

# *Serving English Learners in Compliance with the Civil Rights Act*

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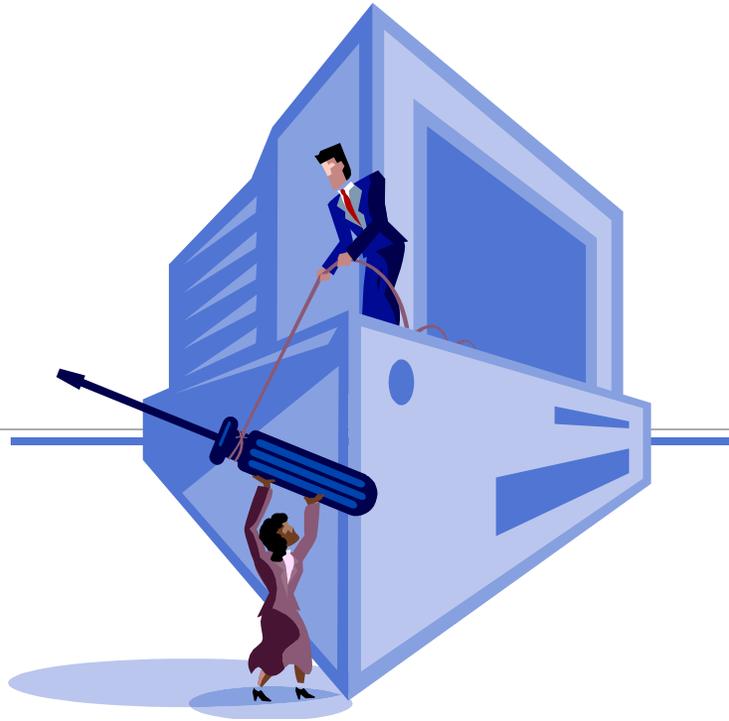
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# Civil Rights and Program Requirements

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- ❑ ESSA Title III Supplement not Supplant
- ❑ Title VI of the Civil Rights Act, 1964
- ❑ Lau v. Nichols, 1974
- ❑ Castañeda v. Pickard, 1981
- ❑ Title I, Title III
  - All states, most districts receive Title I
  - Title III applicable only if district receives
- ❑ State and Local Requirements

# Supplement not Supplant (SNS) Overview



# SUPPLEMENT NOT SUPPLANT PROVISIONS

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## Title I, Part A

- ✘ *...to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.*

*ESEA §1120A(b)(1)*

## Title III, Part A

- ✘ *...to supplement the level of **Federal, State, and local public funds** that, in the absence of such availability, would have been expended for programs for Limited English Proficient (LEP) children and immigrant children and youth and in no case to supplant such **Federal, State, and local public funds.***

*ESEA §3115(g)*

# Presumption of “Supplanting”

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*An auditor will presume that the SEA or LEA violated the SNS requirement when the SEA or LEA uses Title III funds to provide...*

1. Services that the SEA or LEA was required to make available under other federal, state, or local law;
2. Services that the SEA or LEA provided with other federal, state, or local funds in the prior year; or
3. The same services to Title III students as it provided to non-Title III students with non-Title III funds.

Source: See OMB Circular A-133 Compliance Supplement

# Affirmative Obligation to Serve ELLs



# Title VI's General Prohibition

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- ❑ Prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance.
- ❑ Title VI Interpretation – ELs:
  - Prohibits denial of equal access to education because of a student's limited proficiency in English.
  - Protects students who are so limited in their English language skills that they are unable to participate in or benefit from regular or special education instructional programs.

## Other Potential Title III SNS Pitfalls – Obligations to Serve ELLs

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- ESEA Title I

- State Requirements

- Local Requirements

# OCR 1970 Memorandum:

## *Identification of Discrimination and Denial of Services on the Basis of National Origin*

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*“Where the 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 its instructional program to these students.”*

### Upheld in Lau v. Nichols

- *“[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.”*

# Title VI Requirement for ELs: “Core Language Program” / “Language Assistance Program”

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⦿ Federal law requires programs that educate children with LEP to be:

1. Based on a sound educational theory;
2. Adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success; and
3. Periodically evaluated and, if necessary, revised.

*(Castaneda v. Pickard 3-part test)*

# Federal Guidance Ensuring EL Civil Rights Requirements Met

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- 2008: Title III Supplement not Supplant Guidance
- July 2014: Questions & Answers Regarding Inclusion of ELs with Disabilities in ELP Assessments and Title III AMAOs
  - July 2015 Addendum to Q&A Issued
- January 2015: Joint DOJ / ED OCR Dear Colleague Letter: EL Students and Limited English Proficient Parents
  - English Learner Toolkit



# A. Identify and Assess

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# Timely Identify

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- ❑ Must identify EL students in need of language assistance services in a timely manner
- ❑ Title I, III: Identification, placement and parental notice within 30 days of beginning of school year
  - After school year begins – 14 days
- ❑ Understandable to LEP parent (practicable)



# Identification Process

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- ❑ Best practice: Home Language Survey upon registration – identifies students for ELP assessment
- ❑ ELP assessment – mandatory – 4 domains
  - Speak
  - Listen (understand)
  - Read
  - Write



# Compliance Area Questions

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- How (if) are we identifying home language?
- If survey – is it adequate?
- What is our ELP assessment?
- Do we have timely services?
- Cover 4 domains?



# B. Providing Language Assistance

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# Core Language / Language Assistance Program

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- ❑ Castañeda Requirements
- ❑ Educationally sound
  - In Theory **and**
  - Effective in Practice
- ❑ Examples
  - ESL or English Language Development (EDL)
  - Structured English Immersion
  - Transitional Bilingual
  - Dual Language

# Compliance Area Questions

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- Are Kindergarteners included?
- EL services provided by appropriately trained teachers?
- EL SWDs included?
- Services continue until exit criteria met?



# C. Staffing

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## □ HQT

- Core – Title I
- State EL requirements
- Training with specific techniques used
- Adequate number

□ Administrators qualified to evaluate EL teachers for effective EL program implementation

# Compliance Questions

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- Are services provided based on student need – not resources, e.g., teacher availability?
- Do teachers, support staff meet
  - HQT, state requirements, familiarity with EL techniques?
- Adequate training to Gen Ed teachers

# D. Meaningful Access

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# Meaningful Access

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Acquire proficiency

**AND**

Recoup deficits in other areas

→ Attain proficiency and parity within a reasonable time

Full Access to Core Curriculum AND other programs and activities:

PreK

Magnet

Career Tech

Counseling

AP & IB

Gifted / Talented

Distance

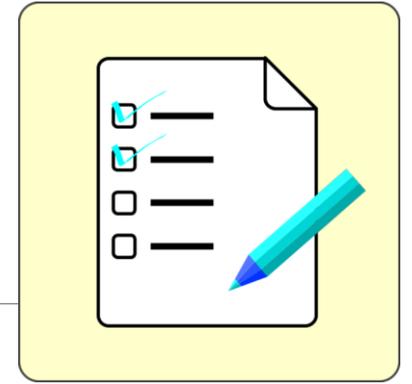
Performing & Visual Arts

Athletics

Clubs

# Compliance Questions

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- How is parity achievement in reasonable time determined?
- Is equal opportunity to participate measured for core but also extra curricular?
- Is equal opportunity measured for special programs?
- Arbitrary admissions criteria that cause exclusion of EL students?



# Compliance Questions

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- EL program ensures access to grade level curriculum and opportunity to graduate on time?
- Equal access for EL to high-level programs and including college and career prep?
- Are there entrance requirements for G & T that are language based?

# E. Avoid Unnecessary Segregation

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- Using least segregative manner
    - Consistent with EL program goals
    - Entry and Exit to program – voluntary
    - Proficiency assessed annually

# Compliance Questions

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- Does monitoring review whether program unnecessarily segregates EL students?
- Is any separation the least amount necessary to achieve program goals?

# F. Special Education

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- ❑ EL SWDs fully IDEA and / or 504 eligible
    - IEP teams also consider language needs
    - Must also consider language needs of parents at meetings
    - Distinguish language proficiency from disability
  - ❑ Participation in Assessments (Core & ELP)
  - ❑ Refer to Q&As

# Compliance Questions

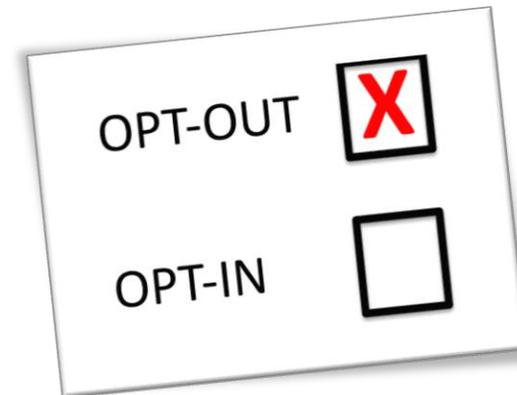
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- Evaluations in appropriate language?
- Measure skills not ELP?
- Improper delay due to EL status or services?
- SPED & EL services provided where both are appropriate?
- Plans provide for language services?
- Are accommodations or alternate assessment provided where appropriate? Including for ELP assessment?

# G. Opt Outs

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- ❑ Must be knowing and voluntary
    - May not recommend that parents decline all or some services within an EL program for any reason
    - Must provide guidance in language parents understand
    - Document opt-out decision!
  - ❑ Even where opt out – Civil Rights protections remain
  - ❑ Must monitor progress & take affirmative steps
  - ❑ No assessment exemption

# Compliance Questions

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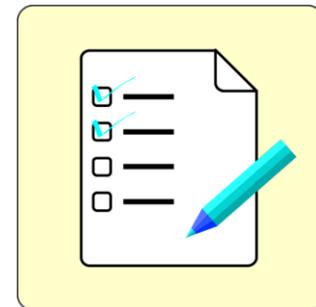


- Are parents fully informed?
- Is there documentation that declines or opt outs are informed?
- Are reasons for high opt out rates explored?
- Is there monitoring and assessment of students who have opted out of services?

# H. Monitoring and Exiting EL Students

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- Annually measure EL students acquisition of core curriculum (with accommodations where appropriate)
  - Annual ELP assessment for all ELs
    - Including EL SWDs
  - Monitor Progress of Exited ELs (at least 2 years)
    - If language barrier may be cause of academic difficulty, re-assess; no prohibition against assessing exited EL



# Compliance Questions

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- Do you monitor progress of opt outs and exited ELs?
- Is exit criteria appropriate and adhered to?
  - E.g., not based on teacher availability, not exited before proficient in all four domains

# I. Evaluate Effectiveness of Program

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- ❑ Results in overcoming language barriers
  - ❑ Exit in reasonable time
  - ❑ Use longitudinal data to compare performance in core content areas
    - EL Students
    - Former EL
    - Never EL
  - ❑ Modify programs that are not successful

# Compliance Questions

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- Are EL and former EL students results compared to Never ELs over time?
- Are unsuccessful programs modified?



# J. Communication With LEP Parents

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- ❑ Identify LEP parents – not dependent on child’s language proficiency
  - ❑ Ensure meaningful communication
  - ❑ Same topics as non LEP parents
  - ❑ Translations, and where no translated documents, language assistance still must be provided
  - ❑ AREAS OF CAUTION: google translate, family/friends, bilingual staff who may not be certified translators

# OCR Resolution Agreements Language Access

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- OCR Agreements re: Parental Communications:
  - Tulsa Public Schools (OK), 1/22/13
  - DeKalb Co. School District (GA), 6/27/13
  - Jefferson Parish Public School system (LA), 7/8/14
  - Jersey City School District (NJ), 12/22/14



# Compliance Questions

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- Procedures to Identify evaluate and assist LEP parents?
- Is language assistance provided?
- What form of assistance is provided?
- How are parents informed of language assistance availability?

# Resources

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- ❑ Jan. 7, 2015 Dear Colleague Letter  
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>
- ❑ English Learner Toolkit  
<http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>  
<http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>
- ❑ July 2014 Q & A: Inclusion of ELs with Disabilities in ELP Assessments and Title III AMAOs  
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf>
- ❑ July 2015: Addendum to July 2014 Q & A  
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/addendum-q-and-a-on-elp-swd.pdf>
- ❑ June 2016 Newcomer Tool Kit  
<http://www2.ed.gov/about/offices/list/oela/new-comer-toolkit/ncomertoolkit.pdf>

# Title VI, Civil Rights Act of 1964

## Resources

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### Key Federal Court Cases:

- *Lau v. Nichols*, 414 U.S. 563 (1974)
- *Castaneda v. Pickard*, 648 F.2d 989 (5<sup>th</sup> Cir., 1981)

### Key OCR Guidance:

- 5/25/70 Memorandum  
<http://www.ed.gov/about/offices/list/ocr/docs/lau1970.html>
- 12/3/85 Memorandum (Reissued 4/6/90)  
[http://www.ed.gov/about/offices/list/ocr/docs/lau1990 and 1985.html](http://www.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html)
- 9/27/91 OCR Policy  
<http://www.ed.gov/about/offices/list/ocr/docs/lau1991.html>
- 2/17/11 DOJ Memorandum  
[http://www.justice.gov/crt/lep/AG\\_021711\\_EO\\_13166\\_Memo\\_to\\_Agencies\\_with\\_Supplement.pdf](http://www.justice.gov/crt/lep/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf)

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# Questions?

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