R277. Education Administration.
R277-716. Alternative Language Services for Utah Students.
R277-716-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Title III; and

(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is:

(a) to address the requirements of Title III and implementing regulations and case law;

(b) to clearly define the respective responsibilities of the Superintendent and LEAs:

(i) in identifying ELL/LEP students who are currently enrolled in Utah schools; and

(ii) in providing consistent and appropriate services to identified students; and

(c) in order to:

(i) meet Title III requirements;

(ii) meet funding eligibility requirements; and

(iii) appropriately distribute ELL/LEP funds to LEAs with adequate policies.

R277-716-2. Definitions.

(1) "Alternative language services program" or "ALS program" means a research-based language acquisition instructional service model used to achieve English proficiency and academic progress of identified students.

(2) "Alternative language services" or "ALS" means language services designed to meet the education needs of all language minority students so that students are able to participate effectively in the regular instruction program.

(3) "Annual measurable achievement objectives" or "AMAOs" means English Language Proficiency Performance Targets established by the Superintendent consistent with Title III requirements for public school students who are receiving language acquisition services in the state of Utah as required by 20 U.S.C. 6842.

(4) "Approved language acquisition instructional services model" means methods of ALS instruction that are evidence-based and recommended by the U.S. Department of Education and the Superintendent.

(5) "Consolidated Utah Student Achievement Plan" means the application for federal funds authorized under ESEA, and other federal sources submitted annually to the Superintendent.

(6) "English Language Learner/Limited English Proficient" or "ELL/LEP" means an individual:

(a) who has sufficient difficulty speaking, reading, writing, or understanding the English language, and whose difficulties may deny the individual the opportunity to:

(i) learn successfully in classrooms where the language of instruction is English; or

(ii) participate fully in society;

(b) who was not born in the United States or whose native language is a language other than English and who comes from an environment where a language other than English is dominant; or

(c) who is an American Indian or Alaskan native or who is a native resident of the

outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency.

(7) "Immigrant children and youth" for purposes of this rule means individuals who:

(a) are ages 3 through 21;

(b) were born outside of the United States; and

(c) have not been attending one or more schools in any one or more states of the United States for more than three full academic years.

(8) "Instructional Materials Commission" means a Commission appointed by the Board to evaluate instructional materials for recommendation by the Board consistent with Title 53A, Chapter 14, State Instructional Materials Commission.

(9) "Language acquisition instructional program" means an instructional program for students for the purpose of developing and attaining English proficiency, while meeting state academic content and achievement standards.

(10) "State Approved Endorsement Program" or "SAEP" means a professional development plan on which a licensed Utah educator is working to obtain an endorsement.

(11) "Title III" means federal provisions for providing language instruction to ELL/LEP students under 20 U.S.C. 6801, et seq.

R277-716-3. Superintendent Responsibilities.

(1) The Superintendent shall make available an identification and placement procedure model to LEAs to provide language acquisition services for ELL/LEP students.

(2) The Superintendent shall develop and require all LEAs to use the statewide annual assessment based on the AMAOs for English language acquisition to measure growth and progress in:

(a) listening;

(b) speaking;

(c) reading;

(d) writing; and

(e) comprehension.

(3) The Utah Academic Language Proficiency Assessment (UALPA) shall be administered throughout the school year.

(4) An LEA may determine restricted testing dates within the school year.

(5) The Superintendent shall apply a formula and distribute funds to LEAs for identification and services to ELL/LEP students and their families.

(a) The formula shall provide an amount based upon eligible students and available funds, to be distributed to all eligible LEAs and consortia consistent with Title III requirements.

(b) The formula shall provide for an additional amount to qualifying LEAs based on numbers of immigrant children and youth.

(6) The Superintendent shall make models and accountability measures in providing ALS services to students available to LEAs.

(7) An LEA shall use Superintendent-identified models or models based upon educational research.

(8) An LEA that receives Title III funds under this rule shall provide the following to the Superintendent:

(a) a budget as part of the Consolidated Utah Student Achievement Plan data on student achievement;

(b) the number of students served with Title III funds;

(c) assurances and documentation maintained of services or a program used to serve students;

(d) assurances and documentation maintained of required parent notification; and

(e) a biennial report summarizing the LEA's progress in Subsection(10) in addition to the annual Consolidated Utah Student Achievement Plan information.

(9) The Superintendent shall provide timelines to LEAs for meeting Title III requirements.

(10) The Superintendent shall assist and provide training to LEAs in development of ALS and Title III services to students who do not meet prescribed English proficiency AMAOs.

(11) An LEA shall maintain:

(a) an ALS budget plan;

(b) a plan for delivering student instruction;

(c) ALS assessments to date;

(d) a sample of parent notification required under Subsection R277-716-4(7); and

(e) documentation or evidence of progress of required Title III AMAOs.

(12) The Superintendent shall conduct on-site audits of all funded ALS programs at least once every five years.

(13) The Superintendent shall provide technical assistance during on-site audits and as the Superintendent deems necessary.

R277-716-4. LEA Responsibilities.

(1) An LEA that receives funds under Title III shall assure as part of the Consolidated Utah Student Achievement Plan that the LEA has a written plan that:

(a) includes an ELL/LEP student find process, including a home language survey and a language proficiency for program placement, that is implemented with student registration;

(b) uses a valid and reliable assessment of an ELL/LEP student's English proficiency in:

(i) listening;

(ii) speaking;

(iii) reading;

(iv) writing; and

(v) comprehension;

(c) provides language acquisition instructional services based on Board-approved Utah English Language Proficiency Standards;

(d) establishes student exit criteria from ALS programs or services; and

(e) includes the ELL/LEP student count, by classification, prior to July 1 of each year.

(2) Following receipt of Title III funds, an LEA shall:

(a) determine what type of Title III ALS services are available and appropriate for each student identified in need of ALS services, including:

(i) dual immersion;

(ii) ESL content-based; and

(iii) sheltered instruction;

(b) implement an approved language acquisition instructional program designed to

achieve English proficiency and academic progress of an identified student;

(c) ensure that all identified ELL/LEP students receive English language instructional services, consistent with Subsection (1)(c);

(d) provide adequate staff development to assist an ELL/LEP teacher and staff in meeting AMAOs; and

(e) provide necessary staff with:

(i) curricular materials approved by the Instructional Materials Commission consistent with Rule R277-469; and

(ii) facilities for adequate and effective training.

(3) If an LEA does not meet AMAOs, the LEA shall develop and implement improvement plans to satisfy AMAOs.

(4) Following evaluation of student achievement and services, an LEA shall:

(a) analyze results and determine the program's success or failure; and

(b) modify a program or services that are not effective in meeting the state AMAOs.

(5) An LEA shall have a policy to identify and serve students who qualify for services under IDEA, including:

(a) implementing procedures and training, consistent with federal regulations and state special education rules, that ensure ELL/LEP students are not misidentified as students with disabilities due to their inability to speak and understand English;

(b) reviewing the assessment results of a student's language proficiency in English and other language prior to initiating evaluation activities, including selecting additional assessment tools;

(c) conducting assessments for IDEA eligibility determination and educational programming in a student's native language when appropriate;

(d) using nonverbal assessment tools when appropriate;

(e) ensuring that accurate information regarding a student's language proficiency in English and another language is considered in evaluating assessment results;

(f) considering results from assessments administered both in English and in a student's native language;

(g) ensuring that all required written notices and communications with a parent who is not proficient in English is provided in the parent's preferred language to the extent practicable, including utilizing interpretation services when appropriate; and

(h) coordinating the language acquisition instructional services and special education and related services to ensure that the IEP is implemented as written.

(6) An LEA shall provide information and training to staff that:

(a) limited English proficiency is not a disability; and

(b) if there is evidence that a student with limited English proficiency has a disability, the staff shall refer the student for possible evaluation for eligibility under IDEA.

(7)(a) An LEA shall notify a parent who is not proficient in English of the LEA's required activities.

(b) A school shall provide information about required and optional school activities in a parent's preferred language to the extent practicable.

(c) An LEA shall provide interpretation and translation services for a parent at:

(i) registration;

(ii) an IEP meeting;

(iii) an SEOP meeting;

(iv) a parent-teacher conference; and

(v) a student disciplinary meeting.

(d) An LEA shall provide annual notice to a parent of a student placed in a language acquisition instructional program at the beginning of the school year or no later than 30 days after identification.

(e) If a student has been identified as requiring ALS services after the school year has started, the LEA shall notify the student's parent within 14 days of the student's identification and placement.

(8) A required notice described in Subsection (7) shall include:

(a) the student's English proficiency level;

(b) how the student's English proficiency level was assessed;

(c) the status of the student's academic achievement;

(d) the methods of instruction proposed to increase language acquisition, including using both the student's native language and English if necessary;

(e) specifics regarding how the methods of instruction will help the child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation; and

(f) the specific exit requirements for the program including:

(i) the student's expected rate of transition from the program into a classroom that is not tailored for an LEP student; and

(ii) the student's expected high school graduation date if funds appropriated consistent with this rule are used for a secondary school student.

(9)(a) An LEA shall provide notice to a parent of an ELL/LEP student if the LEA fails to meet AMAOs.

(b) An LEA shall provide a parent the notice described in Subsection (9)(a) within 30 days of the LEA's receipt of the annual State Title III Accountability Report from the Superintendent.

R277-716-5. Teacher Qualifications.

(1) A Utah educator who is assigned to provide instruction in a language acquisition instructional program shall comply with the State ESL Endorsement requirements provided in Rule R277-520.

(2) A Utah educator whose primary assignment is to provide English language instruction to an ELL/LEP student shall have an ESL or ESL or Bilingual endorsement consistent with the educator's assignment.

R277-716-6. Miscellaneous Provisions.

(1)(a) An LEA that generates less than $10,000 from the LEA's ELL/LEP student count, may form a consortium with other similar LEAs.

(b) A consortium described in Subsection (1)(a) shall designate a fiscal agent and shall submit all budget and reporting information from all of the member LEAs of the consortium.

(c) Each member of a consortium shall submit plans and materials to the fiscal agent of the consortium for final reporting submission to the Superintendent.

(d) A fiscal agent of a consortium described in Subsection (1)(a) shall assume all responsibility of an LEA under Section R277-716-4.

(2) No LEA or consortium may withhold more than two percent of Title III funding for administrative costs in serving ELL/LEP students.

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