



CRLA

Californians Together
Championing the Success of English Learners



October 3, 2013

Dear County and District Superintendents:

The enactment of the Local Control Funding Formula (LCFF) provisions has created a new landscape for California school finance. Much confusion exists about what the impact of LCFF is on district responsibilities regarding programs for English Learners (EL). California Rural Legal Assistance (CRLA), California Association for Bilingual Education (CABE) and Californians Together are sending this letter as a reminder of the continuing state and federal obligations with respect to both programs and funding of services provided to ELs. Districts must ensure compliance with these obligations during the 2013-14 school year, build them into the Local Control Accountability Plans (LCAP) of school districts, and adopt them by the local governing board for 2014 and thereafter. The state and local districts continue to be obligated to comply with specific mandates under 1) the Equal Educational Opportunities Act (EEOA); 2) Title III of ESEA; 3) Economic Impact Aid (EIA) funding restrictions (specific to carry over); 4) Proposition 227; and, 5) Education Code: State Law Related To Services To English Learners.

1) THE STATE BOARD, CDE, AND DISTRICTS MUST COMPLY WITH THE FEDERAL EQUAL EDUCATIONAL OPPORTUNITY ACT OF 1974 (EEOA).¹

The federal Equal Educational Opportunity Act (EEOA) expressly requires that school districts take affirmative steps to ensure that non-English speaking children (aka English Learners) are provided educational support to help them overcome any deficits they encounter because of their inability to speak English. The state and local districts must comply with this law whether or not any federal funds are received.

State laws regarding services for ELs must be applied in a manner that is consistent with the EEOA. Both the state and districts must "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

- Programs must both address English language development and provide equal access to core academic subjects
- Districts must provide programs for ELs at each school site that must meet the following criteria:
 - The program must be based on sound educational theory, recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy.
 - The programs must be implemented through practices, resources, including instructional materials, and adequately trained personnel.
 - The program must produce results.

¹ 20 U.S.C. §§ 1701, *et seq.*

2) DISTRICTS RECEIVING TITLE III (ESEA) FUNDS MUST USE THEM AND ACCOUNT FOR THEM IN A MANNER THAT PROVIDES HIGH-QUALITY LANGUAGE INSTRUCTION TO INCREASE ENGLISH PROFICIENCY OF ELS.

- LCFF does not affect program or reporting requirements for districts receiving Title III² funds.
- Programs must be based on research that is scientifically-based AND aimed at increasing:
 - English proficiency; and
 - Student academic achievement in core academic subjects.
- This funding must **supplement, not supplant**, funds that have been previously used.
 - In order to avoid supplanting, an LEA cannot use Title III funds to provide those services that the LEA is required to make available under state or local laws, or federal law.
 - The LEA cannot use Title III funds to provide those services that the LEA provided in the year prior with state, local, or other federal funds.
 - The funds must be used to provide instructional programs and services that are supplemental to instructional programs and services that would otherwise be provided to EL students in the absence of a Title III grant. Examples:
 - ✓ These funds cannot be used for the salary of a regular classroom teacher who delivers a child's only language arts instruction. The LEA must provide core language instruction and educational programs to students with non-Title III funding.
 - ✓ An additional resource teacher who delivers additional language development beyond that required by State law may be funded through a Title III grant. The LEA must demonstrate how this position is supplemental.
 - ✓ Title III funds may not be used to pay a portion of an assistant principal's salary. It is the LEA that is obligated to provide leadership personal to run a school. An assistant principal is required to work with all students, which includes ELs in the absence of a Title III grant.
 - ✓ Title III funds may not be used as a stipend to those teachers who assess newly enrolled students for English language proficiency. LEA is obligated to assess the ELP of students identified under the Home Language Survey for placement and identification purposes.
 - Title III funding must provide high-quality professional development to classroom teachers, principals, administrators, and other community or school-based organizational personnel. This training must go above and beyond any training required under State law and must be:
 - ✓ Designed to improve the instruction and assessment of EL students;
 - ✓ Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instructional strategies for EL students;
 - ✓ Based on scientifically credible research demonstrating the effectiveness of the professional development in increasing children's English proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and
 - ✓ Of sufficient intensity and duration (which shall not include activities such as one-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers' performance in the classroom.
 - Title III can be used on ELD curriculum development if the LEA can demonstrate that this curriculum development is above and beyond what is required by the school, LEA, and State. The same is true for after school programs, summer programs, and parent ESL classes.

² 20 U.S.C. §§ 6811, *et seq.*

- ✓ Title III funding may not be used on textbooks that serve as a child's main math or language arts textbook.
- ✓ Funding may be used, however, for supplementary textbooks or reference guides that serve as a supplement to the LEA-provided textbook.
- Local educators are expected to describe the former EL student's annual academic progress for a two-year monitoring period.

3) EIA FUNDING CARRIED OVER IN 2013-14 MUST BE SPENT CONSISTENT WITH THE DISTRICT'S APPROVED PLAN AND COMPLY WITH THE PROGRAM AND FINANCIAL REQUIREMENTS OF THE EIA.³

- Funds must be spent on ELs and economically disadvantaged pupils and may not be spent at school sites that do not have EL or economically disadvantaged pupils.
- Funds must be spent to support programs and activities designed to:
 - Assist ELs to achieve proficiency in the English language as rapidly as practicable, and
 - Support programs and activities designed to improve the academic achievement of ELs and economically disadvantaged pupils.
- Funds received by school districts pursuant to this article shall **supplement, and not supplant**, existing resources at the school site. This includes LCFF base, supplementary, and concentration funds.
- 85% of funds must be spent at school sites for direct services for ELs and economically disadvantaged students.
- Both DELACs and ELACs continue to be required.

4) PROPOSITION 227 - STATE LEGISLATION AND REGULATIONS

- All provisions of Education Code pertaining to implementation of Proposition 227⁴ are still required.
- Districts that enroll EL students must establish and make available "Alternative Programs" using bilingual education techniques or other generally recognized educational methodologies permitted by law for eligible EL students as an alternative to the default Structured English Immersion Program
- Parent Exception Waivers and Alternative Programs to the default Structured English Immersion Program must be offered, and all procedures previously followed for the waivers continue.

5) EDUCATION CODE: STATE LAW RELATED TO SERVICES TO ENGLISH LEARNERS

- All notices, reports, statements, and records sent to parents of ELs are written in English and the primary language when 15% or more of the students enrolled in the school speak a single language other than English.⁵
- The district reclassifies a pupil from EL to proficient in English using a process and criteria consistent with state guidelines.⁶

³ Education Code §§ 54000, *et seq.*

⁴ Education Code §§ 300, *et seq.*

⁵ Education Code § 48985

⁶ Education Code §§ 313, 52164.3, 52164.6

- Teachers providing ELD and access to the core for English Learners all possess the appropriate EL authorization.⁷
- The district follows the state procedures for identifying, assessing, and notifying parents of all students who have a primary language other than English.⁸

We encourage all county offices, school districts, and school sites to review these requirements as they begin to develop their Local Control Accountability Plan. There is much flexibility available with the LCFF, but the state and federal laws and regulations are not a part of the flexibility and still must be complied with when allocating funds and adopting and evaluating programs. We offer our help and assistance with any issues needing clarification.

Sincerely,

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Founded in 1966, CRLA’s mission is to fight for justice and individual rights alongside the most exploited communities of our society. Through a network of regional offices and crosscutting programs, CRLA provides legal services to over 40,000 low-income people annually. Our work impacts farmworkers, individuals with disabilities, immigrant populations, LGBT communities, women, children, and families in rural areas.

The California Association for Bilingual Education (CABE) is a statewide organization, founded in 1976, with a vision to promote *biliteracy, educational equity, and 21st century success for all*. CABE has over 4,000 members with chapters and affiliates throughout the state, all working to promote equity and student achievement for all students. CABE’s priorities, initiatives, and services are targeted to teachers, administrators, parents, and others in support of research, planning and learning to guide equitable instructional programs and practices for English Learners.

Californians Together is a statewide coalition of 24 parent, professional, and civil rights organizations that mobilize communities to protect and promote the rights of close to 1.4 million English Learners, 23% of California’s students. Californians Together serves as a statewide voice on behalf of language minority students in California public schools. The coalition is committed to securing equal access to quality education for all children.

⁷ Education Code §§ 44253.3 & 44253.4, 44253.5 & 44253.6

⁸ Education § 52164 & 52164.1