



What Legal Obligations Do Schools Have to English Learners (ELs)?

Under civil rights law, schools are obligated to ensure that English learners (ELs) have equal access to education. The following guidance document details the laws that guide the instruction of English learners and what any school corporation with an English Learner is required to provide. It is important to note that the following federal laws outline what **must** be provided with **local or state funds**. The services below **cannot** be paid for with the federal Title III: Language Instruction for Limited English Proficient and Immigrant Students grant.

1. Title VI of the Civil Rights Act of 1964

Prohibits discrimination on the basis of race, color or national origin in programs and activities that receive federal financial assistance. This has been interpreted by the Office for Civil Rights (OCR) to mean that a student cannot be denied equal access to education because of a student's limited proficiency in English.

(Source: "The Provision of Equal Education Opportunity to Limited- English Proficient Students," August 2000)

2. 1970 OCR Memorandum: Identification of Discrimination and Denial of Services on the Basis of National Origin

This memorandum was issued in order to clarify Title VI requirements for school districts' responsibilities in providing equal education opportunity to language-minority students.

"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."

The memorandum also clarified that school corporations would be in violation of Title VI if:

- Students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;
- National-origin minority students are mis-assigned to classes for the mentally retarded because of their lack of English skills;
- Programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead-end track; or
- Parents whose English is limited do not receive school notices and other information in a language they can understand

(Sources: "The Provision of Equal Education Opportunity to Limited- English Proficient Students", August 2000 and "Identification of Discrimination and Denial of Services on the Basis of National Origin", July 1970)

3. Lau v. Nichols (1974)

Lau v. Nichols is the U.S. Supreme Court Case that upheld the 1970 OCR Memorandum stating:

"There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

4. Casteñeda v. Pickard (1981)

Casteñeda v. Pickard is the U.S. Supreme Court Case that outlined the three-pronged approach that must be used by school corporations when developing their English language development program to ensure it is effective in meeting the needs of their Limited English Proficient (LEP) students:

1. The program must be based on sound educational theory and pedagogy
2. The program must be adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success; and
3. The program must be periodically evaluated and, if necessary, revised

Office for Civil Rights: Title VI Compliance

What steps should a school corporation take to ensure equal educational opportunities for Limited English Proficient (LEP) students?

The OCR does not explicitly require a school corporation to use a specific intervention or program in order to serve their LEP students. However, the OCR has outlined the following procedures that school corporations should follow in order to ensure that their programs are serving LEP students:

- Identify students who need assistance;
- Develop a program which, in the view of experts in the field, has a reasonable chance for success;
- Ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- Develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- Assess the success of the program and modify it where needed

(Source: "The Provision of Equal Education Opportunity to Limited- English Proficient Students", August 2000)

The three fundamental principles for an English language development program

The Supreme Court case *Casteñeda v. Pickard* (1981) outlined the three-pronged approach that requires programs that educate children with limited English proficiency to be:

1. based on sound educational theory;
2. adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success; and
3. periodically evaluated and, if necessary, revised

The English language development program's policy and plan should be developed by the local school corporation. ***This program must be funded through state and local funds and cannot be provided with federal funding (such as Title III).***

What are considerations that must be taken into account when determining each principle?

1. Based on Sound Educational Theory: *Selecting the Educational Approach*

- A school corporation may use an educational approach that is recognized as sound by some experts in the field or recognized as a legitimate educational strategy
- When determining whether your school corporation and its English language development program is in compliance with Title VI, the following should be assessed:

- (a) Whether the approach provides for English language development; and
- (b) Whether the approach provides for meaningful participation of EL students in the district's educational program

To view types of Language Instruction Educational Programs, please visit the following link provided by the National Clearinghouse for English Language Acquisition:

http://www.ncele.gwu.edu/files/uploads/5/Language_Instruction_Educational_Programs.pdf

2. Adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success: *Implementing the Educational Program*

- Once an educational approach has been selected, the necessary resources should be used to implement the program (state and local funds)
- The school corporation should describe and document the educational approach that is used in a written plan

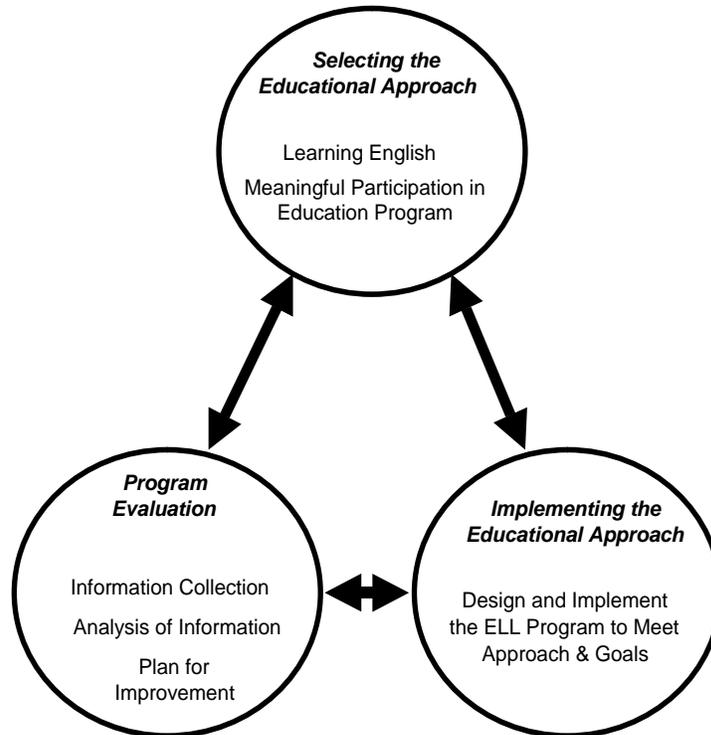
For more information regarding staffing requirements, please view the "Policy Update on Schools' Obligations Toward National origin Minority Students with Limited-English Proficiency":

http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html#_ftnref1

3. Periodically evaluated and, if necessary, revised: *Program Evaluation*

- Under federal law, adopting an EL program with a sound education design is not sufficient if the program as implemented proves ineffective
- In order to satisfy Title VI requirements regarding services for EL students, a school corporation must provide for ongoing evaluation of their EL program. The following are guiding questions:
 - (a) Is the program working?
 - (b) Are EL students gaining the proficiency in English that will enable them to participate meaningfully in the corporation's education program?
- If the program is not working effectively, a corporation is responsible for making the appropriate program adjustments or changes. This satisfies the Title VI obligation for schools to provide EL students with meaningful opportunities to participate in its educational program.

Below is a diagram demonstrating the successful components of an English language program, as determined by the Office for Civil Rights:



(Source: *Programs for English Language Learners*, November 1999)

A resource guide for developing programs for English Learners can be found at:

<http://www2.ed.gov/about/offices/list/ocr/ell/index.html>

Resources

National Clearinghouse for English Language Acquisition, *Title III Accountability*:

<http://www.ncele.gwu.edu/accountability/>

"The Provision of an Equal Educational Opportunity to Limited- English Proficient Students," August 2000

<http://ed.gov/about/offices/list/ocr/eeolep/index.html>

"Identification of Discrimination and Denial of Services on the Basis of National Origin," July 1970

<http://www2.ed.gov/about/offices/list/ocr/docs/nationaloriginmemo.html>

Supplement Not Supplant Provision of Title III of the ESEA

http://www.ncele.gwu.edu/files/uploads/5/supplement_guidance_pdf.pdf

"Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency," September 1991

http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html#_ftnref1