

**TITLE III Q&A:  
Inclusion of LEP Students with Disabilities in English  
Language Proficiency Assessments and Title III  
Annual Measurable Achievement Objectives**



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## TITLE III Q&A: INCLUSION OF LEP STUDENTS WITH DISABILITIES

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# Title III Q&As: Inclusion of LEP Students with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives

## INTRODUCTION:

Currently, it is estimated that nearly five million students in U.S. schools, nearly ten percent of the overall student population, are limited English proficient (LEP), meaning that they have sufficient difficulty speaking, reading, writing, or listening in English to the extent that it has an impact on their academic performance. Between 1989-1990 and 2003-2004, LEP student enrollment has more than doubled, from 2,030,451 students to 4,999,481 students.

Educational personnel in States, districts, and schools across the nation have expressed challenges in developing and applying No Child Left Behind (NCLB) English language proficiency (ELP) assessment and accountability provisions to those students who are both LEP and students with disabilities. During 2001-2002, the most recent years for which data were collected, there were approximately 357,325 LEP students who were also students with disabilities enrolled in U.S. public schools.

The term “limited English proficient,” (LEP) as it is used in this guidance, refers to students “...whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State’s proficient level of achievement on State assessments described in section 1111(b)(3)...” (Title IX, Section 9101). LEP students are those students who score below the proficient level on the State English language proficiency assessment.

The term “students with disabilities,” as it is used in this guidance, refers to students who are eligible for services under the Individuals with Disabilities Education Act (IDEA).

This guidance is intended to assist States in understanding how Titles III and I of the NCLB Act of 2001 and the IDEA address the inclusion of LEP students who are also students with disabilities in State ELP assessments and Title III annual measurable achievement objectives (AMAOs). In the guidance, options for including students with disabilities in ELP assessments, including those students who have significant cognitive disabilities, and those who do not have significant cognitive disabilities, are discussed.

Specifically, this guidance is focused on ways of including LEP students with disabilities in ELP assessments, which are assessments designed to measure their progress in learning the English language.

States planning to develop and implement new policies for ELP assessment and accountability for LEP students

with disabilities should submit this information to the Department for review as an amendment to the Consolidated State Application. The following section addresses questions received by the Department related to the ELP assessment of LEP students with disabilities and their inclusion in Title III AMAOs.

## Questions and Answers:

### 1. Do the requirements for assessing limited English proficient (LEP) students’ English language proficiency (ELP) under Title I and Title III apply to LEP students who are also students with disabilities?

*Yes.* Both Titles I and III require local educational agencies (LEAs) and State educational agencies (SEAs) to provide an annual assessment of English language proficiency for all LEP students in the State enrolled in public schools in grades Kindergarten through twelve in the domains of speaking, listening, reading, and writing (Section 1111(b)(7); 3113(b)(3)(D)).

### 2. Is it appropriate to continue to require administration of the annual ELP assessment in all domains of language even if a child may always score as a non-reader due to his/her disability?

*Yes.* It is important for all LEP students, including those with disabilities, to have a full opportunity to show what they know and are able to do in English and to be included in ELP assessment in all domains of language.

### 3. What are the ways in which LEP students with disabilities can participate in the State ELP assessment(s)?

LEP students who are also students with disabilities can participate in the State ELP assessment(s) through one of the following means:

- a. Participation in the State ELP assessment without accommodations, or
- b. Participation in the State ELP assessment through the use of one or more State-approved accommodations appropriate for the child’s disability, or
- c. Participation in a partial administration of the State ELP assessment, if determined appropriate by the individualized education program (IEP) team.

### 4. What is the role of the IEP team in determining accommodations for LEP students with disabilities on the State ELP assessment?

The IEP team or placement team may be the best-informed group to deliberate on decisions regarding such accommodations, though IDEA does not specifically address or prohibit the role of the IEP team in making decisions regarding accommodations for ELP assessments. Just as in determining what accommodations are needed for any student with a disability, the IEP team, with the appropriate representation, should be able to make sound decisions regarding what accommodations are needed for LEP students with disabilities.

Members of the IEP team for LEP students with disabilities should include speech language pathologists and other professionals with an understanding of how to differentiate between limited English proficiency and a disability. Team members should be provided training in this area, as well as in language acquisition and in serving students with disabilities, as needed (IDEA, Section 61(d)), or include bilingual/ESL teachers or other professionals with expertise in language acquisition as part of the team.

**5. What should IEP teams consider when a student participates in the State ELP assessment through the use of one or more State-approved accommodations appropriate for the child's disability?**

First, such accommodations must not invalidate results from the ELP assessment.

Second, decisions regarding assessment accommodations should be made by individuals familiar with a child's academic achievement and English language proficiency, such as the child's IEP team or placement team. As stated throughout, the IEP team should include professionals with expertise in language acquisition and a speech-language pathologist. Decisions must always be made on the basis of individual student needs and must be documented.

Finally, accommodations may be used for the entire ELP assessment, or for part of the assessment. For example, one option may be to use an accommodation that is appropriate for a subtest of one domain of language just for that particular subtest.

**6. Under what conditions would it be permissible for a State to have LEP students with disabilities participate in a partial administration of the State ELP assessment?**

It is permissible for a State to allow some LEP students with disabilities to participate in a partial administration of the State ELP assessment, if appropriate, due to such students' disabilities. For example, if a student is unable to produce expressive language, it may be appropriate for him/her to receive an exemption from participating in the speaking portion of the State ELP assessment.

Participation in a partial administration of the State ELP assessment would only be permitted if determined appropriate by the IEP team.

Decisions regarding which portions of an ELP assessment a student should participate in should be made by individuals familiar with a child's academic achievement, and assessment of a child's English language proficiency should be made on the basis of individual student needs, and must be documented. The decision should have the benefit of review and input of a speech and language pathologist.

**7. How should States proceed in developing or revising State policies and practices for the ELP assessment of students with disabilities?**

States are advised to consult with appropriate individuals at the SEA, LEA, and school levels with expertise in language acquisition and in the provision of services to students with disabilities, such as speech language pathologists, bilingual/ESL teachers, or other professionals with expertise in language acquisition, when developing such policies.

States are also advised to develop guidance for LEAs and schools to use with IEP teams regarding such policies, and to ensure through monitoring that policies are being implemented at the LEA and/or school levels.

**8. Is it permissible for local personnel, such as school staff members or the IEP team, to remove an LEP designation from an LEP student who is a student with a disability?**

*No.* The LEP designation cannot be removed from a child unless that child has met the criteria for "proficient" in English as defined by the State. It is important for LEP students with disabilities to have a full opportunity to show what they know and are able to do in English. Maintaining a child's designation as LEP, as long as appropriate, may also give him/her access to services important to supporting his/her educational achievement. States submitted their definition of "proficient" in English to the U.S. Department of Education in the September 1, 2003 Submission to the Consolidated State Application. The definition of "limited English proficient" is found in Section 9101 of NCLB.

**9. Must the ELP assessment results for LEP students with disabilities be included in Title III annual measurable achievement objectives (AMAOs)?**

*Yes.* Results from ELP assessment for all LEP students should be included in both the making progress and in the proficient AMAO under Title III, as described in Section 3122(a)(3). All four domains of language (speaking, listening, reading, and writing) must be included in AMAOs.

**U.S. DEPARTMENT OF EDUCATION**  
**[ASSESSING ENGLISH PROFICIENCY OF STUDENTS WITH**  
**COGNITIVE DISABILITIES]**



November 24, 2003

Honorable James A. Kadamus  
 Deputy Commissioner  
 Office for Elementary, Middle, Secondary and Continuing Education  
 The New York State Education Department  
 Room 875 EBA  
 Albany, New York 12234

Dear Deputy Commissioner Kadamus:

I am writing in response to your letter of May 30, 2003, in which you sought clarification about the annual assessment requirements for English language proficiency. Specifically, you asked for clarification regarding the provisions of Title I and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), that require an annual assessment of English proficiency of students with limited English proficiency, as applied to students with the most significant cognitive disabilities. I apologize for the late response to your letter.

For students whose Individual Education Program (IEP) team determines that the cognitive disabilities are so significant that they cannot participate in the NYSESLAT, the State's test of English language proficiency for Title III and test of language arts and mathematics for Title I, New York may excuse those students from the NYSESLAT. In those cases, New York must use the New York State Alternate Assessment (NYSAA) or a similar local assessment to determine student proficiency relative to New York's academic standards, and may also use the NYSAA or a similar local assessment to monitor English language proficiency, as long as the following conditions are met. First, New York would need to define a standard for English language proficiency that can be applied to the alternate assessment. Second, New York must ensure that the alternate assessment is valid for both purposes. One approach for determining validity is to involve experts knowledgeable about language acquisition in the development, administration, and scoring process for the alternate assessment.

Using the NYSAA or a similar local assessment under these conditions would be an acceptable course of action if: (1) New York's language arts content standards are compatible with the assessment of both academic content and English language proficiency in the areas of reading, writing, speaking and listening; (2) the alternate assessment includes an assessment of student achievement on the critical Title III elements (i.e., listening, speaking, reading, and writing) and the language arts standards for Title I; and (3) the alternate assessment scoring rubric permits documentation of a full range of performance on this indicator.

Please remember that, while Title I only requires students to be assessed in reading/language arts and mathematics in grades 3-8 and high school (by 2005-06), Title III of NCLB requires that limited English proficient students must be assessed for English proficiency in grades kindergarten through grade twelve. As you mention in your letter, the number of students who fall into this category must be limited, and would be dictated by the percentage ultimately determined by the Department following its proposed rule of March 20, 2003. We intend to finalize this regulation in the near future, in time for you to provide timely guidance to districts and schools in New York.

As you work through this process, please note that this letter does not constitute final approval of the NYSAA for these purposes. If New York were to pursue this option, it would need to submit evidence to the Department for peer review through the standards and assessment process to receive that approval. Also, please be aware that this letter does not indicate that the approach will comply with Federal civil rights requirements, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and requirements under the Individuals with Disabilities Education Act.

*Standards/Assessments*

If you have additional questions about the nature of this alternate assessment and how it may be designed to measure both content achievement and English language proficiency, please contact Sue Rigney in the Office of Elementary and Secondary Education at 202-260-0931 or Kathleen Leos in the Office of English Language Acquisition at 202-205-4037, who can provide additional guidance.

Sincerely,  
/s/ Ronald J. Tomalis  
Acting Assistant Secretary  
Office of Elementary and Secondary Education

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