



Innovative Solutions for Including Recently Arrived English Learners in State Accountability Systems: A GUIDE FOR STATES



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Executive Summary

Overview

English learners (ELs) — language-minority students whose emerging English proficiency affects their ability to meaningfully participate and succeed in school — are among the fastest growing population of K–12 public school students in the U.S. While about 75 percent of the nation’s nearly 5 million ELs are U.S.-born, many are the children of immigrants or are immigrants themselves. Recently arrived ELs (those ELs enrolled for less than 12 months in U.S. schools, hereafter referred to as RA ELs) represent a growing yet often underserved subpopulation of ELs. As with all ELs, RA ELs are diverse in their levels of initial English proficiency, prior formal schooling, primary language literacy and age/grade on entry. Since the enactment of the No Child Left Behind Act of 2001 (NCLB), States have requested greater flexibility to develop options for meaningfully including RA ELs in their State assessment and accountability systems.

Under NCLB, the U.S. Department of Education (ED) amended regulations and issued non-regulatory guidance regarding Title I assessment and accountability provisions for RA ELs. In light of States’ continued concern for this population, in the fall of 2015, ED initiated a collaborative project with seven State educational agencies,¹ national EL research and policy experts, and other stakeholders to examine policy and technical issues, and to explore innovative strategies for meaningfully including RA ELs in State assessment, reporting and accountability systems. While this work was under way, in December 2015, Congress reauthorized the Elementary and Secondary Education Act as the Every Student Succeeds Act of 2015 (ESSA). ESSA substantially expanded provisions related to assessment and accountability for RA ELs. This guide responds to discussions and insights generated by the collaborative project, and to ESSA provisions and implementing regulations regarding RA ELs.

Specifically, this guide provides States with suggested research- and evidence-based guidelines for developing a RA EL accountability model that is grounded in a State’s theory of action. The theory of action specifies how educators will utilize State assessment and accountability information to help improve educational practice and linguistic and academic outcomes for RA ELs, while also meeting ESSA requirements. A State can use these guidelines to engage in a systematic process of developing a RA EL accountability model; or to formatively evaluate its currently proposed or established approaches to RA EL assessment and accountability. States

¹ Colorado, Florida, Georgia, Maryland, New York, Ohio and Oregon.

can also consider these guidelines within the larger context of their ESSA State plans regarding assessment and accountability, State priorities and goals, and EL instructional program designs.

Assessment and Accountability Exception Options Under ESSA

While States may choose to treat RA ELs in the same manner as all other students, ESSA provides two options that create exceptions for how RA ELs are included in State assessments and school accountability under Title I. The first option is to exclude RA ELs from one administration of the Title I reading/language arts (R/LA) assessment, and from Title I accountability for achievement in R/LA and mathematics in the student's first year of enrollment in U.S. schools (year 1). The State may also exclude a RA EL's results on the State English language proficiency (ELP) assessment from Title I accountability in year 1. In year 2 under this option, RA ELs take the R/LA assessment, in addition to the assessment in mathematics, and their proficiency results in R/LA and mathematics are used in the Academic Achievement indicator for accountability purposes in year 2 and after, as is the ELP assessment result for the Progress in Achieving English Language Proficiency indicator. The second option allows States to assess and report RA ELs' R/LA assessment results each year, but exclude these results from accountability in year 1; assess and include *growth* (from year 1 to year 2) on the R/LA assessment for accountability purposes in year 2 in the Academic Achievement or Academic Progress indicator; and assess R/LA and include *proficiency* results for accountability purposes in year 3 in the Academic Achievement indicator.² Unlike option 1, the second option does not offer flexibility regarding use of the ELP assessment in school accountability for RA ELs.

Moreover, final ESSA regulations effectively offer a third option by permitting States to establish a uniform Statewide procedure for determining which assessment and accountability exception (option 1 or 2, described above), if any, applies to an individual RA EL. (The guide refers to this as option 3.) The regulations require a State, in establishing its uniform procedure, to take into account the RA EL's *initial* ELP level and, at its discretion, other student-level characteristics listed in the regulation (i.e., grade level, age, native language proficiency level and limited or interrupted formal education).

² Under option 2, a State may also exclude a RA EL's mathematics assessment results from accountability in year 1, and include growth in year 2 and proficiency in year 3 for accountability purposes on the mathematics assessment.

Guidelines

This guide elaborates seven suggested guidelines for RA EL assessment and accountability model development:

1. Establish a clear, statewide definition of a recently arrived English learner (RA EL).

As stated in § 1111(b)(3)(A) of the ESEA, as amended by ESSA, a recently arrived EL is an EL who has been “enrolled in a school in one of the 50 States in the United States or the District of Columbia *for less than 12 months*” (emphasis added). To operationalize the italicized elements of this definition:

- “12 months” has been interpreted by ED in the 2007 non-regulatory guidance as the *cumulative* number of months (not necessarily consecutive) the child has been enrolled in any and all public schools in the U.S.
- States should ensure that one or more standardized questions are incorporated into local student registration processes that elicit voluntary, self-reported information from parents on the *total* number of months their child has been enrolled in any and all public schools in the U.S.
- States should provide educators and families with a clear explanation of the reason for asking these questions, and provide districts and schools with guidance on how to solicit, record and use self-reported information about students’ time in U.S. public schools.
- Districts might use a form that lists a specific number of months (e.g., each of the past 24, 36 or more months) and have the parent circle the months the child was enrolled in school in one of the 50 States or the District of Columbia. Such protocols, guidance and approaches can help schools and districts avoid “restarting the clock” each time a RA EL enrolls, and instead focus on the total prior time the student was enrolled in U.S. schools.

2. Develop a theory of action for RA EL accountability models.

A theory of action is an explicitly stated, hypothesized causal chain of expectations describing, in this case, the expected benefits *to educators and students* from the specific model the State implements for including RA ELs in the State’s academic assessment, reporting and accountability system.

- States will find it helpful to draft a theory of action that is as explicit as possible, focusing on two or more positive outcomes for students and educators.
- In developing a robust theory of action, it is critical for States to optimize RA ELs’ meaningful and appropriate participation in State assessment and accountability systems.

- States should consider how their theory of action for RA EL inclusion in assessment and accountability fits within their larger theory of action for ELs, and for all students.
- States choosing option 3 will need to ensure that their initial ELP assessment can adequately distinguish the “cut-point” level of English proficiency used to assign each RA EL assessment and accountability exception.
- States should consider carefully the timing and availability of ELP assessment results relative to content assessment testing.

3. Carefully consider RA EL options permitted under ESSA provisions and related regulations relative to the State’s assessment and accountability model.

Under ESSA, States are granted substantial discretion in determining their accountability systems. ESSA provisions also allow for flexibility with respect to whether and how to incorporate growth in the State accountability model. These two factors have significant implications for States when evaluating the potential benefits and risks of RA EL accountability options.

- The State should carefully consider how each RA EL assessment and accountability option may fit (or not) within the larger context of EL assessment and accountability, and in the State’s overall school accountability system.

4. Determine the appropriate option(s) based on a theory of action and aligned RA EL accountability model.

States need to ensure that educators appropriately and consistently determine which option(s) for assessments and accountability for RA ELs are based on the adopted theory of action and aligned accountability model.

- The timing of annual ELP assessment results is important when considering their use in academic accountability expectations.
- There is a systematic relationship between ELs’ ELP level and their patterns of performance on content assessments given in English. This relationship could serve as the conceptual basis for States determining which RA EL exception option (including whether to utilize an exception at all) is best for a particular RA EL in its uniform procedure, based on the student’s ELP level and other permitted characteristics as applicable.
- Under Title I, a RA EL assessed using a primary language R/LA test (i.e. a native language assessment) cannot receive the RA EL exceptions offered under ESSA and its implementing regulations. In effect, States offering a primary language R/LA content test would be assigning neither RA EL exception to these students, as there is no interference from the student’s emerging English language proficiency.

- States will need to carefully map out the sequence of academic content assessments (possibly in relation to ELP level and other student-level characteristics in its statewide uniform procedure) for RA ELs receiving primary language R/LA assessments under Title I.
- States will need to provide evidence that any primary language assessment used under Title I meets the appropriate validity and reliability standards for assessments given for Title I assessment and accountability purposes.

5. *Validate assessment use in the State’s chosen RA EL accountability model.*

States will need to provide sufficient validity evidence to support inferences made from assessments used for Title I purposes, including the annual R/LA and ELP assessments. There are several validity-related questions and types of evidence used to answer these questions.

6. *Establish procedures for implementing the State’s chosen RA EL accountability model.*

States need to put adequate procedures in place to ensure that districts and schools can successfully implement the chosen RA EL accountability model. These procedures include timely notification, sufficient materials communicating the approach, and sufficient opportunity for field review and input on relevant draft materials.

7. *Establish evaluation criteria and an evaluation process for the State’s chosen RA EL accountability model.*

States should evaluate whether their chosen RA EL accountability model is accomplishing its intended purposes. There are several key elements and questions that States might use to evaluate to what extent the State’s adopted accountability model is meeting its intended purposes.

About This Guide

Overview

English learners (ELs) — language-minority students whose emerging English proficiency affects their ability to meaningfully participate and succeed in school — are among the fastest growing population of K–12 public school students in the U.S. (National Center for Education Statistics [NCES], 2016). While about 75 percent of the nation’s nearly 5 million ELs are U.S.-born, many are the children of immigrants or are immigrants themselves (Batalova & Zong, 2016). Approximately 1.3 million non-U.S.-born individuals immigrated to the U.S. in 2014. Today, immigrant ELs (less than three years in the U.S.) constitute a notable proportion of ELs in K–12 public schools (Zong & Batalova, 2016), and recently arrived ELs (or RA ELs, those ELs enrolled for less than 12 months in U.S. schools) represent a growing yet often underserved subpopulation of EL immigrant students. While holding high expectations for these ELs, ensuring they have equitable access to high-quality instruction, and providing critical information on their progress to families and the community, State and local educators must also establish assessment and accountability policies and systems that take into account RA ELs’ unique needs and ensure their inclusion in meaningful and thoughtful ways.

In December 2014, the U.S. Department of Education (ED) received requests from 10 States³ for flexibility related to assessment and accountability for RA ELs. While regulations under Title I of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), permitted States to exempt RA ELs from reading/language arts (R/LA) assessments in English for one administration, several States and districts asserted that recently arrived ELs needed additional time to learn English before content assessments in R/LA given in English could measure their knowledge and abilities accurately (Maxwell, 2014). The States also maintained that schools and districts needed greater flexibility within their accountability systems for RA ELs during this time period. Therefore, States requested flexibility to develop additional options for meaningful inclusion of RA ELs within their accountability systems.

In response to these developments, ED initiated a collaborative project in the fall of 2015 with seven State educational agencies,⁴ national EL research and policy experts, and representatives of State and local educational agency leadership groups, as well as EL advocacy organizations. Specifically, they formed a community of practice to identify and discuss relevant policy and

³ Colorado, Connecticut, Delaware, Florida, Georgia, Massachusetts, New York, Ohio, Rhode Island and Tennessee.

⁴ Colorado, Florida, Georgia, Maryland, New York, Ohio and Oregon.

technical issues, and to develop innovative strategies for the meaningful inclusion of RA ELs in State assessment, reporting and accountability systems. (Appendix A lists individual members of this community of practice.) This guide is in part a result of the discussions and insights generated by this community of practice.

History and Context: Recently Arrived English Learners Under ESEA Title I

The 2001 reauthorization of the ESEA, known as NCLB, required under Title I that all students be assessed annually in R/LA and mathematics in at least grades three through eight and once in high school, and that schools and districts be held accountable for these students' adequate yearly progress (AYP) on such assessments under Title I. In September 2006, ED amended the regulations for implementing NCLB Title I Part A, and in May 2007, issued non-regulatory guidance clarifying flexibility in the regulations regarding Title I AYP assessment and accountability provisions for RA ELs.⁵ In particular, ED clarified the following:

- A RA EL was defined as an EL “who has attended schools in the United States for less than 12 months”;
- “During the period within which an LEP [EL] student may be a recent arrival to the United States (during his/her first 12 months attending schools in the U.S.) a State may exempt such a student from one administration of the State’s reading/language arts assessment”; and
- “A State may exclude the scores of recently arrived LEP students on State mathematics and reading/language arts (if taken) assessments from one cycle of AYP determinations.” (ED, 2007, p. 4)

In December 2015, Congress reauthorized ESEA by passing the Every Student Succeeds Act of 2015 (ESSA). ESSA substantially expanded provisions related to assessment and accountability for RA ELs.⁶ ESSA provisions regarding RA ELs are cited in Table 1.

⁵ In NCLB, English learners are referred to as “limited English proficient” (LEP) students. This terminology, used in ESEA since 1978, was discontinued under ESSA in favor of “English learners.”

⁶ The timing of this reauthorization resulted in ED curtailing its direct participation in projects focused on topics subject to regulation; ED provided resources to facilitate two community of practice working sessions (one virtual, the other face-to-face), and to support development of this guide.

Table 1. ESSA Provisions for Recently Arrived English Learners (RA ELs)

(3) EXCEPTION FOR RECENTLY ARRIVED ENGLISH LEARNERS.—	
(A) ASSESSMENTS. —With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than 12 months, a State may choose to—	
<p><i>(i) exclude —</i></p> <p>(I) such an English learner from one administration of the reading or language arts assessment required under paragraph (2); and</p> <p>(II) such an English learner’s results on any of the assessments required under paragraph (2)(B)(v)(I) or (2)(G) for the first year of the English learner’s enrollment in such a school for the purposes of the State-determined accountability system under subsection (c);</p> <p><u>or</u> [see next column]</p>	<p><i>(ii)</i></p> <p>(I) <i>assess</i>, and report the performance of, such an English learner on the reading or language arts and mathematics assessments required under paragraph (2)(B)(v)(I) <i>in each year</i> of the student’s enrollment in such a school; <i>and</i></p> <p>(II) for the purposes of the State-determined accountability system—</p> <p>(aa) for the <i>first year</i> of the student’s enrollment in such a school, <i>exclude</i> the results on the assessments described in subclause (I);</p> <p>(bb) <i>include</i> a measure of student growth on the assessments described in subclause (I) in the <i>second year</i> of the student’s enrollment in such a school; <i>and</i></p> <p>(cc) include proficiency on the assessments described in subclause (I) in the <i>third year</i> of the student’s enrollment in such a school, and each succeeding year of such enrollment.</p>

Source: ESEA § 1111(b)(3)(A)(i) and (ii), as amended by the ESSA. (Italics added.)

As described above, ESSA allows for two exception options that States may consider applying to assessment and accountability for RA ELs. While States may always choose to incorporate RA ELs in the same manner as all other students, these exceptions provide additional options for assessing and holding schools accountable for the results of RA ELs.

- **Option 1.** The first option is similar to that offered under NCLB regulations: Namely, to exclude RA ELs from one administration of the Title I R/LA assessment, and from Title I accountability for R/LA and mathematics in the RA EL’s first year of enrollment in U.S. schools (year 1). However, unlike NCLB, under this exception, the State may also exclude a RA EL’s results on the English language proficiency (ELP) assessment from Title I accountability determinations in year 1 as well, given that accountability for ELP under ESSA has been moved from Title III to Title I. In year 2 under this option, RA ELs take the R/LA assessment, in addition to assessments in mathematics and science (if applicable), and their proficiency results in R/LA and mathematics are used for accountability purposes in the Academic Achievement indicator, as is the ELP assessment result for the Progress in Achieving English Language Proficiency indicator.
- **Option 2.** The new (second) option allows States to assess and report RA ELs’ R/LA assessment results, but exclude these results from accountability, in year 1; assess and include *growth* (from year 1 to year 2) on the R/LA assessment for accountability purposes in year 2 (i.e., for the Academic Achievement or Academic Progress indicator); and assess R/LA and include *proficiency* results for accountability purposes in year 3 in the Academic Achievement indicator.⁷ Unlike option 1, the second option does not offer flexibility regarding use of the ELP assessment in school accountability for RA ELs.

In May 2016, ED proposed (Federal Register, 2016a), and in November 2016, finalized (Federal Register, 2016b) regulations on statewide accountability and data reporting under Title I and State plans, including consolidated State plans, under ESSA that included clarifications regarding RA EL provisions in ESSA. Specifically, in addition to the two options discussed above, the final regulations permit a State to establish a uniform Statewide procedure for determining which assessment and accountability exception, if any, applies to an individual RA EL, effectively creating a third option.⁸ The regulations require a State, in establishing its uniform procedure, to take into account the RA EL’s *initial* ELP level and, at its discretion, other student-level characteristics listed in the regulations (i.e., grade level, age, native language proficiency level and limited or interrupted formal education). Each State’s uniform procedure must be used to determine which, if any, exception is appropriate for an individual RA EL.

⁷ Under option 2, a State may also exclude a RA EL’s mathematics assessment results from accountability in year 1, and include growth in year 2 and proficiency in year 3 for accountability purposes on the mathematics assessment.

⁸ For clarity, this guide refers to the uniform statewide procedure for applying options 1 or 2 as option 3.

Objectives and Uses for This Guide

This guide is intended to provide States with specific, research- and evidence-based suggested guidelines for developing a RA EL accountability model that is grounded in a State’s theory of action. This theory of action specifies how educators will utilize State assessment and accountability information to improve educational practice and linguistic and academic outcomes for RA ELs, while also meeting ESSA requirements. Specifically, it offers seven guidelines developed in light of specific policy and technical issues that were identified and explored by community of practice members in virtual and face-to-face working sessions. A State can use these guidelines in at least two ways: (1) to engage in a systematic process of developing a RA EL accountability model; or (2) to formatively evaluate its currently proposed or established approaches to RA EL assessment and accountability. The guidelines are not intended to be lockstep prescriptions. Rather, State education agency staff should consider each guideline within the larger context of their ESSA State plans regarding assessment and accountability, State priorities and goals, and EL instructional program designs.

Moreover, the authors of this guide plan to publish a supplemental guide⁹ describing and illustrating empirical approaches States can use to analyze different RA EL accountability models in order to provide empirical (“impact”) data for policy analysis and decision making. These empirical data analyses enable States to test different accountability models corresponding to the three options specified in ESSA provisions and regulations. They also allow States to explore their data’s “goodness of fit” with their theories of action and to detect and address potential unintended negative consequences that might result from specific models. This is particularly important in a context where States have methods in place for determining accountability (e.g., student growth percentiles, value tables, mixed linear models) that might be applied without considering the impact of and implications for RA ELs.

Recently Arrived English Learner Model Development Guidelines

1. Establish a clear, statewide definition of a recently arrived English learner (RA EL).

Each State must define in a consistent manner who exactly is a RA EL to take advantage of this ESSA provision, and explore options and model possible consequences vis-à-vis a State’s theory

⁹ Planned to be published in early 2017 by the Wisconsin Center for Education Research at the University of Wisconsin, Madison.

of action (explained in guideline two).¹⁰ Doing so involves determining both EL status and recently arrived status. The Council of Chief State School Officers recently published substantial guidance to assist States in developing standardized, statewide EL entry and exit procedures and criteria in order to establish a consistent EL definition.¹¹ The present guide assumes States will, with a representative group of local educators, determine these statewide EL entry and exit procedures and criteria in conformance with ESSA Title III provisions and related ED regulations. Therefore, this guideline focuses specifically on the “recently arrived” dimension of the RA EL definition.

Key Elements for Defining a “Recently Arrived English Learner”

As stated in §1111(b)(3)(A) of the ESEA, as amended by the ESSA, a recently arrived EL is an EL who has been “enrolled in a school in one of the 50 States in the United States or the District of Columbia *for less than 12 months*” (emphasis added). The community of practice discussed at length how to operationalize the italicized elements of this definition. These deliberations yielded the following observations and suggestions:

- a. “12 months” has been interpreted by ED in the 2007 non-regulatory guidance as the *cumulative* number of months (not necessarily consecutive) the child has been enrolled in any and all public schools in the U.S. as calculated from the student’s first enrollment in a school in the 50 States or the District of Columbia until the time of current enrollment.
- b. At a minimum, States should ensure that one or more standardized questions are incorporated into local student registration processes that elicit voluntary, self-reported information from parents on the *total* number of months their child has been enrolled in any and all U.S. public schools. In doing so, States should provide educators and families with a clear explanation for asking such questions, and provide districts and schools with guidance on how to solicit, record and use self-reported information about students’ time in U.S. public schools. This approach will help to prevent misinterpretations that may inadvertently deter students from enrolling based on their (or their family members’) immigration status.¹²

¹⁰ If a State has already established a consistent means for identifying eligible students under ED’s 2007 flexibility related to recently arrived “LEP” students, it should ensure implementation of that consistent method.

¹¹ See Linquanti, Cook, Bailey, & MacDonald, 2016.

¹² Consistent with guidance issued by the U.S. Departments of Education and Justice (2014), the Office for Civil Rights encourages States and school districts to review their enrollment procedures and forms to ensure that

- c. Instead of soliciting a date of initial enrollment in U.S. schools, districts might use a form that lists a specific number of months (e.g., each of the past 24, 36 or more months) and have the parent circle the months the child was enrolled in school in one of the 50 States or the District of Columbia.
- d. Such protocols, guidance and approaches can help schools and districts avoid “restarting the clock” each time a recently arrived EL enrolls, and instead focus on the total prior time enrolled in U.S. schools. This is particularly important as ESSA permits RA ELs to be exempted from one administration only of the R/LA assessment, and this takes precedence over the “12 month” parameter if a student was previously enrolled in a U.S. school when the R/LA assessment was given, and was exempted.

Further Considerations

- a. RA ELs are a subset of ELs, yet local educational agencies (LEAs) might identify potential ELs and determine EL classification before they seek to determine “recently arrived” status. Unless schools and districts ask parents or guardians of *each and every* new registrant about their child’s total time enrolled in U.S. schools, they will need to do so *afterwards* with just those parents or guardians whose child’s EL status has been confirmed. In either case, States should plan to make a recently arrived determination within the current time frames for the initial identification and placement of ELs specified in ESSA.¹³
- b. States should clarify in their procedures whether the “12 months” referred to in law effectively means the nine months of a 180-day school year, or 12 calendar months (365 days). This directly relates to the need to decide how to count summer months, or intercession periods (e.g., on a year-round calendar), when students do not attend school but may be effectively enrolled (or not withdrawn).

those procedures do not deter students from enrolling in school based on their or their parent’s or guardian’s actual or perceived immigration status. In this context, questions should be framed so as to gather only the necessary information to identify RA ELs (as well as students who qualify for Title III immigrant programs) and to provide context to parents and students for the purpose of that data collection. The information needed is the total number of months previously enrolled in U.S. schools if less than one year (for RA ELs) or less than three years (for Title III immigrant programs).

¹³ Per § 1112(e)(3)(A) and (B) of the ESEA, as amended by the ESSA, the time frame for initial identification and placement of ELs is within 30 days for a newly enrolled student at the beginning of the school year, and within two weeks of a student newly enrolling during the school year.

- c. Related to the second consideration, States should clarify how the “12-month” rule interacts with the “one-administration” exemption from R/LA assessments, which a State may decide to use for some, or all, RA ELs. At the very least, a State should clarify through business rules how school and district staff are to navigate these two dimensions, particularly with highly mobile or migratory RA ELs.¹⁴
- d. States will need to work with local educators to define common terms and variables used to designate which ELs are recently arrived and what documentation is needed for RA EL designation. Depending on how varied and locally determined this designation has been to date, standardizing these terms and variables could result in changes in the number and distribution of RA ELs within a school, district or State.
- e. In line with the above considerations, the State should provide resources to support districts and schools in standardizing terms, variables, policies, procedures and documentation used to identify students as RA ELs.

2. Develop a theory of action for RA EL accountability models.

Each State should define its theory of action for including RA ELs in State assessment, reporting and accountability systems. A theory of action is an explicitly stated, hypothesized causal chain of expectations describing, in this case, the expected benefits *to educators and students* from the specific model the State implements for including RA ELs in the State’s academic assessment, reporting and accountability systems. Undertaking this exercise enables a State to (a) examine *a priori* implicit assumptions in the logic of the State’s possible (or current) approach in order to identify areas for strengthening; and (b) move beyond a minimal compliance focus and articulate a robust theory of equitable learning and achievement for RA ELs that can be understood and enacted by a State’s educators.

¹⁴Per ED’s 2007 non-regulatory guidance: “The 12-month timeframe does not define a minimum number of months recently arrived [EL] students must receive instruction in U.S. schools, or be enrolled or attend U.S. schools before being included in State reading/language arts assessments. Rather, the 12 months defines the window of time within which a [EL] student may be eligible for the provisions of the regulations related to recently arrived [EL] students. Even if a student enters and leaves the U.S. so that a State might administer annual assessments multiple times before that [EL] student has attended a full 12 months of school in the U.S., a State may only exempt a recently arrived [EL] student from *one, and only one* administration of the State’s English/language arts assessment during the period of time such a student has still not attended schools in the U.S. for a full 12 months” (p. 6).

Key Elements for Developing a Theory of Action for RA EL Accountability Models

In developing a robust theory of action for RA EL accountability models, States should sufficiently articulate their theory to allow exploration of issues that may affect implementation of the accountability approach the State has chosen. Key elements for developing a theory of action are discussed below.

- a. Theories of action are typically constructed using a series of if/then statements. The following template may be useful to States in constructing their draft theories of action:

IF [State] includes RA ELs in its assessment, reporting and accountability system by...

- i. Excluding RA ELs for the first administration of the R/LA assessment... [see § 1111(b)(3)(A)(i) of the ESEA, as amended by the ESSA, above]; **or**
- ii. Assessing RA ELs on the first administration of the R/LA assessment... [see § 1111(b)(3)(A)(ii) of the ESEA, as amended by the ESSA, above]; **or**
- iii. Establishing a uniform statewide procedure (per ED regulations) for determining how to apply *either* option i or option ii, taking into account RA ELs' initial English language proficiency level and, at the State's discretion, other specified student-level characteristics...

THEN...

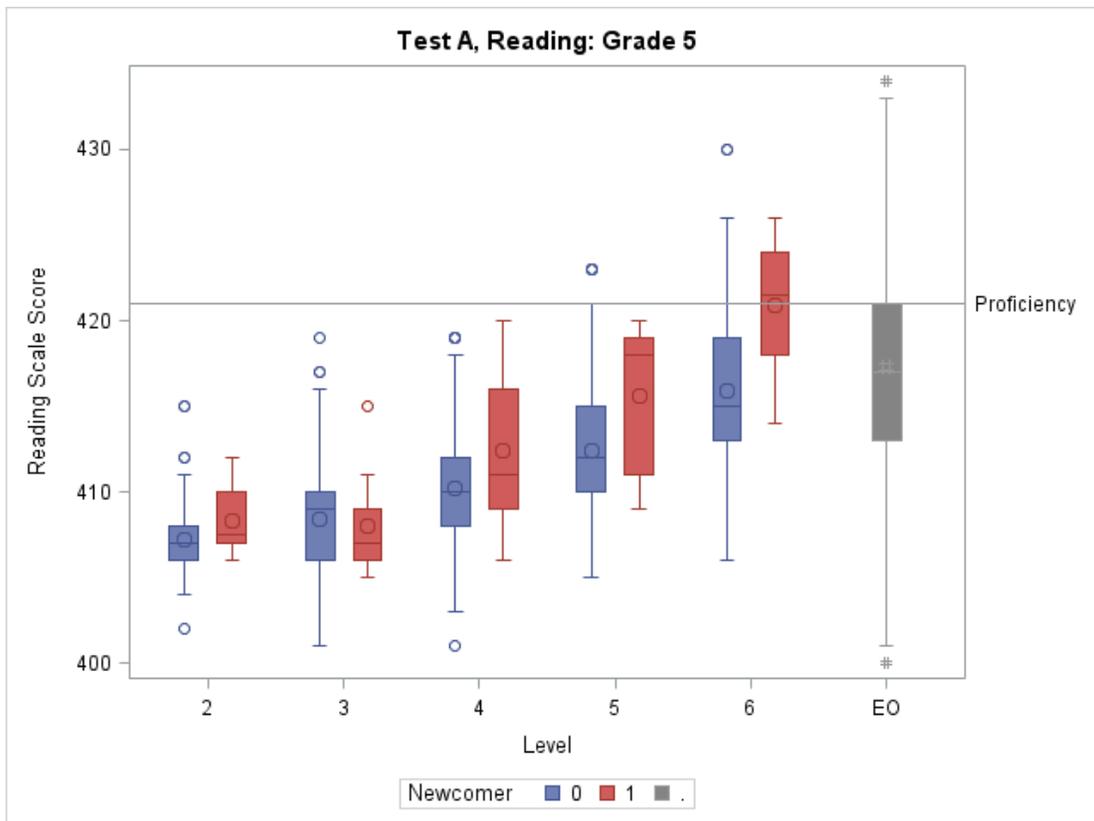
- RA ELs will be supported in their academic progress and achievement by...;
- RA ELs will have opportunities to....;
- educators will have evidence of learning to....;
- school and district administrators will....

States will find it helpful to draft a theory of action that is as explicit as possible, focusing on two or more positive outcomes for students and educators. For example, one positive outcome might be that school system administrators view the inclusion of RA ELs as consequential (because they are included in the assessment, reporting and accountability system); therefore, staff will organize and budget human and other resources accordingly. It is important to share draft theories with key stakeholders so that the theories can be reviewed, discussed and refined. Appendix B contains three anonymized, illustrative examples of State theories of action for including RA ELs in State accountability systems.

- b. In developing a robust theory of action, it is critical for States to optimize RA ELs' *meaningful and appropriate participation* in State assessment and accountability systems. Regulations (34 C.F.R. § 200.16(c)(3)) clarify that States should include RA ELs in meaningful and appropriate ways that acknowledge their diversity and varying needs, and note a student's initial English language proficiency, age and educational background (such as amount of formal education and native language proficiency) as

factors that affect their development of English language proficiency and academic achievement. States might therefore identify certain RA EL characteristics in their theories of action that help guide their choice of a particular option for assessment and accountability. For example, such characteristics as a RA EL’s initial ELP level,¹⁵ primary language (L1) literacy level, limited or interrupted formal schooling, and grade/school level on entry to the U.S. may all be hypothesized as consequential. Because federal regulations require that a RA EL’s initial ELP level be used in models that would allow either option to be used, the figures below provide empirical data about the performance of RA ELs, ELs and monolingual English-speaking students to illustrate an exploration of this characteristic.

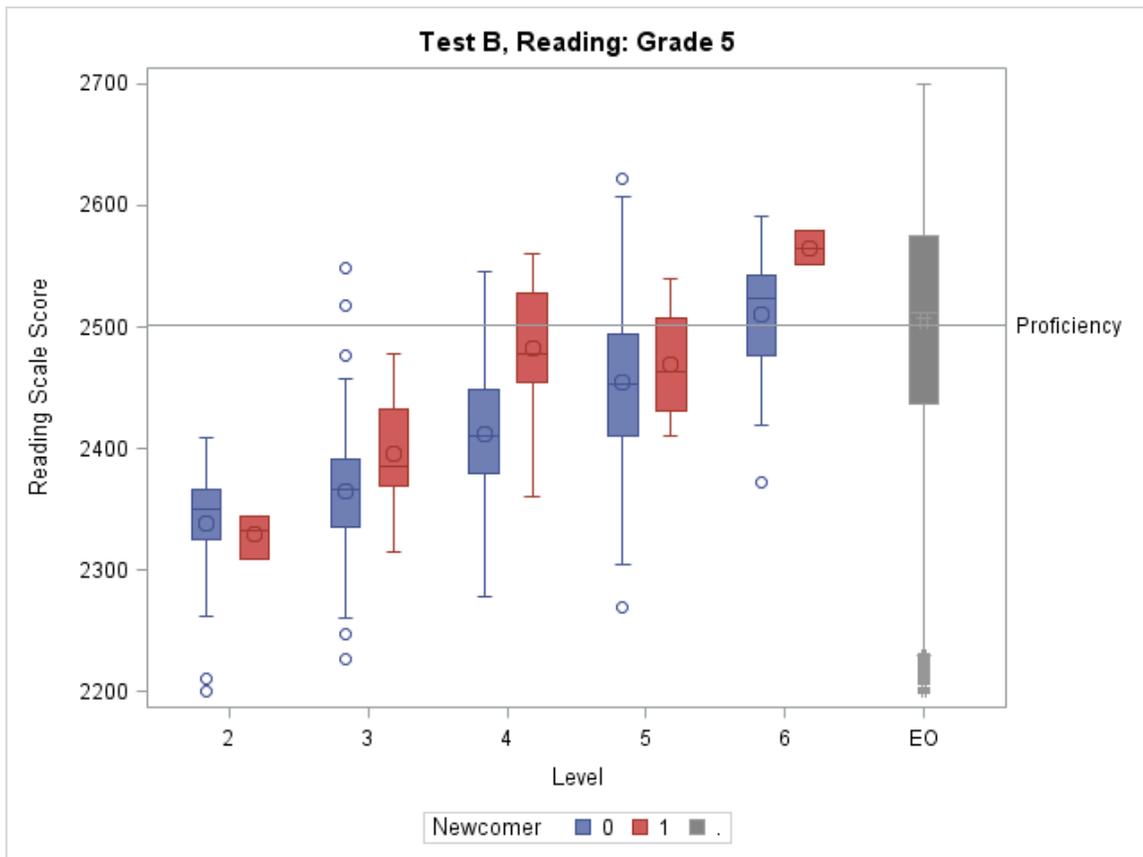
Figure 1. Grade 5 Reading/Language Arts Performance by EL Status/ELP Level, Test A



Note. Newcomer 0 = EL; Newcomer 1 = RA EL; EO = monolingual English speakers

¹⁵ Different State and consortia ELP assessments may have different numbers of ELP performance levels.

Figure 2. Grade 5 Reading/Language Arts Performance by EL Status/ELP Level, Test B



Note. Newcomer 0 = EL; Newcomer 1 = RA EL; EO = monolingual English speakers

Figures 1 and 2, which reflect different reading assessments in different States, depict the distribution of performance for fifth-grade ELs and RA ELs at each ELP level as well as the performance of monolingual English speakers. In both States, the performance distribution of RA ELs is similar to or (at higher ELP levels) higher than that of their EL counterparts. Indeed, RA ELs at the highest ELP level surpass the R/LA performance distribution of monolingual English speakers. Note also that the RA EL sample size at higher proficiency levels is smaller than that of non RA ELs.

Figures 3 and 4 depict the performance across all grades assessed of non-RA ELs and RA ELs, respectively, on one State’s R/LA assessment (in this case, Partnership for Assessment of Readiness for College and Careers, or PARCC) by ELP level (in this case, ACCESS for ELLs 2.0, or ACCESS), as well as monolingual English speakers (see Figure 3, left panel, far right box plot). Again, as can be seen, the performance of RA ELs closely parallels that of non-RA ELs at each ELP level. Also, the performance on the R/LA

assessment of RA ELs at ELP levels 5 and 6 matches or surpasses that of monolingual English speakers.

Figure 3. Non-RA EL R/LA Performance by EL Status/ELP level (Grades 3-8, 11) in One State

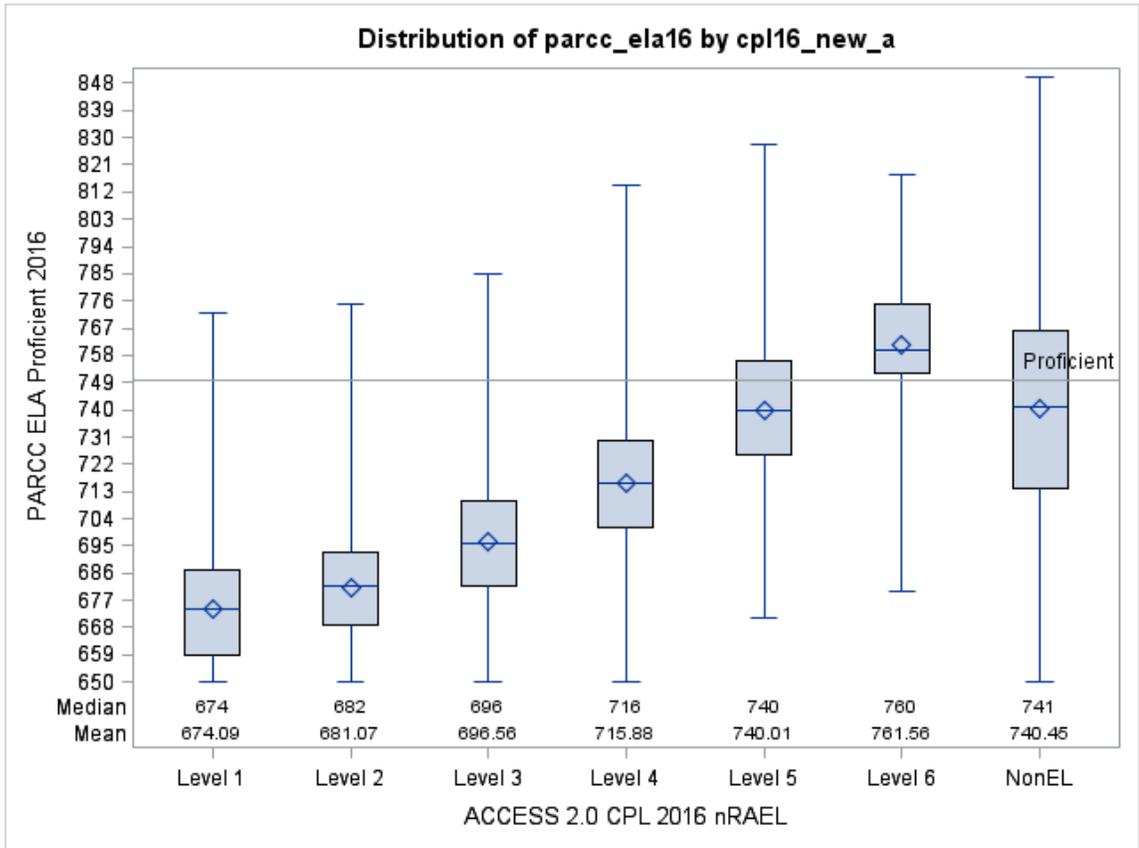
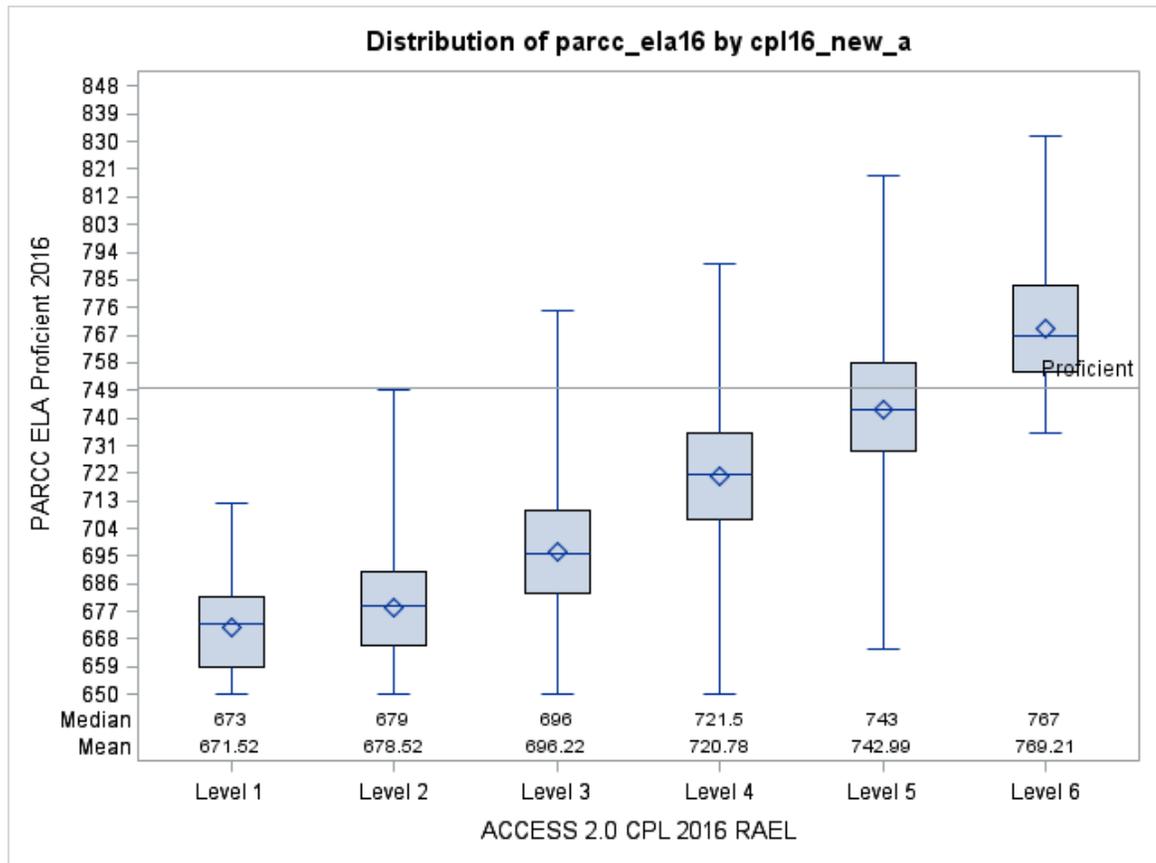


Figure 4. RA EL R/LA Performance by EL Status/ELP Level (Grades 3-8, 11) in One State



As all these data illustrate, RA ELs at each ELP level score similarly to other (non-recently arrived) ELs. Moreover, these data illustrate that both RA ELs and non-RA ELs at higher ELP levels (specifically, at or above a properly determined English-proficient performance standard) perform similarly to or higher than their monolingual English-speaking counterparts. States will need to decide whether recently arrived status *per se* should be the sole determinant of exclusion from R/LA assessment, or whether other characteristics or factors should guide selection of options (including the possibility of not applying either exception for some students as part of the uniform procedure).

In doing so, States will need to ensure that they have data on student characteristics of interest. In this regard, there is an important caveat about the figures above. First, RA EL status was inferred from the available data, as the States illustrated did not have an

explicit RA EL marker.¹⁶ In general, States do not typically store initial ELP assessment performance results in State data systems. (This issue is discussed further below.) Therefore, a student's first available State annual ELP assessment was used to determine RA EL status. These data do not further differentiate RA ELs by other permitted characteristics (e.g., with and without interrupted formal education). For example, in the above examples, it is not known whether RA ELs and RA EL-SIFE students (students with interrupted formal education) at ELP level 4 perform similarly on the R/LA assessment. If RA EL-SIFE students were found to perform substantially lower on the academic content test than their non-SIFE counterparts at the same ELP level, this finding might support a hypothesis that it is their limited prior formal schooling, not their RA EL status *per se* — or even their ELP level — that is contributing to this differentiation in performance.

Further Considerations

- a. **States should consider how their theory of action for RA EL inclusion in assessment and accountability fits within their larger theory of action for ELs, and for all students.** RA EL exception options will apply to a relatively small subset of the EL subgroup. States will need to think through the implications of how these options might work within the larger context of the State's assessment and accountability system for ELs. For example, a State may have a theory of action that values its ELs' primary language proficiency as an asset, and aims to develop academic proficiency in two languages for those families who desire it.¹⁷ If the State offers primary language R/LA instruction and assessment to ELs (e.g., those receiving multilingual instruction), it may choose to assess a RA EL literate in the primary language who enters at a grade where an R/LA assessment in the student's primary language is offered.¹⁸ However, those RA ELs assessed in R/LA in their primary language are not permitted to receive a RA EL exception. (See below for further

¹⁶ That is, for these analyses, ELs for whom the annual ELP assessment result (looking back three years in the longitudinal dataset) was indicated as their first assessment were assigned RA EL status.

¹⁷ Currently, 21 States and the District of Columbia offer a seal of biliteracy to those students graduating literate in two or more languages. See <http://sealofbiliteracy.org/>.

¹⁸ ESSA provisions encourage States to assess ELs (including RA ELs) in the language and form in which they are best able to demonstrate knowledge and abilities in R/LA. They are permitted to do so for R/LA in their primary language for the first three years of their schooling, with an optional additional two years for those who have not yet attained English language proficiency; there are no time limits for mathematics and science assessment in the primary language.

discussion.) Similarly, a RA EL with a documented disability that warrants appropriate accommodations on Title I assessments must be provided these accommodations on a given assessment. If accommodations offered are not sufficient, then the student must be given an alternate academic content and/or ELP assessment as appropriate.

- b. **States choosing option 3 (i.e., to develop a uniform procedure for determining which assessment and accountability exception, if any, applies to an individual RA EL) will need to ensure that their initial ELP assessment can adequately distinguish the “cut-point” level of English proficiency used to assign each RA EL assessment and accountability exception.**

Final ED regulations clarify that States interested in applying option 1 or option 2 conditioned on student characteristics *must* consider an EL’s *initial ELP level* in making a decision about which exception would apply for each of the following two to three years.¹⁹ Most initial ELP assessments are designed for the primary purpose of distinguishing which students are to be classified as EL versus initially fluent English proficient (i.e., the critical cut-point of interest is the point defined as “English proficient”). The initial ELP assessment (e.g., screener) may not provide sufficient precision or reliability for properly distinguishing other cut-points (e.g., distinguishing the “emerging” versus “intermediate” ELP level) used for other high-stakes purposes. This is particularly so at the individual language domain level, as an initial ELP assessment usually has many fewer items than an annual ELP assessment. At minimum, a State would need to ensure that the initial ELP assessment is valid for this purpose. For example, the State might need to ensure that the initial ELP assessment is sufficiently aligned to the State’s ELP standards and strongly predicts performance on the State’s annual ELP assessment.²⁰

- c. **States should consider carefully the timing and availability of ELP assessment results relative to content assessment testing.**

States often assess ELs’ English language proficiency and their academic content in different testing windows (i.e., time frames). Because of this, the most recent and available ELP assessment results may not accurately reflect RA ELs’ current levels of

¹⁹ As stated in regulations, “for states that choose to use a uniform statewide procedure, a recently arrived English learner’s ELP level *at the time of the student’s identification as an English learner* must be taken into account in determining whether the exception applies.... This approach is necessary, as a state must determine which exception is appropriate during the student’s first year of enrollment in the U.S. schools in order to comply with the requirements of that exception in each succeeding year” (Federal Register, 2016b, pp. 86114–86115).

²⁰ For discussion of possible ways to do this, see Linquanti et al. (2016), p. 62.

English language proficiency. If there is substantial time difference between ELP and academic content testing, and if RA ELs progress in their English language proficiency during the time they are enrolled in school, this suggests that a RA EL's ELP may be underestimated at the time of the content assessment, and conversely that content assessment results may be overestimated for ELs at a given ELP level. This would be important in States implementing accountability policies that combine results from ELP and content assessments in forming judgments at the student or school level.

3. Carefully consider RA EL options permitted under ESSA provisions and related regulations relative to the State's assessment and accountability model.

Under ESSA, States are granted substantial discretion in determining their accountability systems. ESSA provisions also allow for flexibility with respect to whether and how to incorporate growth in the State accountability model. These two factors have significant implications for States when evaluating the potential benefits and risks of RA EL accountability options. The review below provides a detailed analysis²¹ of key features of the three options that are allowed under ESSA provisions and related regulations, and briefly discusses some potential benefits and risks of each accountability option.

Key Features of Each RA EL Option in Comparative Context

Table 2 presents a side-by-side comparison of key features of each option for RA EL assessment, reporting and accountability permitted under ESSA provisions and related regulations. There are several important differences among options 1, 2 and 3:

- a. *Year 1 Test Administration and Reporting:* Option 1 allows the State to exempt RA ELs from R/LA assessment, reporting and accountability in year 1; however, States must still assess RA ELs in mathematics and ELP, and report the results. (Regarding calculating and reporting participation rates, under option 1, States may count RA ELs in the R/LA participation rate reporting if RA ELs take the ELP assessment.) Option 2 requires the State to administer R/LA, mathematics and ELP assessments to RA ELs, and to report the results. Under option 3, a State would establish a uniform statewide procedure based at minimum on the RA EL's initial ELP level, and on other permitted student characteristics at the State's discretion, to determine which exception option (option 1 or option 2, if either), to apply to RA ELs having those student characteristics included in the

²¹ This review draws in part from Gong (2016).

procedure. Also, ESSA provisions and regulations require States to report (on LEA and State report cards) the number and percentage of RA ELs exempted from any assessment (under option 1 and option 3) and from accountability, as described below.

- b. *Year 1 Accountability:* Under option 1, the State excludes the results of RA ELs from R/LA accountability in the Academic Achievement indicator, and may, in a uniform manner statewide, either exclude or include the results of RA ELs in accountability determinations for mathematics (in the Academic Achievement indicator) and ELP (in the Progress in Achieving English Language Proficiency indicator). Option 2 allows the State to exclude RA ELs' results from R/LA and mathematics accountability in the Academic Achievement indicator. (Regulations specify that accountability for progress in achieving ELP remains under option 2 in all years of a RA EL's enrollment in U.S. schools.)²² Under option 3, the State would establish a uniform statewide procedure based at minimum on the RA EL's initial ELP level, and on other permitted student characteristics at the State's discretion, to determine which exception option, if either, to apply to RA ELs having those student characteristics included in the procedure. All of the options require States to report the number and percentage of RA ELs exempted from any assessment and from accountability.
- c. *Year 2 Accountability:* Under option 1, the State is required to include the results of RA ELs in accountability within the Academic Achievement indicator in R/LA and mathematics in the same manner as all other students. Under option 2, the State is required to include the results of RA ELs in accountability for *academic growth* in R/LA and mathematics. Final regulations specify that States may include this calculation and hold schools accountable for RA ELs in this year *either* under the Academic Progress indicator or the Academic Achievement indicator. Under option 3, the State would establish a uniform statewide procedure based at minimum on the RA EL's initial ELP level, and on other permitted student characteristics at the State's discretion, to determine which exception option, if either, to apply to RA ELs having those student characteristics included in the procedure. Per the statute and regulations, all three options require RA ELs to be held accountable for progress in achieving ELP.
- d. *Year 3 (and after) Accountability:* Under all three options, the State is required to include the results of RA ELs in accountability for academic achievement in R/LA and

²² Including RA ELs in accountability for progress in achieving ELP in year 1 is possible if (a) the State chooses to compare a RA EL's annual ELP assessment result in year 1 to the student's initial ELP assessment result (if warranted, based on time instructed and demonstrated comparability of initial and annual ELP assessments); or (b) if the RA EL scores English-proficient on the year 1 annual ELP assessment.

mathematics in the same manner as all other students (e.g., if the State includes student growth in accountability, the State must also include RA ELs in academic growth). All three options also require RA ELs to be held accountable for progress in achieving ELP.

Table 2. Key Features of ESSA Recently Arrived English Learner Exception Options for Assessment, Reporting and Accountability

Option	Year 1			Year 2		Year 3 and After	
	Assess	Report	Accountability	Assess	Accountability	Assess	Accountability
Option 1	<ul style="list-style-type: none"> — Exempt R/LA — Assess Mathematics — Assess ELP 	<p><u>Participation:</u></p> <ul style="list-style-type: none"> — ELP assessment participation may be counted as a proxy for R/LA participation <p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Not R/LA — Include Mathematics <p><u>Progress in achieving ELP:</u></p> <ul style="list-style-type: none"> — Include <p><u>#/% exempted</u> from each assessment and excluded from accountability (all years)</p>	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Exclude R/LA — May exclude or include Mathematics (must be uniformly applied statewide) <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> — May exclude or include as appropriate (must be uniformly applied statewide) 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Include R/LA proficiency (same as all students) — Include Mathematics proficiency (same as all students) <p><u>Progress in achieving ELP:</u></p> <ul style="list-style-type: none"> — Include 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Include R/LA proficiency (same as all students) — Include Mathematics proficiency (same as all students) <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> — Include
Option 2	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Include R/LA — Include Mathematics <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> — Include <p><u>#/% exempted</u> from each assessment and excluded from accountability (all years)</p>	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Exclude R/LA — Exclude Mathematics <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> — Include as appropriate (see footnote 22) 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Growth</u> (required):</p> <ul style="list-style-type: none"> Include in calculating either Academic Progress indicator or Academic Achievement indicator for: — R/LA — Mathematics <p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Exclude R/LA proficiency — Exclude Mathematics proficiency <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> — Include 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> — Include R/LA proficiency (same as all students) — Include Mathematics proficiency (same as all students) <p><u>Progress in achieving ELP:</u></p> <ul style="list-style-type: none"> — Include

Option	Year 1			Year 2		Year 3 and After	
	Assess	Report	Accountability	Assess	Accountability	Assess	Accountability
Option 3	<ul style="list-style-type: none"> —Conditionally exempt R/LA (per RA EL’s initial ELP level, and other permitted student characteristics, if used) — Assess Mathematics — Assess ELP 	<p><u>Participation and Academic Achievement:</u></p> <ul style="list-style-type: none"> —R/LA: See above (dependent on option) —Mathematics <p><u>Progress in Achieving ELP indicator:</u></p> <ul style="list-style-type: none"> —Include #/% exempted from each assessment and excluded from accountability (all years) 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> —Exclude R/LA (or include if neither option is assigned) —Mathematics: See above (dependent on option) <p><u>Progress in Achieving ELP indicator:</u></p> <ul style="list-style-type: none"> —See above (dependent on option) 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> —R/LA proficiency: See above (dependent on option) —Mathematics proficiency: See above (dependent on option) <p><u>Academic Growth (in calculating either the Academic Progress indicator or Academic Achievement indicator):</u></p> <ul style="list-style-type: none"> —R/LA: See above (dependent on option) —Mathematics See above (dependent on option) <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> —Include 	<ul style="list-style-type: none"> — Assess R/LA — Assess Mathematics — Assess ELP 	<p><u>Academic Achievement:</u></p> <ul style="list-style-type: none"> —Include R/LA proficiency (same as all students) —Include Mathematics proficiency (same as all students) <p><u>Progress in Achieving ELP:</u></p> <ul style="list-style-type: none"> —Include

Adapted from Gong (2016).

The State should carefully consider how each RA EL assessment and accountability option may fit (or not) within the larger context of EL assessment and accountability, and in the State's overall school accountability system. This includes examining articulation across the RA EL/non-RA EL boundary (i.e., as ELs transition out of RA EL status according to each option) and within and across each school segment (e.g., as RA ELs move through elementary, middle or high school, and potentially as they transition from one segment to the next).

For example, option 2's focus on academic growth for RA ELs suggests that the State may establish a growth provision specifically for RA ELs. In particular, the accountability unit of decision (i.e., student versus school), the growth model, accountability performance standards, and approach to incorporating RA EL accountability into the State's overall school accountability system might be different than in the growth model for ELs not recently arrived and non-ELs.

The following is a brief review of other potential benefits and risks in each option.

- a. **Option 1:** Option 1 permits a RA EL, including those with an emergent initial ELP level, to forgo an R/LA assessment designed for fluent English speakers. It also requires either uniform exclusion of RA ELs from accountability (in R/LA and mathematics in the Academic Achievement indicator and in ELP progress/attainment in the Progress in Achieving English Language Proficiency indicator) or their uniform inclusion in accountability for mathematics performance in the Academic Achievement indicator and ELP progress/attainment in the Progress in Achieving English Language Proficiency indicator in year 1. However, this approach requires assessment and academic achievement accountability for RA ELs in R/LA in year 2 in the same manner as all other students.
- b. **Option 2:** Option 2 might appear promising for RA ELs with higher initial ELP levels. Specifically, a higher ELP level would allow RA ELs to more meaningfully participate in the R/LA assessment (particularly if the assessment offers appropriate designated supports) in year 1. While the R/LA result would be excluded from the Academic Achievement indicator in year 1, the RA EL would again participate in the R/LA assessment in year 2, and the growth from year 1 to 2 would be included in accountability in year 2 (in either the Academic Achievement or Academic Progress indicator). However, if the RA EL's R/LA performance in year 1 is fairly strong due to the student's higher ELP level, there may not be substantial growth from year 1 to year 2. Careful modeling would need to be done to ensure that RA EL growth expectations are reasonably set. Because the underlying assumption of this provision appears to be that RA ELs are more likely to demonstrate academic growth before demonstrating academic

achievement, States may instead consider this option for RA ELs with lower initial ELP levels. Yet the result from the R/LA assessment in year 1 is likely to be less meaningful (and the assessment experience more frustrating for the student), although the growth from year 1 to year 2 is likely to be more substantial. Nevertheless, that academic growth may have as much or more to do with growth in English language proficiency as it does with true academic growth.

- c. **Option 3 (per ED regulations):** Option 3 allows States to develop a uniform procedure based on initial ELP level (as is required in regulation), and possibly on other permitted student characteristics that a State would apply to groups of RA ELs having those characteristics to determine which exception option, if either, applies. This could allow States to establish assessment optimization guidelines based on a theory of action of which students will experience greater support and success under one option or the other. The regulations specify other characteristics that may be considered, including age/grade and prior formal schooling. This assumes that data on these defining characteristics will be available in the short time frame for determining which exception option, if any, applies. Moreover, it may be difficult to model how this option would work in schools with varying populations of RA ELs, particularly if different accountability methods are used in the larger State accountability framework.

4. Determine the appropriate exception based on a theory of action and aligned RA EL accountability model.

As discussed in prior guidelines, States need to ensure that educators consistently determine the appropriate exception option (if any) for RA ELs based on the adopted theory of action and aligned accountability model. In practice, this means that for States choosing to implement option 3 (i.e., assign option 1 or 2—or neither option—based on initial ELP level, and possibly other student characteristics), RA ELs in the same school may have different options applied to them. Even in States that uniformly employ only option 1 or only option 2, decisions about the use of primary language R/LA assessment (where available and applicable to a given RA EL) may also be operating. While detailed scenarios are beyond the scope of this guide, a few key elements and further considerations are highlighted below.

Key Elements in Determining the Appropriate Exception Option (if any) for RA ELs

- a. **ELP assessment use:** Under all options, RA ELs (indeed, all ELs) must be assessed annually in English language proficiency. Only option 1 (employed uniformly or via option 3) permits a one-year exclusion from ELP accountability (employed uniformly for all RA ELs). Note, however, that States employing ELP assessment results in their academic growth accountability models (e.g., conditioning mathematics progress

expectations on current ELP level and time in U.S. schools) might still employ those results. As previously noted, the timing of annual ELP assessment results is important when considering their use in academic accountability expectations.

- b. **Relationship between ELP level and content assessment in English.** As discussed and illustrated above, there is a systematic relationship between ELs' ELP level and their patterns of performance on content assessments given in English. This relationship serves as the conceptual basis for conditioning RA EL exception options (including whether to utilize an exception at all) on the student's ELP level.
- c. **Non-English (L1) R/LA assessment use.** Since 1994, ESEA has permitted States to assess academic content performance in R/LA in an EL's primary language for three to five years (see text box titled "ESSA Title I on Assessment in EL's Primary Language"), and in other subjects without any time limit. The rationale for primary language content assessment is twofold: (1) RA ELs with emerging English proficiency, L1 literacy, and prior formal schooling in their primary language may initially be better able to demonstrate academic content achievement (and even progress) while they develop English language proficiency; and (2) any EL (including a RA EL) who is currently receiving content area instruction in the primary language while developing English proficiency (e.g., in dual language programs that are either transitional or that aim for biliteracy and academic achievement in two languages) will very likely be able to better demonstrate progress and achievement in that content area using that language, particularly if they have less than intermediate-level English language proficiency. However, under Title I, a State cannot apply one of the RA EL exception options to a RA EL that is assessed using a primary language R/LA content test. In effect, States offering a primary language R/LA content test would be assigning neither RA EL exception to these students, as there is no interference from the student's emerging English language proficiency.

ESSA Title I on Assessment in EL's Primary Language

Title I of the ESSA states that ELs "shall be assessed in a valid and reliable manner and provided appropriate accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency." The law allows the use of such assessments for R/LA for the first three years of student's U.S. schooling, and also permits local educators to extend their use for an additional two years with those ELs not yet attaining the English-proficient performance standard on the State ELP test. There is no time limit for assessments in the native language for math and science. (ESEA §1111(b)(2)(B)(vii)(III) and (ix), 34 CFR 200.6(g))

Further Considerations

- a. States will need to carefully map out the sequence of academic content assessments (possibly in relation to ELP level) for RA ELs receiving primary language R/LA assessments under Title I. In particular, they should devise clear decision rules (e.g., via a decision flowchart) on whether and to what extent academic content accountability exclusion rules apply.
- b. States will need to provide evidence that any primary language assessment used under Title I meets the appropriate validity and reliability standards for assessments given for Title I assessment and accountability purposes. (See below for further discussion.)

5. *Validate assessment use in the State's chosen RA EL accountability model.*

States will need to provide sufficient validity evidence to support inferences made from assessments used for Title I purposes, including the annual R/LA and ELP assessments. A detailed list of specific requirements necessary to support the validity of an assessment can be found in Chapter 1 of the *Standards for Educational and Psychological Testing* (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 2014). Other documents (e.g., Brennan, 2006, and *Peer Review for State Assessment Systems* — non-regulatory guidance from ED, 2015) provide ample information on how States can provide evidence of the validity of their assessments.

Here are several validity-related questions and the types of evidence that could be used to address them:

- a. *What documentation can be provided to assure that the R/LA and ELP assessments are aligned to the full range of the State's R/LA and ELP standards, respectively?* Typically, alignment studies, test specifications, and/or test blueprints and frameworks are the types of documents used to provide evidence of alignment of assessments to their respective standards.
- b. *Does the assessment associate sufficiently with relevant variables?* Evidence to address this question is particularly important if a State chooses to use a primary language R/LA assessment. One example of this type of evidence might be a study showing the classification accuracy of literate bilinguals who take both the primary language and English R/LA assessment. The assumption would be that such students would be similarly classified. A study showing the relationship between the ELP and R/LA assessments, specifically as it relates to ELP levels, would support the validity of the ELP assessment's association with relevant variables.

- c. *Is the assessment reliable, and does it lead to appropriate inferences about students' proficiency?* An assessment's technical reports typically provide evidence to address this question. Particularly, the reliability and classification accuracy of subgroups, specifically ELs, is of interest here.
- d. *Does the test measure the intended construct(s)?* An assessment's technical reports often provide information about the construct(s) to be measured. Common types of analyses that address this question include factorial studies, multi-trait/multi-method analyses, reliability analyses and fit statistics from psychometric studies.
- e. *Is the test accessible and fair for RA ELs?* An assessment's technical reports should provide information that addresses this question, often in the form of a test's bias and sensitivity review and differential item functioning (DIF) analyses.
- f. *Is the test comparable across forms?* Documentation that addresses this question is often found in an assessment's technical reports and focuses on issues associated with scaling and equating.

States should consider these questions for all of the relevant assessments used (i.e., for assessments of English R/LA, primary language R/LA or initial/annual ELP). As noted above, special consideration needs to be given to the initial ELP assessment if used (as in option 3) to determine an ELP level for the purposes of assigning a RA EL to option 1 or option 2 (or neither option). The initial ELP assessment is usually a brief "screeener" validated for the purposes of initially classifying a student as EL versus fluent English proficient. Most initial ELP assessments do not provide evidence for determining several ELP levels with the same degree of reliability and validity as annual ELP assessments.²³ A State would need to determine that the initial ELP assessment is also validated for distinguishing between the ELP levels used to determine which option the RA EL receives.

6. Establish procedures for implementing the State's chosen RA EL accountability model.

Each State needs to put adequate procedures in place to ensure that districts and schools can successfully implement the chosen RA EL accountability model. These procedures include timely notification, sufficient materials communicating the approach (e.g., policy statements, procedures manual, FAQs, online orientation events), and sufficient opportunity for field review

²³ See Linqunti et al. (2016), p. 62; and Lopez et al. (2016), pp. 4-5, for further discussion.

and input on relevant draft materials. Key elements that should be considered in establishing such procedures include the following:

- a. Provide documentation that clearly communicates the purpose, goals, development process and corresponding theories of action related to assessment and accountability for RA ELs, including any initial modeled evidence on how the State’s adopted RA EL model(s) meaningfully differentiate(s) between schools.
- b. Establish policies and procedures for the transition to RA EL accountability models.
- c. Anticipate and ensure the technical capacity or support needed to locally implement the State’s RA EL assessment and accountability model.
- d. Provide clear, end user-vetted rules and procedures that school districts and schools use to identify RA ELs and include them in assessment and accountability systems. This includes rules and procedures under option 3 that school districts and schools would follow to assign each RA EL to option 1 or option 2 (or neither option).
- e. Define “business rules” for unusual cases (e.g., students changing schools/districts; students moving at different times of the year).
- f. Monitor school districts’ and schools’ use of these policies and procedures to ensure they are being implemented consistently.

7. *Establish evaluation criteria and an evaluation process for the State’s chosen RA EL accountability model.*

It is important for States to evaluate whether their chosen RA EL accountability model is accomplishing its intended purposes. What follows are several key elements and questions that States might use to evaluate to what extent the State’s adopted accountability model is meeting its intended purposes.

- a. **Definitions.** Clearly identified terms and definitions are critical to implementing accountability models. What are all the key definitions? For example, how has the State defined the 12-month period? What mechanism is used to communicate to schools and districts? Have the key terms and definitions been provided to all schools and districts? Are the policies, procedures and instruments schools and districts need to appropriately identify RA ELs readily accessible and understood?
- b. **Theory of action.** As explained above, a theory of action should be developed to support the selection of the RA EL accountability model. What is the State’s theory of action for including RA ELs in its accountability system? Have all the necessary stakeholders been involved in developing or reviewing the theory of action? Has a theory of action been clearly communicated to schools and districts? Is the theory of action written in such a

way that it can be evaluated? How does the adopted accountability model help to carry out the theory of action?

- c. **Considerations in building a RA EL accountability model.** The purpose of the adopted RA EL accountability model is to identify, in a valid and reliable way, schools that are and are not serving RA ELs well. It adjusts for factors that might influence a RA EL's R/LA achievement that are outside of a school's control (e.g., initial English language proficiency or SIFE status). With this in mind, States may want to consider the following questions:
- i) Does the adopted RA EL accountability model meaningfully differentiate between schools that are or are not supporting RA EL R/LA achievement?
 - ii) What types of criteria and evidence should be gathered to determine if the RA EL accountability model meaningfully differentiates between schools?
 - iii) How will the State limit gaming of the system and assure that procedures are properly inclusive of students?
 - iv) Is the adopted RA EL accountability model consistent with other aspects of the State's current accountability system?
 - v) Has the State developed policies for transitioning to a RA EL accountability model?
 - vi) Is there a plan in place to monitor the intended and unintended consequences, and positive and negative incentive structures, for the RA EL accountability model adopted?

Moving Forward

Under ESSA, States have increased flexibility for including RA ELs in their State-determined assessment and accountability systems intended to meet Title I requirements. With that increased flexibility comes increased *responsibility* — not just for complying with federal statutes and regulations, but also for articulating a viable theory of action of how a State's approach to assessment and accountability supports greater learning opportunities and increased educational equity for ELs recently arrived to U.S. schools. The statutory options and associated regulations for RA ELs appear straightforward at first glance, but are complex and require careful consideration. States that take up the guidelines proposed in this guide may be more likely to develop rigorous and responsive RA EL assessment and accountability policies, systems and practices that complement and enhance the larger assessment and accountability approach to ELs. These States may also be more likely to successfully implement, formatively evaluate and improve those policies, systems and practices over time. In this way, the State and local innovation afforded by ESSA should strengthen assessment and accountability, as well as learning outcomes and educational equity, for a growing and underserved population of RA ELs.

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Appendix A: Community of Practice Participants

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Appendix B: Sample State Theories of Action

State 1 Theory of Action

IF [State 1] *includes* RA ELs in its assessment, reporting and accountability system by choosing to

(ii)(I) assess, and report the performance of, such an English learner on the reading or language arts and mathematics assessments required under paragraph (2)(B)(v)(I) *in each year* of the student's enrollment in such a school; *and*

(II) for the purposes of the State-determined accountability system—

(aa) for the *first year* of the student's enrollment in such a school, *exclude* the results on the assessments described in subclause (I);

(bb) *include* a measure of student growth on the assessments described in subclause (I) in the *second year* of the student's enrollment in such a school; *and*

(cc) include proficiency on the assessments described in subclause (I) in the *third year* of the student's enrollment in such a school, and each succeeding year of such enrollment...

THEN all stakeholders will have access to fair and equitable data on the progress and achievement of RA ELs, and:

- School and LEA administrators will own the data and will have the necessary information to provide staffing and resources accordingly.
- The data will be relevant; LEAs will have the ability to analyze data and compare schools with similar demographics to identify promising practices and skill sets of staff that are contributing to the growth of students.
- The data will be powerful and can be used by schools to plan the learning progressions for staff and students to support continuous improvement.
- The local school and LEA administrators will be able to provide teachers with access to data-driven, targeted professional learning opportunities.

THEN RA ELs will be supported in their academic progress and achievement by educators who understand their challenges and own their success, and:

- RA ELs will have access to rigorous content and data-informed teaching and learning.
- The focus will be on each student's progress rather than performance from a point in time.
- The purpose of assessment will be more about teaching and learning than solely accountability.

State 2 Theory of Action²⁴

IF [State 2] includes RA ELs in its assessment, reporting and accountability system by
 a) excluding RA ELs, whose English language proficiency level at the time of identification as an EL was beginner or early intermediate English proficiency, for the first administration of the reading or language arts assessment if the assessment language is not their home language, **or**
 b) assessing all RA ELs, for the first administration of the reading or language arts assessment if the assessment language is their home language **or**
 c) assessing RA ELs, whose English language proficiency level at the time of identification as an EL was intermediate or above English proficiency, on the first administration of the reading or language arts assessment—

Proposed Participation of RA ELs by ELP Level and Year

ELP Level/Year	English Language Arts Assessment	
	Beginner/Early Intermediate	Intermediate/Above
Year 1	Assessment Participation in Home Language*	Assessment Participation, excluded from accountability
Year 2	Achievement (i.e., proficiency) in accountability	Growth in accountability
Year 3	Achievement (i.e., proficiency) in accountability	Achievement (i.e., proficiency) in accountability

*If language arts assessments in the student’s home language are available, as described in §1111(b)(2)(F) of the ESEA, as amended by the ESSA. If not available, the student does not participate in the assessment.

THEN RA ELs will be supported in their academic progress and achievement by the following:

- students are only assessed on assessments where they can reasonably demonstrate their achievement;
- provides for reliable literacy data, even for beginning RA ELs; and
- allows for a longer transition time for lower-ELP-level RA ELs to be assessed in English, and explicitly values their achievement in their home language.

THEN the State, districts and schools will have unbiased achievement and growth estimates to

- identify areas for improvement;

²⁴ This anonymized draft theory of action includes a uniform procedure assigning exception options by initial ELP level. Also, use of primary language R/LA assessment precludes use of exception options 1 and 2.

- monitor student progress;
- leverage local and State resources;
- design, implement and evaluate local interventions;
- support existing State initiatives; and
- help dual language programs better demonstrate their effectiveness in State accountability systems.

State 3 Theory of Action²⁵

IF [State] includes recently arrived ELs in its assessment, reporting and accountability system by
a) Excluding low-ELP-level recently arrived ELs for the first administration of the reading or language arts assessment [see § 1111(b)(3)(A)(i) of the ESEA, as amended by the ESSA]...

THEN recently arrived ELs will be supported in their academic progress and achievement by the following:

- the newly arrived students will have the opportunity to acclimate to U.S. school systems, and to school and district assessment structures and processes, prior to being tested, and will have exposure to academic and educational language within the school and district (e.g., testing prompts);

THEN educators will have to rely on local assessment and other data to make instructional decisions that reflect each RA EL's academic and linguistic needs;

THEN recently arrived ELs will have opportunities to demonstrate grade-level content knowledge via a body of evidence gathered by a multidisciplinary team at the school and/or local level.

IF [State] includes recently arrived ELs in its assessment, reporting and accountability system by
b) Assessing higher-ELP-level recently arrived ELs on the first administration of the reading or language arts assessment [see § 1111(b)(3)(A)(ii) of the ESEA, as amended by the ESSA]...

and IF [State] offers professional learning to educators on interpretation of growth data in a reliable and appropriate manner for recently arrived ELs...

THEN recently arrived ELs will be supported in their academic progress and achievement by...

- educators using growth data after the second assessment to evaluate the progress of newly arrived students' R/LA growth after one year of exposure to academic and educational language,
- educators having data to describe student growth;

THEN educators will have evidence of learning to be able to monitor the growth of students.

²⁵ This anonymized draft theory of action includes a uniform procedure assigning exception options by initial ELP level.