

1 **R277. Education, Administration.**

2 **R277-716. Alternative Language Services for Utah Students.**

3 **R277-716-1. Authority and Purpose.**

4 (1) This rule is authorized by:

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

7 (b) Title III; and

8 (c) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with
9 its responsibilities.

10 (2) The purpose of this rule is:

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

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

13 (i) in identifying ~~[ELL/LEP]~~ students learning English who are currently enrolled in Utah
14 schools; and

15 (ii) in providing ~~[consistent and appropriate services]~~ evidence-based language
16 instruction educational programs to identified students; and

17 (c) in order to:

18 (i) meet Title III requirements;

19 (ii) meet funding eligibility requirements; and

20 (iii) appropriately distribute ~~[ELL/LEP]~~ Title III funds ~~[to]~~ for students learning English
21 to LEAs with ~~[adequate policies]~~ approved plans in the Utah Grants Management System.

22 **R277-716-2. Definitions.**

23 (1) "Alternative language services program" or "ALS program" means an [research]
24 evidence-based language ~~[acquisition instructional service model]~~ instruction educational
25 program used to achieve English proficiency and academic progress of identified students.

26 (2) "Alternative language services" or "ALS" means language services designed to
27 meet the education needs of all ~~[language minority]~~ students learning English so that students
28 are able to participate effectively in the regular instruction program.

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

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

36 [(5)3] "Consolidated [~~Utah Student Achievement~~] State Plan" means the application
37 for federal funds authorized under the Elementary and Secondary Education Act, or ESEA,
38 20 U.S.C. Sec. 1001, et seq., as amended, and other federal sources submitted annually to
39 the Superintendent.

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

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

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

45 ~~—— (ii) participate fully in society;~~

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

49 ~~—— (c) who is an American Indian or Alaskan native or who is a native resident of the~~
50 ~~outlying areas and comes from an environment where a language other than English has had~~
51 ~~a significant impact on such individual's level of English language proficiency.]~~

52 (4) "Evidence-based language instruction education program" means evidence-based
53 methods, recommended by the Superintendent, that meet the "Non-Regulatory Guidance:
54 Using Evidence to Strengthen Education Investments" developed by the U.S. Department of
55 Education.

56 [(7)5] "Immigrant children and youth" for purposes of this rule means individuals who:

57 (a) are ages 3 through 21;

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

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

61 ~~(8)6~~ "Instructional Materials Commission" means a Commission appointed by the
62 Board to evaluate instructional materials for recommendation by the Board consistent with
63 Title 53E, Chapter 4, State Instructional Materials Commission.

64 ~~(9)7~~ "Language ~~[acquisition]~~ instruction~~[at]~~ educational program" means an
65 instructional course: [an instructional program for students for the purpose of developing and
66 attaining English proficiency, while meeting state academic content and achievement
67 standards:]

68 (a) in which a student learning English is placed for the purpose of developing and
69 attaining English proficiency, while meeting challenging state academic standards;

70 (b) that may make instructional use of both English and a child's native language to
71 enable the child to attain and develop English proficiency; and

72 (c) that may include the participation of English proficient children if the course is
73 designed to enable all participating children to become proficient in English and a second
74 language.

75 ~~(10)8~~ "State Approved Endorsement Program" or "SAEP" means a professional
76 development plan on which a licensed Utah educator is working to obtain an endorsement.

77 (9) "Student learning English" means an individual who:

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

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

81 (ii) participate fully in society;

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

85 (c) who is an American Indian or Alaskan native or who is a native resident of the
86 outlying areas and comes from an environment where a language other than English has had
87 a significant impact on such individual's level of English language proficiency.

88 (10) "TESOL Standards" mean the Pre-K-12 English Language Proficiency Standards
89 established by TESOL International.

90 (11) "Title III" means federal provisions for providing language instruction to ~~[ELL/LEP]~~
91 students learning English and immigrant students under 20 U.S.C. 6801, et seq.

92 **R277-716-3. Superintendent Responsibilities.**

93 (1) The Superintendent shall make available ~~[an]~~ in Utah's approved Title III plan
94 identification and placement procedures ~~[model to LEAs to provide language acquisition~~
95 ~~services for ELL/LEP students]~~ to support evidence-based language instruction education
96 programs for students learning English.

97 (2) The Superintendent shall develop and require all LEAs to ~~[use the statewide annual~~
98 ~~assessment based on the AMAOs for English language acquisition]~~ administer a Board
99 approved annual English language proficiency assessment to measure ~~[growth]~~ fluency level
100 and progress in:

- 101 (a) listening;
102 (b) speaking;
103 (c) reading; and
104 (d) writing~~;~~ ~~and~~
105 ~~— (e) comprehension].~~

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

108 ~~— (4) An LEA may determine restricted testing dates within the school year.]~~

109 ([5]3) The Superintendent shall apply a formula and distribute funds to LEAs for
110 identification and services to ~~[ELL/LEP]~~ students learning English and their families.

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

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

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

117 ~~— (7) An LEA shall use Superintendent-identified models or models based upon~~
118 ~~educational research.]~~

119 ~~[(8)4~~ An LEA that receives Title III funds under this rule shall provide the following to
120 the Superintendent:

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

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

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

126 ~~[(d)b~~ assurances and documentation maintained of required parent notification~~]; and~~

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

129 ~~[(9)7~~ The Superintendent shall provide timelines to LEAs for meeting Title III
130 requirements.

131 ~~[(10)8~~ The Superintendent shall assist and provide training to LEAs in development
132 of ALS and Title III services to students learning English ~~[who do not meet prescribed English~~
133 ~~proficiency AMAOs]~~ who do not meet the state designated annual growth goals in both
134 increased English proficiency and academic standards.

135 ~~[(11)9~~ An LEA shall maintain:

136 (a) an ALS budget plan;

137 (b) a plan for delivering student instruction as a requirement in the monitoring sectio
138 of the Utah Grants Management System;

139 (c) ALS assessments to date;

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

141 (e) documentation or evidence of progress ~~[of required Title III AMAOs].~~

142 (1~~[2]~~⁰) The Superintendent shall conduct on-site ~~[audits]~~ monitoring of all funded ALS
143 programs at least once every five years.

144 (1~~[3]~~¹) The Superintendent shall provide technical assistance during on-site ~~[audits]~~
145 monitoring and as the Superintendent deems necessary.

146 **R277-716-4. LEA Responsibilities.**

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

149 (a) includes an ~~[ELL/LEP student find]~~ identification process for students learning
150 English, including a home language survey and a language proficiency for program
151 placement, that is implemented with student registration;

152 (b) uses a valid and reliable assessment of a ~~[n-ELL/LEP]~~ student's English proficiency
153 in:

154 (i) listening;

155 (ii) speaking;

156 (iii) reading; and

157 (iv) writing~~[- and~~

158 ~~—(v) comprehension];~~

159 (c) provides ~~[language acquisition instructional services]~~ an evidence-based language
160 instruction educational program based on Board-approved Utah English Language Proficiency
161 Standards;

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

163 (e) includes the ~~[ELL/LEP student]~~ count of students learning English, by classification,
164 prior to July 1 of each year.

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

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

168 (i) dual immersion;

169 (ii) ESL content-based; and

- 170 (iii) sheltered instruction;
- 171 (b) implement an approved language ~~[acquisition instructional]~~ instruction educational
- 172 program designed to achieve English proficiency and academic progress of an identified
- 173 student;
- 174 (c) ensure that all identified ~~[ELL/LEP]~~ students learning English receive English
- 175 language instructional services, consistent with Subsection (1)(c);
- 176 (d) provide adequate staff development to assist a ~~[n-ELL/LEP]~~ teacher and staff in
- 177 ~~[meeting AMAOs]~~ supporting students learning English; and
- 178 (e) provide necessary staff with:
- 179 (i) curricular materials approved by the Instructional Materials Commission consistent
- 180 with Rule R277-469; and
- 181 (ii) facilities for adequate and effective training.
- 182 ~~[(3) If an LEA does not meet AMAOs, the LEA shall develop and implement~~
- 183 ~~improvement plans to satisfy AMAOs.]~~
- 184 ~~[(4)3]~~ Following evaluation of student achievement and services, an LEA shall:
- 185 (a) analyze results and determine the program's success or failure; and
- 186 (b) modify a program or services that are not effective ~~[in meeting the state AMAOs]~~.
- 187 ~~[(5)4]~~ An LEA shall have a policy to identify and serve students who qualify for services
- 188 under IDEA, including:
- 189 (a) implementing procedures and training, consistent with federal regulations and state
- 190 special education rules, that ensure ~~[ELL/LEP]~~ students learning English are not misidentified
- 191 as students with disabilities due to their inability to speak and understand English;
- 192 (b) reviewing the assessment results of a student's language proficiency in English and
- 193 other language prior to initiating evaluation activities, including selecting additional assessment
- 194 tools;
- 195 (c) conducting assessments for IDEA eligibility determination and educational
- 196 programming in a student's native language when appropriate;
- 197 (d) using nonverbal assessment tools when appropriate;

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

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

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

205 (h) coordinating the language [~~acquisition instructional services~~] instruction educational
206 program and special education and related services to ensure that the IEP is implemented as
207 written.

208 ([~~6~~5) An LEA shall provide information and training to staff that:

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

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

212 ([~~7~~6)(a) An LEA shall notify a parent who is not proficient in English of the LEA's
213 required activities.

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

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

217 (i) registration;

218 (ii) an IEP meeting;

219 (iii) an SEOP meeting;

220 (iv) a parent-teacher conference; and

221 (v) a student disciplinary meeting.

222 (d) An LEA shall provide annual notice to a parent of a student placed in a language
223 [~~acquisition~~] instruction[~~at~~] educational program at the beginning of the school year or no later
224 than 30 days after identification.

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

228 ([8]7) A required notice described in Subsection ([7]6) shall include:

229 (a) the student's English proficiency level;

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

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

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

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

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

238 (i) the student's expected rate of transition from the program into a classroom that is
239 not tailored for a ~~n-LEP~~ student learning English; and

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

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

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

247 **R277-716-5. Teacher Qualifications.**

248 (1) A Utah educator who is assigned to provide instruction in a language acquisition
249 instructional program shall comply with ~~[the State]~~ state ESL ~~[E]~~ endorsement requirements
250 ~~[provided in Rule R277-520].~~

251 (2) A Utah educator whose primary assignment is to provide English language

252 instruction to a ~~[n-ELL/LEP]~~ student learning English shall have: ~~[an-ESL or ESL or Bilingual~~
253 ~~endorsement consistent with the educator's assignment.]~~

254 (a) an ESL endorsement, through an approved program based on the TESOL
255 Standards;

256 (b) an advanced degree or certification in teaching English as a Second Language,
257 including an approved competency program consistent with Board rule; or

258 (c) a bilingual endorsement consistent with the educator's assignment.

259 **R277-716-6. Miscellaneous Provisions.**

260 (1)(a) An LEA that generates less than \$10,000 from the LEA's ~~[ELL/LEP student]~~
261 count of students learning English, may form a consortium with other similar LEAs.

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

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

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

268 (2) No LEA or consortium may withhold more than two percent of Title III funding for
269 administrative costs in serving ~~[ELL/LEP]~~ students learning English .

270 **KEY: alternative language services**

271 **Date of Enactment or Last Substantive Amendment:**

272 **Notice of Continuation: February 16, 2016**

273 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)**