



# School District Civil Rights Obligations to Serve EL Students

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# Welcome!



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# Disclaimer



No part of this presentation should be taken as the provision of legal advice in any way. The information discussed in this presentation is gleaned from documents posted by the U.S. Department of Education, Office for Civil Rights (OCR) and/or Office for English Language Acquisition (OELA); and the U.S. Department of Justice (DOJ), Civil Rights Division. This presentation is intended for informational purposes only.

# OCR-DOJ Dear Colleague Letter/Guidance

- On January 7, 2015 the U.S. Department of Education's Office for Civil Rights (OCR) and the Department of Justice's (DOJ) Civil Rights Division issued joint guidance in the form of a Dear Colleague Letter (DCL) regarding ELs and LEP parents that included as it's first section an overview of states and districts legal obligations to provide educational programs for English Learners (ELs).
- This presentation focuses on providing information from that section of the guidance, but also draws on other sources of information to provide additional background and details.



# Legal Citations

Civil Rights Act, EEOA,  
And ESSA

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# Civil Rights Act & the EEOA

- Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunity Act of 1974 (along with a 1970 Memorandum) form the foundation for the legal requirements for providing educational services to EL students.
- The details of these legal requirements are found in guidance related to these laws, court cases (case law), and the resolution agreements & consent decrees issued by OCR and DOJ.
- This DCL/guidance specifically says, related to determining Civil Rights compliance, “the Departments apply the standards established by the United States Court of Appeals for the Fifth Circuit more than 30 years ago in *Castañeda v. Pickard*” (pages 5-6).

# Title VI of the Civil Rights Act

- Title VI prohibits recipients of federal financial assistance, including SEAs and school districts, from discriminating on the basis of race, color, or national origin.
- 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.
- NOTE: Title VI applies to recipients of federal financial assistance.



# Equal Educational Opportunities Act

- The EEOA does not allow the denial of “equal educational opportunity to an individual on account of his or her race, color, sex, or national origin.”
- The EEOA requires States and School Districts to “take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.”
- NOTE: the EEOA applies whether the educational agency receives federal financial assistance or not. This distinction is important when it comes to responsibility for enforcement of these laws.



# Title I and Title III

- The Jan. 7, 2015 OCR-DOJ guidance discusses the use of Title I and Title III funds in supporting EL educational programs under NCLB. There have been some significant changes in the responsibilities for EL programs in the reauthorization to ESSA.
- The Jan. 7, 2015 guidance outlines the NCLB Title III requirements to provide high-quality professional development as well as language instruction education programs that are:
  - high-quality;
  - based on scientifically-based research;
  - will enable ELs to speak, listen, read, & write English and;
  - meet challenging state academic standards.

# Title I and Title III

- Not all districts receive Title III funds, so only those districts that receive Title III funds are subject to the requirements of Title III.
- Title I, however, also provides some key requirements for school districts regardless of Title III funding. This includes annually assessing the ELP of all ELs, some specific parent notices, prohibitions against discrimination, and accountability for the EL subgroup.
- This is all discussed in the Jan. 7, 2015 guidance, however, it is based on NCLB and ESSA has made some changes that must be mentioned.

# Some Changes Under ESSA

- When Congress reauthorized ESEA by ESSA it made some significant changes to EL requirements, shifting many EL program responsibilities to Title I.
- One change is that all through ESSA the wording for programs to be “scientifically research based” has been changed to say they need to be “evidence-based” or “effective”.
- The EL parent notification related to identification of the student as an EL and placement of the student in an EL program has been moved from Title III to Title I.
- Title III no longer requires ELP standards and assessment, this is now required under Title I.

# Some Changes Under ESSA

- The most significant changes came in the areas of accountability and school improvement.
- States are required under Title I to design their own accountability systems within a framework outlined in ESSA that must include not only accountability for academic progress, but also for English proficiency.
- Under NCLB, accountability for ELP was under Title III and it included all ELs in all grades, but at the district level.
- Under ESSA, accountability for ELP is now under Title I at the school level, but only in the grades tested by the content test (grades 3-8, once in HS).
- School improvement identifications for ELP are no longer at the district level under Title III. They are now at the school level under Title I.
- A school may be identified under Title I accountability for Targeted Support and Improvement based solely on the EL subgroup not meeting targets for progress toward ELP. This means that school improvement funds will be available to address ELP.



# Civil Rights Enforcement

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# EL Civil Rights Enforcement

- Title VI of the Civil Rights Act of 1964 is premised on federal funding, but the EEOA is not. Both OCR and DOJ enforce Title VI, but OCR does not enforce the EEOA.
- Only the DOJ enforces the EEOA, but it is done in ways that are very similar to its enforcement of the Civil Rights Act.
- Enforcement of Civil Rights laws is discussed in the January 7<sup>th</sup> guidance, but mostly in footnotes.

# EL Civil Rights Enforcement

- DOJ enforces Title VI across federal agencies under Executive Order 12250 and can initiate a Title VI compliance review when an LEA or SEA receives federal funds.
- OCR can also initiate a Title VI compliance review for any LEA or SEA that receives federal funds.
- The DOJ can intervene or file an amicus brief (expresses strong interest in or views on the subject matter of an action even though not a party to the case) or a statement of interest in a Title VI case.



# EL Civil Rights Enforcement

- Another main difference is that the DOJ litigates these cases in federal court. OCR does not litigate these cases.
- However, OCR can refer unresolved findings of noncompliance under Title VI to the DOJ for enforcement, including litigation.
- While it isn't common, when both OCR and DOJ are involved in a case, it is usually because OCR has referred the case to DOJ due to unresolved issues which cannot be settled outside of some type of litigation in court.



# Case Law

*Lau and Castañeda*

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# Case Law

- The *May 25, 1970 Memorandum* was a policy statement issued by the U.S. Department of Health, Education, and Welfare. It was issued to clarify a school district's responsibilities with respect to national-origin-minority children.
- It stated, 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."
- Timeline: Civil Rights Act 1964, 1970 Memo, EEOA 1974

# Case Law

- The *Lau v. Nichols* case was a class action suit brought by parents of non-English-proficient Chinese students against the San Francisco Unified School District.
- In 1974, the Supreme Court ruled that identical education does not constitute equal education under the *Civil Rights Act of 1964*. Providing the same teachers, textbooks, facilities, etc., does not provide equal access to educational programs if students are unable to access the educational programs because of limited proficiency in English.
- The court ruled that the district must take affirmative steps to overcome educational barriers faced by the non-English speaking Chinese students in the district.

# Case Law

- The Supreme Court ruling in the *Castañeda v. Pickard* case in 1981 established a three-part test (or three principles) to evaluate the adequacy of a district's program for ELs.
  1. The educational theory underlying the language assistance program is recognized as sound by some experts in the field or is considered a legitimate experimental strategy;
  2. The program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and
  3. The program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome within a reasonable period of time.



# Guidance

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# OCR Guidance Documents

- One online OCR guidance document titled ‘Programs for English Language Learners’ provides information and self-assessment questions for districts to use to evaluate their EL program(s). This document also discusses in detail the three principles from *Castañeda*. It is found at:  
<http://www2.ed.gov/about/offices/list/ocr/ell/index.html>



# First Principle from *Castañeda*



## First Principle: Selecting the Educational Approach

- It is the responsibility of each district to select a specific educational approach to meet the needs of its particular EL student population. A district may use any educational approach that is recognized as sound by some experts in the field, or an approach that is recognized as a legitimate educational strategy.
- Regardless of the educational approach selected by the district, in assessing compliance with Title VI of the Civil Rights Act of 1964, a twofold inquiry applies: (1) whether the approach provides for English language development; and (2) whether the approach provides for meaningful participation of EL students in the district's educational program (i.e. access to/acquisition of academic content).
- OCR encourages districts to develop their own specific program goals. Whether or not such goals are formally developed, OCR requires the program to meet the twofold requirements of Title VI mentioned above.

# Second Principle from *Castañeda*



## Second Principle: Implementing the Educational Approach

- Once a district has selected an educational approach, it needs to provide the necessary resources to implement the program. The variations in programs implemented by districts may be as diverse as the populations served by those districts.
- Feedback from districts that have implemented successful programs indicates the need to describe and document the educational approach in a written plan so that staff, administrators, and parents understand how the program works.
- Part II of the material found in the ‘Programs for English Language Learners’ online document provides information to assist districts in developing a written description of its program of services for EL students.

# Third Principle from *Castañeda*



## Third Principle: Program Evaluation

- Under federal law, adopting an EL program with a sound education design is not sufficient if the program as implemented proves ineffective. As a result, a central element of satisfying Title VI requirements regarding services for EL students is an ongoing evaluation of a district's EL program.
- Questions to ask are: Is the program working? Are EL students gaining the proficiency in English that will enable them to participate meaningfully in the district's education program?
- Part III of the material found in the 'Programs for English Language Learners' document identifies illustrative approaches and various considerations to assist districts in designing their own approach to EL program self-evaluation.
- If a program is not working effectively, a school district is responsible for making appropriate program adjustments or changes. This requirement is based on the obligation arising from Title VI for a school district to provide EL students with meaningful opportunities to participate in its educational program.

# Supplement not Supplant Issues

- Supplement not supplant guidance related to ELs is directly tied to the Civil Rights requirement of a core EL program, sometimes referred to as *Lau* requirements.
- Neither Title I nor Title III funds may be use for expenditures related to a district's core EL program (i.e. Civil Rights required EL program).
- In order to know what are allowable EL program expenditures for Title I and/or Title III, a district must identify its core EL program.
- A core EL program must satisfy the three principles from *Castañeda* outlined in the previous slides.



# What is a Core EL Program?

- The three principles from *Castañeda* just discussed indicate that a core EL program must have:
  - A sound/recognized educational approach
  - Implementation of that approach with fidelity
  - Evaluation and modification if needed
- While this sounds good, it is difficult to determine how this might work out in practice. With this in mind, OCR provides additional guidance in another online document.
- The document: ‘The Provision of an Equal Education Opportunity to Limited-English Proficient Students’ (<http://www2.ed.gov/about/offices/list/ocr/eeolep/index.html>) includes, among other things, five points related to procedures that school districts should use to ensure that their programs are serving EL students effectively.

# Five Points from the “Provision” Document

- 1. Identify students who need assistance
- 2. Develop a program which, in the view of experts in the field, has a reasonable chance for success
- 3. Ensure that necessary staff, curricular materials, and facilities are in place and used properly
- 4. Develop appropriate evaluation standards for measuring the progress of students, including program exit criteria; and
- 5. Assess the success of the program and modify it where needed

# Point #1: Identify EL Students

- Point #1 necessitates that districts have a process to identify ELs. Title I requires notification of identification and placement in an EL program within 30 days of the start of school or 14 days if the student enrolls mid-year.
- Title I also includes assessment of ELs (see screener below) within those periods as part of the requirement. Also, in ESSA, Title III is required to develop standardized statewide entrance and exit procedures.
- The Home Language Survey is typically the first step in the identification process. It allows districts to identify potential ELs.
- An English Language Proficiency (ELP) assessment (screener) is typically the next step. It provides evidence that a student is or is not an EL. ESSA requires screening of potential ELs within 30 days of enrollment (Section 3113(b)(2)).



## Point #1 cont.'



- A student should be placed in the district's EL program if an ELP assessment indicates that the student is an EL.
- The ELP assessment is also used to identify the level of proficiency of the EL in order to place the student in the appropriate EL services for that student's proficiency level.
- The Jan. 7, 2015 guidance says, "We also encourage SEAs and school districts to reevaluate policies and practices related to their EL programs in light of this guidance to ensure compliance . . ."
- Districts should have a written plan on how they identify and serve ELs (i.e. that describes their core EL program). That plan should include the statewide procedures required by ESSA, outlined in the State's ESSA State Plan.

## Point #2: Develop a Successful EL Program

- Point #2 requires the development of an EL program that has a reasonable chance for success.
- This is where the language in ESEA/NCLB related to programs needing to be ‘research based’ comes from. Under ESSA, the language used is ‘evidence-based’ or ‘effective’.
- This is also where the necessity of a teacher English fluency policy comes from (required under Title III).
- Districts should include in their EL program plan the type of program used (pull-out, sheltered immersion/SIOP, bilingual/dual immersion/dual language, etc.). This will help identify the approach used in the program and meet principle #1 discussed earlier.

## Point #3: Proper Implementation using Adequate Resources



- Point #3 necessitates allocation of the staff, materials, and facilities needed to adequately implement a district's EL program.
- This is where most of the money is spent on an EL program. These three things, appropriately trained staff, materials, and facilities, need to be adequately provided to successfully implement an EL program.
- These things must be identified for a district's core EL program so that what is core can be distinguished from what is supplemental when determining allowable uses of federal funds.

## Point #3 cont.'

- The facilities, in most cases, will be the regular school facilities, wherever a core EL program is implemented and EL students are taught.
- The materials will be the curriculum, etc. that is used in the EL program.
- The staff will be the number of ESL certified teachers, paraprofessionals, and any other personnel that work in the provision of a core EL program.
- In describing a core EL program, don't include supplemental materials, or staff performing activities supplemental to a core EL program, even if they are not paid with federal funds.
- A description of an EL program needs to include the staff, materials, and facilities in order to meet the requirements of principle #2 discussed earlier.

## Point #4: Develop Standards for Measuring Progress and Exit Criteria



- ELP standards should be used for establishing exit criteria (when an EL student is considered English proficient) and for measuring the progress EL students are making toward proficiency.
- ESSA now requires standardized entrance and exit procedures as part of a State's ESSA plan.
- A State's English Language Proficiency Standards should be used to guide curriculum choice and instruction in the classroom.
- ELP standards were required in Title III under NCBL, but that requirement has been moved to Title I in ESSA.
- The use of ELP standards in the classroom is a good practice and implementing ELP standards is required by Civil Rights guidance for all districts serving ELs.



## Point #5: Determine Success of EL Program and Modify if Necessary

- The last point requires the evaluation of a district's EL program to determine if it is successful, and if not, modification of the EL program to improve its effectiveness.
- ELP assessment data can be used in most cases for evaluating the success of an EL program. The performance of ELs on a state's content assessment should also be examined. Other measures could be included if available.
- It is a Civil Rights requirement to evaluate the success of your EL program and modify it if needed (see *Castañeda's* principle #3). A description of how this is done should be included in your EL program plan.

# Monitoring – Current ELs

- School districts must track/monitor the progress of EL students toward ELP and their academic achievement. This should be done in a timely manner.
- As part of the tracking/monitoring, school districts must annually administer an ELP assessment that is aligned to the State's ELP standards. The results of this assessment can be used to track progress toward ELP.
- Tracking EL students' progress on the State's Content Assessment is also one way to monitor EL students' progress toward academic achievement.
- EL students should not be exited from EL status or EL programs until they demonstrate proficiency on an ELP assessment.



# Monitoring/Reporting – Former ELs

- Title I and Title III requires reporting regarding former ELs related to their academic performance. This is one way to determine if EL programs were successful and to ensure that a persistent lack of ELP is not interfering with their ability to access academic content in some way.
- Some questions to ask to determine if a district is adequately monitoring the academic success of former ELs are:
  - How often does a district check the progress of former ELs who are in the mandatory two year monitoring cycle required by Title III? (ESSA now requires four years of reporting)
  - What does a district check (monitor) when examining the progress of former ELs who are in the two/four year monitoring/reporting cycle? (assessment data?, grades?, teacher observations, etc.?)
  - What form, if any, does a district use to report what it monitors for monitored students?

# Evaluation

- Districts must evaluate the success of their EL program(s) and modify these programs where they are not successful.
- To do this, districts must monitor and compare the academic performance of active and exited EL students with never-ELs.
- In addition to the comparison with never-ELs, districts must evaluate EL programs using accurate data to examine the academic performance of current and former ELs.
- Some questions to ask might be:
  - What criteria does the district use to determine if the EL program implemented is successful in helping ELs achieve proficiency in English and access academic content?
  - What does the district do if it is determined that its EL program is not successful?

# Parent Engagement

- Both Title I and Title III require districts to include the parents of ELs in their parent involvement activities. ESSA now requires Parent and Family Engagement under Title I and Parent, Family, and Community Engagement under Title III.
- This includes meetings to keep the parents of ELs informed as well as receive feedback from them on what is or isn't working for their children (required under Title I in ESSA).
- Title I, Title III and OCR require parental notifications to be in a language the parents can understand.





# Questions?

A recording of this presentation  
will be sent out next week

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# Thank You For Participating!



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and State Relationships

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