

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 920

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 920 Educational Programs for English Language Learners (ELLs)

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL). This regulation is being amended to include the statutory authority, to make minor corrections, update definitions and terminology, and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments on the proposed amendments were received from the Governor's Advisory Council for Exceptional Citizens which suggested the Department consider the following:

(1) Not removing the definition of "bilingual programs" as there has been a proven positive effect that these programs have resulted in long-term achievements for students whose first language is not English. **Response:** The Department expanded the definition of Language Instruction Education Program (LIEP) to more clearly outline bilingual education and to align it with the federal definition.

(2) Aligning the definition of LIEP with the federal definition, which includes bilingual education or otherwise ensuring that the definition of LIEP contemplates bilingual approaches, as well as ESL instruction. **Response:** The Department expanded the definition of Language Instruction Education Program (LIEP) to more clearly outline bilingual education and to align it with the federal definition.

(3) Changing the definition of English Language Learners, specifically, the definition is made too vague by the use of the term "among other things" and the use of "standardized entrance and exit procedures" or "state assessments." **Response:** The Department believes the definition is sufficient and aligns with Delaware's ESSA Plan.

(4) Removal of the requirement that programs selected for the education of English Learners be research-based. **Response:** The Department prefers to use the existing language as it aligns with Delaware's ESSA Plan.

(5) A possible change to the language in Section 7.0 regarding communication with family members only be required to be in a language understood by the family member "to the extent practicable." **Response:** The Department removed the language "to the extent practicable" in Section 7.0 to clarify that the communication to parents, guardians and relative caregivers should be in English or the language that these individuals clearly understand.

The Department also removed the acronym "WIDA" in the definition of "WIDA English Language Development (ELD) Standards" as it is duplicative in the definition. It also removed "(ELD)" in this definition as the abbreviation is not used in the regulation and is not needed.

The State Board of Education has agreed to and approved WIDA standards at its December 19, 2019 meeting. This was added at the end of Section 1.0.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL) in order to include the statutory authority, to make minor corrections, update definitions and terminology, and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL). Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELL) amended hereby

shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL) in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of January 2020.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15<sup>th</sup> day of January 2020

## **920 Educational Programs for English Language Learners (ELLs) (ELs)**

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLs) (ELs).

### 1.0 Definitions

The following words and terms, when used in this regulation shall have the following meaning unless the context clearly indicates otherwise:

**"ACCESS"** means a suite of secure, large-scale, summative English language proficiency assessments.

~~**"Bilingual Programs"** Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.~~

~~**"English as a Second Language (ESL) Programs"** English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.~~

**"Department"** means the Delaware Department of Education.

~~**"English Language Learners (ELLs)" or "ELs"** English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by a valid English language proficiency assessment approved by the Department of Education for use statewide means individuals who, among other things, have English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures.~~

**"ESSA Plan"** means a document that reflects the goals of the Delaware education system that are in compliance with applicable federal requirements outlined in the Elementary and Secondary Education Act (ESEA) of 1965, reauthorized in December 2015 as the Every Student Succeeds Act (ESSA).

**"Home Language Survey"** means a questionnaire that is given to a student's parent, guardian or relative caregiver to help schools and local education agencies identify students who are potential ELs, and who will require assessment of their English language proficiency to determine whether they are eligible for a LIEP.

~~**"Language Instruction Education Program" or "LIEP"** means [programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and supports the acquisition of increased English language skills with the goal of attaining English language proficiency and supports the learner in meeting challenging academic standards an instruction course: (1) in which an English learner is placed for the purpose of developing and attaining English proficiency while meeting challenging State academic standards; and (2) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language].~~

["WIDA English Language Development (ELD) Standards" or "WIDA" "WIDA English Language Development Standards"] means the social, instructional, and academic language that students need to engage with peers, educators, and the curriculum in schools.

## 2.0 Home Language Survey

- 2.1 A state standardized home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or ~~Relative Caregiver~~ relative caregiver the student's first acquired language and the language(s) ~~language or languages~~ spoken in the student's home or by the student.
- 2.2 ~~Any For any~~ student ~~for~~ whom a language other than English is reported on the home language survey ~~or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment survey, the school or district shall follow Delaware's statewide entrance criteria as outlined in Delaware's approved ESSA Plan and further described in Delaware's English Learner Guidebook. The~~ When appropriate, an initial screening assessment of English language proficiency shall be conducted as soon as practicable, but not later than ~~twenty-five~~ twenty-five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.
  - 2.2.1 The English language proficiency screening assessment shall be based on the WIDA English Language Proficiency Development Standards for English Language Learners K to 12 ~~and shall assess listening, speaking, reading and writing.~~ The assessment shall be validated for this purpose and approved by the Department of ~~Education~~ for use statewide.
  - 2.2.2 Any student who achieves a score on the English language proficiency screening assessment that is lower than the eligibility cut off score ~~in listening, speaking, reading and writing~~ established by the Department of ~~Education~~ shall be identified as an ELL EL and shall be entitled to a program of instruction for ELLs ELs.

## 3.0 Programs of Instruction for ELLs ELs

- 3.1 Programs of instruction for ELLs ELs shall include formal instruction ~~in~~ to increase English language ~~development~~ proficiency; and instruction in academic subjects which is designed to provide ELLs ELs with access to the regular curriculum. All instruction for ELs must be aligned to the WIDA English Language Development Standards as adopted by the State Board of Education. In selecting a program(s) programs, each district or charter school shall choose programs that are research based and that have been demonstrated to be effective in the education of ELLs ELs.
- 3.2 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not ~~limited in English proficiency ELs~~.
- 3.3 Instruction shall be delivered by individuals who meet Department of ~~Education~~ licensure and certification requirements and who are trained in the delivery of instruction to ELLs ELs.
- 3.4 The student's parent, guardian or ~~Relative Caregiver~~ relative caregiver has a right to refuse placement of their ~~child(ren) in either the Bilingual or the ESL program~~ child or children in a LIEP, and also has the right to withdraw an identified student from either program. Parents, guardians or ~~Relative Caregivers~~ relative caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

## 4.0 English Language Proficiency Assessment

- 4.1 Every student identified as an ELL EL will be administered ~~an~~ the ACCESS English language proficiency assessment annually.
- 4.2 Any student who achieves a score on the annual ACCESS English language proficiency assessment that is higher than the eligibility cut off score ~~in listening, speaking, reading and writing~~ established by the Department of ~~Education~~ shall be ~~transitioned~~ reclassified as fully English proficient ~~and placed in a regular classroom~~.
  - 4.2.1 For at least two school years following the ~~identification of the student as fully English Proficient~~ reclassification, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further ~~assessment re-enter~~ assessment, reenter a Bilingual or ESL program LIEP or shall be provided with additional instructional services as necessary and appropriate.

## 5.0 Annual Evaluation

Each district and charter school ~~receiving funds to provide services or programs for ELL's with ELs~~ shall ~~prepare an annual evaluation of~~ annually evaluate its ~~program(s)~~ program and make programmatic changes as necessary. This ~~evaluation shall be part of the district's annual evaluation process under and in compliance with the Consolidated Application.~~

#### **6.0 Data and Information Required**

Each district and charter school shall enter such data and information concerning ~~ELLs~~ ELs as instructed by the Department of ~~Education~~ and as otherwise required by the Department into the statewide database.

**9 DE Reg. 398 (09/01/05)**

#### **7.0 Communication**

Each district and charter school shall ensure that communication with parents, guardians and ~~[Relative Caregivers,~~ **relative caregivers,]** including notices of eligibility for programs for ~~ELLs~~ ELs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and ~~Relative Caregivers~~ relative caregivers shall be provided in English or ~~[to the extent practicable]~~ in a language the parent, guardian or ~~Relative Caregiver~~ relative caregiver can understand.

**9 DE Reg. 398 (09/01/05)**

#### **8.0 Inclusion in Delaware ~~Student Testing Program~~ System of Student Assessments**

~~ELLs~~ ELs and students ~~transitioned~~ reclassified as fully English proficient shall be included in the Delaware ~~Comprehensive Assessment System (DCAS)~~ System of Student Assessments (DeSSA) as provided for in the ~~Department of Education document~~ *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may from time to time be amended hereafter Department's *Accessibility Guidelines for the Delaware System of Student Assessments*, or any amended version thereafter.

**4 DE Reg. 467 (09/01/00)**

**9 DE Reg. 398 (09/01/05)**

**14 DE Reg. 103 (08/01/10)**

**23 DE Reg. 653 (02/01/20) (Final)**