NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 7 A.A.R. 4784, October 19, 2001

Notice of Supplemental Rulemaking: 9 A.A.R. 506, February 21, 2003

2.

Sections Affected	Rulemaking Action
R7-2-306	Amend

3. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):

Authorizing statute: A.R.S. § 15-203(A)

Implementing statutes: A.R.S. §§ 15-751 through 15-756 and 15-206 through 15-210

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Christy Farley, Executive Director, Arizona State Board of Education

Address: 1535 W. Jefferson
Phoenix, AZ 85007

Telephone: (602) 542-5057

Fax: (602) 542-3046

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The state law governing required services for English language learners ("ELLs") formerly known as "limited English proficient or LEP students," has changed significantly in recent years. In November 2000, Arizona voters approved Proposition 203, which repealed A.R.S. Title 15, Chapter 7, Article 3.1, and replaced it with a new Article 3.1 (codified as A.R.S. §§ 15-751 to 15-755).

In addition, the issuance of a federal court judgment and consent decree in *Flores v. State of Arizona*, United States District Court case no. CIV 92-596 TUC-ACN ("*Flores*"), further changed the legal landscape in this area. The *Flores* consent order imposed a number of duties on the State Board of Education ("Board") and the State Superintendent of Public Instruction ("Superintendent") relating to the identification of and services for ELLs. These supplemental rules are intended to affect the mandates of the *Flores* consent order, as well as House Bill 2010, 2000 (codified as A.R.S. § 15-756).

6. An explanation of the substantial changes that resulted in this supplemental notice:

This is a second Supplemental Rulemaking. The explanations below identify changes to the Supplemental Rulemaking Notice published in the *Arizona Administrative Register* on February 21, 2003.

The Proposed Rules provide a limited definition for "WICP" that lacked specificity. These Supplemental Rules provide a more extensive definition.

The Proposed Rules provide that a student could be determined to be a PHLOTE student based on responses to the home language survey. These Supplemental Rules make two additions to this section: (1) language is added to require the forms to inform parents that the responses to these questions will determine whether their student will be assessed for English language proficiency and (2) an additional option is added stating that PHLOTE status may also be determined based on responses on an enrollment form.

The Proposed Rules provide that PHLOTE students be categorized as ELLs if they scored below the publisher's designated score for English language proficiency or other such score adopted by the Board. These Supplemental Rules clarify that if the Board adopts another score it must be based on the publisher's designated score.

The Proposed Rules eliminate the option to forego an English language proficiency test for a PHLOTE student based on academic achievement demonstrated on the English reading comprehension subtest of the nationally standardized norm-referenced achievement test. These Supplemental Rules reinsert this language and add demonstration of academic achievement based on meeting or exceeding the standards measured by the reading and writing portions of the AIMS test.

The Proposed Rules include the statutory references as guidance for providing daily instruction in English language development in ELL programs. These Supplemental Rules add A.R.S. § 15-753 as applicable to the existing references of A.R.S. §§ 15-751 and 15-752.

The Proposed Rules require ELL programs to provide instruction in subject areas adopted by Board rules. These Supplemental Rules add that this instruction shall be provided daily and shall be comparable in amount, scope and quality to that provided to English proficient students.

The Proposed Rules allow the parent or guardian of an ELL student to request a meeting with the school principal to review the student's progress in achieving proficiency and specified the individuals who must be included in such a meeting. These Supplemental Rules modify the language to require a principal to schedule a meeting if requested and specifies the issues for discussion.

The Proposed Rules require notification to teachers when an ELL student has been reclassified as FEP. These Supplemental Rules eliminate this requirement.

The Proposed Rules require FEP students to be evaluated after reclassification for two years with the same English language proficiency test used for initial assessment of the exited student. These Supplemental Rules change the evaluation tool from the English language proficiency test to an evaluation based on performing satisfactorily in achieving the Arizona Academic Standards adopted by the Board. Performing satisfactorily is further defined in these Supplemental Rules.

The Proposed Rules require the Department to monitor at least 32 schools annually, including at least 10 LEAs that have reported that they do not offer ELL programs in their schools. These Supplemental Rules modify this requirement reflect that these 10 LEAs have reported that they have 25 or fewer ELL students in their schools.

The Proposed Rules require the Department to monitor schools in addition to those specifically listed, "as appropriate, upon receipt of a written complaint…" These Supplemental Rules modify this language to read: "Other LEAs upon receipt of a documented written complaint…"

The Proposed Rules follow the *Flores* consent order language to allow the Board to direct the withholding of funds that an LEA would normally receive for ELLs under A.R.S. § 15-943(1)(b) if an LEA was determined to be in continued noncompliance with state or federal laws applicable to ELL students. This was based on the version of A.R.S. § 15-756 that existed at the time the consent order was signed. This statute was later repealed by Proposition 203 in November of 2000. These Supplemental Rules therefore remove these consequences for continued noncompliance. These Supplemental Rules have been modified to reflect the enforcement mechanisms provided under federal law, 34 CFR 80.43 and Arizona state law, A.R.S. §§ 15-206 through 15-210.

The Proposed Rules eliminate references to "Appendix A," and simply retain the language stating that the tests to be administered shall be the "language proficiency tests approved by the Board." However, the Proposed Rules mistakenly retained the "Appendix A" attachment which should have been eliminated. The Supplemental Rules eliminate "Appendix A."

These Supplemental Rules also contain additional technical and conforming changes.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule will not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

Although the rule imposes various requirements on schools and the Arizona Department of Education ("Department"), those requirements are unlikely to have any economic impact on small businesses and consumers.

The rule will most likely result in increased costs for school in three fiscal areas. First, schools will be required to perform new and additional assessments of certain students to determine their English language proficiency. Second, schools may be required to hire additional or new teachers with appropriate training to teach students enrolled in ELL programs. Third, schools may be required to hire additional staff to track ELL student progress and report that information to the Department. All of these requirements will likely require additional school resources, but the economic impact on each school will of course vary, depending upon the school's available resources and its ELL population.

The rule will also result in increased costs for the Department because the rule requires that the Department monitor school compliance with the rule and with statutes related to ELL education.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christy Farley, Executive Director, Arizona State Board of Education

Address: 1535 W. Jefferson
Phoenix, AZ 85007

Telephone: (602) 542-5057

Fax: (602) 542-3046

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: No proceedings are currently scheduled. Persons may submit written comments, or a written request for an oral proceeding, by contacting the individual listed in item #9.

Time: Through the close of business on November 5, 2003

Location: See item #9

Nature: Only written comments and written requests for oral proceedings will be accepted.

11. Any other matters prescribed by statutes that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section

R7-2-306. ~~Bilingual programs and English as a second language program~~ English language learner programs

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

R7-2-306. ~~Bilingual programs and English as a second language program~~ English language learner programs

A. Definitions. All terms defined in A.R.S. § 15-751 are applicable, with the following additions:

1. "AIMS test" means the Arizona Instrument to Measure Standards test prescribed by A.R.S. § 15-741.
2. "Arizona Academic Standards" means the standards adopted by the State Board of Education pursuant to A.R.S. §§ 15-203, 15-701, and 15-701.01.
3. "Board" means the State Board of Education.
4. "Compensatory instruction" means instruction given in addition to regular classroom instruction, such as individual or small group instruction, extended day classes, summer school or intersession school.
5. "Department" means the Department of Education.
6. "ELL" means English language learner.
7. "FEP" means fluent English language proficient, a student who has met the requirements for exit from an English language learner program.
8. "Federal ELL grant monies" means federal grants or funds awarded to an LEA to educate ELLs or to improve the LEA's capacity to educate ELLs, including but not limited to grants awarded under Title III of the No Child Left Behind Act of 2001, 20 U.S.C. 6301, et. seq.
9. "IEP" means individualized education program, a written statement specifying special education services to be provided to a child with a disability.
10. "LEA" means local education agency, the school district or charter school that provides educational services.
11. "PHLOTE" means primary or home language other than English.
12. "Reassessment for reclassification" means the process of determining whether an English language learner may be reclassified as fluent English proficient (FEP).
13. "Superintendent" means the State Superintendent of Public Instruction.
14. "WICP" means written individualized compensatory plan that documents the scope and type of services provided to an ELL to overcome the identified language and academic deficiencies.

~~**A.**~~**B.** Identification of students to be assessed

1. The primary or home language of all students shall be identified by the students' parent or legal guardian on the ~~upon~~ enrollment form~~s~~ and on the home language survey. These documents shall inform parents that the responses to these questions will determine whether their student will be assessed for English language proficiency.
2. ~~The primary home language of the student shall be considered to be other than English in any of the following cases~~ A student shall be considered as a PHLOTE student if the home language survey or enrollment form indicates that one or more of the following are true:
   a. The primary language ~~most often spoken~~ used in the ~~student's~~ home is a language other than English, regardless of the language spoken by the student.
   b. The language most often spoken by the student is a language other than English.
   c. The student's first acquired language is a language other than English.
3. The English language proficiency of all PHLOTE students shall be assessed as provided in subsection (C).

~~**B.**~~**C.** English language proficiency assessment

1. PHLOTE ~~Students~~ students in kindergarten and first grade ~~whose primary language is other than English~~ shall be administered an oral English language proficiency ~~assessment~~ test approved by the ~~State~~ Board. ~~of Education for the purpose of assessing the comprehension and speaking of English.~~ ~~(Appendix A)~~ Students ~~in kindergarten and first grade~~ who score below the publisher's designated score for fluent English ~~proficient~~ language proficiency, or other such score based on the publisher's designated score that is adopted by the Board, shall be classified as ~~limited English proficient (LEP) students~~ ELLs.
2. PHLOTE ~~Students~~ students in grades 2-12 ~~whose primary language is other than English may be screened prior to the administration of a State Board of Education approved oral language proficiency assessment test. For the purpose of screening, schools shall review the achievement level on the English reading comprehension subtest of the state pupil achievement testing program. Students in grades 2-12 whose primary language is other than English and who score at or below the 40th percentile or for whom no standardized test scores are available shall be administered an oral language proficiency assessment test approved by the State Board of Education.~~ shall be administered the oral, reading and writing English language proficiency tests approved by the Board. Students who score below the publisher's designated score for fluent English ~~proficient~~ proficiency, or such other score based on the publisher's designated score, that is adopted by the Board, shall be classified as ~~limited English proficient~~ ELLs. PHLOTE students in grades 2-12 who have scored at or above the 40th percentile on the English reading comprehension subtest of the nationally standardized norm-referenced achievement test adopted pursuant to A.R.S. § 15-741 or who have met or exceeded the standards on the reading and writing portions of the AIMS test are exempt from taking the oral, reading and writing English language proficiency tests and shall not be classified as ELLs.
3. ~~Upon district staff recommendation or parental request, students in grades 2-12 whose primary language is other than English and who score above the 40th percentile on the reading comprehension subtest of the state pupil achievement testing program shall be administered an oral language proficiency assessment test approved by the State Board of Education. Students who score below the publisher's designated score for fluent English proficient shall be classified as limited English proficient.~~ English language proficiency assessments shall be conducted by individuals who are proficient in English and trained in language proficiency testing to administer and score the tests.
4. ~~Students in grades 2-12 whose primary language is other than English and who score as fluent English proficient on the State Board of Education's approved oral language proficiency assessment test shall be evaluated for achievement in English reading and writing. Students who are determined to be performing below district standards established pursuant to R7-2-301 and R7-2-302 for grade level shall be tentatively classified as limited English proficient and referred for primary language assessment.~~ The LEA shall assess the English language proficiency of all new PHLOTE students as prescribed above within 60 days of the beginning of the school year or within 30 school days of a student's enrollment in school, whichever is later.
5. ~~English language proficiency assessments shall be conducted by individuals who are proficient in English and who have been thoroughly trained to administer and score the test or procedure.~~

~~**C.** Primary language assessment~~

~~1. Students who are classified as limited English proficient shall be administered a primary language assessment in comprehending, speaking, reading, and writing utilizing tests or procedures approved by the State Board of Education. (Appendix B) Students in kindergarten and first grade and students whose primary language is not commonly written, need not be assessed in reading and writing the primary language.~~

~~2. Primary language assessments shall be conducted by individuals who are proficient in the particular language and who have been thoroughly trained to administer and score the test or procedure.~~

~~3. Students in grades 2-12 who were classified as limited English proficient on the basis of reading and writing alone and who demonstrate no language proficiency in a language other that English shall be further reviewed by the district to determine whether the student's low performance in reading and writing is because the student is from an environment in which another language is spoken. If the district finds that the low achievement is language related the student shall continue to be classified as limited English proficient.~~

~~4. Students in grades K-12 who, as a result of the language assessments, are determined to have little or no fluency in either language shall continue to be classified as limited English proficient and shall be referred for further evaluation to complete the assessment.~~

~~**D.** Assessment of students in Special Education or in the Referral Process~~

~~1. Students in special education whose primary language is other than English shall be assessed for limited English proficiency as prescribed in subsections (B) and (C). If the special education director or designee finds the procedures to be inappropriate for a particular student because of the nature of the handicapping condition, the district shall employ alternate procedures for assessing English and primary language skills.~~

~~2. Students in special education shall be classified as limited English proficient as prescribed in subsections (B) and (C). If the special education director or designee finds these standards to be inappropriate for a particular student, he shall determine the impact of the handicapping condition upon the level of language proficiency and shall set the standards for each student accordingly. Persons conducting the language assessments shall participate with the special education director or designee in the determination of the student's language proficiency designation.~~

~~3. Students whose primary language is other than English and who have been referred for special education evaluation shall be assessed for limited English proficiency as prescribed in subsections (B) and (C). If the multidisciplinary conference team finds the procedures to be inappropriate for a particular student because of the nature of the handicapping condition, the district shall employ alternate procedures for assessing English and primary language skills.~~

~~4. Students who have been referred for special education evaluation shall be classified as limited English proficient as prescribed in subsections (B) and (C). If the multidisciplinary conference team finds these standards to be inappropriate for a particular student, the team shall determine the impact of the handicapping condition upon the level of language proficiency and shall set the standards for each student accordingly. Persons conducting the language assessments shall participate with the multidisciplinary conference team in the determination of the student's language proficiency designation.~~

~~**E.** Time to complete assessment~~

~~1. English and primary language assessments shall be completed by December 1, 1984, for all students whose primary language is other than English, and by December 1, annually, thereafter for all newly enrolled students whose primary language is other than English.~~

~~2. Students whose primary language is other than English and who enroll after December 1, shall be assessed within 30 days of enrollment.~~

~~**F.** Program options~~

~~1. All students who have been classified as limited English proficient shall be provided a program as prescribed in A.R.S. § 15-799.03.~~

~~2. Limited English proficient students shall be provided the State Board of Education's course of study pursuant to R7-2-301 and R7-2-302.~~

D. Assessment of students in special education or in the special education referral process

If a multidisciplinary evaluation or IEP team finds the procedures prescribed in subsections (B) and (C) inappropriate for a particular special education student, the LEA shall employ alternate procedures for identifying such students or assessing their English language proficiency. Persons conducting the English language assessment shall participate with the special education multidisciplinary evaluation or IEP team in the determination of the student's English language proficiency designation.

E. Screening and assessment of students in gifted education

ELLs who meet the qualifications for placement in a gifted educational program shall receive programmatic services designed to develop their specific areas of potential and academic ability and may be concurrently enrolled in gifted programs and English language learner programs.

F. English language learner programs

1. All ELLs shall be provided daily instruction in English language development appropriate to their level of English language proficiency and consistent with A.R.S. §§ 15-751, 15-752, and, as applicable, 15-753. The English language instruction shall include listening and speaking skills, reading and writing skills, and cognitive and academic development in English.
2. ELLs shall be provided daily instruction in subject areas required under the minimum course of study adopted by the Board pursuant to R7-2-301 and R7-2-302 that is understandable and appropriate to the level of academic achievement of the ELL and is in conformity with accepted strategies for teaching ELLs. This subsection does not require an LEA to provide daily instruction in every subject area required pursuant to R7-2-301 and R7-2-302 if those subject areas are not provided daily to English proficient students.
3. The curriculum of all English language learner programs shall incorporate the Academic Standards adopted by the Board and shall be comparable in amount, scope and quality to that provided to English language proficient students.
4. ELLs who are not progressing toward achieving proficiency of the Arizona Academic Standards adopted by the Board, as evidenced by the failure to improve scores on the AIMS test or the nationally standardized norm-referenced achievement test adopted pursuant to A.R.S. § 15-741, shall be provided compensatory instruction to assist them in achieving those Arizona Academic Standards. A WICP describing the compensatory instruction provided shall be

kept in the student's academic file.

5. On request of a parent or legal guardian of an ELL the principal of the ELL's school shall require a meeting with the principal or principal's designee, the parent or legal guardian and the classroom teacher to review the student's progress in achieving proficiency in the English language or in making progress toward the Arizona Academic Standards adopted by the Board, to identify any problems, to determine appropriate solutions and to identify the person or persons responsible for implementing the changes and determining their effectiveness.

G. Reassessment for reclassification

1. The purpose of reassessment is to determine if ~~a limited English proficient student~~ an ELL has developed the English language skills necessary to succeed in the English language curricula.
2. ~~A limited English proficient student~~ An ELL may be reassessed for reclassification ~~to fluent English proficient at any time but no less than every two years~~ at any time, but shall be reassessed for reclassification at least once per year.
3. ~~All of the following criteria must be met in order for a student to be reclassified:~~
   a. ~~Teacher evaluation. The teacher must observe the student's oral English proficiency and review the student's performance on the State Board of Education's minimum competency skills in the required subjects to determine the student's readiness to succeed in an English language course of study. The student must be performing at a level consistent with district standards for grade level established pursuant to R7-2-301 and R7-2-302.~~
   b. ~~Parental opinion and consultation. At least one of the student's parents or legal guardians must be contacted by telephone, written communication, or personal interview in the language of the home to inform him/her that the child is being considered for reclassification and to give him/her the opportunity to review student performance data and to provide input into the reclassification decision.~~
   c. ~~Objective assessment of English oral language proficiency. The student must be reassessed with an oral language proficiency assessment test selected by the district from the State Board of Education's approved list. The student must achieve the publisher's designated score for fluent English proficient.~~
   d. ~~Objective assessment of writing skills. The student shall demonstrate writing skills at a level consistent with the district standards for grade level established pursuant to R7-2-301 and R7-2-302. This shall be determined by use of a standardized writing test or by a writing sample.~~
   e. ~~Objective assessment of reading skills. Two options are provided for this standard:~~
      i. ~~The student shall have scored at or above the 36th percentile of national norms on the reading comprehension subtest of the state pupil achievement testing program; or~~
      ii. ~~The student shall have scored in the range of the 31st to the 35th percentile if the criteria in subparagraphs (a) through (d) are met and a decision to reclassify is made by a language assessment team which includes the student's parent, the student's limited English proficiency program teacher pursuant to A.R.S. § 15-799.03, and a school district representative.~~
4. ~~Students who are exempt from the state pupil achievement testing program pursuant to A.R.S. § 15-744(B), need not be administered an English reading and writing test. Such students shall continue to be classified as limited English proficient.~~
5. ~~Review of program sufficiency. When, as a result of each reassessment, a student continues to be classified as limited English proficient, a review of the program services offered must be conducted. The purpose of the program review will be to determine whether the program model and services selected for the student are being provided of the nature and to the extent necessary to afford the limited English proficient student the opportunity to acquire sufficient English language and academic skills to enable the student to meet reclassification criteria.~~
6. ~~Follow-up for reclassified students. For one year following the reclassification of each student, the district shall review achievement levels to ensure that each student has been correctly reclassified. This review must be conducted at least twice during the follow-up year.~~
3. ELLs in kindergarten or first grade shall be reassessed with an alternate version of the oral test of English language proficiency used for initial assessment, unless the same test is no longer published or available when a student is to be reassessed. In such case, the school shall select a test from the Board approved tests for reassessment. Students who score at or above the test publisher's designated score for English language proficiency, or such other score adopted by the Board based on the publisher's designated score, may be reclassified as FEP. LEAs may also consider other indications of a student's overall progress, including teacher evaluation, and subject matter assessments that are aligned with grade level state content and performance standards in deciding whether to reclassify a student who has passed the oral proficiency test.
4. ELLs in grades 2-12 shall be reassessed with an alternate version of the oral, reading and writing English language proficiency tests used for initial assessment, unless the same test is no longer published or available when a student is to be reassessed. In such case the school shall select a test from the Board approved tests for reassessment. Students who score at or above the test publisher's designated score for English language proficiency, or such other score adopted by the Board, in all of the tests shall be reclassified as FEP.
5. LEAs shall notify the parents or legal guardians in writing that their child has been reclassified as FEP when the student meets the criteria for such reclassification.

H. Reassessment ~~for reclassification of limited English proficient students whose language needs are addressed within the context of special education~~ of special education students for English language reclassification

If a multidisciplinary evaluation or IEP team finds the procedures prescribed in subsection (G) inappropriate for a particular special education student, the LEA shall employ alternate procedures for reassessing the student for purposes of English language reclassification. Persons conducting the English language reassessment shall participate with the special education multidisciplinary evaluation or IEP team in the determination of the student's English language proficiency designation.

~~1. Reassessment for language reclassification may be conducted at any time but no less than every two years. This process shall be conducted in conjunction with the review of the individualized education plan (IEP) team.~~

~~2. The purpose of the reassessment is to determine whether the limited English proficient student in special education has developed the English language skills necessary to succeed in English-only instruction.~~

~~3. The reassessment of special education students for reclassification shall be conducted as prescribed in subsection (G). If the individualized education plan team finds the procedures to be inappropriate for a particular student because of the nature of the handicapping condition, the district shall employ alternate procedures for reassessment.~~

~~4. Special education students shall be reclassified to fluent English proficient as prescribed in subsection (G). If the individualized education plan team finds these standards to be inappropriate for a particular student, the team shall determine the impact of the handicapping condition upon the level of language proficiency and shall set the standards for each student accordingly. Persons conducting the language assessments shall participate with the individualized education plan team in the determination of the student's language proficiency designation.~~

I. Evaluation of FEP students after exit from ELL programs

1. The LEA shall monitor exited students based on the criteria provided in this Section during each of the two years after being reclassified as FEP to determine whether these students are performing satisfactorily in achieving the Arizona Academic Standards adopted by the Board. Such students will be monitored in reading, writing and mathematics skills and mastery of academic content areas, including science and social studies. The criteria shall be grade-appropriate and uniform throughout the LEA, and upon request, is subject to Board review. Students who are not making satisfactory progress shall, with parent consent, be provided compensatory instruction or shall be re-enrolled in an ELL program. A WICP describing the compensatory instruction provided shall be maintained in the students' ELL files.
2. The LEA shall use AIMS test scores to determine progress toward achieving the Arizona Academic Standards in monitoring FEP students after exit from an ELL program unless no score is available. Performing satisfactorily will be measured by whether a student meets or exceeds the state standards in reading, writing and mathematics as measured by AIMS.
3. If an AIMS test score is not available because the test is not administered in the students' grade or to assess progress in academic subjects not assessed by AIMS, the LEA shall use one or more of the following criteria in its evaluation to determine progress toward achieving the Arizona Academic Standards in monitoring FEP students after exit from an ELL program:
   a. LEA-developed criterion-referenced tests of academic achievement that demonstrate alignment to the Arizona Academic Standards; or
   b. standardized tests measuring academic achievement that demonstrate alignment to the Arizona Academic Standards; or
   c. nationally norm-referenced test scores; or
   d. teacher recommendations based on classroom assessments that demonstrate alignment to the Arizona Academic Standards.

J. Monitoring of ELL programs

1. Each year the Department shall monitor at least 32 LEAs, as follows:
   a. At least 12 of the 50 LEAs with the highest ELL enrollment;
   b. At least 10 LEAs with ELLs that are not included in the 50 described above;
   c. At least 10 LEAs that have reported that they have 25 or fewer ELL students in their schools; and
   d. Other LEAs upon receipt of a documented written complaint from any Arizona resident, the U.S. Department of Education, or the U.S. Office for Civil Rights, alleging that the LEA is not complying with state or federal law regarding ELLs.
2. All of the 50 LEAs in subsection (1)(a) shall be monitored by the Department at least once every four years.
3. The monitoring shall be on-site monitoring and shall include classroom observations, curriculum reviews, faculty interviews, student records reviews, and review of ELL programs. The Department may use personnel from other schools to assist in the monitoring.
4. The Department shall issue a report on the results of its monitoring within 45 days after completing the monitoring. If the Department determines that an LEA is not complying with state or federal laws applicable to ELL students, the LEA shall prepare and submit to the Department, within 60 days of the Department's determination, a corrective action plan that sets forth steps that the LEA will take to correct the deficiencies noted in the report.

5. The Department shall review and return such corrective action plan to the LEA within 30 days, noting any required changes. No later than 30 days after receiving its corrective action plan back from the Department, the LEA shall begin implementing the measures set forth in the plan, including any revisions required by the Department.
6. The Department shall conduct a follow-up evaluation of the LEA within one year after returning the corrective action plan to the LEA.
7. If the Department finds continued non-compliance during the follow-up evaluation, the LEA shall be referred to the Board for a determination of non-compliance. If the Board determines the LEA to be out of compliance with state or federal laws applicable to ELL students, it may take one or more of the following actions:
   a. Temporarily withhold cash payments of federal ELL grant monies;
   b. Disallow (that is deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
   c. Wholly or partly suspend or terminate the current award of federal ELL grant monies;
   d. Withhold further awards of federal ELL grant monies for the program.
8. The Department shall monitor all LEAs that the Board has determined to be non-compliant and which have had federal ELL grant monies withheld or terminated to ensure that such LEAs do not reduce the amount of funds spent on their ELL programs as the result of its loss of funds.

~~**Appendix A**~~

~~**English Language Assessment Tests and Procedures**~~

~~**A.** Oral Language Proficiency Assessment~~

~~1. The following tests are approved for oral language assessment in English:~~

~~a. Bilingual Syntax Measure I (BSM I) K-2~~

~~b. Bilingual Syntax Measure II (BSM II) 3-12~~

~~Publisher: The Psychological Corporation~~

~~c. IDEA Oral Language Proficiency Test I (IPT I) K-6~~

~~d. IDEA Oral Language Proficiency Test II (IPT II) 7-12~~

~~Publisher: Ballard and Tighe, Inc.~~

~~e. Language Assessment Scales I (LAS I) -- Forms A and B, K-5~~

~~f. Language Assessment Scales (LAS II) -- Forms A and B, 6-12~~

~~g. Language Assessment Scales I (LAS I) Short Form, K-5~~

~~h. Language Assessment Scales II (LAS II) Short Form, 6-12~~

~~Publisher: Linguametrics Group~~

~~2. Districts may request authorization on an annual basis to utilize a test not listed above. The request shall be submitted to the Department of Education by April 1 and shall include a copy of the test and the technical manual for the test. The Department of Education shall review and approve/disapprove such requests by June 1 annually, based upon the technical adequacy of the test in the areas of norming, reliability, validity, and administration.~~

~~3. Districts which conducted oral language proficiency assessment prior to August, 1984 may continue to utilize the current tests for the 1984-1985 school year if the tests provide for the individual assessment of comprehension and speaking.~~

~~**B.** Reading and Writing Assessments~~

~~1. Districts shall utilize the reading comprehension subtest of the state pupil achievement test or district procedures established pursuant to R7-2-301 and R7-2-302 to assess proficiency in reading English.~~

~~2. Districts shall utilize procedures established pursuant to R7-2-301 and R7-2-302 to assess proficiency in writing English.~~

~~**Appendix B**~~

~~**Primary Language Assessment Tests and Procedures**~~

~~**A.** Districts shall utilize formal tests to the extent such tests are available in the particular language for assessing comprehension, speaking, reading, and writing. Districts may refer to a list of such tests maintained by the Department of Education.~~

~~**B.** The parallel versions of the tests listed under Appendix A, (A)(1) shall be used for oral language proficiency assessment in the native language, if available.~~

~~**C.** In the event no test is available in a particular language, a structured interview and academic evaluation shall be conducted by personnel with proficiency in the particular language. Districts may refer to the Directory of Bilingual Resource Persons maintained by the Department of Education to identify such individuals.~~