status, when calculating AYP for the LEP subgroup. A State, however, may not include former LEP students as part of the LEP subgroup in calculating any other information under Title I (e.g. participation rates).

Reporting Requirements

C10. If a State permits LEAs to include the scores of former LEP students in determining AYP, how does a State report those scores?

If a State includes the scores of former LEP students in determining AYP for the LEP subgroup, the State and its LEAs may also include those students' scores in reporting AYP results for the LEP subgroup on State and LEA report cards. States and LEAs may not include former LEP students in the LEP subgroup on State or LEA report cards for any other purpose. Therefore, assessment results for former LEP students can be included in the following instance. Title I reporting requirements provide for a comparison between the achievement levels of subgroups and the State's annual measurable objectives for AYP in reading/language arts and mathematics (for all students and disaggregated by race/ethnicity, disability status, English proficiency, and status as economically disadvantaged). For this section of State and LEA report cards, States and LEAs are reporting on how students whose assessment scores were used in determining AYP (i.e., students enrolled for a full academic year) for reading/language arts and mathematics compare to the State's annual measurable objectives for AYP. For reporting AYP by subgroup for these purposes, former LEP students may be included in the LEP subgroup.

In the following case, results for former LEP students may not be included in reporting. Title I reporting requirements also provide for reporting the overall achievement levels of all students and the students in each subgroup (race/ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged), regardless of whether a student's achievement is used in determining if the subgroup has made AYP (i.e., reporting includes students who have not been enrolled for a full academic year, as defined by the State, and students in subgroups too small to meet the State's minimum group size for determining AYP).

For the purposes of these reporting provisions, former LEP students may not be included in the LEP subgroup because it is important that parents and the public have a clear picture of the academic achievement of students who are currently limited English proficient.

RESOURCES

D1. Where can I read the full text of the regulations?

The regulations on assessment and accountability for recently arrived and former LEP students can be found at: http://www.ed.gov/legislation/FedRegister/finrule/2006-3/091306a.html

D2. Where can I get more information about what the Department is doing to improve assessments and instruction for LEP students?

In order to design effective instruction and improve academic performance for LEP students, we need to build knowledge and develop strategies to maximize the participation of LEP students in the academic life of our schools. Developing high-quality and appropriate assessments and accommodations for LEP students is an important step; it is also a complex and challenging issue for States. The Department is committed to supporting this work.

The LEP Partnership is a Department initiative designed to provide focused support for improving assessments of English language proficiency and in reading and mathematics for LEP students. Partners for the initiative include the National Council of La Raza, the Mexican American Legal Defense and Educational Fund, the Council of Chief State School Officers, the Comprehensive Center on Assessment and Accountability, and the National Clearinghouse for English Language Acquisition. For more information on the LEP Partnership and to sign up for the LEP Partnership listserv see: http://www.ed.gov/about/inits/ed/lep-partnership**.**

The Department's What Works Clearinghouse has resources on interventions designed to improve the English language literacy and the academic achievement of elementary school students who are English language learners. See http://www.whatworks.ed.gov.

The Department's Office of Elementary and Secondary Education (OESE) supports improved assessments and instruction to LEP students through Title I of the ESEA. The Department provides formula grants to all States as well as competitive grant awards to States – under the Grants for Enhanced Assessment Instruments program – to help improve the quality of assessment and accountability systems. OESE peer reviews of assessment systems have examined, and provided States with feedback, on a number of issues related to comparability and technical quality of native language assessment, bias/fairness for LEP students in assessments, and inclusion of and accommodations for LEP students. See http://www.ed.gov/about/offices/list/oese/index.html for more information.

In administering Title III of the ESEA, the Department's Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) helps to ensure that LEP students, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the

same challenging State academic content and student academic achievement standards as all students are expected to meet. OELA's National Clearinghouse for English Language Acquisition & Language Instruction Educational Programs (NCELA) collects, analyzes, synthesizes and disseminates information about language instruction educational programs for English language learners and related programs. See http://www.ncela.gwu.edu/.