Federal Law and English Language Learners

Some Legal Precedents

"Today, education is…a principal instrument in awakening the child to cultural values, in preparing him (her) for later professional training, and in helping him (her) to adjust normally to his (her) environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he (she) is denied the opportunity of an education."
--U.S. Supreme Court, 1954: Brown vs. The Board of Education

"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 or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance from the department of Health, Education and Welfare."
-- Title VI, Civil Rights Act, 1964

"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."
-- excerpt from the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703

The **United States Department of Education Office for Civil Rights (OCR)** has the responsibility for enforcing **Title VI of the Civil Rights Act of 1964**. As stated above, this Act prohibits discrimination on the basis of race, color or national origin in programs and activities that receive federal financial assistance.

Title VI has been interpreted by U. S. Federal Courts to prohibit denial of equal access to education because of a student's limited proficiency in English. Thus Title VI protects those students whose English language skills are limited to the point that they cannot participate in, or benefit from, regular or special education school instructional programs.

During the late 1960s, OCR became aware that many school districts around the country made little or no provision for the education of students who were unable to understand English. In an attempt to resolve this problem, the former Department of Heath, Education and Welfare issued a **memorandum**, on 25 May 1979, to clarify Title VI requirements concerning the responsibility of school districts to provide equal education opportunity to English Language Learners (ELL).

The **25 May memorandum** explained that Title VI is violated if:

1. Programs for students whose English is less than proficient are not designed to teach them English as soon as possible or operate as a dead end track.

   "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 its instructional program to these students."
   -- 25 May memorandum

2. Parents whose English is limited do not receive notices and other information from schools in a language they can understand.

   "School districts must 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."
-- 25 May memorandum

3. School districts cannot assign student to special education program solely on the grounds of the student's inability to speak 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 preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills."
   -- 25 May memorandum

This means that districts must provide language instruction that is meaningful and gives non-English speaking students both the social and academic language skills they need to succeed academically and that districts must provide communication to the parents of such students in the language of the home.

In 1974 the U.S. Supreme Court upheld the 25 May memorandum as a valid interpretation of the requirement of Title VI in **Lau vs. Nichols**.

"Basic English Skills are at the very core of what…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."
-- U. S. Supreme Court, 1974, Lau vs. Nichols.

In 1974, Congress passed the Equal Educational Opportunities Act (EEOA). This Act was designed to require school districts to establish language programs and eliminate language barriers in schools.

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As a result of this act, schools are required, for example, to provide student handbooks, all school policies, signs, labels, parent consent forms, etc., in both English and the home language of the students.

In 1981 the Fifth Circuit Court of Appeals, in **Castaneda vs. Pickard**, formulated a method to determine if a school district was in compliance with the Equal Education Opportunities Act (1974). The three-part test includes the following criteria:

1. "The school is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed legitimate experimental strategy;
2. "the program and practices actually used by (the) school system are reasonably calculated to implement effectively the educational theory adopted by the school;
3. "the school's program succeeds, after a legitimate trial, in producing results indicating that the language barriers confronting students are actually being overcome."

Castaneda further states that the segregation of ELL is permissible only when "the benefits which would accrue to limited English proficient students by remedying language barriers which impede their ability to realize their academic potential in an English language educational institution may outweigh the adverse effects of such segregation." Ian other words, OCR will not

examine whether an ESL/Bilingual program is the least segregative program for providing language services. Instead, OCR will examine whether the degree of segregation in the program is necessary to achieve the program's educational goal.

In 1982, the U.S. Supreme Court in **Plyler vs. Doe** ruled that the Fourteenth Amendment prohibits states from denying a free public education to undocumented immigrant children regardless of the immigrant status.

"Undocumented alien children cannot be denied a free, public education because such a denial would violate their constitutional right of equal protection."

"Visiting…condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the …child is contrary to the basic concepts of out system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his (her) birth and penalizing the …child is an ineffectual – as well as unjust – way of deterring the parent."
-- U.S. Supreme Court, 1982, Plyler vs. Doe

Thus, school districts can request academic records from former attendance centers, but cannot request ANY documentation from students concerning their or their family's alien status.

For further information contact:

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