

# Reckoning with Hammers and Mallets: Indiana's Approach to Licensing English Learner Teachers

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## Abstract

INTESOL has actively advocated for appropriate certification and training of Indiana's EL teacher workforce, informing the policy of the Indiana English Learner (EL) Teacher of Record. The Indiana EL Teacher of Record requirement, established in 2019 by the Indiana Department of Education asserts that by 2022, all Indiana school districts will have an established 30:1 ratio of EL students to EL-licensed teachers meeting the minimum criterion of two Supreme Court cases, *Lau v. Nichols* (1974) and *Castañeda v. Pickard* (1984). The Indiana Department of Education, the funder of this policy, granted accredited universities in EL education to train and license educators, increasing the overall capacity of districts to meet the needs and rights of their ELs with appropriate staffing and programming. While efforts to meet 30:1 goal are still in progress, Indiana's approach has contrasted with other states who addressed such licensure initiatives with a heavy hammer, whereas Indiana has done it with a softer mallet. Implications for universities, districts, and families are discussed.

*Keywords: English learner, language policy, accountability, highly qualified teachers*

In 2019, Dr. Jennifer McCormick, then Indiana Superintendent of Public Schools sent out a memo requiring districts to meet a minimum staffing criterion of a 30 designated-ELs to one EL-licensed teacher (McCormick, 2019) mirroring guidance from INTESOL (Morita-Mullaney & Albrecht, 2017) and historic Office of Civil Rights investigations (Indiana Urban Schools

Association, 2005), holding to the intention and spirit of *Lau v. Nichols* (1974) and *Castañeda v. Pickard* (1984), two Supreme Court cases requiring English Learner (EL) programming. During the 2019-2020 school year 72,229 identified-ELs, legally obliged to receive some form of English language development (ELD) or bilingual instruction, only 1423 EL educators were licensed in this area at the time, accounting for a 50:1 student/teacher ratio. Yet, there are no assurances that these 1423 are active teachers working with EL students, so this number does not adequately capture what is happening on the ground in schools, suggesting that the ratio is much worse. The Superintendent memo (2019) compelled school districts to analyze their current staffing models and to move swiftly towards implementation to satisfy the 30:1 compliance requirement by September 2022.

The Indiana Department of Education (IDOE) then furnished funding to accomplish this aim, working with universities with accredited EL-licensure programs to respond to the demand in due speed. The provision of funding reduced the financial burden on schools who may have regarded the requirement as an “unfunded mandate” (US Congress, 1995). The aspiration of an unfunded mandate is that an institution or individual will be compelled to remedy a given harm, and altruistically furnish the needed resources and funding. But, more often, there is frustration and resentment that a governmental entity is imposing its stance and subsequent requirements and thereby, overreaching. The policy feels like a hammer.

Some narratives that circulated throughout school districts was the shortage of EL teachers available from the outside or from within. Yet, when EL programs are underdeveloped and/or absent, then there is no glaring EL teacher shortage. Claiming a shortage rather than lack of programming is a potential argument used to evade admission that legal provisions for ELs are unmet, simultaneously absolving districts from financial commitment to ELs, rationalizing

their inaction. EL students are thereby, mainly served through general education or what scholars reference as “sink or swim” models (Wright, 2019), an unlawful, yet present circumstance in Indiana. Given that financial formulas for funding public education have become bifurcated and reduced, this financial circumstance reinforces the rationale for EL teacher shortages (Appleton, 2022).

To address the “ESL Program Staffing” needs, the IDOE began recruitment of in-service teachers to add-on EL licensure to their Indiana licenses in the Spring of 2020. EL district-leaders had to quickly identify cohorts of teachers and select a university program(s) in which to collaborate, with most EL (designated) district leaders having multiple duties beyond the EL-scope. The search for in-service teachers was fast paced and decentralized; methods for identification of teachers varied as did the knowledge base of EL-district leaders, many of whom had little to no training or expertise in English learner teaching (Morita-Mullaney & Stallings, 2018; Morita-Mullaney, 2019). Thus, teachers in EL-licensure programs entered with varied understanding about the IDOE policies and their expectations for assisting their districts in making this compliance benchmark by September 2022.

While this phenomenon is relatively new in the Indiana context, EL or bilingual licensure requirements have been enforced through consent decrees and state statute throughout the United States. I turn now to the literature on several states who have experienced this licensure requirement.

### **Literature Review**

Licensing under compliance may be framed by districts as coercive or over-reaching, as many come with no additional funding to reach such goals, further constructing the policy as top-down because it is an “unfunded mandate” (US Congress, 1995). Compliance generally has

timelines for corrective action, creating the conditions for universities and private companies to meet the licensing demand. In this literature review, I examine four states, all with sizable EL populations relative to Indiana who have experienced this enforced requirement of adequately trained and licensed personnel to serve identified-ELs, including Florida, Arizona, New York, and Illinois.

### **Licensing under compliance**

Following the passage of the Bilingual Education Act (1968), *Lau v. Nichols* (1974), *Castañeda and Pickard* (1982), states slowly moved into action to establish consent decrees, a legal obligation administered by regional courts that would ensure the full implementation of services for identified-ELs. Due to the density of ELs in New York, Florida, Arizona, and Illinois, regional or state administered consent decrees became commonplace and state agencies had to swiftly assemble interpretation of policy to move towards fuller compliance, which could include a bilingual and/or EL focused licensing or training provisions.

**Florida.** Florida's consent decree established in 1990, revised in 2003 and again in 2009, reiterates all the essential components of *Castañeda v. Pickard* (1982) stating that a program must be research-based, adequately resourced, and found to be effective. To meet this minimum criterion, staffing and specializing of teachers was needed, galvanizing a focus on licensing teachers with 300 hours of credits within a narrow window of time (Platt et al., 2003).

Universities swiftly built infrastructures to meet this impending demand, but the Arizona policy also allowed for the private agencies to come in to meet the licensing and training demands. Educators having to complete the ELL licensure requirement in a short time frame in order to remain employed or be employable were inclined to find the fastest and least expensive route to the licensure. Many private companies who "sold" the swiftest and tidiest route to

licensure became increasingly attractive. One Florida educator remarked, “I showed up to a meeting with the agency and they handed me a big volume of readings, signed a paper for me, and I applied for my ELL license not having read a single page” (Johnson, C. pers. comm., April 1, 2020).

The origin of this push for EL programming and adequate staffing came from African American and Hispanic community in cooperation with the Multilingual Education, Training and Advocacy (META) creating immediate specificity for the implementation of language programming for ELs (Florida Department of Education, 1990). Florida did not focus on just the stand alone EL teacher, rather any teacher with EL students would need to acquire a regiment of training and/or EL licensure.

**Arizona.** Arizona experienced a restrictive language policy measure that parted ways from some of the historically implemented bilingual approaches to language education. Instead of honoring such models, the Arizona legislature adopted Proposition 203 (Arizona Voter Initiative, 2000), moving to a mandatory structured English immersion (SEI) model that required identified-ELs to be served in a self-contained model for 4 hours daily (Bernstein et al., 2020).

Lillie and Moore (2014) found that restrictive structured English immersion (SEI) programs implemented with a mandatory four-hour instructional block for all identified-ELs and the demand for more trained SEI teachers led to predatory, private companies offering a swift pathway to this preparation. While universities critiqued the subpar preparation imparted by these private companies, there was no specificity within the policy nor in its enforcement that ensured a minimum level of content and quality. Importantly, the authors found that the private companies had appreciably shorter timeframes for completion, but problematically, many of the candidates did not pass the required teacher exams. Gándara and Orfield (2012) and Wright

(2005), lead scholars studying the Arizona context critiqued the student segregation due to the separate, 4-hour model and due to its remedial orientation with now, a disparately trained SEI teacher workforce. The origin of these laws came from an Arizona Voter Initiative, driven by conservative and restrictive orientations toward the EL community grounded in their ideological values of an English-only medium for instruction.

**New York.** New York's ASPIRA Consent Decree (1977), led by the Puerto Rican community plead that a bilingual education should be availed to their children, setting stage for specific ratios to be made for given languages. When 20 or more speakers of a given language in each grade level became represented in a school, then part to all of their day would be within a bilingual education model (*Aspira of New York, Inc. v. Board of Education*, 1975). Once this formula was aggregated, such programming had to be created and staffed. This opened stage for bilingual licensing and universities taking on a demonstrable role. Most New York schools worked within their schools and communities to develop the need for this unique bilingual workforce.

The origin of these laws came from the EL community itself, resulting in state statute. While the department of education was the implementer of such language policies, it did not originate from within the educational system itself, rather from the EL community experiencing its lack of bilingual education provisions in schools.

**Illinois.** Similarly, in Illinois, 20 or more students in each language at a school must have part of their day within a transitional bilingual education model with the appropriately certified teachers as stated in their state policy (*Illinois General Assembly*, 2013). When such staffing is not immediately trained or licensed, then investments are made to get those teachers to compliance. Additionally, an EL count of 200 or more comes with an administrative staffing

requirement, where an EL director must be identified and possess EL and/or bilingual teacher certification along with an administrator license.

The Bilingual Parent Advisory Committee (BPAC) and the Chicago Public Schools actively worked within the Illinois State Board of Education to advocate for appropriate student ratios within EL and bilingual programs. For Illinois, we see a joint effort from within the state department of education, the EL community, and educators (Nguyen, D. pers. comm., October 21, 2022).

Florida, Arizona, New York, and Illinois provide examples of what it means to enforce *Lau v. Nichols* and *Castañeda v. Pickard* with measurable policies including student/teacher ratios, which creates the demand for teachers to be licensed from within or brought in from the outside. Further, they provide context for how different state policies have manifested from within or were drawn from the outside due to the inadequacies of the schools to meet the needs of ELs within EL and bilingual program models. While the above states also had funding to support the increased demand for licensure, they are all located in states where the immigrant population is long standing and the provision for EL and/or bilingual education had greater precedent. In contrast, Indiana is a newer immigrant gateway state, where all sectors of government are still building infrastructures to meet the needs and rights of identified-EL families, especially in schools (Hilburn & Fitchett, 2012). I now turn to Indiana to examine the historic provision of EL programming and related teacher licensure and how it has been positioned differently, with INTESOL playing an instrumental role.

### **The Indiana TESOL History in Advocacy**

Indiana TESOL has been actively engaged in setting a legislative agenda for K-12 schools since 2015. The ELL Regional Collaboratives were formed in November 2015; an effort

to bring together regional English Learner (EL) stakeholders from schools, universities, and educational services centers for input on the most compelling issues for identified-ELs in their districts and communities. Since 2015, the ELL Collaboratives have met annually in person or online the day before the INTESOL conference, with key representatives from all regions of the state, representing urban, suburban, town and rural communities. In its 2015 genesis, the process began with districts creating a portrait of their EL constituencies, demonstrating the diversity of languages and circumstances of families. In rural Northeastern Indiana, in Noble County, INTESOL learned about the growing number of Yemenese refugees resettled in their community and the tensions related to their Muslim faith, which stood in contrast to the mainline Christian church. In Allen and Marion County, we learned about the resettled Burmese refugees who came from a variety of ethnic groups and thus, different languages and faith orientations. In the rural communities of Frankfort and Logansport, we discussed the density of identified-ELs being as high as 30% and that the Hispanic community was nearly 50% of their school population. The Indiana portrait of ELs was diverse.

The years that followed moved from portraiture to an identification of the needs and rights of ELs across the state and how their districts and communities were responding to their increasing representation in their schools. In 2016, districts, universities and educational service centers collectively identified three main areas of concern including 1) need for more qualified and licensed EL staff and EL infrastructure; 2) professional development among teachers and administrators; and 3) increased state and/or district funding to support such needs. The idea of a White paper was introduced.

A White paper is a position paper that would inform state language policies for ELs. Based on the most urgent need identified by the ELL Regional Collaborative group was highly-



qualified staff either through EL licensure and/or high quality professional development based on the density of ELs in a given district (Morita-Mullaney & Albrecht, 2017). A proposed ratio of 30 ELs to 1 highly-qualified teacher was established with supporting evidence from research and Indiana's historic visitations from the Office of Civil Rights in the mid 1990s that established the same ratio among cited districts (Indiana Urban Schools, 2006). The White paper authored by Morita-Mullaney and Albrecht (2017) and signed by 62 INTESOL members/stakeholders was published on the INTESOL website and sent to all INTESOL members, Deans of Education at Indiana's universities, ELL Collaborative leaders, and the Indiana Department of Education. Thereafter, the paper was circulated in various administrative venues for Indiana principals and superintendents (Albrecht & Morita-Mullaney, 2018; Morita-Mullaney & Albrecht, 2018). The objective was to saturate varied language policy decision makers to emphasize the desperate need for training of an adequately trained workforce to serve ELs.

Two years later, on August 9, 2019, the then Indiana Superintendent of Schools, Dr. Jennifer McCormack issued a memorandum called, "English Learner Program Staffing." While the INTESOL White paper (Morita-Mullaney & Albrecht, 2017) was not cited, much of the information demonstrates the imprint of the INTESOL White paper. The memorandum was sent to all district Superintendents and in its introduction, stated:

The passage of the Every Student Succeeds Act (ESSA) in 2015 provided new clarity for state and local education agencies on their responsibilities and requirements for serving English learners (ELs) in public schools, building on the previously-established legal standards for ELs established by Title VI of the Civil Rights Act of 1964, *Lau v. Nichols* (1974), and *Castañeda v. Pickard* (1981). In response to ESSA and its increased spotlight on ELs, the Indiana Department of Education (IDOE) conducted an internal review of its

practices to ensure compliance with ESSA, Title VI of Civil Rights Act of 1964, and the Equal Educational Opportunities Act (EEOA) and to fulfill its responsibility to ensure that all LEAs meet their federal requirements to properly identify, assess, and support English learners through an effective English language development program. As part of this review, IDOE releases this memorandum as a renewed commitment to guide and support LEAs in EL program staffing. *Properly certified English learner teachers, in sufficient quantity, are a must in order to meet the needs of Indiana's diverse learners* (emphasis added) (Indiana Department of Education Memorandum on EL Program staffing, 2019, p. 1).

A series of supporting documents were attached detailing the timeline and the need for Indiana districts to become compliant with the long-standing federal ruling of *Lau v. Nichols* (1974) and *Castañeda v. Pickard* (1984) (Appendix A, B). The state of Indiana was finally recognizing its lack of compliant status and was finally providing specific and enforceable language policy measures. Yet, Indiana's policies are not at the state legislative level nor the regional court level, like Florida and New York (consent decrees as driven by EL families) and Arizona and Illinois (state laws), rather at the level of policy implementation and enforcement with the Indiana Department of Education. This unique meso-level policy context is important because it recognizes that ideologies supporting the rights and needs ELs led from within and outside the department informed the policies and their subsequent roll-out. When consent decrees or state legislation comes down, oftentimes, it is the role of the department of education to interpret, implement and enforce. Importantly, top-down policies like consent decrees or state laws can be problematic as they fail to recognize the persons for whom it impacts, namely school educators and EL families (Spolsky, 2017). In Indiana's case, their department's division of English

learning worked with universities and school districts to create this policy in response to INTESOL's efforts, generating a policy to build an infrastructure of trained EL personnel. Unlike Arizona and Florida, the IDOE worked directly with universities with accredited licensure programs and not private companies.

Districts had to meet this 30:1 ratio by September 2022. At the time of the 2019 memorandum, only 1423 teachers were licensed in EL (with no assurances they were actually teaching ELs). In full, Indiana needs to license another 2,138 EL teachers to meet the minimum criterion in just three years.

In support of this effort, which would be a cost to local districts who were already complaining about the 'unfunded mandate' and the swift timeline, the Indiana Department of Education sponsored a tuition program to fund such efforts alongside of increased licensure in Special Education and Gifted and Talented, other hard to fill areas. Indiana's universities that had accredited EL programs were asked to apply to be a part of this provision and **12** of the 27 accredited EL programs were vetted by the IDOE and committed to the task. The IDOE set the minimum criterion that they must have accredited programs, pushing out predatory practices, specifically private entities who were not university affiliated, contrasting with the policies of Arizona and Florida who did bring in private, for profit entities to conduct licensure and/or professional coursework (Lillie & Moore, 2014).

### **Compliance and Capacity in Credentialing**

As districts recruited their in-service teachers to take on this additional commitment, universities had to respond to the various language policy messages teachers were hearing and understanding. Some teachers had no idea that there was an impending policy deadline of 30:1 and welcomed the opportunity for professional learning and capacity building at no cost. Other

teachers were aware of the policy content and timeline and claimed that they would soon serve as a teacher of record in their school to ensure all legal measures were in place instructionally for identified-ELs.

Whether teachers and/or their district administrators took this as a hammer or an invitation, the hope is that teacher cohorts will change the teaching landscape in their schools. Perhaps they are serving in a stand-alone role as an EL teacher or serving as a more fully prepared grade level teacher of identified-ELs and families. By having a greater proportion of teachers licensed in EL, they become important “social models” of proximity as how to best teach ELs is made accessible by a grade level partner who is now licensed in EL (Bandura, 1971; Morita-Mullaney, 2018). Other possible outcomes of proximity can be made in adjacency to other districts. A district with a growing cohort of licensed EL teachers can begin to change the decision making in a nearby district who may be reluctant participants in the requirement. Adjacency to one district creates the conditions of comparisons and when one district begins to make movement on meeting the requirement, others with appreciably smaller infrastructures for EL programs can hopefully follow suit. The force of a neighbor is sometimes a more accessible and softer message than the hammer of the state. They serve as the softer mallet of encouragement.

As September 2022 has since passed, the 30:1 EL student/teacher ratio has not yet been met. Since the 2019 IDOE memo from the then Superintendent, Jennifer McCormick was put out, an additional 867 teachers have been EL-licensed, representing a 38% growth for a total of 2,290 certified EL teachers statewide. With an identified EL-population of 77,563 for the 2021-2022 school year, Indiana is still understaffed by 2,585 certified EL teachers.

Providing a generalized portrait does not highlight districts who have reached and exceeded their 30:1 teacher/student ratio, training not just the stand-alone ESL specialists, but building the capacity and EL-licensing their general education teachers. This two-pronged focus is building the vertical leadership of specialty within an ESL program, but also building the horizontal leadership among grade level and content area teachers. Done in tandem, EL teachers and general education teachers who have the same body of preparation can co-build their expertise and create programming that goes beyond the mere compliance requirement, moving toward systematic capacity, benefitting identified-ELs.

The generalized portrait does not recognize the grave underrepresentation of EL staffing for many Indiana districts. Appleton (2022b) states that “one-third of districts and two-thirds of charter schools statewide reported not having any licensed English learner teachers” (p. 2). Importantly, the disparity for charter schools is high. Where there is the presence of an EL teacher, many are on emergency permits, which is not an official teaching license, let alone someone with EL specialization. Thus, an identified-EL attending a charter school is much more likely to have no services or services furnished by unqualified personnel.

Many districts continue their efforts to meet this IDOE requirement, but they are doing so during a time of stretched resources and departing faculty. Districts are now concerned with retaining and recruiting general education teachers, due to teachers leaving the profession during the COVID-19 pandemic, potentially reducing emphasis on building their EL staffing and related EL-programming (Cushing-Leubner et al., 2021). Despite these constrained conditions, INTESOL and the IDOE continue to invoke the requirements of *Castañeda v. Pickard*, ensuring that a 1) a program is adequately resourced (licensed staff); 2) employs a researched based model; and 3) is found to be effective. Attending to the first prong of the *Castañeda* is a move

toward adequately and effectively staffing EL programs, yet the next challenge for the EL and bilingual profession is attending to the other two prongs that will more fully build the capacity of Indiana's schools to best serve their growing EL community.

Importantly, the push for requiring EL licensure to satisfy a specific ratio comes alongside the expansion of Indiana's dual language programming (Indiana Department of Education, 2015). Dual language bilingual education is a distinct form of bilingual education that joins together English majority and identified-ELs (Lindholm-Leary & Block, 2010; Lindholm-Leary & Hernandez, 2011; Thomas & Collier, 1997). Presently, there is no such bilingual teacher license available in the state of Indiana, nor that educators within these program models have any specific training and/or licensure. In 2010, prior to the adoption of the dual language pilot in 2015, the bilingual education teacher license was stricken as a professional teaching license as it was seen as duplicative to the EL-teacher license (Morita-Mullaney & Chesnut, 2022; Indiana Office of Educator Licensing, 2010). While the 30:1 ratio looks to licensure in English learning, that can and should be applied to educators teaching within bilingual and/or dual language bilingual education models.

**Call to Universities.** Continue to license teachers in English learning, but also train them in the different program models they can develop and implement, including those that include use of the students' native languages. Bilingual education is an allowable provision within the federal Every Student Succeeds Act (2015) and the state's Indiana's Bilingual-Bicultural Instruction Policy (2005). The role of the native language plays a mitigating role in language development and ensuring that we maintain and develop the multilingualism of our emergent bilingual youth and not resigning ourselves to sole use of English to instruct students.

For educational leadership programs, preparing principals and superintendents, include content on the legal history of ELs, including *Lau v. Nichols* and *Castañeda v. Pickard* and localize the licensure requirements, so administrators can identify the types of program they have and where further development and resources are needed. Presently, there is a lack of content related to ELs within leadership preparation programs, increasing the likelihood that ignorance and ideologies will arbitrate decision making for EL programming (Morita-Mullaney, 2019; Morita-Mullaney & Chesnut, 2022).

**Call to School Districts.** Ask yourself what EL and/or bilingual programs are you employing and what is the best suited model for your current student constituency? EL programs often begin in one way and remain that way, just becoming bigger as the EL student population grows. But the third prong of *Castañeda* of “being effective” needs to be continually reevaluated as your multilingual community changes over time.

**Call to Universities, School Districts and Educators.** Work together on training and preparing educators to not only meet the requirements for the 30:1 ratio, but to build the capacity of your programs and its related staffing to include a wider repertoire of input. Commit to participating in the INTESOL ELL Regional Collaborative so that the varied perspectives of EL students and families are recognized, incorporated and understood. As evidenced by New York and Illinois, advocacy from the outside of schools can provide the invitational mallet to more enduring policy implementation for ELs.

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**Trish Morita-Mullaney** is an Associate Professor at Purdue University. Her research focuses on the influences of educational policy at the federal, state, district, school, and classroom levels and how this informs the practices of educators who work with and among

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To: Indiana Local Education Agencies

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Date: August 9, 2019

Subject: English Learner Program Staffing

The passage of the *Every Student Succeeds Act* (ESSA) in 2015 provided new clarity for state and local education agencies on their responsibilities and requirements for serving English learners (ELs) in public schools, building on the previously-established legal standards for ELs established by Title VI of the Civil Rights Act of 1964, *Lau v. Nichols* (1974), and *Castañeda v. Pickard* (1981). In response to ESSA and its increased spotlight on ELs, the Indiana Department of Education (IDOE) conducted an internal review of its practices to ensure compliance with ESSA, Title VI of Civil Rights Act of 1964, and the Equal Educational Opportunities Act (EEOA) and to fulfill its responsibility to ensure that all LEAs meet their federal requirements to properly identify, assess, and support English learners through an effective English language development program. As part of this review, IDOE releases this memorandum as a renewed commitment to guide and support LEAs in EL program staffing. Properly certified English learner teachers, in sufficient quantity, are a must in order to meet the needs of Indiana’s diverse learners.

In January 2015, the U.S. Departments of Justice and Education jointly released a [Dear Colleague Letter](#) with policy guidance on EL program staffing in compliance with civil rights law. The Dear Colleague Letter emphasized local education agencies’ obligation to provide “the personnel and resources necessary to effectively implement their chosen EL programs” and further clarified, “Where formal qualifications have been established, e.g., the SEA requires authorization or certification to teach in particular EL programs, or a school district generally requires its teachers in other subjects to meet formal requirements, a school district must either hire teachers who already have the necessary formal qualifications to teach EL students or require that teachers already on staff be trained or work towards attaining the necessary formal qualifications and obtain the formal qualifications within a reasonable period of time.” In other words, since Indiana requires formal qualifications for 4th grade teachers, middle school science teachers, high school English teachers, and all other various subjects, it must also ensure that we have properly certified English learner teachers for all English learners, whether a school has one English learner or hundreds.



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According to a 2012 national evaluation of Title III implementation by the U.S. Department of Education, Indiana was one of nine states not requiring EL licensure. While Indiana does have a formal qualification for EL teachers--the English As a New Language (ENL) Professional Educator License--EL teacher licensure has been required variably across Indiana schools and EL programs. Not only would changing this requirement align us with other states, but we would finally be working to attain compliance with civil rights law. Currently Indiana schools staff their EL programs at an average of 83 students to 1 ENL-licensed teacher (83:1). Nearly half of Indiana's local education agencies reported having zero ENL-licensed teachers on staff during the 2018-2019 school year while more than 90% of Indiana LEAs reported having at least one English learner enrolled. Of the 1,259 ENL-licensed teachers working in Indiana LEAs this year, over half of them are concentrated in fifteen LEAs. In light of the recently-clarified legislation and policy guidance from the U.S. Department of Education, IDOE is issuing additional guidance for Indiana schools regarding requirements for EL program staffing.

Every English learner enrolled in an Indiana local education agency is entitled to receive English language instruction via an ENL-certified teacher who acts as the "EL Teacher of Record." While this position may look different across various local contexts, IDOE has defined minimum expected [responsibilities](#) for the EL Teacher of Record to assist local education agencies as they ensure local compliance with federal requirements. It is important to note that recent Office of Civil Rights findings have cited that all English learner students are required to receive English language development services at least 30-45 minutes per day, 4-5 days a week in frequency and duration beyond standard English Language Arts instruction. *Castañeda v. Pickard* (1981) established additional expectations for LEAs as they implement their federally-required English language development programs, clarifying that these programs must be resourced and staffed in a way "reasonably calculated to implement effectively." Where too few ENL-licensed teachers are asked to oversee English language development for an unreasonably large caseload of students, a local education agency fails to meet its federal requirements under *Castañeda*. To comply with this requirement and to ensure EL Teachers of Record are able to effectively carry out their responsibilities, IDOE recommends that the EL Teacher of Record caseload not exceed thirty English learners.

IDOE has an obligation to ensure that all local education agencies comply with the federal civil rights requirements, and will begin implementing the clarified expectations on EL teacher qualifications effective immediately. Local education agencies will submit their plan to ensure every English learner receives English language instruction via an ENL-certified EL Teacher of Record beginning with the 2019-2020 school year as part of the English learner (Lau) Plan. In cases where no ENL-certified teacher is employed by the local education agency or

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where the ENL-certified EL Teacher of Record has an unreasonably large caseload, the LEA will report its plan to comply with the federal requirements to ensure teachers attain ENL licensure within a reasonable period of time--defined by federal guidance as no more than two years.

Because of the wide variance in EL program staffing across the state, IDOE has chosen to honor the experience of EL teachers who have been teaching and leading effectively in EL programs and meet certain additional requirements. Certified teachers who do not currently hold a valid ENL license but meet these additional requirements may either enroll in coursework as part of an approved educator preparation program for the Indiana ENL license or demonstrate their proficiency by fulfilling the requirements of the [EL Teacher of Record Rubric](#) as verified locally by an LEA administrator.

Local education agencies may fund coursework and professional learning for their teachers through Title I, A, Title II, Title III, the Non-English Speaking Program (NESP), or other federal, state, and local funding streams. IDOE will provide additional financial support and technical assistance for Indiana schools as they implement these clarified expectations throughout the 2019-2020 school year and beyond.

#### **Additional Supporting Resources**

The following additional resources can be found on the [IDOE English Learner Policy and Guidance webpage](#):

Meeting Indiana English Learner (EL) Teacher of Record Requirements

EL Teacher of Record Responsibilities

EL Teacher of Record Reporting

EL Teacher of Record FAQ

## Appendix B



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APPENDIX B

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### English Learner Teacher of Record Frequently Asked Questions (FAQs)

Updated July 2022

The following information addresses FAQs regarding the teacher of record (ToR) for English Learners (ELs) within Indiana schools. Please review this accompanying guidance from the Indiana Department of Education (IDOE) to support additional questions:

- [EL Program Staffing Memo \(August 2019\)](#)
- [Meeting EL ToR Requirements](#)
- [EL ToR Responsibilities](#)

The U.S. Department of Justice and U.S. Department of Education's Office for Civil Rights released a [Dear Colleague Letter](#) in 2015 to address the legal responsibilities of schools to ELs under civil rights law. The "Staffing and Supporting EL Programs" section of the letter provides relevant background for Indiana's EL ToR licensing requirements. Review the [IDOE EL Guidebook](#) for additional information on federal EL requirements.

#### General Guidance

Number	Question	Answer
1	<b>How does IDOE monitor local educational agencies (LEAs) for compliance with EL ToR requirements?</b>	<p>IDOE is required to monitor LEAs' compliance with federal EL programming requirements, including the adequate staffing and qualifications of its EL teachers. IDOE annually reviews all LEAs' EL Plans (part of the Title Grants Pre-Application), which detail their core English language development services. This includes information on the number, qualifications, and roles of EL ToRs within LEAs.</p> <p>LEAs chosen for desktop or onsite monitoring for any federal program, including Title I, A, must provide evidence of meeting EL ToR requirements within its provision of an English language development program, as requested. This includes EL ToR qualification documentation, evidence that the ToRs are effectively performing the duties of the <a href="#">EL ToR Responsibilities</a>, and that EL services are being provided in alignment with the LEAs' approved EL Plan.</p> <p>Review IDOE's <a href="#">English Learning and Migrant Education webpage</a> for more information on EL Plans and IDOE's <a href="#">State and Federal Grants and Programs webpage</a> for information on federal program monitoring.</p>
2	<b>The school does not currently have a qualified EL ToR. What actions must be taken to meet compliance?</b>	<p>Changes in Indiana EL teacher licensing requirements were announced in 2019, allowing LEAs sufficient time to address EL staffing needs. LEAs not meeting EL staffing requirements are out of federal compliance, and puts an LEA at jeopardy of losing access to federal Title funding. Efforts must be taken to ensure all EL students</p>





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		<p>in the district have a qualified EL ToR.</p> <p>This may entail identifying a currently-employed, licensed teacher who will serve as the EL ToR. EL ToRs must either have obtained English as a New Language (ENL) licensure or have met the rubric requirements on or before September 1, 2022. If the teacher does not meet either by that date, then the individual must apply for an Emergency Permit for ENL through IDOE and make appropriate progress each year of the Emergency Permit in order to renew it (e.g., two ENL classes or sit for the ENL exam if the required coursework is completed) in order to serve as the EL ToR. See the ENL Licensure section of this FAQ for more information on Emergency Permits.</p> <p>Regardless of how the staffing needs are being addressed, it is important to ensure interim measures are in place to address EL student language needs.</p>
3	<b>My corporation has no ELs. What are my requirements?</b>	<p>LEAs must have a plan to serve future ELs that may enroll in the district via a qualified EL teacher. Per Section 1112 of the Every Student Succeeds Act (ESSA), LEAs must begin providing identified ELs language development services within 30 days of the beginning of the school year or within two weeks if enrolling after that window during the school year. With over 90% of all Indiana LEAs having at least one EL enrolled, a corporation or Choice school with zero active ELs is likely to receive EL students in the future. LEAs with zero ELs currently enrolled must not wait to identify at least one teacher in the district to meet the EL ToR requirements, as the timelines above will not be reasonably met if a plan is not developed until after an EL enrolls.</p>
4	<b>What should corporations/schools do if the EL ToR leaves during the school year?</b>	<p>LEAs must provide evidence that they have taken action to replace the position with a qualified EL ToR within a reasonable period of time. LEAs with small EL populations should always maintain two or more teachers who are qualified to serve as the EL ToR to ensure that services are continued appropriately while replacement staff are hired.</p>
5	<b>Could LEAs with low EL populations share one EL ToR to provide services?</b>	<p>If the EL ToR can meet all the requirements under IDOE's <a href="#">English Learner ToR Responsibilities</a> for all students at both LEAs, then the teacher may serve as the EL ToR at more than one LEA. Two or more LEAs may wish to develop a cooperative agreement to share the costs of providing the EL ToR when the incidence rate in each district is very low, similar to how LEAs share costs related to the provision of special education services. All EL students must still be provided with robust services, so the sharing of costs should not greatly diminish the rate at which services are provided (e.g., at least 30 minutes per day, four to five days a week of English language</p>

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		development for all ELs).
6	<b>Do EL ToR requirements apply to non-public schools?</b>	<p>EL ToR requirements stem from policy and case law pertaining to public education; therefore, the provision of core EL services delivered by qualified EL ToRs is not a requirement. However, non-public schools participating in Choice Scholarship Programs and/or receiving Title III funds do have specific obligations to EL students, including appropriately identifying, reporting, and assessing ELs. Non-public schools that accurately report EL populations to IDOE are also eligible for Title III equitable share and services from the public LEA.</p> <p>All non-public schools should work to effectively meet all students' language needs regardless of accreditation and Title III funding status. Non-public schools are strongly recommended to provide an effective English language development program that involves licensed, qualified EL staff. For more information on EL requirements for non-public schools review this <a href="#">Guidance Regarding Non-public School Participation in Title III and Requirements for English Learners</a>.</p>

### ENL Licensure

Number	Question	Answer
7	<b>What are the requirements to earn ENL licensure in Indiana?</b>	Indiana requires ENL candidates to complete an approved program/ENL coursework and pass the <a href="#">ENL licensure examination</a> to become certified. Coursework requirements vary by university.
8	<b>What universities offer the appropriate coursework to complete ENL licensure?</b>	IDOE's Office of Educator Licensing maintains a list of all <a href="#">approved educator preparation programs</a> in the state, including those offering coursework required to attain the Indiana ENL Professional Educator License.
9	<b>How do corporations/schools without a licensed EL ToR apply for an Emergency Permit?</b>	Emergency Permits can be requested by LEAs in areas where staffing appropriately-licensed educators are experiencing difficulty. The Emergency Permit is a temporary credential issued to a school corporation for a person who is not licensed for that assignment. The applicant must possess a minimum of a bachelor's degree from a regionally-accredited university to be eligible for the permit. The Emergency Permit recipient must commit to working toward completion of an approved program to either add the content area(s) to an existing license or obtain an Initial Practitioner license for the content area(s).

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10	<b>How long is an ENL Emergency Permit valid?</b>	ENL Emergency Permits are valid for one school year. Once issued, future renewals may be approved by the school if the applicant completes the renewal requirements. A school employer may approve an application for the renewal of an Emergency Permit annually as long as the permit recipient can meet renewal requirements by providing proof of continuing progress toward achieving full licensure in the content area(s). Failure to meet renewal requirements may result in denial of the renewal application. For more information on ENL Emergency Permits, visit IDOE's <a href="#">Educator Permits webpage</a> .
11	<b>How can districts/schools fund ENL licensure coursework?</b>	LEAs may be able to use Title IA, IIA, IIIA, IVA, Non-English Speaking Program (NESP), or Elementary and Secondary School Emergency Relief (ESSER) funds to support teachers in completing ENL licensure coursework. While coursework may be federally-funded, note that the time and effort to provide the core English language development services, including the cost of the EL teacher(s) salaries, must still be funded through local or state funding, such as NESP.
12	<b>Are teachers with valid ENL licensure from another state eligible to serve as the EL ToR?</b>	Indiana maintains reciprocity with several other states, in which IDOE honors other states' licensure requirements if they are similar to Indiana's requirements. For more information, visit IDOE's <a href="#">Educator Licensing webpage</a> .

### EL ToRs and Providing EL Services

Number	Question	Answer
13	<b>What are the requirements to serve as an EL Teacher of Service (ToS) if you do not meet EL ToR qualifications?</b>	<p>Qualifications to serve as an EL ToS include:</p> <ul style="list-style-type: none"> <li>• Holding a professional educator's license, and</li> <li>• Having continued participation in ongoing, meaningful, and job-embedded training on English language acquisition and EL best practices, as well as implementing the service delivery model.</li> </ul> <p>The EL ToR may assist in providing training to the ToS. This training does not include WIDA assessment administrator trainings and must extend beyond single workshops or conferences. It must also surpass training on instructional expectations of <i>all</i> teachers of ELs, which includes Individual Learning Plans (ILPs) and WIDA Standards implementation.</p> <p>Although in-service training for classroom EL teachers (e.g., sheltered instruction model) are beneficial in meeting students' needs</p>

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		and fulfills ToS qualifications, this training alone does not compare to the rigor required for full ENL licensure. Substantial evidence is needed to demonstrate training is of sufficient frequency and duration for an EL ToS, as services are not directly delivered by teachers with ENL licensure.
14	<b>What is required for EL services to be delivered by an EL ToS rather than the EL ToR?</b>	<p>This structure would require the following:</p> <ul style="list-style-type: none"> <li>• Oversight of EL services by a qualified EL ToR, as detailed in the <a href="#">EL ToR Responsibilities</a>. This includes meeting at least weekly with the EL ToR to determine instructional needs and plan English language development for the student.</li> <li>• Meet training qualifications requirements cited in the previous question.</li> <li>• Clear implementation of the chosen EL program service delivery model (e.g., sheltered instruction) with fidelity.</li> <li>• Detailing of this structure within the LEA's annual EL Plan.</li> </ul> <p>Documentation of ToS training and qualifications, EL ToR oversight and collaboration with the ToS, and the fidelity and effectiveness of the chosen model must be readily available in instances such as federal programs monitoring.</p>
15	<b>A classroom teacher previously provided English language development via a sheltered instruction model after being properly trained. Is this still a valid model?</b>	Yes. However, this teacher could not serve as the ToR unless the qualifications of ENL licensure or the ToR requirements are met. They are still able to deliver core English language development instruction via a sheltered instruction model as an EL ToS. This can occur so long as they have been adequately trained in EL best practice and the service delivery model, the service delivery model is being implemented with fidelity, and those services are being overseen by a qualified EL ToR.

### EL ToR Rubric

Number	Question	Answer
16	<b>What is the EL ToR Rubric, and how does it differ from full ENL licensure?</b>	The EL ToR Rubric, detailed in the <a href="#">Meeting EL ToR Requirements</a> , was developed as a temporary option for those serving as EL teachers who did not possess ENL licensure to meet EL ToR qualifications. This was a method to honor EL teachers' years of experience without requiring enrollment in a full ENL licensure coursework program. Meeting the rubric includes a coursework requirement as well as evidence of years of service as an EL teacher, and EL professional development professional growth points (PGPs).
17	<b>Can I still meet EL ToR</b>	The EL ToR Rubric requirements must have been met and



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	<b>licensure requirements via the ToR Rubric?</b>	documented by the educator and a supervising administrator on or before September 1, 2022. After this date, no new EL ToR Rubrics will be recognized as meeting EL ToR requirements.
18	<b>After successfully completing the ToR Rubric, how long will it be honored?</b>	After meeting the requirements of the EL ToR Rubric, an educator who maintains a valid Indiana Professional Educator License will remain qualified to act as EL ToR in Indiana. If the EL ToR who has met the rubric transfers to another Indiana school, they must maintain that documentation to be verified by the new administrator.
19	<b>After successfully completing the ToR Rubric, what documentation must be submitted or reported to IDOE?</b>	<p>EL ToR Rubric completion documentation (i.e. rubric cover sheet, administrator letter of recommendation, coursework transcripts, and PGPs) does NOT require submission to IDOE for review and approval. This documentation must be reviewed and verified by an administrator and maintained locally. This documentation must be readily available in the case of federal programs monitoring, or if EL teacher qualifications come under scrutiny.</p> <p>IDOE will require that LEAs submit information on EL teachers' qualifications, including its teachers who have met qualifications via the rubric, in the annual EL Plan.</p>
20	<b>Do years as an EL teacher in another state count toward the EL ToR Rubric?</b>	Yes, years of experience as an EL teacher in another state count toward the "Years of Teaching Experience serving as the EL Teacher" indicator on the EL ToR Rubric.
21	<b>What courses or classes can be taught by a teacher who has met the EL ToR Rubric?</b>	Teachers who have met the requirements of the EL ToR Rubric may act as an EL ToR in kindergarten through grade 12, as would an individual who receives an official Indiana ENL license. Please note that obtaining an ENL license or meeting the ToR Rubric requirements does not automatically make the teacher eligible to teach an academic content area if they do not also possess licensure with that content area. EL ToRs could co-teach, team-teach, or provide resource support to the students in content area classes, but cannot provide primary instruction in academic areas with ENL licensure or a ToR Rubric alone.

Please contact IDOE's [Office of English Learning and Migrant Education](#) with any additional questions.