

Key Sources of Federal Law that Impact English Learners

Title VI of the Civil Rights Act of 1964

- Prohibits discrimination based on race, color, or national origin.
- “No person in the United States shall, on the ground 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.”

Office for Civil Rights’ May 25, 1970 Memorandum

- Requires school districts to take affirmative steps to rectify language deficiencies in order to open instructional programs to all students.
- Prohibits school districts from assigning LEP students to special education classes on criteria which essentially measure or evaluate English language skills.
- School districts have the responsibility to adequately notify parents with limited English proficiency of school activities which are called to the attention of other parents. Such notice in order to be adequate may be to be provided in a language other than English.
- Forbids specialized programs for LEP students to operate as an educational dead-end or permanent track.

Lau v. Nichols - 414 U.S. 563 (1974)

- “Under these state imposed standards, 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.
- Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.
- “It seems obvious that the Chinese-speaking minority receive fewer benefits than the English speaking majority from respondent’s school system which denies them a meaningful opportunity to participate in the educational program – all earmarks of the discrimination banned by the regulations”.

Equal Educational Opportunities Act of 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 Lau Remedies (1975)

They specified approved approaches, methods, and procedures for:

- “Identifying and evaluating national origin minority students’ English language skills;
- Determining appropriate instructional treatments;
- Deciding when LEP children were ready for mainstream classrooms;
- Determining the professional standards to be met by teachers of language minority children.”



Castañeda v. Pickard (1981)

The Court of Appeals then formulated the following three-part test to measure compliance with the EEOA (see #4) requirement of “appropriate action.”

- **Theory:** The Court’s responsibility, insofar as educational theory is concerned, is only to ascertain that a school system in 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.
- **Practice:** The Court’s second inquiry would be whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school. We do not believe that it may fairly be said that a school system is taking appropriate action to remedy language barriers if, despite the adoption of a promising theory, the system fails to follow through with the practices, resources, and personnel necessary to transform the theory into reality.
- **Results:** If a school’s program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned.

Plyler v. Doe: Right to Attend Free Public School (1982)

The US Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202(1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are not obliged under State law to attend school until they reach a mandated age.

As a result of *Plyler* ruling, public schools may not:

- Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- Treat a student disparately to determine residency.
- Engage in any practices to “chill” the right of access to school.
- Require students or parents to disclose or document their immigration status.
- Make inquiries of students or parents that may expose their undocumented status.
- Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

No Child Left Behind Act of 2001

The No Child Left Behind Act of 2002 was established “to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.” Title III of NCLB focuses on the education of English learners.

- Section 3115 (g) – Supplement not supplant
 - Title III can only be used as a supplement, not as the main budget to fund a program. It should not be used to hire FTEs or run programs that have no other funding source or are required by state or local laws and regulations.
- Section 3122 (a)(3)(A) – Annual Measurable Achievement Objectives
 - AMAO 1 – at a minimum, annual increases in the number of percentage of children making progress in learning English;
 - AMAO 2 – at a minimum, annual increases in the number or percentage of children attaining English proficiency by the end of each school year, as determined by a valid and reliable assessment of English proficiency consistent with section 1111(b)(7); and
 - AMAO 3 – academic growth for English learners as described in section 1111(b)(2)(B).



- Section 3211 (b) – Improvement plan
 - If a Title III grantee does not meet AMAOs for two or more consecutive years, it must develop an improvement plan to describe implementation, assess and evaluate current ELD practices.
- Section 3215 – Capacity building
 - Title III grantees must provide professional development to educators to build capacity and enable them to provide high-quality language instruction in the absence of federal funds.
- Section 3302 (a) – Parental notification
 - Parents of ELs must be notified, within thirty days, of their child’s placement in an ELD program.
- Section 3302 (b) – Notification of failure to meet AMAOs
 - Title III Grantees must inform the parents of ELL students when they have failed to meet AMAOs each year.