**Synopsis of Federal Law Governing the**

**Rights of Limited English Proficient Students**

The following section contains information regarding the identification, assessment, and

education of LEP students as outlined in both Supreme Court decisions and federal legislation.

**What does the Fourteenth Amendment to the Constitution state?**

Section 1 of the 14th amendment (1868) states:

*“No state shall . . . deny to any person within its jurisdiction the equal protection of*

*the laws.”* (The Equal Protection Clause)

Even though at the time it was passed, the purpose of the fourteenth amendment was to extend equal rights to former slaves; its significance to LEP individuals is that it provides equal protection (i.e. non-discrimination) to people whose first language is not English. Later court rulings further explained and examined the relationship between LEP individuals and the equal protection clause.

**What does Title VI of the Civil Rights Act of 1964 state?**

Section 601 of the [Civil Rights Act of 1964](http://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html) states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

[Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d]

**What are the requirements of Title VI of the Civil Rights Act of 1964?**

According to Title VI of the Civil Rights Act of 1964, “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 of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

[*Pub*. L. 88-352, title VI, Sec. 601, July 2, 1964, 78 Stat. 25]

Courts have traditionally viewed “national origin” to include an individual’s first language.

Title VI of the Civil Rights Act of 1964 “requires programs that educate children with limited

English proficiency to be:”

• based on a sound educational theory;

• adequately supported, with adequate and effective staff and resources, so that the

 program has a realistic chance of success; and

• periodically evaluated and, if necessary, revised.

Additional information is available at *Questions and Answers on the Rights of Limited-English Proficient Students* <http://www.ed.gov/about/offices/list/ocr/qa-ell.html>.

**What is the May 25th Memorandum (1970)?**

In May 1970, the former Department of Health, Education and Welfare (DHEW), published a

memorandum to school districts on the Identification of Discrimination and Denial of Services on the Basis of National Origin (the [May 25th Memorandum, 35 Fed. Reg. 11595](http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html)). The May 25th Memorandum stated in part:

The purpose of this memorandum is to clarify DHEW policy on issues concerning the

responsibility of school districts to provide equal educational opportunity to national

origin minority group children deficient in English language skills. The following are

some of the major areas of concern that relate to compliance with Title VI:

1. 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.

1. 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.

3. Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

4. School districts 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.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

**What was the Lau v. Nichols (1974) decision, and how does it affect instruction of ELLs?**

Lau v. Nichols 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. 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.

[414 U.S. 563 (1974)]

[Lau v. Nichols](http://www2.ed.gov/about/offices/list/ocr/ell/lau.html) held that:

The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program and thus violates Section 601 of the Civil Rights Act of 1964, which bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance," and the implementing regulations of the Department of Health, Education, and Welfare.

**What was the** [**Equal Educational Opportunities Act of 1974**](http://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter39/subchapter1&edition=prelim)**?**

Section 1703 (f) of the EEOA requires state educational agencies (SEAs) and school districts to take action to overcome language barriers that impede English Language Learner (ELL) students from participating equally in school districts’ educational programs.

**What was the** [**Castañeda v. Pickard**](http://scholar.google.com/scholar_case?case=16848723757397550913&hl=en&as_sdt=6&as_vis=1&oi=scholarr) **(1981) court case?**

On June 23, 1981, the Fifth Circuit Court issued the Castañeda v. Pickard decision that established a three-part test to evaluate the adequacy of a district's program for LEP students: (1) is the program based on an educational theory recognized as sound by some experts in the field or is considered by experts as a legitimate experimental strategy; (2) are the programs and practices, including resources and personnel, reasonably calculated to implement this theory effectively; and (3) does the school district evaluate its programs and make adjustments where needed to ensure language barriers are actually being overcome?

[648 F.2d 989 (5th Cir., 1981)]

**What was the** [**Plyler v. Doe**](https://supreme.justia.com/cases/federal/us/457/202/case.html) **(1982) court case?**

Plyler v. Doe held that:

A Texas statute which withholds from local school districts any state funds for the

education of children who were not "legally admitted" into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment.

**What was the Office of Civil Rights Title VI** [**Policy Update**](http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html) **(1991)?**

On September 27, 1991, the Office of Civil Rights issued a policy update to provide guidance regarding Lau compliance reviews to determine whether schools are complying with their obligation under the regulation implementing Title VI of the Civil Rights Act of 1964 to provide any alternative language programs necessary to ensure that national origin minority students with limited English proficiency (LEP students) have meaningful access to the schools' programs.

**What is the Joint Guidance from USED and DOJ on LEP Students (Released: January 7, 2015)?**

The U.S. Department of Education (USED) in cooperation with the U.S. Department of Justice (DOJ) released joint guidance on January 7, 2015, to assist states and school divisions in meeting their legal obligations to ensure that ELLs can meaningfully and equally participate in educational programs and services.

The Office for Civil Rights (OCR) at the U.S. Department of Education (ED) and the Civil Rights Division at the U.S. Department of Justice (DOJ) share authority for enforcing Title VI in the education context. DOJ is also responsible for enforcing the EEOA. In addition, ED administers the English Language Acquisition, Language Enhancement, and Academic Achievement Act, also known as Title III, Part A of the Elementary and Secondary Education.

Act of 1965, as amended (ESEA) (Title III). Under Title III, ED awards grants to SEAs, which, in turn, award Federal funds through subgrants to school districts in order to improve the education of EL students so that they learn English and meet challenging State academic content and achievement standards.

In addition, Title III requires SEAs and school districts that receive funding under Title III subgrants to provide high-quality professional development programs and implement high- quality language instruction education programs, both based on scientifically-based research, that will enable EL students to speak, listen, read, and write English and meet challenging State standards. [Dear Colleague Letter](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf)

VDOE Superintendent’s [Memo #056-15](http://www.doe.virginia.gov/administrators/superintendents_memos/2015/056-15.shtml) summarized the available [web-based resources](http://www2.ed.gov/about/offices/list/ocr/ellresources.html)

as follows:

* [Dear Colleague Letter](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf)
* A Fact Sheet entitled “Information for Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs”;
* A Fact Sheet entitled, “Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them”; and
* A Toolkit entitled, “Tools and Resources for Identifying All English Language Learners.”

Under the joint USED-DOJ guidance provided in these documents, school divisions must:

* Identify ELLs in a timely, valid, and reliable manner;
* Provide all ELLs educationally sound language assistance programs and services;
* Ensure meaningful and equal access to division and school programs and services;
* Provide sufficient and qualified staffing to provide language assistance programs and services to ELLs;
* Avoid segregating ELLs from the general student population;
* Monitor the progress of ELLs in learning English and achieving academically;
* Provide programs and services to ELLs to remedy any academic deficits that may occur while they are learning English;
* Move students out of language assistance programs and services when they reach English proficiency and monitor these students for academic achievement;
* Evaluate the effectiveness of language assistance programs and services; and
* Provide parents of ELLs with information about division and school programs and services in a language they can understand.

# In addition to the links provided in this document, the [VDOE Title III: Language Instruction for Limited English Proficient & Immigrant Students](http://doe.virginia.gov/federal_programs/esea/title3/index.shtml) webpage posts all resource documents relevant to State and Federal legal requirements at: <http://doe.virginia.gov/federal_programs/esea/title3/index.shtml>