



Kentucky Department of  
**EDUCATION**

## Addressing the Misidentification of Students as English Learners

Districts have an obligation to identify English learner (EL) students in need of language assistance services within 30 calendar days of the student's enrollment. Section 3113(b)(2) of the Every Student Succeeds Act (ESSA) requires states to establish standardized entrance and exit procedures for ELs. Kentucky's entrance procedures begin with the completion of a home language survey (HLS) for every student upon their initial enrollment in the district. If any of the answers on the HLS is a language other than English, the student is a "potential EL", and their English language proficiency (ELP) will be assessed using the appropriate page screener. Responses on the HLS do not directly affect a student's EL status; only a World-class Instructional Design and Assessment (WIDA) can classify a student as an EL. The HLS should only be administered upon **initial** entry into a Kentucky public school and does not need to be administered when a student transfers from one district to another. If an additional HLS is completed, the new HLS has no effect on a previous EL classification.

This document is intended to provide guidance to districts on correcting and preventing the misidentification of students as ELs.

### Determining Misidentification

Question four of the U.S. Department of Education's [Non-Regulatory Guidance Addendum](#) addresses removing a student's EL designation if the student was erroneously identified. The full question and answer are as follows:

**“May a (Local Educational Agency) (LEA) remove a student’s EL designation if that student was erroneously identified as an EL, even if the student does not score proficient on the annual ELP assessment?”**

An erroneously identified EL is a student who was identified as an EL but should not have been because the student does not in fact meet the definition of “English learner” in ESEA section 8101(20). The erroneous identification may have occurred as part of the initial identification process, *e.g.*, due to a parent's inaccurate completion of the home language survey, administration of an EL screening assessment without providing for appropriate accommodations for a student with disabilities, inaccurate scoring on the annual ELP assessment, or other reasons.

In instances where a student is erroneously identified as an EL, the LEA should determine how to proceed based on the individual circumstances. For example, if the LEA discovers that appropriate accommodations on the EL screening assessment were not provided to a student with a disability, the logical step would be to re-test the student with appropriate accommodations. If the results of the screener assessment show that the student is not an EL, the EL designation would be removed.

Erroneous identification may also occur when a parent misunderstands the home language survey and indicates that languages other than English are spoken at home because there is occasional use of a language other than English, even though English is the dominant language

used at home and the student does not speak or understand any language other than English. In that case, the LEA could remove the EL designation since the student should not have been identified as an EL in the first place.

These are rare exceptions to the general rule that, after a student is identified as an EL, the LEA may not remove the EL designation before that student scores proficient on the assessment of the four language domains, even if the student's parents object to the EL designation (although parents have the right to decline services)."

**As stated in the guidance, removal of a student's EL designation before the student scores proficient on the ELP assessment is rare and each scenario must be evaluated on an individual basis.** A parent or guardian request alone is not enough to remove a student's EL designation.

### **Final Determination of Misidentification**

Although KDE staff will provide guidance and are available to assist with any questions that may arise regarding specific cases of misidentification, **KDE will no longer make the final determination about whether an individual student was misidentified.** Districts will be responsible for determining whether misidentification has occurred and making the necessary corrections. Following are recommendations and required actions in the rare case potential misidentification has occurred:

1. If the district suspects the HLS was completed incorrectly, they should reach out to the family to verify its accuracy.
2. If a parent or guardian believes their student was erroneously identified, it is recommended that districts require the parent/guardian to submit a written request to the district to have the student's EL designation removed. The request should include a brief explanation of the reason for amending the student's EL designation, such as a clarification of the student's exposure to a language other than English listed on the original HLS.
3. Districts often consult with multiple sources to determine whether misidentification has occurred. KDE recommends that districts consult with the student's teachers, including the EL teacher, when determining whether EL status is appropriate. The student's grades, scores on benchmark assessments and any previous EL screener or ACCESS assessments available also should be reviewed.
4. KDE recommends districts assemble a team to make the final determination of whether misidentification has occurred. The team should consider the evidence mentioned above (e.g., grades, teacher input, scores on assessments) and any other available and appropriate sources of information. The team should develop some guiding questions that can help them make the decision. Examples could include:
  - a. Is there a language barrier that is affecting this student's success?
  - b. What do the student's grades and scores on benchmark assessments tell us with respect to a possible language barrier?
  - c. What do the student's teachers, including the EL teacher, report about the student's progress?
  - d. What does the student's score on the WIDA screener and/or subsequent ACCESS testing tell us?
  - e. If the EL designation is removed, will it be detrimental to the student's education?

- f. Does the evidence support that the student was correctly identified as an English learner, or was the student misidentified?
5. If the district determines a student has been misidentified as EL, Infinite Campus (IC) must be updated to reflect the student is not EL because of misidentification. Revisions in IC should be made before rosters open in the Student Data Review and Roster (SDRR) application so the student will not appear on the roster. If the district does not update IC to reflect the student is not EL because of misidentification and the student is included on the roster, the district will have to resolve the discrepancy during data review in the fall.
6. Within Infinite Campus the following items will need to be updated in the student record:
  - a. EL program status updated to “not EL”
  - b. Remove Identified Date
  - c. Remove Expected Exit Date
  - d. Enter **Date Determined Misidentified**
  - e. In the comments field,
    1. explain the reason(s) the student was misidentified and
    2. list the evidence that was reviewed in determining the student was misidentified.
  - f. End date EL Services
  - g. End date EL Accommodations
  - h. Update Primary Home Language to English
  - i. Reference the [English Learner Data Standards](#) for additional guidance
  - j. Be sure to retain pertinent documentation related to the decision in the student’s records including the parent/guardian letter of request. The documentation you have gathered to support misidentification must be part of the student’s record in case your district is selected for monitoring.

NOTE: Students with a Date Determined Misidentified will still appear on the *No Prior ACCESS Attainment error report* with the field highlighted in orange for informational purposes.

### Preventing Misidentification

The first step in preventing the misidentification of students as ELs is ensuring parents/guardians understand the purpose of the Home Language Survey (HLS). KDE’s [Home Language Survey](#) includes language to explain that the HLS is used solely to determine if students may qualify for additional services as well as the next steps for a student with an HLS listing a language other than English. KDE also added clarifying language to the online Infinite Campus registration tool and updated language in the [District Guide for the English Learners Program](#). Districts may want to remind parents and guardians again that their responses could qualify their students for EL services.

Districts must use the [HLS template](#) created by KDE beginning with the 2022-23 school year. KDE’s HLS survey template is available on the [English Learner and Immigrant Resources web page](#) in English and the ten most prevalent languages in Kentucky.

## **Monitoring**

KDE is required by [2 CFR 200.332\(b\)](#) to conduct a risk assessment of districts. KDE uses the results of the risk assessment to select districts for consolidated monitoring. While EL misidentification can sometimes happen, cases should be rare. The following instances are evidence of increased risk in the EL program, and in these cases, there could be an increased chance a district will be selected for monitoring:

- Districts with a high rate of misidentification compared to their number of EL students;
- Districts that approve misidentification for students who have been in the EL program for several years; and
- Districts that approve misidentification for students who have not attained the minimum score on the ACCESS assessment to exit the EL program.

KDE's current EL monitoring process includes an indicator for a district process for administering and interpreting the HLS results to minimize the number of students misidentified as ELs. As KDE continues to refine the monitoring process around data quality and misidentification, staff will communicate with districts to ensure they have the most current information about requirements and monitoring.

## **Resources:**

[District Guide for the English Learners Program](#)

[Inclusion of Special Populations in the State-Required Assessment and Accountability Programs 703 KAR 5:070](#)

[English Learner Data Standards](#)

[KDE's Title III—English Learner and Immigrant Students web page](#)

[KDE's Home Language Survey template](#)

[Parent Notification Timelines](#)