

Q: What legal obligations do schools have to English language learners (ELLs)?

A: Under civil rights law, schools are obligated to ensure that ELLs have equal access to education.

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Approximately 5 million students in U.S. schools have limited English language skills that affect their ability to participate successfully in education programs and achieve high academic standards ([NCELA Fast Facts 1](#)). It is the responsibility of schools to ensure that all students, including these English language-learning (ELL) students, have equal access to a quality education that enables them to progress academically while learning English. The specific services to be provided are not specified by federal or state law; however, legislation provides the following broad outlines.

In 1970, the federal Office for Civil Rights (OCR) issued a memo regarding school districts' responsibilities under civil rights law to provide an equal educational opportunity to ELLs. This memorandum stated:

Where the 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.

Although the memo requires school districts to take affirmative steps, it does not prescribe the content of these steps. It does, however, explain that federal law 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 inappropriately assigned to special education classes 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
- parents whose English is limited do not receive school notices or other information in a language they can understand.

In its 1974 decision in *Lau v. Nichols*, the United States Supreme Court upheld OCR's 1970 memo. The basis for the case was the claim that the students could not understand the language in which they were being taught; therefore, they were not being provided with an equal education. The Supreme Court agreed, saying that:

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.

The case reaffirmed that all students in the United States, regardless of native language, have the right to receive a quality education. It also clarified that equality of opportunity does not necessarily mean the same education for every student, but rather the same opportunity to receive an education. An equal education is only possible if students can understand the language of instruction.

Within weeks of the *Lau v. Nichols* ruling, Congress passed the Equal Educational Opportunity Act (EEOA) mandating that no state shall deny equal education opportunity to any individual, "by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students in an instructional program." This was an important piece of legislation because it defined what constituted the denial of education opportunities.

The U.S Department of Education's OCR oversees school districts broad discretion concerning how to ensure equal educational opportunity for ELLs. OCR does not prescribe a specific intervention strategy or program model that a district must adopt to serve ELLs.

The following guidelines have been outlined for school districts to ensure that their programs are serving ELLs effectively. Districts should:

- identify students as potential ELLs;
- assess student's need for ELL services;
- develop a program which, in the view of experts in the field, has a reasonable chance for success;
- ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- assess the success of the program and modify it where needed.

For additional information regarding the provision of equal education opportunity to ELLs, see resources below or contact the Office for Civil Rights enforcement office at:

Phone: (800) 421-3481

Email: ocr@ed.gov

URL: <http://www.ed.gov/about/offices/list/ocr/index.html>

Office for Civil Rights (2006). [What happens to limited-English proficient \(LEP\) students who are not offered services to help them overcome language barriers?](#)

Office for Civil Rights (2006). [English Language Learner Resources](#).

References

Lau v. Nichols, 414 U.S. 563 (1974).

U.S. Department of Education. (1999). Programs for English Language Learners: Resource Materials for Planning and Self-Assessments. Office for Civil Rights. Washington, DC: Author. [Online].

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U.S. Department of Education. (2000). The Provision of an Equal Education Opportunity to Limited-English Proficient Students. Office for Civil Rights. Washington, DC: Author. [Online].

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