

## Funding Differences

# State ESOL Language Program and Federal Title III, Part A Language Program

### Statute & Regulatory Guidance:

#### Title VI of the Civil Rights Act of 1964 and the EEOA

Title VI prohibits race, color and national origin discrimination in any program or activity receiving Federal financial assistance; as recipients of Federal financial assistance, SEAs are required to comply with Title VI.

Title III also contains its own non-discrimination provision, which provides that a student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

#### [DOJ/OCR January 15, 2015 Dear Colleague Letter: English Learner Students and Limited English Proficient parents](#)

*“The Departments are issuing the enclosed joint guidance to assist SEAs, school districts, and all public schools in meeting their legal obligations to ensure that EL students can participate meaningfully and equally in educational programs and services. This guidance provides an outline of the legal obligations of SEAs and school districts to EL students under the civil rights laws. Additionally, the guidance discusses compliance issues that frequently arise in OCR and DOJ investigations under Title VI and the EEOA and offers approaches that SEAs and school districts may use to meet their Federal obligations to EL students. The guidance also includes discussion of how SEAs and school districts can implement their Title III grants and subgrants in a manner consistent with these civil rights obligations. Finally, the guidance discusses the Federal obligation to ensure that LEP parents and guardians have meaningful access to district and school-related information. We hope that you will find this integrated guidance useful as you strive to provide EL students and LEP parents equal access to your instructional programs.” (pg. 2)*

When evaluating compliance under the EEOA, DOJ applies EEOA case law as well as the standards and procedures identified in this guidance, which are like those identified in OCR's previous Title VI guidance.

#### ESEA/ESSA Title I, Part A and Title III, Part A

*“Title III, Part A funds must be used to supplement other Federal, State, and local public funds that would have been expended absent such funds. Because the civil rights laws require SEAs and school districts to take appropriate action to overcome language barriers for EL students, Title III, Part A funds may not be used to fund the activities chosen to implement an SEA's or school district's civil rights obligations. Thus, SEAs and school districts can use these funds only for activities beyond those activities necessary to comply with Federal civil rights obligations. It is important to remember, however, that the legal obligations of an SEA and a school district under Title VI and the EEOA are independent of the amount or type of State or Federal funding received. Thus, for example, any change to State funding dedicated to EL programs and services, including State*



limitations on funding after a child has received EL services for a specified period of time, does not change an SEA’s or school district’s Federal civil rights obligations to EL students.” (DOJ/OCR Dear Colleague Letter, pg. 7)

“Not all school districts that enroll EL students receive such subgrants from their SEA under Title III, Part A. Some school districts have too small a population of EL students to meet the minimum subgrant requirement and are not members of a consortium of districts that is receiving a subgrant. Nonetheless, several key school district requirements for recipients under Title III that are discussed in this letter are also required by Title I of the ESEA, which has no such minimum subgrant requirement.” (DOJ/OCR Dear Colleague Letter, pg. 7)

**September 23, 2016 Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)**

“This guidance addresses how Title III funds may be used to provide supplemental services that improve the English language proficiency and academic achievement of ELs, including through the provision of language instruction educational programs (LIEPs) and activities that increase the knowledge and skills of teachers who serve ELs. All services provided to ELs using Title III funds must supplement, and not supplant, the services that must be provided to ELs under Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA), and other requirements, including those under State or local laws. This guidance does not address the inclusion of ELs in academic content assessments in reading/language arts, mathematics, and science, English language proficiency assessments, accountability and school improvement under Title I, or the new Title III requirement that all States establish and implement standardized statewide entrance and exit procedures for ELs, as these topics will be addressed through rulemaking.”

Program Activity	Funding Source	Statute & Federal Guidance
<p><b>Identification of English Learners – Processes, Tools, Oversight</b></p> <ul style="list-style-type: none"> <li>• Home Language Survey to identify potential ELs</li> <li>• WIDA Screener for Initial Eligibility</li> <li>• WIDA Annual Assessment for Continued Eligibility</li> <li>• Parent Notification</li> </ul>	<p><b>State and Local Funds</b></p>	<p><a href="#"><u>Addendum to September 23, 2016 Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA)</u></a></p> <p><b>3. May an LEA use Title III funds for EL identification?</b></p> <p><u>No.</u> The obligation to identify all EL students is part of an LEA’s civil rights obligations. Because of the supplanting clause in ESEA section 3115(g) (which was not changed by the ESSA), as in the past, <u>Title III funds may not be used to satisfy an LEA’s civil rights obligations to ELs.</u> The legal obligations of an SEA and an LEA under the civil rights laws are independent of the amount or type of State or Federal funding received. <u>Therefore, an LEA may not use Title III funds for identification of ELs, including costs of administering a screening assessment, home language survey, or related tools.</u></p>

<p><b>Provide a core English Language Development Program – (called ESOL in GA)</b></p> <ol style="list-style-type: none"> <li>1. Identify and assess ELs.</li> <li>2. Provide English language development standards, instruction (curriculum) and instructional resources.</li> <li>3. Provide well prepared and trained staff.</li> <li>4. Ensure meaningful participation of ELs in curricular and extracurricular activities.</li> <li>5. Ensure ELs are not segregated.</li> <li>6. Identify, evaluate, and serve EL/SWD.</li> <li>7. Serve ELs whose parents opt out of ESOL.</li> <li>8. Monitor &amp; evaluate effectiveness of ESOL programs to ensure progress.</li> <li>9. Exit ELs when proficient.</li> <li>10. Communicate with EL parents.</li> </ol>	<p><b>State and Local Funds</b></p>	<p><a href="#"><u>September 23, 2016 Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)</u></a></p> <p><b>A-3. What are the legal obligations of States and LEAs to ELs under Title VI of the Civil Rights Act of 1964 and the EEOA?</b></p> <p>“Under Title VI of the Civil Rights Act of 1964 and the EEOA, all States and LEAs must ensure that ELs can participate meaningfully and equally in educational programs and services.”</p> <p>To meet their obligations under Title VI and the EEOA, LEAs must, for example:</p> <ol style="list-style-type: none"> <li>1. Identify and assess all potential EL students in a timely, valid, and reliable manner.</li> <li>2. Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with <i>Castañeda v. Pickard</i> and the Supreme Court decision in <i>Lau v. Nichols</i>.</li> <li>3. Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students.</li> <li>4. Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities.</li> <li>5. Avoid unnecessary segregation of EL students.</li> <li>6. Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services.</li> <li>7. Meet the needs of EL students who opt out of language assistance programs.</li> <li>8. Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied.</li> <li>9. Evaluate the effectiveness of a school district’s language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and</li> </ol>
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		<p>10. Ensure meaningful communication with limited English proficient (LEP) parents.</p> <p>Additional information about <b><u>States’ and LEAs’ legal obligations under Title VI and the EEOA</u></b> can be found in a 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice (hereinafter “DCL”), available at <a href="http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf">http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf</a>.</p> <p><b>pg. 5:</b></p> <p><b>I. State Educational Agency and School District Obligations to EL Students</b></p> <p>SEAs and school districts share an obligation to ensure that their EL programs and activities comply with the civil rights laws and applicable grant requirements. Title VI prohibits recipients of Federal financial assistance, including SEAs and school districts, from discriminating on the basis of race, color, or national origin. Title VI’s prohibition on national origin discrimination requires SEAs and school districts to take “affirmative steps” to address language barriers so that EL students may participate meaningfully in schools’ educational programs. The EEOA requires SEAs and school districts to take “appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs.” In determining whether a school district’s programs for EL students comply with the civil rights laws, the Departments apply the standards established by the United States Court of Appeals for the Fifth Circuit more than 30 years ago in <i>Castañeda v. Pickard</i>. 14</p> <p>Specifically, the Departments consider whether: (1) The educational theory underlying the language assistance program is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (2) The program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) The program succeeds, after a legitimate trial, in producing results indicating that students’ language barriers are actually being overcome within a reasonable period of time.</p> <p>The Departments also apply <i>Castañeda</i>’s standards when evaluating an SEA’s compliance with the civil rights laws. Even if an SEA does not provide educational services directly to EL students, SEAs have a responsibility under the civil rights laws to provide appropriate guidance, monitoring, and oversight to school districts to ensure that EL students receive appropriate EL services. For example, to the extent that SEAs select EL instructional program models that their school districts must implement or otherwise establish requirements or guidelines for such programs and related practices, these programs, requirements, or guidelines must also comply with the <i>Castañeda</i> requirements.</p>
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<p><b>Supplemental Language Instruction Educational Programs (LIEPs) for ELs</b></p>	<p><b>ESEA Title III, Part A</b></p>	<p><b>ESEA Title III Part A Section 3115(c)</b> Required Subgrantee Activities – An eligible entity receiving funds under section 3114(a) for a fiscal year shall use the funds...  (1) to increase the English proficiency of ELs by providing effective language instruction educational programs that meet the needs of ELs and demonstrate successes in increasing (a) English language proficiency (ELP); and (B) student academic achievement.</p>
<p><b>High-quality professional development programs</b></p>	<p><b>ESEA Title III, Part A / State &amp; Local Funds</b></p>	<p><b>ESEA Title III Part A Section 3115(c)</b> Required Subgrantee Activities – An eligible entity receiving funds under section 3114(a) for a fiscal year shall use the funds...  (2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is:  (A) designed to improve the instruction and assessment of ELs;  (B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for ELs;  (C) effective in increasing children’s ELP or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and  (D) of sufficient intensity and duration (which shall not include activities such as one-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’ performance in the classroom.</p> <p><u><a href="#">DOJ/OCR January 15, 2015 Dear Colleague Letter: English Learner Students and Limited English Proficient parents, pg. 5:</a></u>  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.</p>
<p><b>Supplemental EL Parent Engagement Activities to enhance LIEPs</b></p>	<p><b>ESEA Title III, Part A</b></p>	<p><b>ESEA Title III Part A Section 3115(c)</b> Required Subgrantee Activities – An eligible entity receiving funds under section 3114(a) for a fiscal year shall use the funds...  (3) to provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for ELs which (A) shall include parent, family, and community engagement activities; and (B) may include strategies that serve to coordinate and align related programs.</p>
<p><b>Monitoring &amp; Evaluating EL Programs</b></p>	<p><b>State &amp; Local Funds</b></p>	<p><u><a href="#">DOJ/OCR January 15, 2015 Dear Colleague Letter: English Learner Students and Limited English Proficient parents, pg. 7:</a></u>  In addition, SEAs and school districts that receive funding under Title III are required to regularly determine the effectiveness of a school district’s program in assisting EL students to attain English proficiency and meet challenging State academic standards.</p>