

Federal Law and English Learners

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The responsibility for the English Learners' whole education, both in language and academic content, is shared by regular classroom teachers and ESOL teachers alike. All teachers function as language teachers when ELs are enrolled in their classes.

Overview

Federal Law and ESOL Students

Stated below is an excerpt from the United States Code § 1703. **Denial of equal educational opportunity prohibited:**

No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by - (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

In other words, federal law requires schools to provide language assistance services.

The United States Department of Education Office for Civil Rights (OCR) has responsibility for enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in programs and activities that receive federal financial assistance.

Title VI of the Civil Rights Act of 1964 regulatory requirements have been interpreted to prohibit denial of equal access to education because of a student's limited proficiency in English. Thus Title VI protects those students limited in their English language skills such that they are unable to participate in, or benefit from, regular or special education school instructional programs.

During the late 1960s, OCR became aware that many school districts made little or no provision for the education of students who were unable to understand English. In an effort to resolve this problem, on May 25, 1970, the former Department of Health, Education and Welfare issued a memorandum to clarify Title VI requirements concerning the responsibility of school districts to provide equal education opportunity to language minority students.

The May 25 Memorandum explained that Title VI is violated if:

- Programs for students whose English is less than proficient are not designed to teach them English as soon as possible or operate as a dead end track.
- Parents whose English is limited do not receive notices and other information from the school in a language they can understand.

In the 1974 *Lau v. Nichols* case, the U.S. Supreme Court upheld the May 25 Memorandum as a valid interpretation of the requirements of Title VI.

Based on the language of Title VI and the *Lau* holding, a foreign exchange student is a "person in the United States," and the *Lau* provisions would therefore apply. Also under the ESEA, an exchange student would not be exempt from any Title I required assessment, specifically, in this case, the ELP assessment. A LEP student, who happens to be a foreign exchange student, would also be included in an LEA's count of LEP students for purposes of allocating funds under 3114(a) of the ESEA.

Listed below is a review of other key legislation, court rulings, and administrative regulations addressing these students and the legal responsibilities of educational agencies serving them.

Other Federal Laws

- Constitution of the United States, Fourteenth Amendment (1868)

"No State shall deny to any person within its jurisdiction the equal protection of the laws."

- Equal Educational Opportunities Act (EEOA) (1974)

"No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or national origin, by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

The Civil Rights Division, Educational Opportunities Section of the United States Department of Justice

(<http://www.justice.gov/crt/about/edu/types.php>) is charged with enforcement of the EEOA, and as such, investigates allegations that State Educational Agencies (SEAs) or school districts are not providing adequate services to ELs. The Section's webpage outlines specific factors for assessing compliance and conditions that may violate the EEOA:

1. Fails to provide a language acquisition program to its EL students or fails to provide adequate language services to its EL students;

2. Fails to provide resources to implement its language acquisition program effectively (e.g., an ESOL program lacks ESOL teachers or ESOL materials);
3. Fails to take steps to identify students who are not proficient in English;
4. Does not exit EL students from a language acquisition program when the EL students have acquired English proficiency, or exits EL students without written parental or guardian permission before the students acquire English proficiency;
5. Fails to communicate meaningfully with non-English-speaking or limited-English-speaking parents and guardians of EL students by not providing such parents and guardians with written or oral translations of important notices or documents;
6. Fails to provide language acquisition assistance to EL students because they receive special education services, or fails to provide special education services to EL students when they qualify for special education services; and
7. Excludes EL students from gifted and talented programs based on their limited English proficiency.

Court Rulings

Supreme Court

1982 -- Plyler v. Doe

The Supreme Court ruled that the Fourteenth Amendment prohibits states from denying a free public education to immigrant children regardless of their immigrant status.

Federal Courts

1981 -- Castañeda v. Pickard

The Fifth Circuit Court of Appeals formulated a method to determine school district compliance with the Equal Education Opportunities Act (1974). The three-part test includes the following criteria:

1. "the school is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed legitimate experimental strategy;
2. the program and practices actually used by (the) school system are reasonably calculated to implement effectively the educational theory adopted by the school;
3. the school's program succeeds, after a legitimate trial, in producing results indicating that the language barriers confronting students are actually being overcome." *Id.* at 1009-10.

Castañeda states that the segregation of LEP students is permissible only when "the benefits which would accrue to LEP students by remedying language barriers which impede their ability to realize their academic potential in an English language educational institution may outweigh the adverse effects of such segregation." In other words, OCR will not examine whether ESOL is the least segregative program for providing language services. Instead OCR will examine whether the degree of segregation in the program is necessary to achieve the program's educational goals.