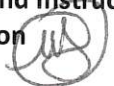# RICHLAND ONE

ENGAGE · EDUCATE · EMPOWER

Department of World Languages & ESOL Programs

Adult Education Building – International Welcome Center

To: **Principals of ESOL Center Schools**

From: **Ernesto Bernal, Coordinator**

World Languages and ESOL Programs

Through: Sandra Brossard, Chief of Teaching and Learning
Chovan Jennings, Executive Director, Curriculum and Instruction
Marriah Schwallier, Director of Secondary Education

Date: **April 9, 2019**

Re: **Retention and MTSS/ Special Ed. Procedures for English Learners**

To support your efforts in providing excellent services to our ESOL students and ensure compliance with the Office of Civil Rights (OCR) and Title III laws, the following information is provided for your reference. Please review this information and share it with your staff. More detailed information can be found in the District ESOL Program Manual on the district webpage.

A. Overview

For English learners (ELs), initial grade placement must be with same-age classmates and they must be advanced along with age-level peers. Classroom teachers must modify instruction and assignments to meet the academic and language needs of ELs, and grades should reflect these modifications. Additionally, all ELs are entitled to an equal opportunity to participate in all programs (see attached letter from South Carolina Department of Education dated February 14, 2019). Please note:

- It is generally not recommended that English Learners be retained.
- If retention is decided, the principal must complete the "Retention Declaration for English Learners" form (attached) and submit to the ESOL Coordinator along with supplemental documents described below.
- The ESOL teacher, contact or district administrator must be included in year-long monitoring, discussions and interventions.
- MTSS discussions should initially focus on an EL's Individual Modification and Accommodation Plan (IMAP).
- If the ESOL teacher has a student who receives special education services, then that ESOL teacher should be in attendance at the IEP meeting regarding that child given that the ESOL teacher is an active participant in the child's educational services.

B. Retention of ELs

Schools are required to collect and provide documents to demonstrate that English Learners who are retained have been provided classroom instruction that is accessible at their level (even for students at a beginning level of English proficiency).

Schools are responsible for assessing students in such a way that does not discriminate against them on the basis of their language proficiency and must follow the plan laid out for each EL on the Individual Modification and Accommodation Plan (IMAP).

Although it is generally not recommended that English Learners be retained, a school may retain an EL student for reasons other than English proficiency if there is well documented evidence.

If there is strong evidence of providing solid instruction at the EL's level and the school is considering retention, the student must be brought before an ESOL retention committee. The ESOL retention committee will likely be the same as the MTSS team at your school. This committee needs to meet initially before the end of the third quarter and should continue to meet throughout the remainder of the year, as needed. By the end of the year, the committee will assist the principal in making the final decision concerning the retention of an EL. If retention is decided, the principal must complete the "Retention Declaration for English Learners" form (attached) and keep copies of all committee forms and supplemental documents on file in the student's permanent record. Also submit copies to district ESOL coordinator.

These documents will likely include, but are not limited to:

- the student's Individual Modification and Accommodation Plan(IMAP)
- MTSS forms
- sample lesson plans and modified assignments
- modified tests and test score reports
- grade and attendance reports
- records of parent conferences

As a part of the ESOL Program Evaluation Process, the ESOL program annually collects data on EL retention in all Richland One schools.

High School Failures and Repeating Grades 9-12

High school students who fail multiple courses will likely not achieve the credits needed to reach the next grade level. While South Carolina credit requirements take precedent over the recommendation to not retain a high school English Learner, high school administration and faculty should closely examine the needs of English Learners and ensure they are provided classroom instruction assessable at their level. The same procedures described above should apply to high school students. Before the end of the third quarter, any high school English Learner who is not on track to earn enough credits for grade advancement should have an MTSS/ ESOL retention committee convened. This committee should

consider all of the above mentioned factors in documenting the likely grade level retention of the student.

High school principals will not need to complete the second page of the "Retention Declaration for English Learners" form. However the first page of the form must be completed and a copy sent to the ESOL coordinator.

It is important to note that an EL who fails even one class should have documentation from that teacher to demonstrate that the appropriate modifications and accommodations were provided and that failure was still a result.

It is assumed that any student at risk of retention (including high school students at risk of failing multiple courses) has been through a process to consider the need for interventions prior to the 3rd quarter meeting of the MTSS/ ESOL retention committee. The above mentioned documentation is designed to help the ESOL program track student progress and interventions in light of the aforementioned state and federal guidelines warning against the retention of ELs and requiring modifications and accommodations to guarantee equal access to curriculum.

C. ELs and Multi-Tiered System of Support (MTSS)

Per SCDE guidance, the ESOL program is a Tier I core EL program. Decisions to place English Learners in certain Tier II interventions should be made respective to an EL's current English language proficiency level and the progress that is currently occurring within Tier I, which includes participation in the ESOL program. Schools should identify EL students at risk of academic failure by comparing the EL's performance to other ELs from a similar background and language proficiency.

ELs must go through the same MTSS processes as their English-only peers. The ESOL teacher must be included in year-long monitoring, discussions and interventions. The data and knowledge that the ESOL teacher brings to this process is integral to ensuring that interventions are implemented with consideration for an ELs English proficiency and that interventions will not cause a student to lose out on valuable language development opportunities (i.e. ESOL services). When an EL is considered by the MTSS Team the ESOL teacher will provide the MTSS Team with the following data:

- ESOL Status – served, exited, waived, newcomer, SLIFE, LTEL
- Levels of ESOL service
- Years in ESOL (and specific on-time proficiency expectations)
- WIDA Screener and ACCESS scores

MTSS discussions should initially focus on an EL's Individual Modification and Accommodation Plan (IMAP). It is possible that these modifications and accommodations, when properly implemented, will eliminate the need for further intervention. Evidence of these modifications and accommodations should accompany any reference for an EL to MTSS. At the very least, these documents will assist the MTSS team in developing more meaningful interventions. An MTSS Team may also update an IMAP prior to starting more rigorous progress monitoring through MTSS.

MTSS teams should be particularly concerned with previous diagnoses or considerations for learning disability in an EL's home country or in previous U.S. schools/districts. Newcomer ELs may be coming from situations in which references to exceptionalities have been underreported to the school or lost due to language or cultural barriers.

If MTSS paperwork is started, it is imperative that the ESOL teacher participate in several weeks of progress monitoring to provide data to aid in the decision-making process.

ELs should not have to wait any longer than their English-only peers to be considered for Tier II interventions or SPED evaluation. All ELs should have the opportunity to be evaluated by an MTSS team before their fourth year in U.S. schools.

ELs not meeting on-time proficiency (>5 years in ESOL services) may need additional support in the form of interventions or, at the very least, consideration and counseling through the MTSS team.

As a part of the ESOL Program Evaluation Process, the ESOL program routinely collects data on EL participation in MTSS across Richland One.

D. Special Education

Students properly identified may receive both ESOL and special education services. A teacher who suspects that an EL has other educational needs unrelated to his or her English language proficiency should bring this to the attention of the school's Response to Intervention Team.

It is important for MTSS teams (especially at the middle and high school levels) to approach consideration for ELs with an understanding that newcomer ELs often have not had the benefit of MTSS or consideration for SPED testing. Even in upper grades, newcomer ELs may never have had the opportunity to be formally evaluated or provided with interventions.

Testing for learning or other disabilities must be done in the language most likely to yield accurate results. Communication with parents regarding referrals for testing, testing results, and placement results must be done in a language that parents can understand.

Under the IDEA, a student may not be determined to be a student with disability if the determinant factor is the student's limited English proficiency (English Learner status now), and if the student does not otherwise meet the IDEA's definition of a "child with a disability" (20 U.S.C. 1414(b)(4) and (5); 34 C.F.R)

A child cannot be determined eligible for SPED services if the determinant factor is:

- Lack of appropriate instruction in reading,
- Lack of appropriate instruction in mathematics, or
- Limited English proficiency.

If students need both special education and ESOL services, they are entitled to receive them. If the ESOL teacher has a student who receives special education services, the ESOL teacher should be in attendance at the IEP meeting. The ESOL teacher must be an active participant in the child's educational services.

Depending on the extent of the student's disability, it is appropriate for the general education teacher, ESOL teacher, and the special education teacher to work collaboratively to meet the needs of the student.

The fact that an EL has a disability does not replace the need for language assistance. It is important to ensure that ELs are dually served through both programs. This process is more difficult when special education requirements place a student at a school that is not an ESOL center. District level personnel (in ESOL and SPED) should collaborate and consider all variables when placing students at particular school sites based on special needs.

As a part of the ESOL Program Evaluation Process, the ESOL program routinely collects data on EL participation in Special Education services across Richland One.

For further guidelines see attachment - SCDE letter from John Payne.

For additional information or support to help you meet the unique needs of language minority students, please call Ernesto Bernal at 212-1475 at the International Welcome Center.

Again, thank you for your cooperation with regards to the referral, enrollment, assessment and placement of ESOL students.

Enclosures

CC: Dr. Craig Witherspoon, Superintendent
        Executive Directors of Schools
        ESOL Teachers
        ESOL Contact Persons
        School MTSS Chairs

List of Documents Enclosed:
SCDE English Learner Enrollment and English language Learner Services Letter
Retention Declaration for English Learners Form
SCDE letter from John Payne re: ELs with Disabilities

STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

MEMORANDUM

TO: District Superintendents

FROM: E. Scott Winburn
Deputy General Counsel, Office of General Counsel

Mike King
Director, Office of Adult Education

Roy Stehle
Director, Office of Federal and State Accountability

DATE: February 14, 2019

RE: English Learner Enrollment and English Language Learner Services

Federal law requires local educational agencies (LEAs) to ensure that enrollment procedures and policies do not negatively impact students based on their immigrant or English-speaking status. To help ensure appropriate services and enrollment policies for English language learners (ELL), please review the below information.

Students who are eligible to enroll in South Carolina public schools **must** be allowed to do so at all grade levels, regardless of the their English language proficiency. S.C. Code Ann. § 59-63-20 (2017). While Adult Education is a viable option for some students age 17 and over in South Carolina, **students must fully understand** that they have the *right to enroll in public high school if they choose to do so*. LEAs **must** not discourage ELL students from enrolling in a South Carolina high school based on age, previous school or academic history, and/or English language proficiency. In addition, LEAs must communicate all enrollment options to ELL students and their families.

A home language survey must be administered to all students, along with a standardized language screening to potential ELL students.

Initial grade placement must be with same-age classmates and ELL students must be advanced along with age-level peers. Classroom teachers must modify instruction and assignments to meet

the academic and language needs of ELL students and grades should reflect these modifications. Additionally, all ELL students are entitled to an equal opportunity to participate in all programs.

Failure to reasonably, and in good faith, follow the above policies may result in an investigation of unprofessional conduct by the South Carolina Department of Education, Office of General Counsel. This includes intentionally ignoring directives or unjustly applying directives in order to circumvent eligibility requirements.

For additional information, please contact E. Scott Winburn at 803-734-0070 or swinburn@ed.sc.gov.

cc: ESOL Coordinators
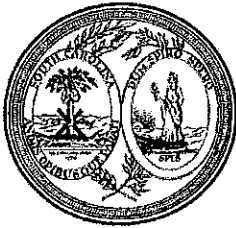
STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

Mick Zais
Superintendent

MEMORANDUM

TO: Directors of Special Education
            ESOL Coordinators

FROM: John Payne, Interim Director
            Office of Exceptional Children

            Crystal Fields
            Title III, ESOL

DATE: January 15, 2014

RE: Children Who Are Both LEP and Special Education Students

The number of limited English proficient (LEP) students continues to increase in South Carolina. Some of these students may also be identified as a student with a disability. In an effort to provide information concerning the referral, evaluation, and identification process, please review the following:

- When a parent or school personnel has reason to suspect that an LEP student may have a disability, the team must plan and carry out an evaluation within the guidelines and timelines specified in the State Board of Education regulation 43-243. The evaluation team must keep in mind that there must also be evidence of the disability in the student's native language and not only in the English language. It is crucial that the evaluation team make the distinction between a language difference and a disability.

- The use of translated tests is generally discouraged because test item difficulty often changes with translation, and because many tests may have been normed using small student samples that may not be representative of the student's language background. However, the use of norm-referenced tests in the student's native language <u>may</u> be appropriate and useful in certain cases such as when the student has received formal education in the native language. Non-verbal tests can provide useful information as well.

- Assessment data must be collected using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. The services of translators may be appropriate and useful in collecting these data.

- The instruction related to English language acquisition may vary based upon the accommodations and modifications recommended by the IEP team. While this instruction may not always involve direct services from an ESOL teacher, the instruction may take the form of collaboration among the ESOL teacher, the special education teacher, and the general education teacher. In cases involving LEP students, the IEP team should include a member with knowledge and expertise in the acquisition of English as a second language.

The following information should be helpful in coding LEP students who also have a disability:

- Once an LEP student has been identified as needing special education services, the student will continue to be coded as ESL based on the same definitional/language proficiency categories, as are all other ELL students without disabilities.

- If an LEP student with a disability who is identified on the Home Language Survey as coming from a family who speaks a language other than English, but who, due to a disability, cannot be tested for an English proficiency level on the diagnostic tests used for this purpose, the student will be coded as an ESL 1 (Pre-functional) in the state data collection system(s). This student and all other ESOL/Special Education students will continue to be coded as ESL AND Special Education as appropriate in the state data collection system(s). In addition to the documentation required for Special Education, the Parent Notification Letter will continue to be used as required by Title III law. Checking the "Other" box in the services section and referring to the student's IEP will be sufficient when no direct ESOL services are provided to the student.

- LEP students with disabilities must also take the SC English proficiency test, ELDA, every year. This test may not be waived by the student's IEP team. At the very least, the school must attempt to administer the speaking test to those students. The test is also available in loose-leaf format and the ELDA writing test may be administered orally. A score of "no response" in this section of the test will indicate that the test was attempted for these students. If students with disabilities can take other parts of ELDA, they should do so. This test is available in Braille and large print formats; signing of the listening and speaking parts of this test is also allowed by the ELDA Test Administration Manual.

- LEP/Special education students will not be coded "ESL Mainstream," "Exited," or "English Speaker I" until they meet the same criteria for these codes as all other LEP students. These criteria are as follows: ESL Mainstream—one year fully English proficient (FEP) on the English language development assessment in grades K through 2; Exited—scoring FEP on the English language development assessment once in grades 3 through 12; and English Speaker I—two years in exited status then moves to this designation. In no case will such students be coded English Speaker II, the designation for students whose first language is English.

For further information on these issues, please contact Bill Rynn, School Psychology, Office of Exceptional Children, at 803-734-8212, or Wcrynn@ed.sc.gov, or Crystal Fields, Title III/ESOL, at 803-734-8306, or CFields@ed.sc.gov.

JP/CF

Page 1
To be started by the ESOL teacher
or school contact in January

Retention Declaration for English Learners

Date: _____/_____/_____

Student: _____ Student ID: _____

Grade: _____ School: _____ School Year: _____

Is this student from a limited formal schooling background? _____ Date of Birth: _____/_____/_____

Has this student been retained in the past? Or, are they above the age of their class peers? _____

Home Language: _____ Years in US Schools: _____ Does the student have an IEP? _____

Parent/ Guardian: _____ Phone: _____

Parent's Preferred Language: _____

Student Data				ACCESS Target
(Last 3 years)	Year: _____	Year: _____	Year: _____	(Current Year)
ACCESS Composite Score				
Reading Level				

Previous Year's State/ Standardized/ Diagnostic Testing Data Year: _____				
Test	Score		Test	Score

Absences and Attendance				
Quarter 2	Quarter 2	Quarter 3	Quarter 4	Total

Describe any circumstances to be considered:

Courses Failing	Q1 Grade	Q2 Grade	Q3 Grade	Q4 Grade

ESOL Teacher: _____

Page 2
To be completed by school principal
if retention is recommended

ESOL Retention Declaration for English Learners

Student: _____

Student ID: _____ School Year: _____

** Please be aware the reasons for retention will need to stand up to OCR and in a court of law. **
** Please print and attach all copies of documentation. **

Outline below the school's plan for addressing what will be done differently next year to ensure student success. Be very specific:

School: _____

Principal's Signature: _____ Date: _____/_____/_____

Telephone Number (summer contact please): _____