

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-19  
ENGLISH AS A SECOND LANGUAGE PROGRAMS**

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**0520-01-19-.01 DEFINITIONS.**

- (1) As used in this chapter:
- (a) “NELB Student” means a Non-English Language Background Student whose parent(s) or guardian(s) list a language other than English in response to any question on the home language survey. A NELB student may or may not qualify for ESL services.
  - (b) “English Learner” (EL) means an NELB student who qualifies for ESL services via a Department of Education-approved English Language Proficiency screener.
  - (c) “ILP” means an individual learning plan that describes the academic and language needs and goals for EL students receiving Direct ESL Services or Indirect ESL Services.
  - (d) “Direct ESL Services” means English as a Second Language services designed for speakers of other languages and provided pursuant to an ILP by a teacher with an ESL endorsement to EL students.
  - (e) “Indirect ESL Services” means English as a Second Language services that provide linguistically appropriate accommodations and scaffolding pursuant to an ILP provided by a general education teacher in the general education classroom to EL students whose parent(s) or guardians waive Direct ESL Services. Indirect ESL Services include providing scaffolding to ensure EL Students can access instructional materials in English.
  - (f) “Fluent English Proficient” (FEP) means an EL Student who meets the proficiency requirements of the Department of Education-approved English language proficiency screener upon initial enrollment or a student who initially qualified as an EL Student and has met the approved exit criteria for Direct or Indirect ESL Services.
  - (g) “Home Language Survey” (HLS) means a survey delivered to parents or guardians within thirty (30) days of a student’s initial enrollment in public school to identify NELB Students who may be eligible for Direct or Indirect ESL Services.
  - (h) “RAEL” means a Recently Arrived English Learner.
  - (i) “Transitional EL Student” means an EL student who has met the exit criteria for Direct or Indirect ESL Services.
  - (j) “ILP Team” means a team at the LEA or school level that creates the ILP for an EL student. At a minimum, the ILP team shall include the EL student’s current and/or former general education teacher and current and/or former ESL teacher, in addition to parents

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or guardians, school counselors, and other staff best suited to assess the language goals and needs of each EL student.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.02 ANTI-DISCRIMINATION POLICIES AND PRACTICES.**

- (1) LEAs shall have anti-discriminatory policies that preclude denial of equal education opportunities to individuals based on race, color, or national origin. In addition, LEAs shall ensure that EL students can meaningfully participate in their educational programs and services. LEA practices shall not result in the inappropriate placement of EL students in or the exclusion from special programs or activities based on English language proficiency or national origin.
- (2) LEAs shall not deny enrollment to a student on the basis of the student's or their parents' or guardians' actual or perceived citizenship or immigration status.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.03 IDENTIFICATION, SCREENING, AND SERVICE DELIVERY.**

- (1) EL student identification is a two (2)-step process that must be completed within thirty (30) days of initial enrollment. In the first step, each LEA shall administer a Home Language Survey (HLS) within thirty (30) days of initial enrollment to identify NELB Students. An HLS should be completed only once in a student's educational career. If the student has previously attended another LEA, the receiving school or LEA shall attempt to obtain the original HLS from the sending LEA. If the receiving LEA cannot obtain the original HLS after reasonable attempts to do so, it may re-administer the HLS, but shall mark it as a secondary HLS. If the original is found, it shall replace the secondary HLS in the student's file.
  - (a) The HLS shall not require parents or guardians to answer questions about student immunization or student or familial immigration status.
  - (b) The HLS shall include, but not be limited to, questions that require the parent(s) or guardian(s) to address the following three (3) topics:
    1. The first language the student learned to speak;
    2. The language the student speaks most often at home; and
    3. The language that is most often spoken to the student at home.
  - (c) If the parent(s) or guardian(s) list a language other than English for any question above, the student shall be classified as an NELB Student. Parents or guardians shall be interviewed to clarify any discrepancies in the HLS.
- (2) In the second step of the identification process, LEAs shall screen all NELB Students with a Department of Education-approved English language proficiency screener described in this rule within thirty (30) days of initial enrollment to determine whether the student qualifies for ESL Services, unless an NELB Student has documentation from a previous state or LEA that he or she met the definition of fluent English proficient (FEP). The English language proficiency screener shall be administered in addition to the HLS within the thirty (30) day time period.

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- (a) NELB Students who are screened in their first (1<sup>st</sup>) semester of Kindergarten shall be screened with the Kindergarten WIDA ACCESS Placement Test (W-APT) screener. If a student scores a 27 or below on the speaking and listening domains combined, the student shall be identified as an EL student and receive Direct ESL Services pursuant to paragraphs (6) and (8) of this rule, unless a parent and/or guardian chooses to waive Direct ESL Services.
  - (b) NELB Students who are screened in their second (2<sup>nd</sup>) semester of Kindergarten or first (1<sup>st</sup>) semester of first (1<sup>st</sup>) grade shall be screened with the Kindergarten WIDA ACCESS Placement Test (W-APT) screener. If a student receives any one (1) of the following scores, the student shall be identified as an EL student and receive Direct ESL Services pursuant to paragraph (6) and (8) of this rule, unless a parent and/or guardian chooses to waive Direct ESL Services:
    1. A 27 or below on the speaking and listening domains combined; or
    2. A 14 or below on the reading domain; or
    3. A 17 or below on the writing domain.
  - (c) NELB Students who are screened in their second (2<sup>nd</sup>) semester of first (1<sup>st</sup>) grade, or at any point in grades two (2) through twelve (12), shall be screened using the WIDA screener. Students who score below a 4.5 on the WIDA screener shall be identified as an EL student and receive Direct ESL Services pursuant to paragraphs (6) and (8) of this rule, unless a parent and/or guardian chooses to waive service.
- (3) All EL students shall have an ILP that contains, but is not limited to:
- (a) Assessment data from the English language proficiency assessment, achievement assessments, and any relevant benchmark data;
  - (b) Short-term goals that help the student proceed to the next proficiency level in the four (4) domains of language: reading, writing, speaking, and listening;
  - (c) Growth trajectories for English language proficiency based on individual student data; and
  - (d) Strategies, accommodations, and scaffolding used in the delivery of Indirect ESL Services.
- (4) Each LEA shall have an oversight plan for the development, implementation, and monitoring of ILPs for EL students.
- (5) Teachers shall monitor the academic and English language proficiency growth of EL students through benchmarking, formative assessments, and/or summative assessments at least every four and one-half (4.5) weeks. If an EL student is not meeting the growth expectations identified in his or her ILP, the student shall receive differentiated support so that he or she may advance more rapidly toward English language proficiency. Supports shall be implemented promptly after the ILP Team has determined the student is not on the expected growth trajectory.
- (6) EL students identified for ESL service via a Department of Education-approved English Language Proficiency screener described in this rule shall receive a minimum of one (1) hour of Direct ESL Service each school day from a teacher who holds an ESL endorsement, until the student achieves a sufficient score on a summative assessment pursuant to State Board rule 0520-01-19-.06 to be exited from Direct or Indirect ESL Service or achieves a sufficient

(Rule 0520-01-19-.03, continued)

score on a summative assessment to have Direct or Indirect ESL Services modified by the ILP Team pursuant to paragraph (8) of this rule.

- (a) Parents or guardians of EL students shall be informed of the right to refuse placement of their children in ESL programs, and each LEA shall provide the parent(s) or guardian(s) the option to waive Direct ESL Services before services are provided, or at any time during the course of the school year.
  - (b) If the parent(s) or guardian(s) waives Direct ESL Services for the student, the general education classroom teacher shall be responsible for providing Indirect ESL Services in the form of linguistically appropriate accommodations and scaffolding within the general education setting as described in the student's ILP.
- (7) LEAs shall ensure that all teachers who provide Direct or Indirect ESL Services are annually trained on delivering ESL instruction. At a minimum, this training shall include, but not be limited to:
- (a) The Tennessee English language development (ELD) standards;
  - (b) Appropriate ESL instructional methods to use with grade-level academic content standards in English language arts, mathematics, science and social studies;
  - (c) English language acquisition training for general education teachers to understand the process of acquiring a second or subsequent language; and
  - (d) Strategies for collaboration between teachers serving EL students so that ILPs are developed and implemented by all educators.
- (8) EL students shall be assessed annually using either the WIDA ACCESS for ELLs or Kindergarten ACCESS for ELLs to determine if the Direct or Indirect ESL Services provided may be modified by the ILP Team.
- (a) EL students in Kindergarten shall be assessed using the Kindergarten ACCESS for ELLs. For students who score a 3.5 or higher on any domain, LEAs may tailor the service provided to those students, including providing less than one (1) hour of Direct ESL Service per day based on their ILP.
  - (b) EL students in grades one (1) through twelve (12) shall be assessed using WIDA ACCESS for ELLs. LEAs may tailor the services provided to those students, including providing less than one (1) hour of Direct ESL Service per day based on their ILP for students who score:
    1. 3.5 or higher on reading; and
    2. 3.5 or higher on writing; and
    3. 3.5 or higher on either the speaking or listening domains.
- (9) An ESL Program may be provided through various service delivery models. These service delivery models may be used in ESL classrooms, general education classrooms, or in newcomer centers for recently arrived ELs (RAELs). Direct ESL Services shall be provided utilizing one (1) or more of the following approved service delivery models:
- (a) Sheltered English Instruction;

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- (b) Structured English Immersion;
  - (c) Specially Designed Academic Instruction in English (SDAIE);
  - (d) Content-Based Instruction (CBI);
  - (e) Heritage Language;
  - (f) Virtual ESL classes;
  - (g) Pull-out instruction;
  - (h) Another model approved by the Department.
- (10) All service delivery models shall:
- (a) Be evidence-based and effective;
  - (b) Address how academic deficits that are the result of students' limited English proficiency will be remediated; and
  - (c) Be aligned to the Tennessee English language development standards.
- (11) LEAs shall ensure that all EL students who may have a disability are located, identified, and evaluated for special education and related services in a timely manner, in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and T.C.A. §§ 49-10-101, et seq.
- (a) When conducting special education and/or Section 504 evaluations, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students shall not be identified as students with disabilities solely because of their limited English language proficiency.
  - (b) LEAs shall provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under federal law.
  - (c) Neither Response to Instruction and Intervention (RTI<sup>2</sup>) nor special education services shall be used in place of Direct ESL Services.
- (12) Two (2) high school ESL courses shall be counted toward the four (4) English credits required for graduation. At least one (1) of the ESL courses counted toward graduation credit shall be counted toward credit in an English course with an end-of-course assessment. Additional high school ESL courses shall be counted as elective humanities credits.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.04 PARENTAL NOTIFICATION AND RIGHTS.**

- (1) LEAs shall communicate information related to identification, screening, and service delivery to the parent(s) or guardian(s) of EL students in the language and method that the parent(s) or guardian(s) can understand, to the extent practicable. Parent(s) or guardian(s) shall be informed of the ESL program type to be used, length of time expected for completion of ESL services, how the EL student was assessed for entrance to services, and options related to program types, if available.

(Rule 0520-01-19-.04, continued)

- (2) Parents or guardians of EL students shall be informed of:
  - (a) Their right to waive placement of their student in ESL programs;
  - (b) Their right to remove their student from Direct ESL Service at any time; and
  - (c) The scaffolding and accommodations to be provided in the general education setting via Indirect ESL Services if the parent(s) or guardian(s) waive Direct ESL Services.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.05 STAFFING RATIOS.**

- (1) LEAs shall:
  - (a) Provide adequate ESL staff to implement the chosen service delivery model effectively, as documented by the progress in English language proficiency and academic content of their EL students.
  - (b) Adequately staff their ESL programs to meet state and federal requirements. This includes, but is not limited to, having sufficient staff to ensure meaningful communication to parents or guardians of EL students with limited English proficiency, to identify EL students, and to monitor transitional EL students.
- (2) To meet the two (2) criteria of effective and compliant ESL programs, LEAs shall implement ESL programs based on the following staffing ratio standards:
  - (a) ESL class sizes shall not exceed state-mandated grade-level class size requirements; and
  - (b) The LEA-wide ESL program staffing ratio shall be based on an average of no more than thirty-five (35) identified EL students per full-time equivalent ESL teacher unless an alternate staffing ratio is approved by the Department of Education.
- (3) An alternative staffing ratio may only be approved when the LEA can show adequate academic growth and proficiency with the EL student population and can prove that EL students are receiving the required hours of service. LEAs seeking approval for a waiver for an alternate LEA-wide staffing ratio shall provide the following information upon application and, if approved, annually to the Department of Education:
  - (a) The number of EL students served;
  - (b) The proficiency levels of EL students;
  - (c) The academic growth of EL students;
  - (d) Evidence that no school in the LEA is an Additional Targeted Support and Intervention (ATSI) school based on the EL student accountability subgroup;
  - (e) The most recent analysis for the EL student subgroup for achievement assessments in reading/language arts, mathematics, and science;
  - (f) The proposed staffing ratio that will be used in place of the recommended thirty-five (35) to one (1) ratio; and

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- (g) The justification for the alternate staffing ratio.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

**0520-01-19-.06 EXIT PROCESS.**

- (1) EL students who score a 4.4 composite or higher and 4.2 or higher for literacy on the WIDA ACCESS for ELLs or Kindergarten ACCESS for ELLs shall be exited from Direct or Indirect ESL Services. Students who exit Direct or Indirect ESL Services shall be considered transitional EL students for four (4) school years.
- (2) EL students in the first (1<sup>st</sup>) and second (2<sup>nd</sup>) years of transition are referred to as T1 and T2 respectively. EL students in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) years of transition are referred to as T3 and T4 respectively. However, T3 and T4 students shall be included in the LEA's EL student subgroup with T1 and T2 students for accountability purposes.
- (3) Transitional EL students shall be served in the general education classroom. T1 and T2 EL students shall be monitored for two (2) years.
  - (a) If a transitional student demonstrates difficulty in the general education classroom or fails to meet ILP benchmarks, academic interventions should be provided by a general classroom teacher or teacher with an ESL endorsement.
- (4) Each LEA shall have a written reclassification procedure to be used for exited EL Students who require reentry into the ESL program. The LEA shall apply its reclassification procedure if academic or non-academic interventions are unsuccessful.
- (5) EL students who take alternate exams for TNReady, as determined by their IEP team shall be considered for exit from ESL services through the WIDA Alternate ACCESS for ELLs assessment. EL students who achieve a P1 composite or higher and P1 literacy or higher on the WIDA ALT ACCESS assessment shall be exited from Direct ESL Services.
- (6) If a student was exited from ESL services by another state, the exit shall stand as valid.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.