

Q&A: Evaluation Due Process Requirements for English Learner Students

The Minnesota Department of Education (MDE) provides ongoing technical assistance to districts and professional organizations regarding appropriate materials and methods for evaluating English Learners. MDE Divisions of Compliance and Monitoring and Special Education Policy have developed this document to address questions raised by parents and school districts regarding the determination of special education eligibility for Limited English Proficiency (LEP) students, also called English Learners (EL) students for specific learning disabilities or other disabilities. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal question.

Question 1: How do school districts and charter schools determine the home or native language spoken at a child's home?

Answer: At the time of a child's enrollment into a school district or charter school, a document such as a home language questionnaire is used to identify students who need language support services. In addition, the parents may inform school personnel that English is not their native language. A child's home language is defined as the language normally used by the child's parents.

Authority: 20 U.S.C. §§ 7011 (1) and (11); 20 U.S.C. §§ 7012(a)(1) and (2).

Question 2: When must a school district or charter school provide a notice of special education evaluation plan to a child's parents in a language other than English?

Answer: A school district or charter school must always provide an evaluation notice in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. This requirement applies to all notices, regardless of the race, ethnicity, or national origin of the child or child's parents. For example, if the parent's native language is English, then the notice must be provided in English. If the parent's native language is Japanese, as another example, then the notice must be provided in Japanese. This requirement applies to other modes of communication as well. For example, if the parent's mode of communication is Braille, then the notice must be provided to the parent in Braille.

Authority: 34 C.F.R. § 300.503(c); 34 C.F.R. § 303.403(c); Minn. Stat. § 125A.091, Subd. 4.

Question 3: What are a school district's responsibilities with respect to evaluation notices when the parent's native language or other mode of communication is not written?

Answer: If the parent’s native language or other mode of communication is not a written language, the school district must ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication. The school district must ensure that the parent understands the content of the evaluation notice. The school district must also document the method used for translation and verification that the parent understood the evaluation notice contents.

Authority: 34 C.F.R. § 300.503(c); 34 C.F.R. § 303.403(c); Minn. Stat. § 125A.091, Subd. 4(b).

Question 4: When must a school district conduct an evaluation with materials in a language other than English?

Answer: Unless clearly not feasible to do so, school districts must provide and administer assessments and other evaluation materials used to assess or evaluate the child in the child’s native language or other mode of communication. This requirement applies regardless of the child’s race, ethnicity, or national origin. The child’s native language dictates the language in which the school district must provide evaluation materials and conduct evaluation procedures.

Authority: 34 C.F.R. §§ 300.304(c)(1)(i),(ii); Minn. Stat. § 125A.08(a)(6).

Question 5: In evaluating an EL student, should a school district follow certain procedures?

Answer: Whenever a school district conducts an evaluation, the school district must provide assessments and other evaluation materials in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. Further, the school district’s selection and administration of assessments, evaluation materials, and procedures used to assess or classify and place a child must be nondiscriminatory on a racial or cultural basis. Additionally, the school district’s selection and administration of materials and procedures should ensure that those materials and procedures measure the extent to which the child has a disability and needs special education and related services; materials and procedures should not measure the child’s English language skills. These requirements apply to all evaluations, whether or not the evaluation is for an EL student. In order to meet these requirements, school districts must shape each evaluation around the specific child in question.

Authority: 34 C.F.R. § 300.304(c)(1)(i) and (ii); Minn. Stat. § 125A.08(a)(6).

Question 6: Does the use of alternate procedures and sources of data, such as the use of an interpreter, during the administration of standardized tests of an EL student constitute an override of state eligibility criteria?

Answer: In the case of EL students, the use of alternate procedures and sources of data for the purpose of reducing bias in eligibility determination does not constitute an override of state eligibility criteria so long as all criteria components are addressed. This would include situations when staff members modify the administration of standardized tests through use of interpreters or through other means, thus limiting the validity of derived scores. When working with EL students, teams should gather additional evaluation data to supplement and support data gathered through standardized tests.

Authority: 34 C.F.R. § 300.304(c)(1) (i) and (ii); Minn. R. 3525.1354.

Question 7: What can a school district or charter school use as a decision-making model to ensure that the evaluation addresses all criteria components when the team determines that standardized test scores are not valid for an EL student?

Answer: The override process can serve as a decision-making model when determining eligibility for a disability category for an EL student. The team must address all parts of the eligibility criteria, including exclusionary factors. If teams determine that standardized test scores are not valid for an EL student, the team is recommended to follow a decision-making procedure similar to the team override eligibility process found in Minnesota Rule 3525.1354. This decision-making procedure allows the team to document all types of data that were gathered and considered as part of the eligibility determination. Following this practice will also help districts ensure that they are in compliance with requirements to conduct fair, unbiased, and comprehensive evaluation procedures.

Authority: Minn. R. 3525.1354.

Question 8: What information should be included in the criteria component section(s) of the team's evaluation report?

Answer: The criteria component section(s) of the evaluation report should include information explaining why procedures used with the majority of children resulted in invalid or inconclusive findings for this child; a summary of the data that were used to determine that the child has a disability. This may include test scores, work products, self-reports, teacher comments, previous testing, observational data, ecological assessments, and other developmental data. In addition, the summary should describe any modifications made during the administration of standardized procedures including the use of interpreters and an indication of the data sources having the greatest relative importance for the eligibility decision.

Authority: 34 C.F.R. § 300.532(c)(2); Minn. R. 3525.2710, Subp. 3(C) and 5(A); 34 C.F.R. § 300.306(b).