



STATE OF SOUTH CAROLINA

DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN

STATE SUPERINTENDENT OF EDUCATION

MEMORANDUM

TO: Special Education Directors
ESEA Title III EL Coordinators

FROM: Rebecca Davis, Director
Office of Special Education Services (OSES)
Division of Federal Programs, Accountability & School Improvement

Sarah Longshore, Director
Office of Federal and State Accountability
Division of Federal Programs, Accountability & School Improvement

DATE: May 2021

RE: Multilingual Learners with Disabilities (MLWD)

The number of multilingual learners (MLs) continues to increase in South Carolina. Some of these students may also be identified as a student with a disability. Federal guidelines and timelines need to be met when a parent or school personnel has reason to suspect that an ML may have a disability.¹ To provide information concerning the referral, evaluation, and identification process, please review the following:

- Evaluations to determine eligibility for special education services may not be delayed because of a student's proficiency level in the English language, and a student's English language proficiency cannot be the basis for determining that a student has a disability.
- It is crucial that the evaluation team make the distinction between a language difference and a disability. Assessment data must be collected using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. Evidence of the

¹ [OCR/DOJ Dear Colleague Letter of January 7, 2015](#)

disability should be present in the student's native language and not only in the English language. The use of translated tests is strongly discouraged if the test item difficulty or the intent changes with translation. Many nationally-normed tests are limited in their usefulness because the norms have small samples that may not be representative of the student's language background. The evaluation team must select test results which reflect the student's aptitude or achievement levels rather than reflecting the student's level of language acquisition. The use of norm-referenced tests in the student's native language may be appropriate and useful in certain cases such as when the student has received formal education in the native language. Non-verbal tests can provide useful information as well.

- It is the guidance of the Office of Special Education Services (OSSES), in cases involving MLs, that the Individualized Education Program (IEP) team include the English to Speakers of Other Languages (ESOL) teacher, or someone with knowledge and expertise in English language acquisition, in order to consider all aspects of the student's needs. It is also advised that a member with knowledge and expertise in special education be included in the Individualized Language Acquisition Plan (ILAP) team. The IEP and the ILAP should align.
- Parents of MLs are entitled to meaningful participation as a member of the IEP and ILAP team.² Trained interpreters and translators are crucial when collecting relevant data pertaining to the student and communicating with the parents. A trained and competent interpreter should have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and should be trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.³
- Students identified as multilingual learner with disabilities (MLWD) have both IEPs and ILAPs. Each program determines the allowable accommodations and services that best meet the needs of the student. The IEP team addresses needs related to the student's disability; whereas, the ILAP team addresses needs related to the student's language acquisition. Although both accommodation and service plans are distinct and separate, both plans should be met and implemented with the same due diligence that is specific to the student's needs. A continuous plan for progress monitoring should be in place with respect to language- and disability-based goals. The student should receive both special education and ESOL services to meet the needs of the whole student.
- The notation of accommodations on a report card is neither best practice nor necessary. The type of accommodations a student can use and the circumstances under which the accommodations are used are detailed in the student's IEP and ILAP or accommodation plans under Section 504 of the Rehabilitation Act of 1973 (Section 504). A report card will not include the same detailed description as an IEP, ILAP, or Section

² [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#)

³ [OCR/DOJ Fact Sheet Information for Limited English Proficient \(LEP\) Parents and Guardians and for Schools and School Districts that Communicate with Them \(Jan. 2015\)](#)

504 Plan. If the inclusion of the accommodation on the report card is rooted in or results in discrimination, it is not lawful.

- MLWDs must also take the English language proficiency (ELP) assessment every year. This test may not be waived by the student's IEP or ILAP team. MLs who meet the significant cognitive disability criteria may be eligible for the alternate ELP assessment, as determined by the IEP team.
- If an ML is unable to access specific domains of the ELP assessment due to the nature of the disability, the IEP team can request for the student to be relieved from specific domain(s) of the ELP assessment. This request should be communicated through their District Test Coordinator (DTC) and approved by the South Carolina Department of Education (SCDE), Office of Assessment.

For additional information or questions, please contact Susan Murphy (smurphy@ed.sc.gov) or Elizabeth Supan (esupan@ed.sc.gov) in the Office of Federal and State Accountability or Sara Garrett (sgarrett@ed.sc.gov) or Lisa McCliment (lmcclement@ed.sc.gov) in the Office of Special Education Services.