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# Indigenous Students and English Learner Identification: A Fifty-State Policy Review

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## Abstract

English learner (EL) education is widely conceived as services for immigrant-origin students, however nearly one in ten American Indian, Alaska Native, and Native Hawaiian students are classified in school as ELs. Title III of the Every Student Succeeds Act (2015) defines EL eligibility differently for Indigenous, compared to non-Indigenous, students with implications for who is identified as an EL and how best to serve their academic and linguistic interests. This study presents findings from a 50-state review of Indigenous EL identification policy. We find that states fall into four categories ranging from no differentiation in Indigenous EL identification to clear differentiation. We describe each of these four categories and conclude with reflections on how this wide variation in state policies has implications for Indigenous students' educational resources and experiences.



**Keywords:** State education policy, Indigenous students, English learner education

While English learner (EL) education is widely considered to be a set of rights and services for immigrant-origin multilingual students, nearly one in ten American Indian and Alaska Native students is classified in school as an EL, and Indigenous students (referring in this paper to American Indian, Alaska Native, and Native Hawaiian students)[1] make up 10% or more of state EL populations in six states (Office of English Language Acquisition [OELA], 2016; 2020). Yet very little is known about Indigenous EL-classified students, nor the policies or services that support their identification and schooling experiences (Carjuzaa & Ruff, 2016). In particular, the current reauthorization of the federal Elementary and Secondary Education Act (ESEA), the Every Student Succeeds Act (ESSA) of 2015, includes a definition for EL students that is differentiated for Indigenous students. While non-Indigenous students must have a home or primary language other than English (or be born outside the United States) in order to be identified as an EL, Indigenous students must "come from an environment where a language other than English has had a significant impact on the student's English language development" (ESSA, 2015, 20 U.S.C. §8101 (20)). This seemingly nuanced difference has important implications for Indigenous EL identification because the vast majority of Indigenous students do not speak a language other than English at home (Siebens & Julian, 2011), but many have exposure to their heritage language through their larger communities and with other Tribal members, and many speak non-standard English varieties that have grammatical markers of their heritage languages (Leap, 2012).

An open question is how states, as the primary governmental level responsible for public schooling (Mitra, 2018), including EL policy (Callahan et al., 2020), interpret and enact federal EL identification law in state policy. Do states differentiate EL identification for Indigenous students, as laid out in ESSA, and if so, how? This is the central question addressed in this study,

which contributes to a small but growing body of work on Indigenous EL education (Carjuzaa & Ruff, 2016; Combs & Nicholas, 2012; Smallwood et al., 2009; WIDA, 2014). To answer this question, we conducted a 50-state review of EL identification policies (Bailey & Kelly, 2013).

In what follows we provide an overview of the EL policy context, including the differentiated definition for Indigenous students in federal law, as well as a description of typical EL identification policies. Further, we contextualize the differentiated definition for Indigenous EL identification in the larger picture of Indigenous education which includes both historical and current abuses that have led to widespread heritage language loss, as well as Indigenous-led efforts for heritage language revitalization and culturally-sustaining education. We then review our process for identifying and analyzing state Indigenous EL identification policy before detailing our findings, including a four-category typology of state approaches to Indigenous EL identification. We close with a discussion of our findings within the context of prior research, and a proposal for future work, both for researchers as well as policy makers.

## Policy Context

The Bilingual Education Act was signed into law as Title VII of the Elementary and Secondary Education Act (ESEA) in 1968 during the time of the Civil Rights Movement. Title VII provided competitive federal funding for school districts and other eligible entities to support students identified as having limited English language proficiency. Law emerged in response to court cases highlighting the experiences of first and second-generation immigrant students who entered school speaking a language other than English and were "effectively foreclosed" from educational access when confronted with an education all in English without efforts to support English development and content understanding (Castañeda v. Pickard, 1981; Lau v. Nichols, 1974).

While the 1974 reauthorization of ESEA restricted Title VII eligibility to students born outside of the United States, the 1978 reauthorization broadened the eligibility to include American Indian and Alaska Native students and introduced the differentiated eligibility that remains in place today (Wright, 2005). The Every Student Succeeds Act of 2015 (ESSA), the current reauthorization of ESEA, defines EL eligibility (now contained in Title III) as follows:

> The term "English learner", when used with respect to an individual, means an individual
>
> (A) who is aged 3 through 21;
>
> (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
>
> (C) (i) who was not born in the United States or whose native language is a language other than English;
>
> (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
>
> (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
>
> (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—
>
> (i) the ability to meet the challenging State academic standards;
>
> (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society. (ESSA, 2015, 20 U.S.C. §8101 (20))

Sections (A), (B), and (D), relate to all individuals, and indicate that EL status should be afforded to school-aged students of K-12 schools who are acquiring English. Section (C) however, differentiates the EL definition for different populations, including Indigenous students. Section (C) suggests that, while non-Indigenous students must speak a language other than English to be eligible for Title III (unless born outside the United States), Indigenous students are only required to "come from an environment" where a heritage language has had a "significant impact" on their English language proficiency. To date, however, there is no federal guidance related to this differentiated eligibility for Indigenous students.

The population identified in section (C) includes American Indian and Alaska Native students, as well as "native residents of the outlying areas." The outlying areas is defined as American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands (U.S. Department of Education [DOE], 2021). While this study will not address EL identification policy in any of these locales, it is noteworthy that section (C) does not include Native Hawaiians, a point we will return to later.

Under ESSA, federal education funding, including funding attached to EL-classified students, is distributed to each state education agency (SEA), which in turn distributes funds to school districts within the state. SEAs are responsible for the operationalization of Title III and manage district- and school-level implementation. EL-classified students, by law, must receive supports in developing English language proficiency – typically in the form of English language development (ELD) classes – as well as accessible core content instruction – often in the form of

content instruction with modifications to make the language of instruction more accessible to students (Hopkins et al., 2013).

While the history and intent of EL classification and service provision is to ensure that students learning English have full access to public schooling and content, a robust body of research has identified how EL classification and services work in both intended and unintended ways, providing specific and additional services to classified students, while also limiting students' access to other services and content and also influencing the ways in which teachers, administrators and peers perceive and treat classified students. For example, while EL classification has been shown to result, as intended, in a far greater likelihood of placement into an ELD class as well as placement with specially trained teachers (Dabach, 2015, Umansky, 2018), it also has been shown to result in decreased access to core content area instruction, diminished teacher perceptions of academic ability, and ultimately lower likelihoods of high school graduation (Johnson, 2019; Umansky & Dumont, 2021).

With regard to how states should identify students as ELs, ESSA prescribes that SEAs should "establish and implement, with timely and meaningful consultation with local educational agencies representing the geographic diversity of the State, standardized, statewide entrance and exit procedures [to Title III services]" (ESSA, 2015). To comply with this requirement of standardized, statewide entrance procedures, most SEAs have a basic two-step EL identification process. First, schools administer a home language survey (HLS) to incoming families to identify eligible students for clauses (A), (B), and (C) in the ESSA EL definition. The federal Office of English Language Acquisition (OELA) suggests the following three questions (Bailey & Kelly, 2013; OELA, 2017):

1. What is the primary language used in the home, regardless of the language spoken by the student?

2. What is the language most often spoken by the student?

3. What is the language that the student first acquired? (OELA, 2017, p. 4)

In cases where the family indicates the presence of a non-English language, districts then proceed to the second step, aligned with ESSA's EL definition, part (D). This involves the administration of a state-approved English language proficiency assessment with a preset cutoff score (Linquanti & Cook, 2013). Students who score below the cutoff are identified as ELs.

The differentiated EL definition for Indigenous students, however, has implications for identification policies and procedures. It may necessitate that SEAs use different tools and criteria for the identification of Indigenous ELs compared to non-Indigenous ELs. To date, however, the literature on EL identification has largely focused on immigrant-origin students (Carjuzaa & Ruff, 2016; Villegas, 2020), and has not examined how EL eligibility requirements for Indigenous students are operationalized by each SEA. The overarching objective of our study is to fill this gap and document policies and practices related to Indigenous EL identification.

**The Context of Indigenous Education in the United States**

The history of colonial schooling in the United States is characterized by Indigenous peoples' resistance to settlers' assimilative practices and persistent efforts to repurpose schooling for protecting their lands, cultures, and languages (Hopkins, 2020; McCarty & Lee, 2014; McCoy & Villeneuve, 2020; National Indian Education Association [NIEA], 2020). In many early missionary and government day and boarding schools, Indigenous students were forced to speak English only, and teachers often took brutal disciplinary actions against those who used their Native languages. This led to the loss of ancestral cultures and languages, as well as deaths

and intergenerational trauma, among Indigenous communities (Adams, 2020; Child, 2018; Hirshberg, 2008, Reyhner, 2018; Vitale, 2020). However, Indigenous peoples' activism along with legislation, such as the Indian Education Act of 1972 and the Indian Self-Determination and Education Act of 1975, strengthened Indigenous educational sovereignty, expanding Indigenous language revitalization/bilingual programs and culturally responsive curriculums across the country (Brayboy et al., 2015; Carjuzaa et al., 2010; Cohen & Allen, 2013). These federal laws underscore Indigenous educational sovereignty, defined by Lomawaima and McCarty (2006) "the inherent right of a people to self-government, self-determination, and self-education" (p. 9). Under current federal education law, ESSA Title VI provides funding for programs that aim to address Indigenous students' unique educational and cultural interests (ESSA, 2015).

Today, opportunities for Indigenous students to learn their histories, cultures, and languages in school have expanded. For example, a federally-funded Navajo-English immersion program in Magdalena, New Mexico, has been shown to have positive effects on students' language skills and their pride in and awareness of Navajo culture in the community (Smallwood et al., 2009). In addition to bilingual programs, there is also recent movement in states such as Oregon to award an official Seal of Biliteracy to students who achieve proficiency in an Indigenous language, as determined by the relevant Tribe (Oregon DOE, 2022). Lastly, Montana and Washington, among a few other states, require all students to learn about state Tribal history, cultures, and governments (Carjuzaa et al., 2010; Washington Legislature, 2015). Despite these expanded opportunities, there are still challenges in Indigenous education. For example, most schools continue to center an English-dominant, standardized Western knowledge system (Sabzalian, Shear, & Snyder, 2021), a fact that likely contributes to low state standardized test scores and high dropout rates among Indigenous students (Brayboy & Lomawaima, 2018). The

lack of licensed Indigenous teachers continues to be a barrier to Indigenous cultural and language programs, but many university-based Indigenous teacher preparation programs have recently been emerging (Whitinui, de France, & McIvor, 2018). Finally, although Tribal consultation is required under federal education law, meaningful implementation is largely absent (Mackey, 2017).

**Indigenous Students as EL Students**

Today, eight percent of American Indian and Alaska Native students are classified in school as ELs, or nearly one in ten students (OELA, 2020). American Indian and Alaska Native (AIAN) students make up only about one percent of the national EL population, a small percentage that masks wide variation. Indigenous students make up roughly three-quarters of ELs in Montana and half of ELs in Alaska (OELA, 2020). OELA reports that Indigenous ELs are 100% of ELs in at least 68 districts in the United States. Native Hawaiian and other Pacific Islander (NHPI) students accounted for an additional 0.7 % of the national EL population and are concentrated on west coast (OELA, 2015a). The top Indigenous language groups among ELs are Navajo, Yupik, Inupiaq, and Cherokee (OELA, 2020).

Estimates from the 2006–2010 American Community Surveys show that only 5.1% of school-aged students living in American Indian and Alaska Native residence areas are estimated to speak an Indigenous language; 87.5% of these students speak English only (Siebens & Julian, 2011). However, many Indigenous communities speak a form of English that is influenced by their ancestral language to varying degrees, and that has different grammar, speech, and pronunciation patterns compared to the Standard American English typically used in schools (Ball & Bernhardt, 2008; Leap, 2012; Wassink & Hargus, 2020). Such forms of English are often referred to as Indian, Native, Indigenous, First Nations, Rez, or village Englishes.

As predominantly English speakers, it is an open question whether, and under what conditions, it is beneficial for Indigenous students to be identified as ELs. It is unknown how SEAs interpret the differentiated federal ESSA definition, what policies and procedures they have in place to support Indigenous EL identification, and, as such, the extent to which English-speaking Indigenous students are EL-classified. Preventing Indigenous students with English language needs from receiving appropriate support could be considered non-compliant with ESSA and could result in low academic achievement due to lack of appropriate language supports. By contrast, classifying Indigenous students as ELs if they do not have linguistic needs or they do not benefit from EL language services could be harmful especially if this practice limits access to academic content or perpetuates English language imposition at the loss of Indigenous languages (Combs & Nicholas, 2012). For these reasons, it is imperative to understand how states identify Indigenous students as ELs as defined in ESSA. This study, therefore, asks the following research questions: Across the 50 states, how do SEAs identify Indigenous students as ELs? As a further question, we ask: in what ways is Indigenous EL identification differentiated from the identification of non-Indigenous students in each state?

## Author Positionality Statements

Ilana Umansky, the granddaughter of Eastern European Jewish immigrants to the United States, is an associate professor at the University of Oregon's College of Education where she studies how education policies influence the opportunities, experiences, and outcomes of multilingual students. She has been learning about EL policies and services in the context of Indigenous students, families, and communities, and aims to support greater equity, excellence, and Indigenous self-determination through casting light on this set of topics.

Taiyo Itoh, a former teacher from Japan, is currently pursuing a doctoral degree at the University of Oregon's College of Education. His graduate study at the University of Alaska focused on Alaska Native education, and as an ally to Indigenous peoples and an advocate for culturally-responsive, place-based pedagogy, he has supported research projects by and with Alaska Native students for five years.

Jioanna Carjuzaa has over 30 years of experience as a multicultural educator. While well versed in the many aspects of cultural diversity, linguistic diversity is her passion. In addition to her heritage Greek language, she has studied several languages. Currently, she is a professor at Montana State University and serves as the Executive Director of the Center for Bilingual and Multicultural Education where she has provided Indian Education for All leadership as a scholar and educator in Montana and beyond. She is committed to Indigenous language preservation and revitalization efforts and works closely with heritage language speakers. As an ally, she is humbled to serve Tribal communities throughout Indian Country.

## Data and Method

This study is part of a larger project on Indigenous EL identification across the United States. The full project encompassed two stages: first, a 50 state scan of policy documents to examine state policies related to Indigenous EL identification, and second, interviews with state education agency EL directors to understand the motivations, questions, and considerations that state agencies and their leaders have related to Indigenous EL identification. Here, we report findings from the first stage.

### Data

Our primary data source was state policy documents obtained through a web search during the winter of 2020. We visited each SEA's website and downloaded key policy

documents related to EL education. This included, at a minimum: (1) state-level EL education guidelines, and (2) the state home language survey (HLS). We also searched for any other state-level documents related to EL identification including family interview protocols and English language proficiency assessment guidelines. Some SEAs did not have relevant documents available on their websites. In these cases, we visited the websites of individual schools and districts to find further information about EL identification policies and practices in the states. In doing so, we did not identify district-level policies, but rather searched for state-level documents that were available on district websites.

Additionally, we obtained each SEA's approved ESSA plan from the U.S. Department of Education website (U.S. DOE., n.d.) and collected select statistics on each state's EL and Indigenous student populations from the federal Common Core of Data and the Civil Rights Data Collection, among other sources (see Table 1). Given that the initial web search occurred during the height of the COVID-19 pandemic, we conducted a follow-up web search in spring of 2021 to capture any potential policy changes for school reopening. We found a few new and revised documents and updated our files with these updated documents. For both web searches, we recorded the date of the search, the URL addresses of the documents, created a comprehensive bibliography of documents, and downloaded each document for analysis.

**Method**

This study employed an iterative, analytic memo-writing strategy to organize, analyze, and code policy information (Saldaña, 2014), categorizing state policies as previous 50-state education policy reviews have done (e.g., Bailey & Kelly, 2013 or Hazi & Rucinski, 2009). With the state policy documents in hand, one researcher (Itoh) conducted an initial review, identifying that some states did and other states did not differentiate Indigenous students in EL identification

policies. This initial search also revealed that states that differentiated the EL identification process for Indigenous students did so in diverse ways. The authors discussed these initial findings and developed a state memo template with key sections around state EL identification processes, home language survey questions, ELP screener assessment, as well as more specific sections on any mention of Indigenous students, non-standard English varieties, and a non-English language "impact" on English language development. The memo also included detailed instructions on how to review state policy documents for relevant information. For example, while state EL guidance documents were to be reviewed in full, state ESSA plans were reviewed by reading the Title III sections as well as conducting word searches throughout the full document for key terms such as "American Indian," "Native American," "bilingual," and "English learner." Two authors (Umansky and Itoh) then proceeded to review all fifty states' policy documents, completing a memo for each state, meeting weekly to review findings, discuss revisions and questions, and make alterations.

A core finding that emerged in both the initial review and the memo-writing process was a typology for state Indigenous EL identification policies. We initially identified three state types, later separating one of the types into two, for a total of four state types. We adapted the state memo to include a question related to the identification of each state into one of the state types, along with a detailed rationale for why the researcher categorized the state into that type.

Once the 50 state memos were written, we grouped the memos into the four state types. We created a new memo template for each state type, including sections on the number of states within that type, descriptions of typical forms of the state type, descriptions of exceptions to those typical forms, and state level examples of the state type. Umansky and Itoh then each carefully reviewed all state memos in each state type and wrote up the corresponding state type

memo. All three authors then met to discuss the four state type memos and outline key findings from the analysis. It is important to note that because our study focused on written policies, we did not involve Tribal consultation and participation, methods that are critical to decolonizing research about Indigenous peoples (Smith, 2012). We were influenced by Indigenous methodologies, however, in our use of critical reflexivity throughout the research, in which we acknowledged and embraced languages, cultures, and ways of knowing that have been othered in schooling systems (Thambinathan & Kinsella, 2021).

## Results

In what follows, we describe the four types of state approaches to Indigenous EL identification. The four state types include states with (1) no differentiation, (2) possible differentiation, (3) ambiguous differentiation, and (4) clear differentiation of Indigenous students in EL identification policies. Figure 1 displays a map of the United States with different shading for each state type.

### No Differentiation States

The largest group of states, comprising 29 states, did not have any differentiated procedures for identifying Indigenous students as ELs, seemingly overlooking the differentiated EL definition in ESSA (2015). The majority of these states (21) included no mention of Indigenous students and no mention of non-English language impacts in their EL identification and service provision policies and guidance. These states relied on the basic two-step EL identification procedure: first, having incoming families fill out a home language survey and second, among those families that identified a non-English language, administering an English proficiency assessment or screener to the incoming student. Many of these states followed the federal government's guidance on home language survey questions, using the three questions

laid out in the EL Toolkit, cited above (OELA, 2017). In general, states stipulated that one or more of the three questions had to be answered with a non-English language in order to prompt the English proficiency assessment.

Some states in this category, however, did either mention Indigenous students or mention EL eligibility based on a non-English language impact. These states are categorized as *no differentiation* states because there was no differentiated policy or pathway to EL eligibility for these groups of students. New Mexico, North Carolina, and Louisiana all specifically mentioned Indigenous students in their state EL policy documents. New Mexico, for example, provided the state's home language survey in Navajo, and listed several other Indigenous languages as eligible home languages on the home language survey. New Mexico also provided guidance on best practices in EL identification processes in Indigenous communities. The processes themselves, however, did not differ for Indigenous students. North Carolina and Louisiana both recognized the presence of Indigenous ELs in state EL policy documents, but again, did not differentiate identification processes. For example, Louisiana's state EL guidance document stated: "Native American students can be considered for EL program services if the student's Home Language Survey responses indicate that a language other than English is spoken in the home, but they should not be identified solely on the basis of being Native American" (Louisiana DOE, 2020, p. 4).

While not mentioning Indigenous students specifically, EL policies in Kansas, Rhode Island, and Utah indicated that students who spoke English as their sole or dominant language could still be eligible for EL identification, but they did not create a pathway by which these students could be identified. In other words, these states drew on ESSA language regarding a non-English language impact, but they did not clarify how a student with a language impact

could be identified as an EL. For example, Utah's state guidance indicated that the goal of the home language survey was to "identify a student with a native language other than English, or who comes from an environment where a non-English language either is dominant or may have affected a student's English-language proficiency" (WIDA, 2021, p. 1) seemingly including English-speaking students with a non-English language impact. Yet their EL identification process did not allow for identification of these students aside from the standard HLS questions.

**Possible Differentiation States**

The second category of states, which included 10 states, were those where state policy did not have a differentiated process for EL identification of Indigenous students, but where there was a policy pathway to EL identification that did not require identification of a non-English home or primary language. We consider these possible differentiation states because in these states it would have been possible for Indigenous students to be identified via an alternative pathway even though there was no explicit articulation of a differentiated pathway for Indigenous students. The main alternative pathways to EL identification among these states included: (1) An alternative pathway to English proficiency screening when no non-English language was identified on the HLS, such as through a family interview or teacher language use observation protocol; and (2) English proficiency screening allowed when the home or primary language was identified as a non-standard English variety.

Eight of the 10 states in this category had an alternative pathway to EL identification that did not involve identifying a non-English language on the HLS. These alternative pathways were largely framed as a means of correcting HLS survey responses that were considered to be erroneous or inaccurate. For example, Arkansas, Colorado, Idaho, and Missouri specified that if a student was not EL-eligible based on HLS responses, a school could screen a student if a

teacher or staff member believed that there was a non-English language spoken in the home or that a student spoke a non-English language. California, Wyoming and Florida had more open alternative pathways. In Wyoming, for example, schools could screen students who were having academic challenges if the teacher thought this might be for "linguistic reasons" (Wyoming DOE, 2020, p. 13). Similarly, in California, policy allowed for English proficiency screening if the educator found that "the student is unable to perform classwork in English" (California DOE, 2021, p. 1).

To replace the HLS, these states typically had an alternative way to review these students' eligibility for screening. Alternative metrics typically included one or more of the following elements: (1) evaluation of multiple measures, (2) parent/family interview, and (3) evaluation of academic performance. If deemed eligible based on these alternative metrics, the school or district could proceed with the administration of an ELP screener assessment.

The remaining two states in the possible differentiation category, Delaware and Minnesota, did not have alternative pathways to English proficiency screening. Instead, they included non-Standard American English varieties as EL-eligible languages on the HLS. This allowed for at least some students without a non-English language to be eligible for EL identification. State guidance in Delaware indicated that "if a language other than English or non-US English is indicated on questions 1-3 [of the HLS], the school initiates the standardized identification screening process" (Delaware DOE, 2020, p. 26). Of note, this inclusion of non-Standard American English appeared to not include non-standard English varieties spoken by Indigenous students since the guidance specified a "non-US English." Guidance in Minnesota stated that "English creoles such as Nigerian English, Liberian English, or Jamaican Patois

should be recorded as the home primary language. Speakers of English creoles should be screened. This does not include dialects such as British English" (Minnesota DOE, 2017, p. 15).[2]

Across all 10 states in the possible differentiation category there was no indication that the pathway to EL identification for students without an English language on the HLS was intended for Indigenous students. Indigenous students were mentioned in only two of the ten states in this category. The first was Idaho, where state policy and guidance specified that Indigenous students were not eligible for EL identification or screening simply based on their Indigenous status. Instead, the state document indicated that Indigenous students had to go through the same procedure and criteria for EL identification that all other students went through (Idaho State Department of Education, 2020, p. 5). The second state was Wyoming where Indigenous students came up in descriptions of eligible language programs for EL students. Specifically, Indigenous and heritage language programs were listed among eligible EL programs with specific examples given of Arapaho and Shoshone language immersion programs (Wyoming DOE, 2020, p. 15).

**Ambiguous Differentiation States**

The third category of states, comprising seven states, were those where state EL policy mentioned Indigenous students in policies and practices related to differentiating the processes of EL identification, but did so in a way that was not fully articulated or clear and that would likely have been difficult or varied in implementation by district and school educators and/or administrators.

Six of these seven states fell into one of two clusters. The first cluster was a set of three states – New Hampshire, Oklahoma, and Pennsylvania – that included specific questions about Indigenous identity and Tribal language impacts on a family interview protocol. All three states

used the same family interview protocol as part of the EL identification process. The protocol asked both "Is this student a Native Alaskan, Native American, or Native Hawaiian?" and "Is this student's language influenced by a Tribal language through a parent, grandparent, relative, or guardian?" (Oklahoma DOE, n.d., p. 5). The family interview protocol was an additional EL identification step in these states which took place after the HLS, although in New Hampshire and Oklahoma the family interview was a part of EL identification during the COVID-19 pandemic, and it was unclear whether it would remain in place post-pandemic. In all three states the interview was not universally administered but instead was administered when a non-English language was identified on the HLS, and, in the case of Pennsylvania, only in a discretionary manner. Of note, both New Hampshire and Pennsylvania stated that non-Standard American English varieties "constitute a language other than English for [EL] identification purposes" (New Hampshire, 2020, p. 1). All the same, it is likely that few Indigenous students in English-speaking households went through the family interview process since their answers on the HLS were unlikely to include anything but English.

Importantly, there was no state guidance in any of the three states as to how responses to the two questions above should impact EL identification. Guidance on the protocol stated: "Based on the answers to the parent interview questions, determine if the second language exposure/use is significant or superficial in nature. If the student's development of English may have been impacted by exposure to another language in any way, then proceed to [the English proficiency screener assessment]," (New Hampshire DOE, 2020, p. 7). Because there was no clear guidance on how EL identification should proceed based on the two Indigenous student-related interview questions, we considered these states as ambiguous differentiation states rather than clear differentiation states. It is probable that the answers to these two questions were

interpreted differently by different individuals and in different schools and districts regarding whether they indicated a 'significant' or a 'superficial' language impact and should therefore merit English proficiency screening.

Three other ambiguous differentiation states, Alaska, Oregon, and South Dakota, had alternative pathways that were independent of each state's HLS. Alaska, where the majority of ELs were Indigenous, offered a language observation checklist as an alternative pathway to screen English-only students. The checklist specifically asked teachers to compare a target student's English use to those of a "Standard English-speaking student" (Alaska Department of Education and Early Development [DEED], n.d., p. 1) indicating that non-Standard English speakers were eligible for EL identification. This was further supported in state guidance that defined Indigenous student eligibility, drawing on the ESSA definition, and stated that "even though a student may not speak the heritage language in the home, a student may have grown up in an environment in which the syntax, rhetorical style and sociolinguistic patterns of the heritage language may have had a significant impact on the student's level of proficiency in English in order to succeed in the classroom" (Alaska DEED, 2020, p. 3). While these stipulations seem likely to refer to Alaska Native students, especially given Alaska's population, there was no indication that either the observation protocol or the non-English language impact related specifically to Indigenous students.

In Oregon, the pathway for Indigenous students was vague. While the process was generally undifferentiated, an example in the state guidance document differentiated the EL identification procedure for Indigenous versus non-Indigenous speakers of American Sign Language (Oregon DOE, 2020, p. 21). Finally, South Dakota's ESSA plan stated that "South Dakota's ELs are diverse. … ELs in South Dakota also have lived here for generations – as

members of a Hutterite colony whose first language is Hutterite (a form of German) and American Indian students whose primary language at home is English, but with a strong native language influence" (South Dakota DOE, 2017, p. 28). While state guidance underscored that Indigenous status was not sufficient to be classified as an EL, the state process allowed for students with only English on the HLS to be screened and employed the ESSA definition for Indigenous student EL eligibility. As in the other states, the process in South Dakota did, therefore, specifically call out Indigenous students in EL identification policies, but the process by which Indigenous students with a non-English language impact could be identified was not specified. As such, it seems likely that different individuals and locales interpreted these policies in diverse ways with diverse outcomes for Indigenous students.

The final state in this category was Hawaii. Hawaii was an interesting outlier in the category. In Hawaii, state EL policy stated that students enrolled in Hawaiian language immersion schools, over 85% of whom were Native Hawaiian (Office of Hawaiian Affairs, 2017) should not be screened as possible ELs. Thus, an important subset of Indigenous students in the state – specifically those enrolled in heritage language programs – were not EL-eligible. This state is an outlier because EL policy in the state actually made the net for EL eligibility narrower, rather than wider, for Indigenous students. It is possible that Hawaii stands out from other states in this regard because Native Hawaiian students, unlike American Indian and Native Alaskan students, are not included in ESSA's differentiated EL definition.

**Clear Differentiation States**

The final, and smallest, group of states were those with clearly differentiated policies and procedures for the identification of Indigenous students as ELs. This group encompassed four states: Montana, North Dakota, Washington, and Wisconsin. While all four differentiated EL

identification for Indigenous students, there was significant variation in the characteristics and degree of differentiation across the states. A commonality was that differentiation occurred in all four states at the first stage of EL identification – that of identifying potential ELs. None of the four states differentiated identification at the second stage – administering a state ELP screener and assigning EL status based on the outcome of that assessment. In other words, once identified as a possible EL via a differentiated process, Indigenous and non-Indigenous students alike took the ELP screener and were subject to the same statewide EL threshold. This aligned with federal law in that the differentiated EL definition for Indigenous students related to Part (C) which identifies the pool of possible ELs, but not to Part (D) which pertains to students' English skills (ESSA, 2015).

Three of the four states (Montana, North Dakota, and Wisconsin) differentiated EL identification among Indigenous students through the HLS. Wisconsin had the least differentiated procedure. In Wisconsin families completed a standardized, computer-adaptive HLS which asked both if English was the student's first language and whether a student was exposed to a non-English language at home at least half of the time. If the family member did not indicate a non-English presence on either of those questions, then neither Indigenous nor non-Indigenous students proceeded to further questions. The differentiation only happened if a family member indicated a non-English presence in one of those first questions. In that case, the HLS then asked whether the student was Indigenous, and if so "Is this student's language influenced by a Tribal language through a parent, grandparent, relative, or guardian?" (Wisconsin DOE, 2020, p. 8). A 'yes' answer to these two questions resulted in identification as a possible EL and subsequent ELP screening. Non-Indigenous students, by contrast, had to identify a specific family member or caregiver who interacted with the student in a non-English language in order

to proceed to screening. This difference was very minimal, and in fact it is difficult to imagine a scenario where an Indigenous student would be screened when a non-Indigenous student would not be screened.

North Dakota and Montana, by contrast, had rules on the HLS that would result in much more significant differentiation. Namely, in neither state did families of Indigenous students need to indicate a non-English first or home language. In both states, merely answering that the student was Indigenous and had a Tribal language "influence" (North Dakota Department of Public Instruction, n.d., p. 2) or that the student had "significant" exposure to an ancestral language (Montana Office of Public Instruction, 2021, p. 1) resulted in ELP screening. While the source of the language impact was not included in North Dakota's question, Montana cast a wide net with regard to source of impact, stating that the exposure could be through "family, friends, or other community members" (Montana Office of Public Instruction, 2021, p. 1). This statement that community could be a source of language impact is notable given multiple states' implicit or explicit positions (including that of Wisconsin) that the non-English language impact must originate in the home. Neither Montana's nor North Dakota's HLS defined what was meant by influence or exposure, leaving this is up to the interpretation of the family member filling out the form or the teacher or staff member aiding in the HLS submission. Both states also used the term 'significant' language influence/exposure on their HLS forms but did not define for families what would constitute 'significant'.

While Wisconsin and North Dakota used the HLS only to identify potential ELs, Washington state did not use the HLS at all while Montana used both the HLS and an alternative pathway. Beginning with Montana, regardless of the HLS, educators who observed what they believed was a student with a "language barrier" in school or a heritage language impact could

employ a teacher observation checklist that, similar to Alaska, had teachers compare the student's language skills to that of same-age "Standard English-speaking students" (Montana Office of Public Instruction, 2021b, p. 9). In this way, Montana was the only one of the four states that specifically called out non-Standard American English as a source of EL eligibility for Indigenous students.

Washington, meanwhile, had the most differentiated process for identifying Indigenous students for EL eligibility. A fundamental difference between Washington and all other 49 states was that Indigenous students who took the ELP screener and met the EL threshold were not considered 'English learners' by the state, but instead were considered 'eligible for Title III services.' This change in terminology removed the English language learning focus of EL status and was aligned with their identification process, as described next, that had relatively little to do with language. The alternate term was also aligned with Washington's differentiation of services for Indigenous compared to non-Indigenous EL/Title III students (Washington Office of the Superintendent of Public Instruction, n.d.).

Washington's identification policy started not with the HLS but with the student's entry in the race/ethnicity field on school intake forms. All students who were identified as Indigenous on those intake forms were to be academically evaluated once sufficient data was available from state and local assessments. Indigenous students who were deemed "academically at risk" were considered potentially eligible for Title III services. This process did not include any datapoints about non-English language skills or impacts. Eligible student's families would then be notified of potential eligibility and students screened using the state ELP assessment (Washington Office of the Superintendent of Public Instruction, n.d.).

Washington also differed from the other three states in this category in having the above interim family engagement step. Based on federal law, all families have to be notified of students' EL eligibility if they score within the EL range on the ELP screener assessment. But only Washington required that families also be informed that a student was eligible to be screened, and this was for Indigenous students specifically. According to state policy, families must be informed of the student's potential eligibility, told what Title III services were for and consisted of, told the proposed date for ELP screening, and given the opportunity to decline screening. In addition, if the family did not respond to the letter, state policy indicated that the school must try to contact the family by phone. Thus, Washington's Indigenous EL identification process was, by far, the most differentiated process among the 50 states.

## Discussion

Federal education law differentiates the definition of an EL student – and therefore the entry criteria for EL identification and services – for Indigenous students. Specifically, Indigenous students do not need to have a non-English home or primary language. Instead, they are eligible if they come "from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency" (ESSA, 2015, 20 U.S.C. §8101 (20)). Despite this differentiated definition, there has not been any systematic evaluation of how states interpret and enact this law, if at all (Carjuzaa & Ruff, 2016). Yet EL identification and services are consequential for students, in both expansive and constrictive ways, often depending on the characteristics of the learner and the services and supports they receive (or do not receive) once EL-identified (Johnson, 2019; Shin, 2018). EL education, and its targeted focus on English language development, also sit uncomfortably in the context of U.S. public schooling of Indigenous students, a context marked by forced heritage language loss,

overt racism, and brutal violence (Brayboy & Lomawaima; Vitale, 2020). EL education also sits uncomfortably in the linguistic context in Indigenous families and communities, a context where the vast majority of Indigenous students grow up speaking English with only limited exposure to their ancestral languages (Siebens & Julian, 2011). At the same time, EL identification and supports represent the potential for additional resources for Indigenous students, who are overrepresented in under-resourced schools, including for the development and expansion of heritage language development programs and culturally-sustaining content and pedagogy (Gambler, 2010; Smallwood et al, 2009; WIDA, 2014). For these reasons, an understanding of how states have interpreted and structured Indigenous EL identification is a critical first step in unpacking EL classification and services for Indigenous students and communities. In this study we obtained EL policy documents, including ESSA plans, state EL guidance, and home language surveys, and documented how each state approached Indigenous EL identification. We found that interpretation of the federal Indigenous EL definition ranged widely, from states that did not differentiate Indigenous EL identification at all to those with clearly defined differentiated identification policies.

More specifically, we found that all states fell into one of four categories: no differentiation, possible differentiation, ambiguous differentiation, and clear differentiation. The no differentiation state category was the largest – encompassing 29 states – and was characterized primarily by state EL policies that made no mention whatsoever of Indigenous students. These states, it seems, were either unaware of the differentiated EL definition for Indigenous students or were aware of it but had not acted upon it. The 10 possible differentiation states were only marginally different from the no differentiation states. They typically made no references to Indigenous students, although they all allowed for the possible ELP screening of

students with English only on the home language survey, allowing, we argue, for the possible differentiation of Indigenous students without a non-English primary language.

Only 11 states, seven in the ambiguous category and four in the clear category, directly called out Indigenous students in the EL identification process. Unlike the 39 states in the no and possible categories, these 11 states appeared to be aware of the ESSA differentiated definition and were attempting to create policies in compliance with it. What differentiated the ambiguous from the clear states was that the ambiguous states had in place policies that did not fully articulate how Indigenous students would go through a differentiated process, resulting, we believe, in a high likelihood of inconsistent or absent implementation. The clear states, by contrast, had clearly differentiated procedures for Indigenous students with well-articulated processes that likely resulted in different patterns of EL identification for Indigenous compared to non-Indigenous students.

This study contributes to a nascent body of work exploring EL identification, classification, and service delivery for American Indian, Alaska Native, and Native Hawaiian students. This work, to date, has identified several core findings that make this area of study, including an understanding of state policy, urgent and necessary. Core findings include that Indigenous EL-classified students are principally English dominant (Carjuzaa & Ruff, 2014), a finding that has profound implications on the types of services that are likely beneficial for them, as well as implications for whether typical EL services such as English language development classes, as currently conceived, are appropriate (Umansky et al, 2021). More generally, prior work identifies a tension between EL services' English language focus (Bilagody, 2014; Moffett, 2020) and the dual interests of many Indigenous students, families, and communities for both Standard American English supports and heritage language maintenance and revitalization

(Bilagody, 2014; Henry, 2004). This bilingual focus can support students' language development in both languages (Gambler, 2010; Jackson, 2008; Smallwood et al, 2009) and culturally-sustaining instruction can improve Indigenous students' school engagement and cultural well-being (Almaguer, 2019; Smallwood et al., 2009; WIDA, 2014).

While prior research points to the importance of a bilingual approach to Indigenous EL education, as well as culturally-sustaining content and pedagogy, much more research is needed on what kinds of services EL-classified Indigenous students are currently receiving in school. A limitation of the current study is that it looked only at EL identification policy, and not at service provision. While not the focus of this study, we noted that only two states – Montana and Washington –specified in their state EL policies that services for Indigenous EL students were to be differentiated from those of non-Indigenous students. Both states highlighted language and literacy instruction although Montana's policy was more centered on English supports while Washington's was more inclusive of heritage language development (Montana Office of Public Instruction, 2021b; Washington Office of the Superintendent of Public Instruction, n.d.). Future research should examine the types of EL services that Indigenous EL students receive, the degree of differentiation of services in place for Indigenous students, and the effects of different types of EL services for Indigenous students' linguistic, academic, and well-being outcomes.

A second primary limitation of the current study is that it was focused on state level policies, as written, and not at their implementation in schools and districts. Ample research on policy implementation (Honig, 2006), including EL policy implementation (Heineke, 2015; Hopkins, 2016; Sampson, 2019), indicates that one cannot assume that policy is being implemented in consistent ways, nor as designed. Instead, local stakeholders, including teachers and administrators at the school and district levels, are interpreting state policies and applying

them to their unique contexts. Thus, future research should also examine the implementation of Indigenous EL identification policy. Of particular interest are the practices in possible and ambiguous differentiation states. Given the lack of clarity within many of these state policies, it is especially unclear how different local stakeholders are implementing these state policies.

While acknowledging these limitations, the results of this study have important implications. A clear implication of the widespread variation in Indigenous EL identification policies is the need for greater understanding of the intent of ESSA's differentiated definition and guidance on how to enact it. Critically, this needs to be achieved through government-to-government processes that uphold and reaffirm Indigenous educational sovereignty and self-determination, working with Tribal governments as well as other Indigenous stakeholders including educators and families. Clarifying the intent of the differentiated definition will be important, in part so that SEAs can align their practices with the intent of the law, moving beyond issues of mere compliance (Dabach & Callahan, 2011). Guidance should include, for example, information on who, among Indigenous students, should be eligible for EL identification, and how to effectively identify those students. For example, our study found that several states' home language surveys ask directly about the presence of a non-English language having a "significant impact" on students' English language development, a question that, without significant guidance, may not be understood or answered in intended ways by families. In another example, Native Hawaiian students are included in ESSA's (2105) Title VI, entitled "Indian, Native Hawaiian, and Alaska Native Education", but are absent from the differentiated EL definition in Title III. Federal and state agencies should work with Native Hawaiian stakeholders to clarify whether and how Native Hawaiian students should be included in Title III.

The centering of Indigenous sovereignty and self-determination will be crucial for this process of clarifying ESSA's differentiated EL definition for Indigenous students (Lomawaima & McCarty, 2006; Brayboy et al., 2015). Different Indigenous Nations and stakeholders are likely to have different perspectives and interests, so future ESEA reauthorizations should clarify the differentiated definition while also allowing for flexibility across contexts based on Indigenous-led interests and decisions.

Importantly, neither the federal government, nor state or local education agencies should stop at a differentiated definition for EL eligibility. If inclusion criteria for Indigenous students is differentiated, then, as a matter of course, the characteristics of Indigenous students will be different from those of non-Indigenous students (Umansky et al., 2021). As a result, the educational and language skills and needs of Indigenous students will also be different from those of non-Indigenous students, on average, and should be met through appropriate and effective educational services. Thus, a differentiation in EL identification policies needs to be mapped onto guidance on appropriate and effective differentiation of EL services, again developed in consultation with Indigenous governments and educational stakeholders. As described earlier, effective and appropriate services for Indigenous EL students include heritage language revitalization programs, supports in Standard American English development that reinforce the legitimacy and importance of non-standard English varieties, and culturally-sustaining content and pedagogy (Holbrook, 2011; McCarty & Nicholas, 2014; Sabzalian, 2019).

As with all EL-classified students, EL services should not be implemented in homogenous ways for students with diverse linguistic and academic profiles. For example, appropriate and effective EL services for Indigenous students will look different for students growing up speaking their heritage language, compared to those with exposure to their heritage

language but speaking primarily English, and compared to those with little or no access to their heritage language. Likewise, appropriate and effective services will look different for Indigenous EL-classified students who speak Standard American English compared to those who speak non-standard English varieties. Future ESEA reauthorizations, at a minimum, should specify that states can use Title III funds for heritage language revitalization programs for Indigenous EL-classified students.

In summary, this study documents wide variation in the ways in which states interpret and instantiate the differentiated Indigenous EL definition in federal law. This variation ranges from no differentiation to clear differentiation, with enormous implications on the likelihood and characteristics of Indigenous students being identified as ELs. The study identifies four categories of state Indigenous EL identification policies, describing both patterns and exceptions within each category, and contributes to a nascent body of work on Indigenous EL education. Extending and deepening this area of research is critical as upwards of one in ten Indigenous students is identified as an EL in U.S. public schools, and this identification has repercussions for students' linguistic and academic opportunities.

## Endnotes

[1] We recognize the use of a variety of terms for Indigenous peoples that share geography with the United States. While referring to specific Tribes and Nations is preferable over generic terms, this study is largely focused on federal and state policy as it pertains to all American Indian, Alaska Native, and Native Hawaiian students. As such, in this study we use the term Indigenous students. Following Younging's (2018) *Elements of Indigenous style: A guide for writing by and about Indigenous peoples*, we capitalize the terms Indigenous, Nation, and Tribe as these represent Indigenous identities and "Indigenous governmental, social, spiritual, and religious institutions" (p. 102). We chose not to use the term American Indian and Alaska Native (AIAN) because it does not encompass Native Hawaiian students. We recognize that a limitation of our choice is that there are many Indigenous EL-classified students who do not share ancestral geography with the United States such as Indigenous immigrant-origin students from Latin America, Asia, and other global regions. In this study, we are not referring to these students when using the term Indigenous.

[2] While not directly related to Indigenous EL differentiation, Minnesota's guidance to not screen speakers of varieties "such as" British English is noteworthy since it suggests that British English is not sufficiently different from Standard American English while Nigerian, Liberian, and Jamaican Englishes are. If there is a linguistic rationale to this guidance it is not mentioned. It is hard to miss, however, the racial undertones to the statement given that England is a historically and majority White country while Liberia, Nigeria, and Jamaica are historically and majority Black.

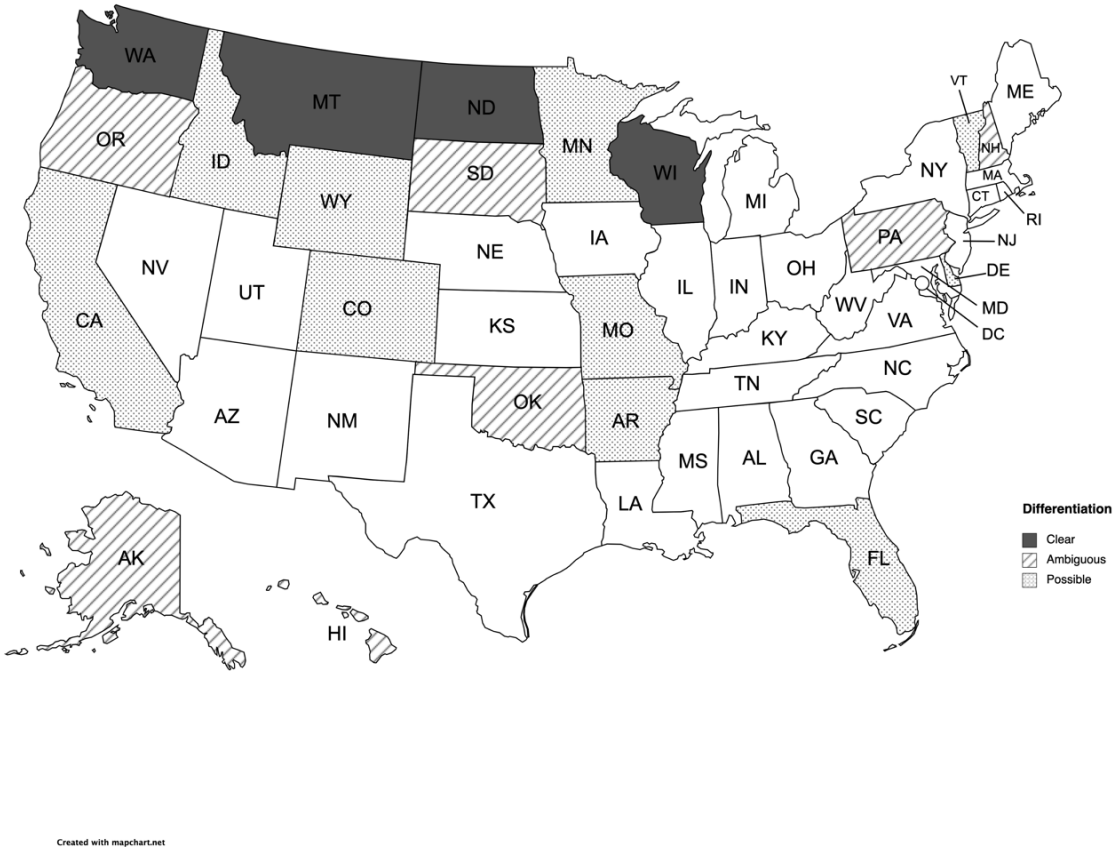
Table 1: Descriptive statistics related Indigenous and EL student populations, by state

| State | Indigenous EL identification category | # of Indigenous students in state | % Indigenous students in state | % EL in state | # of Indigenous ELs in state | % Indigenous ELs among all ELs | # of Indigenous ELs in state | % Indigenous ELs among all ELs | # of federally recognized tribes | If there is an Indigenous language among the top 5 non-English languages spoken by ELs in the state, what is it? (#) |
|---|---|---|---|---|---|---|---|---|---|---|
| Montana | Clear | 33626 | 11.20 | 2.36 | 2248 | 51.11 | 762 | 38.84 | 8 | North American Indian (122) |
| North Dakota | Clear | 19896 | 8.56 | 3.69 | 130 | 3.44 | 125 | 3.43 | 4 | Ojibwa (382) |
| Washington | Clear | 53436 | 2.34 | 11.78 | 5505 | 4.25 | 3988 | 3.51 | 29 | |
| Wisconsin | Clear | 19966 | 1.17 | 6.36 | 164 | 0.32 | 133 | 0.32 | 11 | |
| Alaska | Ambiguous | 66130 | 25.05 | 11.53 | 8678 | 55.18 | 6891 | 50.64 | 229 | Yup'ik (16397), Inupiaq (1892) |
| Hawaii | Ambiguous | 98838 | 27.29 | 9.23 | 10779 | 29.07 | 5863 | 39.71 | 0 | |
| New Hampshire | Ambiguous | 1140 | 0.32 | 2.87 | 30 | 0.57 | 26 | 0.54 | 0 | |
| Oklahoma | Ambiguous | 186404 | 13.24 | 8.32 | 2247 | 4.07 | 1816 | 4.00 | 37 | Cherokee (37018) |
| Oregon | Ambiguous | 22870 | 1.96 | 8.60 | 1749 | 3.30 | 1701 | 3.35 | 10 | |
| Pennsylvania | Ambiguous | 8378 | 0.24 | 3.98 | 174 | 0.27 | 169 | 0.27 | 0 | |
| South Dakota | Ambiguous | 29916 | 10.69 | 4.42 | 42 | 0.77 | 30 | 0.59 | 8 | Siouan (592) |
| Arkansas | Possible | 15150 | 1.52 | 8.06 | 3034 | 7.30 | 2907 | 8.39 | 0 | |
| California | Possible | 114944 | 0.93 | 19.35 | 6468 | 0.52 | 5823 | 0.53 | 106 | |
| Colorado | Possible | 17286 | 0.95 | 11.36 | 980 | 0.78 | 984 | 0.79 | 2 | |
| Delaware | Possible | 1512 | 0.54 | 9.66 | 82 | 0.64 | 76 | 0.62 | 0 | |
| Florida | Possible | 25262 | 0.44 | 10.14 | 1381 | 0.47 | 1385 | 0.48 | 2 | |
| Idaho | Possible | 8918 | 1.43 | 6.27 | 261 | 1.29 | 142 | 0.94 | 4 | North American Indian (243) |
| Minnesota | Possible | 31518 | 1.76 | 8.48 | 213 | 0.28 | 186 | 0.26 | 12 | |
| Missouri | Possible | 12522 | 0.69 | 3.90 | 1067 | 2.66 | 973 | 2.77 | 1 | |
| Vermont | Possible | 799 | 0.46 | 2.23 | 38 | 1.50 | 34 | 1.45 | 0 | |
| Wyoming | Possible | 7138 | 3.77 | 2.89 | 125 | 4.50 | 80 | 4.18 | 2 | Arapaho (24) |
| Alabama | No | 15472 | 1.04 | 3.84 | 1313 | 3.30 | 1023 | 4.12 | 1 | |
| Arizona | No | 106268 | 4.61 | 7.34 | 2060 | 2.56 | 1853 | 2.62 | 20 | Navajo (1245) |
| Connecticut | No | 3682 | 0.35 | 7.92 | 137 | 0.37 | 130 | 0.36 | 2 | |
| Georgia | No | 10312 | 0.29 | 6.96 | 559 | 0.42 | 440 | 0.41 | 0 | |
| Illinois | No | 13854 | 0.36 | 12.11 | 1527 | 0.66 | 1322 | 0.66 | 0 | |
| Indiana | No | 5558 | 0.26 | 5.94 | 338 | 0.44 | 267 | 0.48 | 0 | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Iowa | No | 7102 | 0.69 | 6.48 | 718 | 2.40 | 689 | 2.43 | 1 | |
| Kansas | No | 9820 | 0.99 | 9.29 | 457 | 0.88 | 371 | 0.80 | 4 | |
| Kentucky | No | 3680 | 0.27 | 4.17 | 204 | 0.78 | 203 | 0.83 | 0 | |
| Louisiana | No | 10126 | 0.71 | 3.74 | 141 | 0.57 | 29 | 0.34 | 4 | |
| Maine | No | 3396 | 0.94 | 3.43 | 72 | 1.24 | 67 | 1.24 | 6 | |
| Maryland | No | 7346 | 0.40 | 9.72 | 329 | 0.39 | 308 | 0.38 | 0 | |
| Massachusetts | No | 5784 | 0.30 | 10.32 | 354 | 0.36 | 337 | 0.36 | 2 | |
| Michigan | No | 20626 | 0.69 | 6.64 | 325 | 0.33 | 296 | 0.31 | 12 | |
| Mississippi | No | 2846 | 0.31 | 3.18 | 117 | 0.84 | 93 | 0.74 | 1 | |
| Nebraska | No | 9748 | 1.48 | 7.17 | 122 | 0.56 | 111 | 0.53 | 4 | |
| Nevada | No | 22705 | 2.28 | 15.18 | 728 | 0.89 | 717 | 0.88 | 17 | |
| New Jersey | No | 9624 | 0.34 | 6.25 | 183 | 0.21 | 169 | 0.22 | 0 | |
| New Mexico | No | 67404 | 10.18 | 15.81 | 8747 | 17.51 | 7788 | 21.11 | 22 | Navajo (42351) |
| New York | No | 53722 | 1.00 | 9.07 | 1831 | 0.74 | 1794 | 0.74 | 8 | |
| North Carolina | No | 39044 | 1.25 | 7.46 | 571 | 0.54 | 563 | 0.53 | 1 | |
| Ohio | No | 7328 | 0.22 | 3.43 | 316 | 0.60 | 259 | 0.62 | 0 | |
| Rhode Island | No | 2884 | 1.00 | 8.91 | 112 | 0.87 | 109 | 0.93 | 1 | |
| South Carolina | No | 6950 | 0.44 | 6.03 | 718 | 1.31 | 616 | 1.32 | 1 | |
| Tennessee | No | 5366 | 0.26 | 4.65 | 353 | 0.47 | 193 | 0.46 | 0 | |
| Texas | No | 57102 | 0.52 | 18.70 | 4395 | 0.43 | 4143 | 0.43 | 3 | |
| Utah | No | 35716 | 2.61 | 7.64 | 2509 | 4.97 | 2312 | 5.44 | 5 | Navajo (30950) |
| Virginia | No | 11060 | 0.43 | 8.54 | 527 | 0.43 | 483 | 0.43 | 7 | |
| West Virginia | No | 692 | 0.13 | 0.80 | 35 | 1.27 | 29 | 1.36 | 0 | |

*Note*. The number and proportion of Indigenous students data come from Common Core of Data, State Nonfiscal Public Elementary/Secondary Education Survey Data 2019-2020, published by National Center for Educational Statistics (NCES) https://nces.ed.gov/ccd/files.asp. The proportion of ELs are from Digest of Education Statistics, Table 204.20. English language learner (ELL) students enrolled in public elementary and secondary schools, by state: Selected years, fall 2000 through fall 2018, published also by NCES https://nces.ed.gov/programs/digest/d20/tables/dt20_204.20.asp. The number and proportions of Indigenous students who were ELs are from Civil Rights Data Collections 2017-18 dataset, published by Office of Civil Rights https://ocrdata.ed.gov/resources/downloaddatafile. The number of federally recognized Tribes are approximated based on the 2022 tribe leader directory list from U.S. Department of the Interior, Indian Affairs https://www.bia.gov/service/tribal-leaders-directory. The data about each state's top five languages of ELs is from U.S. Department of Education, Consolidated State Performance Report (CSPR): Part I: SY 2012-13, compiled by Migration Policy Institute's English Language Learner Information Center https://www.migrationpolicy.org/programs/ell-information-center.

Figure 1: Map of the U.S. displaying the four categories of Indigenous EL differentiation, by state



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