

Chapter 1

An Introduction to English Learners

An Introduction to English Learners in Indiana

More than 112,000 Indiana students speak a language other than English at home, and there are over 275 different languages represented in Indiana schools. Of these, over 50,000 students have been formally identified as English learners due to limited proficiency in speaking, listening, reading, and writing academic English.

English learners make up roughly 5% of Indiana's total student population, and they are enrolled in schools and districts in every corner of the state. Some of these students are immigrants and refugees, but the vast majority of Indiana's English learners were born in the United States. English learners have rich potential - culturally, linguistically, and academically. Indiana assessment data shows that students who achieve fluency in English often end up outperforming their native-speaking peers on state content assessments.

Whether a local education agency has one English learner or thousands, they are obligated to meet certain federal requirements for their students.

This living document is designed as a reference for district and school personnel working with English learners (ELs). The content of the guide represents a compilation of information, examples and resources for your use. We will be continuously updating this document to provide further clarity and information to district and school personnel working with ELs.

If you find an error, or feel this guide needs to be updated to reflect new or additional information, please email the Office of English Learning and Migrant Education at titleiii@doe.in.gov.

Legal Background & Federal Requirements for English Learners

Years of legislation and landmark court rulings have defined equal educational opportunity and federal requirements for local education agencies as they serve English learners. These events and their implications for schools educating English learners are detailed below.

Title VI of the Civil Rights Act of 1964 and its regulations at 34 CFR Part 100 2) -"No person in the U.S. shall, on the ground of race, color, or national origin be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

May 25, 1970, Memorandum, Department of Health, Education, and Welfare – In 1970, the federal Office for Civil Rights (OCR) issued a memorandum which interpreted the Civil Rights Act. The memo delineates school districts' responsibilities under civil rights law to provide an equal educational opportunity to national origin minority group students whose English language proficiency is limited. The following quotes discuss some major areas of concern with respect to compliance with Title VI and have the force of Law:

"Where inability to speak and understand the English language exclude 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."

"School districts have the responsibility to adequately notify national origin minority group parents of school activities which are called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English."

"School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin minority group children access to college preparation courses on a basis directly related to the failure of the school system to inculcate English language skills."

ELs are required to have equal access to the full range of district programs, including special education, Title I, gifted and talented programs, and nonacademic and extracurricular activities.

Although the memo requires school districts to take affirmative steps, it does not prescribe the content of these steps. It does, however, explain that federal law is violated 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 inappropriately assigned to special education classes because of their lack of English proficiency;
- programs for students with limited English proficiency 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 proficiency is limited do not receive school notices or other information in a language they can understand.

Lau v. Nichols (1974) – The basis for the case was the claim that the students in question could not understand the language in which they were being taught; therefore, they were not being provided with an equal education. The U.S. Supreme Court agreed, and its decision upheld the OCR's 1970 memo, **If English is the mainstream language of instruction, then measures have to be taken to ensure that instruction is adapted to address those children's linguistic characteristics** (Lau v. Nichols, 414 U.S. 563, 94 S. Ct. 786, 1974). The Lau ruling stated:

"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."

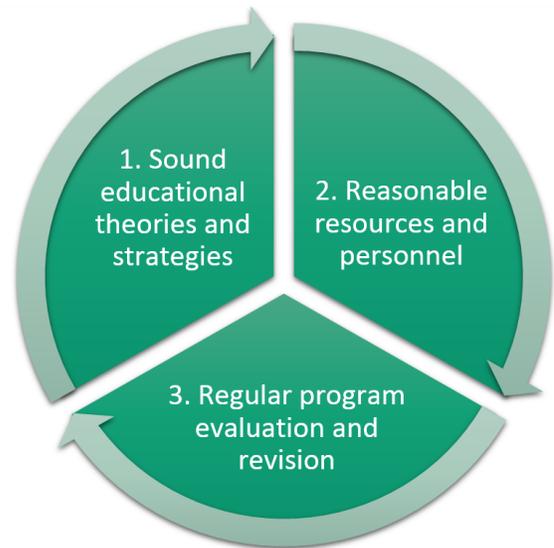
The case reaffirmed that all students in the United States, regardless of native language, have the right to receive a quality education. It also clarified that equality of opportunity does not necessarily mean the same education for every student, but rather the same opportunity to

receive an education. An equal education is only possible if students can understand the language of instruction.

Equal Educational Opportunities Act (EEOA) - 1974 - This legislation defined what constituted the denial of education opportunities, stating:

"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."

Castaneda v. Pickard (1981), The 5th Circuit set out a widely adopted three-part test to determine whether districts have taken "appropriate action" to remedy the language deficiencies of their ELLs: (1) is the school "pursuing a program informed by an educational theory recognized as sound by some experts in the field, or at least, deemed a legitimate experimental strategy"; (2) are the programs and practices actually used by the school "reasonably calculated to implement effectively the educational theory adopted by the school"; and (3) does the program "produce results indicating that the language barriers confronting students are actually being overcome." Congress intended that schools make a "genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students."



Plyler v. Doe (1982) The United States Supreme Court stated that school systems must enroll and educate children residing in their district even if their parents do not possess legal residency documents.

Title II of the Americans with Disabilities Act of 1990, 42 USC 12131-12161 - Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability in all programs, activities, and services of public entities. Public entities include state and local governments and their departments and agencies. Title II applies to all activities, services and programs of a public entity.

Individuals with Disabilities Educational Act (IDEA) of 2004 - The purpose of IDEA 2004 is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and their parents are protected; to assess and ensure the effectiveness of efforts to educate children with disabilities.

Equal Opportunity for English Learners

The U.S Department of Education's Office of Civil Rights oversees school districts' broad discretion concerning how to ensure equal educational opportunity for ELs. OCR does not prescribe a specific intervention strategy or program model that a district must adopt to serve ELs, but provides guidelines to ensure that programs are serving ELs effectively. Local education agencies should:

- identify students as potential ELs;
- assess students' need for EL services;
- 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.

The Office for Civil Rights provides fact sheets, guidance, and resources for education officials about their obligations to EL students and LEP parents. For additional information regarding the provision of equal education opportunity to ELs, contact the Office for Civil Rights at:

Phone: (800) 421-3481

Email: ocr@ed.gov

URL: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>