

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-19  
ENGLISH AS A SECOND LANGUAGE PROGRAMS**

**0520-01-19-.01 DEFINITIONS.**

- (1) As used in this chapter:
- (a) “Characteristics of Dyslexia” means reading challenges that are identified when a student is:
    - 1. Identified by the composite score created by the universal reading screener and/or the Early Warning System (in grades 9-12 only); and
    - 2. Demonstrates deficiencies in fifty percent (50%) or more of the grade appropriate subtests of skills which support the goal of reading proficiently as identified by the Department’s Minimum Universal Reading Screening Matrix.
  - (b) “Co-Teaching Instruction” means the collaborative planning, organization, delivery, and assessment of instruction by a general education teacher and a teacher who holds an ESL endorsement that integrates content and language standards using an approved Direct ESL Service model to ensure ELs at all language proficiency levels have the opportunity to productively engage in grade level curriculum and develop both content and language skills.
  - (c) “Direct ESL Services” means English as a Second Language (ESL) services designed for speakers of other languages and provided pursuant to an ILP by a teacher with an ESL endorsement to teach EL students.
  - (d) “English Learner” or “EL” means an NELB Student who qualifies for ESL services via a Department of Education-adopted English Language Proficiency screener.
  - (e) “Fluent English Proficient” (FEP) means an EL student who meets the proficiency requirements of the Department of Education-adopted English language proficiency screener upon initial enrollment or a student who initially qualified as an EL Student and has met the approved exit criteria for Direct or Indirect ESL Services.
  - (f) “Home Language Survey” (HLS) means a survey delivered to parents or guardians within thirty (30) days of a student’s initial enrollment in public school to identify NELB Students who may be eligible for Direct or Indirect ESL Services.
  - (g) “ILP Team” means a team at the LEA or school level that creates the ILP for an EL student. At a minimum, the ILP Team shall include an EL student’s current and/or former general education teacher and current and/or former ESL teacher. ILP Team members may also include parents or guardians, school counselors, and other staff best suited to assess the language goals and needs of each EL student.
  - (h) “Indirect ESL Services” means ESL services that provide linguistically and academically appropriate accommodations and scaffolding pursuant to an ILP that are:
    - 1. Provided as a result of parent(s) or guardian(s) waiving Direct ESL Services;

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2. Provided by a general education teacher in the general education classroom; and
  3. Designed to ensure EL Students have access to daily grade level instruction in English.
- (i) "Individualized Learning Plan" or "ILP" means a document developed pursuant to this Chapter that prescribes the academic goals, supports, and/or accommodations that an EL student needs to access classroom instruction.
  - (j) "Individualized Learning Plan - Dyslexia" or "ILP-D" means a document developed by the LEA for students with Characteristics of Dyslexia in accordance with T.C.A. § 49-1-229 and the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22, that prescribes the academic goals, supports, and/or accommodations that a student may need to access classroom instruction.
  - (k) "Pull-Out Instruction" means a teacher who holds an ESL endorsement delivers intensive language support to EL students in small groups or one-on-one settings outside of the general education classroom using an approved Direct ESL Service model.
  - (l) "RAEL" means a Recently Arrived English Learner as defined in the state's plan required by the Every Student Succeeds Act.
  - (m) "Transitional EL" means an EL student who has met the exit criteria for Direct ESL Services.
  - (n) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
  - (o) "Long-Term English Learners" means English Learners in year seven (7) of the ESL program who have not met the program's exit criteria pursuant to this Chapter.
  - (p) "Minimum Universal Reading Screening Matrix" means a state-designed tool that identifies the subtests required at each grade level for all state-approved universal reading screeners and determines the grade appropriate subtests necessary for the screening process for Characteristics of Dyslexia.
  - (q) "Non-English Language Background (NELB) Student" means a student whose parent(s) or guardian(s) list a language other than English in response to any question on the home language survey. An NELB Student may or may not qualify for ESL services.

**Authority:** T.C.A. §§ 49-1-302, 49-3-104, and 49-3-105; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703.

**Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed March 10, 2023; effective June 8, 2023.

### 0520-01-19-.03 IDENTIFICATION, SCREENING, AND SERVICE DELIVERY.

- (1) EL student identification is a two (2)-step process that must be completed in the sequence detailed below within thirty (30) days of initial enrollment.
- (2) Step One (1): Each LEA and public charter school shall administer a Home Language Survey (HLS) to identify NELB Students. An HLS should be completed only once in a

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student's educational career. If the student has previously attended another LEA, the receiving school or LEA shall attempt to obtain the original HLS from the sending LEA. If the receiving LEA cannot obtain the original HLS after reasonable attempts to do so, it may re-administer the HLS, but shall mark it as a secondary HLS. If the original is found, it shall replace the secondary HLS in the student's file.

- (a) The HLS shall not require parents or guardians to answer questions about student immunization or student or familial immigration status.
  - (b) The HLS shall include, but not be limited to, questions that require the parent(s) or guardian(s) to address the following three (3) topics:
    - 1. The first language the student learned to speak;
    - 2. The language the student speaks most often at home; and
    - 3. The language that is most often spoken to the student at home.
  - (c) If the parent(s) or guardian(s) list a language other than English for any question above, the student shall be classified as an NELB Student. Parents or guardians shall be interviewed to clarify any discrepancies in the HLS.
- (3) Step Two (2): LEAs shall screen all NELB Students with a Department of Education-adopted English language proficiency screener identified in State Board Policy 3.207 to determine whether the student qualifies for ESL Services, unless an NELB Student has documentation from a previous state or LEA that he or she met the definition of Fluent English Proficient (FEP) on the Department-adopted screener. The determination must be completed within thirty (30) days of initial enrollment.
- (a) NELB students shall be screened utilizing the screener identified in State Board Policy 3.207. The scores that identify a student as an EL student are further defined in State Board Policy 3.207.
  - (b) Students identified as EL students shall receive Direct ESL Services pursuant to paragraphs (6) and (8) of this Rule unless a parent and/or guardian chooses to waive Direct ESL Services.
- (4) Each LEA and public charter school shall:
- (a) For every EL student who receives Direct ESL Services or Indirect ESL Services, develop and implement an ILP for each EL student that includes:
    - 1. Assessment data from the Department-adopted English language proficiency assessment;
    - 2. Relevant demographic data including but not limited to years of ESL service, Long Term English Learner status, and additional services the student receives such as special education or Response to Instruction and Intervention (RTI<sup>2</sup>);
    - 3. Data from other assessments such as achievement assessments, relevant benchmark data, universal screener data, and Tennessee comprehensive assessment program (TCAP) data. Career-readiness data for EL students in grades nine through twelve (9-12) may be included as available;

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4. For EL students in grades Kindergarten through three (K-3), Direct ESL Services and language focused supports will be defined in the ILP that provide access to classroom instruction aligned to grade-level academic standards;
  5. For EL students in grades four through twelve (4-12), Direct ESL Services and language, academic, and career-readiness supports that provide access to classroom instruction aligned to grade-level academic standards;
  6. Strategies, scaffolds, and accommodations used in the delivery of Indirect ESL Services, as decided appropriate by the student's ILP Team, that provide access to instruction;
  7. Short-term goals that help the student proceed to the next proficiency level in the four (4) domains of language: reading, writing, speaking, and listening; and
  8. Growth trajectories for English language proficiency based on individual student data, as available.
  9. For Transitional EL students, appropriate ILPs must outline services in accordance with transitional EL status and needs. In addition, the ILP must include the required components listed in paragraphs two (2), three (3), and seven (7).
- (b) Ensure that, at least annually, the student's ILP Team reviews and revises, as necessary, each student's ILP;
- (c) Comply with the parent and legal guardian participation and notification requirements of this Chapter and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); and
- (d) Adopt and implement an oversight plan that outlines the development, implementation, and monitoring of ILPs for EL students in accordance with this Chapter and the Tennessee Investment in Student Achievement (TISA) guide. At a minimum, ILP oversight plans shall include procedures regarding:
1. The development of ILPs for all ELs within the LEA or public charter school;
  2. The monitoring of ILPs quarterly;
  3. The provision of intensified support for ELs not meeting growth expectations identified in the ILP;
  4. Annual review and revision of ILPs by the ILP Team;
  5. Parental communication and involvement in the ILP process;
  6. The seamless coordination of services and supports for ELs with disabilities and/or Characteristics of Dyslexia;
  7. Training for teachers providing Direct or Indirect ESL Services regarding ILP requirements, development, and implementation; and

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8. The sufficient staffing and resources required to support the development and implementation of all ILPs across the LEA or public charter school.
- (5) LEAs shall monitor authorized public charter schools to ensure compliance with this Chapter.
  - (6) Teachers shall monitor the academic and English language proficiency growth of EL students through benchmarking, progress-monitoring, formative assessments, and/or summative assessments at least quarterly. If an EL student is not meeting the growth expectations identified in his or her ILP, the student shall receive differentiated support so that he or she may advance more rapidly toward English language proficiency. Supports shall be implemented promptly after the ILP Team has determined the student is not on the expected growth trajectory.
  - (7) Provision of Direct ESL Services.
    - (a) EL students in elementary school identified for ESL services via a Department of Education-adopted English language proficiency screener described in State Board Policy 3.207 shall receive a minimum of one (1) hour of Direct ESL Service per school day from a teacher who holds an ESL endorsement, until the student achieves a sufficient score on the Department-adopted English language proficiency assessment listed in State Board Policy 3.207 to be exited from Direct ESL Service or achieves a sufficient score on a summative assessment to have Direct or Indirect ESL Services modified by the ILP Team pursuant to paragraph (8) of this rule.
    - (b) EL students in middle and high school identified for ESL services via a Department of Education-adopted English language proficiency assessment described in State Board Policy 3.207 shall receive a minimum of one (1) hour of Direct ESL Service per school day or the equivalent of one (1) full-class period of at least 45 minutes in duration per school day, from a teacher who holds a license with an ESL endorsement, until the student achieves a sufficient score on a summative assessment pursuant to State Board Policy 3.207 to be exited from Direct ESL Service or achieves a sufficient score on a summative assessment to have Direct or Indirect ESL Services modified by the ILP Team pursuant to paragraph nine (9) of this rule.
    - (c) Parents or guardians of EL students shall be annually informed of the right to waive placement of their child(ren) in ESL programs, and each LEA shall provide the parent(s) or guardian(s) the option to waive Direct ESL Services before services are provided, or at any time during the course of the school year.
    - (d) If the parent(s) or guardian(s) waives Direct ESL Services for the student, the general education classroom teacher shall be responsible for providing Indirect ESL Services in the form of linguistically appropriate scaffolding and accommodations within the general education setting as described in the student's ILP.
  - (8) LEAs shall ensure that all teachers who provide Direct or Indirect ESL Services are annually trained in delivering ESL instruction. At a minimum, this training shall include, but not be limited to:
    - (a) The Tennessee English language development (ELD) standards;

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- (b) Appropriate ESL instructional methods to use with grade-level academic content standards in English language arts, mathematics, science and social studies;
  - (c) English language acquisition training for general education teachers to understand the process of acquiring a second or subsequent language;
  - (d) Strategies for collaboration between teachers serving EL students so that ILPs are developed and implemented by all educators; and
  - (e) The requirements regarding ILP development and implementation.
- (9) EL students shall be assessed annually using the Department-adopted English language proficiency assessment identified in State Board Policy 3.207 to determine if the Direct ESL Services provided may be modified by the ILP Team.
- (a) If applicable, LEAs may tailor the services provided to students, including providing less than one (1) hour of Direct Service per day or less than the equivalent of one (1) full-class period of at least 45 minutes in duration per school day pursuant to paragraph (6) of this rule and requirements specified in State Board Policy 3.207.
- (10) An ESL Program may be provided through various service models. These service models shall be delivered through scheduled core instruction, pull-out instruction, or co-teaching instruction in ESL classrooms, general education classrooms, in newcomer centers or programs for recently arrived ELs (RAELs), or virtual classrooms. Direct ESL Services shall be provided utilizing one (1) or more of the following Department-approved service models:
- (a) Sheltered English Instruction;
  - (b) Structured English Immersion;
  - (c) Specially Designed Academic Instruction in English (SDAIE);
  - (d) Content-Based Instruction (CBI);
  - (e) Heritage Language Instruction;
  - (f) Another model approved by the Department.
- (11) All service models shall:
- (a) Be evidence-based and effective;
  - (b) Provide effective language instruction educational programs that meet the needs of ELs and demonstrate success in increasing English language proficiency and student academic achievement; and
  - (c) Be aligned to the Tennessee ELD standards.
- (12) LEAs shall ensure that all EL students suspected of having a disability are located, identified, and evaluated for special education and related services in a timely manner, in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and T.C.A. §§ 49-10-101, et seq.
- (a) When conducting special education and/or Section 504 evaluations, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students

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- shall not be identified as students with disabilities solely because of their limited English language proficiency.
- (b) LEAs shall provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under state and federal law.
  - (c) Neither Response to Instruction and Intervention (RTI<sup>2</sup>) nor special education services shall be used in place of Direct ESL Services.
- (13) LEAs shall ensure that EL students suspected of having Characteristics of Dyslexia are screened and served in accordance with T.C.A. § 49-1-229 and the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22.
- (a) When conducting screenings for Characteristics of Dyslexia, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students shall not be identified as having Characteristics of Dyslexia solely because of their limited English language proficiency.
  - (b) In addition to an ILP developed pursuant to this Chapter, an LEA shall provide to an EL student identified as having Characteristics of Dyslexia an Individualized Learning Plan - Dyslexia (ILP-D) in accordance with the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22. The EL's ILP and ILP-D shall be coordinated to ensure the seamless provision of coherent and complete services and supports.
- (14) Two (2) high school ESL courses shall be counted toward the four (4) English credits required for graduation. At least one (1) of the ESL courses counted toward graduation credit shall be counted toward credit in an English course with an end-of-course assessment. Additional high school ESL courses shall be counted as elective humanities credits.

**Authority:** T.C.A. §§ 49-1-302, 49-3-104, and 49-3-105; Chapter 966 of the Public Acts of 2022; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed December 14, 2021; effective March 14, 2022. Amendments filed March 10, 2023; effective June 8, 2023.

#### **0520-01-19-.04 PARENTAL NOTIFICATION AND RIGHTS.**

- (1) LEAs shall communicate information related to identification, screening, and service delivery to the parent(s) or guardian(s) of EL students in the language and method that the parent(s) or guardian(s) can understand, to the extent practicable. Parent(s) or guardian(s) shall be informed of the ESL program type to be used, length of time expected for completion of ESL services, how the EL student was assessed for entrance to services, and options related to program types, if available.
- (2) Notification to parents or guardians of EL students shall include:
  - (a) Their right to waive placement of their student in ESL programs;
  - (b) Their right to waive Direct ESL Service at any time; and

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- (c) The scaffolding and accommodations to be provided in the general education setting via Indirect ESL Services if the parent(s) or guardian(s) waive Direct ESL Services.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### 0520-01-19-.05 STAFFING RATIOS.

- (1) LEAs shall:
  - (a) Provide adequate ESL staff to implement the chosen service model effectively, as documented by the progress in English language proficiency and academic content of their EL students.
  - (b) Adequately staff their ESL programs to meet state and federal requirements. This includes, but is not limited to, having sufficient staff to ensure meaningful communication to parents or guardians of EL students with limited English proficiency, to identify EL students, and to monitor transitional EL students.
- (2) To meet the two (2) criteria of effective and compliant ESL programs, LEAs shall implement ESL programs based on the following staffing ratio standards:
  - (a) ESL class sizes shall not exceed state-mandated grade-level class size requirements; and
  - (b) The LEA-wide ESL program staffing ratio shall be based on an average of no more than thirty-five (35) identified EL students per full-time equivalent ESL teacher unless an alternate staffing ratio is approved by the Department of Education.
- (3) An alternative staffing ratio may only be approved when the LEA can show adequate academic growth and proficiency with the EL student population and can prove that EL students are receiving the required hours of service. LEAs seeking approval for a waiver for an alternate LEA-wide staffing ratio shall provide the following information upon application and, if approved, annually to the Department of Education:
  - (a) The number of EL students served;
  - (b) The proficiency levels of EL students;
  - (c) The academic growth of EL students;
  - (d) Evidence that no school in the LEA is an Additional Targeted Support and Intervention (ATSI) school based on the EL student accountability subgroup;
  - (e) The most recent analysis for the EL student subgroup for achievement assessments in reading/language arts, mathematics, and science;
  - (f) The proposed staffing ratio that will be used in place of the recommended thirty-five (35) to one (1) ratio; and
  - (g) The justification for the alternate staffing ratio.

**Authority:** T.C.A. §§ 49-1-302, 49-1-104; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.



(Rule 0520-01-19, continued)

**0520-01-19-.06 EXIT PROCESS.**

- (1) EL students who attain the cut score on the Department-adopted English language proficiency assessment identified in State Board Policy 3.207 shall be exited from Direct or Indirect ESL Services. Students who exit Direct or Indirect ESL Services shall be considered Transitional EL students for four (4) school years.
- (2) Exited EL students in the first (1st) and second (2nd) years of transition are referred to as T1 and T2 respectively. Exited EL students in the third (3rd) and fourth (4th) years of transition are referred to as T3 and T4 respectively. However, T3 and T4 students shall be included in the LEA's EL student subgroup with T1 and T2 students for accountability purposes.
- (3) Transitional EL students shall be served in the general education classroom. T1 and T2 students shall be monitored for two (2) years.
  - (a) If a Transitional EL student demonstrates difficulty in the general education classroom or fails to meet ILP benchmarks, academic interventions should be provided by a general classroom teacher or a teacher with an ESL endorsement.
- (4) Each LEA shall have a written reclassification procedure to be used for exited EL Students who require reentry into the ESL program that includes parent consent. The LEA shall apply its reclassification procedure if academic or non-academic interventions are unsuccessful.
- (5) EL students who take alternate assessments for TCAP, as determined by their individualized education program (IEP) team, shall be considered for exit from ESL services through the criteria listed for the alternate English language proficiency assessment identified in State Board Policy 3.207.
- (6) If a student was exited from ESL services by another state, the exit shall stand as valid.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed March 10, 2023; effective June 8, 2023.