


**U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons**



**PROGRAM STATEMENT  
English as a Second Language (ESL) Program**

Approved by	 William K. Marshall III Director, Federal Bureau of Prisons
DPI	RSD
Number	5351.01
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**Summary of Changes**

<i>Program Statement Rescinded:</i> <ul style="list-style-type: none"><li>5350.24 English-as-a-Second-Language Program (ESL) (7/24/1997)</li></ul>
<i>Changes:</i> <ul style="list-style-type: none"><li>Changes Program Statement title from “English-as-a-Second-Language Program (ESL)” to “English as a Second Language (ESL) Program.”</li><li>Replaces Comprehensive Adult Student Assessment Systems (CASAS) as the sole source for ESL tests with an Education Services Branch approved list of tests.</li><li>Adds language to clarify direct policy exceptions.</li><li>Updates minimum ESL program hours.</li><li>Adds references regarding the First Step Act (FSA) of 2018.</li><li>Removes cash incentives and refers to the Program Statement <b>First Step Act Assessments, Programming, and Incentives</b> for related guidance.</li><li>Removes specific references to a Bureau inmate management system and related codes. Education staff must now refer to the Education Services Branch page of the Bureau’s intranet site for guidance regarding this system and required education codes.</li></ul>

1. **§ 544.40 Purpose and scope.**

Pursuant to the Crime Control Act of 1990 (18 U.S.C. 3624(f)), limited English proficient inmates confined in Federal Bureau of Prisons institutions are required to attend an English-as-a-Second Language (ESL) program until they function at the equivalence of the eighth grade level in competency skills. Waivers to this requirement may be granted by the Warden in accordance with §§ 544.41 and 544.42.

This program statement applies to inmates identified as having Limited English Proficiency

(LEP) skills as defined in Section 3 of this program statement.

The Crime Control Act of 1990, codified in 18 U.S.C. § 3624(f)(4) and (5), states, “Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test. The Warden of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.”

Except as provided in Section 3 of this program statement, each inmate identified as having LEP skills is required to complete one mandatory period of English as a Second Language (ESL) program participation during their confinement. The mandatory period ends when the inmate has achieved the eighth-grade English proficiency level on the ESB approved educational assessment as determined by the test publisher’s scoring and competency measurements.

a. **Program Objectives.**

- Identify inmates who have LEP skills.
- Ensure inmates who have LEP skills have the opportunity to achieve English proficiency.

b. **Institution Supplement.** None.

## 2. AGENCY RESPONSIBILITIES

The following Bureau components are responsible for establishing, maintaining, and providing resources to ESL programs to ensure inmates have the opportunity to achieve English proficiency.

a. **Education Services Branch (ESB).** The ESB is the agency’s primary source for all literacy programs and services including instructional practices, approving assessments, and management of the ESL program. The ESB will develop education policies and procedures and provide professional development to all Bureau Education staff including the training of ESL Examiners. The ESB monitors and reports program performance and outcomes to internal and external stakeholders.

b. **Regional Office.** Regional Education Administrators (REA) will support the ESB by providing guidance, updates, resources, and professional development to Education staff within their regions. REAs will ensure institutions in their regions adhere to education policies and procedures and provide reports and updates to the ESB.

c. **Institutions.** Wardens will ensure the Education Department is appropriately staffed to provide ESL programs and ensure inmates have access to programs and services.

The Supervisor of Education (SOE) will provide support, guidance, updates, resources, and professional development for Education staff. The SOE will serve as the ESL Chief Examiner and will designate at least one Education Department staff member as an ESL Examiner. Examiners are authorized by the ESB Test Administrator(s) to administer educational tests. Examiners responsibilities include managing the administration of various educational tests, managing testing sessions, ensuring compliance with testing standards and procedures, recommending examiners, reviewing test results, resolving any issues related to test administration, and conducting monthly inventories of certification tests. They are also responsible for developing a plan outlining the test procedures and security measures as required by the test publisher and ESB. Overall, the Chief Examiner maintains the integrity and effectiveness of the educational testing program.

The classroom teacher serves as a general education teacher and will monitor and evaluate inmate performance and progress in preparation for the program certification test. Classroom teachers may administer ESL placement and achievement tests but may not administer certification level tests.

### 3. § 544.41 Applicability: Who must attend the ESL program.

(a) All Federal prisoners who have limited English proficiency skills shall attend an ESL program except:

(1) Pretrial inmates;

Institutions will refer to the Program Statement **Pretrial Inmates** for guidance regarding pretrial inmate participation and access to education programs.

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

Sentenced deportable aliens are not mandated to participate in the ESL program if they are assigned a Public Safety Factor “H” status of “Alien” or are under a final order of deportation, exclusion or removal legally enforceable by the Bureau of Immigration and Customs Enforcement (ICE). See the Program Statement **Inmate Security Designation and Custody Classification** for more information about Public Safety Factor “H” status of “Alien.”

The above exceptions in Section 3 of this program statement and in § 544.41(a)(1), for pretrial inmates, (2) for inmates committed for study and observation, and (3) sentenced deportable aliens are “direct policy exceptions” and no other approval authority is required.

(4) Other inmates whom, for documented good cause, the Warden may excuse from

attending the ESL program.

The Warden may excuse other inmates for documented good cause. Good cause excuses will be limited to reasons which are deemed by the Warden to be outside of the inmate's control, or which affect the orderly running of the institution.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ESL program.

Except for direct policy exceptions, the Warden will not delegate ESL program exception authority below the Associate Warden level. The exception justification will be documented in the applicable Bureau inmate management system in accordance with the guidance provided on the ESB page of the Bureau's intranet site.

Inmates not required to enroll in the mandatory ESL program may participate if they choose to and with the SOE's approval. If classroom space and resources are limited, priority enrollment will be given to mandatory inmates.

#### 4. **ESL PROGRAM PLACEMENT, ACHIEVEMENT, AND CERTIFICATION TESTS**

Institutions must refer to the Program Statement **Minimum Standards for Administration, Interpretation, and Use of Education Tests** for testing requirements.

#### 5. **§ 544.42 Procedures.**

(a) The Warden at each federal institution shall ensure that inmates who at their initial classification are found to be limited English proficient are enrolled in the ESL program. Determination of limited English proficiency is made by staff on the basis of personal interviews and placement testing.

LEP inmates will be referred to the Education department for placement testing if use of a translator/interpreter is noted in the Presentence Investigation Report and/or inability to read and understand information presents at initial classification.

An inmate's ability to understand and read English during the initial Education interview will determine whether to administer the approved Bureau ESL placement test.

Bilingual inmates who speak the English language, but who are illiterate in their native language and in the English language will be placed in the mandatory literacy program.

(b) An inmate who returns to the Federal Bureau of Prisons on a new sentence or as a parole violator, and who has not achieved or is unable to demonstrate verified achievement of the eighth

grade level, must provide verification or enroll in the ESL program until that inmate achieves such a grade or is granted a waiver for cause.

Achievement of the eighth-grade level is measured by using the approved Bureau ESL certification test.

(c) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ESL program. The ESL coordinator or designee shall meet with the inmate for the purpose of enrolling the inmate in the ESL program. The ESL coordinator shall be responsible for the completion of the official ESL Program Record, and shall place it in the inmate's education file.

The SOE will delegate an ESL Coordinator. The ESL coordinator or classroom teacher will administer and record the initial placement and achievement test scores as well as the dates of participation in the ESL program in the Bureau's inmate management system in accordance with the guidance provided on the ESB page of the Bureau's intranet site. An approved ESL Examiner will administer the ESL certification test. The ESL Coordinator and/or classroom teacher will enter certification scores and if appropriate, update the inmate's status in the program to complete, as well as enter any other applicable education data information in the Bureau inmate management system.

Suspicion or confirmed compromise of any ESL certification test will be reported immediately to the REA and ESB.

(d) Ordinarily, there will be no time limit for completion of the ESL mandatory program. However, after 240 instructional hours of continuous enrollment in an ESL program, excluding sick time, furloughs, and other excused absences from scheduled classes, the Warden shall have the authority to grant a waiver from further program participation. This waiver may be granted when it is determined that the inmate will not benefit from further instruction. Each exemption determination shall be made on an individual basis and shall be supported by documentation.

The authority to waive inmates from further participation in the ESL program will not be delegated below the Associate Warden level. A waiver under this section refers to inmates continuously enrolled in the ESL program for at least 240 hours as opposed to those who may be excepted or excused from mandatory enrollment under Section 3 of this program statement. However, an inmate who meets the requirements of an exception or is excused from mandatory enrollment under Section 3 does not require a waiver under this section to voluntarily withdraw from the program. Requests for exemptions will be directed to the Warden or designee after recommendation from the ESL teacher and SOE approval.

Documentation supporting a waiver will consist of attendance records, classroom observation notes, individual progress tracking, and test scores or a documented disability preventing the inmate from achieving a passing score on an approved test. A waiver will be granted only after

all efforts have been made to achieve program completion.

The SOE or designee will document in the Bureau inmate management system the specific reasons for not requiring the inmate to enroll or continue in the ESL program.

Inmates may need to be placed in the ESL program in lieu of the literacy program for instructional, programming, or administrative reasons. Likewise, participation in the mandatory ESL program may be postponed while the inmate is enrolled in the mandatory literacy program at the SOE's discretion.

## 6. PROGRAM ACHIEVEMENT AWARDS

### § 544.43 Incentives.

The Warden or designee shall establish a system of incentives to encourage an inmate to meet the mandatory ESL program requirements.

Each institution will refer to the Program Statement **First Step Act Assessments, Programming, and Incentives** for guidance regarding monetary incentives for inmates participating in and completing the ESL program. Non-monetary incentives may also be offered including pencils, pens, journals, and "Student of the Month" or "Perfect Attendance" awards, in an effort to encourage continued participation in the ESL program.

## 7. PROGRAM VIOLATIONS

### §544.44. Disciplinary action.

As with any other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate when that inmate refuses to enroll and participate in, or to meet the minimum requirements of the mandatory ESL program.

If a mandatory (non-exempt, non-excused, non-waived) inmate refuses to enroll, participate in, or to meet the minimum requirements of the mandatory ESL program, the inmate will be charged with Prohibited Act 306, Refusing to Work or Accept a Program Assignment, as well as any other appropriate prohibited act. Prohibited Act 306, Refusing to Work or Accept a Program Assignment, includes refusing to participate in the placement, achievement, and certification tests as described in Section 4 of this program statement. Incident reports must be written in accordance with the Program Statement **Inmate Discipline Program**.

Inmates sanctioned as above while participating in the ESL program in lieu of the literacy program will be deemed to be making unsatisfactory progress in the literacy program and may be subject to the provisions under the Violent Crime Control and Law Enforcement Act (VCCLEA)

of 1994, the Prison Litigation Reform Act (PLRA) of 1995, or other applicable laws such as the First Step Act (FSA) of 2018. Refer to Program Statements **Literacy Program** and **First Step Act of 2018 - Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)** for information on the potential impact of this unsatisfactory program status.

## 8. ESL CLASS SCHEDULE

ESL classes will be scheduled Monday through Friday. Students enrolled in the ESL program must be scheduled for class each weekday. Each ESL class session will meet a minimum of 90 minutes per day. When possible, the ESL program should operate during daytime hours; however, if the Warden determines a daytime ESL program would adversely affect other institution programs (e.g., work assignments), it can be offered in the evening in accordance with the Program Statement **Education, Training and Leisure Time Program Standards**.

To support ESL program fidelity and encourage direct classroom instruction, it is recommended instructional staff do not provide weekend coverage or work compressed schedules.

## 9. TRANSFERS

An inmate who transfers to another institution prior to completing the mandatory ESL program is expected to complete the program at the new institution. The sending institution will ensure all test scores, current diagnostic test results, class attendance time, and related data are recorded in the applicable Bureau inmate management system.

## 10. PROGRAM MONITORING REQUIREMENTS

Education staff will refer to the ESB page of the Bureau's intranet site for guidance regarding program monitoring requirements and the appropriate education transaction codes utilized for documentation in the applicable Bureau inmate management system.

## REFERENCES

### *Program Statements*

Education, Training, and Leisure Time Program Standards  
First Step Act Assessments, Programming, and Incentives  
First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)  
Inmate Discipline Program  
Inmate Security Designation and Custody Classification  
Management of Inmates With Disabilities  
Minimum Standards for Administration, Interpretation, and Use of Education Tests  
Pretrial Inmates  
Unit Management and Inmate Program Review

### *Federal Statutes*

18 U.S.C. § 3624(f) (Comprehensive Crime Control Act of 1990)

### *Federal Regulations*

28 CFR 544.40-44  
28 CFR 523.20-44

### *ACA Standards*

Performance-Based Standards and Expected Practices for Adult Correctional Institutions (5th Edition): 5-ACI-3C-03, 5-ACI-3D-04, 5-ACI-4B-27, 5-ACI-5E-02, 5-ACI-5E-03, 5-ACI-7A-01, 5-ACI-7A-02, 5-ACI-7B-01, 5-ACI-7B-09, 5-ACI-7B-10.

Performance-Based Standards and Expected Practices for Adult Local Detention Facilities (5th Edition): 5 -ALDF-2A-25, 5-ALDF-2A-26, 5-ALDF-5A-09, 5-ALDF-5C-06

Standards for the Administration of Correctional Agencies, 2nd Edition: 2-CO-5B-01

### *Records Retention Requirements*

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on the Bureau's intranet site.