

# Legal Obligations and Best Practices Pertaining to English Learners

In accordance with Title VI of the Civil Rights Act of 1964 and other state and federal laws

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As part of the department's aim to provide a quality education to all Tennessee public school students and in order to assist local education agencies meet their obligations under Title VI of the Civil Rights Act of 1964 (Title VI)<sup>1</sup>, the department has provided the following summary of legal obligations and best practices regarding English Learners.

These legal obligations pertaining to English Learners apply to all school districts that receive federal financial assistance in any regard – not solely to those school districts that receive funding under Title III.

Please do your part to ensure that your school district implements the following guidance on registration, ESL programs, communication with Limited English Proficient (LEP) parents, and student discipline.

If you have questions, please contact the department's ESL coordinator/Title III consultant at 615-532-6314 or the assistant general counsel for civil rights at 615-253-1550.

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## Terms and Definitions

The following terms will be used throughout this document:

- EL: English Learner. (ELs are also referred to as ELLs or English Language Learners in resources by the federal government and other entities.)
- ESL (English as a Second Language) services: These services provide instruction and academic support to facilitate English language acquisition.
- LEA (local education agency): All Tennessee public school districts (and authorized charter schools<sup>2</sup>), state special schools, and the Achievement District.
- LEP: Limited English Proficiency.
- Parent: Any biological parent, legitimated parent, or legal guardian.

## Registration

- Right to an Education. All minors present in the United States are entitled to receive an education – regardless of immigration or citizenship status.<sup>3</sup>

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<sup>1</sup> Under Title VI, no person shall “be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination” on the basis of race, color, or national origin in any program in receipt of federal funding. 34 C.F.R. §100.3 (a).

<sup>2</sup> As explained in a [May 2014 Dear Colleague Letter](#) by the U.S. Department of Education Office for Civil Rights, charter schools must also comply with all federal civil rights laws and charter authorizers must ensure civil rights compliance within their authorized charter schools.

<sup>3</sup> *Plyler v. Doe*, 457 U.S. 202 (1982). In *Plyler v. Doe*, the U.S. Supreme Court struck down a Texas state statute that withheld state funds to local school districts for undocumented students. “As *Plyler v. Doe* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student’s entitlement to an elementary and secondary public education.” (U.S. Department of Education’s Dear Colleague Letter issued on May 6, 2011, available [here](#).)

- Social Security Number. An LEA may not require the provision of a social security number as a condition of student enrollment in a public school.
  - An LEA may not request a student social security number unless the LEA both informs the students and parents that providing it is voluntary *and* explains for what purpose the social security number will be used.
  - If needed at the local level, LEAs are encouraged to create other unique student identifiers for all students.
  
- Enrollment Documentation. LEAs may request documentation of age and residency within the LEA's geographic boundaries as part of the enrollment process.<sup>4</sup> LEAs may not, however, insist on certain types of documentation. Furthermore, an LEA's request for documentation should not chill enrollment or act as a proxy for inquiring into immigration status or citizenship.<sup>5</sup>
  - *LEAs should accept the following documentation of age:* parent affidavit, family Bible or Koran, adoption paperwork, hospital or medical records, (photocopies of) birth certificates from any nation, baptismal records, and/or other legal documentation (e.g., I-94, passport, or "green card").<sup>6</sup>
  - *LEAs should accept the following documentation of residency within the LEA's geographic boundaries:* utility bills, phone bills, mortgage or lease documents, letter from sponsoring agency showing housing assignment, driver's license, and/or an affidavit by a neighbor or landlord.<sup>7</sup>
  
- Screening of Parents and Students.
  - LEAs must screen students for eligibility for ESL services. Neither "foreign-sounding last names" nor a parent's LEP qualify a student for ESL services or satisfy an LEA's obligation to appropriately screen English language proficiency.
  - Note that parents can have LEP status – and be entitled to translation and interpretation services – distinct from and independent of their children enrolled in the LEA. Therefore, parents should also be screened and identified as LEP distinctly from their children. For example, an LEP parent may still need to be informed of school activities in a language other than English even though the child has exited ESL services. Similarly, bilingual students may not qualify for or require ESL services, but their LEP parents may need to be advised of school activities in a language other than English.
  
- Accessible Enrollment Information. LEAs should provide registration documents and information to LEP parents in a manner that LEP parents can understand. "In a manner

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<sup>4</sup> Homeless students, however, must be enrolled immediately and without providing documentation, in accordance with McKinney-Vento Homeless Assistance Act (42 U.S.C. §11301 *et seq*).

<sup>5</sup> For more information on enrollment documentation, please review the U.S. Department of Education's Dear Colleague Letter issued on May 6, 2011 regarding practices that chill or discourage enrollment, available [online](#).

<sup>6,7</sup> This list is not exhaustive. LEAs should accept other reasonable forms of documentation.

that LEP parents can understand” may constitute written translation of documentation and/or oral interpretation for LEP parents during the registration and enrollment process.

- Immunizations. When needed, LEAs should provide information to LEP parents on how or where to receive immunizations, so that the state immunization requirement does not chill enrollment amongst immigrants, refugees, or minors of LEP parents.
- GED Programs. LEAs should not provide information on GED programs to ELs (or their parents) at enrollment, unless the LEA provides that same information in the same manner to all students.

## ESL Programs

- Duty. School districts have a duty to “take affirmative steps to rectify language deficiency.”<sup>8</sup>
- EL Access to School District Programs and Services. An LEA must provide EL access to all aspects of and programs within the district.
  - LEAs should monitor the number enrolled and academic progress of ELs in gifted and talented programs, honors classes, CTE (Career and Technical Education), and other programs.
  - When appropriate, LEAs should provide eligibility exams for programs in ELs’ native languages.
- (Mis)Identification as Special Education Students. LEAs should take care to ensure ELs are not misidentified as individuals with a disability. While mispronunciation of words, inattention, difficulty forming consonants present in English (but not present in other languages) may indicate a disability, these behaviors also constitute normal behaviors of students learning English. (LEAs can refer to pages 93-95 of the department’s [RTI<sup>2</sup> Implementation Guide](#) for more information on distinguishing an EL’s language acquisition from a possible disability.)
- Staff and Personnel
  - ESL services must be (1) based on a widely accepted theory (or a theory recognized as sound by experts), (2) adequately staffed and supported with other resources, and (3) periodically evaluated and modified accordingly.<sup>9</sup>
  - Teachers providing ESL services must have a Tennessee ESL endorsement, but this endorsement is not dispositive of teacher effectiveness. LEAs should evaluate teacher effectiveness and provide professional development for teachers providing ESL services.

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<sup>8</sup> “Identification of Discrimination and Denial of Services on the Basis of National Origin,” May 1970 memorandum by the U. S. Department of Health, Education, and Welfare, available online at <<http://www2.ed.gov/about/offices/list/ocr/docs/nationaloriginmemo.html>>. The Supreme Court affirmed this interpretation of Title VI in 1974 in *Lau v. Nichols* (414 U.S. 563).

<sup>9</sup> The U.S. Department of Education Office for Civil Rights adopted the three prong analysis developed by the Fifth Circuit of the U.S. Court of Appeals in *Castañeda v. Pickard*, 648 F.2d 989 (5<sup>th</sup> Cir. 1981).

- All teachers of ELs should know basic language-acquisition techniques and incorporate those techniques into instruction.
- Grade Retention. ELs should not be retained in grade simply for lack of English language proficiency.
  - Although Tennessee Code Annotated §49-6-3115<sup>10</sup> mandates retention of third grade students who fail to demonstrate a basic understanding and skills in reading, the statute allows grade promotion if a student participates in an intervention. An LEA's ESL services qualify as such a "research-based intervention."
- Comparable resources. ESL services must have resources comparable to remainder of the LEA's services.
- Guidance counselors. Guidance counselors should possess and employ cultural sensitivity in their interactions in ELs. Guidance counselors should also be aware of and equipped to address psychological issues that often affect ELs (e.g., depression, posttraumatic stress disorder, and suicide).

### **Communication with Limited English Proficient (LEP) Parents**

*In July 2013, the U.S. Department of Education Office for Civil Rights (OCR) Atlanta office completed a compliance review of a Georgia school district that investigated and determined "whether the District discriminates against national origin minority limited English proficient (LEP) parents by failing to adequately communicate with them and to ensure that they have meaningful access to school-related information that is provided to parents in English, in noncompliance with Title VI[.]" Access OCR's letter of findings [here](#).*

- Duty to communicate with parents. LEAs have the responsibility to communicate with LEP parents and provide the same notice to LEP parents of school activities that the LEA provides to other parents.
- Screening of Parents. Because of LEAs' duty to communicate with parents, LEAs must also screen parents and identify LEP parents. Parents may have LEP status – and be entitled to translation and interpretation services – distinct from and independent of their minor students enrolled in the LEA. Furthermore, a parent is not required to be LEP in all areas to request LEP services. (For example, a parent may speak fluently, but have limited proficiency in reading.)
- Free provision of services. At registration and enrollment, LEAs should clarify for all parents the LEA's free provision of ESL services.

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<sup>10</sup> Tennessee Code Annotated §49-6-3115 states, "Beginning with the 2011-2012 school year, a student in the third grade shall not be promoted to the next grade level unless the students has shown a basic understanding of curriculum and ability to perform the skills required in the subject of reading as demonstrated by the student's grades of standardized test results. However, such student may be promoted if the student participates in an LEA approved research-based intervention prior to the beginning of the next school year. This section shall not apply to students who have IEPs pursuant to 20 U.S.C. § 1400 *et seq.*"

- Interpreters and Translators.
  - An LEA should ensure its interpreters and translators understand their role and practice ethics and confidentiality within that role. LEAs may require translators and interpreters sign a confidentiality agreement to ensure confidentiality practices match the LEA's expectations.
  - An LEA should also ensure that interpretation services are readily available and parents do not feel the need to rely on family members to interpret. It is not appropriate for friends or family to provide interpretation. LEP parents may request that a third party be present at meetings regarding the student's education, but the third party should not serve as the official translator and the LEA should obtain a signed parental consent form before the meeting to discuss confidential information in the presence of the third party.
  
- Accessible Enrollment Information. LEAs should provide registration documents and information to LEP parents in a manner that LEP parents can understand. "In a manner that LEP parents can understand" may constitute written translation of documentation and/or oral interpretation for LEP parents during the registration and enrollment process.
  
- Essential Documents. An LEA must provide access for LEP parents to all essential documents – whether by translation, interpretation, or other means. Essential documents include, but are not limited to, student handbooks, bus schedules, class schedules, registration forms, discipline notices, school events, and permission slips.
  - If it is unfeasible to translate all essential documents for all languages represented by ELs in an LEA, an LEA should both inform LEP parents of the availability of interpretation and translation services and provide LEP parents with information on how to access those services.
  - LEAs should be sure to provide access to any LEA form *and the form's content* when applicable. (For example, a discipline referral form may be translated into Spanish, but if the LEA's narrative of the circumstances leading to discipline that is written on the form is not also translated, the LEA has failed to satisfy its duty to communicate with parents.)
  - An LEA may also provide access by providing interpretation of a document in lieu of translation or providing a translated summary of a longer document in lieu of translation of the entire document.
  
- Correct language. An LEA should ensure that it provides all ESL services in the correct native language. (For example, many Central and South American countries – often referred to as "Spanish speaking countries" – have population groups that only speak indigenous languages. An LEA must provide services in an indigenous language, if applicable, and not the presumed Spanish language.)

## Discipline<sup>11</sup>

- Discipline Policies. An LEA must provide access (i.e., translation or interpretation) to LEP parents and ELs to all discipline policies, codes of conduct, and classroom rules under which students are subject to discipline.
- Training. An LEA must correct any and all discrimination present within the LEA. As such, an LEA must train and ensure all LEA staff – including school resource officers (SROs) and transportation and food services personnel – interact appropriately with ELs and administer discipline and programs with cultural competency and without bias. LEAs should ensure LEA policy and practice permits all staff to effectively collaborate with one another to maintain a safe and supportive learning environment for all students.
- Positive Behavioral Intervention Supports. An LEA must ensure that ELs have access to positive behavioral intervention and supports (PBIS) comparable to that of other students. PBIS refers to any proactive, school-wide approach to classroom management and student behavior.
- Cultural Issues. LEAs should discuss with school staff how differing cultural views related to appropriate behavior may manifest in schools. LEAs should take care to prevent and monitor any disparate impact created by conflicting cultural views regarding behavior.

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<sup>11</sup> Please review the U.S. Department of Education and U.S. Department of Justice’s joint guidance on discriminatory discipline practices in public schools published in January 2014 ([pdf](#) / [html](#)). The document provides an overview of racial disparities in discipline, explains the legal framework for discrimination investigations, provides examples of and remedies for discriminatory discipline practices, in addition to offering recommendations for school districts to “identify, avoid, and remedy” discriminatory discipline.