

Students who are Newcomers

Considerations for Special Education



Introduction

[Newcomers](#) are entitled to school enrollment and equal access to educational programming. This Fact Sheet clarifies the Special Education process as it relates to Newcomers who are Multilingual Learners identified with or suspected of having disabilities.

Administrative Units must evaluate students who are Newcomers without delay if they are suspected of having disabilities. This evaluation must be non-discriminatory.

Should a school wait to evaluate Newcomers?

When there is reason to suspect the child has a disability, AUs should not wait to refer a student who is a Newcomer for a Special Education evaluation. Under Child Find requirements, an Administrative Unit's (AU) obligation to locate, identify, and evaluate Newcomers with disabilities in a timely manner is no different from any other student. Limited English Proficiency (LEP) and time lived in the United States are not reasons to delay an evaluation for Special Education. If the team suspects a child has a disability and may need Special Education, the team should promptly request parental consent for evaluation. ([See the 2015 Dear Colleague Letter p. 25](#))

Can IEP teams evaluate Newcomers entirely in English?

No, not unless it is infeasible to evaluate the child in their native language. Special Education evaluations must be conducted in conformity with [CFR 300.304](#). This means that any student with Limited English Proficiency (LEP) must be evaluated in their native language. It is critical to use the child's native language to provide the most accurate data on what the child knows and can do. AUs should employ the expertise of trained and knowledgeable bilingual professionals to perform bilingual evaluations. If no such professional is available, teams should clearly document the steps they take to ensure the evaluation is sufficiently comprehensive to rule out language and cultural differences. A student must not be found eligible for Special Education services if English Language Proficiency and/or acculturation are found to be the determinative causes for the child's difficulties in school.

How do I know if a student is a Newcomer?

According to the U.S. Department of Education (2023), Newcomers refers to K-12 students born outside the United States who have arrived in the country in the last three years and are still learning English. The term newcomer families refers to the families or guardians of these students. Some Newcomers may arrive in the United States voluntarily (e.g., to reunite with families or to work), while others are forced to leave their home countries due to violence or war (e.g., refugees). U.S. schools are essential civic institutions for welcoming all types of Newcomers to the United States and can be well situated to address and mitigate challenges Newcomers face, such as prejudices and xenophobia that lead to hostility and discrimination. School and district leaders have the important responsibility of countering this negativity by ensuring a safe, inclusive, and welcoming environment for Newcomers.

For more information see the [CLDE Office's information on Newcomers](#).

When a student missed a significant amount of instructional time, can a school still evaluate for Special Education?

This depends on the individual circumstances of the child. [Students with Limited or Interrupted Formal Education](#) (SLIFE) are covered under Child Find. Therefore, if there is suspicion of a disability, the team must proceed with an evaluation. School-based teams must ensure that they gather sufficient information about the student and from the family before making a referral for the Special Education evaluation. Teams should dedicate sufficient time to welcoming, establishing rapport, building trust, and mutual understanding with Newcomer families so that they feel comfortable openly sharing their knowledge, experiences, backgrounds, observations, concerns, and questions with school staff before signing consent for evaluation. These data will ultimately help the Special Education team to rule out or confirm lack of instruction as a determinative cause of the student's difficulties in school.

How should schools support students who are Newcomers if they are struggling to adapt to their new environment socially, emotionally, and/or behaviorally?

Newcomers, like all students, come to school with diverse experiences, stress tolerances, and coping strategies. Teams should not assume that all Newcomers have experienced traumatic events. However, many have and/or will experience significant upheaval in their lives due to moving, leaving the country of origin, learning a new language, and adapting to a foreign culture. Schools can develop a holistic and tiered approach to [trauma-informed practices](#) that have positive outcomes for all students which may include targeted interventions within an MTSS framework. If the team suspects a disability, it should promptly request consent from parents or guardians to conduct an evaluation. Teams must be careful to consider the period of time for which the student has been exposed to trauma ([ECEA 2.08\[3\]\[c\]\[iv\]](#)). Schools should take a trauma-informed approach to welcoming and supporting students within a layered continuum of interventions so as not to exacerbate the impact of immigration and acculturation.



Do schools need to provide translation and interpretation services to Newcomer families?

Yes. Under IDEA, schools must provide specific documents in the native language of the child's parents. These documents include Prior Written Notice (PWN), consent for evaluation, and the IEP. Under [Colorado's state law](#), the IEP team must offer to translate the IEP into the "dominant language spoken in the home" for a student who is a Multilingual Learner. Schools "must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English." [\[§300.322 \(e\)\]](#). [Title VI of the Civil Rights Act](#) prohibits discrimination based on race, gender, and national origin. An entity that receives federal funds must ensure equitable access to educational programming regardless of Limited English Proficiency (LEP).

What should school staff do if they think that some of the students at the school may be undocumented?

Schools may not inquire about an individual or a family's immigration status. If this information is shared with school employees or volunteers, it must be kept confidential and should never be documented or disclosed for any reason. [See Immigrant Dear Colleague Letter](#). Students who are undocumented and those awaiting decisions on their cases in the immigration court system are entitled to the same educational programs that citizens or legal residents are entitled to ([Plyler v. Doe 457 US 202, 1982](#)). Birth certificates and social security numbers are not required for school enrollment. [Q and A](#), [DOJ Fact Sheet](#), and [the 2014 Dear Colleague Letter](#).

Special Education departments should work collaboratively with English Language Development departments to develop coherent policies, procedures, and practices to ensure that all evaluations of Multilingual Learners are non-discriminatory, comprehensive, and timely. Special Education directors should ensure that all IEP team members understand how to secure interpretation services for families with Limited English Proficiency at all IEP-related meetings and how to request finalized IEP document translations. When a student is dually identified, the IEP team must work to ensure that dually identified students receive the specially designed instruction as outlined in the IEP in addition to the English Language Development instruction.

This CDE guidance document is meant for the clarification, is not legally binding, and is not to be confused with legal advice. This guidance reflects CDE's recommendations, but Administrative Units (AUs) may have developed their own policies or procedures that differ from those described herein. Be sure to refer to your local AU's policies and procedures through the Director of Special education. If you are seeking legal advice, please contact your legal counsel.

WHERE CAN I LEARN MORE?

Newcomers

[Welcoming, Registering, and Supporting Newcomer Students: A Toolkit for Educators of Immigrant and Refugee Students in Secondary Schools \(See page 22\)](#)

[Evaluating Foreign Transcripts A-Z Manual New York City Department of Education](#)

Trauma-Informed Schools

[Trauma-Informed Education Strategy Guide - Archived CDE](#)

[Creating, Supporting, and Sustaining Trauma-Informed Schools](#)

Evaluation

[Best Practices in Nondiscriminatory Assessment \(Ortiz 2007\)](#)

[The Center for Applied Linguistics \(CAL\) SOLOM Observation Protocol](#)

[Ethnographic Interview for Culturally and Linguistically Diverse Families TNDofE](#)

[Office of English Language Acquisition Tool Kit \(OELA\)](#)

[Chapter 6: Addressing English Learners with Disabilities](#)

CDE IEP Translation Guidance

[IEP Document Translation: HB 23-1263: Language Access for Families with Limited English Proficiency](#)