



Legal Provisions for the Education of English Learners

To ensure English Learners are properly and adequately served, the following court cases have formed the regulations and guidelines that direct and impact ESL instruction:

Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance. The Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a language minority student's limited proficiency in English.

<http://www.usdoj.gov/crt/cor/coord/titlevistat.htm> (full text)

Title VII of the Elementary and Secondary Education Act of 1968

The Bilingual Education Act recognizes the unique educational disadvantages faced by non-English speaking students. It establishes a Federal policy to assist educational agencies to serve students with limited English proficiency by authorizing funding to support those efforts. It also supports professional development and research activities. Reauthorized in 1994 as part of the Improving America's Schools Act, Title VII was restructured to provide for an increased state role and give priority to applicants seeking to develop bilingual proficiency. The Improving America's Schools Act modified eligibility requirements for services under Title I so ELLs are eligible for services under that program on the same basis as other students.

<http://www2.ed.gov/legislation/ESEA/toc.html> (access full text)

Title VII was replaced in the most recent reauthorization of the ESEA, the *No Child Left Behind Act of 2001*, and is now Title III "Language Instruction for Limited English Proficient and Immigrant Students."

U.S. Department of Health, Education, and Welfare - May 25 Memorandum (1970)

The Memorandum clarified a school district's responsibilities with respect to national-origin-minority children, stating, in part, that "where 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 the instructional program to the students."

<http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>

Supreme Court - Lau v. Nichols (1974)

The Supreme Court ruled that equality of educational opportunity is not achieved by merely providing all students with the same facilities, textbooks, teachers, and curriculum (because) students who do not understand English are effectively foreclosed from any meaningful education. The court ordered that districts must take affirmative steps to overcome educational barriers faced by non-English speaking students.

<http://www.pbs.org/beyondbrown/brownpdfs/launichols.pdf> (summary)

<http://stanford.edu/~kenro/LAU/IAPolicy/IA1aLauvNichols.htm> (summary and full text)

Equal Education Opportunities Act of 1974

This civil rights statute prohibits states from denying equal educational opportunity to an individual on account of his or her race, color, sex or national origin. The statute specifically prohibits states from denying equal educational opportunity 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.

<http://www.maec.org/laws/eeo.html> (full text)

Fifth Circuit Court - Castañeda v. Pickard (1981)

The court established a three-part test to evaluate the adequacy of a district's program for ELLs: 1) is the program based on an educational theory recognized as sound by some experts in the field or is considered by experts as a legitimate experimental strategy, 2) are the programs and practices, including resources and personnel, reasonably calculated to implement this theory effectively, and 3) does the school district evaluate its programs and make adjustments where needed to ensure language barriers are actually being overcome?

http://scholar.google.com/scholar_case?case=16848723757397550913&hl=en&as_sdt=2&as_vis=1&oi=scholar (full text)

Supreme Court - Plyler v. Doe (1981)

The Supreme Court ruled that the Fourteenth Amendment prohibits states from denying a free public education to undocumented immigrant children regardless of their immigrant status, that all students in public schools must be appropriately served, including any students who may not be documented as legal immigrants. The court emphatically declared that school systems are not agents for enforcing immigration law, and determined that the burden undocumented aliens may place on an educational system is not an accepted argument for excluding or denying educational services to any student.

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0202_ZS.html (text)

Congress - Civil Rights Restoration (1988)

This law clarified previous laws to ensure that discrimination is prohibited throughout an entire institution or agency, if any part receives federal assistance. If any state and local agencies, school systems, and corporations were found to be in violation of civil rights laws and refused to comply with the law, all of the federal funding for that institution would be in jeopardy of being withdrawn.

Office for Civil Rights - Enforcement Policy of 1991

This addressed components within the compliance points: 1) ESL teachers must have been adequately trained and be evaluated by someone familiar with methods being used, 2) exit criteria should be based on objective standards, 3) schools cannot have policies of "no double services" refusing alternative language service and special education to children needing them and, 4) cannot be categorically excluded from gifted/talented or other special programs.

Office for Civil Rights Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited English Proficiency (1991) adopted the three prongs of *Castañeda v. Pickard* (1981), above, required that all language minority students be assessed for fluency, that parents be provided school information in a language they understand, and that schools assure that instruction to limited English proficient students is carried out by qualified staff.

<http://www.ed.gov/about/offices/list/ocr/docs/lau1991.html>

Executive Order 13166: Improving Access to Services for Persons With Limited English Proficiency (2000)

<http://www.usdoj.gov/crt/cor/13166.htm> (full text)

Title III of the Elementary and Secondary Schools Act of 2001 - No Child Left Behind

Public Law 107-110

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)].

<http://www.ed.gov/policy/elsec/leg/esea02/index.html> (full text) <http://www.ed.gov/esea> (U.S. Department of Education's official ESEA Web site; includes NCLB links)