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**August, 2007.**

**TO: School District Superintendents, Superintendents of Education Service Districts, School Principals, Public Charter School Principals**  
**RE: Legal Requirements for Programs to Serve English Language Learners.**

The State Department of Education (ODE) has recently obtained clarification around frequently asked questions regarding services for English Language Learners (ELLs). The Department strongly believes that rigorous, relevant and research-based programs for ELLs not only contribute to the removal of factors impeding ELLs from participating in an equal opportunity education but, when well implemented, those programs make a strong and significant contribution toward closing the achievement gap in Oregon schools.

The Department acknowledges, and is thankful for, the hard work evident in programs of services for ELLs in schools across the state. The Department would also like to reiterate its commitment to Oregon schools to continue in our partnership role as we further refine programs that offer sound, innovative and the very best educational programs for ELLs and each student attending our schools.

It is with a partnership spirit in mind that we have created responses to the following frequently asked questions. The Department consulted with the Office of the Attorney General in preparing this document and intends to pursue Administrative Rules to further clarify questions around services for English Language Learners.

Should you have any questions about this document specifically, or generally about services for ELLs, or the role of Civil Rights around educational programs for ELLs, please do not hesitate to contact: Carmen West, ([Carmen.west@state.or.us](mailto:Carmen.west@state.or.us)), Brad Capener ([brad.capener@state.or.us](mailto:brad.capener@state.or.us)) or Helen Maguire ([helen.maguire@state.or.us](mailto:helen.maguire@state.or.us)).



Oregon Department of Education  
Office of Educational Improvement and Innovation  
Services for English Language Learners

***Frequently Asked Questions***

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## 1. DEFINITION – English Language Learners

### Q1 Who are English Language Learners?

Under the **Elementary and Secondary Education Act 2001 (ESEA) - No Child Left Behind- Title IX – General Provisions – Part A – Definitions (25)** English Language Learners are defined as Limited English Proficient, a term 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

## 2. WHO SHOULD PROVIDE SERVICES FOR ENGLISH LANGUAGE LEARNERS

### Q2 Must all districts provide services to English Language Learners (ELLs)?

Yes. A complex web of state and federal laws govern the services that public school districts must provide to students who are not proficient in English. Some of those laws are mandatory for all districts while others apply only to districts that receive certain funding. Although those laws share the same goal (ensuring that English language learners benefit from their education) there are some differences in how they seek to achieve it. Specifically, all districts must comply with **ORS 336.079**, which requires schools to provide **specific courses** to teach speaking, reading and writing of the English language. All districts also must comply with state and federal anti-discrimination laws discussed in Q 4.

**Q3 Must public charter schools provide ELLs with programs to overcome their language barriers?**

*Yes. Although public charter schools are exempt from ORS 336.079, applicable state and federal anti-discrimination laws require public charter schools to identify ELLs and provide them with appropriate programs to overcome their language barriers. Whether a particular program is appropriate under federal law depends on whether it: (1) is based on a sound educational theory or legitimate experimental strategy; (2) implemented effectively, and (3) produces results that demonstrate that language barriers are being overcome... Oregon requirements are, most likely, substantially the same as federal requirements.*

**OAR 581-0210-0046(8) requires public charter schools to (1) develop and implement a plan for identifying students whose primary language is other than English; and (2) provide those students with "appropriate programs" until they are able to effectively participate in regular classroom instruction.**

**Q4 Aside from ORS 336.079, do any other statutes or rules govern the provision of services to ELLs?**

*Yes. Oregon and federal anti-discrimination laws require districts to provide appropriate programs to ELLs. Beginning with Oregon laws, **ORS 659.850(2)** prohibits discrimination in public education programs and services. Subsection (1) defines "discrimination" as:*

*[A]ny act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion or sex.*

*Also, **OAR 581-021-0046(8)** provides that:*

*\* \* \* Districts shall develop and implement **a plan for identifying students** whose primary language is other than English **and shall provide such students with appropriate programs** until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.*

*Consequently, **OAR 581-021-0046(8)** requires public schools to: (1) develop and implement a plan for identifying students whose primary language is other than English; and (2) provide those students with "appropriate programs" until they are able to effectively participate in regular classroom instruction.*

**Title VI of the Civil Rights Act of 1964 (Title VI)** 34 C.F.R. Part 100 § 100.3  
Discrimination prohibited.

(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the

- benefits of, or be otherwise subjected to discrimination under any program to which this part applies.
- (b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:
- (i) Deny an individual any service, financial aid, or other benefit provided under the program;
  - (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
  - (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
  - (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
  - (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
  - (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).
  - (vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.
- (Authority: Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d-1, 2000d-3)

### **3. "SPECIFIC COURSES"**

#### **Q5 What is the definition of "specific courses"?**

*"Specific courses" as used in ORS 336.079 mean educational units consisting of a series of instructional periods that **explicitly** teach speaking, reading, and writing English in a manner enabling ELL students to profit from regular classroom instruction in English. Since these courses apply to students who are "unable to profit from classes taught in English", these classes are not the same as general education content classes (reading, writing, speaking) taught in English.*

***ORS 336.079** requires districts to provide English language skills classes to children "until [those] children are able to profit from classes conducted in English."*

**Q5a May Districts offer parents the option of having their children attend required English skills classes before the regular school day?**

*The District may offer ELL students the **option** to attend before-school ELD classes. **But**, the District must take special care to ensure that the parents understand that **the before-school program is completely optional** and that the District is required to provide the classes to their children during the regular school day unless the parents choose the before-school program. Districts must take the necessary steps to ensure that parents clearly understand their choice and voluntarily choose the before-school program for their children.*

*No statute or rule expressly authorizes school districts to offer legally-required courses to students outside regular classroom hours. The only statute that gives districts discretionary authority to provide programs outside school hours, **ORS 336.183**, applies by its terms only to classes for which districts may "establish rules for eligibility in participation" and "collect fees for participation," in short -- **optional courses**.*

**Q5b How is "regular school day" defined?**

*When we refer to regular school "hours" or "day" we mean the time that the district requires all children to attend school. **ORS 339.020** (requiring children regularly to attend public "full-time" school). **OAR 581-023-0006 (1)(g); 581-022-1620**.*

**Q6 Does NCLB Title III require "specific courses" to teach the English language?**

*Yes. **Title III, § 3301(8)**. **Title III, like ORS 336.079**, requires instructional "courses," or educational units consisting of a series of instruction periods dealing with a particular subject. The difference between **ORS 336.079** and **Title III** is that courses under **ORS 336.079** are designed specifically to teach English proficiency, whereas courses under **Title III** must, in addition to teaching English proficiency, simultaneously ensure that ELL students meet state academic content and student achievement standards.*

*Also, Title III requires that: student progress is rigorously assessed; students meet annual measurable achievement objectives; and states hold districts accountable for meeting those objectives. **Title III, §3122; § 3116(3)**. To successfully meet those objectives, **a program would likely require substantial instructional time**.*

**Q7 Must districts: designate a separate period of time to teach "specific courses"? If so, how long must that period be and how many days per week must those courses be taught?**

***ORS 336.079** expressly requires districts to provide a series of instruction periods that **explicitly** teach speaking, reading and writing English. By requiring a series of instruction periods, the statute appears to **require instruction that is regular and ongoing, rather than incidental or sporadic**. The statute does not, however, set out specific requirements for how long those periods must be, how often they must occur or whether they must take place in a separate classroom. Therefore, districts have discretion in determining such details so long as they provide **regular and ongoing***

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**instruction periods specifically teaching speaking, reading and writing of the English language** to students “unable to profit from classes taught in English.”

**OAR 581-023-0100** does not explicitly require that classes be of any particular length or frequency or that they be separate. Again, however, the rule requires evaluation of program effectiveness in preparing ELLs for academic success in the mainstream curriculum; therefore, **programs must allot sufficient time to achieve that objective.**

**Q8 Do the anti-discrimination laws require classes to meet for certain periods of time, to be of a particular frequency, or to take place in separate classrooms?**

*No. The federal anti-discrimination laws do not require across-the-board program specifics, rather courts have examined programs on a case-by-case basis to determine whether the details of a particular program are appropriate given local circumstances and resources. For that reason, there can be no single answer applicable to all districts.*

**Q9 Does NCLB Title III require what English Language Development (ELD) classes meet for certain periods of time, to be of a particular frequency, or to take place in separate classrooms?**

*No. Title III requires that:*

- 1) student progress is rigorously assessed;*
- 2) students meet annual measurable achievement objectives; and*
- 3) states hold districts accountable for meeting those objectives. Title III, §3122; § 3116(3). To successfully meet those objectives, a program would likely require **substantial instructional time.***

*Regarding whether ELLs must be taught separately, Title III section 3125 expressly provides that nothing in the Title III should be construed to “prohibit a local educational agency from serving limited English proficient children simultaneously with children with similar educational needs, in the same educational settings where appropriate[.]” Therefore, ELLs need not necessarily be instructed separately from other children so long as children instructed together have the same educational needs and it can be shown to be appropriate.*

#### **4. STATE AUTHORITY**

**Q10 Does the State have authority to determine whether the courses that districts provide comply with ORS 336.079?**

*Pursuant to **ORS 326.051**, the State Board of Education has authority to establish state standards for public elementary and secondary schools and to prescribe required or minimum courses of study. Therefore, **ORS 326.051** empowers the Board to prescribe minimum standards for courses under **ORS 336.079**. Additionally, **ORS 326.111** empowers the Oregon Department of*

Education (ODE) to exercise all administrative functions of the state relating to supervision, management and control of schools not conferred by law on some other agency. That statute empowers ODE to supervise whether districts are providing courses in compliance with **ORS 336.079**.

**ORS 659.855(1)** authorizes the Superintendent of Public Instruction to determine whether public elementary or secondary schools are in compliance with the provisions of ORS 659.850 and to subject those schools to sanctions. **OAR 581-021-00046(8)** implements **ORS 659.850**, so the Superintendent has authority to determine that schools are not providing appropriate programs to ELLs. Moreover, as discussed above, ODE has certain supervisory authority over the administration of schools.

Additionally, under the **Equal Educational Opportunities Act of 1974 (EEOA)**, both state and local educational agencies are required to take action to overcome educational barriers that impede equal participation by their students. **20 U.S.C. § 1703(f) (1975)**. Thus, federal law places an affirmative obligation on states to take appropriate action. Both the 9<sup>th</sup> and the 7<sup>th</sup> Circuit Courts of Appeals have held that state educational agencies are subject to civil action in federal court to enforce the EEOA. *Idaho Migrant Council v. Board of Education*, 647 F2d 69 (9<sup>th</sup> Cir 1981); *Gomez v. Illinois State Bd. of Education*, 811 F2d 1030 (7<sup>th</sup> Cir 1987).

Based on the above, the state has authority to determine whether district programs comply with anti-discrimination laws. Of course, the federal government has independent authority to determine whether districts are in compliance with federal laws, but that authority does not negate the state's authority in the first instance to supervise schools for compliance.

**Q11 Does the state have authority to monitor OAR 581-023-0100?**

Yes. ODE has express authority to determine whether a district's program complies with **OAR 581-023-0100** for the purpose of receiving weighted ADM funding. Under **OAR 581-023-0100(9)**, ODE is authorized to perform periodic reviews of the eligibility of students reported for additional weighting. In those reviews, ODE must determine whether a district has met the criteria for eligibility specified by **OAR 581-023-0100**. If ODE determines a district has not met those requirements then it can recover funds provided for ineligible students for redistribution to other schools.

**Q12 Does the state have the authority to decide whether district programs comply with federal and state anti-discrimination laws?**

Yes. The state has authority to decide whether district programs comply with federal and state anti-discrimination laws. **ORS 659.855(1)** authorizes the Superintendent of Public Instruction to determine whether public elementary or secondary schools are in compliance with the provisions of **ORS 659.850** and to subject those schools to sanctions. **OAR 581-021-00046(8)** implements **ORS 659.850**, so the Superintendent has authority to determine that schools are not

providing appropriate programs to ELLs. Moreover, ODE has supervisory authority over the administration of schools.

Additionally, under the **EEOA**, both state and local educational agencies are required to take appropriate action to overcome educational barriers that impede equal participation by their students. **20 U.S.C. § 1703(f) (1975)**. Thus, federal law places an affirmative obligation on states to take appropriate action. Both the 9<sup>th</sup> and the 7<sup>th</sup> Circuit Courts of Appeals have held that state educational agencies are subject to civil action in federal court to enforce the **EEOA**. *Idaho Migrant Council v. Board of Education*, 647 F2d 69 (9<sup>th</sup> Cir 1981); *Gomez v. Illinois State Bd. of Education*, 811 F2d 1030 (7<sup>th</sup> Cir 1987).

**Q12a Does the state have any authority to take action against the District if it has discriminated against ELL students?**



**ORS 659.855(1)** provides that: Any public elementary or secondary school determined by the Superintendent of Public Instruction \* \* \* to be in noncompliance with provisions of ORS 659.850 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.

**OAR 581-022-1140** -Equal Educational Opportunities:Each district school board shall adopt written policies, and the school district shall implement in each school, programs which assure equity, opportunity and access for all students as provided in OAR 581-021-0045 and OAR 581-021-0046.

**OAR 581-021-0046(8)** - Program Compliance Standards  
(8) Bilingual or Linguistically Different Students. District shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instructions and other educational activities.

**Q13 Does NCLB Title III authorize the state to determine whether a particular program complies with Title III?**

**Yes.** In initially approving a grant, **Title III** contemplates that the state simply determines whether a proffered plan "us[es] a language instruction curriculum that is tied to scientifically based research on teaching limited English proficient children [that] has been demonstrated effective." **Title III, § 3113(b)(6)**. States must demonstrate how they will give districts flexibility to choose the manner and methods of instruction for purposes of Title III. **Title III, § 3113(b)(6)** (states must demonstrate how they are giving districts flexibility to implement program "in the manner the eligible entities determine to be the most effective"); **Title III, § 3115(f)** (specifying that the entity who receives the subgrant under **Title III** is authorized to select the methods or forms of instruction to be used in its programs.)

The flexibility allowed to districts under **Title III**, however, does not negate any requirements imposed on districts under state law or negate the state's ability to

determine compliance with those requirements. Specifically, districts must assure the state that they are not in violation of any state law regarding the education of limited English proficient children. **Title III, 3116(d).**

Additionally, **§ 3126** provides that Title III shall not be construed to "negate or supersede \* \* \* the legal authority under State law of any State agency, State entity, or State public official, over programs that are under the jurisdiction of the State agency, entity, or official."

Moreover, once a district implements a chosen program, the program must prove to be effective or the state may step in and require that the program be changed. Districts are required to assess the progress of students in their programs and meet annual measurable achievement objectives and states are authorized to hold districts responsible for meeting those objectives. **Title III, §3122; § 3116(3).** A district that fails to meet those objectives for two consecutive years must work with the state to develop a plan to improve its programs or methods of instruction; and a district that fails to meet objectives for four consecutive years may be required by the state to modify its curriculum, program and method of instruction. **Title III, § 3121(a); § 3122(b).**

## **5. APPROPRIATE ACTION**

### **Q14 How have federal courts interpreted "appropriate action" as used in the anti-discrimination laws?**

Two federal anti-discrimination statutes have been interpreted to require state public schools to take appropriate action to give ELLs an equal opportunity to obtain a meaningful education: **Title VI of the Civil Rights Act of 1964 (Title VI)**, and the **Equal Educational Opportunities Act of 1974 (EEOA)**.

- A. **Title VI of the Civil Rights Act of 1964:** Programs or activities that receive federal financial assistance are subject to **Title VI of the Civil Rights Act of 1964. Section 601** of that Title provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." The Department of Health, Education of Welfare (HEW) has issued informal guidance that interpreted **Title VI** to require public schools receiving federal financial assistance to take affirmative steps to overcome the educational barriers faced by LEP students.
- B. **The Equal Educational Opportunities Act: Section 1703(f) of the Equal Educational Opportunities Act (EEOA)** provides that: "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or national origin, by ... (f)the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program."

## 6. APPROPRIATE PROGRAMS

### Q15 What is the definition of “appropriate programs” as used in OAR 581-021-0046?

**OAR 581-021-0046(8)** does not set out the requirements for “appropriate programs” nor have Oregon courts addressed that issue. Oregon courts would likely construe the requirements of “appropriate programs” similarly to how federal courts construe requirements for taking “appropriate action” under federal anti-discrimination laws. (See Q 16 and Q 17 for additional clarification).

### Q16 Have there been Federal Court decisions that further clarify “appropriate programs”?

Yes. In **Castaneda v. Pickard, 648 F2d 989 (5<sup>th</sup> Cir 1981)**, the 5<sup>th</sup> Circuit set out a widely-adopted three-part test to determine whether districts have taken “appropriate action” to remedy the language deficiencies of their ELLs: (1) is the school “pursuing a program informed by an educational theory recognized as sound by some experts in the field, or, at least, deemed a legitimate experimental strategy”; (2) are the programs and practices actually used by the school “reasonably calculated to implement effectively the educational theory adopted by the school”; and (3) does the program “produce results indicating that the language barriers confronting students are actually being overcome.”

Also, the U.S. Department of Education, Office for Civil Rights in *The Provision of an Equal Education Opportunity to Limited-English Proficient Students (2000)* has provided non formal general guidelines for districts to ensure that they meet the needs of ELL’s. Under those guidelines, districts should:

- 1) Identify students as potential ELLs;
- 2) Assess students’ need for ELL services;
- 3) Develop a program which, in the view of experts in the field, has a reasonable chance for success;
- 4) Ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- 5) Develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- 6) Assess the success of the program and modify it where needed.

**Q17 Does NCLB Title III require “appropriate programs” for LEP students?**

Yes. **Title III, § 3115(c) (1).**

The Act defines **“language instruction educational programs”** to mean:

- (8) \* \* \* an instruction course –
- (A) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards, as required by section **1111(b)(1)**; and
- (B) that may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.”

**7. LEGITIMATE EXPERIMENTAL STRATEGIES**

**Q18 What is the definition of “legitimate experimental strategies” as used in case law?**

*“Legitimate experimental strategies” are strategies that are discovered by experiment or which are tentative, i.e., not yet proven effective, but which are based on theories that conform to recognized principles or accepted rules or standards.*

**Q19 Is a legitimate experimental strategy adequate under NCLB Title III?**

No. **Title III**, like the anti-discrimination laws, also requires programs be based on sound theory. **Title III**, however, contains additional explicit requirements about the theory on which a program is based.

**First**, theories must be based on “scientifically based research.” The NCLB provides that “scientifically based research”: means “research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

- (B) includes research that –
- (i) employs systematic, empirical methods that draw on observations or experiment;
- (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent

that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review."

**Second**, the scientifically-based research must "demonstrate[e] the effectiveness of the programs in increasing \* \* \* English proficiency \* \* \* and \* \* \* student academic achievement in the core academic subjects." Therefore, a "legitimate experimental strategy" –i.e., one that is tentative and not demonstrated effective -- would not be sufficient under Title III.

## **8. ESOL ENDORSEMENT**

### **Q20 Are instructors require to have an ESOL endorsement to comply with federal anti-discrimination laws?**

The statute does not explicitly contain such a requirement, nor can such a requirement be implied from the statutory language. **ORS 336.081(1)**, however, provides that all school districts providing courses pursuant to **ORS 336.079** "shall afford the licensed personnel of that district that are assigned to perform teaching duties for such courses an opportunity to qualify to assist non-English speaking students to learn English at no cost to the personnel." That statute does not expressly require teachers who are teaching the courses required by **ORS 336.079** to be ESOL endorsed, but it does require districts to afford those teachers the opportunity to "qualify" to teach English skills to ELLs at no personal cost. Therefore, a district that is providing courses under **ORS 336.079** must also provide teachers of those courses the opportunity to obtain training to make them qualified to teach ELLs English.

### **Q21 Should instructors be ESOL-endorsed to comply with federal anti-discrimination laws?**

No, there is no explicit federal requirement that they must be ESOL-endorsed.

## **9. ADDITIONAL WEIGHTED AVERAGE DAILY MEMBERSHIP**

### **Q22 What are the eligibility requirements for districts to collect Weighted Average Daily Membership?**

In order to receive additional state funding for educating ELL students, districts must comply with two laws: **ORS 327.013(7) (a) (B)** and **OAR 581-023-0100**. **ORS 327.013(7) (a) (B)** allows an additional .5 to be added to the average daily membership (ADM) funding calculation "for each student in average daily membership eligible for and enrolled in an English as a Second Language program under **ORS 336.079**." To be eligible to receive that funding, district programs must meet the criteria set out in **OAR 581-023-0100**:

(4) Pursuant to **ORS 327.013(7) (a) (B)**, the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:

- (a) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;
- (b) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;
- (c) Instruction by credentialed staff and [sic] trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;
- (d) Adequate equipment and instructional materials;
- (e) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.

**Q 23 When does a student’s eligibility for weighted funding end?**

A student is eligible for classes under **ORS 336.079** if the child cannot profit from classes conducted in English. Once a district determines that a student has sufficient English language skills that he or she can profit from classes conducted in English, the child no longer is eligible for classes under **ORS 336.079**, and therefore, is ineligible for ADMw funding **under ORS 327.103(7) (a) (B)**.

In order to determine whether students are able to profit from classroom instruction in English, districts must have measures in place to evaluate student progress in acquiring proficiency in English, including program exit criteria.

**10. PROGRAM EXIT CRITERIA**

**Q 24 Must the exit criteria assess solely English language skills or must it also assess academic achievement in other areas such as whether students meet state academic content standards expectations?**

The exit criteria must assess whether a child understands English well enough to profit from classes conducted in English. Accordingly, the exit criteria must be the student’s **level of English language proficiency**, rather than whether the student meets state academic content standards expectations.

## LEGAL CITATIONS

- Q1 Elementary and Secondary Education Act 2001 (ESEA) - No Child Left Behind- (NCLB) Title IX – General Provisions – Part A – Definitions (25)**  
*English Language Learners are defined as Limited English Proficient, a term 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.*
- Q2 ORS 336.079 - Special English courses for certain children.** Specific courses to
- Q3** teach speaking, reading and writing of the English language shall be provided at
- Q4** kindergarten and each grade level to those children who are unable to profit from
- Q6** classes taught in English. Such courses shall be taught to such a level in school as
- Q7** may be required until children are able to profit from classes conducted in English. [1971 c.326 §3; 1993 c.45 §77]
- Q5 NCLB Title III – Section 3301(8) - LANGUAGE INSTRUCTION EDUCATIONAL PROGRAM-** The term language instruction educational program' means an instruction course —
- (A) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards, as required by section 1111(b)(1); and*
  - (B) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.*

- Q7 ORS 326.051 Board functions; rules.** Subject to **ORS 417.300** and **417.305**:
- (1) In addition to such other duties as are prescribed by law and pursuant to the requirement of ORS chapter 183, the State Board of Education shall:
    - (a) Establish state standards for public kindergartens and public elementary and secondary schools consistent with the policies stated in **ORS 326.011**.
    - (b) Adopt rules for the general governance of public kindergartens and public elementary and secondary schools and public community colleges.
    - (c) Prescribe required or minimum courses of study.
    - (d) Adopt rules regarding school and interscholastic activities in accordance with standards established pursuant to paragraph (f) of this subsection.
    - (e) Adopt rules that provide that no public elementary or secondary school shall discriminate in determining participation in interscholastic activities. As used in this paragraph, “discrimination” has the meaning given that term in **ORS 659.850**.
    - (f) Adopt standards applicable to voluntary organizations that administer interscholastic activities as provided in **ORS 339.430**.
    - (g) Adopt rules that will eliminate the use and purchase of elemental mercury, mercury compounds and mercury-added instructional materials by public elementary and secondary schools.
  - (2) The State Board of Education may:
    - (a) Consistent with the laws of this state, accept money or property not otherwise provided for under paragraph (b) of this subsection, which is donated for the use or benefit of the public kindergartens and public elementary and secondary schools and public community colleges and use such money or property for the purpose for which it was donated. Until it is used, the board shall deposit any money received under this paragraph in a special fund with the State Treasurer as provided in **ORS 293.265** to **293.275**.
    - (b) Apply for federal funds and accept and enter into any contracts or agreements in behalf of the state for the receipt of such funds from the federal government or its agencies for educational purposes, including but not limited to any funds available for the school lunch program, for career education purposes, for professional technical educational purposes, for adult education, for manpower programs and any grants available to the state or its political subdivisions for general federal aid for public kindergartens and public elementary and secondary schools and public community colleges and their auxiliary services, improvement of teacher preparation, teacher salaries, construction of school buildings, administration of the Department of Education and any other educational activities under the jurisdiction of the State Board of Education.
    - (c) Adopt rules to administer the United States Department of Agriculture’s National School Lunch Program and School Breakfast Program for public and private pre-kindergarten through grade 12 schools and residential child care facilities.
  - (3) The State Board of Education shall provide a separate, identifiable place on its agenda six times a year for community college issues. The state board may also consider matters affecting community colleges at any regular or special meeting. [1965 c.100 §6; 1965 c.519 §14; 1967 c.67 §24; 1969 c.284 §1; 1971 c.513 §9; 1973 c.707 §1; 1975 c.459 §1; 1975 c.605 §17a; 1981 c.91 §1; 1987 c.404 §2; 1987 c.474 §2; 1989 c.834 §§12,13; 1993 c.45 §§5,6; 2001 c.530 §1; 2003 c.14 §146; 2003 c.151 §1]

- Q7 STATE BOARD OF EDUCATION - 326.011 Policy.** In establishing policy for the administration and operation of the public elementary and secondary schools and public community colleges in the State of Oregon and in carrying out its duties as prescribed by law, the State Board of Education shall consider the goals of modern education, the requirements of a sound, comprehensive curriculum best suited to the needs of the students and the public and any other factors consistent with the maintenance of a modern and efficient elementary and secondary school system and community college program. [1965 c.100 §1; 1971 c.513 §8]
- Q8 ORS 659.850(2) PROHIBITED DISCRIMINATION - (Discrimination in Education) Discrimination in education prohibited; rules.**  
 (2) No person in Oregon shall be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.
- Q8 OAR 581-021-0046(8) -Program Compliance Standards (8) Bilingual or Linguistically Different Students.** Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.
- Q9 NCLB Title III, § 3115(c) (1).. SUBGRANTS TO ELIGIBLE ENTITIES.**  
 (c) REQUIRED SUBGRANTEE ACTIVITIES- An eligible entity receiving funds under section 3114(a) shall use the funds —  
 (1) to increase the English proficiency of limited English proficient children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing
- Q9 NCLB Title IA - 1111. STATE PLANS.(a) PLANS REQUIRED-**  
 (b) ACADEMIC STANDARDS, ACADEMIC ASSESSMENTS, AND ACCOUNTABILITY-  
 (1) CHALLENGING ACADEMIC STANDARDS-  
 (A) IN GENERAL- Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.  
 (B) SAME STANDARDS- The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.  
 (C) SUBJECTS- The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science,

which shall include the same knowledge, skills, and levels of achievement expected of all children.

(D) CHALLENGING ACADEMIC STANDARDS- Standards under this paragraph shall include —

(i) challenging academic content standards in academic subjects that —

(I) specify what children are expected to know and be able to do;

(II) contain coherent and rigorous content; and

(III) encourage the teaching of advanced skills; and

(ii) challenging student academic achievement standards that —

(I) are aligned with the State's academic content standards;

(II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.

**Q10 OAR 581-021-0046(8) -Program Compliance Standards (8)** Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

**Q11 Title VI of the Civil Rights Act of 1964 (Title VI)** 34 C.F.R. Part 100 § 100.3  
Discrimination prohibited.

(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to

participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(Authority: Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d-1, 2000d-3)

**Q11** *Equal Educational Opportunities Act of 1974 (EEOA). (20 USC Sec. 1703) § 1703.*

**Q18** Denial of equal educational opportunity prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by -

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this subchapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

**Q12** **Castañeda vs. Pickard (1981)** In this case, which was filed against the Raymondville, Texas Independent School District (RISD), Mexican-American children and their parents claimed that the district was discriminating against them, because of their ethnicity. They argued that classrooms were segregated using a grouping system based on racially and ethnically discriminatory criteria. School districts were required to establish bilingual education according to the Lau vs. Nichols ruling, yet, there was no way to evaluate the adequacy of the school's approach. Consequently, sometimes it could result in inadequate separation.

This case was tried and on August 17, 1978 the judge ruled in favor of the defendant, stating that the district had not violated any of the plaintiff's constitutional or statutory rights. The ruling was appealed and in 1981, the Fifth Circuit Court of Appeals ruled in

favor of the plaintiffs. In addition, the *Castañeda vs. Pickard* case established three criteria for a program that serves LEP students. These measures determine whether a school district is serving the LEP students and if the program addresses the needs of these students. The principles are as follows:

- It must be based on “a sound educational theory.”
- It must be “implemented effectively,” with adequate resources and personnel.
- After a trial period, it must be evaluated as effective in overcoming language handicaps

**Q13 NCLB Title IX — General Provisions - SEC. 9101. DEFINITIONS. - (37)**

**SCIENTIFICALLY BASED RESEARCH-** The term scientifically based research' —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

- (i) employs systematic, empirical methods that draw on observation or experiment;
- (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
- (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
- (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

**Q16 Title III, § 3301 (8) (B) Definitions (8) LANGUAGE INSTRUCTION**

**EDUCATIONAL PROGRAM-** The term language instruction educational program' means an instruction course —

(B) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language.

**Q16 NCLB Title III, §3122).. ACHIEVEMENT OBJECTIVES AND ACCOUNTABILITY. (b) -**

(1) FOR STATES- Each State educational agency receiving a grant under subpart 1 shall hold eligible entities receiving a subgrant under such subpart accountable for meeting the annual measurable achievement objectives under

- subsection (a), including making adequate yearly progress for limited English proficient children.
- (2) **IMPROVEMENT PLAN-** If a State educational agency determines, based on the annual measurable achievement objectives described in subsection (a), that an eligible entity has failed to make progress toward meeting such objectives for 2 consecutive years, the agency shall require the entity to develop an improvement plan that will ensure that the entity meets such objectives. The improvement plan shall specifically address the factors that prevented the entity from achieving such objectives.
  - (3) **TECHNICAL ASSISTANCE-** During the development of the improvement plan described in paragraph (2), and throughout its implementation, the State educational agency shall —
    - (A) provide technical assistance to the eligible entity;
    - (B) provide technical assistance, if applicable, to schools served by such entity under subpart 1 that need assistance to enable the schools to meet the annual measurable achievement objectives described in subsection (a);
    - (C) develop, in consultation with the entity, professional development strategies and activities, based on scientifically based research, that the agency will use to meet such objectives;
    - (D) require such entity to utilize such strategies and activities; and
    - (E) develop, in consultation with the entity, a plan to incorporate strategies and methodologies, based on scientifically based research, to improve the specific program or method of instruction provided to limited English proficient children.
  - (4) **ACCOUNTABILITY-** If a State educational agency determines that an eligible entity has failed to meet the annual measurable achievement objectives described in subsection (a) for 4 consecutive years, the agency shall —
    - (A) require such entity to modify the entity's curriculum, program, and method of instruction; or
    - (B)(i) make a determination whether the entity shall continue to receive funds related to the entity's failure to meet such objectives; and
    - (ii) require such entity to replace educational personnel relevant to the entity's failure to meet such objectives.

**Q16 NCLB Title III, §3116(3) SEC. 3116. LOCAL PLANS.**

- (3) describe how the eligible entity will hold elementary schools and secondary schools receiving funds under this subpart accountable for —
  - (A) meeting the annual measurable achievement objectives described in section 3122;
  - (B) making adequate yearly progress for limited English proficient children, as described in section 1111(b)(2)(B); and
  - (C) annually measuring the English proficiency of limited English proficient children, so that such children served by the programs carried out under this part develop proficiency in English while meeting State academic content and student academic achievement standards as required by section 1111(b)(1)

**Q16 NCLB Title III Section 3125 RULES OF CONSTRUCTION.** Nothing in this part shall be construed —

- (1) to prohibit a local educational agency from serving limited English proficient children simultaneously with children with similar educational needs, in the same educational settings where appropriate;

- (2) to require a State or a local educational agency to establish, continue, or eliminate any particular type of instructional program for limited English proficient children; or
- (3) to limit the preservation or use of Native American languages.

**Q 18 ORS 659.855(1)** As used in this section, “discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion or sex.

**Q18 ORS 659.850 ORS 659.850(2)** No person in Oregon shall be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

**Q18 OAR 581-021-0046(8) OAR 581-021-0046(8) 581-021-0046 -Program Compliance Standards (8)** Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

**Q19 NCLB Title III, § 3113(b)(6) NCLB Title III, § 3113(b)(6).** SEC. 3113. STATE AND SPECIALLY QUALIFIED AGENCY PLANS.

- (b) CONTENTS- Each plan submitted under subsection (a) shall —
- (6) describe how eligible entities in the State will be given the flexibility to teach limited English proficient children—
- (A) using a language instruction curriculum that is tied to scientifically based research on teaching limited English proficient children and that has been demonstrated to be effective; and
- (B) in the manner the eligible entities determine to be the most effective

**Q19 NCLB Title III, § 3115(f) NCLB Title III, § 3115(f)** SELECTION OF METHOD OF INSTRUCTION-

- (1) IN GENERAL- To receive a subgrant from a State educational agency under this subpart, an eligible entity shall select one or more methods or forms of instruction to be used in the programs and activities undertaken by the entity to assist limited English proficient children to attain English proficiency and meet challenging State academic content and student academic achievement standards.
- (2) CONSISTENCY- Such selection shall be consistent with sections 3125 through 3127.

**Q19 NCLB Title III, § 3116(d). NCLB Title III, 3116(d)** (d) OTHER REQUIREMENTS FOR APPROVAL- Each local plan shall also contain assurances that —

- (1) each local educational agency that is included in the eligible entity is complying with section 3302 prior to, and throughout, each school year;
- (2) the eligible entity annually will assess the English proficiency of all children with limited English proficiency participating in programs funded under this part;

- (3) the eligible entity has based its proposed plan on scientifically based research on teaching limited English proficient children;
- (4) the eligible entity will ensure that the programs will enable children to speak, read, write, and comprehend the English language and meet challenging State academic content and student academic achievement standards; and
- (5) the eligible entity is not in violation of any State law, including State constitutional law, regarding the education of limited English proficient children, consistent with sections 3126 and 3127.

**Q19 NCLB Title III § 3126 NCLB Title III § 3126 SEC. 3126. LEGAL AUTHORITY UNDER STATE LAW.** Nothing in this part shall be construed to negate or supersede State law, or the legal authority under State law of any State agency, State entity, or State public official, over programs that are under the jurisdiction of the State agency, entity, or official.

**Q21 ORS 327.013(7) (a) (B) ORS 327.013(7) (a) (B) 327.013 State School Fund distribution computations for school districts.** The State School Fund distributions for school districts shall be computed as follows:  
 (7)(a) Weighted average daily membership or ADMw = average daily membership + an additional amount computed as follows:  
 (B) 0.5 for each student in average daily membership eligible for and enrolled in an English as a second language program under ORS 336.079

**Q 21 OAR 581-023-0100 OAR 581-023-0100 -Eligibility Criteria for Student**

**Q 22 Weighting for Purposes of State School Fund Distribution**

- (1) The following definitions apply to this rule:
  - (a) "Average Daily Membership" or "ADM" means the membership defined in ORS 327.006(3) and OAR 581-023-0006;
  - (b) "Days in Session" means number of days of instruction during which students are under the guidance and direction of teachers;
  - (c) "Department" means the Oregon Department of Education;
  - (d) "Language Minority Student" means:
    - (A) Individuals whose native language is not English; or
    - (B) Individuals who come from environments where a language other than English is dominant; or
    - (C) Individuals who are Native Americans or Native Alaskans and who come from environments where a language other than English has had a significant impact on their level of English proficiency.
  - (e) "Superintendent" means the State Superintendent of Public Instruction;
  - (f) "Weighted Average Daily Membership" or "ADMw" means the ADM plus an additional amount or weight as described in ORS 327.013, subject to the limitations imposed by Section (4)(a), Chapter 780, Oregon Laws 1991.
- (2) Pursuant to ORS 327.013(7)(a)(A) the resident school districts shall receive one additional ADM or "weight" for children with disabilities who comprise up to 11 percent of the district's ADM. The Department will calculate the percentage of children with disabilities on the basis of resident counts of students eligible for weighting from the Special Education Child Count and the resident ADM:

- (a) To be eligible, a student must be in the ADM of the school district and meet the following criteria:
- (A) The student must be eligible for special education having been evaluated as having one of the following conditions: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, serious emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities; and
  - (B) The student must be between the ages 5 and 21 and generate federal funding for purposes of special education.
- (b) Districts may apply for an exception to the 11 percent ceiling. Applications are to be made on forms provided by the Department. Upon receipt of the application the Superintendent may conduct a complete review of a district's special education records. The Superintendent shall develop a process for conducting such reviews which will include the following elements:
- (A) Comparison of district claims with those submitted by other districts;
  - (B) Participation of school district and education service district staff in the review. No district staff shall be asked to review claims submitted by the employing district.
  - (c) After considering the recommendations of the review committee the Superintendent may allow all or a portion of the requested added weighted ADM over 11 percent;
  - (d) The Superintendent shall make the determination of approval for funding above the 11 percent limitation. Such determination may be appealed for review by the State Board of Education according to a process established by the Superintendent;
  - (e) If the review indicates that a district has claimed ineligible special education students, the Superintendent also shall withhold the related federal funds from the district, pursuant to OAR 581-015-0049;
  - (f) A district must submit an application for an exception to the 11 percent ceiling no later than six months after the close of the year for which payment is being sought. Payments for allowable exceptions shall be made in the following school year as part of the May 15 payment.
- (3) Pursuant to ORS 336.640(4), the resident school districts shall receive an additional 1.0 times the ADM of all eligible pregnant and parenting students:
- (a) To be eligible, a student must be in the ADM of the resident school district and meet the following criteria:
    - (A) The student must be identified through systematic procedures established by the district;
    - (B) The student must be enrolled and receiving services described in ORS 336.640(1)(b) and (d);
    - (C) The student must have an individualized written plan for such services which identifies the specific services, their providers, and funding resources.
  - (b) Students counted in section (2) of this rule are not eligible under this section.
- (4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:

- (a) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;
- (b) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;
- (c) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;
- (d) Adequate equipment and instructional materials;
- (e) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.

**Q21 ORS 327.013(7) (a) (B) ORS 327.013(7) (a) (B) 327.013 State School Fund distribution computations for school districts.** The State School Fund distributions for school districts shall be computed as follows:

(7)(a) Weighted average daily membership or ADMw = average daily membership + an additional amount computed as follows:

(B) 0.5 for each student in average daily membership eligible for and enrolled in an English as a second language program under ORS 336.079.

**Q21 ORS 336.079 ORS 336.079 Special English courses for certain children.** Specific courses to teach speaking, reading and writing of the English language shall be provided at kindergarten and each grade level to those children who are unable to profit from classes taught in English. Such courses shall be taught to such a level in school as may be required until children are able to profit from classes conducted in English. [1971 c.326 §3; 1993 c.45 §77]