1. Can students be referred and/or evaluated for special education services while receiving bilingual/ESL services?

Yes, neither federal nor state regulations prohibit a student who is receiving ESL services from being evaluated. According to New Jersey Administrative Code (N.J.A.C.) 6A:14-3.4(f), "SEAs and school districts must ensure that all ELLs who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. School districts must not identify or determine that ELLs are students with disabilities because of their limited English language proficiency.

2. Can students receiving special education services receive bilingual/ESL services?

Yes, a student who is determined eligible for special education and related services or eligible for speech-language services can continue to receive bilingual/ESL services. Districts should consider embedding special education services in the existing bilingual/ESL classes in order to provide the services in the general education setting.

School districts must provide ELLs with disabilities with both the language assistance and disability-related services6 to which they are entitled under Federal law. Districts must also inform a parent of an EL student with an individualized education program (IEP) how the language instruction education program meets the objectives of the child’s IEP.

4. Can bilingual/ESL students receive speech-language services?

Yes

4. What should a school district do if they can't find a bilingual child study team member to complete a child study team evaluation?
N.J.A.C. 6A:14-3.4(f)1 requires that evaluations be conducted in the language or form most likely to yield accurate information. Therefore, a school district must make extensive efforts to locate a bilingual child study team member. The school district may contract for services from another school district or an approved clinic or agency. A list of bilingual child study team professionals is available on the following website: bilingual child study team list. Additional resources that should be considered by the school district include the recruitment of bilingual paraprofessionals and the use of bilingual community professionals and bilingual professionals in the district. In all instances, the school district must train personnel in the assessment process and the role of interpreters at meetings.

5. **If an ELL is referred for special education, how should the parent be notified?**

**Before a Meeting:**
Parental involvement through the referral and evaluation process is important and districts should make every effort to ensure parental participation at meetings.

**After a Meeting:**
Written notice must be provided to the parents within 15 days following a meeting of the IEP team (N.J.A.C. 6A:14-2.3(h). According to N.J.A.C. 6A:14-2.4:

a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly not feasible to do so.

   1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent.

b) If the native language is not a written language, the district board of education shall take steps to ensure that:

   1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
   2. That the parent understands the content of the notice; and
   3. There is written documentation that the requirements of (b)1 and 2 above have been met.

6. **How should special education eligibility be determined for English language learners?**

First, the child’s dominant language must be determined. While the NJDOE does not
mandate or endorse any particular assessment, examples include the Brigance Screening, Language Assessment Scale, IDEA Proficiency Test, Bilingual Verbal Abilities Test, or Woodcock-Munoz Test. For additional resources you may consult the Center for Applied Linguistics Foreign Language Assessment Directory.

Once the dominant language is determined, evaluations should be conducted in accordance with N.J.A.C. 6A:3.4(f). If it is determined that the native language is dominant, then testing should be in the native language. If tests are unavailable in student's native language, then use informal assessment measures (language sample, oral story retelling).

Additionally, according to N.J.A.C. 6A:15-1.4(g), "...additional programs and services shall be designed to meet the special needs of eligible ELLs and include, but are not limited to, remedial instruction through Title 1 programs; special education; school-to-work programs; computer training and talented education services."

7. If an English language learner is determined eligible for special education services, what should the child study team consider when developing the individualized education program (IEP)?

N.J.A.C. 6A:14-3.7(c)6 requires that when developing an IEP for an ELL, the IEP team consider the language needs of the student as related to the IEP. The IEP team shall determine the language needs of the student and the student’s language abilities in listening, speaking, reading, and writing based on a state-approved language proficiency test.

8. What are some other areas to consider when providing instruction to an ELL who is either classified or referred for an evaluation?

- Consider including bilingual or ESL professionals as part of the IEP team and solicit their input when considering the language needs of ELLs.
- Contact your district's parent advisory group to better understand the needs of parents of ELLs who are receiving special education services.

- Once a school district determines that an ELL is a child with a disability under the IDEA and needs special education and related services, the school district is responsible for determining, through the development of an IEP at a meeting of the IEP Team (which includes the child’s parents and school officials), the special education and related services necessary to make FAPE available to the child. As part of this process, the IDEA requires that the IEP team consider, among other special factors, the language needs of the ELL as those needs relate to the child’s IEP.
9. **Should IEP Teams for ELLs with disabilities include persons with expertise in second language acquisition?**

Yes. It is important that IEP Teams for ELLs with disabilities include persons with expertise in second language acquisition and other professionals, such as speech-language pathologists, who understand how to differentiate between limited English proficiency and a disability. The participation of these individuals on the IEP Team is essential in order to develop appropriate academic and functional goals for the child and provide specially designed instruction and the necessary related services to meet these goals.

The *IDEA* regulations at 34 CFR §300.321(a) specify that the participants on each child's IEP Team include:

1. The parents of the child;
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who –
   - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
   - Is knowledgeable about the general education curriculum; and
   - Is knowledgeable about the availability of resources of the public agency.
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
7. Whenever appropriate, the child with a disability.

It is important that IEP Teams for ELLs with disabilities include a public agency representative, as described previously, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of ELLs with disabilities. This representative should be knowledgeable about the availability of agency resources needed to enable ELLs with disabilities to meaningfully access the general education curriculum. This will ensure that the services included in the ELL student's IEP are appropriate for the student and can actually be provided.
Under the IDEA, the IEP Team must consider a number of special factors in developing, reviewing, or revising a child's IEP. Under 34 CFR §300.324(a)(2)(ii), the IEP Team must "[i]n the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP." Therefore, to implement this requirement, the IEP Team should include participants who have the requisite expertise about the student's language needs.

An IEP Team that includes appropriate members should be able to make thoughtful decisions about the content of an ELL's IEP, including the manner in which the student participates in the annual State ELP assessment. In addition, States and districts are encouraged to provide other IEP Team members with appropriate training in language acquisition and the unique needs of ELLs with disabilities.

The IEP team should consist of appropriate members who should be able to make thoughtful decisions about the content of an ELL's IEP. Although bilingual and ESL teachers are not required members of the IEP Team, in order to effectively consider the needs of a student with limited English proficiency, the district should consider including them as members of the team and/or solicit input into the student's IEP.

It is important to note, in accordance with N.J.A.C. 6A:14-2.4, foreign language interpreters shall be provided, when necessary.

In order effectively include parents on the IEP team, team members should be trained in working with linguistically and culturally diverse parents.

10. When and how can an ELL with a disability be exited from ELL status?

An ELL with a disability can be "exited" from ELL status when he/she no longer meets the definition of an ELL. This occurs when the student meets the State's definition of "proficient" in English. The district, school personnel, and the IEP Team may have input into the decision of whether a student is proficient in English in accordance with the district's multiple measures ELL exit policy.

However, there is no provision in the IDEA that would authorize the IEP Team to remove the ELL designation before the student has attained English proficiency. In addition, other districts and/or school personnel do not have the authority under Federal law to remove a student's ELL designation solely because the student has an IEP.

11. What do school districts need to provide when evaluating ELLs for special education services and providing special education and English language assistance services?
School districts must ensure ELLs who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and related services as required by federal and state regulations. When conducting such evaluations, school districts must consider the English language proficiency of ELLs in determining the appropriate assessments and other evaluation materials to be used. School districts must provide ELLs with disabilities with both the language assistance and special education and related services to which they are entitled. (20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300 (IDEA, Part B and its implementing regulations); 29 U.S.C. § 794 and 34 C.F.R. pt. 104 (Section 504 and its implementing regulations).

As with evaluations under the IDEA, Section 504 evaluations of EL students must measure whether an ELL has a disability and not reflect the student’s lack of proficiency in English. When administering written or oral evaluations to determine whether an ELL has a disability under Section 504, school districts must administer those evaluations in an appropriate language to avoid misclassification. This is true even for those ELLs whose parents have opted their children out of bilingual/ESL programs. Prior to evaluating an ELL, school districts should, to the extent practicable, gather appropriate information about the student’s previous educational background, including any previous language-based interventions.