

TO: Roger Breed, Ed.D.
Commissioner of Education

FROM: Mary Ann Losh, Administrator, Equity & Instructional Strategies
Nancy Rowch, Director, Title III

SUBJECT: Hearing Draft of Rule 15

PROPOSED BOARD ACTION

Approve the proposed Rule 15 – (92 NAC 15), Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools.

BACKGROUND INFORMATION

At the February State Board of Education meeting, the Commissioner announced the NDE Service Projects for 2011. One of these projects was the development of a rule to provide consistency of services for Limited English Proficient (LEP) students. The rule development process has included input from external stakeholders. The external stakeholder committee met in April and May. Participants represented Superintendents, Principals, Curriculum Coordinators, and teachers from both general and LEP education perspectives. The participants were selected to represent both large and small schools, Educational Service Units and all State Board of Education regions from across the state. An internal NDE committee has met giving further suggestions. Updates were presented at the March, May, July and September State Board meetings. The input and discussions have assisted in the rule development process. A presentation and discussion of the proposed Rule was held at Administrators Days. Those in attendance indicated the proposed rule would assist with LEP program services. At the October State Board of Education meeting, the Hearing Draft of Rule 15 was approved along with approval to set a hearing date and time, and appoint a hearing officer. On November 18 the Hearing for the proposed Rule 15 was conducted.

Estimated Cost

Costs associated with rule development were estimated at \$9,000.

Supporting Documentation Included: Summary of Rulemaking Hearing on Proposed 92 NAC 15, Hearing Draft of proposed Rule 15, and Comments with NDE Staff Response

For additional information on this item: Call Mary Ann Losh, Administrator, Equity & Instructional Strategies, (402) 471-4357, e-mail maryann.losh@nebraska.gov or Nancy Rowch, (402) 471-2477, e-mail nancy.rowch@nebraska.gov



Roger D. Breed, Ed.D., Commissioner
Scott Swisher, Ed.D., Deputy Commissioner

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TO: State Board of Education

FROM: Scott Summers, Legal Counsel III – Commissioner’s Appointed Staff Person to Conduct a Rule Hearing on Title 92, Nebraska Administrative Code, Chapter 15, *Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools*

DATE: November 21, 2011

RE: Summary of Rulemaking Hearing on Proposed 92 NAC 15

On October 11, 2011, the Commissioner approved a hearing draft and set a hearing date and location as well as designated a staff person to conduct a hearing on the adoption of Title 92, Nebraska Administrative Code, Chapter 15. By a memorandum dated October 15, 2011, the Commissioner appointed me to conduct a hearing on this Rule on November 18, 2011, commencing at 10:00 a.m. After the proper legal notice was published, this hearing was held at the Nebraska State Office Building, Nebraska Department of Education, State Board Meeting Room, 301 Centennial Mall South, Sixth Floor, Lincoln, Nebraska. Pursuant to State Board of Education Policy B9, what follows is a written summary of the hearing testimony.

An audio recording of the hearing is available if any members of the Board wish to hear the recording.

SUMMARY OF TESTIMONY ON THE PROPOSED 92 NAC 15
Regulations and Procedures for the Education of Students with Limited English
Proficiency in Public Schools

Scott Summers, staff attorney and the hearing official, called this hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, outlined the procedures for the hearing and introduced **Dr. Mary Ann Losh, Administrator**, Equity & Instructional Strategies, Nebraska Department of Education.

Mr. Summers indicated that the following written testimony, (attached), was received before the hearing and will be made a part of the hearing record:

1. A letter from **Jamie Garner, Staff Developer, ESU 15, Trenton, NE.**
2. A letter from **Rosemary Cervantes, ESU Coordinator, Kearney, NE.**
3. A letter from **JuLee Kallenbach, ELL teacher, DC West Public Schools.**
4. A letter from **Jay Sears, Program Director Instructional Advocacy, Nebraska State Education Association.**

Dr. Losh introduced and explained the proposed Title 92, Nebraska Administrative Code, Chapter 15. Dr. Losh testified that the proposed Rule 15 was created to ensure that all LEP students in Nebraska public schools in grades K-12 have access to a quality language instruction educational program and to provide consistency among those programs. A copy of Dr. Losh’s testimony is attached.

Mark Feldhausen, Ph.D., Associate Superintendent for Educational Services, Millard Public Schools, testified in regard to six areas of concern to Millard Public Schools:

1. Sec. 003.03 (home language survey and identification of a student as LEP);
2. Sec. 003.05 (obtaining documentation from a student's previous district);
3. Sec. 005.02 (professional development requirements);
4. Sec. 007 (exit requirements);
5. Sec. 008 (LEP program review); and
6. Alignment of Rule 15 with state statutes sections 79-1007.08 and 79-1014.

A copy of Dr. Feldhausen's testimony is attached.

Susan Mayberger, Coordinator for Migrant, Refugee and ESL Programs, Omaha Public Schools. Ms. Mayberger testified that OPS had 6,902 ELL students as of the fall of 2011. Her testimony was focused on three areas of concern:

1. Sec. 003.02 - Requiring that *all* students shall be assessed for listening, speaking, reading and writing. It would be difficult to test a Kindergarten student with reading and writing. OPS's assessment does not include reading and writing at the Kindergarten level. OPS deems a student LEP if they cannot speak or understand English. They should not have to be assessed in that, and it would not provide additional information.
2. Sec. 003.05 - Providing that students coming from other Nebraska schools as well as from another state are not subject to new testing if identified as LEP in previous school and that they will continue to be identified as LEP. Ms. Mayberger feels that if a student does indicate a language other than English, but the student's transcripts indicate that the student was performing successfully in the mainstream curriculum or that data shows they are proficient in reading, they should not have to be subject to a language assessment to be exited. OPS feels in such cases it would have evidence that the student is a competent English speaker/reader.
3. Sec. 007 - Exit Criteria and use of state English language proficiency assessment (grades 3-12). Ms. Mayberger stated that this does not serve the students well in that not all students can demonstrate their proficiency on the basis of this test.

Deila Steiner, Homeless Liaison Director, Lincoln Public Schools. Ms. Steiner complimented the NDE in starting the process of getting a rule written for LEP. It has been long overdue and thanked the NDE for giving her the opportunity to participate in the hearing and review. On the basis that Section 001.03 of the Rule is the foundation for these regulations, Ms. Steiner does have some concerns:

1. Sec. 002.02B3 - Is redundant and should be removed. Why is there a need to separate migratory students?
2. Sec. 003.04 - Needs further clarification. How should the school notify the parent? Must it be in writing? Must it be in a language the parent understands? Do schools also assess the student will be exiting the LEP program?

3. Sec. 003.05 - Agrees with the concerns testified to by Dr. Feldhausen of Millard that a prompt request for records from the new district to the former district does not mean the new district will receive them within 30 days. Additionally, she questioned (a) how is the new district to know if the previous district identified a student as LEP? (b) How do different levels of LEP equate across the state? One school district uses A, B, C – how does that compare to another school district’s use of 1, 2, 3? NDE should do a study.
4. Sec. 005.01 - She suggests that 005.01B be deleted and only include 005.01A. 005.01B does not provide a high enough standard nor is it clear.
5. Sec. 005.02B - Same concern as expressed by Dr. Feldhausen’s testimony on “professional development”. There is “huge fiscal impact.” Also, what does it mean to “participate”? How is this to be documented? What is the content to consist of? Recommends this section either be clarified or eliminated.

Bethany Brunsmen, Director of Evaluation and Assessment, Lincoln Public Schools. Ms. Brunsmen testified about her concerns with the LEP Exit Criteria (Sec. 007). The NeSA reading assessment was not designed for this purpose. The NeSA reading assessment is not consistent with the intent of Sec. 001.03, it does not measure if an LEP student is proficient in “listening, speaking, reading and writing.” That test is under-inclusive and some LEP students may lose out on LEP services as a result.

Ms. Brunsmen collected data from her district and gave a breakdown of LPS Students grades 3-8 and 11 who took both NeSA Reading and the English Language Development Assessment, (ELDA) (see attached). This shows some agreement or correlation, but not a complete or sufficient amount. 2/3 of students either met both or did not meet both standards. 1/3 met one, but not the other. Of those, a larger group met proficiency on NeSA, but not on ELDA. The correlation between NeSA Reading (Met/Not Met) and ELDA Composite Levels= .37. That is too low of a correlation to be using the NeSA reading for this purpose. We should see a correlation of .7 to .8 for that to be a valid assessment here. NeSA does not measure all the things that are an important part of LEP exit criteria. State needs to work on a rubric or alternate plan.

Valorie Foy, Director of Instruction, Crete Public Schools. Ms. Foy testified that 21% of Crete Public School students are ELL. She too feels that the exit criteria are too limiting in allowing only having a single passing score on the NeSA reading test. The NeSA test is given in one day and that is too short of a time period to picture what student’s ability is and is not. NeSA reading does not address speaking or writing. Further criteria are needed to test those skills. Crete data shows 10 of 28 students passed the NeSA reading assessment, but not ELDA. Moreover, Crete has followed ELL students for a two year period and that showed that 6 of 27 passed the NeSA reading in the first year, but not the second year. These students would have “exited out” of LEP under this Rule, but then would be put back in. That would be disruptive to their education.

No other oral or written testimony was received.

Nebraska Department of Education Comments

At the Hearing on Proposed Rule 15

November 18, 2011

My name is Mary Ann Losh, Administrator of the Equity and Instructional Strategies Team.

The proposed Rule 15 was developed in response to the Commissioner, Dr. Roger Breed, setting four Service Priorities for the 2011 year. One of the priorities was the development of a Rule for Limited English Proficient (LEP) educational services. The proposed rule was created to ensure that all LEP students in Nebraska public schools in grades K-12 have access to a quality language instruction educational program and to provide consistency among these programs. In developing the proposed Rule 15, NDE staff convened both internal and external committees to provide guidance and feedback. The external committee was comprised of educators representing: School Districts and Educational Service Units from all of the State Board of Education regions, including both large and small districts. The purpose of the proposed Rule 15 is to enable each limited English proficient student to become English proficient in listening, speaking, reading and writing.

The proposed Rule 15 consists of the following major sections:

- Definitions
- Identification of Students with Limited English Proficiency
- Language Instruction Educational Programs
- Staffing
- Assessment and Accommodations for LEP Students
- Exit Requirements
- LEP Program Review

Compliance with the proposed Rule 15 is a condition for school accreditation.

Although most school districts in Nebraska are already implementing many of the requirements in the proposed Rule 15, program consistency between districts per the major sections described above is a goal of the proposed rule. From recent discussions one area of impact on school districts may be the student exit requirements. In order to provide the consistency desired, the exit requirements need to include assessments that are common across all districts; which resulted in the inclusion of the state language proficiency assessment and the state reading content assessment.

For clarification, the exit requirements in the proposed rule for grades K-2 require districts exit students who score fluent on the state language proficiency assessment and teacher

recommendation. This was in response to comments that students in that grade range do not take the state content assessment for reading and another factor should be included.

Again, for clarification the exit requirements in the proposed rule for grades 3-12, require that districts exit students in the LEP program by either scoring as fluent on the state language proficiency assessment OR by meeting or exceeding the standard for the state reading content assessment. The external committee discussed this at length and originally had included teacher recommendation in the exit criteria; however, this was removed after further consideration.

Districts are required to monitor former ELL students for two years after they exit the program. During this time, districts should be closely examining the performance of these students. If students are struggling, it is important that district personnel discuss the students' educational needs to determine if they need additional ELL services or other types of assistance to help them succeed.

Although the goal is that all students in Nebraska schools can meet or exceed the standards on the reading assessment, currently this is not the case. If LEP students are required to achieve that goal prior to exiting the language instruction educational program, they may be held to a higher expectation than non-LEP students.

NDE staff will be working with school personnel across the state and the North Central Comprehensive Center to develop a technical assistance document to support district implementation after the Rule approval process is completed. Nebraska Department of Education (NDE) staff will continue to monitor not only the implementation of the rule, but also student performance on language proficiency and content assessments to ensure that the entry and exit requirements serve the needs of the Limited English Proficient students across the state.

Thank you for your time and interest on this important topic. In addition, thank you to the stakeholders who participated in the external committee meetings. It was with their input and hard work that the proposed Rule 15 has moved forward.

November 11, 2011

Roger D. Breed Ed.D., Commissioner of Education
and Nebraska State Board of Education
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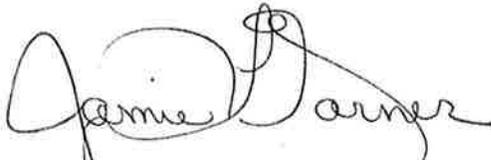
RE: Rule 15

I am writing to express my support of Rule 15 that would establish regulations for schools concerning their English Language Learner Programs. Such regulations would give guidance to school districts as well as providing program consistency for schools across the state of Nebraska.

I believe that the State of Nebraska should do everything possible to improve education programs for those students learning the English language. By allowing said regulations to take effect, the State Board of Education will take a stand on the importance of these programs and send a message to school districts that action is needed to provide such programs for these students.

I understand that the quality of ELL programs has a direct correlation to the academic progress an ELL student makes. As an educator, my hope is that all students achieve to their highest potential and this includes Nebraska's English Language Learners.

I urge you to adopt Rule 15.

A handwritten signature in black ink that reads "Jamie Garner". The signature is written in a cursive style with a large, looped initial "J".

Educationally Yours,
Jamie Garner
37553 Rd 718
Culbertson, NE 69024
308-278-2500

November 11, 2011

Letter of support

Title 92, Chapter 15 – Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools

In working with small, rural districts in central Nebraska who have students who are limited English proficient I have seen broad variations from district to district in programs to support the English language development and academic achievement of these students. Some districts offer little or no support to the students and are unfamiliar with federal laws regarding the education of limited English proficient students. For example, many districts do not have procedures in place to identify, place, provide instruction to the students, or to follow their students' yearly progress in attaining English. Other districts have well designed and very successful programs in place to provide educational opportunities to limited English proficient students.

The regulation proposed in Chapter 15 is very clear in outlining exactly what all districts need to do to be in compliance with federal regulations, and to provide a more equitable and level playing field for all English language learners in Nebraska no matter which district they attend.

I strongly support the passage of Chapter 15. Thank you for your consideration of my views on this legislation that is so important to the success of all students in Nebraska.

Rosemary Cervantes
ESL Coordinator
ESU 10
Kearney, Nebraska

November 8 2011

Dear Dr. Breed,

I am the ELL teacher at DC West Public Schools. I attended a Title III, Rule 15 informational meeting at our ESU# 3 on November 3 where Terri Schuster (NDE) provided us with information about the proposals that will be addressed at a hearing on Nov. 18. A separate testimonial will be submitted for the hearing but I did want to share some of my personal thoughts with you.

I totally agree that there needs to be consistency among our ELL programs throughout the state. However, I have a concern with the proposed exit criteria that is being proposed.

The way I understand it, an ELL student is going to be exited using only one tool—either the ELDA OR the NeSA reading score. So, a student can be proficient on the ELDA but not even meet NeSA reading standards. I feel that Rule 15 in regards to exit criteria needs to read:

*3-12 students who receive a composite score of proficient on the ELP assessment (ELDA) **AND** (instead of OR) meet or exceed standards on NeSA-reading can exit. I also feel they should have to meet Language Arts standards as well.

Proficient on the ELDA is a 4/5 level. I have some students who are at level 4 on the ELDA but are not ready to be exited from my program. . Research and studies show that it can take many years for an ELL to become truly fluent in a language and to be successful in core class curriculum. BICS (conversational language that is attained in 6 months- 2 years) and CALP (Academic language used in classroom instruction and textbooks which is attained in 5-7 **MORE** years). For example, our Biology text here at DC West contains around 2100 biology terms in the index. I don't feel the ELDA alone assesses our ELL students on their knowledge and understanding of all that is involved in CALP and core content curriculum. I feel that the MAPS test that the students here at DC West take in the fall and spring is a better tool of measuring skills and understanding of the language in these core classes and the reason I include them in my exit criteria.

Terri reported that ELL students scored the lowest of any of the groups (even below SPED) on the NeSA reading. It doesn't make sense then to exit them before they do meet standards.

Most of these students have little or no resource support at home, as the only language spoken at home is their native language. They depend on us (ELL teachers) to help them as they struggle with all the language they need to attain to become truly fluent. Exiting them before they are ready would be devastating.

Thanks for listening and thanks for everything you do for the children in our Nebraska schools. I have also attached information on BICS and CALP. I really think this information needs to be looked at carefully as decisions are being made and criteria set up for exiting our ELL students.

Sincerely,

JuLee Kallenbach
DC West ELL



November 15, 2011

Mary Ann Losh, Administrator
Equity and Instructional Strategies
Nebraska Department of Education
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987

Reference: Rule 15

Dear Ms. Losh:

The Nebraska State Education Association provides this letter as its official testimony in support of the adoption of Title 92, Nebraska Administrative Code, Chapter 15 Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools.

The adoption of Rule 15 will provide an equitable education for every Limited English Proficient student in Nebraska no matter where they are enrolled. The NSEA believes Rule 15 will help school districts provide the education every student in Nebraska deserves and has a legal right to obtain. Adoption of Rule 15 "levels the playing field" for everyone. Rule 15 sets the entrance and exit requirements of Limited English Proficient students into and out of Language Instruction Educational Programs that are important to the development of LEP students' acquisition of the English language and proficiency of the academic content standards in Nebraska.

The 28,000 educators of the Nebraska State Education Association urge the State Board to adopt Rule 15.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jay Sears', is written over the word 'Sincerely'.

Jay Sears
Program Director Instructional Advocacy
Nebraska State Education Association



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November 18, 2011

State Board of Education
Nebraska Department of Education
301 Centennial Mall South
P.O. Box 94987
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Concerns (Testimony) Regarding Title 92, Chapter 15, Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools

To Whom It May Concern:

The Millard Public Schools enrolls 450 PK-12 Limited English Proficient (LEP) students out of its total enrollment of 23,050 students. Of the 450 LEP students, 384 are in Kindergarten -12th grades with another 66 in preschool. These students represent 44 different languages with Spanish accounting for 46% and Telugu, Vietnamese another 6%. The District's English Language Learners program addresses these students' needs in a comprehensive, systematic manner that resulted in 68 students meeting program requirements and being redesignated as English fluent last year. In addition, during the 2010-2011 school year the District expended \$1,182,283 for LEP program purposes while being allocated \$727,683 through the state aid formula. This is in keeping with the Limited English Proficiency (LEP) Plan required under Nebraska Revised Statute 79-1014 and the state aid LEP allowance in 79-1007.08.

Like many other Districts in Nebraska, the Millard Public Schools has been meeting the needs of LEP students without a specific NDE Rule. Having reviewed the proposed Rule, the District respectfully submits the following concerns regarding certain stipulations found in the Hearing Draft of Rule 15 "Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools." The concerns are as follows:

1. 003.03 *If the home language survey indicates that the student has a home language other than English and the student has a composite score or level on the English language proficiency assessment indicating that the student is not proficient in English, the student shall be determined by the school district to have met the definition of limited English proficient in Subsection 002.02 of this Chapter.*

Since the two measures (home language survey and English proficiency test) are linked with the word AND it mandates that both and only these two criteria are required to indicate that the student **shall** be LEP. Furthermore, the word **shall** mandates that there is no opportunity to decide otherwise. Sometimes additional evidence, such as background information, verified disabilities, and other assessment data provide sound justification for NOT identifying a student as LEP even though the home language survey may indicate another language spoken at home and an English proficiency test may not return a score of proficient. As written, this rule looks at a one-test occasion decision and includes a home language survey, which is important to have, but probably should serve as extra information rather than a decision making tool.

If a student "is determined by the school district to have met the definition of limited English proficient..." what are the implications? Do parents/guardians still have the option to not receive services? Parental rights and the waiver of services are not specified in the proposed Rule.

Forte, E., Faulkner-Bond, M. (2010) *The Administrator's Guide to Federal Programs for English Learners*, Thompson Publishing Group Inc., notes the following best practices and recommendations regarding identification and placement of English language learners.

- LEAs need to consider each student individually and make appropriate choices based on that student's needs and skills, as well as any external factors such as parental preference (p. 87)
- . . . based on a student's actual linguistic needs . . . required to serve *all* ELs and *only* (genuine) ELs (p. 88)
- Identification as an EL is a high-stakes decision for individual students and should not be based on an untested assumption that EL classification based on a screener test is a valid process (p. 96)
- Agencies should strongly consider using additional information beyond the student's screener scores to inform this decision (p. 96)
- If the child is transferring from another district and/or state . . . the new school *may* [emphasis added] use the student's previous LEP status and placement to inform the decision in the new school (p. 100)

Given the concerns and best practices to the contrary, this section should be reviewed and significantly adjusted.

2. 003.05 *If a student has been identified as LEP in his or her previous Nebraska school district and has not met the exit requirements in Section 007 of this Chapter, the enrolling school district shall continue to identify the student as LEP. The school district shall not be required to administer a home language survey or an English language proficiency assessment upon enrollment. The school district shall obtain documentation of the previous LEP determination within thirty (30) school days of the student's enrollment.*

In regard to students enrolling from other NE districts, we are concerned about the statement "the enrolling school district shall continue to identify the student as LEP" without doing our own evaluation. Conversely, the statement "shall not be required to administer a home language survey or an English language proficiency assessment upon enrollment" implies the district may administer these if it chooses.

It is not appropriate to say the receiving district must obtain documents from the previous district within a certain number of days. Requesting it from the previous district within a certain number of days is appropriate. If the receiving district's efforts do not produce documentation from the previous school, the district's professional judgment to assess independently should be deemed appropriate.

3. 005.02 *Each school district shall ensure that teachers in the core curriculum classrooms who have responsibilities for the English language instruction of LEP students:*

005.02A *Hold a valid Nebraska teaching certificate; and*

005.02B *Participate annually in professional development to learn skills for meeting the language and academic needs of the LEP students they teach.*

The professional development requirements, especially for core curriculum teachers who have LEP students in their classes, are vast and vague. Is the intent of this statement to further define the ten hour yearly requirement for teachers found in Rule 10, Section 007.07A or is the intent to increase the requirement for said core curriculum teachers thus subjecting the districts/schools to additional costs?

Should this be an added requirement and tied to accreditation as referenced in "001.04 Implementation of this Chapter. This Chapter will be used initially during the 2012-2013 school year in conjunction with 92 NAC 10 (NDE Rule 10) to determine future accreditation status for school districts," then the potential impact on budget and time are of significant concern.

The Fiscal Impact statement for the proposed Rule states that there is "*No Fiscal Impact*" on the political subdivision and for the "*Political Subdivision: The proposed rule outlines procedures that accredited public schools are already performing to appropriately identify and place students in a language instruction educational program and thus should result in no or minimal fiscal impact.*"

The Millard Public Schools respectfully disagrees with this analysis. A conservative estimate of the potential additional costs for said staff development is \$33,231 for the

LEP program in the Millard Public Schools. At a time of diminishing resources this can hardly be viewed as having “no fiscal impact” on the political subdivision.

4. 007 Exit Requirements

007.01 *Each school district shall require the following in order for a student to exit the language instruction educational program:*

007.01A *The student in grades K-2 receives a composite score of proficient on the annual state English language proficiency assessment and his or her teacher(s) recommend that the student exit the language instruction educational program; or*

007.01B *The student in grades 3-12 receives a composite score of proficient on the annual state English language proficiency assessment; or*

007.01C *The student achieves a proficiency level of “meets the standards” or “exceeds the standards” on the Nebraska State Accountability Reading test; or*

Herein, there is a concern that districts will have to wait for ELDA or NeSA-R scores to exit students from ELL. It is inappropriate to keep children in the ELL program longer than they need it. Under this system, if a student appears to be ready to exit ELL in October, he will have to wait until the following summer to be exited.

Additionally, if a student receives a proficient score on ELDA, the student MUST be exited from the language program because the student no longer meets the second of the two required criteria per section 003.03 of the Rule. Data analysis techniques espouse the importance of looking at the results of more than one analysis in order to make fully informed and valid decisions.

These requirements are too limiting to be what is best for individual LEP student needs.

Again, Forte, E., Faulkner-Bond, M. (2010) note the following best practices and recommendations regarding exiting ELL students from a program.

- Criteria for exiting services is usually determined by the SEA [because it is related to AMAO 2] (p. 105)
- States should know that exit criteria do not have to be limited to setting a cut-score and saying that any student who achieves this score is no longer an EL (p. 105)
- students need not exit abruptly -- states may employ transitional tactics that ease students into mainstream classes before they officially exit from services completely . . . the student should remain identified as an EL through this process (p. 105-106)
- Some states may require ELs to score proficiently more than once on the ELPA [ELDA] before determining that the student is ready to exit services. Some states may also choose to use other education-related criteria to make the final call, such

as test scores, teacher recommendations, or overall performance from content area classes (p. 106)

- Exiting a student from language support services is a critical decision for that student's continued academic success and should be made very carefully using as much accurate information about that student's abilities as possible. Although SEAs should strive to keep students in language instruction programs no longer than necessary, the potential harm of exiting a student prematurely is far greater -- both for the student and the school. Students who are exited prematurely may find themselves re-identified as ELs due to teacher recommendations. Ultimately, this back and forth can be embarrassing for students and disruptive for their coursework. (p. 106)
- Exit criteria should be set as flexibly as possible to account for the fact that students may be ready to exit (or not) based on various factors. And . . . SEA administrators may wish to err on the side of *over-inclusion* (in this case, keeping a student in language support for a year too long) rather than premature exiting -- as the cost to students is likely higher in the latter case. (p. 107)

5. 008 LEP Program Review

008.01 *The school district shall conduct an annual review of the school district's program(s) for LEP students and issue an annual report. This review shall be conducted by a designated team of staff. The review and report shall include the following:*

008.01A *An examination of the program implementation practices, including the process for identifying LEP students, the implementation of the language instruction educational programs, staffing, assessment and accommodations and the exit requirements.*

008.01B *An analysis of LEP student data including performance on the annual English language proficiency assessment and performance on state content assessments. Other assessments and relevant data may be included.*

008.02 *The school district shall monitor the academic progress of former LEP students for at least two (2) years to compare their academic performance to non-LEP students.*

008.03 *The school district shall make modifications to its language instruction educational program based on the review of the program implementation practices and data analysis when necessary in the judgment of the district to assist students in overcoming any language barriers in order to participate meaningfully in the core curriculum.*

008.04 *The school district shall ensure that the review team submits the written report of its annual review to the district's Superintendent. The report shall be kept on file and available to the public, with personally identifiable student information redacted, upon request for so long as the report is retained pursuant to the district's records retention schedule.*

Program evaluations should be and are conducted periodically for every instructional program either through a curriculum cycle or other mechanism identified by the local board of education. Such evaluations, including an analysis of student academic performance and program effectiveness, should be left to the local education agency. The prescriptive nature of this section surpasses anything currently in Rule 10. In addition, this requirement is a duplication of efforts since it is already a statutory requirement as defined by Nebraska Revised Statute 79-1014(2)(d).

6. Alignment with Nebraska Revised Statutes 79-1014, Limited English Proficiency (LEP) Plan and 79-1007.08 the State Aid LEP Allowance.

The Proposed Rule 15 neither acknowledges these statutes nor does it provide any guidance in how the Rule addresses the requirements of the statutes. This lack of alignment and recognition results in duplication (see #5 above) and potential conflict. This is especially troublesome for those school districts that are members of a learning community wherein the LEP plan must be approved by the local subcouncil and the learning community coordinating council before being forwarded to the Nebraska Department of Education.

Although unlikely, there is always the possibility that the plan components requested by a subcouncil of a learning community or the learning community's governing board might be contrary to the requirements of the proposed Rule. Should such a conflict occur, Nebraska Revised Statute 79-1014(3) states that the state board of education shall establish a procedure for appeal of such decisions. One of the results of an alignment between the Proposed Rule 15 and state statute should be the creation and or enumeration of said procedures.

In closing, the Millard Public Schools supports the creation of a Nebraska Department of Education Rule that provides guidance for Limited English Programs throughout the state. In so doing, however, it is hoped that district or site decisions that are based on multiple sources of data and executed with the best interest of the individual student in mind, will be the resultant outcome of a new, proposed Rule. Any Rule that hamstring programmatic decisions, ignores individual needs by treating all students the same, that diminishes local control, and overlooks existing statutory requirements cannot be viewed as a step forward.

Respectfully,



Mark W. Feldhausen, Ph.D.
Associate Superintendent for Educational Services
Millard Public Schools

FROM BETHANY BRUNSMEN, LPS

11/18/11

RULE 15 HEARING

**NeSA Reading (NeSA R) and ELDA Comparisons for Proposed Rule 15 Changes
based on Lincoln Public Schools Data**

Correlation between NeSA Reading (Met/Not Met) and ELDA Composite Levels: .37

Breakdown of LPS Students Grades 3-8 and 11 who took both NeSA R and ELDA:

Group	Number of Students	Percent of Students
Met on both ELDA and NeSA R	264	27%
Met ELDA, but Not NeSA R	114	12%
Met NeSA R, but not ELDA	217	22%
Not Met on both ELDA and NeSA R	390	40%

Of the students who met on the NeSA R, only 55% also met on the ELDA, which means that almost half of the students who met NeSA R (45%) got an ELDA Composite score of 3 or less.

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 15

**REGULATIONS AND PROCEDURES FOR THE EDUCATION OF
STUDENTS WITH LIMITED ENGLISH PROFICIENCY IN PUBLIC
SCHOOLS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 15**

**HEARING DRAFT
OCTOBER 11, 2011**

**State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509**



TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
 CHAPTER 15 - REGULATIONS AND PROCEDURES FOR THE EDUCATION OF STUDENTS WITH
 LIMITED ENGLISH PROFICIENCY IN PUBLIC SCHOOLS

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Appendix A
 Sample Home Language Survey

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
 CHAPTER 15 - REGULATIONS AND PROCEDURES FOR THE EDUCATION OF STUDENTS WITH
 LIMITED ENGLISH PROFICIENCY PROGRAMS FOR NEBRASKA SCHOOLS

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<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
General Provisions	79-305, 79-318, 79-703	001
Definitions	79-305, 79-318, 79-703	002
Identification of Students with Limited English Proficiency (LEP)	79-305, 79-318, 79-703	003
Language Instruction Educational Programs	79-305, 79-318, 79-703	004
Staffing	79-305, 79-318, 79-703	005
Assessment and Accommodations for LEP Students	79-305, 79-318, 79-703	006
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Compliance as a Condition for School Accreditation	79-305, 79-318, 79-703	009

Appendix A
 Sample Home Language Survey

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 15 - REGULATIONS AND PROCEDURES FOR THE EDUCATION OF STUDENTS WITH LIMITED ENGLISH PROFICIENCY IN PUBLIC SCHOOLS

001 General Provisions.

001.01 Statutory Authority. This Chapter is adopted pursuant to Sections 79-305, 79-318 and 79-703 of the Revised Statutes of Nebraska (R.R.S.).

001.02 Scope and Application of this Chapter. This Chapter contains provisions related to the education of students with limited English proficiency in public schools in grades kindergarten through twelve. This Chapter applies to all accredited public school districts in Nebraska. All of the statements herein, with the exception of the Quality Indicators, are requirements of school districts. Quality Indicators may be used by school districts to help in designing local programs for students who are limited English proficient.

001.03 Purpose. The goal of this Chapter is to enable each limited English proficient student to become English proficient in listening, speaking, reading, and writing.

001.04 Implementation of this Chapter. This Chapter will be used initially during the 2012-2013 school year in conjunction with 92 NAC 10 (NDE Rule 10) to determine future accreditation status for school districts.

001.05 Related Regulations. The requirements for the accreditation of public school districts are contained in 92 NAC 10. The requirements for teacher certification are contained in 92 NAC 21. The requirements for endorsements on teaching certificates are contained in 92 NAC 24.

002 Definitions as Used in this Chapter.

002.01 Language instruction educational program means an instructional program designed to assist a limited English proficient student in developing and attaining English proficiency while meeting state academic standards. It may make use of both English and a student's native language to enable the student to develop and attain English proficiency, and may include but is not limited to the participation of English proficient students if the course is designed to enable all participating students to become proficient in English and a second language.

002.02 Limited English proficient (LEP): The term 'limited English proficient', when used in this Chapter with respect to a student, means a student:

002.02A Who is enrolled or preparing to enroll in an elementary school or secondary school;

002.02B Who falls into at least one of the following categories:

002.02B1 Who was not born in the United States or whose native language is a language other than English;

002.02B2 Who is a Native American or Alaska Native, or a native resident of the outlying areas and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

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002.02B3 Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

002.02C Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual at least one of the following:

002.02C1 The ability to meet the State's proficient level of achievement on State assessments;

002.02C2 The ability to successfully achieve in classrooms where the language of instruction is English; or

002.02C3 The opportunity to participate fully in society.

002.03 Native language when used with reference to a student of limited English proficiency, means

002.03A the language normally used by such student; or

002.03B the language normally used by the parents of the student.

003 Identification of Students with limited English proficiency (LEP).

Quality Indicator: A home language survey and a valid and reliable English language proficiency assessment are administered by school district personnel. As a result, districts can appropriately identify and place students in a language instruction educational program so that all students have an equal opportunity to achieve academically, regardless of the student's native language. Timely parental notification allows parents to make informed decision regarding student program placement.

003.01 Each school district shall administer a home language survey to be completed by the student's parent, guardian, or other person enrolling the student as part of the admission process for all kindergarten students and for all other students new to the district. A student who is emancipated or who has reached the age of majority and who is enrolling himself or herself may complete the survey instead. A sample survey is contained in Appendix A of this Chapter. The survey shall ask the following questions:

003.01A What language did the student first learn to speak?

003.01B What language is spoken most often by the student?

003.01C What language does the student most frequently use at home?

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003.02 If an answer to any one of the home language survey questions in Subsections 003.01A to 003.01C indicates that a student speaks a language other than English, the school district shall administer an English language proficiency assessment to the student in order to determine if the student may be limited English proficient (LEP). The assessment shall assess listening, speaking, reading, and writing. The district shall determine the assessment to be valid and reliable in measuring English language acquisition. The English language proficiency assessment shall yield composite scores or levels that indicate whether the student is proficient or not proficient in English, as defined by the assessment instrument.

003.03 If the home language survey indicates that the student has a home language other than English and the student has a composite score or level on the English language proficiency assessment indicating that the student is not proficient in English, the student shall be determined by the school district to have met the definition of limited English proficient in Subsection 002.02 of this Chapter.

003.04 The school district shall notify the parent, or guardian, or other person enrolling the student that the student qualifies for services as a student with limited English proficiency.

003.05 If a student has been identified as LEP in his or her previous Nebraska school district and has not met the exit requirements in Section 007 of this Chapter, the enrolling school district shall continue to identify the student as LEP. The school district shall not be required to administer a home language survey or an English language proficiency assessment upon enrollment. The school district shall obtain documentation of the previous LEP determination within thirty (30) school days of the student's enrollment.

004 Language Instruction Educational Programs.

Quality Indicator: Language instruction educational programs assist all LEP students in acquiring the English language to successfully participate in classrooms where the language of instruction is English. The language instruction educational program is research-informed and values the cultural and linguistic diversity of the student.

004.01 For each student who is determined to be limited English proficient pursuant to Subsection 003.03 of this Chapter or who is otherwise determined by the school district to meet the definition of LEP in Subsection 002.02 of this Chapter, the district shall implement a language instruction educational program that meets the following requirements:

004.01A Is designed to provide a systematic approach to teaching the English language to LEP students;

004.01B Is a research-based approach the effectiveness of which has been demonstrated and which is based on educational theories that are recognized as sound by experts in the field; and

004.01C Is designed for the purpose, and has the effect, of developing the English proficiency of LEP students so that students can meet academic standards using the English language.

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005 Staffing.

Quality Indicator: A comprehensive language instruction educational program assists students in developing literacy and proficiency in the English language. Such programs are directed and taught by professional staff with an appropriate endorsement in English as a Second Language. Ongoing professional development is designed to assist teachers in learning strategies to meet the language and content needs of LEP students.

005.01 Each school district shall ensure that all teachers of language instruction educational programs possess valid Nebraska teaching certificates. In addition, the school district shall ensure that each teacher:

005.01A Shall hold an endorsement or a provisional endorsement in English as a Second Language; or

005.01B Shall participate annually in professional development in the language instruction educational program model implemented by the school district for the students he or she teaches.

005.02 Each school district shall ensure that teachers in the core curriculum classrooms who have responsibilities for the English language instruction of LEP students:

005.02A Hold a valid Nebraska teaching certificate; and

005.02B Participate annually in professional development to learn skills for meeting the language and academic needs of the LEP students they teach.

005.03 Pursuant to Neb. Rev. Stat. §79-802(3), teacher aides may be assigned duties in connection with LEP students that are nonteaching in nature if the employing school district has assured itself that the aides have been specifically prepared for such duties, including the handling of emergency situations which might arise in the course of their work. A teacher aide shall not teach, as defined in Neb. Rev. Stat. §79-101(12).

006 Assessments and Accommodations for LEP Students.

Quality Indicator: All LEP students participate in the state language proficiency and content assessments so that each student has the opportunity to demonstrate mastery of learning. As a result, parents and school staff address the academic and language needs of the student. The district provides appropriate accommodations to ensure meaningful participation in the assessments.

006.01 Each school district shall ensure that all LEP students participate in the assessments required by Section 005 of 92 NAC 10. Each school district shall provide accommodations for LEP students participating in the assessments.

006.02 Each school district shall ensure that all LEP students participate in the annual state English language proficiency assessment.

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007 Exit Requirements.

Quality Indicator: District exit criteria are established to determine that the LEP student has attained English language proficiency in speaking, reading, writing, and understanding at a level sufficient to participate successfully in the classroom.

007.01 Each school district shall require the following in order for a student to exit the language instruction educational program:

007.01A The student in grades K-2 receives a composite score of proficient on the annual state English language proficiency assessment and his or her teacher(s) recommend that the student exit the language instruction educational program; or

007.01B The student in grades 3-12 receives a composite score of proficient on the annual state English language proficiency assessment; or

007.01C The student achieves a proficiency level of “meets the standards” or “exceeds the standards” on the Nebraska State Accountability Reading test; or

007.01D For LEP students with verified disabilities, if a school district committee of assessment and educational personnel determine that the educational needs of a student with verified disabilities are not affected by his or her degree of proficiency in the English language; the committee may recommend that the student exit the language instruction educational program. The committee shall be knowledgeable about the language and educational needs of the student, shall include at least one member of the student’s IEP team, and must maintain documentation that the student’s educational needs are not affected by his or her degree of proficiency in the English language.

008 LEP Program Review.

Quality Indicator: The LEP program review process focuses on improving student learning. The process includes an annual review by a designated school district team who provides input to the district superintendent in order to guide the planning, implementation, evaluation and modifications of the district’s language instruction educational program.

008.01 The school district shall conduct an annual review of the school district’s program(s) for LEP students and issue an annual report. This review shall be conducted by a designated team of staff. The review and report shall include the following:

008.01A An examination of the program implementation practices, including the process for identifying LEP students, the implementation of the language instruction educational programs, staffing, assessment and accommodations and the exit requirements.

008.01B An analysis of LEP student data including performance on the annual English language proficiency assessment and performance on state content assessments. Other assessments and relevant data may be included.

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008.02 The school district shall monitor the academic progress of former LEP students for at least two (2) years to compare their academic performance to non-LEP students.

008.03 The school district shall make modifications to its language instruction educational program based on the review of the program implementation practices and data analysis when necessary in the judgment of the district to assist students in overcoming any language barriers in order to participate meaningfully in the core curriculum.

008.04 The school district shall ensure that the review team submits the written report of its annual review to the district's Superintendent. The report shall be kept on file and available to the public, with personally identifiable student information redacted, upon request for so long as the report is retained pursuant to the district's records retention schedule.

009 Compliance as a Condition for School Accreditation.

009.01 Starting with the 2012-2013 school year, each school district shall comply with the provisions of this Chapter as a condition for accreditation under 92 NAC 10. Failure of a school district to comply with this Chapter shall be treated as if it were a violation of a provision of 92 NAC 10, and may subject the district to loss of accreditation as provided in that Chapter.

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Appendix A: Sample Home Language Survey

Student Name: _____ Birth Date: _____ Gender: __Male__ Female

Parent/Guardian Name: _____

Address: _____

Home Telephone: _____ Work Telephone: _____

School: _____ Grade: _____ Date: _____

What language did your child first learn to speak? _____

What language is spoken most often by your child? _____

What language does your child most frequently use at home? _____

Rule 15

Comments with NDE Staff Response from Public Hearing (11.18.11)

Support for the Hearing Draft:

- * Need for guidance to Nebraska school districts in providing services for limited English proficient (LEP) students.
- * Consistency for schools is beneficial.
- * Small, rural districts need the guidance to ensure that the LEP students are acquiring English in a systematic fashion and Rule 15 levels the playing field.
- * Rule 15 is long overdue in a statewide effort of services for LEP students.

Section 003 – Identification of Students with limited English proficiency

Comments: Can a district use additional factors in identifying students and not just the home language survey and language proficiency assessment? There is a need for further clarification in notifying parents.

NDE Staff Response

- The current entry criteria ensure that students are consistently identified as limited English proficient.
- **A technical assistance document could clarify how parents are notified and how to appropriately identify students who may be LEP.**

Section 005 – Staffing

Comments: Professional development requirements for the core curriculum teachers may be costly and time consuming. All teachers who staff a language instruction educational program should be endorsed in English as a Second Language (ESL).

NDE Staff Response

- The number of professional development hours/days was not specified in order to give districts discretion in integrating topics related to LEP students in their current professional development efforts.
- Districts already conduct professional development and this section is not intended to require additional hours. There is not an additional fiscal impact on districts.
- This section does NOT require professional development for all core curriculum teachers, ONLY for those who are responsible for delivering English language instruction.
- Small school districts with limited numbers of LEP students would have difficulty ensuring that the language instruction teachers are endorsed in ESL. In addition, the current ESL endorsement is supplemental and not a required endorsement.
- **A technical assistance document can further clarify/discuss professional development and endorsement requirements.**

Section 007 – Exit Requirements

Comments: There is a concern that districts would have to wait for test scores before the LEP student is exited from the program. NeSA-Reading may not be an appropriate measure for exiting students. A suggestion was made to continue to utilize the language proficiency assessment but add an additional assessment (such as a rubric).

NDE Staff Response

- Most districts already have a variety of language instruction services; students may be “transitioned” out of direct language instruction services as they are nearing English language proficiency but have not met the district’s exit criteria. Districts will continue to have the option of transitioning students in a similar fashion until test scores quantify that they are eligible for exiting.
- After exiting the language instruction educational program, school staff continues to examine student performance to ensure academic success. Additional supports can be provided.
- By utilizing the state language proficiency assessment and the state reading assessment, the rule provides consistency in exit criteria. For students moving between districts, staff will know the criteria used to identify and/or exit the student. Recent studies across the nation have examined the high correlation between language proficiency assessment and state reading assessments.
 - NDE has conducted preliminary studies to examine how students are performing on the state language proficiency assessment compared to NeSA-Reading. Students at the highest levels of the language assessment are also meeting the standard on NeSA-R.
- A rubric, as suggested, is not an objective measure and there are no dollars to develop an additional exit assessment as suggested.
- NDE has the ability to define “proficient” on the language proficiency assessment.
- **A technical assistance document can further discuss the exit criteria.**

Section 008 – LEP Program Review

Comments: Instead of an annual program evaluation, it should be only periodic and left to the discretion of the school district. This requirement surpasses Rule 10.

NDE Staff Response:

- As part of a district’s continuous improvement process, data is examined on an annual basis. The LEP program review should be included in the continuous improvement process. This is not a separate or an additional requirement. Rule 10 establishes a minimum standard for reviewing a district’s educational program.