

R277-716 received final approval by the Utah State Board of Education on February 4, 2021. R277-716 will be published in the March 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of April 7, 2021.

**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 53E-3-401(4), 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 students learning English who are currently enrolled in Utah schools; and

(ii) in providing evidence-based language instruction educational programs to identified students; and

(c) in order to:

(i) meet Title III requirements;

(ii) meet funding eligibility requirements; and

(iii) appropriately distribute Title III funds for students learning English to LEAs with approved plans in the Utah Grants Management System.

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

(1) "Alternative language services program" or "ALS program" means an evidence-based language instruction educational program used to achieve English proficiency and academic progress of identified students.

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

(3) "Consolidated State Plan" means the application for federal funds authorized under the Elementary and Secondary Education Act, or ESEA, 20 U.S.C. Sec. 1001, et seq., as amended, and other federal sources submitted annually to the Superintendent.

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

(5) "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.

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

(7) "Language instruction educational program" means an instructional course:

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

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

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

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

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

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(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.

(10) "TESOL" means Teachers of English to Speakers of Other Languages.

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

(12) "Title III" means federal provisions for providing language instruction to students learning English and immigrant children and youth under 20 U.S.C. 6801, et seq.

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

(1) The Superintendent shall make available in Utah's approved Title III plan identification and placement procedures to support evidence-based language instruction education programs for students learning English.

(2) The Superintendent shall develop and require all LEAs to administer a Board approved annual English language proficiency assessment to measure fluency level and progress in:

- (a) listening;
- (b) speaking;
- (c) reading; and
- (d) writing.

(3) The Superintendent shall apply a formula and distribute funds to LEAs for identification and services to students learning English and their families.

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(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.

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

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

(b) assurances and documentation maintained of required parent notification.

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

(8) The Superintendent shall assist and provide training to LEAs in development of ALS and Title III services to students learning English who do not meet the state designated annual growth goals in both increased English proficiency and academic standards.

(9) An LEA shall maintain:

(a) an ALS budget plan;

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

(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 in the state accountability system.

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

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

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

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(1) An LEA that receives funds under Title III shall assure that the LEA has a written plan that:

(a) includes an identification process for students learning English, 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 a student's English proficiency in:

(i) listening;

(ii) speaking;

(iii) reading; and

(iv) writing;

(c) provides an evidence-based language instruction educational program based on Board-approved Utah English Language Proficiency Standards;

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

(e) includes the count of students learning English, 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 instruction educational program designed to achieve English proficiency and academic progress of an identified student;

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

(d) provide adequate staff development to assist a teacher and staff in supporting students learning English; and

(e) provide necessary staff with:

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

(ii) facilities for adequate and effective training.

(3) 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.

(4) 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 students learning English 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 are provided in the parent's preferred language, including utilizing interpretation services; and

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

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

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

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(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.

(6)(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.

(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 instruction educational 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.

(7) A required notice described in Subsection (6) 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:

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- (i) the student's expected rate of transition from the program into a classroom that is not tailored for a student learning English; and
- (ii) the student's expected high school graduation date if funds appropriated consistent with this rule are used for a secondary school student.

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

(1) A Utah educator who is assigned to provide instruction in a language acquisition instructional program shall comply with state ESL endorsement requirements.

(2) A Utah educator whose primary assignment is to provide English language instruction to a student learning English shall have:

- (a) an ESL endorsement, through an approved program based on the TESOL Standards;
- (b) an advanced degree or certification in teaching English as a Second Language, including an approved competency program consistent with Board rule; or
- (c) a 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 count of students learning English, 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 students learning English .

**KEY: alternative language services**



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

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

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