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Legal Provisions and Ensuring Equity & Access to English Language Learners (ELL) With and Without Special Needs

Legal Provisions Affecting English Language Learners (ELLs) with and without Special Needs in the USA ensures that ELLs are provided a free and appropriate public education. Ortiz & Yates, 2001 cited in Artiles and Ortiz (2002) point out that, given the current legislation, schools should put into place the following practices:

- prevention and early intervention services to avert unnecessary special education referrals
- referral processes that distinguish struggling learners from students who are likely to have disabilities
- Assessments conducted by qualified bilingual evaluators who:
 - use instruments and procedures appropriate for English language learners;
 - provide accurate data about native language and English language performance;
 - identify modifications of instruction, methods, and materials needed for both native language and English as a second language instruction; and
 - provide data to rule out such factors as limited English proficiency, cultural differences, economic status, and opportunity to learn as the causes of learning problems
- **Multidisciplinary teams made up of experts in the education of English language learners and in assessment and placement alternatives**; interpreters for non-English-speaking parents, and administrators to ensure that needed bilingual special education programs and services are provided
- IEPs that are culturally and linguistically relevant and that describe the extent to which students will participate in bilingual education, English as a second language (ESL), and general education programs and in-state or district accountability systems

A variety of bilingual special education alternatives, such as special education classes that provide native language and ESL instruction and inclusive general education classes in which expertise in teaching English language learners with disabilities:

- Civil Rights Act (1964)
 - Office for Civil Rights Memorandum (1970)
 - Office for Civil Rights Memorandum (1991)
- Elementary and Secondary Education Act (1968)
- Bilingual Education Act(1968)
- Section 504 of the Vocational Rehabilitation Act(1973)
- Equal Educational Opportunities Act(1974)
- Education for all Handicapped Children Act(1975)
- Americans with Disabilities Act(1990)
- Individual With Disabilities Education Act(1990)
- Improving America's Schools Act(1994)
- No Child Left Behind Act(2001)
- Brown vs. Board of Education(1954)
- Diana vs. State Board of Education(1970)
- Lau vs. Nichols(1974)
- Larry P. vs. Riles(1979)
- Plyler vs. Doe(1982)

- Castañeda vs. Pickard(5th Cir. 1981)
- **Jose, P. v. Ambach, 557 F. Supp. 11230 (E.D.N.Y., 1983),, United Cerebral Palsy (UCP) of New York v. Board of Education of the City of New York, 79 C. 560 (E.D.N.Y. 1979),, and Dyrchia S. v. Board of Education, 79 C. 2562 (E.D.N.Y. 1979).**
Together, **these cases require that school systems:**
 - Use bilingual resources to identify English language learners that need special education.
 - **Provide evaluations that are** in two languages when appropriate and are **nondiscriminatory**
 - Provide bilingual alternatives at each stage of special education placement process.
 - Protect the rights of parents and students and develop a Spanish language version of the parent's rights booklet.
 - Hire community workers to facilitate the involvement of parents in the assessment process and development of their Individual Education Plans (Baca, 1990).
- **Diana vs. State Board of Education, CA 70 RFT (N.D. Cal. 1970)**
Plaintiffs in Diana v. State Board of Education (1970), filed on behalf of Mexican American children in Monterey County, California, alleged that the school system was inaccurately identifying Spanish-speaking children as mentally retarded on the basis of IQ tests administered in English. The court ruled that non-English proficient children **cannot** be placed or denied Special Education on the **basis of culturally biased tests** or tests administered in English.
- **Larry P. vs. Riles, 793 F. 2d 969 (9th Cir. 1984).**
Larry P. vs. Riles was a California class-action case that focused on IQ testing of young black children. The Larry P. case established the legal precedent that **tests administered to minority children must have been validated for use with that population** (Valdés & Figueroa, 1994), it **provides the legal precedent against cultural bias in testing.**
- **Office for Civil Rights Legal Memorandum (1991)**
"Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited English Proficiency (LEP students)"
The 1991 policy update was designed to ensure that schools were in compliance with Title VI of the Civil Rights Act of 1964, which requires them to provide "any alternative language programs necessary to ensure that national origin minority students with limited-English proficiency (LEP students) have **meaningful access to the schools' programs.**"
- **Equal Educational Opportunities Act (1974) (PL 93-380)**
The EEOA prohibits specific discriminatory conduct, including segregating students on the basis of race, color or national origin, and discrimination against faculty and staff. Furthermore, the EEOA **requires school districts to take action to overcome students' language barriers that impede equal participation in educational programs.**
- **Provisions for Assessment in PL94-142** Tests are to be selected and administered so as to be racially and culturally nondiscriminatory

<http://www.ed.gov/about/offices/list/ocr/ellresources.html>

<http://usinfo.state.gov/usa/infousa/laws/majorlaw/civilr19.htm>

<http://www.eeoc.gov/policy/rehab.html>

<http://www.usdoj.gov/crt/edo/faq.htm>

http://www.ed.gov/admins/lead/account/nclbreference/page_pg30.html

<http://www.ed.gov/about/offices/list/ocr/ellresources.html>

<http://www.ed.gov/about/offices/list/ocr/ell/edlite-glossary.html>

<http://www.ncela.gwu.edu/pubs/ideabook/partnerships/#iasa>