



Washington Office of Superintendent of  
**PUBLIC INSTRUCTION**

*Washington State  
Multilingual Learners:  
Policies and Practices Guide*

**2024**

# INTRODUCTION

Washington state has over 150,000 students identified as multilingual learners (MLs) who are served in Transitional Bilingual Instruction Programs (TBIP). These English language development programs are guided by state and federal laws and policies, sound educational theory, and effective, culturally responsive instructional practices. The Office of Superintendent of Public Instruction (OSPI) has compiled this guide to outline these policies and practices.

In this guide you will find information on the following topics:

- Chapter 1: Student Identification
- Chapter 2: Program Models and Services
- Chapter 3: MTSS, Progress Monitoring, and Tiered Supports
- Chapter 4: Staffing and Professional Learning
- Chapter 5: Grants and Use of Resources
- Chapter 6: Program Evaluation
- Chapter 7: Family Communication and Engagement
- Chapter 8: Title III Services for Native Americans

All TBIP programs are monitored by the state on a regular basis. The OSPI Program Review Checklist outlines the evidence required during monitoring. Each item on the checklist corresponds to a chapter in the guide and is designed to support districts in developing effective programs that will best serve MLs and meet all requirements during Program Review. Below are the federal and state laws and guidance that shape this work and inform this guide.

## Civil Rights Obligations

The purpose of [Title III, Part A](#) Language Instruction for English Learners and Immigrant Students is to help ensure that English learners, including immigrant children and youth, attain English proficiency, develop high levels of academic achievement in English, and meet the same challenging state academic standards that all children are expected to meet in the [Elementary and Secondary Education Act \(ESEA\) as amended by the Every Student Succeeds Act \(ESSA\), Section 3102\(1\)](#).

Providing services for MLs is a basic education requirement under federal and state Civil Rights laws (See [Dear Colleague Letter, 2015](#)) and includes the following required elements:

- Appropriate identification, screening, testing, notification, and reporting practices;
- Meaningful access to core content instruction provided by trained and supported teachers; and
- Designated English language development (ELD) which is planned and delivered by an educator with appropriate knowledge, skills, and expertise in language acquisition and instructional methods for teaching MLs.

## Landmark Court Cases

Civil rights requirements for multilingual learners include the following rights, based on landmark court cases.

### *Lau v. Nichols*

Eligible multilingual learners must be provided appropriate supports for meaningful access to rigorous content (*Lau v. Nichols*, 1974, U.S. Supreme Court).

### *Castañeda v. Pickard*

English language development instruction must be designed to meet individual needs for sustained progress toward reaching English proficiency in the least amount of time (*Castañeda v. Pickard*, 1981, U.S. Court of Appeals).

The *Castañeda* framework provides a three-pronged test to guide districts in designing, evaluating, and improving their English language development program for multilingual learners:

- The program design must be based on sound educational theory and/or high-quality research findings.
- The program must be sufficiently staffed and resourced.
- The district must evaluate the effectiveness of the services provided and adjust the program to ensure students are achieving language proficiency and academic success.

### *Plyler v. Doe*

Undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. (*Plyler v. Doe*, 1982, U.S. Supreme Court). Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

## Equitable Access to Programs

State and federal civil rights laws, including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, require districts to allow multilingual learners the opportunity to participate in all programs, services, and activities offered by the district.

Districts may not categorically deny multilingual learners from participating in any program, service, or activity based solely on students' English proficiency. This includes honors and advanced courses, Career and Technical Education, Highly Capable programs, online programs, Title I services, special education, Advanced Placement, extracurricular activities, and athletic programs. If, for example, a district has a process for locating and identifying students for a particular program or activity, it must also locate and identify multilingual learners who could benefit from the program.

Tests used to place students in specialized programs should not prevent them from qualifying based on a student's English proficiency. For programs with entrance exams, testing multilingual

learners in English may not effectively demonstrate their abilities and skills. Testing in the student's primary language may be necessary to provide an equal opportunity to participate.

For more information, refer to [Prohibiting Discrimination in Washington Public Schools: Guidelines for school districts to implement Chapters 28A.640 and 28A.642 RCW and Chapter 392-190 WAC.](#)

## Federal and State Laws

### Definitions

#### *Multilingual English Learner*

A multilingual English learner is defined by the U.S. Department of Education's Office of English Language Acquisition, as a student who:

- A. is aged 3 through 21;
- B. is enrolled or preparing to enroll in an elementary or secondary school;
- C. (i) was not born in the U.S. or whose native language is a language other than English;  
(ii)(I) is a Native American or Alaska Native, or a native resident of the outlying areas; and  
(II) comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or  
(iii) is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual
  - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);
  - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
  - (iii) the opportunity to participate fully in society.

#### *Immigrant Children and Youth*

The term "immigrant children and youth" as defined by ESSA Section 3201(5) refers to individuals who:

- Are aged 3 through 21;
- Were not born in any state. "State" means the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico (Section 3127 of ESEA). Children born to U.S. citizens abroad (e.g., children born on a military base overseas) may be considered immigrants if they meet all the criteria in the definition of immigrant;

- Have not been attending one or more schools in any one or more states for more than 3 full academic years. A full academic year is 10 months of school attendance in grades K–12. If a student has been in different schools or different school districts or even in different states, the number of months that the student has been in school in any one or more states must not add up to a total of more than 3 full academic years.

### *TBIP-Eligible Student*

A student who meets the following two conditions is eligible for the Transitional Bilingual Instructional Program under Washington State’s law:

- The primary language of the student is other than English; and
- The student’s English skills impact their learning ([RCW 28A.180.030\(1\)](#)).

Washington State defines “primary language” as the language most often used by a student (not necessarily by parents, guardians, or others) for communication in the student’s place of residence or the language that the student first spoke or understood. A student who does not demonstrate proficiency based on the WIDA Screener or WIDA ACCESS is considered impacted by their English skills and remains eligible for the TBIP.

## **Washington State Laws**

The following Washington state laws define the requirements for instructional services for multilingual learners:

- [RCW 28A.150.220: Basic education—Minimum instructional requirements—Program accessibility—Rules](#) defines basic education requirements for every district, including supplemental services for eligible and exited multilingual learners.
- [RCW 28A.180 —Transitional Bilingual Instruction Program](#) provides the mandate for transitional bilingual instruction programs in public schools.
- [WAC 392-160—Special Service Program—Transitional Bilingual](#) directs and defines the requirements for administration of the Transitional Bilingual Instruction Program.

## **Federal Guidance**

The following documents provide federal guidance for Title III programs:

[Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act \(ESEA\)](#) provides states and Local Educational Agencies (LEAs) with information to assist them in meeting their obligations under Title III and provides members of the public with information about their rights under this law and other relevant laws and regulations.

[2015 Dear Colleague Letter: Joint Guidance from the U.S. Departments of Education and Justice](#) assists State Education Agencies (SEAs), districts, and all public schools in meeting their legal obligations to ensure that MLs can participate meaningfully and equally in educational programs and services. This [Fact Sheet](#) provides an overview of this guidance.