

## CHAPTER 7

ESSA  
UPDATE  
INCLUDED\*

## TOOLS AND RESOURCES FOR SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

This is the seventh chapter of the English Learner Tool Kit, which is intended to help state and local education agencies (SEAs and LEAs) meet their obligations to English Learners (ELs). This tool kit should be read in conjunction with the U.S. Department of Education Office for Civil Rights' and the U.S. Department of Justice's Dear Colleague Letter, "English Learner Students and Limited English Proficient Parents," published in January 2015, which outlines SEAs' and LEAs' legal obligations to ELs under civil rights laws and other federal requirements. The Dear Colleague Letter can be found at <http://www2.ed.gov/about/offices/list/ocr/ellresources.html>.

### SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

#### KEY POINTS

- Parents have the right to opt their children out of EL programs or particular EL services. This decision must be voluntary and based on a full understanding of the EL child's rights, the range of services available to the child, and the benefits of such services to the child.
- If a parent decides to opt his or her child out of EL programs or particular EL services, that child still retains his or her status as an EL.
- LEAs must continue to monitor the English language proficiency (ELP) and academic progress of students who opt out of EL programs and services. If a student does not demonstrate appropriate growth in ELP or maintain appropriate academic levels, the LEA must inform the parents in a language they understand and offer EL services.



Any parent whose child is receiving or is eligible to receive EL programs or services has the right to decline or opt his or her child out of the EL programs or particular EL services being offered. **LEAs may not recommend that a parent opt a child out of EL programs or services for any reason.**

The LEA must provide guidance in a language parents can understand to ensure that parents understand their child's rights, the range of EL services that their child could receive, and the benefits of such services. This is

to ensure that the parent's decision to opt out is knowing and voluntary. LEAs that receive *Title I* or *Title III* funds must provide written notification to parents of their children's recommended placement in an EL program within 30 days of the start of the school year (or within two weeks for later-arriving students). The notification must include all of the statutorily-required elements, including the right to opt out (See Tool #1, attached). The LEA should retain appropriate documentation to demonstrate that a parent knowingly and voluntarily opted his or her EL child out of EL programs or particular

\*This chapter has been updated to reflect changes in the *Elementary and Secondary Education Act (ESEA)*, as amended by the *Every Student Succeeds Act of 2015 (ESSA)*. The U.S. Department of Education has released a non-regulatory guidance (NRG) about *ESSA* and ELs that is available at <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>. The text of the *ESEA*, as amended by *ESSA*, can be found at <http://www2.ed.gov/documents/essa-act-of-1965.pdf>.

You can access **Tools and Resources for Serving English Learners Who Opt Out of EL Programs** at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>.

EL services. It is important to note that opting out of EL programs or particular EL services does not affect a student's ability to participate in any other programs or services, such as special education services.

If a parent decides to opt his or her child out of EL programs or particular EL services, that child retains his or her status as an EL. The LEA remains obligated to take affirmative steps and appropriate action required by civil rights laws to provide the EL student meaningful access to its educational program. Thus the LEA must continue to monitor periodically the opted-out student's academic progress.

Specific monitoring practices will vary from LEA to LEA. They should include a combination of performance data, such as information on assessment results, grades, courses taken, observations, attendance, and parent meeting notes, along with possible comparisons to other EL students of similar ELP levels. Appropriate personnel should analyze this information throughout the year and make recommendations based on the student's current ELP level and ability to perform at grade level.

If an LEA finds that a student is struggling, it should take appropriate steps to assist the student. These steps may include, but are not limited to, further assessing the student's ELP; notifying the student's parent about his or her child's lack of progress, and encouraging him or her to opt the child into EL programs and services; and providing supports for the student's language acquisition, such as offering professional development in second language acquisition to the student's core curriculum teachers.

ELs who opt out of services must, like those receiving programs or services, have their ELP reassessed a minimum of once per year until they exit EL status. After it is determined that the EL no longer qualifies as an EL, the LEA must continue to monitor the student for at least two years, just as it would an EL who has received EL programs and services.

The following checklist is intended to assist with developing processes and providing support for ELs whose parents choose to opt them out of EL programs or particular EL services. The checklist provides suggested questions only. LEAs and schools should check their SEA's policies and other federal guidance to ensure compliance.

### Communicating with Parents

- ★ How are parents informed of their children's EL status and the right to opt their children out of the EL programs or particular EL services being offered?

- ★ Are there procedures in place to ensure that parents do not opt their children out of any EL programs or services based on inadequate information about those programs or services, or on unanswered questions about their children's EL status?
- ★ Are there procedures in place to ensure that parents do not opt their children out of any EL programs or services based on schedule conflicts with other programs (such as special education programs); insufficient space in the available EL programs; or insufficient offerings within the EL program?
- ★ Are there procedures in place to address parental concerns about the quality of the EL services and programs being offered?
- ★ Is information provided in a language that parents understand?
- ★ Does the LEA have a formal mechanism for documenting which students opted out of services, including tracking communications to and from the ELs' parents in the appropriate languages?
- ★ Is there a process (perhaps during parent-teacher conferences or after report cards are issued) for informing parents who opted their children out of EL programs or services that their children are not making progress in ELP or academic content areas, when applicable?
- ★ Is there a process for parents to revisit their opt-out decision and opt their children back into EL programs or particular EL services?
- ★ Is there a process for SEAs and LEAs to explore the cause of high opt-out rates for EL services if and when they occur?

### Addressing ELs' Needs

- ★ If a parent opts his or her child out of EL services, is there a process to ensure and monitor that (1) the child maintains his or her EL status; (2) the LEA is fulfilling its obligation of meeting the child's language and academic needs; and (3) the child still has appropriate access to the general curriculum?
- ★ Are ELs who have opted out being assessed for ELP at least annually?
- ★ If a parent continues to opt his or her child out of EL programs and services after being notified of that child's insufficient progress, is the LEA providing additional training to the student's classroom teacher(s) in EL instructional strategies?

# SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

## TOOLS

The U.S. Department of Education does not mandate or prescribe particular curricula, lesson plans, assessments, or other instruments in this tool kit. This tool kit contains examples of, adaptations of, and links to resources created and maintained by other public and private organizations. This information is provided for the reader's convenience and is included here to offer examples of the many resources that educators, parents, advocates, administrators, and other concerned parties may find helpful and use at their discretion. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of links to items does not reflect their importance, nor is it intended to endorse any views expressed, or materials provided. All links included here were verified September 9, 2015.

The following set of tools is intended to assist schools, LEAs, and SEAs in developing processes to assist in meeting legal requirements when parents of ELs choose to opt their child out of EL programs or particular EL services. LEAs are reminded to check with their SEAs to see if a particular parent notification letter is required, and, if so, what the current version is.

Tool #1, Statutorily Required Elements of Parent Notification Letter, cites relevant *Title I* requirements for notifying parents of their children's EL status and their right to opt their children out of EL programs or particular EL services.



### ESSA UPDATE

ELP accountability for ELs has been moved from *Title III* to *Title I* of the *ESEA*, as amended by *ESSA*. *Title I* requires LEAs to notify parents of their child's EL status and their right to opt their child out of EL programs [Section 1112 (e)(3) and (4)], and also requires continued annual ELP assessment of all ELs [Section 1111(b)(2)]. For more information, see Section E-6 of the NRG (U.S. Department of Education, Office of Elementary and Secondary Education, 2016).

Tool #2, Sample English Learner Programs and Services Opt-Out Notification, provides one example of a form that LEAs could use to provide documentation for legal compliance when a parent has expressed the desire to opt his or her child out of EL programs or particular EL services.

Tool #3, Sample Notification to Opt a Child Back into English Learner Programs or Services, provides one example of a form that LEAs could use to provide documentation when a parent revisits his or her decision and decides to opt the child back into EL programs or particular EL services.

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## TOOL #1

# STATUTORILY REQUIRED ELEMENTS OF PARENT NOTIFICATION LETTER

This tool cites the relevant *Title I* requirements for notifying parents of their children's EL status and their right to opt their children out of EL programs or particular EL services. SEAs and LEAs that receive *Title I* or *Title III* funds should be familiar with the requirements of *Title I* and *Title III* and ensure parental notification letters include all statutorily required elements.

## TITLE I: SECTION 1112(e)(3) AND (e)(4) OF THE ESEA (20 USC 6312)

### (3) LANGUAGE INSTRUCTION.—

(A) NOTICE.—Each local educational agency using funds under this part or title III to provide a language instruction educational program as determined under title III shall, not later than 30 days after the beginning of the school year, inform parents of an English learner identified for participation or participating in such a program, of—

- (i) the reasons for the identification of their child as an English learner and in need of placement in a language instruction educational program;
- (ii) the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement;
- (iii) the methods of instruction used in the program in which their child is, or will be, participating and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction;
- (iv) how the program in which their child is, or will be, participating will meet the educational strengths and needs of their child;
- (v) how such program will specifically help their child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation;
- (vi) the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for English learners, and the expected rate of graduation from high school (including four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates for such program) if funds under this part are used for children in high schools;
- (vii) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child, as described in section 614(d) of the *Individuals with Disabilities Education Act* (20 U.S.C. 1414(d)); and
- (viii) information pertaining to parental rights that includes written guidance—
  - (I) detailing the right that parents have to have their child immediately removed from such program upon their request;

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## TOOL #1: STATUTORILY REQUIRED ELEMENTS OF PARENT NOTIFICATION LETTER (CONTINUED)

- (II) detailing the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available; and
- (III) assisting parents in selecting among various programs and methods of instruction, if more than 1 program or method is offered by the eligible entity.

(B) SPECIAL RULE APPLICABLE DURING THE SCHOOL YEAR.—For those children who have not been identified as English learners prior to the beginning of the school year but are identified as English learners during such school year, the local educational agency shall notify the children's parents during the first 2 weeks of the child being placed in a language instruction educational program consistent with subparagraph (A).

(C)\*

(D)\*

(4) NOTICE AND FORMAT.—The notice and information provided to parents under this subsection shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

\*Sections (C) and (D) of the statute are omitted, as they are not directly relevant to the information in this tool.

Source: Elementarily and Secondary Education Act, §1112(e)(3) and (e)(4), 20 USC 6312 (2015). Retrieved from <http://www2.ed.gov/documents/essa-act-of-1965.pdf>

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## TOOL #2

# SAMPLE ENGLISH LEARNER PROGRAMS AND SERVICES OPT-OUT NOTIFICATION

The following tool provides one example of a form that LEAs could use to provide documentation for legal compliance with the requirements of the EL opt-out decision-making process when a parent chooses to opt his or her child out of the EL program or particular EL services. The tool reflects forms currently used by LEAs to document that parents have been notified of their child's rights, the range of EL services that their child could receive, and the benefits of such EL services, before voluntarily waiving them. The form would need to be provided in a language that the parents understand.

## NOTIFICATION TO OPT A CHILD OUT OF EL PROGRAMS OR PARTICULAR EL SERVICES

[SCHOOL NAME, ADDRESS, CONTACT INFORMATION]

Date:

Dear Parent,

We understand that you would like to decline the English Learner (EL) program or particular EL services proposed for your child \_\_\_\_\_ (*insert child's name*). EL services are specifically designed to help your child obtain English language proficiency as well as acquire grade-level content. However, as stated in our conversation, you have the legal right to opt your child out of the program or particular services.

If you still wish to opt your child out of the EL program or particular EL services, please initial next to each item on the checklist below. Doing so will indicate that you fully understand and agree with each statement. After you have initialed next to each of the statements, please sign, date, and return the form to your child's school. We will keep this document on file stating that you have declined or do not want these indicated EL services for your child.

- I am aware of my child's English language assessment score and other information about my child's current academic progress, and understand why he/she was recommended for additional English language instruction.
- I am familiar with the EL programs and services the school has available for my child.
- I have had the opportunity to discuss the available EL programs and services with the school.
- I understand that the school believes its recommendation is the most academically beneficial for my child.
- I understand that my child will still be designated an "English Learner" and have his or her English proficiency assessed once per year until he/she no longer meets the definition of an English Learner.
- All of this information has been presented to me in a language I fully understand.

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## TOOL #2: SAMPLE ENGLISH LEARNER PROGRAMS AND SERVICES OPT-OUT NOTIFICATION (CONTINUED)

I, \_\_\_\_\_ (*insert name*), with a full understanding of the above information, wish to

- decline **all** of the EL programs and EL services offered to my child.
- decline **some** of the EL programs and/or particular EL services offered to my child.

I wish to decline (*List program/services*)

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\_\_\_\_\_  
Parent's Signature

\_\_\_\_\_  
Child's Name

\_\_\_\_\_  
Date

Source: Zantal-Wiener, K., & Bell, T. (2015). *Sample English learner programs and services opt-out notification*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from [http://ncela.ed.gov/files/forms/sample\\_notification\\_to\\_opt\\_out.pdf](http://ncela.ed.gov/files/forms/sample_notification_to_opt_out.pdf)

You can access **Tools and Resources for Serving English Learners Who Opt Out of EL Programs** at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>.





# SERVING ENGLISH LEARNERS WHO OPT OUT OF EL PROGRAMS

## RESOURCES

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Bell, T., & Zantal-Wiener, K. (2015). *Sample notification to opt a child back into English learner programs or services*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from [http://ncela.ed.gov/files/forms/sample\\_notification\\_to\\_opt\\_in.pdf](http://ncela.ed.gov/files/forms/sample_notification_to_opt_in.pdf)

This tool provides one example of a form that LEAs could use to provide documentation when a parent decides to opt his or her child back into EL programs or particular EL services. This form would only be used if/when a parent changes his or her initial decision to opt out of EL programs or particular EL services.

U.S. Department of Education, Office for Civil Rights (OCR), and U.S. Department of Justice (DOJ). (2015, January). *Dear colleague letter: English learner students and limited English proficient parents*. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

This document provides guidance to assist SEAs, LEAs, and all public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs and services. This guidance provides an outline of the legal obligations of SEAs and LEAs to ELs under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under *Title VI of the Civil Rights Act of 1964* and the *Equal Educational Opportunities Act* and offers approaches that SEAs and LEAs may use to meet their federal obligations to ELs. A discussion of how SEAs and LEAs can implement their *Title III* grants and subgrants in a manner consistent with these civil rights obligations is included. Finally, the guidance discusses the federal obligation to ensure that limited English proficient parents and guardians have

meaningful access to SEA-, LEA-, and school-related information.

U.S. Department of Education, Office of Elementary and Secondary Education. (2016). *Non-regulatory guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)*. Washington, DC: Author. Retrieved from <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>

This guidance provides SEAs and LEAs with information to assist them in meeting their obligations under *Title III* of the *ESEA*, as amended by *ESSA*. This guidance also provides members of the public with information about their rights under this law and other relevant laws and regulations.

Zantal-Wiener, K., & Bell, T. (2015). *Sample English learner programs and services opt-out notification*. Silver Spring, MD: National Clearinghouse for English Language Acquisition (NCELA). Retrieved from [http://ncela.ed.gov/files/forms/sample\\_notification\\_to\\_opt\\_out.pdf](http://ncela.ed.gov/files/forms/sample_notification_to_opt_out.pdf)

This tool is one example of a form that LEAs could use to provide documentation for legal compliance with the requirements of the EL opt-out decision-making process when a parent wishes to opt his or her child out of the EL program or particular EL services. The tool reflects forms currently used by LEAs to document that a parent has been notified of his or her child's rights, the range of EL services that the child could receive, and the benefits of such EL services, before voluntarily waving them.

To access these and other relevant resources, and for additional information about ELs, please visit <http://www.ncela.ed.gov/>.