

1 16 NCAC 06D .0106 is proposed for readoption with substantive changes as follows:

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3 **16 NCAC 06D .0106 LIMITED ENGLISH PROFICIENCY PROGRAMS**

4 (a) For purposes of this Rule, the following definitions shall apply:

5 (1) "Annual testing program" is defined in 16 NCAC 06D .0307(c).

6 (2) "Caregiver" means a parent, custodian, legal guardian, or other person having formal or informal  
7 responsibility for the care and education of an English learner. "Caregiver" does not include  
8 employees of the public school system acting in their professional capacities.

9 (3) "English language proficiency assessment" means the diagnostic test approved by the State Board  
10 of Education and administered to an English learner to evaluate the English learner's achievement  
11 and progress in English language development. The approved test is the WIDA ACCESS.

12 (4) "English language proficiency alternative assessment" means the diagnostic test approved by the  
13 State Board of Education and administered to an English learner who has been identified as a child  
14 with a disability, as defined in G.S. 115C-106.3(1), and has a significant cognitive disability to  
15 evaluate the English learner's achievement and progress in English language development. The  
16 approved test is the WIDA Alternate ACCESS.

17 (5) "English language proficiency screener" means the diagnostic test approved by the State Board of  
18 Education and administered to a student to determine if the student is an English learner. The  
19 approved tests are the WIDA Screener and WIDA Screener for Kindergarten.

20 (6) "English language proficiency alternative screener" means the diagnostic test approved by the State  
21 Board of Education and administered to a student who has been identified as a child with a disability,  
22 as defined in G.S. 115C-106.3(1), and has a significant cognitive disability to determine if the  
23 student is an English learner. The approved test is the WIDA Alternate Screener.

24 (7) "English learner" is defined in 20 U.S.C. 7801(20).

25 (8) "English learner plan" means a comprehensive document, unique to each English learner, that  
26 outlines how the public school unit will support the English learner's English language development  
27 and access to grade-level academic content. The plan shall include key information such as the  
28 English learner's identification, English proficiency level, language development goals,  
29 instructional services, testing accommodations, and parent or caregiver notifications.

30 (9) "Home language survey" means one or more questions posed to a student and the student's  
31 caregiver(s) upon the student's initial enrollment in a public school unit ("PSU") to determine the  
32 language or languages spoken in the home.

33 (10) "Language instruction educational program" or "LIEP" is defined in 20 U.S.C. 7011(7).

34 (a) Each superintendent or his delegate shall:

35 (1) identify resources available to serve limited English proficient students;

36 (2) coordinate programs and services to these students and their parents in the local school  
37 administrative unit;

- (3) report to the SBE information concerning the identification, placement, and educational progress of these students; and
- (4) report funding needs for the provision of services to these students to the SBE.

(b) LEAs shall report

annually to the SBE information including but not limited to the number of students whose primary home language is other than English, the number of limited English proficient students identified and receiving services, the nature of the services, the number of limited English proficient students receiving special education services and services for the academically gifted, and data required to be reported to the U.S. Department of Education.

(e) ~~A home language survey shall be administered to every student at the time of enrollment and maintained in the student's permanent record. LEAs shall then identify and assess every limited English proficient student who needs assistance in order to have access to the unit's instructional programs. Each LEA which identifies limited English proficient students who need assistance shall adopt an effective method of determining the students' current level of English proficiency in order to determine what types of assistance are needed. The method used may be a combination of the following, unless some other method can be effectively substituted:~~

- (1) teacher observations;
- (2) teacher interview;
- (3) achievement tests;
- (4) review of student records;
- (5) parent information;
- (6) proficiency tests;
- (7) English as a second language teacher referral;
- (8) student course grades;
- (9) teacher referral or recommendation;
- (10) criterion referenced tests;
- (11) grade retention or deficiency report;
- (12) informal assessment or screening;
- (13) portfolio-based assessment; and
- (14) alternative assessments such as cloze and dictation.

**(b) Upon a student's initial enrollment in a North Carolina public school unit ("PSU"), the PSU shall administer a home language survey and maintain the results of that survey in the student's educational record. If a student has been previously enrolled in another North Carolina PSU, the enrolling PSU shall use the results of the previous survey. The home language survey shall collect at least the following information:**

(1) The student's name.

(2) The student's date of birth.

(3) The student's current grade.

(4) The name of the student's parent(s) or caregiver(s).

(5) The telephone number of the parent(s) or caregiver(s).

- (6) The primary language used in the student's home, regardless of the language spoken by the student.
- (7) The language the student speaks most often.
- (8) The first language the student learned to speak.
- (9) If the student has attended any other primary or secondary school in the United States:
  - (A) The state, territory, or federal district in which the student attended school;
  - (B) The name of the PSU the student attended, if the student attended another PSU in North Carolina; and
  - (C) The years that the student attended each school.

(c) The PSU shall take the following steps within 30 days of a student's enrollment:

- (1) The PSU shall investigate the English language skills of the student if the home language survey indicates that:
  - (A) The student's first language is other than English;
  - (B) The student's primary language is other than English; or
  - (C) The student most often speaks a language other than English.
- (2) Based on this investigation, the PSU shall determine whether the student's English language skills will impair the student's ability to access academic content.
- (3) The PSU shall administer one of the following English language proficiency screeners:
  - (A) The WIDA Screener for Kindergarten, if the student is in the first semester of Kindergarten.
  - (B) The WIDA Screener, if the student is in the second semester of Kindergarten or in Grade 1 through Grade 12;
  - (C) The WIDA Alternate Screener, if the student is identified as a child with a disability.
- (4) The PSU shall designate a student as an English learner if the student scores the following on the applicable English language proficiency screener:
  - (A) Below a 4.5 overall (listening, speaking, reading, and writing) composite score on the WIDA Screener;
  - (B) Below a 4.5 oral language (listening and speaking) composite score on the WIDA Screener for Kindergarten; or
  - (C) Below a 3.0 on the WIDA Alternate Screener.
- (5) Once a student is identified as an English learner, the PSU shall enroll the student in a language instructional educational program that will best enable the student to:
  - (A) Increase English language proficiency; and
  - (B) Access academic content and curriculum.

(d) LEAs shall adopt a program or programs for limited English proficient students who need assistance which have a reasonable chance of allowing students to progress in school. The program may be one of the following unless some other method or process can be effectively substituted:

- (1) English as a second language (ESL);
- (2) bilingual education;

(3) programs which provide neither instruction in the native language nor direct instruction in ESL but which adapt instruction to meet the needs of these students.

~~Program entry criteria shall be developed which take into account the student's educational background, English language proficiency, native language proficiency, and content area knowledge. LEAs shall conduct a program evaluation annually.~~

(d) Each English learner shall participate in the annual testing program using one of the following methods of test administration:

(1) The standard test administration provided to non-English learners.

(2) The standard test administration with accommodations identified in the English learner plan, if the English learner scored below Level 5.0 Bridging on the reading domain of the WIDA Screener or WIDA Access.

English learners who are in their first year of enrollment in a United States public or nonpublic school and enrolled in a course with an End-of-Course test in reading, mathematics, or science shall take the End-of-Course test, but the test scores shall not be included in the student's final grade for the course.

(e) The PSU shall administer one of the following English language proficiency assessments to each identified English learner during the annual testing program:

(1) The WIDA ACCESS, if the English learner is in Kindergarten or in Grade 1 through Grade 12;

(2) The WIDA Alternate ACCESS, if the English learner is identified as a child with a disability, as defined in G.S. 115C-106.3(1), and has a significant cognitive disability.

(e) LEAs shall adopt appropriate evaluative standards for measuring the progress of limited English proficient students in school. In order to determine when students no longer need assistance, the LEA shall determine the content knowledge and language skills necessary for successful functioning in the regular classroom. Then, multiple instruments as well as teacher judgment may be used to evaluate English listening and speaking skills, English literacy skills, and content area knowledge. The students shall not be maintained in alternative language programs longer than necessary based on program exit criteria but shall be monitored after exiting such programs for a minimum of six months and additional academic and English language support shall be provided if the students begin to have difficulty.

(f) The PSU shall deem a student to no longer be an English learner and exit the student from the language instructional educational program if the student scores the following on the applicable English language proficiency assessment:

(1) An overall composite score of 4.5 or above on the WIDA ACCESS; or

(2) A Performance Level 2 or higher on the WIDA Alternate ACCESS.

If the PSU has evidence that a student who was previously identified as an English learner has English language skills that may impair the student's continued ability to access academic content, the PSU may re-administer the applicable English language proficiency to re-assess the student's eligibility for English learner services and accommodations.

(f) LEAs shall monitor the progress of limited English proficient students in English proficiency and in the BEP. When a limited English proficient student is not making progress in school, the LEA shall conduct an evaluation of the student's program and make modification as needed.

1       (g) Limited English proficient students shall participate in the statewide testing programs in accordance with 16  
2       NCAC 6D .0301.

3       (h) LEAs shall promote the involvement of parents of students of limited English proficiency in the educational  
4       program of their children. LEAs shall notify national origin minority group parents of school activities which are  
5       called to the attention of other parents and these notices shall be provided in the home language if feasible.

6       (i) LEAs shall ensure that limited English proficient students are not assigned to or excluded The PSU shall not  
7       exclude English learners from special education programs because of their due to limited English language  
8       proficiency. Evaluation, The PSU shall conduct evaluation, placement, and notification to parents of students with  
9       special needs shall be conducted in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. 1401  
10      et seq. and its implementing regulations at 34 C.F.R. Part 300.

11      (j) LEAs shall ensure that limited English proficient students are not categorically excluded The PSU shall not  
12      exclude English learners from programs for the academically gifted and other specialized programs or support services  
13      such as guidance and counseling due to limited English proficiency.

14      (k) LEAs shall ensure that limited English proficient students are educated The PSU shall educate English learners  
15      in the least segregative manner based on the educational needs of the student and these students shall be included  
16      segregated manner consistent with each student's English learner plan and include these students in all aspects of the  
17      regular school program in which they can perform satisfactorily. for which they are otherwise eligible and qualified.

18      (l) The Department shall monitor the progress of LEAs in providing programs to all limited English proficient students  
19      using the same procedures and standards as provided in Title I—Helping Disadvantaged Children Meet High  
20      Standards, 20 U.S.C. ' 6301 et seq.

21      (m) The Department shall make available a list to all LEAs of teachers licensed in English as a Second Language  
22      (ESL). ESL training and add on ESL licensure for teachers currently licensed in areas other than ESL is an appropriate  
23      strategy to obtain qualified staff.

24      (n) Each LEA may consider joint agreements with other LEAs to provide programs to limited English proficient  
25      students.

26      (o) Each LEA may coordinate services with those available at local community colleges in order to maximize efficient  
27      delivery of services to limited English proficient students and their parents.

28      (p) The Department shall administer the Teacher Education Program Approval process so as to ensure that all  
29      participants have an opportunity to gain an understanding of and develop strategies for addressing the educational  
30      needs of limited English proficient students. The Department shall work with IHEs to expand English as a Second  
31      Language teacher training programs.

32      (j) The PSU shall report the following information to the SBE no later than November 1st of each year:

33            (1) The number of English learners identified and receiving services from the PSU.

34            (2) The number of English learners receiving special education services in accordance with Chapter  
35            115C, Article 9 of the General Statutes.

36            (3) The number of English learners receiving services for academically or intellectually gifted students  
37            in accordance with Chapter 115C, Article 9B of the General Statutes.

(4) Any other information required by the United States Department of Education.

*History Note:* Authority G.S. 115C-12(9)e.; N.C. Constitution, Article IX, Sec. 5; 115C-12(9); 115C-12(48); 115C-83.7; 115C-83.15; 115C-83.16; 115C-218.85; S.L. 2007-323, Section 7.9; 20 U.S.C. 6311; 20 U.S.C. 6811-7014; 20 U.S.C. 1703; 34 C.F.R. 200.6;  
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