

ESL Legal History

Alexander v. Sandoval: Martha Sandoval brought a class action suit to enjoin the Alabama Department of Public Safety from administering state driver's license examinations only in English. She argued that the English-only policy violated the DOJ regulation because it had the effect of subjecting non-English speakers to discrimination based on national origin. James Alexander, Department Director, argued, unsuccessfully, that Title VI did not provide a cause of action to enforce the regulation. The U.S. Supreme Court (5-4) held that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI.

Castaneda v Pickard: On June 23, 1981 the Fifth Circuit Court issued a decision that is the seminal post-Lau decision concerning education of language minority students. The case established a three-pronged test to evaluate the adequacy of a district's program for ELLs. (1) Is the program based on an educational theory recognized as sound by some experts in the field or is considered by experts a legitimate experimental strategy? (2) Are the programs and practices, including resources and personnel, reasonably calculated to implement this theory effectively? (3) Does the school district evaluate its programs and make adjustments where needed to ensure language barriers are actually being overcome?

Equal Education Opportunities Act of 1974: This civil rights statute prohibits state from denying equal education opportunity to an individual on account of his/her race, color, sex, or national origin. The statute specifically prohibits states from denying equal educational opportunity 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.

Flores v. Arizona: Argument was whether the State adequately funded ELL programs. The State was ordered to appropriate funds for the ELL programs that are rationally related to helping ELLs overcome language difficulties. Upheld on appeal. (9th circuit, Feb. 2008)

Lau v. Nichols: The U.S. Supreme Court ruled that school districts have a duty to see that students are not discriminated against because they do not speak English. There is no equality of treatment merely by providing students with the same facilities, texts, and curriculum for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the heart of what these schools teach. Imposition of a requirement that before a child can effectively participate in the educational program he must have already acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful (U.S. Supreme Court, 414 U.S. 563).

The May 25 Memorandum: To clarify a school district's responsibilities with respect to national-origin-minority children, the U.S. Department of Health, Education, and Welfare, on May 25, 1970, issued a policy statement stating, in part, that "where inability to speak and understand the English language excludes national-origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open the instructional program to the students."

Mendez v. Westminster (1947): Unanimous U.S. Court of Appeals upheld a federal district court that struck down the segregation of Mexican and Mexican-American students in four California districts as a violation of the due-process and equal-protection clauses of the U.S. Constitution's 14th amendment. One of the arguments for segregating the students at the time was that they were deficient in English. The challenge to the practice was that Spanish-speaking students lost ground in learning English in such settings.

NCLB: No Child Left Behind. All students of all racial, ethnic, socio-economic and language groups must achieve proficiency as defined by each state by 2013-2014. In the interim all districts, schools, and subgroups must make APY toward 100% proficiency.

Plyler v. Doe: The U.S. Supreme Court held that Texas law allowing local education agencies to deny enrollment to undocumented children was unconstitutional based on the equal protection provision of the 14th Amendment of the U.S.

Serna v. Portales Municipal Schools (1972): Despite the federal bilingual education law, many districts were slow to offer effective bilingual education programs. Consider the first bilingual education class action filed by Mexican-Americans. A federal judge ordered school officials to hire more Spanish-speaking teachers and to develop a more aggressive bilingual education plan.

Title VI of the Civil Rights Act of 1964: Title VI prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance. The Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a language minority student's limited proficiency in English.

Title VII of the Elementary and Secondary Education Act (ESEA): The Bilingual Education Act, Title VII of the ESEA, recognizes the unique educational disadvantages faced by non-English speaking students. Enacted in 1968, the Bilingual Education Act established a federal policy to assist educational agencies to serve students with limited-English-proficient students, Title VII also supports professional development and research activities. Reauthorized in 1994 as part of the Improving America's Schools Act, Title VII was restructured to provide for an increased state role and give priority to applicants seeking to develop bilingual proficiency. The Improving America's Schools Act also modified eligibility requirements for services under Title I so that limited-English-proficient students are eligible for services under that program on the same basis as other students.

Valeria G. v Wilson (1998) ruled that structured English immersion was based on delivery of English language and content instruction that was "sequential" rather than "simultaneous." The assumption (incorrect) is that focusing on teaching English first then providing remedial instruction in content areas is equal access to the curriculum.

14th Amendment: No state shall...deny any person within its jurisdiction the equal protection of the laws.

Source: ERIC Clearinghouse on Tests Measurement and Evaluation Princeton NJ.