



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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November 26, 2019

Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, DE 19901

RE: 23 DE Reg. 357/14 DE Admin. Code 920 [DOE Proposed Educational Programs for English Language Learners (ELLs) Regulation (November 1, 2019)]

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend 14 DE Admin. Code 920, which establishes procedures for identification, education, and evaluation of English Language Learners (ELLs). Council supports the proposed amendments, and would like to share the following observations.

First, in Section 1.0 Definitions, the definition for "Bilingual Programs" has been removed with no replacement and "English as a Second Language (ESL) Programs" is now referred to as "Language Instruction Education Program (LIEP)". The removal of "bilingual programs" is concerning due to the proven value of bilingual education for students whose first language is not English. See *A national study of school effectiveness for language minority students' long-term academic achievement* by W. Thomas and V. Collier, Center for Research on Education, Diversity & Excellence (2002). It seems as though DOE is removing bilingual programs and moving toward only providing LIEP, which provides instruction only in English. Council would ask that the DOE reconsider removing bilingual programs from this proposed amendment given the proven positive effect on the long-term achievement of students whose first language is not English. In addition to the positive effect on those whose first language is not English, dual-language and immersion programs have also been shown to be beneficial to students whose first language is English.

Relatedly, Council recommends that DOE align its definition of LIEP with the federal definition, which includes bilingual education. Council's reading of DOE's definition of LIEP is that instruction is provided in English. Council's interpretation of the federal definition of LIEP is that it is a term of art that subsumes a variety of different approaches, including both

ESL and bilingual approaches. See *Language Instruction Educational Programs (LIEPs)*, U.S. Department of Education, <https://www2.ed.gov/rschstat/eval/title-iii/language-instruction-ed-programs-report.pdf>. Council recommends that DOE make clear that LIEP contemplates bilingual approaches, as well as ESL instruction.

Second, Council is concerned by the change in the definition of English Language Learners. The proposed amended definition reads:

“**English Learners (ELs)**’ 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”

The proposed change presents two issues. The inclusion of “among other things” leads to a vague definition. What does “among other things” mean? Council suggests the clause be removed, as it does not add anything to the definition. The new proposed definition moves away from who the student is and toward how the student performs on standardized tests. This is most concerning because it appears that DOE is attempting to return to a focus on standardized tests. If the mention of “standardized entrance and exit procedures” is referring to the World-Class Instructional Design and Assessment (WIDA) assessment in the English Learner Guidebook, that is unclear from the language used. The definition is also vague in terms of whether DOE intends to apply this definition to students with disabilities whose impairments impact their abilities to speak, read, write or understand.

It seems as though DOE may be attempting to take bits and pieces of the ESSA definition of English Language Learners, which also includes the following language:

English learner means “an individual whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the challenging State academic standards[.]” 20 U.S.C. §7801 20(D)(i).

It appears that the proposed amendment is failing to include or consider the rest of 20 U.S.C. §7801 20(D), which notes that the difficulty mentioned above may be sufficient to deny the individual “the ability to successfully achieve in classrooms where the language of instruction is in English; or the opportunity to participate fully in society.” 20 U.S.C. §7801 20(D)(ii)-(iii).

Council would recommend that DOE redefine “English Learner” to remove the mention of state assessments and include more references to how the lack of English proficiency hinders participation in society and academic success in areas other than the state standardized test. A suggested definition may be as follows:

*“**English Learner (EL)** means an individual who is linguistically diverse and who is identified by the Home Language Survey as having a level of English language proficiency that requires language support to fully participate in the school setting and to achieve academic standards in grade-level content.”*

This definition removes the focus on standardized tests and focuses on acknowledging the benefits of speaking more than one tongue. This definition acknowledges that being an English learner is not a “difficulty,” but that supports are needed to ensure success. This definition does not include mention of the “standardized entrance and exit procedures” because it is, arguably, unnecessary since that information is included in 2.2.2.

Third in section 3.1, the amendment proposes to remove the requirement that programs selected for the education of ELs be research-based. Both the IDEA and ESSA require that schools use programs, curricula, and practices based on “scientifically-based research” “to the maximum extent possible.” 42 U.S.C. §1400(c)(5)(E). Removing this requirement goes against the spirit of the IDEA and ESSA; therefore this requirement should not be removed.

Fourth, in Section 7.0, it is a concern that communication with family members who are likely not to be competent speakers of English is only required to be in a language understood by the family member “...to the extent practicable.” Consent cannot be informed if the information presented is not clearly understood. There are so many mechanisms available for remote language translation/interpretation that access to that service is almost always “practicable”.

Thank you for the opportunity to share our comments with you. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: Whitney Sweeney, State Board of Education
Mary Ann Mieczkowski, Department of Education
Linnea Bradshaw, Professional Standards Board
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