

Transcript of Provisions Related to a Parent's Right to Refuse Specialized ELD Services and Programs

Eugenia Krimmel: Good afternoon, and welcome to the Pennsylvania Department of Education's ESL Professional Development Opportunity. I'm Eugenia Krimmel, ESL Bilingual Advisor at the Pennsylvania Department of Education.

Today's session is entitled Provisions Related to a Parent's Right to Refuse Specialized ELD Services and Programs, and is being presented by Bob Measel, ESL Bilingual Education Advisor, Pennsylvania Department of Education.

This webinar will provide guidance to school administrative personnel on what communication needs to be provided to parents of these students. The session will also discuss LEA's continued responsibilities towards educating their English learners.

We are very pleased to be able to offer this live online learning session today, and welcome all of you who are able to join us. This session is offered in partnership with the Center for Schools and Communities and is being moderated from their Camp Hill office.

We will now begin today's presentation. Bob, I'm turning the webinar session over to you.

Bob Measel: Thanks Jeannie, and welcome everyone. So, we'll just jump right in here.

So, what we're going to cover today are these four topics. First, we're going to go over what the federal requirements to allow parental refusal of ESL programs or services are. We're going to talk about the federal rules governing the process for declining the ELD programming, the federal rules governing the district's responsibility for students who have been opted out, and then what it is that PDE is doing to support districts in this, and the kinds that we've produced for you.

So, to start off, the federal government released what's known as a Dear Colleague Letter on January 17 of 2015, which outlined the district's responsibilities for meeting the needs of EL students. There's a link here where you can go find this PDF document online if you'd like to read it. What we're concerned with here today is section G of the letter, which explains the requirements for meeting the needs of students whose parents have opted them out of particular EL services.

So, the first paragraph in section G states that, although school districts have an obligation to serve all EL students, parents have a right to decline or opt their children out of school district's EL program or out of particular EL services. So, we'll go over what that means in the next few slides here. On these next few slides, we've got it broken down by the information that you're going to need. And

then, what we've done is we've separated out into the blue shaded area here, what districts must do. So, they're action items for you here.

So, first of all, here are the rules that govern the process for declining the programming. A parent's decision to opt the child out of formal ELD programming has to be informed and it has to be voluntary, the fed's very clear about that. A district may not recommend that a parent decline programming or make any scheduling or placement decisions contingent on them declining programming. What that means is, the way that this actually plays out is, sometimes in districts they will centralize an ESL program in one particular school and it's not a student's home school, and they will tell the parents ... Well, the parents might want their child to stay in the home school in the neighborhood, and the district will say, "That's fine, but you have to opt out of ESL programming, because our ESL program is at that other school. So, if you want to stay at your home school, you have to opt out." That kind of thing is prohibited by the federal rule. The district is only allowed to explain to the parent their right to opt out and then provide them with certain information, which we'll go over, and then the parent's decision to do so has to be voluntary.

The district, and like I was saying here, the district has to provide a more detailed description of the ELD program and services to the parent in a language or through a mode of communication that they understand. That could be a translated document, or it could be the information that was interpreted for them, if the district can't translate the document. Here are the lists of things that the district has to do in terms of the process for declining ELD programming. You've got to adequately document the process. That documentation has to demonstrate that the decision was informed and voluntary on the part of the parent. In order to do that, this should include the results of the ELD screening, the rationale for the identification of the student as an EL, and the child's English language needs that were provided to the parents, the program description that was provided to the parents or if this information was explained to them verbally, it should be a dated summary of the description that was given to them, including the various components of the program, it's benefits, and then explanation and evidence of its effectiveness.

Now, what the fed has found is that sometimes parents opt out of programs because the district didn't adequately explain that the program was effective or demonstrate to them that it was going to be effective. The fed has made it clear that one of the district's obligations is to provide the parents with these three pieces of information, it's the program description, it's benefits for the child, and an explanation and evidence of it's effectiveness, so that the parents decision can be informed and voluntary. And then, the last thing is, a check list and/or form signed by the parent/parents, that demonstrates that they understand the benefits of the program and that they have willingly decided to opt their child out of part or all of it. And then, that form would also identify which parts if they didn't opt out of all.

The next section here are the federal rules governing the district's responsibility for opted out students. Once a student has opted out, the district still has responsibilities for that student. So, opting out does not release the district from most of its responsibilities for an EL student. Even though a student may be opted out of the formal specialized and separate ELD program, the district's not released from those obligations required under Title six, to take appropriate action to overcome language barriers, also co-defined in the EEOA. Districts have to monitor the opted out student periodically and notify the parents if that student begins to struggle as a result of the second language acquisition.

The district has to offer the parents of a struggling, opted out EL's further opportunities to enroll their children back into the ELD program. They've got to document the monitoring and parent notifications for the above. They've got to ensure that opted out students' needs are met in general education classrooms. Just because a parent opts out of a specific component of an ESL program, or the language instruction educational program, it doesn't mean that the district's not responsible for overcoming language barriers. And what that means is, that the content area teachers, in the classrooms where opted out students are placed, are now responsible for overcoming language barriers. And they can either do that by collaborating with ESL teachers to employ the strategies on their own, or getting training that the district can provide or getting training on their own to do that, without the benefit of cooperating with an ESL teacher.

The district also has to assess the students using the ACCESS each year until they attain proficiency and are exited, and report the students to the state as ELs. So, opting out is not opting out of being an EL, it's opting out of specific specialized separate ESL program services.

Here's a pyramid that kind of explains the various layers of what might be part of an LIEP for EL, also. On the bottom here, there are ESL accommodations in all classrooms, and there is no opting out of this. Essentially what that is, is any classroom where and EL is place, those teachers are responsible for providing the supports in the combinations of modifications and whatever is necessary to overcome language barriers, so that those students have meaningful access to the content. Parents can't really opt their children out of that because there's nothing to opt them out of, they would essentially be opting them out of an equal education, which doesn't make sense. That's the bottom of the pyramid. Those things are required, there's no opt out.

Next is the specific language instruction educational program, which can be a bilingual ed program or an ESL program, a collaborative program or sheltered or something else. Whatever part of that program is only for ELs, that is the part that parents can opt their children out of. In other words, if you have sheltered English emerging classrooms, but they're mixed with non-L's and Ls, a parent can't really opt out of that because that's not specialized and only for Ls. If that's where you might place that student, even if they weren't an L, then the parents aren't opting out of that. If you have self contained sheltered classrooms, however, that are populated only with ELs, parents can opt their children out of

those classes because they're separate and specialized. Okay, so that's the key is that they're separate.

Bilingual programs, obviously, those are a transitional program would only be for Ls, so parents can opt out of that. They can opt out of things that are separate in addition to the normal academic program. For example, after school tutoring, tutoring during the daytime, summer programs, it's things like that, that are only for Ls and are separate from the regular academic program, that's what parents can be opting out of.

And then, of course, there's the top layer of the pyramid here, which are Title three supplemental services and Title three has its own opt out provisions, so parents can opt their children out of those. And parents can choose what parts of this they want to opt their children out of out of the top two parts of this pyramid. So, they can opt out of certain provisions or services under a Title three, but not the LIEP, or vice versa, or just parts of the LIEP and parts of Title three. It's really up to the parents. The district obligation is only to provide them with the information that they need to make those decisions on their own.

PDE, we have put together some documents and information to support districts, because this will be kind of a shift in Pennsylvania. These will be posted on the SAS Portal's ESL Professional Learning Community, Content Repository under ELD Documents 2016-2017 School Year. The guidance and the forms are still in draft right now. You can use them while they're draft. You can create your own. We do ask that if you create your own that it contain information, so you can then, in other words, you can add to these documents. Once they're through the review process of PDE, the draft will come off them. We don't expect any major changes to them.

So, the three things that we've produced are policy document that summarizes these requirements we have just gone over. A parent refusal form with a necessary acknowledgements. And a parent reinstatement request form to opt back in, if they decide to do that at any point. They haven't been translated yet. We have plans to translate them. As soon as the translations are available, we'll post those on the same website. And like I said, you are free to use our form or develop your own. If you develop your own, it has to at least include the same acknowledgements, what I'm talking about now is the parent refusal form, it's got to contain the same acknowledgements that we have put on our form.

That concludes the informational part of this session. So, now we will go ahead and answer any questions that have been coming in.

Eugenia Krimmel: Okay. Thank you, Bob. That was very informative and quite a few questions are coming in. So, we will address these as we can. One of the first questions that came in says, so does this mean that ESL is no longer core instruction in PA? Are we now viewed as an intervention?

Bob Measel:

Well, first of all, ESL is not an intervention. ESL is a component of the general curriculum for ELs. The label of core content, I'm not sure, ESL is not core content the way that other contents are core content because it is not listed in chapter 412 and because it's also not for all students.

Now, English as a Second Language as a methodology and as a content in and of itself is required for ELs. Now, that can be delivered in many different ways. It's not an intervention, only because ELs don't require an intervention, they just require second language acquisition instruction. So, that is, well, we'll call it part of the general academic program for all Ls, and it looks different depending on their level, it's different depending on the program model, but it is certainly not an intervention. It is still required for all ELs. Parents can't, and to be clear, parents aren't opting out of ESL. Parents are opting out of program components that are separate, like an ESL pull out class, or a tutoring class, or a summer class, or something like that.

Like I said earlier, the supports and modifications accommodations and content classrooms have to be there regardless of whether or not a student is opted out or rather their parents have opted them out of the program and English as a Second Language as a content or methodology would still be part of their academic program where it would just have to take place in a content classroom.

So, hopefully I answered that. We'll go to the next question.

Eugenia Krimmel:

Okay, thank you. And then, is there a sample form or checklist that is being used when parents sign students out? As Bob had mentioned at the last slide there, there are the forms that are available to you in your LEA. Currently on the SAS Portal, if you go to the ESL Community, you'll be able to access that on the content repository, but as soon as they go through the approval process, they will be on the ESL Portal, as well. So that was a pretty straight forward question.

Okay, we have another question here, Bob. The classroom teachers are not responsible or accountable that the EL student acquire the mainstream language. That was the question, I think it's referring to, what is the role, then, of the classroom teacher? I believe that was the spirit of the question.

Bob Measel:

Yeah. I assume that the question is, because it's written as a statement, but assume that the question is, are classroom teachers responsible or accountable for ELLs learning English? The answer is yes, and they've always been. Under federal law, any teacher in front of an L is responsible for making the content comprehensible to them, and for, essentially, teaching them English, as well. I mean, to try to separate the concept that you would learn content, but not the language of that content doesn't make sense. Given that they are responsible for making the modifications and accommodations necessary in a classroom to make content comprehensible for Ls and give them access to the general curriculum and they are doing both of those things and they are responsible for that under federal law and under state regulations, as well, and that's always been the case.

Eugenia Krimmel: Okay. The next question is, can parents opt their children out of ACCESS testing?

Bob Measel: That's an easy one, no, they cannot. Students have to be ... A district has an overarching responsibility to identify L's because they're a protected class of citizen student, and in order to do that, they've got to screen them using the state's screener. So, there is no opting out of the identification process or the screening. There's no parent permission required for any of that. Once the students are identified, the parents have to be given the option to opt them out of the particular parts of the LIEP, their language program. But, part of the district's responsibility is to make sure that those students attain proficiency at some point, and then exit them from that status. In order to do that, they have to test them. There is no opting out of ... This is not opting out of any kind of screening or any kind of testing, this is only opting out of particular components that are separate components only for Ls of the LIEP for ELs.

Eugenia Krimmel: Okay. Good. The next one is referring to slide two, could you provide some examples of evidence of effectiveness that districts could provide to parents? Okay? I'll read this at the question. Oh, did I read it out loud? Okay, I'll read it again. Referencing slide two, could you provide some examples of evidence of effectiveness that districts could provide to parents?

Bob Measel: Yeah. This could be lots of things. Under prong one of Castaneda, districts are required to have an articulated, thought out, and well planned program model. It needs to be based on either research or a sound theory. That is the first piece of evidence is the research that your program is based on. And you can provide that to parents in parent friendly language, so a summary of that research.

Also, if you've got ACCESS scores and you've got growth the state reports to you, and you've got some access to data tools that you can use to pull down some data that shows EL performance in your district, either growth or achievement, I would recommend using growth, on the ACCESS, you can show parents performance of former ELLs on state academic achievement assessments like the Keystones, or PSSA, and that is an indicator that your program is effective, that would demonstrate to parents, for example, that if your child participates in this program, once they are exited, then they are well prepared to achieve academically based on data that we've gathered from other ELs who have participated in the program, and as you can see they're doing well, if those numbers do actually demonstrate that.

I would recommend sitting down with a team at your school. Under prong three of Castaneda, district should be evaluating their program annually anyways, so it would just be a matter of taking that evaluation data and summarizing it for parents, so that you can at least give them some indication that you're fairly confident that your program is effective.

Eugenia Krimmel: Okay, the next question is, should this be done each year?

Bob Measel: And I assume that that question has to do with, I'm not sure what that has to do with, actually. I guess, I'll answer a couple questions that this could mean. And if I get it wrong, then you can feel free to send in an update to your question.

Does an opted out student have to be monitored and the parents have to be contacted each year? And the answer to that question would be, yes. The expectation from the federal government is that districts monitor opt out students, if the student is not struggling, and they do fine, I think that you still have some obligation to offer the parents, at least annually, to enroll their student back into the program, but certainly if the student is struggling, the district should be responding to that at the time that they identify the student is struggling as a result of second language acquisition challenges, and contact the parents then.

ACCESS testing, obviously, happens each year.

And then the other question that this could have ... that you may have meant was, does a parent have to opt out every year? And the answer to that is, no, once they have opted out, they do not have to continue doing it every year, but the district should be reaching out to them each year to offer them the option of putting their student back into the program.

Eugenia Krimmel: Okay. The next question is, what does monitoring look like? Should it be similar to how we monitor exited students?

Bob Measel: Yes. It should be similar. You would be looking at the same things, essentially. Monitoring would be checking in on the student's progress in some way to make sure that they are not failing all their classes, or they're not failing a particular class, or struggling. They haven't expressed to a teacher that they don't understand, or that the teachers are able to meet their needs in the classroom, things like that. It would probably look very similar to monitoring a former ELL, except that, obviously, with the understanding that you're not looking at former ELLs, you're looking at active ELLs, so the monitoring, the outcome of the monitoring may look a little bit different, and districts should anticipate that.

Eugenia Krimmel: Very good. The next question is, should we explain parent's rights to opt out before we even test a potential L student?

Bob Measel: Okay, and the answer to that, like I said just a few minutes ago, related to another question, is no, there is no requirement that you gain parent permission to screen students. It's the district's obligation to identify ELs at the time of enrollment. Whether or not you want to explain to a parent the program description and their rights to opt out before you've identified this student as an L, I don't think that would make a lot of sense, just because you haven't screen the student yet, so you don't know if they're an L. Opt out is only an option available to parents who are parents of Ls. If you haven't identified the student yet, then you wouldn't explain the program models and all that to them before you screen the student. The option to opt out would be something that you would explain to

them after you've identified the student as an L, and after you've provided them with all the program information.

Eugenia Krimmel: Very good. And, a similar question was answered a while ago, but just to repeat that in case somebody missed it. So, opt out students have to take the WIDA ACCESS each year?

Bob Measel: Yes.

Eugenia Krimmel: Just thought maybe we needed to repeat that one because that's come up several times. Okay, another question is, how does this impact students already entered in the ELD program?

Bob Measel: Well, that's a good question, and that even though that hasn't not made it's way into the state policy concerning opt outs yet, what's almost certainly going to happen with that is that districts will probably be required to notify through some means, probably, hopefully, existing means like if you're contacting parents each year to talk about or to indicate continued participation in the program, or something like that, you'd attach onto that some standard language that would explain their right to opt out. Although, that question hasn't been answered yet, so the answer to that question will appear in the policy document out on the portal once it's been answered, and that will have to go through legal for us to get a final answer to that one. So, good question.

Eugenia Krimmel: Okay. Another question has to do with the timing. What is the timeframe for offering the opt out parents of ... Oh, I'm sorry, we just did that one.

When is this to take effect? Is it dated back to January 2015? Or what is the effective start date?

Bob Measel: Yeah. The effective start date is right now for this, at the very least. Now, whether or not this is retroactive gets back to question that we still have to run by legal at the department, which that has to do with, does it apply retroactively and are you going to be required to go back and notify the parents of Ls in the district that they have a right to opt their children out of the program. Given that this is a federal rule, and it's been around for a while, as I said, that's likely going to be the outcome, but I can't say that with certainty right now, because the legal folks at the department haven't weighed in yet, maybe they'll feel differently. The first part of your question is, yes, this applies right now, if you have students enrolling next week, you have to explain to the parents their right to opt out of the program. For kids who are already in, stay tuned and we'll see.

Eugenia Krimmel: Very good. If a parent is refusing L services, they likely will refuse ACCESS testing, how do we handle that?

Bob Measel: Well, there is no refusing ACCESS testing. I'm not sure really how to answer that if they opt their children out of the EL program, that is their right, they don't have

a right to opt out of ACCESS testing. I'm sorry, that's the best answer that I can give. There is no provision for that.

Eugenia Krimmel: Okay. Do you want me to read that?

Bob Measel: Mm-hmm (affirmative)-

Eugenia Krimmel: Another question is, if no ability to opt out of ACCESS, the data is being used to assess districts through the proposed future ready index, are opted out Ls going to be calculated into this?

Bob Measel: I'm not sure exactly what you're referring to in that question, but what I can tell you is this, opted out Ls are Ls like any other L, they're is no difference between them and any other L, so they are included in all the same calculations in all the same ways as other Ls. For example, for disaggregating data for PSSA, for the L subgroup, opted out Ls are included in that, as well.

There's something I didn't mention earlier, though, and that is that in PIMS, because I know the question's going to come up, how we are going to identify these kids and are we going to be able to disaggregate? And the answer to that is, yes, we are going to want to identify these kids. We are in the process, now, of working with the PIMS folks at PDE to add a field. Likely, it's going to be a program type field, so where you select the type of LIEP for that student, opt out is going to be one of those options that you can pick, or it will be a code that you can enter into that field, so you if you had bilingual ed, you could select bilingual ed or the identifier for that, if a student is opted out, it would have its own identifier, so that we would be able to see if there are pockets of lots of students opting out of particular districts or if there are spikes in opt out over time, also if we're disaggregating test data.

I know some of you are probably, I say some, probably all of you, have been thinking about this, how does this impact testing outcomes? We will definitely want to be able to disaggregate opt out students, so we can understand better if it has an impact on test outcomes and what that impact is.

Eugenia Krimmel: Great. The next question, I think a lot of you may have the same question, if we provide push in ESL support, would that be something they could no opt out of?

Bob Measel: Well, these things get very tricky. If it's push in, yes, also in part it depends on what it looks like. If the ESL teacher's in the classroom, and they're working with all the kids in that class, then that's not really something that parents should be opting out of because it's being provided for everyone in the class. If there are non-ELs in there and the ESL teacher's working with a group that has non-Ls in it, then that's fine. If the ESL teacher of push in means an ESL teacher is going into a classroom and taking a group of those students to the side and doing something separate with them, then that would be something that parents would be opting out of. So, it all depends on, is it separate, and only for Ls? Now, if an ESL teacher is working with a content teacher to give them strategies to employ,

that's not something parents can opt out of. Those are just strategies being employed by the content teacher. It's just anything that is separate and different for Ls and only Ls, that's what they can opt out of and not things that are more for all students where they're kind of blended into the academic program, those are not things that parents can opt out of.

Eugenia Krimmel: Okay. Is there a formal monitoring tool that will be created to monitor opt out students?

Bob Measel: So, we were talking about, related to it, a question a little bit earlier. No, we're likely not going to develop a formal monitoring tool. I know PDE has already provided monitoring tools for former Ls, you can use those, you can modify those in any way that you like, but we're not going to produce a separate document for opted out Ls for monitoring of opted out Ls. The monitoring, it can be whatever the district develops, or you can use the forms that PDE has provided for former Ls, same thing. Or, you can just use parts of the former L monitoring form. At the very least, the monitoring just has to ensure that you are able to identify the point at which a student begins to struggle academically as a result of English language proficiency, so that you can communicate that information to the parents and offer them another opportunity to enroll their child in the LIEP.

Eugenia Krimmel: Okay. Another question is, that I can answer here is, where is the content repository for the forms? I looked on the SAS website and unable to find that link. You have to actually go into ... You have to make an account on SAS. And then, when you go into My Account, you will see many options, like EPortfolio and so forth, and one of them says Communities. Click on Communities, and then you will go to search, put ESL, and then the ESL community should come up. Register for that community, and then once you're on to the community, you want to scroll, because everything in SAS is about scrolling, scroll all the way down to the bottom of the community, you'll see several forms. And then, you'll see the Content Repository. Those forms are actually on that list of the five or six most recent additions, but you can also hit the bottom button, which says Content Repository, that will take you to a list of resources, and the you'll see the folder that says, ELD Documents 2016-2017 School Year. Okay? So, hopefully you'll be able to find that.

Before we continue with final questions, I wanted to remind everyone to take a few minutes to complete the brief online evaluation. That will be emailed to each participant after today's session. Your feedback concerning today's session is very important and will help the Pennsylvania Department of Education and the Center for Schools and Communities, to offer online sessions of the highest quality.

Let's continue on a little bit. Should all parents be sent an opt out letter with the screening results and placement letter when new Ls enroll?

Bob Measel: The list of what you're required to provide to parents is on the second or third slide of this presentation. It's also going to be contained in that policy document. I can go back there really quickly.

After you screen the student and you've identified them as an L, now the parents have to be given information, so that their decision can be informed and voluntary. Part of that information is notifying them of their right to opt out, so you've got to provide them with the program description, including all the various components of the program, so that they can opt out of parts of that if they want, the benefits that it has for the children, and an explanation of the evidence of its effectiveness. And then, you've got to document that, so that's where the checklist would come in. And then, on top of that, you've also got to provide them with the ELP screening results, what those results mean, and the rationale for the identification of the student as an EL. So, the point of here is that they understand the entire process and that if they decide not to participate in the program it's informed, and that they're also informed about what it meant for their student to be identified as an EL and how you did it.

Those things have always been required. Districts have always been required to provide parents with an explanation of the identification process, the rationale for their decisions, and then the outcome of the screening along with the language proficiency the student was identified at, and what that means. So, those are new requirements, but that's also included in the regular identification process, now what we're adding onto here is that parents have to be told about their right to opt out of particular parts of that program.

Eugenia Krimmel: Very good. Next question is, so, my assumption is that this federal Dear Colleague Letter negates Pennsylvania's school code law that state that parents do not have a right to opt out?

Bob Measel: That is correct. The Pennsylvania rule, as codified in the Beck, was that parents had that limited right to opt out for religious reasons only. This is a federal rule, which trumps the state rule. So, it does, in fact, overrule what we had in the Beck, and the next revision of the Beck will not contain that language, it'll contain this language.

Eugenia Krimmel: Very good. That was a good question because I know a lot of people are thinking about that. So, can the parents opt out include not having their student tested for L services?

Bob Measel: Just to be very clear, once more. Parents cannot opt out of any testing or screening, and that's it. There is no opting out of testing. There is opting out of program components only. Parents cannot opt out of screening, and parents cannot opt out of ACCESS testing under this rule.

Eugenia Krimmel: Okay. This next question, I think, might reveal there's a little bit of confusion with the acronym here. Is PA going to have formal LIEP's similar to IEP's with mandated requirements and documentation?

Bob Measel: Yeah. This is just an unfortunate acronym overlap here. So, LIEP has got nothing to do with an IEP under IDEA. LIEP just means Language Instruction Educational Program, in other words, your ESL or bilingual ed program, that's all that means.

Eugenia Krimmel: Very good. If students who opt out are still tested by the ACCESS 2.0 test, will there scores be a reflection of the ESL program in our district even though the ESL teachers have not instructed them?

Bob Measel: To the degree that you're using ACCESS scores to determine the effectiveness of the ESL program, yes, in some ways, but, it depends what the state is going to use for an accountability system under ESSA is yet to be decided. What that's going to look like, we don't know the details of it, we don't know.

So, if your district is using that data like I said, you can locally track your opted out students and disaggregate, so you're not going to be forced to make a determination about your own program with these kids lumped into there, if you want to separate them out and see if they're doing differently. And then, eventually at the state, we're going to have an identifier for opt out students, so we can disaggregate our own data, but I can't speak to that right now because the decisions about the future accountabilities systems, or how that works, are still up in the air. Is there potential that we could disaggregate by students that have been opted out? Sure, there is the potential for that.

At the very least, if that's not part of the state accountability system, whatever that accountability system is, may identify your district as needing improvement in some area, which might include Ls, and part of your explanation for that status or part of your decision making process about how to make improvements will certainly include disaggregating opted out students to either make a case that your program does not, in fact, need to be subjected to improvement efforts because you have lots of opted out students, or something along those lines. Or you can decide to do something separate for opted out students, or do something about opting out in general, I don't know. That's about the best information I can give you related to that question right now.

Eugenia Krimmel: Very good. Will all accommodations still be available to Ls on the Keystone and PSSA assessments if a child is opted out?

Bob Measel: Okay. Just to be very clear about this point, again. Opted out students are still Ls, and there's nothing different about them compared to other Ls. So, yes, all the accommodations, everything still applies, the only thing different is they would not be able to be scheduled for a separate ESL class or an after school tutoring program or a summer program or something like that. But, they're still Ls, and everything else about them stays the same.

Eugenia Krimmel: Okay then. Are we going to distinguish between a student who does not receive service and one who does, when we are evaluated as an LEA, as to student growth?

Bob Measel: I already answered that question. So, I don't know. Yeah, I just answered that a second ago. I will stick with the same answer I gave them.

Eugenia Krimmel: Okay. We have another question here, in order to explain and inform a parent, should we have an in person meeting to make sure they understand what they are declining?

Bob Measel: Yes. The answer to that is yes, certainly, in particularly with language minority parents, you would definitely have to have an in person meeting, if for no other reason than, to make sure that they understand the written translated documents that you've got there and to be able to ask questions. I don't think that you could make a case that their decision was informed or voluntary or specially informed if no one was there to answer their questions, if they had any, or even to verify that they understood the information that they were given.

Just so that everyone knows, we're kind of going through the questions right now, that's why there's pauses here. We're sifting through the questions. We've got a lot of repeat questions, so we're kind of going through them to find new questions. So, it's just taking a couple seconds, so just bear with us.

So, before my question in here that I will speak to really quickly, which is that, what about kids who come in and they're speaking English, but their parents are not. The federal rule is that you've got to communicate with the parents, and it's inappropriate in cases like this to use children to translate information like this, [inaudible 00:39:35] interpret information like this. So, how you communicate with parents is based on their needs, not the children.

Eugenia Krimmel: Okay. Should districts wait until the opt out form is returned before the L is placed into ESL instruction, or should teachers go ahead and place the student in ESL instruction? What if parents do not return the form?

Bob Measel: No, you don't wait until the parents return the form. They have to be given the information, it's their right to decide. The default is that you place the student in the program that is most appropriate for them. The parents have to take some action to change that. So, the default is the students go into your ESL program, your LIEP, Language Instruction Educational Program, and then if the parents return that form a month later or something, if they've thought about it and decided, then you would change the student's schedule or change their program at that time, but there is no waiting, so don't do that. You give the parents all the information that you're required to give them at the time of enrollment and they don't make a decision right there on the spot, then you move forward with the default placement, which is the most appropriate one based on the school's identification and placement procedures.

Eugenia Krimmel: Okay. Here's another question, if a student is in a middle school or high school scheduled ESL class period during the day, can the parents opt out of that? It is not a pull out, but it is just a classroom of just Ls.

- Bob Measel: That meets the definition of the separate program or class, just for Ls. So, yes, parents can opt out of that. If it is an ESL class, and it is only for Ls, and you do not schedule non-Ls for that class, then that is considered separate and specialized, and that's what the opt out provision covers. If, for example, you have a sheltered social studies classroom in the ninth grade and the student is scheduled for that, but there are non-Ls in that class, the parents couldn't opt their child out of that class because of their student wasn't an L, they could potentially end up in that class anyway. So that's the distinction.
- Eugenia Krimmel: Okay. We sometimes let high level Ls to be mainstreams in the regular ed, do we need to go through the opt out process in order to do so now?
- Bob Measel: The only opt out process is at the time of enrollment when parents are offered the option to make an independent, voluntary decision that is informed. So, there is no opt out process ever again beyond that, unless parents come back into the district and they say, my student is unhappy in the program, or something, what can I do? Then you can offer to them, well, you should inform them of their right to opt out at that time, but there's no other process that opt out is involved in.
- Eugenia Krimmel: Okay. The question is, what is the actual law number or title to refer to for parents and teachers?
- Bob Measel: Like most things that have to do with rights of kids and parents who are language minorities students and parents, the authority for this is coming from Title six of the Civil Rights Act of 1964. There is a link to the Dear Colleague Letter that came from the fed earlier on this presentation, well we welcome you to go and take a look at that, there are some citations in there, but like I said, the authority for this is coming from Title six. This is a parents right as a language minority parent to opt their children out. And it's the same for other parents, parents of non-Ls to opt their children out of specialized programming, specialized academic program, if they choose not to, they can't opt their children out of the required curriculum in a school, but they can opt them out of anything that's not part of the required curriculum. That's where the authority for this comes from, and like I said you can go look at the Dear Colleague Letter, which we've linked to earlier in this document.
- Eugenia Krimmel: Okay. Another question is, how many times a year are we expected to reach out to parents of struggling opt out students, Ls?
- Bob Measel: The answer to that is, at least once. If the students continue to struggle ... For any struggling student is the expectation, or districts have some obligation rather, to be reaching out to parents to inform them of the difficulties that their children are having in school, and that goes for all students, EL parents are no different, so at the very minimum under the federal guidance you are required to reach out at least one time and let them know, and offer them the program again, but if the student continues to struggle you would almost, at least in theory, you'd be reaching out to the parent, someone would be, the teacher or someone, to inform the parents about the student's continued academic struggles and you could take

advantage of the opportunity to offer them the opportunity to enroll their student back into the LIEP every time you reached out to them, but the minimum requirement is at least once.

Eugenia Krimmel: Okay. The next question is, can a parent have input into the amount of time an L receives pull out ESL? Some parents may be more willing to have their student participate in ESL pull out if it does not remove them from the entire core class.

Bob Measel: The answer to that is, yes, because that would be considered a part of the program. Remember, parents can opt out of all or part of an LIEP program. Let's say, your program, your recommendation is that the student receive two periods of ESL per day, or something like that, and the parents say, no, I don't want that, I only want one period per day. That is their right. They can say I want to opt out of that second period, I only want them to have one. In my experience in other states with this, that's not very common. In fact, almost all our states have an opt out provision and what I've seen, and what we've found is, that a very small percentage of parents actually end up opting their children out of the program. I don't know if I've ever heard of an instance of a parent selecting certain parts of a program to opt their children out of, I've only heard of parents opting out of the whole program or not opting out of any of it.

So, a question came in about a ten day window for doing this. I'm not sure where that requirement comes from, but from that from in the question, but this has to take place during the identification and enrollment process, and under current state requirements and federal requirements, the district is obligated to complete the identification and placement process within 30 days of the beginning of the school year, or 14 days for students who enroll after the beginning of the school year. This is just part of that, so this would have to take place, there is no special timeline for this, this has to be done as part of the identification process. There is a 30 day window for having it complete for students who enroll at the beginning of the year, and a 14 day window for students who enroll after the beginning of the school year.

Eugenia Krimmel: Okay. This is a good one. If an EL has, okay ...

Okay. So, if an L has opted out status in another PA school system, does that status remain in the new district?

Bob Measel: The answer to that is, no, not necessarily. It might be a little bit easier for the new district to ... Well, no, it wouldn't because the LIEP is going to be different from district to district, so a parent has opted their child out of the LIEP that was explained to them in district A, when they get to district B, that program is going to be different, so that decision really was no longer valid because they had opted out of one program. So, it's still the district's obligation to explain to the parent their language program, their ESL program, or bilingual program, to parents and then offer them the option to opt out based on that information. The answer to that question is, no, the district still needs to go through the same process.

So, a question came in about whether or not we're going to modify documents on TransAct or add these. We are likely going to take these new documents that we are producing and put them on TransAct for you, rather than modify existing ones, although we may, but in either case, we're not quite there yet. You'll have to, as we stated during the presentation, use the forms that we've got now and either interpret them or translate them locally, and then as soon as we get translations we'll put them on the web, and they'll either show up on TransAct as stand alone documents or we'll modify existing documents, whichever one is going to make the most sense.

So, a couple of questions have come in about when parents can opt out, or when they have to be given the option to opt out. The formal process to take place at the time of enrollment, and once you've offered that to parents, you don't have to continue offering it. You don't have to continue offering it. If they come in and a parent is unhappy with the program, you should let them know at that time, in case they have forgotten, or they were unsure about it the first time, that they do have a right to opt out. The formal requirement is that you do it at the time of enrollment.

And then, the other question was about, if a parent approaches the district and wants to remove their child from the classes. They can do that at any time that they want. You've explained their right to them, at the time of enrollment, they can decide to not act on that right for three months or nine months or a year or two or whatever, but if they come and they say, I've decided to exercise my right to opt my child out, then the district has to honor that at any time that they come back and request it.

Eugenia Krimmel: Okay. We're going to wrap up this webinar session at this time. If you have any additional questions, please email your questions to the RA-LEP@pa.gov email account. Let me repeat that, RA-LEP@pa.gov email account. And we will respond to your questions as soon as possible.

As a reminder, this webinar session will be archived and posted on the ESL Portal at ESLPortalPA.info within a day or two, along with today's PowerPoint presentation with the note pages.

Again, I want to thank everyone for joining us today and hope today's session addressed your questions concerning the implementation of the parent refusal for ESL program and services. Have a great day.