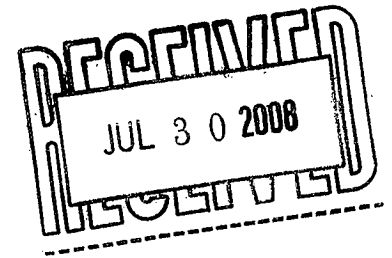




UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUL 28 2008

Leigh M. Manasevit, Esq.
Brustein & Manasevit
3105 South Street, NW
Washington, DC 20007



Dear Mr. Manasevit:

Thank you for your July 22 letter to Assistant Secretary Kerri L. Briggs requesting information regarding the U.S. Department of Education's (Department's) regulations relating to "recently arrived" limited English proficient (LEP) students, set forth at 34 C.F.R. § 200.6(b)(4). In particular, you asked: (1) whether an LEP child entering a U.S. school for the first time qualifies as "recently arrived" even if the child were born in the U.S. and lived in the U.S. for an extended period of time prior to entry into school; and (2) whether an LEP child entering a U.S. school for the first time qualifies as "recently arrived" even if the child were not born in the U.S. but has lived in the U.S. for an extended period of time prior to entry into school. Your letter was referred to my office and I am pleased to respond to these questions.

The regulations you referenced were designed to provide flexibility to States in how they include recently arrived LEP students in their assessment and accountability systems. The regulations define a "recently arrived" LEP student as a "student with limited English proficiency who has attended schools in the United States for less than twelve months." 34 C.F.R. § 200.6(b)(4)(iv). The Department's Non-Regulatory Guidance on Assessment and Accountability for Recently Arrived and Former Limited English Proficient (LEP) Students (Non-Regulatory Guidance, available at: <http://www.ed.gov/policy/elsec/guid/lepguidance.doc>) provides clarity regarding how States and local educational agencies can implement the regulations. The Non-Regulatory Guidance provides the following explanation of who a "recently arrived LEP student" is:

A recently arrived LEP student is defined as a LEP student *who has attended schools in the United States (not including Puerto Rico) for less than 12 months*. The definition of a recently arrived LEP student provides a window – the student's first 12 months attending school in the U.S. – within which time such a student is entitled to a *one-time* exemption from academic content assessments in reading/language arts.

A recently arrived LEP student is not to be confused with a recent arrival to a school, an LEA, or a State. The one-time assessment exemption provided for recently arrived LEP students in these regulations is to be used only for LEP students who have recently arrived *in schools* in the United States, not for those students who have lived in the United States for a number of years *and attended U.S. schools* but who are still limited English proficient.

Non-Regulatory Guidance at 6 (emphasis added).

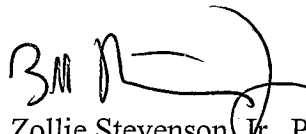
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As the Non-Regulatory Guidance states, recently arrived LEP students are those LEP students who have attended schools in the United States for 12 months or less. It is possible that the definition could include the two examples you raised: an LEP student born either in or outside of the United States but who has resided in the United States for several years. The defining factor is the amount of time the student has attended schools in the United States, not where the student was born or the amount of time the student has resided in the United States. In other words, to be a “recently arrived” LEP student, the student must be in his or her first 12 months of schooling in the United States.

Please note, however, that this definition is only pertinent to determining whether a “recently arrived” LEP student may be exempt from one administration of a State’s reading/language arts assessment and whose scores may be excluded from one cycle of adequate yearly progress determinations. Because NCLB requires that students be annually assessed in each of grades 3 through 8 and once in high school in both reading/language arts and mathematics, practically speaking, the students in the two examples you raised most likely would have attended schools in the United States for 12 months prior to third grade, the first tested grade, so the flexibility provided in the regulations would not apply. However, in rare cases, it may be possible that a student in one of the tested grades would be an LEP student who was either born in the United States or who has lived here for several years but is in his or her first 12 months of schooling in the United States. In such cases, the student could be exempt from one administration of the reading/language arts test.

I hope this answers your question. Please feel free to contact me or Patrick Rooney of my staff with any additional questions.

Sincerely,



Zollie Stevenson, Jr., Ph.D.

Director

Student Achievement and

School Accountability Programs