



English Learner students: Do you know your legal obligations?

January 12, 2018

Recently, there has been an increase in discrimination complaints involving English Learner (EL) students. EL students are those who have a native language other than English and are not proficient in listening, speaking, writing and/or reading English. As of January 2015, EL¹ students accounted for nine percent of all public school students nationwide and were enrolled in nearly three out of every four public schools, with those numbers steadily rising.² Given the increase in complaints against school districts in Ohio involving EL students, mirroring similar complaints being investigated by the U.S. Department of Education Office for Civil Rights (OCR) nationwide, this is an issue that should be on the radar for building administrators.

Federal law protects EL students from discrimination and mandates that they be provided with language services to enable them to meaningfully participate in school programs and activities, both curricular and extracurricular.³ If EL students or their parents believe that they have been discriminated against or denied a meaningful opportunity to participate, they may file complaints with the OCR. This article highlights some of the issues that can arise with EL students and provides tips for legal compliance.

1. Understand your obligation to identify EL students and educate teachers about their role in the process.

Public schools are legally obligated to identify students who may be in need of language assistance - students age 3 to 21 who were not born in the United States or whose native language is a language other than English. EL students may be born in the United States and be U.S. citizens.

Your district probably uses a home language survey in the enrollment process as the primary mechanism for identification, but if you or one of your staff encounters a student or parent who appears to be limited English proficient, you should determine

whether they have previously been identified through the home language survey as needing language services. If not, you should follow up with your district administrator in charge of language services to notify them that the student's English proficiency may need to be assessed and/or that the parent may need language assistance when interacting with the school.

2. Keep in mind that limited English proficiency is not a disability.

EL students do have special needs and some of the legal rules that apply to them look similar to those that apply to special education students. As mentioned above, schools have an obligation to identify and assess EL students and to provide the language services they need. However, schools should not identify or determine that EL students are students with disabilities solely because of their limited English language proficiency.

Even if your district's special education department also oversees the EL program, the two processes should be kept separate. EL students should not be placed on an Individualized Education Program unless separately determined to need special education services. Similarly, EL students with disabilities who are determined to need special education services should be separately assessed to determine their need for language assistance and should be offered both the disability-related services and the language services they need.

3. Be alert to the potential for unlawful discrimination against EL students.

Discrimination or harassment may occur in the form of negative behavior by students or staff against EL students based on race, color, national origin or religion, which may violate your district's board policies or student code of conduct.

Discrimination may also occur if EL students are denied meaningful access to school programs and activities. This means that you must not only provide alternative language services to EL students but also make sure they are not unduly segregated from other students. Depending on the student's level of proficiency, an EL student may need to be in a segregated English as a Second Language (ESL) classroom for part of his/her day, but that does not mean that the student should be segregated for non-academic subjects such as recess, physical education, art and music.

Legal issues can also arise if EL students are kept in a language assistance program longer than necessary. The ultimate goal for every EL student is to attain English proficiency and exit from the ESL program. In addition, EL students must not be retained in a grade based solely on a lack of English proficiency. Ohio law specifies that you can promote to fourth grade a student who does not test proficient in English language arts if the student is a limited English proficient student, has been enrolled in U.S. schools for less than three full school years and has had less than three years of instruction in an ESL program.⁴

4. If you are involved in hiring recommendations, know what qualifications to look for in teachers providing language support programs for EL students.

To implement an ESL program effectively, the instructors should be teachers specially qualified to provide language assistance services. To the extent possible, you should look to hire ESL teachers with TESOL (Teaching English to Speakers of Other Languages), bilingual certification or endorsement or at least someone who is working towards such licensure.

5. Promote conversation and collaboration between ESL teachers and other classroom teachers regarding teaching of EL students and provide professional development to teachers on this topic.

ESL (or bilingual language program) teachers have the primary responsibility for providing language assistance to EL students, but it is important to remember that the classroom teacher can help EL students be successful by knowing their assessed level of English proficiency, how to speak to EL students (such as avoiding the use of slang or idioms), being familiar with the student's culture and modifying teaching strategies when necessary. Providing opportunities for conversation and collaboration between ESL teachers and other classroom teachers can make classroom teachers more aware of how they can help.

In addition, when you are preparing teacher in-service training, don't forget to include professional development on this topic. For many, this is required if your district receives Title III funding. (You may find more information to assist you on the Ohio Department of Education's website under Teaching English Language Learners and the [Lau Resource Center](#).)

6. Consider the need for qualified interpreters and/or translators when communicating with limited English proficient parents.

Guidance from the OCR indicates that to enable limited English proficient (LEP) parents to meaningfully participate in their children's education, schools must try to communicate with them in a language they can understand. This typically means providing qualified interpreters and, sometimes, translated documents for such significant matters as student disciplinary proceedings, parent-teacher conferences, and special education eligibility and placement determinations. Therefore, it is important to familiarize yourself and your staff with your district's practices and procedures for obtaining interpreters for parent meetings and for translating documents provided to parents such as parent-teacher conference notices, codes of conduct, disciplinary notices and building newsletters.

For detailed information about the federal legal requirements applicable to EL students, see [OCR's Dear Colleague](#) letter issued January 7, 2015.

¹ Such students may also be referred to as ELL (English Language Learners) or LEP (Limited English Proficient) students.

² U.S. Department of Education Office for Civil Rights Fact Sheet, "Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs" (January 2015).

³ Applicable laws include Title VI of 42 U.S.C. §2000d, et seq. (The Civil Rights Act of 1964); Equal Educational Opportunities Act, 20 U.S.C. §1703(f); Lau v. Nichols, 414 U.S. 563 (1974).

⁴ R.C. 3313.608(A)(2)(a).

Authors



Susan L. Oppenheimer

Senior Attorney

Columbus

614.227.8822

soppenheimer@bricker.com