

August 2015 Monthly Newsletter



Educating English Learners with Disabilities: New Study and New Guidance Released

Identifying and supporting ELs with disabilities has been an issue that educators have struggled with for many years. Here's what you need to know now. See page 2.



Testing Opt-Out Movement and Parent Notifications

A major movement by parents to opt students out of taking State Content Assessments mandated by ESEA/NCLB. How does this affect parent notifications? See page 4.



New Collection! TransACT® for English Learners

The new TransACT for English Learners collection aligns with the new USED-DOJ guidance for serving English Learners. This collection is available in 10 languages. See page 6.

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Educating English Learners with Disabilities: New Study and New Guidance Released

Identifying and supporting ELs with disabilities has been an issue that educators have struggled with for many years. It is a topic for which state and district educators seek additional guidance every year.

In July, the Institute for Education Sciences, and the Regional Education Laboratory at WestEd posted the paper "Identifying and Supporting English Learner Students with Learning Disabilities: Key Issues in the Literature and State Practice". This paper includes an annotated bibliography of publications related to English Learners (ELs) with disabilities.

Also in July, new guidance related to including ELs in English language proficiency assessments was discussed at the Joint Federal Programs Meetings in Washington, DC.

Here's what you need to know:

1. Issues related to ELs with disabilities, also called dually identified ELs, is currently a hot topic in education.
2. There are currently no parent notices that are specific to ELs with disabilities, but notifications related to ELs and separate notifications related to students with disabilities are required.
3. TransACT's IDEA, 504 and EL parent notice collections provide parent notices that can help meet the compliance requirements for ELs and for students with disabilities, thus meeting parent notification needs for this dually identified student group.
4. TransACT's monthly webinar for September addresses Civil Rights issues related to ELs with disabilities. Be sure to sign up if you are interested.

Background

Identifying and supporting ELs with disabilities has been an issue that educators have struggled with for many years. It is a topic for which state and district educators seek additional guidance every year. It was addressed in breakout presentations from the U.S. Department of Education (USED) at the joint federal programs meetings in Washington, DC in 2014 and additional information was discussed at this year's joint meetings.

In July 2014 the USED posted a guidance document related to ELs with disabilities, which was introduced during the joint federal programs meetings. The document, "Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives", is eleven pages and puts into writing guidance related to this group of students (see: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>). During the 2014 joint federal programs meetings, USED reported that this document provided information that was already largely agreed upon by all parties involved in drafting the guidance. They also reported that they are working on another guidance document that addresses the more difficult issues where there is less agreement.

New Guidance

That second guidance document was released at this year's joint federal programs meetings. This second guidance document is an Addendum to the first document and adds an additional eleven questions to the Question and Answer format guidance document. At the time of the joint federal programs meetings in Washington, DC (July 30th) the addendum had not been publically released, but it was reviewed with participants by USED staff. Despite this second document, there are still questions that state and district staff have that remain unanswered.

New Publication

The Regional Education Laboratory at WestEd, in conjunction with the Institute for Education Sciences has just published a paper on identifying and supporting ELs with disabilities. This paper describes "key elements to inform policymakers interested in developing more effective procedures for identifying, assessing, and supporting English learner students who may have learning disabilities." It can be downloaded at: <http://ies.ed.gov/ncee/edlabs/projects/project.asp?projectID=4483>. The paper provides a helpful annotated bibliography of relevant research and policy documents that address ELs with disabilities. For those interested in learning more about this unique group of students, this is a good place to start.

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Educating English Learners with Disabilities Continued...

New Publication Continued...

This publication provides five guiding principles for identifying and recommending assistance for ELs with disabilities. They are:

- Have a clear policy statement that additional considerations will be used in placing English learner students in special education programs.
- Provide test accommodations for English learner students.
- Have exit criteria for English language support programs for English learner students in special education.
- Assess English learner students' language and disability needs using a response to intervention approach.
- Publish extensive, publicly available manuals to aid educators in identifying and supporting English learner students who have learning disabilities.

Also, TransACT is hosting a series of webinars related to the Civil Rights of English Learners. If you want to learn more about the Civil Rights issues for ELs with disabilities, be sure to sign up for the September webinar at: https://attendeegototraining.com/84710/catalog/154080423478822912?tz=America/Los_Angeles.

For information about the TransACT for English Learner Parent Notice collections, visit: <http://www.parentnotices.com/english-learners/> and TransACT's IDEA and 504 parent notice collection visit: <http://www.parentnotices.com/504-idea/>. If you have any questions, please contact us at 425.977.2100 or email at support@transact.com.

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Testing Opt-Out Movement and Parent Notifications

A major movement by parents to opt students out of taking State Content Assessments mandated by ESEA/NCLB has led to questions by SEA's and LEA's related to documenting parents' requests to opt out.

The sheer numbers/percentages of students opting out has also led the U.S. Department of Education (USED) to send letters to some states detailing the consequences of having too many students opt out.

So how does this affect parent notifications?

1. There are currently no federal requirements for schools or districts to notify parents regarding opting out of the mandated ESEA/NCLB content assessments.
2. TransACT is monitoring the legislation introduced related to the opt out movement. If parent notification becomes required, an opt out letter will be created.
3. For now, no proactive steps are needed. If parents choose to opt their student(s) out, it is recommended that schools and districts document that this was the parent's choice by asking parents to put in writing their desire to opt their student(s) out of the ESEA/NCLB mandated content assessments.

Background

The spring of 2015 saw a major grass roots movement by parents in many parts of the country to opt their children out of the ESEA/NCLB mandated content assessments (PARCC, Smarter Balanced, etc.). According to an article in Education Week (<http://www.edweek.org/ew/articles/2015/06/10/when-students-opt-out-what-are-the.html?cmp=ENL-CM-NEWS2>), approximately 165,000 students in New York opted out of the State's content test. That same Education Week article reports that Colorado has asked USED for "leniency" for not meeting the 95% participation rate threshold. The issue is that ESEA/NCLB requires at least 95% of students participate in these assessments. Those states, districts, and schools that fall below the 95% participation rate threshold face potential consequences, up to a loss of a large portion of ESEA/NCLB funding.

Parent Notices

There are currently no requirements for schools or districts to notify parents of their right to opt out of these assessments. However, it is recommended that if a parent chooses to opt their student(s) out of these assessments, that the school or district document that this was the parent's choice and was in no way coerced or even recommended by the school or district. It is a Civil Rights violation to coerce parents to opt out. Also, because it would make it much more likely that districts and schools would fall below the required 95% participation rate threshold, USED considers it inappropriate to proactively encourage parents to opt out. And, falling below the 95% participation rate threshold could result in enforcement action.

Legislation

Recent legislative action connected to opting out of the ESEA/NCLB mandated assessments has resulted in at least three bills, one at the federal level and at least two at the state level. This does not include the opt-out amendments to the ESEA reauthorization. One of those amendments passed in the House, but the other failed in the Senate. With reauthorization of ESEA now going to a joint conference committee of the House and Senate, this is one of the sticking points that will need to be ironed out.

Earlier this year, Tom Reed (R-NY) and Rosa DeLauro (D-CT) introduced bipartisan legislation in the U.S. House of Representatives. This legislation would allow parents to opt their children out of the ESEA/NCLB mandated assessments for any reason. The law puts into place the provision that the decision to opt out of the ESEA/NCLB assessments could not result in "any corrective action, penalty, or other consequence against the parent, the student, any school leader or employee, or the school."

At the state level, California and Utah already have laws that allow for parents to opt their students out of state assessments. Recently, at least one state, Oregon, has also passed legislation that would allow parents to opt out and actually requires that parents be notified twice a year of their right to opt their children out of assessments. This state legislation also provides for alternate sets of ratings for state-level accountability purposes based on the prevalence of opt outs. Another state's legislature, Delaware, passed a bill related to allowing parent's to opt their students out of assessments, but Governor Jack Markell vetoed that bill. In addition to all this, New Jersey's legislature just passed a non-binding resolution asking the New Jersey Department of Education to draft rules that outline how school districts should accommodate opt out students.

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Testing Opt-Out Movement and Parent Notifications Continued...

The federal legislation mentioned in the previous paragraph would not necessarily cause problems with ESEA/NCLB because it would change the way participation rates are calculated at the federal level. However, State legislation that encourages opt outs and establishes an alternate accountability system could fly in the face of the ESEA/NCLB requirements.

USED Response

Then Assistant Secretary of Elementary and Secondary Education at USED, Deborah S. Delisle, in an email to Rob Saxton, the Oregon Deputy State Schools Chief, said, "The text of the Oregon bill currently under consideration, proactively encouraging parents to opt students out of assessments and failing to hold districts and schools accountable if they fall below 95% participation, increases the likelihood that Oregon will not meet its obligations under the law and incur enforcement action." In a letter attached to the email, Secretary Delisle outlined the possible range of consequences for non-compliance to the 95% participation rate requirements. According to the letter, "[US]ED might condition the SEA's [State Education Agency] Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds" and "[i]f an SEA or LEA [Local Education Agency] refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold [Title I, Part A] programmatic funds from the State."

Basically, USED could withhold all of a State's Title I, Part A funds. In addition, the letter outlines a number of other ESEA/NCLB programs whose funding could be put at risk for similar consequences of non-compliance related to assessment participation rates results. These programs include but are not limited to, "the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II."

So, while there is a lot at stake for ESEA/NCLB funding because of parents opting their student(s) out of assessments, there are no current federal requirements for schools or districts to notify parents regarding this issue.

If you have any questions, please contact us at 425.977.2100 or email at support@transact.com.

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Now Available!

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Take the mystery out of funding parent notices and translations!

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- Compliance - English learner program notices and translations
- Communication - Title I & Title III communication to improve parent involvement
- Documentation - Provide evidence of program implementation

Three options available, aligned to your funding sources:

1. Combined Title III & General English Learners Collection
2. General English Learners Only Collection
3. Title III Only Collection

This collection is available in the following 10 languages: Arabic, Chinese, French, Haitian Creole, Hmong, Korean, Russian, Somali, Spanish, and Vietnamese.

For more information, go to www.transact.com/EL.

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TransACT Family of Services



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**USED/DOJ Webinar Series:
OCR Issue #5: Evaluating For and Providing Special
Education Services to ELs with Disabilities**

Webinar series focusing on the recent guidance issued by USED and DOJ for serving English Learners. Presented by Dr. David Holbrook. Go to: www.transact.com

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