



Civil Rights and English Learners

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Who are English Learners (ELs)?

- Approximately 4.6 million students nationwide
- Nearly 10% of overall population
- Every age and grade level
- Every socioeconomic class
- Every continent, dozens of countries, hundreds of languages
- More than half of ELs are 2nd and 3rd generation, meaning they are born in the US
- May or may not have received formal education prior to enrolling in American schools
- May or may not be literate in their home language

Source: EPE Research Center, 2009

In Kansas there are over 41,000 identified ELs, approximately 8% of the students in Kansas are ELs, there are about 100 languages spoken by ELs in Kansas, many are US citizens (including 2nd and 3rd generation American), some languages are not written languages and if the home language is a written language the family or the EL might not be literate in that language.

EL Civil Rights: Foundations...

Title VI of the Civil Rights Act of 1964:

“[n]o 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.”

The Equal Protection Clause, 14th Amendment to the US Constitution:

“No state shall...deny to any person within its jurisdiction the equal protection of the laws.”

14th Amendment (1868)...equal opportunity to attend school, receive an education, etc.

EL Civil Rights: Foundations...

General outcomes from Title VI and Equal Protection:

1. Students **may not** be screened or identified as ELs based on:
 - a) Name
 - b) National origin
 - c) Ethnicity
 - d) Appearance
 - e) Language other than EnglishDoing so violates Title VI.
2. Under the **Brown v. Board of Education** (1954) ruling, permanently segregating ELs into 'separate but equal' schools or academic pathways based on their language skills is a violation of the Equal Protection Clause.

2. Doing this may result in what is known as a “dead end” program.

EL Civil Rights: Critical cases

I. **Lau v. Nichols, 1974:**

“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”

LEAs must help ELs overcome linguistic barriers in order to access instruction.

- Probably the most important court decision regarding EL civil rights in an education context.
- Stands as the most basic and fundamental ruling about service requirements for ELs in all public schools.
- Basis for the Lau memoranda from the Office for Civil Rights.

San Francisco...Chinese family wanted their children to attend public school but the children didn't speak English. School claimed they DID have equal access to public education since they were attending the same classes as other students. The court's ruling said that the children did NOT have equal **access** to the same curriculum b/c they were not proficient in English and that it was the school's responsibility to provide the children with equal access (linguistic support). Not providing linguistic support is denying them access to the curriculum (education).

EL Civil Rights: Critical cases

2. **Castañeda v. Pickard, 1981:** In order to be considered “appropriate” a language instruction program must satisfy the following criteria:
 - a) Be based on sound educational theory
 - b) Be implemented to full effect (i.e., adequate funds, adequate teacher competency to run the program as it is intended)
 - c) Be subject to change or replacement if it fails to achieve intended aims of language acquisition.
3. **Plyler v. Doe, 1982:** States are obligated to provide free public education services to all children within their jurisdiction, regardless of their citizenship status.

2. Three prongs (evaluation?)
3. One basis for not requiring a SSN.

Another Critical Document:


May 25 Memorandum, 1970:

Circulated from the Office for Civil rights; highlighted specific “common practices which have the effect of denying equality of education opportunity to [language minority] pupils” (and are therefore, violations of Title VI). These included:

1. Failure by the LEA to take “affirmative steps” to help ELs overcome language barriers or otherwise access instructional programs;
2. “Dead end” programming for ELs that has no aim to integrate them into mainstream classes;
3. Denying ELs the opportunity to participate in college prep or other advanced classes based on their language skills;
4. Failure to notify parents of ELs about issues or opportunities for which other parents do receive information.

Practices Prohibited in K-12 public schools:

Action	Basis
1. Permanent or complete academic segregation; "dead end" academic tracks.	Title VI (May 25 Memo)
2. Denial of access to advanced or college preparatory courses based on language skills.	Title VI (May 25 Memo)
3. Failure to provide the same information to parents of ELs that other parents receive about opportunities or issues in their child's school.	Title VI (May 25 Memo)
4. Identification as students with disabilities based on language skills only.	Title VI (May 25 Memo)



Remember:

- Schools are required to ensure that the rights of students are met, whether Federal or State funding is accepted or not.
- Parent refusal of a language support program for their child does not release the school from its obligation to provide linguistic support in order for that child to access the curriculum.

A district does not have to meet the requirements of Title III, for example, if it does not accept Title III funds. They DO have to ensure that the rights of ELs are met, however, whether they receive ANY Federal or State funding.

Expectations	Challenge
<ul style="list-style-type: none">• All students must be identified as ELs according to the same criteria.• Identification criteria must be language based.• ELs with disabilities must be identified using the same criteria as other students with disabilities.	<ul style="list-style-type: none">• Assessments used to evaluate for possible disabilities are usually given in English.

Expectations and Challenges

Is it a language issue (difference) or a disability? Some non-verbal assessments can be used, but there may still be language/culture bias.
If the assessment IS available in another language, does the school have the appropriate personnel (language ability and training) to administer?

Expectations

- School provides timely and adequate information to parents of ELs about opportunities for them and their children.

Challenge

- Information has to be provided in a language that the parents can understand. Finding appropriate interpreters and/or translators may be difficult.

Expectations and Challenges

Expectations	Challenges
<ul style="list-style-type: none">• ELs have the same access to Gifted and Talented, Advanced Placement, International Baccalaureate, or other advanced level courses.	<ul style="list-style-type: none">• Language ability may not easily reflect thinking or performance ability.

Expectations and Challenges

It is often difficult for teachers to know what a student knows if his/her language is not yet fully developed. In class, language may be reduced or simplified, but higher order thinking skills and content should not.



Questions?

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