



Guidance regarding English learner students equal access to high-quality education

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Last week, the Office for Civil Rights at the U.S. Department of Education (OCR) and U.S. Department of Justice (DOJ) released a joint guidance reminding state education agencies, school districts, and public schools of their obligations to ensure English learner (EL) students have equal access to a high-quality education, as well as the opportunity to achieve their full academic potential.

This guidance comes 40 years after *Lau v. Nichols* and the Equal Educational Opportunities Act of 1974 (EEOA). In *Lau*, the Supreme Court held public schools must take affirmative steps to ensure students with limited English proficiency can meaningfully participate in educational programs and services. The EEOA requires that state education agencies overcome language barriers that affect equal participation by EL students in school.

The joint guidance provides an outline of EL program requirements that school districts must comply with, including:

- Implementing procedures to accurately and timely identify and assess potential EL students.
- Providing EL students with a sound and effective language assistance program.
- Ensuring the EL program has sufficient resources to implement the program, including qualified EL teachers, staff, and administrators. If needed, the school must provide supplemental training to these employees.
- Providing meaningful access to all curricular and extracurricular programs. Access to curricular programs must allow EL students to meet promotion and graduation requirements. Access to extracurricular programs includes pre-kindergarten, magnet, gifted and talented, career and technical education, arts, athletics, advanced placement and International Baccalaureate courses, clubs, and honor

societies.

- Avoiding segregating students on the basis of national origin or EL status. Though some EL programs may require separate instruction for a period of time, schools are expected to implement the program in the least segregative manner.
- Evaluating EL students for special education needs. Where students have a disability, services must be provided to assist both the EL and disability-related needs.
- Making EL programs and services available to students who opt out of the school's EL program. Also, schools must provide guidance to EL students' parents in a language they understand and should document that the parent made a voluntary, informed decision in opting their child out of the EL program.
- Monitoring EL student progress in the program to ensure language proficiency and content knowledge. School districts must annually administer an English language proficiency assessment that complies with state standards. An EL student must remain in the EL program until the student demonstrates English proficiency on the assessment. School districts must monitor the progress of former EL students for two years to make sure they are participating in school programs comparably with non-EL students.
- Evaluating the school district's EL program to verify effectiveness, and modify the program as needed. EL student performance should be measured against students that did not partake in the EL program.
- Ensuring meaningful communication with parents that are limited English proficient. Schools must communicate information to limited English proficient parents in a language they can understand on all matters that are called to the attention of English proficient parents. This applies even if the limited English proficient's child is English proficient. Schools must provide translation or interpretation, and cannot have the limited English proficient's child translate or interpret for them.

What You Need To Do: The DOJ's Civil Rights Division is focused on enforcing the EEOA and Title VI of the Civil Rights Act of 1964 in order to ensure EL students and limited English proficient parents receive the services to which they are entitled. State education agencies, school districts, and public schools should review their current EL programs to verify compliance with the joint guidance. Frost Brown Todd LLC can help you comply with the requirements outlined in this Advisory. Please contact any attorney in the [Government Services Practice Group](#) to answer any questions you have concerning this Advisory.

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