

I. STUDENT & PROGRAM ELIGIBILITY

1. STUDENT ELIGIBILITY

There are two sets of criteria used to determine student eligibility for participation in a Bilingual Multicultural Education Program. One set of criteria is the federal requirements; the other set is the state requirements.

A. Federal Requirements

The No Child Left Behind Act (NCLB) of 2001, Title III Act Language Instruction for Limited English Proficient and Immigrant Students, provides funding for schools districts that identify and serve their English Language Learner (previously called Limited English Proficient – ELL/LEP) students. A definition for the term comes from the NCLB Act Title IX-Part A-Definitions:

“LIMITED ENGLISH PROFICIENT”— The term “limited English proficient”, when used with respect to an individual, means an individual—

- (A) who is age 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.

IMMIGRANT CHILDREN AND YOUTH—The term ‘immigrant children and youth’ means an individuals who—

- (A) are aged 3 through 21;
- (B) were not born in any State; and
- (C) have not been attending one or more schools in any or more States for more than 3 full academic years.” (No Child Left Behind Act, Title III, 2001).

B. State Requirements

The Bilingual Multicultural Education Act of 2004 provides funds to local districts to implement bilingual, multicultural instructional programs. The goals of the program are: (1) to become bilingual and biliterate in English and a second language, including Spanish, a Native American language, where a written form exists and there is tribal approval, or another language; and (2) to meet state academic content standards and benchmarks in all subject areas. The PED regulation allows a district to develop programs that meet the needs

of ELL/LEP students while allowing all students in a district to participate in a Bilingual Multicultural Education program.

CHART 3
EXAMPLE OF STUDENT ELIGIBILITY ACCORDING TO LANGUAGE PROFICIENCY
**Priority of funding is given to K-3 students wishing to participate.*

Categories	Language Proficiency
A	Monolingual in a language other than English - NEP (ELL/LEP students)
B	Partial proficiency of English(ELL/LEP students)
C	Fluent English Proficient students are eligible to participate in 1 or 2-hour programs. FEP students can also participate in 3-hour Dual Language Programs.
D	Other students who may wish to participate (Meeting the following criteria: FEP status and/or Home Language Survey= English; Parent Approval, and if funds are available after first meeting the needs of ELL students). State Bilingual Multicultural Education Programs meet the New Mexico House Bill 212 requirement that students in Grades 1-8 must receive instruction in a language other than English.

2. PROGRAM ELIGIBILITY

The New Mexico Bilingual Multicultural Education Regulation (6.32.2 NMAC, 11-30-05) and The No Child Left Behind Act, Title III provides for the establishment of Bilingual Multicultural Education programs as a local option. To be eligible for financial support, each program shall:

A. Student Participation

Provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate in grades Kindergarten through Twelve (with priority to be given to programs in grades Kindergarten through Three) in any public school or any combination of public schools in a district. English Language Learners (ELL/LEP), Fluent English Proficient (FEP) students, and native English speakers (“Non-PHLOTE”) may be part of the State Bilingual Multicultural Education program. *However, only ELL/LEP and immigrant students qualify for financial support under the Federal Title III formula-based funding.*

B. Program Funding

Fund programs for culturally and linguistically different students in the state in grades Kindergarten through Three for which there is an identifiable need to improve the language capabilities in both English and the Home/Heritage language of these students before funding programs at higher grade levels.

C. Instruction

Use two languages as mediums of instruction for any part or all of the curriculum of grade levels within the program.

D. Parent Involvement

Establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation, and evaluation of the program. The parent advisory committee may be formed at the school level and/or at the district level, based upon local needs. The parent advisory committee from the district and/or school shall review the goals and priorities of the Bilingual Multicultural Education plan and make recommendations to the local board of education.

E. Parent Notification and Program Placement

Provide procedures to ensure that parental notification is given annually prior to program placement. U.S. Civil Rights law and policy require districts that receive Federal financial assistance to provide the parents of language minority students with notice of all school activities containing the same information that is provided to the parents of other students, regardless of the subject matter. To be adequate, such notices must be furnished in a language, manner and/or form that are understandable to parents. (See examples in the Appendixes of this manual).

Parents of ELL/LEP students do not need to respond to the student placement notification in order for the student to participate in the program. Whether the parent(s) responds or not, the district is obligated to provide ESL/ELD instruction strategies to ensure that the student's English-language and academic needs are met.

1. Parent Notification Requirements of Individual ELL/LEP Student Placement:

Within 30 days after the start of the school year and prior to placement, parents must be notified with regard to:

- Reason for identification which includes student's level of English proficiency (as indicated by the New Mexico English Language Proficiency Assessment);
- Method of instruction used in the program (content, instructional goals, English and home language instruction);
- How the program will meet student's educational strengths and individual needs;
- Program exit/expected rate of transition for ELL/LEP students;
- The right to remove the child upon request;
- The right to decline enrollment in the program or decline the method of instruction; and
- Additional parent notification within 30 days if the LEA fails to meet its Annual Measurable Achievement Objectives and/or Adequate Yearly Progress.
- Information given to parents must be in an understandable and uniform format in the language of the parents when feasible. (Some Native American languages are not available in a written format.)

2. Parent Notification Requirements for FEP and Non-PHLOTE Students:

Prior to placing an FEP/Non-PHLOTE student in a Bilingual Multicultural Education program, the school/district will notify parents in writing regarding:

- Benefits of the program being offered to the student;
- Other program options available;
- Parents' rights to visit the program; and
- Parents' rights to withdraw the student from the program.

F. Staffing and Professional Development

Under the *Bilingual Multicultural Education Regulation* (November 30, 2005), districts are responsible to provide personnel endorsed in Bilingual Multicultural Education, TESOL or licensed through the Native American Language and Culture License.

For detailed information regarding Staffing and Professional Development Requirements, please refer to Chapter IV.

