

Legal Rights of Students who are English Learners



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Housekeeping

- This webinar is being recorded.
- Please protect student confidentiality.
- We will pause at certain points to respond to questions.

Framing the Conversation

- Maine's students who are English learners (ELs) come from a variety of personal, educational, and linguistic backgrounds, and bring with them a wealth of experiences and knowledge.
- Having students who are ELs in your school is an invaluable opportunity for all members of the community to learn and grow.



Role of the Maine DOE

- Maine DOE is a partner to all Maine school administrative units (SAUs).
- Our goal is to provide you with information, resources, and supports to help you successfully meet the needs of every student.
- For any civil rights concerns, please refer to [Clarification of the Process for Addressing Complaints of Discrimination.](#)

Presentation Overview

- Historical Context
- Legal Rights of Students who are English Learners (ELs)
- Civil Rights in the COVID-19 Context

Historical Context



Source: Historical Photograph Collection of San Francisco Public Library's San Francisco History Center.

Before the Civil Rights Movement

- No explicit federal protections for students learning English
- Segregation of students based on race/ethnicity and/or language was commonly practiced in schools across the country.
- English-only laws prevented instruction in languages other than English in over 20 states.
- In Maine, a 1919 law prohibited the use of languages other than English in schools.

Title VI of the Civil Rights Act (1964)

§ 2000d.

“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.”

Bilingual Education Act (1967)

- Included as Title VII in an amendment to the Elementary and Secondary Education Act (1965)
- Provided federal funding for competitive grants to support innovative language programs for students who are ELs in low-income households
- Bilingual instruction was not required, but innovative programming was encouraged.

Office for Civil Rights Memorandum (1970)

- Response to civil rights violations found in Title VI compliance reviews
- Specified actions all school districts must take:
 - “affirmative steps” to ensure that students learning English can access the instructional program
 - not assign students to special education classes based on English proficiency; not deny access to college preparatory classes due to school’s failure to teach students English
 - teach students English as quickly as possible
 - communicate with families in a language they can understand

Lau v. Nichols (1974)

- Brought by Chinese-American students in San Francisco Unified School District, who were placed in mainstream classes with no supports to learn English
- SFUSD argued that the students received equal treatment to other students.
- Supreme Court ruled that “equal treatment” is, in effect, discrimination.
- Resulted in the Lau Remedies

Equal Educational Opportunities Act (1974)

- Served to codify the conclusions of *Lau v. Nichols*
- Section 1703(f): "No state shall deny educational opportunities to an individual on account of his or her race, color, sex, or national origin by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

Castañeda v. Pickard (1981)

- Brought by Mexican-American students against Raymondville Independent School District in Texas
- Resulted in three-pronged test to ensure program effectiveness:
 - Is it based on *sound educational theory*?
 - Is it implemented effectively with sufficient resources/personnel?
 - Has it been proven (through regular evaluation) to effectively meet students' needs?

Plyler v. Doe (1981)

- Class-action suit on behalf of students of Mexican origin in Texas
- Texas legislature passed a law barring denying enrollment to children who were not “legally admitted” into the US
- Supreme Court ruled that all children residing in the US are covered under the Equal Protection Clause of the 14th amendment of the US constitution

Maine Human Rights Act (1983)

§4601. Right to freedom from discrimination in education

“The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, sexual orientation, a physical or mental disability, national origin or race is recognized and declared to be a civil right.”

English Language Acquisition, Language Enhancement, and Academic Achievement Act (2001/2015)

- Replaced the Bilingual Education Act of the ESEA (amended as No Child Left Behind, 2001, and the Every Student Succeeds Act [ESSA], 2015)
- Provided federal funds to improve and enhance language acquisition programming
- Included accountability measures for students who are English learners (first under Title III only, now under Title I)

Questions

Legal Rights of Students who are ELs



1. Right to be Identified

- Under Title I of the ESSA, all students who are ELs must be identified (and parent/guardian notified) within 30 days from the start of the school year. The parent/guardian of any student enrolling mid-year must be notified within two weeks of placement in an ESOL program.
- ESSA requires statewide, uniform EL identification procedures.
- Parent/guardian consent is not required to identify a student who is an EL.

Recommendations

- [Language Use Survey Training Video](#)
- Low-incidence districts:
 - Designate a specific teacher to oversee the [EL identification process](#).
 - Proactively ensure that at least one teacher is prepared to administer the appropriate English language proficiency screeners.

2. Right to a Language Assistance Program

- All students who are ELs (pre-K to 12) are entitled to ESOL services until exiting with a proficient score on a valid, reliable English language proficiency (ELP) assessment.
- ESOL services must be:
 - tailored to the individual needs of each student
 - based on sound educational theory
 - “reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time”

2. Right to a Language Assistance Program (cont.)

Maine DOE offers the following service provision guidelines:

1. The “consultation model” of services is not considered to be based on sound educational theory and should not be used.
2. ELs in English language proficiency levels one and two (as measured by WIDA assessments) should receive at least two periods of ESOL per day, and ELs above proficiency level two should receive at least one period of ESOL per day.

Recommendations

- Include in your SAU's Lau Plan provisions for annual Language Acquisition Committee meetings to develop students' Individual Language Acquisition Plans (ILAPs), as well as typical service amounts by proficiency level.
- Ensure that parents/guardians are meaningfully included in ILAP development.
- Maintain detailed records of service plans and delivery in the student's cumulative file.

3. Right to sufficient resources and staff

- ESOL programs must have sufficient resources (such as facilities and instructional materials) and staffing to ensure successful implementation.
- Staffing level must be responsive to the needs of students.
- Administrators must be equipped to evaluate the effectiveness of ESOL teachers and programs.

3. Right to sufficient resources and staff (cont.)

Maine DOE offers the following [service provision guidelines](#):

Ed Techs, tutors, or other educators cannot provide the core ESOL services required by civil rights law, even under supervision of an ESOL-endorsed teacher.

Recommendations

- Build flexibility into budgets to manage fluctuations in EL enrollment.
- A small rural district with staffing challenges may consider:
 - face-to-face or remote supports through consultant
 - leveraging a regional service center
 - cultivating ESOL teachers in-district
- Administrators can become familiar with best practices in ESOL through [WIDA eLearning](#) offerings.
- Consider using the Sheltered Instruction Observation Protocol ([SIOP](#)) checklist in observations.

Questions

4. Right to meaningful access to all curricular and extracurricular programs

Schools must provide equal opportunities for students who are ELs to participate in all programs and activities, including:

- pre-K
- magnet programs
- career & technical education programs
- college preparatory courses
- Advanced Placement
- International Baccalaureate
- gifted & talented
- online and distance learning opportunities
- visual and performing arts
- athletics
- clubs
- honor societies
- summer/extended day programs
- Title I

Recommendations

- Provide culturally-responsive explanations of all programs in a language/format that parents can understand.
- Ensure that supports are in place to enable students to be successful.
- Have options available so students aren't excluded based on religious practices (sports hijabs, gender groups).
- Make participation decisions on a case-by-case basis rather than on the basis of proficiency level.
- Provide transportation whenever possible.

5. Right to integration with peers

- Separation of students who are ELs from their non-EL peers must be limited to only what is absolutely necessary for their educational benefit.
- Schools are generally expected to integrate students who are ELs with their peers for:
 - PE, art, and music classes
 - lunch, recess, and assemblies
- Newcomer programs that isolate students who are ELs for the majority of the day for intensive English language development are generally considered acceptable for no more than a year.

Recommendations

- Design student schedules in a way that maximizes integration.
- For successful integration:
 - provide common planning time for teachers so students can be successful in content classes
 - ensure that all school staff understand how to interact with students in culturally-responsive, welcoming ways

6. Right to Appropriate Special Education Identification and Services

- Students who are ELs with suspected disabilities must be evaluated for special education and disability-related services in a timely manner.
- Before referring, ensure that Tier I programming is high-quality and effective for ELs, and proceed through cycles of intervention as necessary.
- Evaluations must take into account the student's level of ELP and may need to be conducted in the student's primary language (when feasible).
- Students who are ELs must not be identified for special education based on ELP.

Recommendations

- Listen to what parents say about students' behavior, cognitive abilities, and language development in their primary/home language.
- Awareness of linguistic differences between the student's languages can help distinguish typical language development from speech/language needs.
- Recognize that students may be operating between two linguistic systems (with different alphabets/directionalities).
- Recognize that trauma and/or limited/interrupted education can often manifest in ways that resemble a special education need.

7. Right to ESOL Program Options

- Parents/guardians may choose to opt their child out of an ESOL program or particular type of ESOL service.
- However, schools remain obligated to ensure that the student's language and content acquisition needs are met.
- Parents/guardians who seek to opt out must be informed of their ESOL service options, the implications of opting out, and their right to opt back in at any time.

Recommendations

- Ensure that parents/guardians have a complete and accurate understanding of ESOL programming.
- Provide a sample of student's schedule to clarify the role of ESOL supports in the instructional day.
- Frame multilingualism positively.
- Include parents/guardians in decision-making processes.

8. Right to Exiting/Monitoring

- Students who achieve ELP are automatically exited from EL status.
- Former ELs must be monitored to ensure that they do not continue to need ESOL services.
- A student can be rescreened for ELP and reentered into EL status if necessary at any time.

Recommendations

- Consult the US DOE Office of English Language Acquisition (OELA) [EL Toolkit](#) for best practices in monitoring.
- Build time into an ESOL educator's schedule for monitoring.
- Train all educators to know what signs to look for that a former EL may need to be rescreened.

9. Right to an ESOL Program that is Evaluated

- Schools must evaluate their ESOL programs to ensure that students are achieving ELP and able to participate successfully in the general educational program within a reasonable amount of time.
- Suggested data points to review include:
 - academic performance of current ELs as compared to former ELs and never-ELs
 - participation in various educational opportunities/programs (special education, gifted & talented, AP, CTE, extracurriculars)
 - graduation and drop out rates
 - retention rate
 - EL status exit rate/long-term EL percentage

Recommendations

- Consult the US DOE OELA [EL Toolkit](#) for best practices in program evaluation.
- Use the US DOE Office for Civil Rights [program evaluation tool](#).
- Build ESOL program evaluation into annual needs assessment/strategic planning processes.

10. Right to Meaningful Communication between Schools and Families

Schools must communicate information to limited English proficient parents in a language they can understand about any program, service, or activity that is called to the attention of parents who are proficient in English.

- registration and enrollment in school
- grievance procedures and notices of nondiscrimination
- language assistance programs
- parent handbooks
- report cards
- gifted and talented programs
- student discipline policies and procedures
- magnet and charter schools
- special education and related services, and meetings to discuss special education
- requests for parent permission for student participation in school activities
- parent-teacher conferences

[US DOE/DOJ Factsheet](#)

Recommendations

- Develop a language access plan for the SAU
- Budget appropriately for anticipated and unanticipated interpretation/translation needs.
- Train all staff on how to access translation/interpretation.
- Post signage notifying parents/guardians of their right to interpretation/translation and how to access it.

Recommendations

- Consider contracting with a phone interpretation for on-the-spot needs.
- Provide Robocalls in multiple languages.
- If any written communication to parents/guardians has not been translated, include a notice that interpretation of the document is available upon request.
- Do not rely on [automated interpretation/translation tools](#) for essential communications.
- See list of agencies [here](#).

Civil Rights in the COVID-19 Context

US DOE Factsheet: Providing Services to English Learners During the COVID-19 Outbreak

- All civil rights requirements remain in effect.
- US DOE offers flexibility as to *how* services are provided but confirms that they must continue to be provided in remote or hybrid settings.
- *“The Department recommends continuity in providing language services to ELs to the greatest extent possible under the current circumstances.”*
- In addition to ESOL services, ELs must be provided with core content instruction that meets their needs.

Recommendations

- Prioritize ESOL services in scheduling.
- Build collaboration/planning time into teachers' schedules.
- Consider creative/innovative solutions:
 - co-teaching
 - phone/video call services
 - instructional packets
 - project-based/experiential learning

Recommendations

To improve accessibility of remote content instruction, include:

- content/language objectives
- extended time for assignments
- closed captioning/subtitles on videos
- reading materials at various levels
- translated materials
- text-to-speech
- online bilingual dictionaries
- word banks and sentence frames
- peer groupings

Resources

- [Maine DOE English Learners Webpage](#)
- [Serving Maine's English Learners](#)
- [Maine DOE Administrative Letter 27](#)
- [US DOJ/DOE Dear Colleague Letter](#)
- [Maine DOE Lau Plan Template and Guidance](#)
- [WIDA](#)
- [Colorín Colorado](#)

Questions

Thank you!

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