

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]~~ learning English students 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]~~ 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" means Teachers of English to Speakers of Other Languages.

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

91 (1~~[4]~~2) "Title III" means federal provisions for providing language instruction to  
92 ~~[ELL/LEP] students learning English and immigrant [students] children and youth~~ under 20  
93 U.S.C. 6801, et seq.

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

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

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

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

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

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

111 ([5]3) The Superintendent shall apply a formula and distribute funds to LEAs for  
112 identification and services to ~~[ELL/LEP] students~~ learning English and their families.

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

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

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

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

121 ~~[(8)4~~ An LEA that receives Title III funds under this rule shall provide the following to  
122 the Superintendent:

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

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

126 ~~————(c)]~~ assurances and documentation maintained of services or a program used to serve  
127 students; and

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

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

131 ~~[(9)7~~ The Superintendent shall provide timelines to LEAs for meeting Title III  
132 requirements.

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

137 ~~[(11)9~~ An LEA shall maintain:

138 (a) an ALS budget plan;

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

141 (c) ALS assessments to date;

- 142 (d) a sample of parent notification required under Subsection R277-716-4(7); and  
143 (e) documentation or evidence of progress ~~[of required Title III AMAOs]~~ in the state  
144 accountability system.

145 (1~~2~~0) The Superintendent shall conduct on-site ~~[audits]~~ monitoring of all funded ALS  
146 programs at least once every five years.

147 (1~~3~~1) The Superintendent shall provide technical assistance during on-site ~~[audits]~~  
148 monitoring and as the Superintendent deems necessary.

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

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

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

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

157 (i) listening;

158 (ii) speaking;

159 (iii) reading; and

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

161 ~~-(v) comprehension];~~

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

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

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

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

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

- 198 (c) conducting assessments for IDEA eligibility determination and educational  
199 programming in a student's native language when appropriate;
- 200 (d) using nonverbal assessment tools when appropriate;
- 201 (e) ensuring that accurate information regarding a student's language proficiency in  
202 English and another language is considered in evaluating assessment results;
- 203 (f) considering results from assessments administered both in English and in a  
204 student's native language;
- 205 (g) ensuring that all required written notices and communications with a parent who  
206 is not proficient in English ~~[is]~~ are provided in the parent's preferred language ~~[to the extent~~  
207 practicable], including utilizing interpretation services ~~[when appropriate]~~; and
- 208 (h) coordinating the language ~~[acquisition instructional services]~~ instruction educational  
209 program and special education and related services to ensure that the IEP is implemented as  
210 written.
- 211 ([6]5) An LEA shall provide information and training to staff that:
- 212 (a) limited English proficiency is not a disability; and
- 213 (b) if there is evidence that a student with limited English proficiency has a disability,  
214 the staff shall refer the student for possible evaluation for eligibility under IDEA.
- 215 ([7]6)(a) An LEA shall notify a parent who is not proficient in English of the LEA's  
216 required activities.
- 217 (b) A school shall provide information about required and optional school activities in  
218 a parent's preferred language ~~[to the extent practicable]~~.
- 219 (c) An LEA shall provide interpretation and translation services for a parent at:
- 220 (i) registration;
- 221 (ii) an IEP meeting;
- 222 (iii) an SEOP meeting;
- 223 (iv) a parent-teacher conference; and
- 224 (v) a student disciplinary meeting.

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

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

231 ~~[(8)7]~~ A required notice described in Subsection ~~[(7)6]~~ shall include:

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

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

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

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

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

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

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

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

245 ~~[(9)(a) An LEA shall provide notice to a parent of an ELL/LEP student if the LEA fails  
246 to meet AMAGs:~~

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

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

251 (1) A Utah educator who is assigned to provide instruction in a language acquisition  
252 instructional program shall comply with ~~[the State]~~ state ESL ~~[E]~~ endorsement requirements

253 ~~[provided in Rule R277-520].~~

254 (2) A Utah educator whose primary assignment is to provide English language  
255 instruction to a ~~[n-ELL/LEP]~~ student learning English shall have: ~~[an ESL or ESL or Bilingual~~  
256 ~~endorsement consistent with the educator's assignment.]~~

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

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

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

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

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

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

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

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

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

273 **KEY: alternative language services**

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

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

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