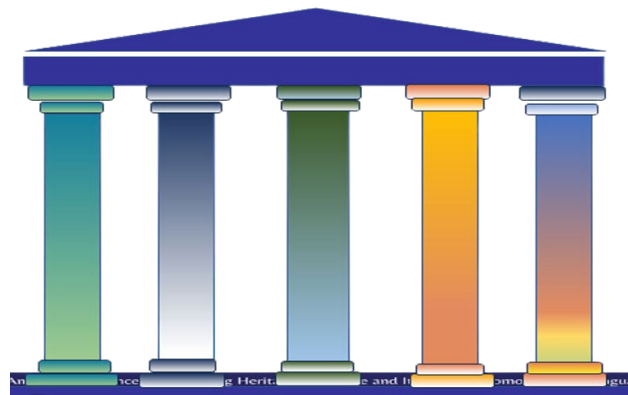


# *Serving Multilingual Learners*

## *Laws, Policies, and Regulations*

By Dr. Debbie Zacarian





# About This Guide

*Serving Multilingual Learners: Laws, Policies, and Regulations* is a publication from Colorín Colorado that provides an accessible summary of federal laws governing multilingual learners' education.

## About Colorin Colorado

Colorín Colorado is the nation's leading website serving educators and families of multilingual learners/English language learners. An award-winning public media project, Colorín Colorado is based at public broadcasting station WETA in Washington, DC and is funded by the AFT. The first edition of this publication was made possible with the support of the Carnegie Corporation. This updated edition is made possible by the AFT.

## About the Author

[Dr. Debbie Zacarian](#), a seasoned expert in educational policy, specializes in professional development, strategic planning, and technical assistance for K-16 educators working with culturally and linguistically diverse populations. With over 35 years of experience, she works with rural, suburban, and urban districts, as well as agencies and organizations nationwide, to develop and implement evidence-based language education policies aligned with federal and state regulations.

A former University of Massachusetts faculty member and program director at the Collaborative for Educational Services, she has trained educators, mentored faculty, and co-authored two National Professional Development Grants to enhance multilingual learner instruction. As the leader of Amherst Public Schools' multilingual programming, she earned state recognition. Dr. Zacarian is the founder of Zacarian and Associates and the author of multiple [books](#), including [Transforming Schools for Multilingual Learners: A Comprehensive Guide for Educators, Second Edition](#) (Corwin Press, 2023), which serves as the basis for the contents of this guide.



# Table of Contents

[Introduction](#)

[Who Are Multilingual Learners?](#)

[Federal Laws and Regulations Governing Language Assistance Programming](#)

## Key Topics

1. [Identification and Assessment](#)
2. [Language Assistance Programs](#)
3. [Staffing and Staff Preparation](#)
4. [Meaningful Participation in School Activities](#)
5. [Avoiding Unnecessary Segregation](#)
6. [Identifying and Serving Multilingual Learners with Disabilities](#)
7. [Opting Out of Language Programs and Services](#)
8. [Monitoring Students Who Have Exited](#)
9. [Evaluation of Language Assistance Programs](#)
10. [Communication with Multilingual Families](#)

[Summary of the Federal Overview](#)

[References](#)



# Introduction

*Serving Multilingual Learners: Laws, Policies, and Regulations* provides an overview of the federal laws and regulations governing the education of multilingual learners [MLs]. The first edition of this guide provided a comprehensive, user-friendly resource about the latest laws, regulations, research, and evidence-based strategies of effective language education programs for MLs. Since then, several significant developments have occurred, including:

- Updates to federal laws and regulations;
- A stronger emphasis on strengths-based, culturally and linguistically sustaining practices;
- A deeper understanding of the impact of adverse childhood experiences [ACEs];
- Increased focus on student, family, school, and community partnerships;
- The publication of the *Dear Colleague Letter* related to serving MLs in 2015; and
- The implementation of the Every Student Succeeds Act [ESSA] in 2015.

## What's New in the Second Edition?

This second edition incorporates the changes of the past decade, supporting school and district leaders, teachers, specialists, and other stakeholders in creating high-quality language assistance programs for the growing population of MLs. It begins with an overview of the nation's MLs and educators, followed by the importance of a strengths-based approach. The guide then reviews federal laws and regulations, with the following goals:

- Provide an accessible, user-friendly explanation of our legal obligations;
- Include embedded references about these obligations for easy access;
- Describe how the federal regulations should be enacted in our various contexts;
- Furnish examples to support us in understanding and, as importantly, following the laws and regulations in our contexts; and
- Incorporate state education agency resources on our [interactive map](#).

**Note:** While each section of this guide functions as a stand-alone resource, we recommend reading the full document for a comprehensive overview. Policies evolve, and this guide is current as of 2025. The first edition is still available online for reference, but we strongly advise using this updated edition for accurate policy guidance.



# Who Are Multilingual Learners?

Multilingual learners [MLs] are one of the fastest growing and most diverse populations in our nation's schools. While they represent more than four hundred different language groups, 75% are Spanish speakers and 2% are Arabic, Chinese, or Vietnamese speakers. The primary language that a student speaks is but one descriptor. Students who speak Spanish, for example, have richly distinct cultures and dialects and represent many countries; they may also include Indigenous students for whom Spanish is a second or third language.

## A Note on Terminology

The term **multilingual learner [ML]** refers to a diverse group of students enrolled in public and public charter schools whose primary language is other than English. Several acronyms are used interchangeably to refer to MLs, including:

- English learners [ELs] / English language learners [ELLs]
- Heritage language learners
- Limited English proficient students [LEPs]
- Emergent multilingual learners [EMLs]
- Emergent bilinguals [EBs]
- Long-term English learners [LTELs] / Experienced multilinguals [EMs]
- Students in dual-language, two-way, and immersion programs
- Students with limited or interrupted formal education [SLIFE]
- Immigrant students who come from countries other than the United States and whose primary language is other than English

The strengths-based term **multilingual learner** is used throughout this document to recognize and value students' existing language abilities and highlight what they know. Check to see which terms are used in your district and state.

See the federal definition of a multilingual learner on the next page.



## Federal Definition: Multilingual Learner

The [federal definition](#) of a multilingual learner follows ([USCODE-2011, Title 20 Chapter 70 subchapter IX Part A, §7801](#), p. 1540). The term 'limited English proficient,' when used with respect to an individual, means an individual —

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C) (i) who was not born in the United States or whose native language is a language other than English;
- (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas, and
- (II) 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
- (iii) 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
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —
  - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3)
  - (ii) the ability to successfully achieve in classrooms where the language of instruction is English or
  - (iii) the opportunity to participate fully in society.



# Looking at the Whole Student

## The Importance of Using Culturally Sustaining Practices

All multilingual learners must receive culturally sustaining practices that support them to feel safe, as well as a sense of belonging, value, and competence in their classroom, school, and local communities. To do this, it is essential to become familiar with the lived experiences of the multilingual learners we work with. For example, some MLs have had prior literacy and schooling experiences, and some have not yet had these opportunities or had them consistently. MLs who have not yet had the opportunities to develop the literacy and academic experiences needed for school success must obtain these skills while learning English (Zacarian & Soto, 2020).

## Deepening Our Understanding of MLs with Adverse Childhood Experiences [ACEs]

An epic number of our nation's students, including MLs, have adverse childhood experiences [ACEs] in the form of abuse, neglect, and household challenges. MLs often face unique and significant challenges that set them apart from their peers. These may include living in war or conflict zones, facing persecution in their home countries, and experiencing displacement. Many endure long, arduous, and perilous journeys in search of safety in the United States, often separated from their families. Others face hardships in refugee camps, migrant camps, or detention centers, and some families live in constant fear of homelessness. Additionally, students from mixed-status families — where some members are U.S. residents or citizens while others are not — grapple with uncertainty and chronic anxiety related to their immigration status, as do students who do not yet possess residency or citizenship.

These realities underscore the need for evidence-based practices that help us to recognize students' full potential and to strengthen their resilience, academic success, and personal strengths. Later in this document, we explain why it is essential to use practices that acknowledge the strengths students possess, both inherently and because of the adversities they have faced. Gaining a deeper understanding of the rich diversity among MLs in our contexts helps us design, implement, and strengthen language support programs, ensuring MLs' success in school and in their lives.



# Who Are We as Educators?

Most educators and educational leaders have yet to have formal training to educate the rapidly growing population of multilingual learners. Additionally, many have limited to no experience working with this population, including MLs experiencing adversities and with limited, interrupted, or no prior formal education.

The good news is that training and support *do* make a difference! Educators with training and experience describe having a sense of hope and even inspiration working with MLs. They also have a deeper understanding of how to enact federal laws and obligations effectively. Additionally, they help us see and, as importantly, shift our focus to the assets and strengths that all multilingual learners possess.

## Using a Strengths-Based Approach

One of the key principles of multilingualism is looking at human behavior through the lens of the assets that empower people. Psychologist Abraham Maslow (1987, 1999), a pioneer in positive psychology, described what is possible when we look at human behavior through the lens of strengths, capacities, and qualities. One of the most exciting and even inspiring aspects of being an educator of MLs is seeing their endless possibilities and competencies.

### A Note on Terminology

**Assets-based** and **strengths-based** are terms used interchangeably to refer to an approach that:

- Identifies, acknowledges, values, and infuses students' and families' assets;
- Recognizes students' and families' personal, cultural, social, linguistic, academic, and life experiences as assets into all we do to support students' success in school and in their lives; and
- Includes a whole-student, whole-school, whole-district, and whole-community perspective.





## Moving Away from a Deficits-Based Approach

For years, the fields of psychology, psychiatry, social work, and education looked at *what was wrong* to find remedies for treating the problem. However, focusing on what was wrong, like educators lamenting that a child doesn't speak English, led to having a deficits-based view and, tragically and all-too-often, to negative outcomes. Here's what this can look like in practice.

*Manuel moved to the United States from El Salvador when he was 13 years old. In El Salvador, he worked on his uncle's bus as the ticket taker and money exchanger. He is a very polite Spanish speaker who came to the United States without any formal school or prior exposure to English.*

Considering Manuel through a deficits-based lens, what might we share with others about him?

- He doesn't speak English.
- He's never been to school (Zacarian, 2023, p. 27).

This deficits-based example commonly leads to more dialogue about what Manuel **cannot** do as opposed to what he **can**. Evidence-based research demonstrates the essentialness of moving away from a deficits-based view to fully embracing a strengths-based one (Gonzalez, Moll, and Amanti, 2005; Dweck, 2006).

## Embracing a Strengths-Based Approach

A strengths-based approach with MLs occurs by:

- Focusing on students' existing strengths;
- Acknowledging these strengths;
- Helping them to see these in themselves; and
- Building school- and classroom-wide practices and connections that fully integrate a strengths-based approach into all we do.



## Reframing Our Perspective: Manuel

When we reframe our perspective, we can identify the strengths that the same student, Manuel, possesses:

- He speaks Spanish.
- He has the depth of cultural experience.
- He has lived in more than one place and experienced some differences to share.
- He has a depth of math experience as a money exchanger.
- He is polite (Zacarian, 2023, p.28).

Can you think of other strengths that Manuel possesses? Read more about the importance of using a strengths-based approach in this federal infographic, [An Asset-Based Approach to Multilingual Learner Terminology](#).

## Why Should We Work Together?

One of the greatest lessons that we learned during the COVID-19 pandemic is that we cannot work alone. It becomes much more possible to create successful language assistance programming when we work in close collaboration and partnership with others. [The U.S. Department of Education](#) (1999) suggests that we form a **committee or workgroup** of administrators, teachers, counselors, and other staff, as well as families and community members.

The intent of forming this group is to support us all in designing, enacting, evaluating, and strengthening the successes of our language assistance programming. It is helpful to begin a group's efforts by ensuring that everyone is aware of the federal and state laws, policies, and regulations governing the education of MLs.

When everyone has this knowledge, the benefits are multiplied:

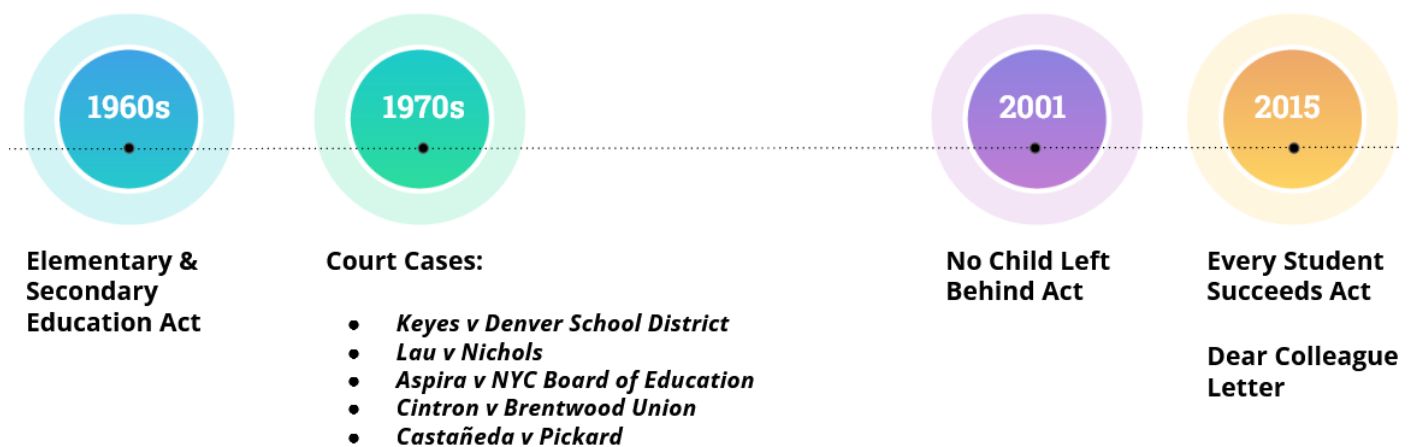
- We can enact what we are legally obligated to do.
- We can explain these legal obligations to students, families, colleagues, and others.
- We can ensure that everyone meaningfully understands the laws and regulations and participates actively in supporting the successful implementation of them.



# Federal Laws and Regulations Governing Education for MLs

The federal education regulations governing the education of all public and public charter school MLs are an outcome of major historical events. Many of the laws result from **federal acts** and **significant court cases**. Illustrated in Figure 1.1, each is intended to provide safeguards for MLs to receive a quality education, learn English and content successfully, and remedy obstacles and barriers to learning.

Figure 1.1: Federal Acts and Court Cases Related to Multilingual Learners



## Guiding Questions

- What are the key federal education acts governing the education of MLs?
- What are the landmark court cases regarding language assistance programming for MLs?
- What action steps should be taken to analyze the effectiveness of the language assistance program in my school?



# Federal Education Acts Governing MLs' Education

In the United States, federal education laws prohibit discrimination and ensure equal access to an education. The laws and regulations regarding the education rights of MLs are the result of federal actions intended to equalize students' access to education and include the following:

In 1964, the **Civil Rights Act** was enacted. It ruled that any institution receiving federal funding cannot deny access to anyone from any program or activity based on their race, color, and national origin (U.S. Department of Justice, Office of Civil Rights, n.d.).

The **Elementary and Secondary Education Act [ESEA]** of 1965 was amended in 1968 and was the first federal education statute to bring the rights of MLs into focus. The purpose of the amendment, known as the Bilingual Education Act, was to support MLs in attaining proficiency in English and meeting educational standards.

The **No Child Left Behind Act [NCLB]** of 2001 was enacted to improve student achievement and ensure that all students received a high-quality education and met state academic standards. The standards included four major principles:

1. Stronger accountability for results;
2. Greater flexibility among the nation's states, school districts, and schools in the usage of federal funds;
3. More choices for parents of disadvantaged backgrounds; and
4. An emphasis on teaching methods that are proven to work (U.S. Department of Education, 2002).

ESEA was amended in 2015 under a new name, **Every Student Succeeds Act [ESSA]**. It reinforced our nation's promise to provide students with equal opportunities to an education and established standards to ensure the success of all students (U.S. Department of Education, n.d.). ESSA requires every **state education agency [SEA]** to "monitor every **local education agency [LEA]** to ensure that they are providing ELs with meaningful access to grade-level core content instruction and remedying any academic deficit in a timely manner" (U.S. Department of Education, 2016, p. 1).



There are many activities that schools and districts must follow under the ESSA. These include:

- Monitoring MLs' progress in becoming proficient in English and learning core content;
- Establishing benchmarks for expected growth and steps for supporting students who are not making progress toward these goals;
- Using valid and reliable assessments in the areas of listening, speaking, reading, and writing and documenting the progress of MLs in learning English;
- Monitoring former MLs for at least two years to ensure they were not exited prematurely, any academic deficits are addressed, and they are successfully participating in the standard program alongside their never-ML peers; and
- Reporting the number and percentage of former MLs who have met state academic standards for four years ([U.S. Department of Education, 2016](#), pp. 1-2).

In addition to the rulings of federal courts, described in the succeeding paragraphs, federal policies about MLs follow various federal acts, including Title I and Title III of federal regulations.

**Note:** Title I and Title III address the education of MLs in two distinct ways:

- Title I addresses issues of accountability and high-stakes testing.
- Title III provides us with a definition of the language instruction that multilingual learners must receive.

## Serving Immigrant Students

It is important to note that **all** public and public charter school MLs have a legal right to free public education, regardless of their immigration status or that of their families.

**Note:** For additional information, please see the following:

- [Immigrant Students' Legal Rights: An Overview](#) (Colorín Colorado)
- [Immigrant Students' Rights: A Guide for Schools' Front-Office Staff](#) (*Education Week*)



# Landmark Court Cases: Language Assistance Programs for MLs

Many of the federal regulations about MLs are the result of lawsuits filed in local courts across our country and appealed to the United States Court of Appeals and the United States Supreme Court. These court cases addressed such critical issues as segregation, equal access to education, and the English language development and content learning needs of students.

In 1973, [\*Keyes v. Denver\*](#) argued that groups of students were being segregated from their peers. The U.S. Supreme Court ruled that schools must desegregate their students. This ruling meant that multilingual learners could not be segregated from their English-fluent peers.

In 1974, [\*Lau v. Nichols\*](#) was a Supreme Court case brought on behalf of families of Chinese-speaking multilingual learners in San Francisco. They argued that the school district was not providing an effective (or even adequate) education because the children could not comprehend English. The court ruled that school districts must take steps to provide MLs with an instructional program that has equal access to education.

In 1978, [\*Castañeda v. Pickard\*](#) argued that their local district was segregating students based on race and ethnicity and that the district failed to implement a successful bilingual education program for children to learn English. The United States Court of Appeals for the Fifth Circuit ruled that districts must establish a **three-prong test** to ensure that their educational program for multilingual learners is consistent with every student's right to an education.



The three prongs require educational programming for MLs to be:

1. Based on **sound educational research**;
2. Implemented with **adequate commitment and resources**; and
3. Evaluated and **proven to be effective** and that alternative evidence-based programming be implemented when it is not found to be effective.

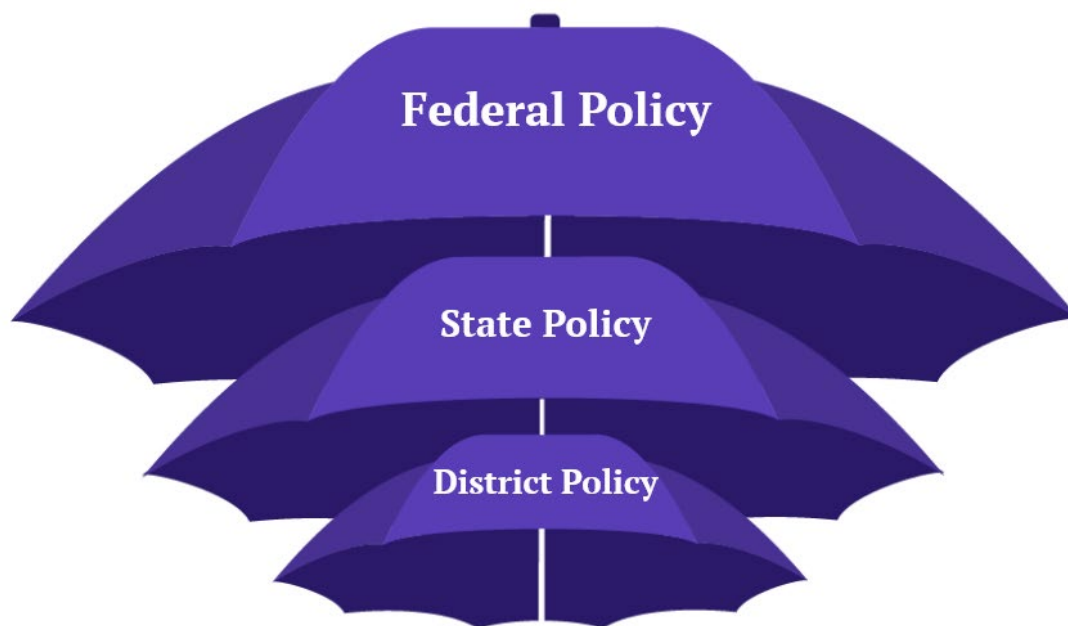
**Note:** The [\*Castañeda v. Pickard\*](#) case is the **most cited of all the court cases**. For example, the *Dear Colleague Letter* references the first prong to describe common language assistance programs that are sound in theory. These include the examples on the following page. See more in this video: [Castañeda v. Pickard: Are ELLs receiving the services they need?](#)



# Safeguarding the Laws & Regulations

There are three governing agencies of public education: federal, state, and local agencies. Who has the most power? In the United States, federal education agencies are the most important and have the highest authority, followed by state education agencies [SEAs] and then local education agencies [LEAs]. Federal regulations take precedence over state and local education agencies. In turn, state regulations take precedence over local education policies. Lastly, all local education agencies, such as public school districts and public charter districts, must follow their state's laws and regulations. Figure 1.2 illustrates the governing precedence of federal, state, and local education agencies (including the regulations regarding the education of multilingual learners).

**Figure 1.2: Governing Precedence of Federal, State, and Local Education Agencies**



According to federal laws, every local school district must provide MLs with instruction in English language development and simultaneously ensure that students are held to the same educational standards and outcomes as their English-fluent peers.



Following federal laws and regulations, each state education agency determines the assessments and language education instruction programs that will be followed by local education agencies. Following the three-prong test of [Castañeda v. Pickard](#), these must be (1) based on sound research, (2) properly resourced, and (3) proven to be effective, and alternatives must be provided when they are not.

**Note:** The laws do not place restrictions on the amount of time that is needed for a multilingual learner to:

- Be able to listen, speak, read, and write in English;
- Be successful in classroom settings where English is the language of instruction; or
- Be able to participate actively in his/her classroom, school, community, and beyond.

## 10 Compliance Issues and Solutions: Following the Laws

In January 2015, the U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights sent a letter to every state education agency [SEA] and local education agency [LEA] (i.e., public school district and public charter school and district) in the nation. Known as the [Dear Colleague Letter](#), the two federal agencies remind local schools and state education agencies of their legal obligation to ensure that MLs “participate meaningfully and equally in educational programs and services” (p. 2). The letter reflects the precedent court cases and federal Acts included in the timeline presented earlier (p. 2).

Our policy guide explains ten common compliance issues in public and public charter schools related to the education of MLs. It also offers strategies and actions steps for following the laws. (**Note:** For additional information, see the federal [English Learner Toolkit](#)).





# 1. Identification and Assessment

An essential first step for districts is **identifying all MLs**. The *Dear Colleague Letter* underscores this requirement. It states that schools and state education agencies must "identify and assess ... students in need of language assistance in a **timely, valid, and reliable manner**" (U.S. Departments of Justice and Education, 2015, p. 8).

## Guiding Questions

- How are MLs identified?
- What action steps should be taken to ensure all MLs are identified?
- What is a Home Language Survey?
- What are the requirements for informing families when a child is identified as an ML?

## What Schools Need to Know

Federal guidelines, as described in the [Dear Colleague Letter](#), require schools to:

- Have a clear set of procedures for identifying multilingual learners using a "valid and reliable" assessment as put forth by their state education agency; and
- Complete these procedures within a timely manner so that they may notify parents of identified MLs about their child's language assistance program within 30 days of enrollment.

Some districts may believe that they have 30 days to identify an ML. **This is not true or practical.** Instead, it is essential to have procedures to identify potential multilingual learners within the first few days of enrollment. Doing so ensures that each student is identified *and* placed into an appropriate language assistance program as quickly as possible. In addition, **families have a legal right** to information in a language they comprehend meaningfully. According to federal law, "districts must, to the extent practicable, translate such notices in a language that the parent can understand" ([U.S. Department of Justice and U.S. Department of Education, 2015, p. 10](#)). (See our section on [Communicating with Multilingual Families](#) for more information.)



## Home Language Surveys

In practice, many schools and districts use a **Home Language Survey** to screen potential multilingual learners. Some state education agencies [SEAs] furnish a mandated form. Schools and districts should check with their SEA to ensure they adhere to the laws. Please see our [State Overview](#) for state-specific resources.

Home language surveys typically include questions such as:

- What language did your child first understand or speak?
- What language do you or others often use when speaking with your child?
- What language does your child use most often when speaking at home?
- What language does your child use most often when speaking with family members?
- What language does your child use most often when speaking with friends?

When a parent or guardian responds that their child uses a language other than or in addition to English, the school must assess the child to determine whether the child is an ML or is proficient in English. However, the Home Language Survey is intended to be one of many means to identify potential multilingual learners. See additional information and sample Home Language Surveys in Chapter 1 of the [English Learner Toolkit](#).

**Note:** Home Language Surveys are not intended (and should not be used) as the only means for identifying MLs. Federal law expects that local education agencies, under direction from their state education agency, will use state-approved assessments as well as parent/guardian and student interviews in a language that is meaningfully understood, teacher input, and student performance in class and on assessments to identify its MLs.



## Case Study: Identifying MLs

Let's examine three newly enrolled Kindergarten students. Consider the next steps that you would take as you read the examples.

**Juan Carlos** was born in the United States. He lives with his parents and grandmother and is enrolling in kindergarten at his local school. When his mother comes to enroll her son in their local school, she is given a packet of forms to complete. Included in the packet is a Home Language Survey. Juan Carlos' mother answered that the only language that Juan Carlos knew was Spanish.

**Bao Chen** recently moved to the United States from Beijing. Her parents enroll her in the same school as Juan Carlos. Their responses to the Home Language Survey are that Bao speaks English. However, when Bao begins attending school, her teacher suspects that Bao is a multilingual learner.

**Laura Mitchell** is also a new student in the same school as Juan Carlos and Bao. Based on her name, the school assumes she is not a multilingual learner and does not ask her parents to complete the survey. However, her teacher later suspects that Laura may be a multilingual learner.

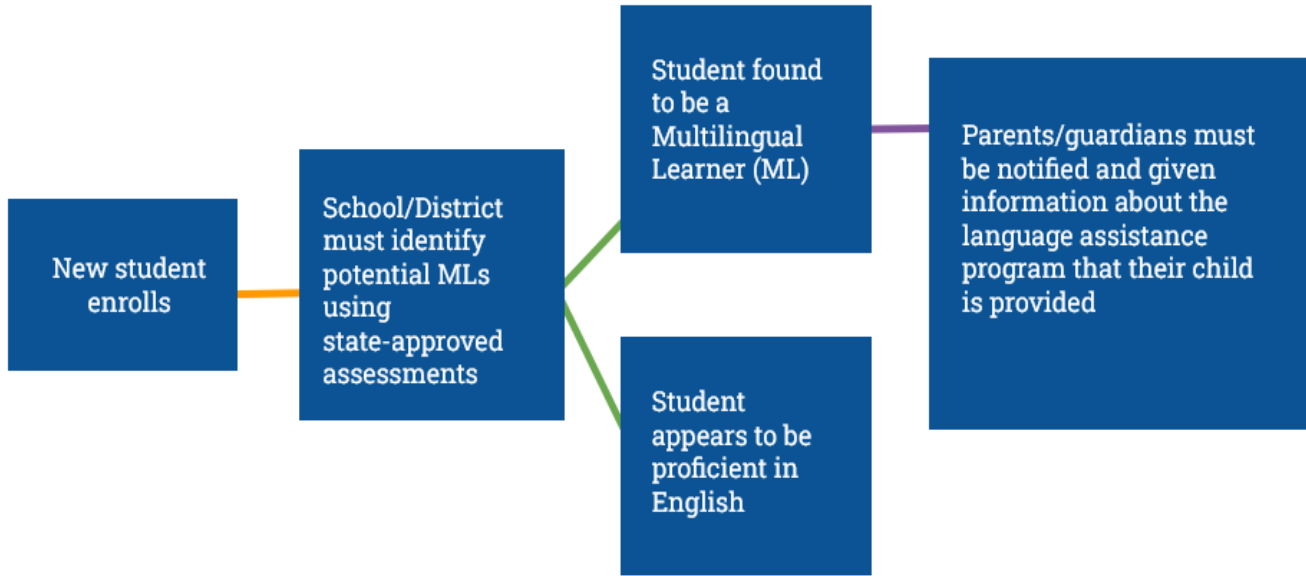
### Discussion Questions

When we look closely at the three examples, the only one that seems clear is Juan Carlos. His mother indicated that he spoke a language other than English on the Home Language Survey. Does this mean that we automatically identify him as a multilingual learner? What about Bao and Laura?

These examples underscore that Home Language Surveys are not intended and should not be used as the sole means for identifying MLs. As noted above, federal law expects that local education agencies, under direction from their state education agency, will use the following to determine their MLs: state-approved identification assessments; parent/guardian and student interviews in a language that is meaningfully understood; and student performance in class and on assessments. Figure 1.3 illustrates the identification process.



Figure 1.3: Identification Process of Multilingual Learners

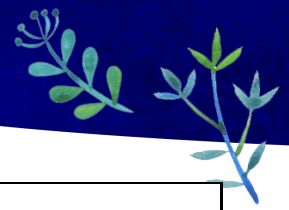




## Action Steps: Identifying Multilingual Learners

Every local education agency (i.e., school and district) should assess the steps it takes to identify and assess potential MLs. The following action steps, drawn from Zacarian (2023, p. 182) are intended for this purpose. These questions can guide a review of school and district Multilingual Learner [ML] identification procedures and policies.

<p>What steps have we taken to ensure timely, valid, and reliable identification and assessment of potential MLs?</p>	
<p>What might we do to strengthen those steps?</p>	
<p>What documents, forms, and protocols are we using?</p>	
<p>What professional readings or school/district documents on this topic should be included?</p>	
<p>What cultural and linguistic considerations do we need to address, such as providing interpreters when needed? (Please see <a href="#">Communicating with Multilingual Families</a> for more ideas).</p>	



What additional questions should we ask about our identification process?	
What type of professional growth do we need about identifying all our MLs?	

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## 2. Language Assistance Programs

The second key topic of the *Dear Colleague Letter* focuses on **language assistance programs**. What is a language assistance program? It is a sequential program of instruction that is based on sound theory and has proven to be successful in supporting students to become proficient in English. Its purpose is to “enable” MLs to “attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time” (U.S. Departments of Justice and Education, 2015, p. 12).

Further, it states that a “student’s English proficiency level, grade level, and educational background, as well as language background for bilingual programs, must be considered to determine the language assistance program that will be the most effective. For example, some school districts have designed programs to meet the unique needs of EL students [referred to in this document as ML students] whose formal education has been interrupted in their country of origin, perhaps due to dislocation, war, disease, famine, or other situations resulting in missed educational instruction” (p. 12).

Salina Elementary School in Dearborn, Michigan serves as a prime example. Many of its MLs came to the U.S. because of the war in Yemen. Supported by a dedicated team of bilingual and bicultural teachers, support staff, and other personnel, many of whom have family roots in Yemen, a hallmark of the school’s language assistance programming is the use of trauma-informed practices to address the unique social and emotional needs of its students. These programs complement a similar approach at its sister school, Salina Intermediate School, where many older siblings of the elementary school students are enrolled.

For additional Colorín Colorado resources about Salina’s approach to supporting its students, see the following resources:

- [10 Strategies for Supporting SEL for ELLs: "Grow as You Go"](#)
- [You are Welcome Here](#), an award-winning video featuring the Salina community

For more related guiding questions and considerations, see our section on [Evaluating Language Assistance Programs](#) of this document, as well as [English Learner Toolkit: Chapter 2](#).



## Common Language Assistance Programs

The term **Language Assistance Program** is used interchangeably with **Language Assistance Instructional Program**, **Language Instruction Educational Program [LIEP]** and **Language Assistance Services** to describe “the affirmative actions” that a district must take to (1) properly identify students whose primary or home language is other than English and who are not yet able to perform ordinary schoolwork in English and (2) provide them with appropriate language assistance services until they can participate meaningfully in a school’s or district’s education program without language assistance services. The *Dear Colleague Letter* references the first prong of Castañeda to describe educationally sound language assistance programs for MLs/ELs:

“**English as a Second Language [ESL]**, also known as **English Language Development [ELD]**, is a program of techniques, methodology, and special curriculum designed to teach EL students explicitly about the English language, including the academic vocabulary needed to access content instruction, and to develop their English language proficiency in all four language domains (i.e., speaking, listening, reading, and writing). ESL instruction is usually in English with little use of the EL students’ primary language(s).

**Structured English Immersion [SEI]** is a program designed to impart English language skills so that the EL student can transition and succeed in an English-only mainstream classroom once proficient. All instruction in an immersion strategy program is in English. Teachers have specialized training in meeting the needs of EL students (e.g., an ESL teaching credential and/or SEI training), and have demonstrated strong skills in promoting ELD and SEI strategies for ensuring EL students’ access to content.

**Transitional Bilingual Education [TBE]**, also known as **early-exit bilingual education**, is a program that utilizes a student’s primary language in instruction. The program maintains and develops skills in the primary language while introducing, maintaining, and developing skills in English. The primary purpose of a TBE program is to facilitate the EL student’s transition to an all-English instructional program, while the student receives academic subject instruction in the primary language to the extent necessary.

**Dual Language Program**, also known as two-way or developmental, is a bilingual program where the goal is for students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom that is usually comprised of half primary-English speakers and half primary speakers of the other language” (p. 12).





## Action Steps: Language Assistance Programs

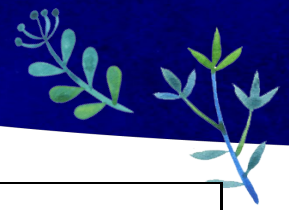
Every local education agency (i.e., school and district) should assess the effectiveness of its language assistance programming for MLs. The assessment should draw from the three prongs of the *Castañeda v. Pickard* ruling. These action steps, drawn from Zacarian (2023, p. 184) are intended for this purpose. These questions can guide a review of a school or district language assistance program.

What steps have we taken to ensure that we are providing MLs with language assistance programming that is educationally sound and proven successful, consistent with the *Castañeda v. Pickard* ruling?

What might we do to strengthen those steps?

What is the evidence-based research that our language assistance program is educationally sound and proven to work?

What documents, forms, and protocols are we using to demonstrate that we are providing educationally sound and successful language assistance programming?



What professional readings or school/district documents on this topic should be included?	
What cultural and linguistic considerations do we need to address?	
What additional questions should we ask about our language assistance programming for MLs?	
What type of professional growth do we need about analyzing the success of our language assistance programming for MLs?	

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## 3. Staffing and Staff Preparation

The third key topic of the *Dear Colleague Letter* focuses on **staffing and the preparation of staff**. In brief, schools and state education agencies must “sufficiently staff and support the language assistance program” (U.S. Departments of Justice and Education, 2015, p. 8).

### Guiding Questions

- What are the federal requirements for sufficiently staffing and supporting language assistance programming?
- What action steps should be taken to sufficiently staff and support language assistance programs?

### What Schools Need to Know

It is important to ensure that:

- Educators teaching and working with MLs are trained and credentialed to do so effectively;
- Educators are receiving sufficient professional development to obtain these skills; and
- Evaluators (e.g., supervisors, administrators), instructional coaches, peers, and others conducting observations and supporting educators of MLs are familiar with the skills needed to provide highly effective instruction for MLs and are sufficiently trained and experienced doing so.

There are many pathways that schools and districts can use to determine the professional readiness and learning needs of its staff to work with its dynamically changing population of MLs. An annual review should be conducted to ensure that there are highly qualified staff and supports to meet the language, academic, and social-emotional development of MLs. The survey at the end of this section is an example of a tool that can be used to conduct an annual review. For more detail on what “sufficient” staffing and preparation looks like, see the [English Learner Toolkit, Chapter #3](#). You can also learn more in Colorín Colorado’s related resources:

- [Best Practices for Evaluating ELL Educators: Lessons Learned in Syracuse, NY](#)
- [Hiring Your School’s First ELL Teacher: 10 Tips for School Leaders](#)
- [10 Ways ELL Coaches Can Support Student Success](#)



## Federal Requirements: Sufficient Staff and Support

According to the federal laws cited in the *Dear Colleague Letter*:

*“School districts have an obligation to provide the personnel and resources necessary to effectively implement their chosen [language assistance] programs. This obligation includes having highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the [language assistance] programs. At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct English-learning students and that these teachers have mastered the skills necessary to effectively teach in the district’s program for English-learning students.*

*“Where formal qualifications have been established, e.g., the SEA requires authorization or certification to teach in particular language assistance programs, or a school district generally requires its teachers in other subjects to meet formal requirements, a school district must either hire teachers who already have the necessary formal qualifications to teach English Learning students or require that teachers already on staff be trained or work towards attaining the necessary formal qualifications and obtain the formal qualifications within a reasonable period” (pp. 14-15).*



## Case Study: Substitute Shortage

The following example can extend our thinking about these laws and regulations. Colorín Colorado conducted a national survey about the national shortage of substitute teachers. Many teachers of MLs, including ESL, ESOL, ELD teachers and others, reported that they were being taken from their teaching, co-teaching, and administrative duties to be a 'substitute' teacher. They also reported that they were engaging in a substitute teacher role at a much higher rate than other educators in their schools. A survey respondent shared the following:

*"(ESL teachers being pulled as substitutes) has happened in past years, but given a Department of Justice settlement in my county, it's now avoided. There are potential legal ramifications with an audit should our EL students not receive their designated hours."*

### Discussion Question

Drawing from the federal laws and regulations, what steps might you take to ensure that there are highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the [language assistance] programs in your context?



## Staffing and Staff Preparation for MLs: Annual Survey

We welcome learning as much as we can about the prior preparation of our school/district educators so that our professional learning opportunities are tailored to meet the needs of our multilingual learners. Please complete the following survey, drawn from Zacarian (2023, p. 186) for this purpose. Thank you!

Name:

Role:

School:

Date:

Please list prior professional development sessions or formal courses taken in multilingual education.

Number of PD or Formal Education Hours Earned

Do you possess an advanced Degree in Multilingual Education? If yes, please list the degree earned.

What topics would you like included in our professional growth activities so that it strengthens your preparedness working with MLs?

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## 4. School Activities, Curriculum, and Enrichment

The fourth key topic of the *Dear Colleague Letter* focuses on **participation in school activities, access to the core curriculum, and enrichment opportunities**. According to the *Dear Colleague Letter*, schools and state education agencies must “ensure MLs have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum, graduation requirements, specialized and advanced courses and programs, sports, and clubs” (U.S. Departments of Justice and Education, 2015, p. 8).

### Guiding Questions

- What activities are covered under this guidance?
- What action steps should be taken to ensure MLs meaningfully participate in curricular and extracurricular activities?

### What Schools Need to Know

According to the *Dear Colleague Letter*, “SEAs and school districts must provide EL students equal opportunities to meaningfully participate in all programs and activities of the SEA or school district — whether curricular, co-curricular, or extracurricular. Such programs and activities include pre-kindergarten programs, magnet programs, career and technical education programs, counseling services, Advanced Placement and International Baccalaureate courses, gifted and talented programs, online and distance learning opportunities, performing and visual arts, athletics, and extracurricular activities such as clubs and honor societies” (p. 18).

All public and public charter schools and districts must take time to:

- Meaningfully inform students and families about these opportunities to ensure that all MLs and their families have equal access to the same activities as do English-fluent peers and their families;
- Assist MLs and their families with activity enrollment;
- Support MLs and their families in the process of enrolling in these activities; and
- Address barriers to MLs and their families’ involvement.



It is useful to think of before-, after-, and out-of-school events, programs, and activities as cultural activities. Each involves routines and practices that are familiar to American English-fluent speaking families, students, and others. They know the actions to take as they are deeply familiar with the predictable routines, practices, and outcomes associated with them. Examples of cultural events include parent conferences, open house or curriculum events, potluck suppers, athletic events, and field trips.

It is essential for educators to think carefully, empathetically, and proactively about the ways in which MLs' families can become familiar with these *and* actively participate in them. A helpful means for creating partnerships that promote families' active participation in supporting student engagement in all school and community activities involves the framework on the following page. For additional resources, see [English Learner Toolkit: Chapter 4](#).

## Case Study: Permission Slips

Alfredo is a middle school ML who wants to play 'after-school' soccer. At the end of the school day, he excitedly jogs to the soccer field to join his classmates. The first activity that the soccer coach does is collect *permission slips*. When the coach asks Alfredo for his *permission slip*, Alfredo shrugs his shoulders to signal that he doesn't know what the document is. In response, the coach says, "I am sorry, but you cannot play without it." Alfredo saunters off the field feeling very confused about what he did or did not do (as he is not sure) and sad that he cannot play the game that he loves.

### Discussion Questions

- Drawing from the federal laws and regulations, what steps would you take to ensure that students such as Alfredo have equal access to all curricular and extracurricular activities?
- How might you involve his parents/guardians to ensure that they have meaningful and equal access to the same information as all parents/guardians?





## Framework for Meaningful Participation of MLs in Extracurricular Activities

### Bridging the cultural divide

- Welcome and respect families' cultures.
- Make routines and practices transparent, meaningful, and accessible for families of MLs.
- Create events and activities that pay particular attention to families of MLs and their cultural ways of being.
- Encourage family involvement throughout all grade levels in a manner that is respectful of parents.

### Infusing parent advocacy as part of the core

- Help families become a powerful influence in their child's education.
- Understand the ML community and its needs.

### Linking parent involvement to learning

- Connect family activities with learning.
- Connect learning to what is happening at home and in the community.

### Working together for the common good of students

Create opportunities in which educators and families can:

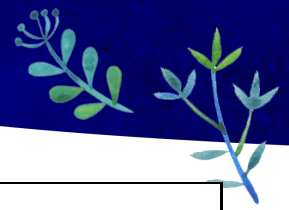
- Work together to create a welcoming climate; and
- Work with the community to improve student outcomes and their connections with and service to the community.



## Action Steps: Meaningful Participation in Activities

Every local education agency (i.e., school and district) should review state agency obligations related to student participation in school activities. The following list of action steps, drawn from Zacarian (2023, p. 190) is intended to guide schools and districts as they ensure that MLs have equal opportunities to meaningfully participate in the same curricular and extra-curricular activities (before-, during-, and after-school) and local activities as their English-fluent peers, both in and out of school.

<p>What steps have we taken to ensure MLs' participation in school activities?</p>	
<p>What might we do to strengthen those steps?</p>	
<p>What are we doing to ensure that MLs have agency in creating or suggesting new activities?</p>	
<p>What steps are being taken to communicate these opportunities with multilingual families?</p>	
<p>What documents, forms, and protocols are we using?</p>	



What professional readings or school/district documents on this topic should be included?	
What cultural and linguistic considerations do we need to address?	
What additional questions should we ask about ML participation in school activities?	
What type of professional growth do we need to ensure ML participation in school activities?	

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## 5. Avoiding Unnecessary Segregation

The fifth key topic of the *Dear Colleague Letter* focuses on **avoiding unnecessary segregation of MLs**. According to the *Dear Colleague Letter*, “EL programs may not unjustifiably segregate students on the basis of national origin or EL status” (U.S. Departments of Justice and Education, 2015, p. 22).

### Guiding Questions

- What does inclusion mean for MLs?
- What kinds of targeted support or instruction are appropriate for MLs?
- What action steps should be taken to avoid unnecessary segregation?

### Inclusion: What Does It Mean for MLs?

It is always important to explore this question across all that occurs with MLs. Many of us might not realize its special significance. This is especially true when our emphasis is wholly on the speed by which MLs learn English. It is also true that many MLs continue to feel segregated from their peers before, during, and after school and that MLs may not report the bullying they experience. Exploring this question can provide us with important information to transform our thinking toward being more inclusive, as seen in this case study.

See additional resources in [English Learner Toolkit: Chapter 5](#), as well as in Colorín Colorado’s resources related to [preventing the bullying of MLs](#).



## Case Study: Why do we have to leave the room?

A group of educators was invited to discuss a question that second-grade students asked their ESL teacher: Why did they have to be separated from their peers during their ESL class? While a simple response might have been “So you can learn English,” it is critical to carefully consider how we can support the equity and inclusion of all students.

### Discussion Questions

The kinds of questions that the group of educators explored included:

- What might have prompted the students to ask this question?
- What might happen if the second graders brought a buddy to their ESL class?
- What might happen if the ESL teacher and the second-grade teacher co-planned and co-taught lessons?



## Action Steps: Assessing Unnecessary Segregation of MLs

Every local education agency (i.e., school and district) should review their practices in order to ensure that MLs are not unnecessarily segregated in school settings. The following action steps, drawn from Zacarian (2023, p. 192) are intended to support this type of review and strengthen language assistance programming.

<p>What steps are being taken to avoid unnecessary segregation of MLs?</p>	
<p>What might we do to strengthen those steps?</p>	
<p>What documents, forms, and protocols are we using?</p>	
<p>What professional readings or school/district documents on this topic should be included?</p>	
<p>What cultural and linguistic considerations do we need to address?</p>	



What additional questions should we ask about avoiding unnecessary segregation?	
What type of professional growth do we need about avoiding unnecessary segregation?	

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## 6. Identifying and Serving MLs with Disabilities

The sixth key topic of the *Dear Colleague Letter* focuses on **identifying and serving MLs with disabilities**. According to the *Dear Colleague Letter*, schools and state education agencies must “ensure that MLs with Disabilities Under the Individuals with Disabilities Act [IDEA] or Section 504 are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in evaluations and delivery of services” (U.S. Departments of Justice and Education, 2015, p. 8).

### Guiding Questions

- What is the Individuals with Disabilities Education Act [IDEA]?
- What are some trends of MLs and Special Education?
- In our work identifying and serving MLs with disabilities:
  - Why is it important to evaluate the effectiveness of language assistance programming?
  - Why use a team approach?
  - What steps must be taken with parents and guardians?
- What action steps should be taken to assess a district’s procedure for identification of and services for MLs with learning disabilities?

### Schools’ Legal Obligations Regarding MLs with Disabilities

All SEAs and school districts are legally obligated to do the following:

- Identify MLs in a timely manner;
- Consider the English language proficiency level of all MLs in determining the appropriate assessments and other evaluation materials used;
- Not determine MLs have a disability due to limited English language proficiency;
- Provide MLs with disabilities with both the language assistance and disability-related services they are entitled to under Federal law; and
- Inform the parent/guardian of a ML with an individualized education program (IEP) and how the language instruction education program meets the objectives of the child’s IEP (p. 24-25).





## Individuals with Disabilities Education Act [IDEA]

In 1975, Congress enacted the Individuals with Disabilities Education Act [IDEA], which addresses the rights and educational needs of children with disabilities. The law has been amended several times, most recently in 2004 and Every Student Succeeds Act of 2015. IDEA spans students' education from birth to age 21.

### Individuals with Disabilities Education Act [IDEA]

Under [IDEA, §1401 Section 3](#):

(A) In general, the term “child with a disability” means a child —

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child[ren] aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child —

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.



## MLs and Special Education: Common Questions

### What are some trends of MLs and Special Education?

The [U.S. Department of Education Office of Special Education and Rehabilitation Services](#) (April 2022) posted some facts about MLs, which are important for all of us to consider:

- “The number of students with disabilities that are MLs in the U.S. grew by close to 30% between school years 2012 to 2020.”
- MLs with disabilities “were more likely to drop out of school, less likely to graduate with a high school diploma, and more likely to receive a certificate as compared to all students served under IDEA, Part B.”
- MLs with disabilities “were less likely to be served inside the regular class 80% more of the day as compared to all school-aged students served on IDEA, Part B.”
- MLs “were more likely to be identified with a specific learning disability or speech or language impairment, autism, or emotional disturbance as compared to all students served under IDEA, Part B.”

In addition to the trends discussed by the U.S. Department of Education, **MLs being over-identified as having disabilities when they don’t** is a chronic issue that needs our attention. Two of the major reasons for this outcome are that MLs may be referred for a special education evaluation when:

1. They do not seem to be making the same academic progress as their English-fluent peers.
2. They don’t seem to be learning English rapidly.

Another chronic issue is **MLs being under-identified**. This happens when students who have disabilities are not referred for special education services. It happens when schools fear that they might be referring MLs too quickly. This “wait till the student fails” and “stall for time” approach can prevent us from identifying MLs with disabilities in a timely manner.

It is also possible for schools or districts to over-correct in one direction or the other, especially if an over- or under-identification trend is identified. (See Dr. Zacarian speak on this topic in this [related video clip](#).) That is why schools need procedures in place that offer a comprehensive view of each individual child and their progress. (See related resources below.)



## Why is it important to evaluate the effectiveness of language assistance programming?

Every school district must demonstrate that its language assistance program is effective. This is done by gathering data to show that programming is based on the above-mentioned [Castañeda v. Pickard](#) federal regulations that programming is (1) based on sound educational research, (2) implemented with adequate commitment and resources, and (3) proven to be effective. (**Note:** Please refer to our sections on [Language Assistance Programs](#) and [Evaluating Language Assistance Programs](#) in this document for more detailed information.)

Additionally, a team of teachers, administrators, and specialists should periodically review and analyze data about the MLs who have been referred and evaluated for special education services. The action steps at the end of this section drawn from Zacarian (2023) are intended for this purpose. See more in [these related videos](#).

## Why use a team approach?

It is critical for schools serving MLs to use a team approach that includes students and families as well as staff, including bilingual, bicultural staff; classroom, ESL, subject matter, and special education teachers; reading specialists and speech and language pathologists; counselors; and family liaisons. It is also important that all who educate MLs and supervise those working with MLs have training to work with multilingual learners (**Note:** See our section on [Staffing and Staff Preparation](#) for additional information.)

## What steps must be taken with parents and guardians?

MLs' parents and guardians have the right to receive information from the school in a language that is meaningfully understood — including all information related to special education. Under the federal laws, they also have the right to meaningful participation and inclusion in evaluation decisions, procedures, and meetings — such as referrals, evaluations, and procedures related to special education. As importantly, parents, guardians and MLs themselves can and do provide us with invaluable information when we create an open dialogue for this purpose.



## Including Interpreters and Translators

Federal law requires providing interpreters (commonly referred to as translators) for meetings and written translations for parents and guardians who need them. To ensure full participation, it is helpful to confirm in advance who will attend the meetings and whether an interpreter is needed.

Additionally, the language of special education — including terms, idiomatic expressions, and acronyms such as Ed Plan, Team Meeting, Child Study Team, IEP, 504, and SLP — requires educators, parents, guardians, and multilingual interpreters and translators to be knowledgeable and capable of having meaningful communication throughout the process of identifying and supporting a child with disabilities.

As such, it is imperative that school personnel employ interpreters and translators who:

1. Are proficient in English and the primary language(s) of parents and guardians.
2. Are familiar with a school's programming, policies, and practices related to:
  - a. general school programming;
  - b. language education programming; and
  - c. special education.

It is also crucial to provide interpreters and translators with ongoing professional development to ensure they have an up-to-date understanding of the school's general education, language education, and special education programs, as well as the technical language associated with these. This understanding enables them to help parents and guardians of MLs understand their child's needs, support their child effectively, and make informed decisions on their child's behalf.

**Note:** See the following articles for building, training, and sustaining an effective cadre of interpreters and translators. Each features insights from Dr. Jennifer Love, Director of Language Access Services for Prince George's County School District in Maryland:

- [Equity Through Language Access: Best Practices for Collaborating with Interpreters](#)
- [Building Interpreter and Translator Networks](#)



Proactive steps that schools can take to partner with families, interpreters, and translators include the following:

- Collaborating with families about scheduling meetings and setting meeting times;
- Ensuring that families, interpreters, and translators meaningfully understand all of the information discussed, as well as any proposed plans or solutions;
- Ensuring that interpreters and translators have training in interpreting and providing written translations about special education;
- Collaborating closely with family liaisons, interpreters, and translators; and
- Allocating time for interpretation, as meetings with interpreters may take up to 50-100% longer.

**Note:** Some families may hesitate to sign forms or agree to services for their children. [This article](#) by National Teacher of the Year Juliana Urtubey, provides some helpful considerations.

For more ideas and resources, see:

- [Special Education and Your Child: FAQs for Multilingual Families](#) (14 languages)
- [Equity Through Language Access: Best Practices for Collaborating with Interpreters](#)
- [American Speech and Language Hearing Association on IDEA with Culturally and Linguistically Diverse Students](#)
- [Comparison of Language Differences Versus Disabilities](#) (*English Learner Toolkit: Chapter 6*)
- [Fact Sheet: Equal Access to Elementary and Secondary Education for Students Who Are English Learners with Disabilities](#) (U.S. Department of Education)



## Case Study: Language Access

Dr. Jennifer Love, Director of Language Access for Prince George's County Public Schools in Maryland, brings these ideas to life. She states that the *Dear Colleague Letter* helped solidify the translation arm of the district. It has moved well beyond providing translators at meetings to include systematic communication from e-blasts, outreach videos, and social media in dozens of languages.

As importantly, it includes continuous professional growth and training to better ensure their success in partnering with families. Dr. Love tells us that her district has moved from language access as an add-on to fully embracing multilingual communication. She also shares that one of the district's biggest commitments is to nurture the growth and leadership of their translation teams. The professional growth steps that they take, and their evaluation of these steps, are vital for ensuring that families are well informed about their child's programming and performance in school and are partners with us (Zacarian, 2023, pp. 121-122).

### Discussion Question

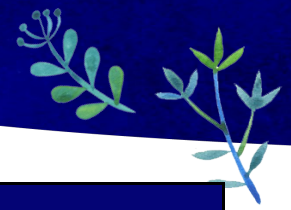
Drawing from the federal laws and regulations and what Dr. Love shared, what steps might you take to ensure that parents and guardians have full access to and participation in the referral, identification, and special education services offered in your context?



## Analysis of ML Population & Special Education Referrals

The following action steps, drawn from Zacarian (2023, p. 166-167), are intended to help schools and districts in assessing the identification of and services for MLs with learning disabilities.

Total <b>number</b> of identified MLs in the school	
Total <b>number</b> of MLs who were referred during this school year for a special education evaluation in the school	
Total <b>percentage</b> of MLs referred for a special education evaluation during this school year	
Is the proportion of MLs who have been <b>referred</b> the same as the proportion of the general population of students who have been referred?	
If no, what is the difference noted?	
Is the proportion of MLs who have been <b>identified</b> as having disabilities the same as the proportion of the general population of students who have been identified?	
If no, describe the differences.	
Are there commonalities among the languages spoken by MLs and the reasons for referral or diagnosis of disability?	
If yes, what is the commonality?	



## Action Steps: Reasons for ML Special Education Referrals

The reasons, by total number of occurrences, that MLs were referred for a special education evaluation this year follow below.

- \_\_\_\_\_ Autism
- \_\_\_\_\_ Cognitive Disability
- \_\_\_\_\_ Deaf-Blindness
- \_\_\_\_\_ Deafness
- \_\_\_\_\_ Emotional Disturbance
- \_\_\_\_\_ Hearing Impairment
- \_\_\_\_\_ Multiple Disabilities
- \_\_\_\_\_ Orthopedic Impairment
- \_\_\_\_\_ Other Health Impairment, Including ADHD
- \_\_\_\_\_ Specific Learning Disability
- \_\_\_\_\_ Speech/Language Impairment
- \_\_\_\_\_ Traumatic Brain Injury
- \_\_\_\_\_ Visual Impairment, Including Blindness

The most common reason that MLs were referred for a special education evaluation this year is:	
--	--

Anecdotally, describe any additional commonalities among the MLs who were referred (e.g., interrupted formal education).	
--	--

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## Action Steps: Staffing and Assessments for MLs with Disabilities

### Teachers and Specialists

Have assessors received instruction and ongoing professional learning in second language acquisition and linguistic and cultural diversity?

If no, what steps will ensure that evaluators — including school psychologists, speech and language therapists, and special education staff — are being equipped with the appropriate theory, research, and techniques?

### Assessments

Do the assessments used to identify MLs with disabilities make use of relevant and actual behaviors in classroom contexts?

Are assessments provided in the students' home language(s) by staff who have been trained in second language acquisition and practices for teaching MLs?

If no, what steps will ensure that staff are trained?

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## Action Steps: Identifying and Serving MLs with Learning Disabilities

<p>What steps are we providing to ensure that the language assistance programming for MLs as a whole is effective and follows the <a href="#">Castañeda v. Pickard</a>* federal regulations?</p> <p>*Language assistance programming for MLs must be based on sound educational research, implemented with adequate commitment and resources, and evaluated and proved to be effective.</p>	
<p>What interventions, including Multi-tiered Systems of Support [MTSS], are we providing in the language assistance instructional program** that are effective for MLs who appear to struggle academically and socially-emotionally?</p> <p>**This includes general education and English language development instruction for MLs.</p>	
<p>How are we partnering with families, understanding their perspective, and communicating effectively to support their child's success?</p> <p>What role does communicating, interpreting, and partnering play in our work together?</p> <p>Note: Please refer to a <a href="#">federal lawsuit</a> that was filed showing a lack of involvement with families around special education.</p>	



<p>What steps are we providing to ensure that MLs who have or are suspected of having a disability are identified and evaluated in a timely manner?</p>	
<p>What steps are we taking to ensure that the language needs of MLs who need special education and disability-related services are considered in evaluations and delivery of services?</p>	
<p>What professional growth readings should be included to support our understanding about the differences and distinctions between MLs with learning differences and disabilities, including students with limited and interrupted formal education and those who have experienced trauma?</p>	
<p>What additional questions should we ask about our identification process of MLs with learning differences and disabilities?</p>	
<p>What resources and tools are we using to demonstrate the steps we are taking?</p>	
<p>How might we strengthen what we are doing?</p>	
<p>What cultural and linguistic considerations should we address?</p>	

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## 7. Opting Out of Language Services

The seventh key topic of the *Dear Colleague Letter* focuses on **students who opt out of language education services**. According to the *Dear Colleague Letter*, schools and state education agencies must “meet the needs of MLs who opt out of language education programs” (U.S. Departments of Justice and Education, 2015, p. 8).

### Guiding Questions

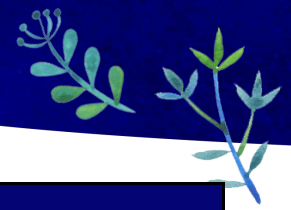
- What are schools and districts obligated to do when parents/guardians decline language education programming for their children?
- What action steps should schools and districts take to analyze the number/trends of students whose families opt out of the language education services offered for their children?
- What action steps should schools and districts take to assess the needs of its MLs who opt out of language assistance programming?

### What Schools Need to Know

Families have a right to opt out of some or all the language education programs and services offered for their child. However, that decision must be voluntary and made with a family’s full understanding of their child’s rights, including the services that are being declined. In this case, the child will still be classified as an ML. When parents decline language education programming or specific language education services for their children, schools and districts are obligated to:

- Support the English language development and other academic learning needs of students under the civil rights laws;
- Monitor students’ progress in learning English and core content subjects; and
- Continuously inform parents when a student does not make progress **and** offer and re-offer further opportunities to enroll the student in the language education program “at any time” (U.S. Departments of Justice and Education, 2015, p. 31).

It is helpful for schools and districts to regularly review trends related to MLs whose families opt their children out of language education services, as well as these students’ learning needs. The following tools can help, along with the tools from [English Learner Toolkit, Chapter 7](#).



## Action Steps: How Many Students Are Opting Out?

To use the following tool, drawn from Zacarian (2023, p. 69) fill out the number of students in each grade who are opting out of language assistance services based on their primary language. Compiling data in this way can help identify trends among language groups, as well as by grade level.

Language	PreK	K	1	2	3	4	5	6	7	8	9	10	11	12

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## Action Steps: Meeting the Needs of MLs Who Opt Out of Language Education Services

It is helpful for a school- and/or district-based team of teachers, administrators, and specialists to periodically review and analyze the learning needs of the MLs whose parents opted their children out of language education services. The following list of action steps, drawn from Zacarian (2023, p. 196) is intended for this purpose.

<p>What steps are we using to meet the needs of MLs who opt out of language assistance programming?</p>	
<p>What might we do to strengthen those steps?</p>	
<p>What documents, forms, and protocols are we using?</p>	
<p>What professional readings or school/district documents on this topic should be included?</p>	
<p>What cultural and linguistic considerations do we need to address?</p>	



<p>What professional development do we need to effectively identify and work with all our MLs, including those whose parents or guardians have opted out of the language education program?</p>	
<p>What additional questions should we ask to meet the needs of MLs who have opted out of language assistance programming that we have not yet included?</p>	
<p>Before families opt out of language education services, how do we ensure that families understand:</p>	
<ul style="list-style-type: none"> <li>• Their child’s rights to these services</li> </ul>	
<ul style="list-style-type: none"> <li>• The benefits of language education services</li> </ul>	
<ul style="list-style-type: none"> <li>• How to follow their child’s progress</li> </ul>	
<ul style="list-style-type: none"> <li>• The language education services their child is entitled to receive</li> </ul>	
<ul style="list-style-type: none"> <li>• Their right to opt back into these services</li> </ul>	

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## 8. Monitoring MLs Who Have Exited

The eighth key topic of the *Dear Colleague Letter* focuses on **monitoring students who have exited language assistance programs**. According to the *Dear Colleague Letter*, schools and state education agencies must “monitor and evaluate students in language assistance programs to ensure their progress in acquiring English proficiency and grade-level core content, exit from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied” (U.S. Departments of Justice and Education, 2015, p. 8).

### Guiding Questions

- What should be done to monitor and evaluate MLs in language education programs?
- What actions steps should occur to (1) monitor and evaluate MLs’ acquisition of English and grade-level content and (2) transition from language assistance programming?

### What Schools Need to Know

A key action step for monitoring and evaluating the progress of MLs in acquiring English and grade-level content is to carefully and strategically support students’ successful transition from one level of language assistance programming to the next and, eventually, out of the language education assistance programming entirely. To do this, it’s helpful for a team to continuously and systematically review the report cards, progress reports, and state assessment data that are captured by a school or district. With these data points in hand, a team of teachers, specialists, administrators, and other stakeholders can more fluidly assess the steps it is taking to successfully ensure MLs:

- Make progress in learning English and grade-level content;
- Successfully transition from language assistance programs; and
- Receive appropriate academic support where needed.

The following action steps can support these efforts, along with the tools in [English Learner Toolkit: Chapter 8](#) and NCELA’s related webinar, [Reclassifying English Learner Students](#).

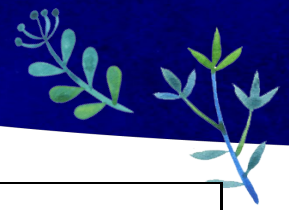




## Action Steps: Monitoring MLs' English and Content Acquisition for Successful Transition from Language Assistance Programs

This list of action steps, drawn from Zacarian (2023, p. 193), is intended to support schools and districts in monitoring and evaluating MLs' English and grade-level content growth and successful transition from language education programming.

<p>What steps are we using to monitor and evaluate MLs in language assistance programs to:</p> <ul style="list-style-type: none"> <li>• Ensure their progress in acquiring English proficiency and grade-level content knowledge;</li> <li>• Exit ML students from language assistance programs when they are proficient in English; and</li> <li>• Monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied?</li> </ul>	
<p>What resources are we using to demonstrate each ML's acquisition of English and grade-level content and successful transition out of our language assistance programming?</p>	
<p>How might we strengthen what we are doing and better ensure MLs' smooth and successful transition out of that language assistance programming?</p>	



<p>What additional questions should we ask about students' success in our language assistance programming and their successful transition from these programming programs that we have not yet considered?</p>	
<p>What district documents should be included?</p>	
<p>What cultural and linguistic considerations do we need to address?</p>	
<p>What type of professional growth do we need to support staff understanding about the ways we monitor and evaluate MLs in language assistance programs and successful transition out of the programming?</p>	

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## 9. Evaluation of Language Assistance Programs

The ninth key topic of the *Dear Colleague Letter* focuses on **evaluating language assistance programs** — which pulls several of the previous topics together. According to the *Dear Colleague Letter*, schools and state education agencies must “evaluate the effectiveness of a school district’s language assistance program(s) to ensure that students acquire English proficiency and that each program was reasonably calculated to allow students to attain parity of participation in the standard instructional program within a reasonable period of time” (U.S. Departments of Justice and Education, 2015, p. 9).

### Guiding Questions

- What are the federal requirements for evaluating language assistance programming?
- What action steps should be taken to evaluate our language assistance program?

### What Schools Need to Know

Schools and districts must regularly and consistently evaluate how effective their language assistance programming is — and determine what changes may be needed. This should be a collaborative effort amongst a working group of teachers, administrators, parents, specialists, students, and other stakeholders.

One way to collaboratively assess the effectiveness of language assistance programming is to **assemble a school-work group or team**. This group should represent various sectors of the school, district, family, and local community to support a shared mission and unified purpose. The U.S. Department of Education (1999) suggests that these teams be as inclusive and comprehensive as possible, including “administrators, teachers ... educational assistants, school counselors, and other staff who work with [ML] populations [as well as] parents, students, or community representatives who work with the same students in other settings” (para 3). Additionally, these groups should focus on identifying successes and making improvements as needed.



To do this, it is helpful to include facilitators who will support groups to continuously:

- Have a sense of curiosity, openness, and flexibility to different perspectives;
- Promote and nurture the mission of selecting and analyzing the strengths and efficacy of their language program model choices;
- Steadfastly and wholly focus the team’s conversations on supporting MLs to succeed; and
- Support the mission of assessing, improving, and strengthening the effectiveness of our language assistance models.

For an additional resource, see Exhibit 1 of the [English Learner Toolkit: Chapter 9](#).

## Creating a Mistake-Safe Culture

Another key step is fostering a mistake-safe culture. Mistakes are a natural part of learning and discovery, and such a culture provides everyone the opportunity to try new ideas, make errors, and receive constructive feedback. It is built and comes from a trusted colleague, mentor, coach, and supervisor, or friends who have our best interests — and the collective’s interests — in mind (Zacarian & Silverstone, 2020). In addition, a mistake-safe culture highlights individual and group strengths, values everyone’s contributions and voices, and encourages exploring new ideas with an open mind to discover what might work better.

Helpful strategies for creating a mistake-safe culture include:

- Collaboratively forming questions that support an open dialogue;
- Considering what might be asked that has not yet been asked;
- Fully supporting every member to be confident in speaking on behalf of their child, themselves, and others; and
- **Considering MLs everyone’s students and a shared responsibility.**



## Action Steps: Monitoring and Evaluating Language Assistance Programming

The following list of action steps, drawn from Zacarian (2023, p. 200), is intended to support us in monitoring and evaluating MLs' English and grade-level content growth and successful transition from language education programming.

<p>What steps are being taken to evaluate the effectiveness of our language assistance programming to ensure that:</p> <ul style="list-style-type: none"> <li>• MLs acquire English proficiency; and</li> <li>• Each program is reasonably calculated to help MLs attain parity of participation in the standard instructional program within a reasonable period of time?</li> </ul>	
<p>What resources are we using to demonstrate how we are evaluating the effectiveness of our school/district language assistance programming?</p>	
<p>What additional steps might we take to strengthen what we are doing to support MLs in language assistance programming and successful transition from the programming?</p>	
<p>What professional readings or school/district documents should be included in our effort to strengthen our language assistance programming?</p>	



<p>What additional questions should we ask that we have not yet asked about our MLs, the success of our language assistance programming, and the steps we need to take to analyze success and make changes when needed?</p>	
<p>What cultural and linguistic considerations do we need to address?</p>	
<p>What type of professional growth is needed to support everyone in our school/district in understanding the goals, mission and structures of our language education programming?</p>	

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## 10. Communication with Multilingual Families

The tenth key topic of the *Dear Colleague Letter* focuses on **communication with MLs' families**. Federal regulations explicitly state that schools and state education agencies are obligated “to ensure that parents and guardians [of MLs] have meaningful access to district and school-related information” (U.S. Departments of Justice and Education, 2015, p. 2).

**Note:** The terms “**parents and guardians**” and “**families**” are used interchangeably to refer to the legal guardians of a child (e.g., parents in two-parent or single-parent families, grandparents, stepparents, foster parents, custodial parents, and in some cases, other relatives with guardianship). More broadly, “families” can also include siblings, relatives, and members of students’ extended families who are involved in students’ lives and education.

### Guiding Questions

- What do the federal regulations require of local education and state education agencies to ensure that parents and guardians of MLs have access to school-related information?
- What is important to know about the research on family-school partnerships and engagement?
- What action steps should be taken to ensure meaningful communication with MLs’ parents and guardians?

### What Schools Need to Know

Federal regulations explicitly state that schools and state education agencies are obligated “to ensure that parents and guardians [of MLs] have meaningful access to district- and school-related information” (U.S. Departments of Justice and Education, 2015, p. 37).



Further, federal regulations specify:

*"This essential information includes but is not limited to information regarding: language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options." (U.S. Departments of Justice and Education, 2015, p. 38).*

## The Importance of Family Engagement

Research on family engagement affirms that families are important partners in their child's education. While the importance of family involvement is widely recognized, its unique significance for families from linguistically and culturally diverse backgrounds is sometimes overlooked. Many educators may not be familiar with the cultural norms of MLs and their families, as well as their strengths and assets. Conversely, many ML families may not fully understand the culture of U.S. public schools, including the implied ways of thinking, being, and acting shaped by the dominant culture. These differences can lead to misconceptions and misunderstandings on both sides, potentially creating barriers that divide and separate communities.

However, partnerships between schools and ML families have been shown to help students thrive socially and academically while fostering mutual understanding. Creating partnerships with families of MLs calls for educators to:

- Help families understand the routines and practices of school;
- Help the school community understand the family communities of MLs; and
- Bring together the collective assets of families, educators, and local communities before-, after-, and in-school through ongoing partnerships.

See more in this [related resource collection](#) and [English Learner Toolkit: Chapter 10](#).





## Wolfe Street Academy, Baltimore

An example of this type of family/school partnership is Wolfe Street Academy, a community school serving a large ML population in Baltimore, MD. Like many schools across the globe, it made the rapid shift from in-person to remote schooling when COVID-19 struck. Prior to the pandemic, its after-school programming had been an integral part of students' lives. Rather than forgo this mainstay, Wolfe Street quickly and adeptly launched several after-school remote activities including yoga, robotics, art, and debate classes taught by staff, ML families, and members of the local community (Zacarian, 2023; Zacarian, Calderón, and Gottlieb, 2021). See more from Wolfe Street in this special Colorín Colorado video project, [How a Community School Helps ELLs Succeed](#).



## Action Steps: Meaningful Communication with MLs' Parents and Guardians

The following resource of action steps, drawn from Zacarian (2023, p. 202), is intended to support meaningful communication with parents and guardians of MLs.

<p>What steps are we taking to establish meaningful communication with families of MLs and to become partners in supporting their child's education?</p>	
<p>What additional actions could we take to strengthen those steps?</p>	
<p>What documents, forms, and protocols are we using?</p>	
<p>What professional readings or school/district documents should be included to ensure meaningful communication with families?</p>	
<p>What additional questions should we ask about partnering and communicating with families that we have not yet included?</p>	



What cultural and linguistic considerations do we need to address?	
What type of professional growth do we need to support stronger and more meaningful communication and partnerships with families?	

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# Summary of Federal Overview

Educators must comply with federal laws, policies, and regulations governing the education of multilingual learners (MLs) in public and public charter schools. These regulations prioritize evidence-based practices that support MLs' success and foster partnerships with their families. Through collaboration, teams of educators and administrators can develop and strengthen language assistance programs to serve this dynamic and diverse population effectively.

This Second Edition provides an overview of the federal laws and regulations shaping language assistance programming for multilingual learners. It emphasizes the importance of a strengths-based approach and highlights the collaborative roles of educators, administrators, specialists, families, and students in creating effective programs. Drawing from the [\*Dear Colleague Letter\*](#) by the U.S. Department of Justice and the U.S. Department of Education, it outlines key laws governing ML education and offers actionable strategies for successful implementation.

For more information about supporting our ever-changing population of multilingual learners, please see Debbie Zacarian's [\*Transforming Schools for Multilingual Learners: A Comprehensive Guide for Educators, Second Edition\*](#) (Corwin Press, 2023).



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