



**Kentucky Department of**

*Our  
Children,*

*Our  
Commonwealth*

**Education**



# English Learners with Disabilities

Regulation and Policy Considerations

DOS Inspire  
September 2015

# Introductions:

- ▶ My role
- ▶ Your role
- ▶ What brought you to this session?



# Three questions to keep in mind:



- ▶ What does this mean for my district?
- ▶ What does this mean for my students and their families?
- ▶ How can we utilize this regulation or policy to improve outcomes for students?



# Before we begin...

- ✓ English language learning is not a disability.
- ✓ Being bilingual is an asset.



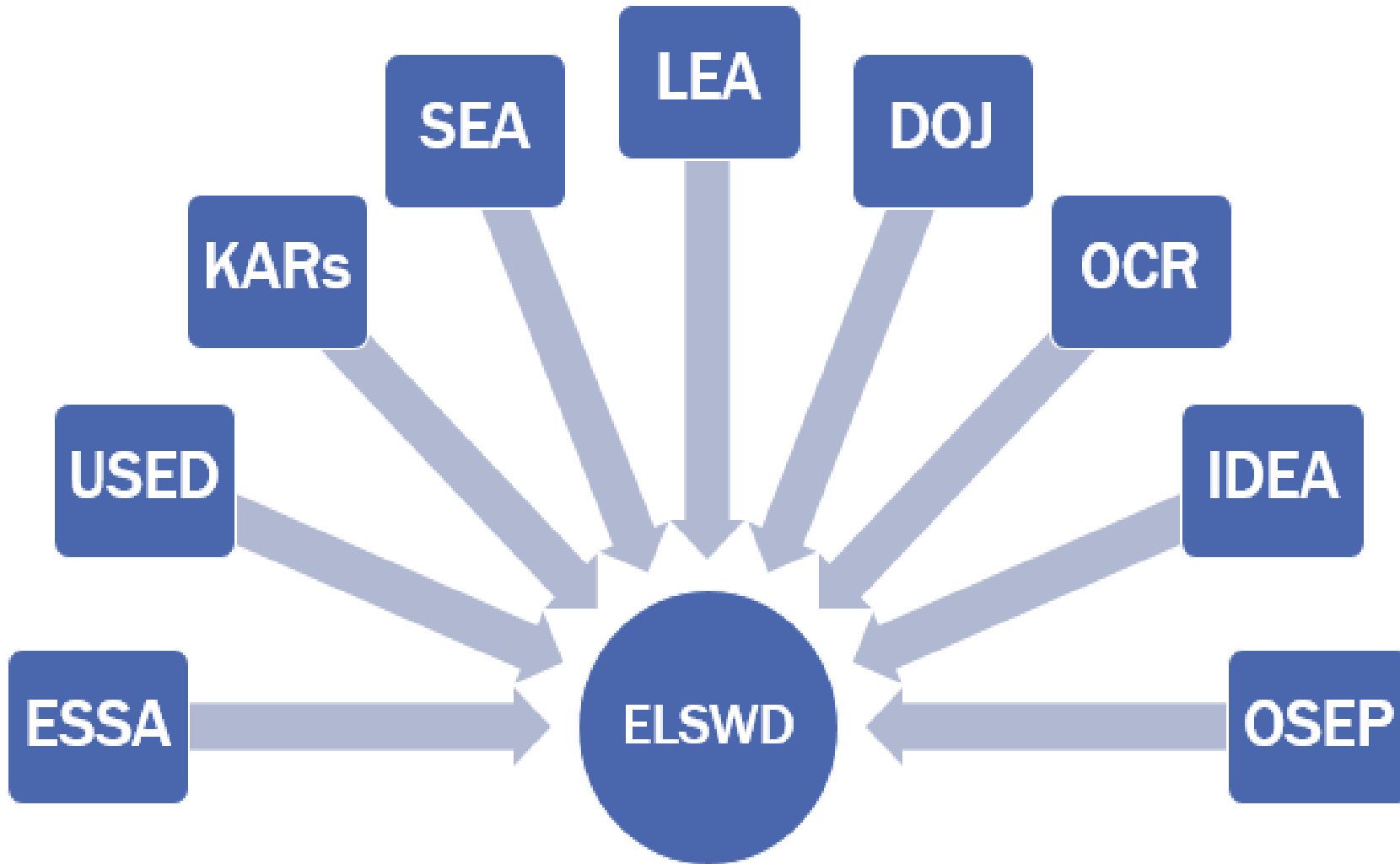


# English Learners with Disabilities (ELSWD):

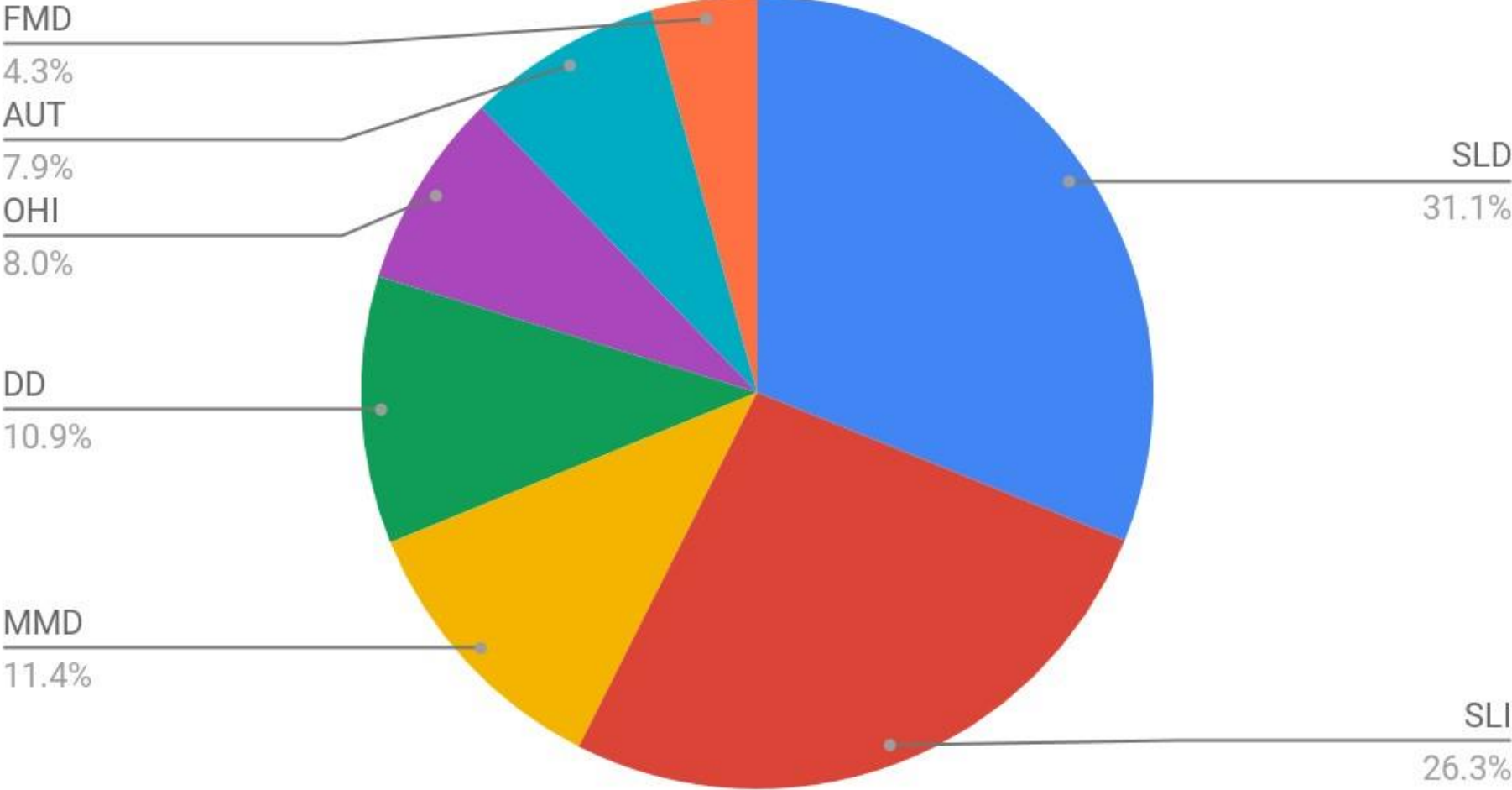
- ▶ While there is a lot to consider, our focus will be on *policy* and *regulation* as it relates to ELSWD.



# ELSWD: Policy & Regulation



# English Learners with Disabilities: Top Eligibility Categories





# Regulation and Policy Makers:

**ESSA, OSEP, IDEA**



# ESSA- Every Student Succeeds Act

- ▶ The nations main education law for all public schools
- ▶ Holds schools, districts and states accountable for student achievement
- ▶ Main purpose- to ensure public schools provide a quality education for all kids, including disadvantaged students in four key groups:
  - Students in poverty
  - Minorities
  - Students who receive special education
  - Those with limited English language skills



# Office of Special Education Programs (OSEP)



- ▶ Leads the nation's efforts to improve outcomes for children with disabilities, birth through 21, and their families, ensuring access to fair, equitable, and high-quality education and services.
- ▶ Administers the *Individuals with Disabilities Education Act (IDEA)*
- ▶ Uses information from the state performance plan/annual performance report (SPP/APR) to annually determine if the state meets requirements and purposes of the IDEA
  - data obtained through monitoring and other public information

# Individuals with Disabilities Act (IDEA)

- ▶ Addresses the rights and educational needs of children with disabilities
- ▶ Assures Free Appropriate Public Education (FAPE)
- ▶ Applies to any state or local educational agency that accepts federal funding



# ESSA: Federal Requirements for ELSWD



- ▶ Subgroup: requires that certain data be disaggregated by ELSWD, including the number and percentage of:
  - ELs who are making progress toward achieving ELP in the aggregate and disaggregate, at a minimum, by English learners with disabilities
  - ELs who have not attained ELP within five years of initial classification and first enrollment in the LEA. (Long Term English Learners-LTELS)
  - Requires that the data on former ELs be disaggregated by English learners with disabilities (ESEA Section 3121(a)(2), (a)(5))

# ELSWD :Federal & IDEA



ELSWD

**Title III: Track's progress toward achieving English language proficiency for students identified as ELs, including English learners with disabilities**

**IDEA: Tracks number and percentage of children with disabilities by race, ethnicity, gender, limited English proficiency status, and disability category in specified areas**



# Policies & Regulations

What do they mean for Kentucky's EL's with (suspected) disabilities?



# Kentucky Administrative Regulations (KAR's): Special Education Programs

- ▶ Contains regulations relating to EL's
  - Free appropriate public education (FAPE) (707 KAR 1:290)
  - Child find, evaluation and reevaluation (707 KAR 1:300)
  - Determination of Eligibility (707 KAR 1:310)
  - Individual Education Program (707 KAR 1:320)
  - Procedural Safeguards (707 KAR 1:340)



# Child find (707 KAR 1:300)

- ▶ An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child, ages 3 – 21, within residence of the districts boundaries, *who may need special education and related services.*
- Ensures that *all* children with disabilities residing in the State and in need of special education and related services are identified, located, and evaluated in a timely manner.



# Free appropriate public education (707 KAR 1:290)

- ▶ The LEA shall make a free appropriate public education (FAPE) available to *all children with disabilities* aged three to twenty-one residing within its district's boundaries who have not received a high school diploma.
- ▶ FAPE is fully applicable regardless of a child's ELP level, and includes highly mobile children and migrant children suspected of having a disability under the IDEA.



# Number of years requirement?

- ▶ There are NO federal or state laws that require a minimum number of years of access to English instruction before a student can be referred for Special Education.



# Child Find & FAPE:



- ▶ What does this mean for my district?
- ▶ What does this mean for my students and their families?
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# Concern: Under & Over Identification

## Under

- ▶ Delaying a referral for an evaluation can result in the under-identification of ELs as “children with disabilities” under the IDEA.

## Over

- ▶ Wrongly determining that a student’s difficulties are due to a disability rather than lack of English language proficiency.



# Key: *Appropriate* Referral & Identification



- ▶ ARC Teams must adhere to applicable IDEA procedures in conducting evaluations and reevaluations of ELs
  - IDEA: assessments/evaluation materials must be selected and administered so as **not to be discriminatory on a racial or cultural basis**
  - IDEA: A *team* (ARC) of **qualified professionals** and the child's parent determines whether a child is a "child with a disability," as defined in the IDEA
  - IDEA: ARC team must draw upon information from a **variety of sources**

# Key: Multidisciplinary Teams



## Expertise to be included on multidisciplinary teams

- Second language acquisition, multilingualism, and English language development
- Student's home language and culture
- Culturally and linguistically responsive practices relevant to the linguistic and cultural needs of the student in question (see Recommendation 3)
- Bilingual evaluation
- Special education
- Curriculum, general education content
- Family and community engagement
- Related services (as appropriate), such as speech-language pathology, occupational therapy, etc.

## Individuals to be included on multidisciplinary teams

- Parents/family members
- General education teachers
- Special education teachers
- English learner and bilingual education teachers/experts
- Intervention specialists
- Other service providers, especially speech-language pathologists who have expertise in language development
- School administrators
- School psychologists
- Bilingual evaluators
- Trained and qualified interpreters
- Cultural liaisons
- Student (when appropriate)

# Referral System (707 KAR 1:300)

- ▶ **Timely**
- ▶ ***Prevents*** inappropriate over identification or disproportionate representation by race and ethnicity
- ▶ **Child is provided appropriate, *relevant research-based instruction and intervention services in regular education settings*, with the instruction provided by *qualified personnel***
- ▶ ***Data-based documentation* of repeated assessments of achievement or measures of behavior**



# TESOL: Assessment of English Language Learners With Disabilities

- ▶ For ELL's, nomination for Special Education services may occur if pre-referral intervention has not been successful, exclusionary factors have been considered, formal and informal assessment in the students first language and English has been provided, a synthesis of all available student data has been compiled, families have been consulted and an ESL teacher is included in a multidisciplinary team.





# Referral:



- ▶ What does this mean for my district?
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# After the Referral: Assessment, Evaluation & Data Collection

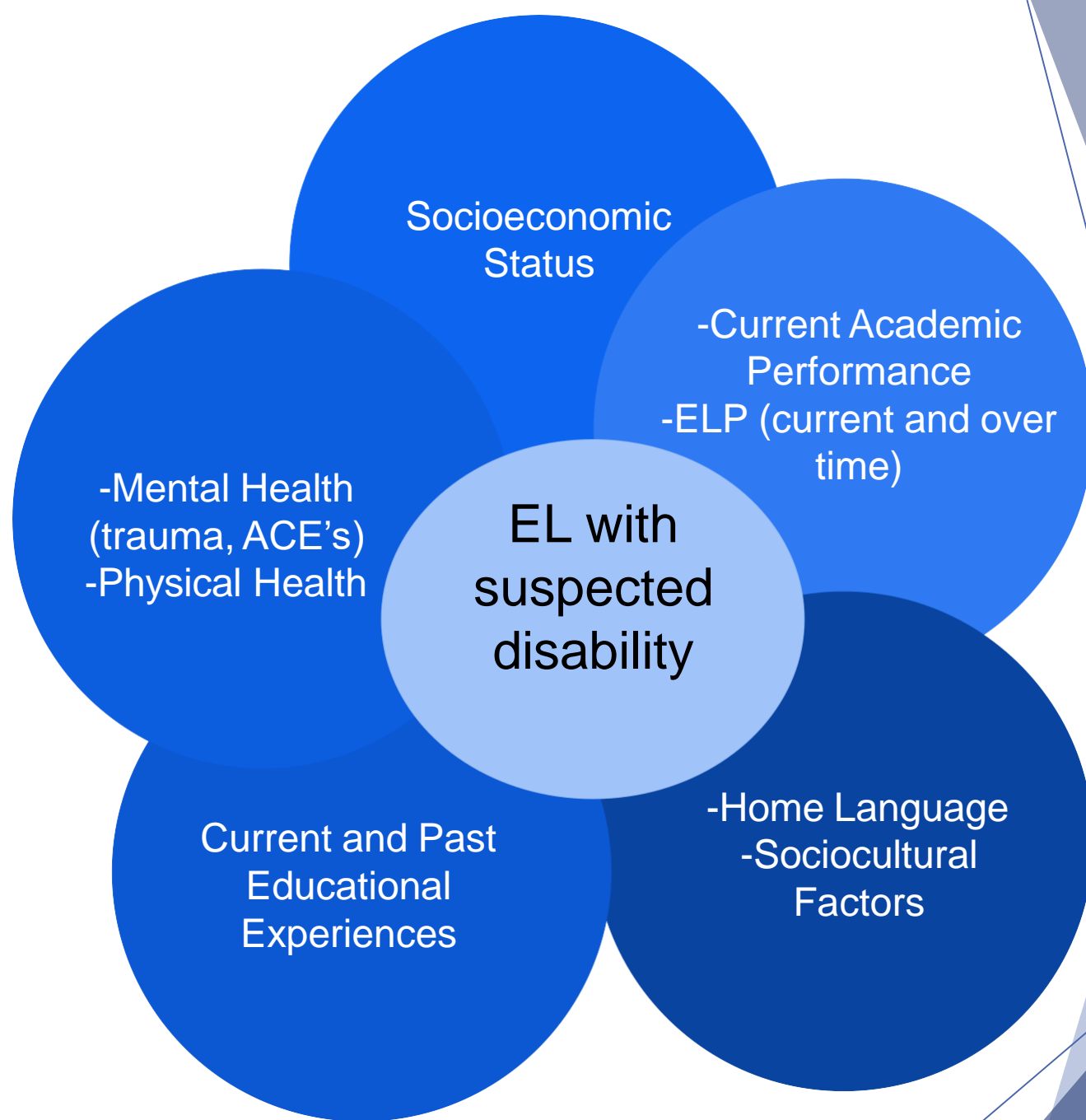


# Evaluation and Reevaluation (707 KAR 1:300)



- ▶ LEA's should ensure a full and individual evaluation is conducted
- ▶ Tests and other evaluation materials:
  - ▶ Shall be **non-discriminatory** on a racial or cultural basis
  - ▶ Shall be administered in the child's **native language**, unless it is clearly not feasible to do so
  - ▶ Shall measure the *extent to which the child has a **disability, rather than measuring the child's English language skills.***
  - ▶ A **variety of assessment tools and strategies** shall be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent

- ▶ *variety* of assessment tools & strategies
- ▶ relevant functional, developmental, and academic information about the child
- ▶ information from **parent**



# Evaluations: L1 or L2?

- ▶ IDEA: assessments/evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis, and be administered in the student's *native language or other mode of communication and in the form most likely to yield accurate information*
- ▶ DOJ, USED: To avoid inappropriately identifying EL students as students with disabilities because of their limited English proficiency, EL students must be evaluated in an *appropriate language* based on the student's needs and language skills.



# Assessment and Evaluations:



- ▶ What does this mean for my district?
- ▶ What does this mean for my students and their families?
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# Determining Eligibility





# ARC Membership (707 KAR 1:320)

- ▶ The parents of the child
- ▶ Not less than one regular education AND one special education teacher of the child
- ▶ A representative of the district who is qualified and knowledgeable (i.e. ARC Chair)
- ▶ An individual who can *interpret the instructional implications of evaluation results* who may be a member of the team
- ▶ An *individual who has knowledge or special expertise regarding the child* at the discretion of the parent or the LEA
- ▶ Related services personnel, as appropriate
- ▶ The child, if appropriate
  - Member of the ARC may be dismissed from attendance if the parents and LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary.



# Determination of Eligibility (707 KAR 1:310)

- ▶ A child shall not be determined to be eligible if the *determinant factor* for that eligibility determination is:
  - A lack of *appropriate instruction* in math or reading
  - Limited English proficiency
- ▶ So ***how do we rule out ELP as a determinant factor?*** Information and data obtained is analyzed, carefully considered and documented.



# Determination of Eligibility (707 KAR 1:310): Variety of Sources



- Screenings
- Rtl
- Parental input
- Aptitude and achievement tests
- Teacher recommendations
- Physical condition
- Social or cultural background
- Adaptive behavior
- Behavioral observations



# Eligibility Considerations: ELP & ACCESS

- ▶ **Special factors: IEP Team must consider AND document how the language needs of the student relate to the student's IEP:**
  - **ACCESS scores support ARC teams in ascertaining the student's language needs and ensuring that the student receives appropriate services**
  - **Analysis and discussion of ACCESS scores can help the ARC team make decisions**
  - **ACCESS scores should be discussed and documented**
    - ✓ **Growth, peer comparisons, strengths and weaknesses**



# Eligibility:



- ▶ What does this mean for my district?
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- ▶ How can we utilize this regulation or policy to improve outcomes for students?



# Parents: Policy and Regulation Considerations





# Parents as Partners- “Informed Partnership”

Parents are essential members of IEP teams. They should be engaged and be provided with information necessary to participate as active members of the IEP team.



# Procedural Safeguards (707 KAR 1:340) Parent Rights

- ▶ Parents shall be afforded an opportunity to:
  - Inspect and review all education records
  - Participate in all ARC meetings concerning his child
  - Be provided with a written notice of ARC meetings
  - Discuss why the LEA proposes or refuses to take the action
- ▶ Notices shall be written in language understandable to the general public and provided in the native unless it is clearly not feasible to do so.
  - If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of the translation.



# Parent Participation (707 KAR 1:320)

- ▶ LEA shall ensure that one or both of the parents of a child with a disability are **present at each ARC meeting, or are afforded the opportunity to participate.**
- ▶ LEA shall provide **written notice** to the parents of a child with a disability at least seven (7) days before an ARC meeting. The meeting shall be scheduled at a mutually-agreed-on time and place. (Exception: meetings concerning a disciplinary change in placement or a safety issue)
- ▶ LEA shall send **meeting invitation** which includes: The purpose, time, location, who will be in attendance, notice that the parents may invite people with knowledge or special expertise of the child to the meeting



# Parent Participation (707 KAR 1:320)

- ▶ Parent may attend using **other methods** (i.e. individual or conference telephone calls, video conferencing)
- ▶ ARC meeting may be conducted without a parent if the LEA is unable to convince the parent that he should attend. **Attempts to arrange a mutually-agreed-on time and place should be documented:**
  - Detailed records of telephone calls made or attempted and the results of those calls
  - Copies of correspondence sent to the parents and any responses received
  - Detailed records of visits to the parent's home or place of employment and the results of those visits



# Parents: Use of Interpreters (707 KAR 1:320)

- ▶ LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, *including arranging for an interpreter* for parents whose native language is other than English (unless it is clearly not feasible to do so).



# OCR and Certified Interpreters

- ▶ *“What steps must school districts take to provide effective language assistance to LEP parents?”*
  - School districts must provide **effective language assistance** to limited English proficient parents, such as by offering translated materials or a language interpreter. Language assistance must be free and provided by **appropriate and competent staff, or through appropriate and competent outside resources.**
  - School districts should ensure that interpreters and translators have **knowledge in both languages of any specialized terms or concepts** to be used in the communication at issue, and are **trained** on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality
  - It is **not sufficient for the staff merely to be bilingual.** For example, a staff member who is bilingual may be able to communicate directly with limited English proficient parents in a different language, but may not be **competent** to interpret in and out of that language, or to translate documents.





# ARC Meetings:



- ▶ What does this mean for my district?
- ▶ What does this mean for my students and their families?
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# The Individualized Education Plan (IEP) for ELSWD

# Individual Education Program (707 KAR 1:320)

- ▶ LEA shall ensure that:
  - The child's IEP is **accessible** to all teachers & service providers who are responsible for its implementation
  - **Prior to the implementation**, each implementer is informed of their **specific responsibilities** related to implementing the child's IEP
  - The specific accommodations, modifications, and supports are provided for the child **in accordance with the IEP**



# IEP Contents (707 KAR 1:320)

- ▶ The *strengths* of the child (i.e. being bilingual)
- ▶ Concerns of the parents
- ▶ Evaluation results
- ▶ General state or district-wide assessment results
- ▶ The academic, developmental, and functional needs of the child
- ▶ In the case of a child with LEP, consider the language needs of the child as those needs relate to the child's IEP
- ▶ If child who is deaf or hard of hearing, consider the child's language and communication needs
- ▶ Special factors



# EL Data in the IEP

- ▶ Student performance data is documented in the *Present Levels* section of the IEP and comes from a variety of sources, including but not limited to:
  - ▶ IEP progress monitoring data
  - ▶ data from evidence-based interventions
  - ▶ Integrated Assessment Report
  - ▶ diagnostic assessments
  - ▶ classroom-based assessments and work samples
  - ▶ criterion-referenced tests
  - ▶ data collected from multiple observations
  - ▶ state and district-wide (universal screener) assessment results with age/grade comparisons
  - ▶ English Learner (EL) Program Services Plans



# IEP Goals & Objectives:

- ▶ When the ARC writes learning goals for ELSWD, they should consider the student's progress in their English language development as related to proficiency standards and content standards.





# Dual services: Dear Colleague Letter

- ▶ Dear Colleague Letter: English Learner Students and Limited English Proficient Parents issued by DOJ and USED (January 7, 2015)
  - ▶ *The Departments are aware that some school districts have a formal or informal policy of “no dual services,” i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA and Federal civil rights laws...*



# Dual services: DOJ and OCR

- ▶ EL students with disabilities must be provided both the language assistance and disability-related services to which they are entitled under Federal law.
- ▶ EL students who may have a disability, like all other students who may have a disability and may require services under the IDEA or Section 504 of the must be located, identified and evaluated for special education and disability-related services in a timely manner.

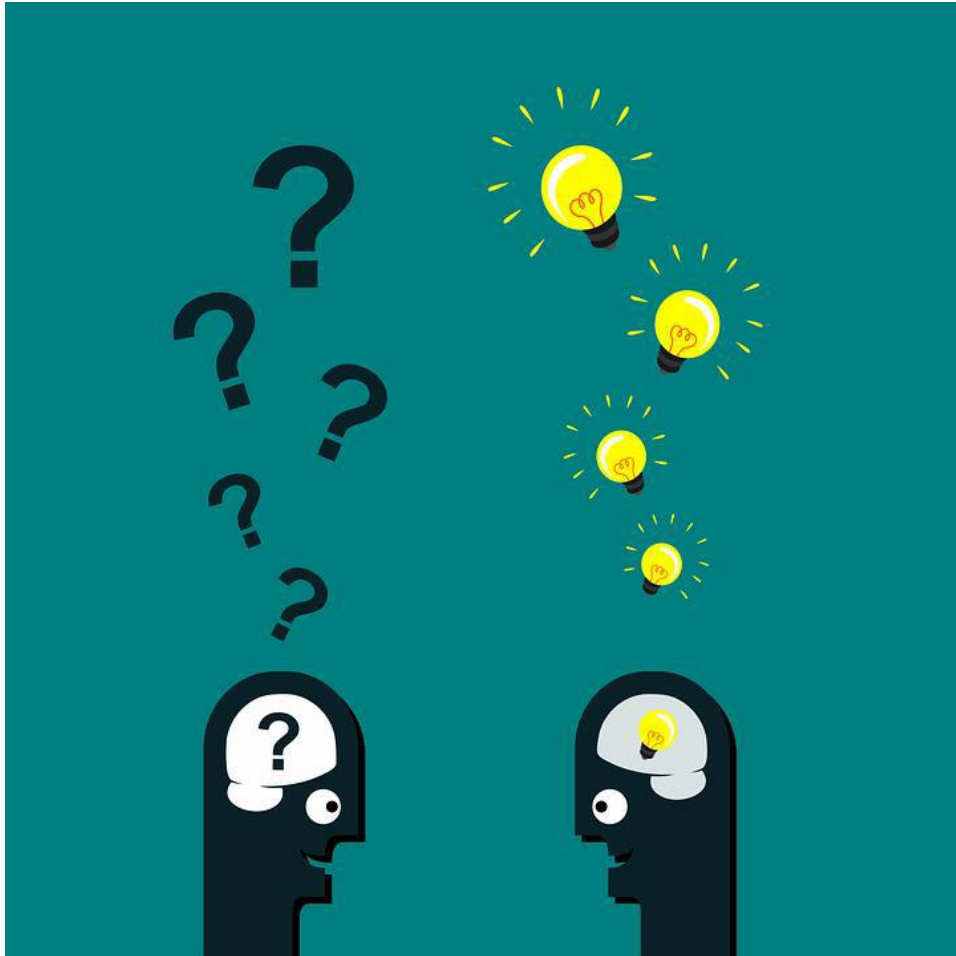


# The IEP



- ▶ What does this mean for my district?
- ▶ What does this mean for my students and their families?
- ▶ How can we utilize this regulation or policy to improve outcomes for students?

# Questions & Final Thoughts?



Contact us!

[English Learners  
Contact Guide](#)



# Additional Resources

- ▶ [Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\)](#)
- ▶ [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#)
- ▶ [Addendum to Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives Issued July 18, 2014 \(2014 Qs and As\)1](#)
- ▶ [Information for Limited English Proficient \(LEP\) Parents and Guardians and for Schools and School Districts that Communicate with Them](#)



# Resources Continued

- ▶ [Alternate English Language Learning Assessment Project](#)
- ▶ [WIDA: Identifying ELLs with Specific Learning Disabilities: Facts, Advice, and Resources for School Teams](#)
- ▶ [When an English Learner Struggles Academically: Telling the Difference Between Second Language Acquisition and a Possible Learning Disability \(Webinar with materials\)](#)
- ▶ [Resources and Strategies for Identifying and Supporting English Learners With Learning Disabilities](#)
- ▶ [Evidence Based Practices for English Learners- CEEDAR](#)





# Gracias a todos! Thank you everyone!



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