

Overview of Legal Issues Which Impact English Language Learners

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Implications for English Language Learners (ELLs) or Limited English Proficient (LEP) Students:

1. Students cannot be discriminated against due to language. ELLs/LEP students cannot be denied services, e.g., AG because the teacher does not speak the language.
2. Students cannot be refused enrollment due to Limited English Proficiency (LEP). Students are entitled to education in a public school until age 21.
3. Students cannot be retained due to Limited English Proficiency. Additionally, this means that as a practice Fs, Ds, or Us should not be given if English language ability prevents the students from performing the same as a native speaker of English. However, grading decisions are made at the school level and such variables as effort, participation, and attendance should be considered. Students cannot be expelled or suspended because of their limited English proficiency status.

The Health, Education, and Welfare (HEW) Memorandum of May 25, 1970

“Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.”

Lau vs. Nichols (1974)

This case involved a suit by Chinese parents in San Francisco which led to a ruling that identical education does not constitute equal education under Title VI of the Civil Rights Act of 1964. School districts must take the affirmative steps to overcome educational barriers faced by non-English speakers, i.e. to develop a plan.

The Equal Opportunity Act of 1974

This act requires a local school agency to take the appropriate action to overcome language barriers that impede students' equal participation in its instructional programs. A policy must be in place (Lau Plan).

Rios vs. Read (1978)

States must identify LEP students through valid testing. Program must be monitored. No premature exit without valid testing.

Castañeda vs. Pickard (1981)

The program that is used to serve students must be based on sound theory and show reasonable success.

Plyler vs. Doe (1982)

Students cannot be refused enrollment due to lack of legal documentation. Enrollment cannot be denied to students here on a Visitor's Visa, as long as they are here with parents or legal guardian. If they are not here with parent or legal guardian, the system does not have to enroll the student, but DPI recommends erring on the side of enrollment. Students need "satisfactory proof of age." Birth certificate is not required; requirement can be satisfied by baptismal certificate, medical records, affidavit signed by parents. Students do not need a social security number. School officials are not to inquire into legal status of students. The assumption is that the children do not come here on their own.

Civil Rights Restoration Act of 1988

All federal programs are "at risk" (may risk a loss of funds) if there is a failure to comply with statutes regarding education of English language learners.

Office of Civil Rights Enforcement Policy (1991)

Program evaluation is required to gauge success. Qualified ESL personnel must be employed to implement program. Specific program exit criteria must be in place. Systems cannot screen out LEP students for Gifted and Talented programs.

P.L. 103-302 Improving America's School Act (IASA) — 1994

This act authorizes full participation of eligible students with limited English proficiency in Title I programs for economically disadvantaged children. It states, "... limited English proficient children are eligible for services on the same basis as other children selected to receive services." It also states, "... limited English proficient students shall be assessed to the extent practicable, in the language and form most likely to yield accurate and reliable information on whatever students know and can do to determine such students' mastery of skills in subjects other than English."

Title III of the No Child Left Behind Act — 2001

This federal mandate holds state educational agencies, local educational agencies, and schools accountable for increases in English language proficiency and core academic content knowledge of Limited English Proficient students. It requires states to implement yearly student academic assessments that include, at a minimum, academic assessments in mathematics and reading or language arts. These assessments must be aligned with state academic content and achievement standards. Each state, school district, and school is expected to make adequate yearly progress toward meeting the state standards. This progress is measured by disaggregating data for specified subgroups of the population.

NCLB also requires that states provide for an annual assessment of English language proficiency (listening, speaking, reading, writing, and comprehension in English) of all

students identified as limited English proficient in schools served by the state [ref. Title I, SEC. 1111 (a) (7)].