

Legal Responsibility to English Language Learners (ELLs) A Summary of Litigation and Resulting Actions

Title VI Civil Rights Act of 1964

Equal Access – No person in the United States, on the ground of race, color or national origin shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Health, Education and Welfare Memorandum - May 25, 1970

Identification of Discrimination and Denial of Service on the Basis of National Origin – Three major areas of concern: unequal access to participate in school programs because of language, segregation of tracking, ability grouping and assignment of special education, and the exclusion of parents from school information. Office for Civil Rights (OCR) instructed to implement review and compliance procedures.

Lau vs. Nichols – 1975

The court affirmed the authority of OCR to require affirmative efforts to give special attention to linguistically minorities. Simply providing the same text books, teachers, classrooms, and curriculum is not enough to support non-English speakers because students who do not understand the language of instruction are effectively foreclosed from learning. School districts must provide more to support these students.

Castaneda vs. Pickard – 1981

The court developed a 3-part test to determine if districts were providing an adequate program for English language development: sound educational theory recognized by at least some experts in the field, programs and practices reasonably calculated to implement the theory in an effective manner, and regular evaluation of the program that leads to adjustments where needed to ensure that language barriers are overcome.

Plyler vs. Doe – 1982

Public schools prohibited from denying immigrant students access to a public education. Undocumented children have the same right to a free public education as U.S. citizens and permanent residents. Undocumented children are obligated to attend school until they reach the age mandated by state law.

Further, schools are prohibited from adopting policies or taking actions that would deny students access to education based on their immigrant status.

Therefore, schools are prohibited from

- requiring families to prove they are in this country legally by asking for documents such as green cards, citizenship papers or other papers. Schools must be careful not to take actions that lead to “chilling” of families Plyler rights.
- barring access to a student on the basis of legal status or alleged legal status.
- treating students disparately on the basis of an undocumented status
- inquiring about a student’s immigration status including requiring documentation of a student’s legal status at registration or at any other time.
- making inquiries of a family which may cause them to expose their legal status.

Regarding social security numbers:

- Schools may not require families to apply for a social security number.
- Schools may not deny registration if the family cannot supply a social security number.
- If a school provides an application for a social security number they must stress that this is provided as a service and it is the families choice whether or not to apply for the number. This information must be provided in a language that can be understood by the parents.
- For the purpose of applying for free and reduced lunch, the school can assign an ID number or write in none where the number is requested on the form. School lunch programs are interested in family income, not legal status.

Regarding communication with Immigration and Naturalization Services:

- School personnel are prohibited from releasing information to INS without the presentation of a valid subpoena. All school personnel should be notified of this policy. It is recommended that if a subpoena is presented that the school consult an attorney.
- School personnel should not cooperate with INS in any manner that jeopardizes immigrant students and their right of access to education. If approached by INS, the principal in a school should immediately contact the superintendent of schools and the school’s attorneys to clarify responsibilities under Plyler vs. Doe.

Department of Education Memorandum – 1985

The memorandum outlines what districts are required to do for non-English language background students:

- Determine need for and English language development program
- Program must be based in sound educational theory

- Programs calculated to be effectively implemented
- Programs evaluated to determine if they yield positive results and modified if not
- Is the program provided in a least segregated manner
- Programs provide equal access to other special services as needed (including extracurricular activities)

Department of Education Memorandum Policy Update – 1991

This memorandum updates the policies put forth in the 1985 memorandum. Districts must ensure the following:

- All non-English background students must be identified
- All non-English background students assessed for need of special services
- All non-English background students placed in an appropriate program and provided needed service or English language development
- Programs modified when not effective
- No under or over representation in special education
- Provision of appropriate and understandable information to parents
- Appropriate facilities for instruction and no unnecessary segregation of students
- Inclusion of non-English background students in special opportunity programs

Alabama State Department of Education Compliance Agreement with OCR – 1999

Alabama's SDE submitted policy and procedures under OCR compliance which included the following mandates:

- Districts must identify students with a Home Language Survey
- Districts must assess students for English language proficiency
- Districts must use an ELL committee to determine appropriate program for students in need of English language development
- Districts must have a plan for their program approved by the state

No Child Left Behind Reauthorization of Title Funding – 2002

Federal funds programs for education revamped and reauthorized. Title III becomes act regarding service to English language learners. Primary new policy and procedures:

- Parent notification
- Annual assessment of English language proficiency in a uniform manner
- Adequate yearly progress required
- Inclusion of all English language learners in state assessment programs regardless of proficiency level.
- State standards for ESL instruction required

- Title III funds distributed to states for sub grants to local education agencies

Alabama State Department of Education Revised Handbook for Service to ELLs and State Standards for ESL Instruction– June 2003

The SDE in a meeting in June 2003 provided draft copies of the state handbook and state ELL standards. These two documents are meant to guide LEAs in the education of ELLs. The state is in the process of formulating and adopting a uniform test of English language proficiency to be administered annually in the spring, beginning in the spring of 2004.