



# Technical Assistance Bulletin

Division of Early Intervention and Special Education Services | Bulletin # 17-04



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## Translations/Native Language/Multilingual learners

### SUMMARY

The Individuals with Disabilities Education Act (IDEA) has specific provisions governing the evaluation of, and services for, students whose first language is not English. It is important to understand that while some students and families speak English, there is a difference between speaking the language and having full language proficiency. If the Individualized Education Program (IEP) team is not cognizant of the student’s language, as well as the impact of the student’s culture and societal influences on their communication and learning, it may not accurately assess what the student knows and can do. The IEP team must consider the language acquisition needs of the student and distinguish those from those that relate to development, review, and revision of the student’s IEP. Moreover, if the IEP team is not aware of the language and cultural influences and experiences of the family members, it may not fulfill its obligations to obtain informed consent as parents may not fully understand decisions being made and their impact on the student’s educational program. This Technical Assistance Bulletin will outline the various areas in which home language adds a unique layer to the IEP process, not only with regard to oral communication, but also the translation of certain documents.

### LEGAL FRAMEWORK

Federal and state law require that the public agency “take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.” Education Article §8-405 requires that if the native language spoken by the parents is spoken by more than 1% of the student population in the local education agency (LEA), the LEA must provide the parents a translated copy of their child’s IFSP or IEP within thirty (30) calendar days after the date if the parents make a request for a translation. It also requires that the parent be provided with an oral and written explanation of their right to request mediation, contact information that a parent may use to receive more information about mediation, and information about pro bono representation and free or low cost legal and related services, in their native language, if there are disagreements about decisions made for their child at the IEP team meeting. Federal also require that other documents related to the IEP process be provided to parents in their native language, unless it is “clearly not feasible to do so.” [20 USC §1415(b)(4); 34 C.F.R. § 300.322(e)]

According to the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), the LEA must take whatever action is necessary to ensure that the parent understands the IEP team meeting, including arranging for an interpreter for deaf parents who use American Sign Language or another signed language, or those whose native language is other than English. For parents who read in their native language, providing the parents with written translations of the IEP documents may be one way for an LEA to demonstrate that the parent has been fully informed of their student’s educational program. If, however, the parents are unable to read in their native language, written translations may not show that the parent was fully informed. In those

instances, the LEA should ensure that there is another way to make certain that these parents are fully informed about the activity to which they are consenting, “such/as oral interpretation.”

[34 CFR §300.9; Letter to Boswell, <https://sites.ed.gov/idea/idea-files/policy-letter-september-4-2007-to-linda-boswell-conway-arkansas-public-schools>

The United States Department of Justice (USDOJ) and the United States Department of Education (USDOE) drafted a Joint Guidance Document, [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#) (January 2015). This guidance clarifies that multilingual learners with disabilities must be provided with both the language and disability related services they are entitled to under federal and state laws. It also reinforces the needs for multilingual learners to be appropriately evaluated and identified as students with disabilities, taking the impact of both their language acquisition and any special education language needs into account. Finally, the USDOJ and USDOE emphasize the importance of having IEP team participants who are knowledgeable about the all aspects of the student’s language-related needs.

Students suspected of having an educational disability must be assessed using tools that are selected and administered “so as not to be discriminatory on a racial or cultural basis.” The assessments must be administered in the child’s native language or “other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible...” to do so. At times, assessments for multilingual learners include a “Language Dominance Screening” to determine the mode of communication “most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.” It is important to note that there are no extensions of the timelines for the special education evaluation, eligibility determination, and IEP development processes when a Language Dominance Screening is required. [34 CFR § 300.304(c)(1)(i)-(ii)]

It is critical that school teams obtain information about the student’s cultural, medical and educational background and experiences when referring the student for a special education eligibility determination. There are many exclusionary factors, such as interrupted education, transiency, and medical considerations that may make referral premature, and other factors that may impact the student’s responses to assessment questions. If a team or evaluator is unaware of the impact, the results of intervention data, as well as assessment results may be inaccurate.

### **Scenario 1: (From ¡Colorin Colorado!)**

*Li was born in a rural province outside of Beijing. Shortly after she was born, her parents moved to the United States to complete their graduate studies and left Li in China, entrusting her to the care of her paternal grandparents. During her first five years, Li spoke solely in Mandarin, her grandparents were her sole caretakers, and she did not attend preschool.*

*In August of her fifth year, her grandparents put Li on a plane bound for the United States, where she was reunited with her parents. Her parents’ plan was for Li to begin attending kindergarten in the local public school a few weeks after her arrival. Thinking that it was important for Li to begin speaking in English, her parents decided that it was important for them to communicate with her solely in English.*

*When Li arrived in the United States, she was unable to understand her parents or the English-speaking environment in which they lived. In frustration, she spent her first few weeks crying, having temper tantrums, and begging that she could return to her grandparents. When Li began attending kindergarten, she was placed in an English-only classroom where she was the sole Mandarin speaker. Because of limited time and scheduling conflicts, Li’s school allotted one 20-minute block of time per week for Li to receive ESL classes. The school justified this action based on the belief that kindergarten classes included a language-rich environment where ELs would flourish and that five-year-olds learned English quickly and without much help.*

*During Li’s first month in school, she rarely interacted with her peers, and when she did, it was usually to grab something from them. Her teacher frequently observed Li kicking other students and being unable to perform most of the tasks that were assigned. At the end of Li’s first month in school, her teacher held a parent conference to express the concerns that she had about Li’s poor academic progress and inappropriate behavior. At the meeting, Li’s parents told the teacher that Li was a “difficult” child.*

*Li's teacher asked the school counselor, psychologist, speech and language therapist, and special educator to join her in meeting with Li's parents. Wanting more information about Li, the group asked her parents to describe what she had been like as a younger child. When they learned that Li had lived with her paternal grandparents in China and had not lived with her parents until just prior to enrolling in kindergarten, they asked if Li had heard or spoken English prior to arriving in the United States. They also asked Li's parents if she had attended preschool. The teachers and specialists learned that Li spoke only in Mandarin, had not attended preschool, and had not had much contact with her parents during her first five years of life. A much clearer picture of Li emerged as a result of the meeting. Several prereferral interventions were recommended, including that Li speak in Mandarin at home and that her parents meet with the school counselor to discuss various parenting strategies.*

*In addition, a Chinese interpreter was employed to work in Li's kindergarten class to help Li understand her kindergarten environment and to support her in communicating with her teacher and peers. The school psychologist and counselor often visited with Li while during her lunch and helped her engage more appropriately with her peers. Li also received a more appropriate amount of instruction in English language development: an hour per day from an ESL teacher. The kindergarten and ESL teachers collaborated closely and often co-delivered lessons that they thought would benefit Li and her classmates. For example, during a unit about what makes a family, Li and her peers were encouraged to bring in family photos, draw pictures of their home, and use these visuals to talk about their family. Li brought in several photos of her grandparents and parents and drew some beautiful pictures of her home in China and in the United States. She readily shared these with her peers and began to converse in English more fluently.*

*By the close of her kindergarten year, Li was able to communicate in English, was working well with her peers, and was making remarkable progress. Her parents and teachers were delighted with her accomplishments, and plans were made for her to attend the first grade.*

#### *Scenario 2:*

*Micquel is a middle school aged student, however, in his country students were not promoted until they were able to pass grade level assessments. Micquel is 12, and he last attended 5<sup>th</sup> grade before coming to the United States, where he was put into a 7<sup>th</sup> grade class. Micquel has difficulty with math problem-solving and calculation, as his records confirm. He had the equivalent of an IEP when he moved into the United States. His goals and objectives were only in math, as were his services and supports. According to the documentation his parents submitted to the school, Micquel was reading on a 6<sup>th</sup> grade level.*

*Micquel attended middle school for two years and is now in high school. He is becoming a much more fluent English speaker, and communicates only in English in the school setting. As a ninth grader, Micquel continues with his IEP for math. He is very quiet in school and his teachers are concerned that he also has a reading/decoding problem. His English teacher is working with him trying to sound out words. She asked him for words that begin with /t/, and the student says "maestra". His teacher spoke to the reading specialist and shared her concerns that Micquel doesn't know beginning sounds, and her fears that he is so quiet because he doesn't understand.*

*The reading specialist consulted with the language acquisition specialist who informed her that it is not unusual for individuals who are becoming multilingual to become quiet as they are in a "listening phase." She also told her that it is not unusual for students to substitute a vocabulary word in their native language for one in their second language when responding to a question. It does not mean that the individual does not understand or is having problems. The language acquisition specialist suggested that Micquel's responses and behavior are understandable, reasonable, and don't reflect additional learning problems at this time. Micquel should continue to be supported through his IEP for math and his English Language Acquisition Plan.*

## Questions and Answers

### 1. How is “native language” defined?

When used with respect to an individual who is limited English proficient, “native language” means the following:

- The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student.
- In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.
- For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

As this definition demonstrates, the term “native language” should be applied according to the norms of the person receiving the communication. Generally, when a person’s native language is something other than English, native language means the language normally used by that person, including for individuals with deafness, blindness, or no written language. In the case of a student, however, it becomes relevant whether the communication is with the student directly or with the parents of the student. In all direct contact with a student, the term “native language” means the language normally used by the student, which may be different than the language normally used by the parents. [20 U.S.C. §1401(20); 34 C.F.R. § 300.29; COMAR 13A.05.01.03B(45)]

### 2. How is native language related to informed consent?

Under the IDEA, consent means the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication. First, the parent must understand, and agree in writing, to the carrying out of the activity for which his or her consent is sought. Second, the written consent form must describe the activity and list any records that may be released and to whom. Finally, the parent also must understand that consent is voluntary and may be revoked at any time, although revocation is not retroactive. [34 C.F.R. § 300.9]

### 3. Under the IDEA, what information must be provided in a parent’s native language?

Each LEA must ensure that the following information is provided to a parent in his or her native language, or other mode of communication, unless it is clearly not feasible to do so:

- Parental consent for evaluation or re-evaluation;
- Parental consent for initiation of special education services;
- Parental consent to excuse an IEP team member from an IEP team meeting when the team member’s area is being modified or discussed;
- Prior written notice whenever a LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education (FAPE) to the student;
- Notice that fully informs parents of the requirements regarding the confidentiality of personally identifiable information; and
- Notice of procedural safeguards.

Assessments and other evaluation materials used to assess a student, on the other hand, must be provided and administered (including directions) in the student’s native language, or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do, unless it is clearly not feasible to do so. [34 C.F.R. §§ 300.321(e)(2); 300.304(c)(ii); 300.503(c); 300.504(d); 300.612(a)(1)]

### 4. Under Maryland law, what information must be provided in a parent’s native language?

Although there is no express requirement in the IDEA that all IEP documents must be translated, Maryland law outlines three additional sets of documents to be translated in certain circumstances: 1) completed Individualized Family Service Plan (IFSP) and completed Individualized Education Program (IEP); 2) information about mediation; and 3) information about early intervention and special education family support services.

First, parents may request that their child’s completed IFSP or their student’s completed IEP be translated into the parents’ native language. If the native language spoken by the parents is spoken by more than one percent

(1%) of the student population in the LEA, appropriate school personnel must provide the parents with the translated document within thirty (30) calendar days after the date of the request. Thus, there are three important triggers for the requirement to translate an IFSP or IEP: 1) the IFSP or IEP must be complete, not in draft form; 2) the parent must request the translation, although the request need not be in writing; and 3) the parent's native language must be above the one percent (1%) threshold. Any amendment to a completed IFSP or IEP would also be subject to these requirements, although only the amended part(s) would have to be translated again once completed.

Second, if during an IEP team meeting a parent disagrees with a child's IEP or the special education services provided to the child, the IEP team must provide the parent, in plain language:

- An oral and written explanation of the parent's right to request mediation;
- Contact information, including a telephone number, that a parent may use to receive more information about the mediation process; and
- Information regarding pro bono representation and other free or low-cost legal and related services available in the area.

As with a completed IFSP or completed IEP, parents may request that information about mediation be translated into the parents' native language. If the native language spoken by the parents is spoken by more than one percent (1%) of the student population in the LEA, the IEP team shall provide the parent with the translated document within thirty (30) calendar days after the date of the request. The notice of procedural safeguards, which is already required under the IDEA to be translated into the parents' native language, also includes information about mediation. Third, at the initial evaluation meeting and upon request at any subsequent meeting, the LEA must provide the parent with written information that the parents may use to contact early intervention and special education family support services staff members within the LEA and a brief description of the services provided by the staff members. If a parent's native language is not English, this information must be provided in the parent's native language, regardless of whether it is spoken by a particular percentage of the LEA population. [Md. Code Ann., Education Article § 8-405]

##### **5. How does a parent request translation of an IEP document?**

Maryland law does not outline a particular procedure for requesting translation, nor does it expressly require that such a request be in writing. Thus, LEAs should be prepared to respond to both oral and written requests, as well as take reasonable steps to independently ensure that a parent with limited English proficiency understands the proceedings of the IEP team meeting and is fully informed of IEP team decisions.

The Maryland State Department of Education (MSDE) recommends that a procedure like the following be adopted to comply with Maryland's translation requirements:

- Use an "IFSP/IEP Translation Request Form" that includes, at a minimum, the following data elements:
  - The parent's name;
  - The student's name;
  - The date of the parent's request;
  - The language requested for translation; and
  - The date of the completed IFSP or IEP to be translated.
- Make the request form generally available to the public (e.g. copies in the IEP team meeting room and posted online).
- Complete the request form even for oral requests, either by providing the form to the parent or having school staff fill out the information as the request is made.
- Date stamp each completed request form in order to monitor compliance with the 30-day timeline for providing the translated document.

In addition, the Maryland Online IFSP/IEP forms will include a check box to indicate whether or not a translation of the document was requested at the time of the meeting.

##### **6. Do LEAs collect data on the language spoken in a student's home?**

In accordance with the Maryland Student Records Manual, each LEA is required to purport the language(s) spoken in the student’s home.

It is critical that such data is captured on an annual basis so that the LEAs can determine what languages exceed the one percent (1%) threshold described in Question 4, as this may trigger a requirement to translate certain documents into a parent’s native language under Maryland law. Individual schools that are not incorporated into a LEA should utilize the population of the LEA in which they are located when applying the one percent (1%) threshold.

**7. What services are available to meet interpretation and translation needs?**

Statewide Foreign Language Interpretation and Translation Services. The Board of Public Works (BPW) has approved contracts for foreign language interpretation and translation services (FLITS) These contracts are available for use by any agency of the State of Maryland. In addition, all local governments and qualifying not-for-profit organizations in Maryland are permitted to use these contracts at the same prices and levels of service as for State agencies.

- **By Telephone:** Language Line Services, LLC, 800-752-6096
- **Onsite at a Specified Location:** Ad Astra, Inc., 301-408-4242
- **Written Document Translation:** Schreiber Translations, Inc., 301-424-7737

These services are available 24 hours per day, 7 days per week, and 365 days per year in the 29 core languages listed below. Services may also be available in other languages.

Amharic	Creole	Haitian Creole	Somali	Vietnamese
Arabic	Farsi (Afghani)	Hindi	Spanish	
Bengali	Farsi (Iranian)	Portuguese	Swahili	
Burmese	Farsi (Persian)	Korean	Tagalog	
Chin	French	Nepali	Tigrinya	
Chin Hahka	French Creole	Romanian	Turkish	
Chinese*	Gujarati	Russian	Urdu	

\* Chinese, inclusive of Mandarin and Cantonese

**8. If an interpreter is unavailable for an IEP team meeting, can a relative or a staff member who speaks the parent’s native language be used if postponing the meeting will violate timelines?**

No. Teams should invite families to IEP team meetings well before timelines are due in order to ensure all the required individuals are present. Interpreters are required team members if the parents need their services to fully participate in the meeting. Interpreters are trained individuals who are familiar with the vocabulary and way in which interpretation should be used. Untrained individuals do not have the same skills and cannot replace an interpreter.

**9. Can a student receive both special education and ESL services?**

Yes. According to the OSEP, it is critical that families not have to choose between having their child participate in these legally mandated entitlements. In fact, asking a parent to do so violates federal law. IDEA requires that the language learning needs of a student who is a Multilingual learner be considered when developing the IEP. Collaboration between special educators, related service providers, and EL specialists is essential to ensure appropriate services.

**10. If a student for who English is their second language now speaks fluent English, but they are still having academic difficulties, is it likely they also have an academic disability?**

Maybe, but not necessarily. It is likely to take anywhere from five to ten years for a student to demonstrate mastery at the cognitive academic language proficiency level (CALP), therefore, general educators need to understand that even if they are exited from a language acquisition program or are conversationally fluent, multilingual learners may need ongoing support in the general education setting before they are referred for consideration of special education eligibility.

**11. Are English Language Acquisition services considered “Response to Intervention” services?**

No. English Language Acquisition services are not interventions. They are instructional services that assist students in accessing school curriculum and developing language skills to help them be successful in school. Response to intervention is a tiered, systematic approach to provide targeted, intensive assistance to students who are underperforming in specific areas compared to age or grade level standards.

**12. Can multilingual learners who have had little or no previous formal education be referred for special education?**

Yes. If a disability is suspected, the referral and evaluation process should be completed. Students should not be categorically denied access to special education because they are learning English or have not previously attended school. However, a team cannot find a student eligible for special education under certain disability categories, such as specific learning disability, if they cannot rule out that the student’s lack of achievement of standards is not due to lack of access to instruction. 34 CFR § 300.309(b)(1) and 34 CFR § 300.309(a)(3)(vi).

**13. Does WIDA or other assessments for placement in English Language Acquisition services take the place of language dominance screening or bilingual assessment for special education eligibility?**

No. The two assessments are for different purposes. Placement assessments are not meant to determine language dominance for standardized assessment purposes, and assessments given for English Language Acquisition services should only be used as a part of the special education eligibility determination as background information for student demographics and/or considering exclusionary factors for eligibility.

**14. How does the Maryland State Department of Education assist LEAs to support parents who speak a native language other than English?**

The Division of Early Intervention/Special Education Services (DEI/SES) assists LEAs by:

- Translating the blank IFSP and IEP forms into 24 languages
- Incorporating a check box for translation request in the IEP form
- Providing blank consent forms in multiple languages
- Providing the Prior Written Notice form in multiple languages
- Maintaining the Special Services Information System (SSIS) to annually collect data on the native language or other mode of communication used by parents of students with disabilities

The 24 languages translated by the DSE/EIS include most of the core languages:

Amharic	French	Korean	Spanish
Arabic	Gujarati	Nepali	Tagalog
Bengali	Haitian	Pashto	Turkish
Burmese	Hebrew	Polish	Urdu
Chinese	Hindi	Portuguese	Vietnamese
Dari	Japanese	Russian	Zophei

## Resources

Office for Civil Rights, Schools' Civil Rights Obligations to Multilingual learner Students and Limited English Proficient Parents, January 7, 2015 <https://www2.ed.gov/about/offices/list/ocr/ellresources.html>

Colorin Colorado!, A Word Beginning with T: Maestra  
<https://www.colorincolorado.org/article/word-beginning-t-maestra>



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