

US Federal Policy: Rights of Immigrants and English Learners in U.S. Public Education (Pre-K–12)

Key Laws, Legislation, and Policy¹

The following key pieces of U.S. Federal Legislation, U.S. Supreme Court Decisions, and U.S. Department of Education policy establish the framework of the rights of immigrants and English learners in public education.

Civil Rights Act of 1964

Schools may not discriminate against any person in the United States based on race, color, or national origin. National origin discrimination includes language! School districts may not, on these bases:

- Provide services, financial aid, or other benefits that are different or provide them in a different manner
- Restrict an individual's enjoyment of an advantage or privilege enjoyed by others
- Deny an individual the right to participate in federally assisted program
- Defeat or substantially impair the objectives of federally assisted programs

Equal Educational Opportunities Act (1974)

Schools must take action to overcome all students' barriers to participation in education, including language barriers. Also, access to information must be provided in a language that English learners and their families understand.

Lau v. Nichols (1974)

Schools must provide English learners with the ability to overcome educational barriers due to language difference. Providing the same education to English learners as non-English learners is not enough.

This case upheld the 1970 memorandum from the U.S. Office of Civil Rights in the U.S. Department of Education regarding Title VI policy on language minority students, that Title VI is violated if

- students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;
- national-origin minority students are misassigned to classes for the mentally retarded because of their lack of English skills;
- programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead-end track; or

¹ From *TESOL Zip Guide: Advocating for English learners*, by H. Linville & J. Whiting, 2022. TESOL Press.

- parents whose English is limited do not receive school notices and other information in a language they can understand.

Castañeda v. Pickard (1981)

Schools must provide English learners a language education program that is:

- Based in solid educational theory.
- Implemented with sufficient resources.
- Proven successful, over time, in overcoming language barriers.

Plyler v. Doe (1982)

All children and young adults in the United States have the right (and requirement) to attend school. No child/young adult can be denied access to schooling because of immigration status.

Every Student Succeeds Act (2015, the reauthorization of the Elementary and Secondary Education Act of 1965)

All states must provide for English learners in elementary and secondary public education by:

- standardizing how English learners are identified and exited from English learner status;
- developing criteria for determining English language proficiency;
- adopting language proficiency standards for English learners that include the four skills, address English learners' different proficiency levels, and align with state academic standards;
- assessing English learners annually and reporting on their progress; and
- determining procedures in reporting the academic progress of those formerly identified as English learners.

Key areas of access for Immigrants, regardless of status, and English learners to U.S. Public Education (impact of Plyler v Doe)

Public schools cannot

- require social security numbers and/or birth certificates for enrollment,
- deny admission to a student at any time on the basis of immigration status,
- treat a student disparately to determine residency,
- engage in practice(s) to “chill” the right of access to school, or
- require students or parent to disclose their immigration status.

Resources

The U.S. Department of Education Office for Civil Rights has several resources to aid families and schools in understanding rights under U.S. law, regulation, and policy. This information is free and open to the public, and it is available in

several languages. Main page at
<https://www2.ed.gov/about/offices/list/ocr/index.html>

Some key highlights from the US Department of Education Office for Civil Rights page on Equal Educational Opportunities for English Learners
<https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue03.html>

May 2014: Dear Colleague Letter – School Enrollment Procedures
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

January 2015: Dear Colleague Letter – English Learner Students and Limited English Proficient Parents.
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

January 2015: Fact Sheet – Information for Limited English Proficient Parents and Guardians and for Schools and School Districts that Communicate with Them
<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>

Schools and school districts must provide language information to parents of learners (regardless of whether the student is an English learner) in a language the parents understand. Furthermore, schools may not ask the learner, other students, or untrained school staff to translate or interpret. Schools must provide translations or interpretation from appropriate and competent individuals.

January 2015: Fact Sheet – Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs.
<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>

August 2021: Fact Sheet – Confronting Discrimination Based on National Origin and Immigration Status
<https://www.justice.gov/crt/page/file/1425321/download>

The U.S. Department of Education Office of English Language Acquisition has several resources in support of learners and families
<https://ncela.ed.gov/resources/oela-resources>

- Toolkits for learners, families, and schools:
 - [Family Toolkit](#)
 - [English Learner Toolkit](#)
 - [Newcomer Toolkit](#)
- [English Learners with Disabilities](#)

- English Learner Civil Rights Brief – [Practices to Increase Access to Advanced Coursework and Specialized Programs for Student are English Learners](#)

[TESOL Zip Guide: Advocating for English Learners](#)

[Colorín Colorado's Facebook Live series on Advocacy for English Language Learners](#)