

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

FROM: Mary Ann Losh, Administrator
Equity & Instructional Strategies

SUBJECT: Hearing Draft of Rule 15

PROPOSED BOARD ACTION

Grant the Commissioner authority to approve a Hearing Draft of Rule 15 – (92 NAC 15), Regulations and Procedures for the Education of Students with Limited English Proficiency in Public Schools and to set a hearing date and time and appoint a hearing official to conduct a hearing on behalf of the State Board.

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 perspectives. The participants were selected to represent both large and small schools from across the state. An internal NDE committee has met giving further suggestions. Updates were presented at the March, May and July 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 was consistent with current practices.

Estimated Cost

The amount of the contract is up to \$9,000

Supporting Documentation Included: None

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

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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001 General Provisions.

001.01 Statutory Authority. This Chapter is adopted pursuant to Sections 79-305 and 79-318 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 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.

001.04 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 be determined to be valid and reliable by the school district in measuring English language acquisition and shall assess listening, speaking, reading, and writing. 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 002.03 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 Section 003.03 of this Chapter or who is otherwise determined by the school district to meet the definition of LEP in Section 002.03 of this Chapter, the district shall implement at least one of the types of language instruction educational programs described in Subsections 004.01A and 004.01B below. (See Appendix B for specific examples of these types of programs). The language instruction educational program implemented for each student shall provide for English language development and participation of LEP students in the district's core curriculum.

004.01A English as a Second Language (ESL) Program.

004.01A1 An ESL program is designed to provide a systematic approach to teaching English for limited English proficient students; and

004.01A2 An ESL program is designed to help students develop proficiency in English and knowledge and skills to meet state academic standards.

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004.01B Bilingual Educational Program.

004.02B1 A bilingual educational program is designed to provide a systematic approach to teaching English with instructional support in the native language. It may also assist the student in gaining proficiency in both English and the native language; and

004.02B2 A bilingual program is designed to help students develop proficiency in English and knowledge and skills to meet state academic standards.

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 ESL 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

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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.

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/her degree of proficiency in the English Language, the committee may recommend that the student exit the language instruction educational program. The committee must be knowledgeable about the language and educational needs of the student, must include at least one member of the student’s IEP team, and must maintain documentation that the child’s educational needs are not affected by his/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.

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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.

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 complying 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? _____

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Appendix B: Examples of Language Instruction Educational Programs

English as a Second Language Programs (ESL):

Sheltered English Instruction: Programs designed to develop student proficiency in English while learning academic content in an all-English setting. Students from various linguistic and cultural backgrounds may be in the same class. Instruction is adapted to the students' English proficiency levels.

Structured English Immersion: Programs designed to develop proficiency in English and have only LEP students in the classroom. These programs often include those designed for LEP students who are newly arrived to the United States.

Pull-Out ESL: Programs designed for the LEP student to leave the general education classroom to spend part of the day receiving ESL instruction. These programs often focus on grammar, vocabulary, and communication skills and not on academic support. Typically, there is no support for the students' native languages.

Push-In ESL: Programs designed to serve the student in a general education classroom. The LEP students receive ESL instruction and an ESL teacher teams with the general education classroom teacher to provide clarification, translation if needed, and lessons that integrate ESL strategies.

Bilingual Education Programs:

Dual Language: This program is sometimes referred to as Two-way Immersion or Two-way Bilingual. The program is designed to provide instruction in both English and the native language. The dual language program is designed to help students develop literacy and proficiency in both English and the native language to provide the knowledge and skills to meet the state academic standards.

Early Exit Transitional: This program is designed to help children acquire English skills required to succeed in an English-only general education classroom. Some initial instruction is provided in the students' native language. This method phases out the use of instruction in the native language after two or three years in the program and the student is transitioned speaking only English in the classroom.