LEGAL OBLIGATIONS TO SERVE ENGLISH LANGUAGE LEARNERS (ELL)

NOVEMBER 1ST, 2013
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Federal Obligations

There are two key Federal laws, and two court decisions based on them, which frame the obligations to serve English Language Learners in public education: the Equal Educational Opportunities Act of 1974, Title VI of the Civil Rights Act of 1964, and the decision in Lau v. Nichols, 414 U.S. 563 (1974). The following Department of Justice actions illustrate how these legal obligations are applied:

On October 1, 2010, the U.S. Department of Justice issued a press statement:

“WASHINGTON - Today, the Department of Justice, Civil Rights Division, (DOJ) and the Department of Education, Office for Civil Rights, (OCR) reached a settlement agreement with the Boston School Committee, the governing body of the Boston Public Schools, and its superintendent. While conducting a joint investigation, DOJ and OCR determined that, since 2003, the Boston Public Schools had failed to properly identify and adequately serve thousands of English Language Learner (ELL) students as required by the Equal Educational Opportunities Act of 1974 and Title VI of the Civil Rights Act of 1964.

...the Boston Public Schools agreed to provide ELL students with Sheltered English Immersion in their core content classes, such as math, social studies and science; to deliver English as a Second Language instruction consistent with state guidance; and to train and hire a sufficient number of teachers to serve its ELL population. The Boston Public Schools also will ensure that special education ELL students are properly assessed and served to address their unique needs. In addition, the Boston Public Schools agreed to monitor the academic performance of current and former ELL students; to offer compensatory services to the ELL students who were recently identified and formerly misidentified as “opt outs;” and to give the parents of those students the information they need to make informed decisions regarding the ELL services their children receive.”

A similar settlement was announced in 2011 for the Carson City School District in Nevada:

“WASHINGTON – A settlement agreement with the Carson City School District in Nevada has been reached to ensure that all English Language Learner (ELL) students receive sufficient services as required by federal law, the Justice Department announced today.

Almost 20 percent of the district’s students have been identified as ELL students, and the Justice Department’s compliance review revealed that many of these students were not receiving any ELL services and others were receiving insufficient services. The four-year settlement agreement will ensure that they receive appropriate ELL services by qualified instructors. Under the agreement, all ELL students will receive English as a Second Language and sheltered content instruction by teachers who are...
adequately trained to provide this instruction, and those teachers will be assigned to classes to ensure that all ELL students receive sufficient services. The district will dedicate funding, resources and time through the end of the 2011-12 school year toward professional development to ensure that a sufficient number of teachers are trained to adequately serve its ELL population.”

The Equal Educational Opportunities Act of 1974 and Title VI of the Civil Rights Act of 1964 are the key Federal laws involved in these imposed remedies:

1. The **Civil Rights Act of 1964** (Pub.L. 88–352, 78 Stat. 241, enacted July 2, 1964) is a landmark piece of civil rights legislation in the United States that outlawed major forms of discrimination against racial, ethnic, national and religious minorities, and women. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public (known as "public accommodations").

The Civil Rights Act and the Equal Opportunities Act define rights and obligations that every public school district must take seriously, especially one such as Hawai‘i with so many immigrants and ELL students in the public schools. In many cases, settlements require the allocation of more funds, personnel, and structural changes at the school level.

2. **Lau v. Nichols**, 414 U.S. 563 (1974), 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)] The Office of Civil Rights has a dedicated web page relating to this decision.

The students claimed that they were not receiving special help in school due to their inability to speak English, which they argued they were entitled to under Title VI of the Civil Rights Act of 1964 because of its ban on educational discrimination on the basis of national origin. Finding that the lack of linguistically appropriate accommodations (e.g. educational services in English) effectively denied the Chinese students equal educational opportunities on the basis of their ethnicity, the U.S. Supreme Court in 1974 ruled in favor of the students, thus expanding rights of students nationwide with limited English proficiency.

The Supreme Court stated that these students should be treated with equality among the schools. Among other things, Lau reflects the now-widely accepted view that a person's language is so closely intertwined with their national origin (the country someone or their ancestors came from) that language-based discrimination is effectively a proxy for national origin discrimination.
Lau remains an important decision on the fourteenth amendment, and is frequently relied upon as authority in many cases (the San Francisco Unified School District remains covered by the consent decree that was ultimately entered into in the Lau case, and civil rights groups continue to monitor SFUSD’s compliance with that decree).

The case relied on Section 601 of the Civil Rights Act of 1964 and not the 14th amendment.ii

In response to growing needs within the U.S. education system, the Department of Justice has prepared Questions and Answers on the Rights of Limited-English Proficient Students.

“What happens to limited-English proficient (LEP) students who are not offered services to help them overcome language barriers?

Limited-English proficient students (also sometimes referred to as English-language learners) may suffer repeated failure in the classroom, falling behind in grade, and dropping out of school if they are not provided services to overcome language barriers. Students who are not proficient in English and sometimes inappropriately placed in special education classes. Also, because of their lack of English proficiency, qualified students often do not have access to high track courses or Gifted and Talented programs.

What is the federal authority requiring districts to address the needs of English language learners?

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin. In Lau v. Nichols, the U.S. Supreme Court affirmed the Department of Education memorandum of May 25, 1970, which directed school districts to take steps to help limited-English proficient (LEP) students overcome language barriers and to ensure that they can participate meaningfully in the district’s educational programs.

What does Title VI of the Civil Rights Act of 1964 require for English-language learner students?

Federal law requires programs that educate children with limited English proficiency to be:

1. based on a sound educational theory;
2. adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success; and
3. periodically evaluated and, if necessary, revised.

Does OCR require districts to follow a particular educational approach, such as bilingual education?

No. OCR does not require or advocate a particular educational approach to the instruction of ELL students. Districts have substantial flexibility when developing programs to meet the needs of ELL students.

What if parents do not want their child to have services to address their English needs?

Parents can opt not to have their children enrolled in an ELL program. When a parent declines participation, the district retains a responsibility to ensure that the student has an equal opportunity to have his or her English language and academic needs met. Districts can meet this obligation in a variety of ways (e.g. adequate training to
classroom teachers on second language acquisition; monitoring the educational progress of the student).

**How long does a district have to provide special services to ELL students?**

ELL students must be provided with alternative services until they are proficient enough in English to participate meaningfully in the regular program. To determine whether a child is ready to exit, a district must consider such factors as the students’ ability to keep up with their non-ELL peers in the regular education program and their ability to participate successfully without the use of adapted or simplified English materials.

Exit criteria must include some objective measure of a student’s ability to read, write, speak and comprehend English.”

The federal government has also demonstrated that it takes ELL seriously by establishing an Limited English Proficiency (LEP) interagency working group with its own web site.

**Castañeda v. Pickard**

The case of Castañeda v. Pickard was tried in the United States District Court for the Southern District of Texas in 1978. This case was filed against the Raymondville Independent School District (RISD) in Texas by Roy Castañeda, the father of two Mexican-American children. Mr. Castañeda claimed that the RISD was discriminating against his children because of their ethnicity. He argued that the classroom his children were being taught in was segregated, using a grouping system for classrooms based on criteria that were both ethnically and racially discriminating.

Mr. Castañeda also claimed the Raymondville Independent School District failed to establish sufficient bilingual education programs, which would have aided his children in overcoming the language barriers that prevented them from participating equally in the classroom.

According to Lau v. Nichols (1974), a case decided by the U.S. Supreme Court, school districts in this country are required to take the necessary actions in order to provide students who do not speak English as their first language the ability to overcome the educational barriers associated with not being able to properly comprehend what is being taught to them. Castañeda argued that there was no way to sufficiently measure the Raymondville Independent School District's approach to overcoming this barrier.

The Castañeda v. Pickard case was tried, and on August 17, 1978, the court system ultimately ruled in favor of the Raymondville Independent School District, stating they had not violated any of the Castañeda children’s constitutional or statutory rights. As a result of the Federal Court ruling, Castañeda filed for an appeal, arguing that the Federal Court made a mistake in its ruling.

In 1981 the United States Court of Appeals for the Fifth Circuit ruled in favor of the Castañedas, and as a result, the court decision established a three-part assessment for determining how
bilingual education programs would be held responsible for meeting the requirements of the Equal Educational Opportunities Act of 1974. The criteria are listed below:

- The bilingual education program must be “based on sound educational theory.”
- The program must be “implemented effectively with resources for personnel, instructional materials, and space.”
- After a trial period, the program must be proven effective in overcoming language barriers/handicaps.

Hawaii’s ELL Situation

Office of Language Access

According to the 2000 U.S. Census survey, 26.6 percent of persons in Hawai’i speak a language other than English. Nationally, only 17.9 percent of the population speaks a language other than English. Additionally, the 2000 Census reports that the majority of persons immigrating to Hawai’i come from Asia and the Pacific Islands. Of the population that (at home) speak a language from Asia or from the Pacific Islands, 20.2 percent do not speak English well or at all.

The 2011-12 Office of Language Access Report

The table below shows the 4,949 “encounters” for top 10 languages in which language services were provided during the same six-month period (July-December 2011) for nine agencies (Judiciary, Human Services, Libraries, Labor, Attorney General, etc.):

<table>
<thead>
<tr>
<th>Languages</th>
<th># of Encounters</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korean</td>
<td>1,223</td>
<td>21.4</td>
</tr>
<tr>
<td>Chuukese</td>
<td>1,104</td>
<td>19.3</td>
</tr>
<tr>
<td>Cantonese</td>
<td>672</td>
<td>11.7</td>
</tr>
<tr>
<td>Marshalese</td>
<td>579</td>
<td>10.1</td>
</tr>
<tr>
<td>Ilokano</td>
<td>562</td>
<td>9.8</td>
</tr>
<tr>
<td>Spanish</td>
<td>397</td>
<td>6.9</td>
</tr>
</tbody>
</table>
Of the total LEP encounters, 85.4 percent were for oral language (interpretation) services, 8.8 percent were for written language (translation) services, and 4.8 percent were for sight translation services (oral translation of written documents). This non-scientific sample suggests that Pacific Islanders represent a significant percent of encounters – 30 percent.

Did You Know?

- Of the state’s 1.2 million residents, more than 296,000 speak a language other than English at home. More than 134,000 additional residents speak English “less than very well.”
- Languages in Hawai‘i with 1,000 speakers or more are Ilokano (27,077), Tagalog (26,418), Japanese (21,710), Mandarin/Cantonese (15,751), Korean (11,397), Spanish (7,384), Vietnamese (5,060), Chuukese/Marshallese (6,458), Samoan (3,334), Cebuano/Bisaya (2,137) and Hawaiian (1,292).
- A survey by some state agencies, conducted in 2011, showed a different ranking in terms of the numbers of people needing language help. The encounters were most commonly with Korean (21.4 percent), Chuukese (19.3 percent), Cantonese (11.7 percent) and Marshallese (10.1 percent). The remainder were for speakers of Ilokano, Spanish, Mandarin, Tagalog, Vietnamese and Japanese.

A recent Hawaii Department of Education reports there are 17,441 ELL students enrolled in public schools, representing approximately ten percent. However, certain complex areas (a high school and its feeder elementary and middle schools) are recording much higher percentages:

- Farrington Complex – 28%
- Kaimuki Complex – 24%
- McKinley Complex – 26%
- Waipahu Complex – 22%
- Kau Complex – 23%
These levels of ELL student enrollments present a challenge to public schools. Among the policy questions are the following:

- How are students labeled or enrolled in ELL programs?
- How well is Hawaii able to provide services to ELL students?
- How does Hawaii define or determine if students are “proficient enough in English to participate meaningfully in the regular program?”
- What is the overlap between recent immigrants and ELL students?
- How vulnerable is Hawaii to a class action suit?

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iii http://scholar.google.com/scholar_case?case=1684872375739750913&q=castañeda+v+pickard&hl=en&as_sdt=2006&as_vis=1