

Chapter 8: Meeting Legal and Compliance Requirements - Additional Support and Resources

Landmark Cases and Mandates

- *Bilingual Education Act of 1968, Title VII of the Elementary and Secondary Education Act*. Former 20 U.S.C. Section 880b: The Bilingual Education Act created a permissive grant in aid program to support research and experimental demonstration projects supporting bilingual education. Under the Act, school districts were not required to provide special programs for English Learners or to submit grant applications.
- Office for Civil Rights, United States Department of Education, *Identification of Discrimination and Denial of Services on the Basis of National Origin*, 35 Fed.Reg.11595 (May 25, 1970). The Office for Civil Rights (OCR) issued a policy memorandum stating that the failure of federally assisted educational programs to take “affirmative steps” to provide for “effective participation” by children from national origin minority groups in their programs constituted a violation of Title VI of the Civil Rights Act of 1964.
- *Lau v. Nichols*, 414 U.S. 563 (1974): In *Lau v. Nichols*, the United States Supreme Court held that the failure of the San Francisco Unified School District to provide English language instruction to students of Chinese ancestry who did not speak English, or to provide them with other adequate instructional programs, denied them a meaningful opportunity to participate in the public educational program and thus violated Title VI. The court in *Lau* concluded: “[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.” (414 U.S. at 566). The *Lau* court deferred to the school district to design programs to meet the needs of legislation.
- *Equal Educational Opportunities Act*, 20 U.S.C. Section 1703(f) (1974): The Act codified the *Lau* decision, and paralleled language from other civil rights laws: “No state shall deny equal opportunity to an individual on account of . . . race, color, sex or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in the instructional programs.” Similar to the *Lau* decision, Congress did not specify particular educational or remedial approaches, but required that school districts take appropriate action to guarantee equal educational opportunities for language minority students.
- *Castañeda v. Pickard*, 648 F2d. 989 (5th Cir. 1981): In *Castañeda*, the school district operated a bilingual educational program for all students in kindergarten through third grade. The program included an assessment component and instruction in fundamental reading and writing skills in both Spanish and English. The district did not offer a formal program of bilingual education after the third grade. The Court held that the EEOA did not require local educational authorities to adopt a particular type of program; the EEOA required appropriate action rather than bilingual education. A three-pronged test for appropriate action was established by the *Castañeda* court. For appropriate action, programs developed for ELs must:
 - Develop an educational plan based on scientific research or sound educational theory
 - Have adequate resources to fully implement the program

- Produce results that show the program is effective
- *Teresa P. v. Berkeley Unified School District*, 724 F.Supp. 698 (N.D.Cal. 1989): The United States District Court applied the Castañeda test and found that a school district complied with the EEOA and the Castañeda test even though it did not employ teachers or tutors who spoke the primary language of the students or utilized materials in the student’s primary language. The court held that Berkeley Unified School District, which used the English as a second language approach, was supported by sound educational theory and noted that the EEOA did not require the District to adopt a specific educational theory or implement an ideal academic program. Rather, the court held that the EEOA permits educational officials substantial latitude in formulating programs to meet the needs of language minority students. “That Congress utilizes the term ‘appropriate action’ rather than ‘bilingual education’ indicates that Congress intended to leave educational authorities substantial latitude in formulating programs to meet their EEOA obligations.” (Teresa P. at 713)
- *Proposition 227, English Language in Public Schools Initiative* (June 2, 1998): Proposition 227 stated as its purpose that all children in California public schools shall be taught English as rapidly and effectively as possible. Proposition 227 enacted a number of provisions that severely restricted the implementation of bilingual programs. In *Valeria v. Davis*, 307 F.3d 1036 (9th Cir. 2002; rehearing denied, 320 F.3d 1014 (2003)), plaintiffs argued that Proposition 227 unconstitutionally restricted the political process by enabling the state to make bilingual education decisions. The Court of Appeals held that the provisions of Proposition 227, which replaced bilingual education programs with curricular programs designed to teach students in English, did not violate the Equal Protection Clause of the United States Constitution because the record did not establish racial discrimination or racial animus, and the racial makeup of California’s students did not shape Proposition 227’s reallocation of political authority over bilingual education. The United States Court of Appeals upheld the constitutionality of Proposition 227.
- *Reauthorization of ESEA in 2001*: This reauthorization eliminated references to bilingual instruction and focused English Learner programs on English proficiency.
- *Horne v. Flores*, 557 U.S. 433 (2009): A group of English Learners in Nogales Unified School District in Arizona filed a class action lawsuit against the state for violations of the EEOA. The U.S. Supreme Court held that the EEOA mandates neither equal inputs nor equal outcomes, noting that the EEOA does not require any particular level of funding for implementation. The Court further opined that achievement gaps alone would not be sufficient to show a violation of the EEOA.
- *CDE settlement agreement with U.S.D.O.J.* (September 2016): This settlement agreement addresses alleged violations of the Equal Educational Opportunities Act (EEOA). The U.S.D.O.J. alleged that California failed to take appropriate action for over a decade in response to LEA reports of unserved EL students, and when action was taken, CDE’s actions did not meet EEOA standards. As part of the settlement terms, CDE must respond faster to CALPADs reports of EL services, provide professional development to CDE monitoring staff, and include appropriate student placement, program of ELD instruction, and access to core subject matter services as part of monitoring.
- *Proposition 58, California Education for a Global Economy Initiative (California EdGE Initiative)*, enacted November 2016, effective July 1, 2017: The California EdGE Initiative amends and repeals provisions from Proposition 227. Specifically, the new law

deletes the sheltered English immersion requirement and waiver provisions and provisions for lawsuits and personal liability for failure to implement Prop 227; requires part of the LCAP to include soliciting input on and providing to pupils effective and appropriate instructional materials including language acquisition programs; and articulates a different form of notice to parents/legal guardians/educational rights holders. In addition, the new law places a new or renewed emphasis on importance of learning multiple languages, as exemplified by the statement: “A large body of research has demonstrated the cognitive, economic, and long-term academic benefits of multilingualism and multiliteracy (EC section 300(m)). Education Code section 306(c)(1) clarifies that language acquisition programs include dual-language immersion programs that provide integrated language learning and academic instruction for native speakers of English and native speakers of another language, with the goals of high academic achievement, first and second language proficiency, and cross-cultural understanding.

- The California English Learner Roadmap: Strengthening Comprehensive Educational Policies, Programs, and Practices for English Learners

A Common Vision for Educating English Learners:

The Vision: English learners fully and meaningfully access and participate in a 21st century education from early childhood through grade twelve that results in their attaining high levels of English proficiency, mastery of grade level standards, and opportunities to develop proficiency in multiple languages.

The Mission: California schools affirm, welcome, and respond to a diverse range of EL strengths, needs, and identities. California schools prepare graduates with the linguistic, academic and social skills and competencies they require for college, career, and civic participation in a global, diverse, and multilingual world, thus ensuring a thriving future for California.

The Principles:

- Assets-Oriented and Needs-Responsive Schools
- Intellectual Quality of Instruction and Meaningful Access
- System Conditions that Support Effectiveness
- Alignment and Articulation Within and Across Systems

The principles are further broken down into elements that make up each principle. These elements are the concrete actions that need to be taken in order to enact each principle. The elements are described in the CA EL Roadmap published document.

- Connection to the Local Control and Accountability Plan: The CA EL Roadmap helps LEAs update their Local Control and Accountability Plan (LCAP) and Title III plans to ensure that their goals are aligned with the State Board policy. The resource “From Principles to Practice: Crosswalk to LCAP State Priorities,” available on the [CDE EL Roadmap website](#), demonstrates the connections between the principles in the EL Roadmap Policy and the LCAP.