

STUDENTS' CIVIL RIGHTS ENFORCEMENT INITIATIVE

Protections for English Learners & Limited English Proficient Families

(a) Definitions. For the purposes of this Section—

(1) “English Learner” means an individual—

(A) Who is enrolled or preparing to enroll in an elementary school, secondary school, or post-secondary school;

(B) Who—

(i) Was not born in the United States or who was born in the United States and whose heritage or primary language is a language other than English;

(ii) Who—

a. Is a Native American or Alaska Native, or a native resident of the outlying areas; and

b. Comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

(iii) Is migratory, whose heritage or primary language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(C) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

- (ii) The ability to successfully achieve in classrooms where the language of instruction is English; or
 - (iii) The opportunity to participate fully in society.
- (2) “Heritage or primary language,” when used with reference to an individual of limited English proficiency, means—
 - (A) The language normally used by such individual;
 - (B) In the case of a child or youth, the language normally used by the parents of the child or youth; or
 - (C) A minority language spoken at home or within a community that differs from the dominant language (English) of the wider society.
- (3) “Language assistance services” include access to information, materials, or documents using appropriate and accurate oral translation and interpretation, including written translation services in an accurate, timely, and effective manner, to a limited English proficient parent, at no cost to the limited English proficient parent.
- (4) “Language instruction educational program” or an “LIEP” means an instruction course—
 - (A) In which an English Learner is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic standards; and
 - (B) That may make instructional use of both English and a child’s primary or heritage language to enable the child to develop and attain English proficiency and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.
- (5) “Limited English proficient parent” or “LEP parent” means an individual—
 - (A) Who is the parent or guardian of a student enrolled or preparing to enroll in a public elementary or secondary school; and
 - (B) Who—
 - (i) Was not born in the United States or whose heritage or primary language is a language other than English;

- (ii) Is a Native American or Alaska Native or a native resident of one of the outlying areas of the United States and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - (iii) Is migratory, whose heritage or primary language is a language other than English, and who comes from an environment where a language other than English is dominant; and
 - (C) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the opportunity to participate fully in society, including to deny the individual the opportunity to participate fully in decisions relating to or effectively communicate with the school about their child's education.
- (6) "Vital documents" —
- (A) Means documents that—
 - (i) Create or define legally enforceable rights or obligations;
 - (ii) Solicit information necessary to establish or maintain eligibility for education programs or services; or
 - (iii) Are necessary for a parent to make informed decisions relating to their child's education; and
 - (B) Include enrollment forms, disciplinary notices, student codes of conduct, individualized education program documents, and information relating to rights of appeal.
- (b) All [LEAs] within [STATE] shall take affirmative steps to ensure equal access to educational opportunities for students identified as English Learners (ELs).
- (c) With regard to students who are potentially or identified as EL within a district or school, the district or school has an obligation to do the following:
- (1) Identify and assess all potential EL students in a timely, valid, and reliable manner;
 - (2) Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), and *Lau v. Nichols*, 414 U.S. 563 (1974);

- (3) Provide sufficiently well-prepared and -trained staff and support the language assistance programs for EL students;
 - (4) Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
 - (5) Avoid unnecessary segregation of EL students. EL programs may not unjustifiably segregate students on the basis of national origin or EL status;
 - (6) Ensure that EL students who have or are suspected of having a disability under the federal Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services;
 - (7) Meet the needs of EL students who opt out of language assistance programs;
 - (8) Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade-level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
 - (9) Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and
 - (10) Ensure meaningful communication with limited English proficient (LEP) parents.
- (d) Language instruction educational programs shall:
- (1) Be based on current evidence-based research;
 - (2) Be based on state-approved language acquisition and academic content achievement standards at grade level;
 - (3) Have sufficient resources, funds, and qualified personnel;
 - (4) Be designed so that ELs can gain proficiency in English and acquire grade-level knowledge and skills [\[consistent with the academic standards required by\]\[RELEVANT STATE EDUCATION CODE\]](#); and

- (5) Be based on evidence-based research strategies and the educational needs and the demographic characteristics of ELs in the school district.
- (e) Compliance. If the [SEA] finds that a proposed or current program fails to meet the requirements of federal or state laws, the following procedures shall be followed:
- (1) The [SEA] shall notify the [LEA] in writing. The notice shall cite the legal requirements with which the program would not comply and include corrective steps that shall be taken to bring the program into compliance, and the [LEA] shall have 60 days to adopt such steps.
 - (2) Nothing in this Section shall prevent the [SEA] from conducting an evaluation of a language acquisition program at any time. Thereafter, the program shall be subject to the requirements of this Section.
- (f) Program enrollment. The parent or legal guardian of a student eligible to enroll in a language instruction educational program (LIEP) may select any available EL program offered by the [LEA] or approved by the State; provided, however, that the program shall be in adherence with federal and state legal requirements and appropriate for the age and grade level of the student.
- (1) If a [LEA] receives requests from the parents or legal guardians of not less than 20 students to implement a specific program to provide language instruction in that [LEA], the [LEA] shall, not later than 90 days after receiving the request, respond and provide:
 - (A) A plan for implementation of the requested program; or
 - (B) A denial of the request, in writing, including an explanation of the denial.
 - (2) [LEA] shall inform parents or guardians of their right to ‘opt out’ of a particular LIEP or participation in a LIEP altogether, but [LEA] shall not recommend that parents or guardians decline all or some services within an EL program for any reason, including facilitating scheduling of special education services or other scheduling reasons.
 - (3) In the case that parents or guardians ‘opt out’ of a LIEP for their EL student, the [LEA] must ensure that the student receives the appropriate instruction and language services that provide access to the districts’ educational programs provided all students in the district.
 - (4) [SEAs] and [LEAs] must provide EL students equal opportunities to meaningfully participate in all programs and activities of the [SEA] or school district and may not be restricted from participating in both EL services and services funded by

other programs, including Title I of the federal Every Student Succeeds Act (ESSA) and special education.

- (g) Evaluations. When conducting an evaluation for a student who is an EL to determine the need for services, such as reading interventions, special education, or gifted and talented enrichment, school committees shall consider the English language proficiency of the student.
 - (1) Assessments and other evaluation materials used to evaluate said student shall be provided and administered in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, including in the student's heritage or primary language or using linguistic accommodations.
 - (2) The evaluation team shall consider the language needs of a student who is an EL and include members with expertise in second language acquisition and differentiating between language acquisition trajectories and other learning processes.
 - (3) Schools or districts shall not identify or determine that EL students are students with disabilities because of their limited English language proficiency.
- (h) SEA regulations. The [SEA] shall promulgate regulations establishing standards for the provision of interpretation and translation services, including standards for the qualification of interpreters and translators, to limited English proficient parents and legal guardians of all public school students. Such regulations shall include but not be limited to the following qualifications:
 - (1) Bilingualism;
 - (2) Knowledge in both languages of specialized terms or concepts;
 - (3) Training for interpreters and translators;
 - (4) Ethics of interpreting and translating; and
 - (5) The need to maintain confidentiality.
- (i) Limited English proficient (LEP) parents. Each [LEA] shall develop, implement, and post, in a publicly accessible location on its website, a language access plan consisting of policies and procedures designed to ensure meaningful communication with and informational accessibility for LEP parents, in a language understandable to such LEP parents.
 - (1) Such language access plan shall include policies and procedures for—

- (A) Ensuring LEP parents are notified as adequately as non-LEP parents of any essential information about any program, service, or activity provided or sponsored by [LEA], [the school board, or a public school] within the applicable school division, including but not limited to information relating to:
 - (i) Language assistance programs;
 - (ii) Special education and related services;
 - (iii) IEP meetings;
 - (iv) Grievance procedures;
 - (v) Notices of nondiscrimination;
 - (vi) Student discipline policies and procedures;
 - (vii) Registration and enrollment;
 - (viii) Report cards;
 - (ix) Requests for parental permission for student participation in division or school activities;
 - (x) Parent teacher conferences;
 - (xi) Parent handbooks; and
 - (xii) Any available courses of instruction or academic program options, including gifted and talented programs and magnet and charter schools; and
- (B) Identifying each LEP parent at the enrollment of such parent's child, or as soon as possible thereafter, and determining and maintaining records of the language needs and preferred language for communication of each identified LEP parent;
- (C) Providing to each LEP parent language assistance services to ensure meaningful access to all school and school division-level communications, including relevant meetings, notices, and electronic communications, which shall—
 - (i) Include providing, in situations where written translation into a language understandable to or preferred by an LEP parent is not feasible or immediate communication is necessary, oral

interpretation services for an LEP parent in a language understandable to or preferred by such LEP parent;

(ii) Be provided by the [LEA] and at no cost to the LEP parent; and

(iii) Be provided in an accurate, timely, and efficient manner to ensure no LEP parent is required to rely on the student or any of the parent's other children, family members, or untrained school board employees to interpret or translate for education-related purposes. In providing language assistance services pursuant to this Section, each [LEA] may use, when necessary to ensure meaningful access to all school and school division-level communications, research-based language access technology, including digital platforms and remote interpretation tools, provided that any such research-based language access technology is accurate, utilized in a timely and effective manner, and, if deemed appropriate by the school board, supplemented by qualified human interpretation; and

(D) Translating all vital documents into the languages most commonly spoken by the LEP parents in the [DISTRICT], as determined annually based on each LEP parent identified and the language needs and preferences of each LEP parent identified pursuant to this subsection (i);

(E) Providing training to all [LEA] employees whose duties, as determined by the [LEA], are relevant to or involve communication with LEP parents, on the requirements of this section with respect to LEP parents and the processes and procedures for obtaining interpretation or translation services in accordance with this section; and

(F) Posting in a prominent and publicly accessible location on such [LEA's] website information relating to language and communication accessibility for LEP parents, including information on the rights of LEP parents, the corresponding obligations of the [LEA] to LEP parents under this section, and any language assistance services available to LEP parents under this section and clear, easily understandable instructions for accessing such language assistance services.

(2) In implementing the language access plan pursuant to this subsection (i), each [LEA] may fulfill the requirements and provide the services required pursuant to this subsection (i) through contracts, cooperative procurement agreements, or statewide or regional service arrangements, including telephonic or video remote interpretation and centralized translation services. Each [LEA] shall provide language assistance services required pursuant to this subsection (i)(1)(C) in a manner consistent with [STATE STANDARDS] but shall be afforded discretion in selecting cost-effective service delivery models that meet the specific needs of the limited English proficient population in its school division.

- (3) Each [LEA] shall annually submit to the [SEA] a report on its activities relating to meeting its obligations to LEP parents in accordance with the requirements of this section, including:
- (A) A description of the language access plan developed and implemented pursuant to this subsection (i), including any revisions or modifications made to such language access plan since the report submitted the preceding year;
 - (B) Data relating to LEP parents identified by the school board pursuant to subsection (i)(1)(B), including the total number of LEP parents identified and served in the school division, the total number of languages other than English preferred or spoken by such LEP parents and the number of such languages supported by the school board in accordance with this section; and
 - (C) Any other efforts of the [LEA] to comply with this section.
- (j) The [SEA] shall annually post and maintain in a publicly accessible location on its website each annual report submitted by an [LEA] in accordance with subsection (i)(3) of this Section. [SEA] may adopt such policies and procedures as it deems necessary for monitoring and enforcing each [LEA's] compliance with the provisions of this section.
- (k) Civil Rights Compliance. [LEAs], school districts, and schools shall comply with and are subject to the provisions of this Section and the Students' Civil Rights Act and shall not engage in discrimination, as defined in Section 4 of the Students' Civil Rights Act, against ELs.*
- (1) Discrimination against an EL may be possible when EL status is used as a pretext or proxy for race, color, national origin, disability, or other protected class [as defined in Section 3 of the Students' Civil Rights Act].
 - (2) [LEAs], school districts, and schools that are alleged to have discriminated against ELs in violation of Section 4 of the Students' Civil Rights Act may be subject to complaint and enforcement procedures, pursuant to Section 6 of the Students' Civil Rights Act, or a private civil action, pursuant to Section 7 of the Students' Civil Rights Act.
 - (3) [LEAs], school districts, and schools shall take appropriate actions to ensure ELs and LEP parents are aware of the nondiscrimination provision, in compliance with Section 4 of the Students' Civil Rights Act.

Throughout the model, you may see this symbol: *

This symbol indicates that the language provided is purely an option for you to use based on your state's needs or that there may be additional strategies to consider while drafting.

When you see the ‘*’ symbol while reviewing this template, check out the **Part 5: Protections for English Learners & Limited-English Proficient Families** toolkit document to learn more.