

Equal Access to Elementary and Secondary Education for Students Who Are English Learners with Disabilities

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According to the most recent [Civil Rights Data Collection](#), U.S. public schools educate 5.2 million students who are English Learners (ELs).¹ Sixteen percent of students who are ELs also have disabilities.² This fact sheet outlines several protections that federal civil rights laws enforced by the U.S. Department of Education's (Department) Office for Civil Rights (OCR) provide to students who are ELs who also have disabilities. OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department. These laws include protections for students who have disabilities and are also ELs.³ Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination based on race, color, and national origin in programs or activities that receive federal financial assistance, and Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance. OCR also shares responsibility with the U.S. Department of Justice to enforce Title II of the Americans with Disabilities Act of 1990 (Title II). Title II bars public entities, whether or not they receive federal financial assistance, from discriminating against individuals with disabilities.⁴

This resource does not cover federal requirements that pertain to students under the Individuals with Disabilities Education Act (IDEA), or requirements related to students who are ELs and the use of Title III, Part A funding under the Elementary and Secondary Education Act of 1965 (ESEA). For more information about the requirements of IDEA, please see the Department's [Individuals with Disabilities Education Act \(IDEA\) website](#) and the [IDEA Topic Areas website](#), which includes resources relating to students who are ELs with disabilities. For more information about the ESEA, please see [OELA's Reports and Resources website](#) and the [Title III website](#).

Students who are ELs and also have disabilities must receive equal access to educational programs and activities; therefore, school communities need to be aware of schools' obligations under Title VI, Section 504, and Title II.⁵ This document outlines the requirements of these laws as they relate to students who are ELs with disabilities. Title VI requires that elementary and secondary schools have procedures to identify students who are potentially ELs and take affirmative steps to ensure that they can meaningfully participate in educational programs and services.⁶ Under Section 504, public schools are required to provide a "free appropriate public education" (FAPE) to qualified students with disabilities.⁷ Under Title II, public entities are required to take appropriate steps to ensure that communications for individuals with disabilities are as effective as communications with others.⁸

Meaningful and Equal Participation for Students Who Are ELs: Title VI requires schools to provide meaningful language assistance services to students who are ELs. Language assistance services enable students to:

- Overcome language barriers;
- Work towards proficiency in English; and
- Participate equally, fully, and meaningfully in the standard instructional programming within a reasonable period.

Appropriate language assistance services must be educationally sound in theory, appropriately resourced, and effective in practice.⁹

Meaningful Communication with Parents and Guardians Who Have Limited English Proficiency (LEP): Title VI requires that schools ensure meaningful communication in a language they can understand with parents and guardians who have limited English proficiency (LEP). Schools must take steps to provide effective language assistance to parents and guardians who have LEP, which may be accomplished by providing accurate written translation or oral interpretation.¹⁰

FAPE: Section 504 requires public schools to provide students with disabilities with FAPE.¹¹ Under Section 504, FAPE is the provision of regular or special education and related aids and services that: (1) are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met; and (2) are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards. Parents and guardians have the right to challenge FAPE decisions using Section 504's procedural safeguards.¹²

Communication with Individuals with Disabilities: Under Title II, a public entity (e.g., a public school) shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. To do so, schools shall:

- Furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.
- Understand the type of auxiliary aid or service necessary to ensure effective communication. The necessary type of auxiliary aid or service will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication occurs.
- Give primary consideration to the requests of individuals with disabilities in determining what types of auxiliary aids and services are necessary.
- Provide auxiliary aids and services in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.¹³

Schools must provide students who are ELs and also have disabilities with both the EL services and disability-related services to which they are entitled under federal law.¹⁴ Requirements under the federal civil rights laws include, but are not limited to, the accurate and timely identification of students who are ELs, accurate and timely identification and evaluation of students with disabilities, and provision of appropriate services for students who are ELs and also have disabilities.¹⁵ To avoid improperly identifying students who are ELs as having a disability because of their LEP, schools must evaluate students who are ELs for a disability in an appropriate language based on the student's needs and language skills.¹⁶ Similarly, students with disabilities must receive appropriate disability-related services when schools evaluate their English language proficiency. To ensure that Section 504 services for a student who is an EL and has a disability are designed to meet the individual educational needs of the student, a school is required to draw upon information from a variety of sources, including the social or cultural background of the student and recommendations from teachers, and ensure that the placement decision is made by a group of persons knowledgeable about the student.¹⁷ For example, in making placement decisions, a school could include a teacher responsible for providing EL services for the student as a person knowledgeable about the student.

Examples of the kinds of practices that could, depending on the facts and circumstances, violate federal civil rights laws include the following:

1. Determining that students who are ELs also have disabilities only on the basis of their LEP or because they receive EL services.
2. Determining that students who are ELs and who have disabilities do not need disability-related services or that, although otherwise eligible, do not receive disability-related services because they get EL services.
3. Delaying disability-related evaluations, placements, or services because of a student's English-language needs, or vice versa.
4. Making a student who is eligible for both EL services and disability-related services (or student's parent or legal guardian) select either EL services or disability-related services.
5. Conducting a Section 504 evaluation only in English for students who are ELs and suspected of having a disability instead of individually determining the appropriate language based on each individual student's needs and language skills.
6. Only providing disability-related services in English for a student who is an EL and requires some or all services in their native language.
7. Scheduling programming at the same time, such as scheduling EL services and disability-related services for the same 45-minute schedule block, forcing students to miss one or the other type of services.
8. Communicating about a student's disability-related services with a parent or guardian who has LEP, but not doing so in their preferred language (e.g., not providing interpretation during Section 504/Individual Education Program meetings or translations of Section 504 notices or plans).
9. Not considering the English language-related needs of a student who is an EL when making determinations regarding a student's disability-related services.
10. Identifying or determining whether students who are ELs are students with disabilities based on criteria that measure and evaluate the student's English language skills.
11. Informing a student who is an EL and who is blind or has low vision that they can receive written information from the school either translated into a language other than English or in Braille, but not both—that is, the Braille version would be in English only.
12. Not considering a request for auxiliary aids and services by a parent or guardian who has LEP and who is deaf or hard of hearing and needs auxiliary aids and services, like a qualified interpreter, in addition to English language interpretation, during a meeting for their child.
13. Separating students who are ELs with disabilities from other students who are ELs or from students generally, when not necessary to provide EL- services or disability-related services for the students.

How Can I File a Complaint with OCR?

If you believe a school has discriminated against a student who has a disability and/or is an EL, you can file a complaint with OCR using [OCR's electronic complaint webpage](#). You can also find links on this complaint webpage to resources available in other languages—OCR has some resources available in almost 30 languages in addition to English.

How Can I Learn More About the Rights of English Learners and Students with Disabilities?

For more information, please contact OCR at 1-800-421-3481 (TDD 1-800-877- 8339) or ocr@ed.gov, or visit www.ed.gov/ocr. Information regarding schools' civil rights obligations to students who are ELs and parents and guardians with LEP is also available on OCR's [Equal Opportunities for English Learners](#) website. Information regarding schools' civil rights obligations to provide equal access to education for students with disabilities is available on OCR's [Disability Discrimination](#) website.

How Can I Request Interpretation and/or Translation Services?

To request language access services or resources, which may include oral technical assistance, interpretation, or written translation of Department information, free of charge, contact OCR@ed.gov. If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0852 or of_o_eeos@ed.gov.

This fact sheet does not have the force and effect of law and is not meant to be binding, beyond what is required by statutory and regulatory requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.

For additional information, please see these resources:

- [FAQ on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools](#) (November 2014)
- [Dear Colleague Letter: English Learner Students and Limited English Proficient Parents](#) (January 2015)
- [Fact Sheet: Ensuring English Learners Can Participate Meaningfully and Equally in Educational Programs](#) (January 2015)
- [Tools and Resources for Addressing English Learners with Disabilities](#) (November 2016)
- [Dear Colleague Letter: Preventing Racial Discrimination in Special Education](#) (December 2016)
- [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#) (December 2016)
- [Fact Sheet: Information for Limited English Proficient \(LEP\) Parents and Guardians and for Schools and School Districts that Communicate with Them](#) (January 2015)
- [Fact Sheet: English Learners with Disabilities](#) (August 2021)
- [Fact Sheet: Ensuring Meaningful Participation in Advanced Coursework and Specialized Programs for Students Who Are English Learners](#) (June 2023)
- [FAQ: Protecting Students with Disabilities](#) (July 2023)
- [Secretary's Letter on English Learner Resources](#) (November 2023)

Endnotes

¹ See U.S. Dep't of Educ., Off. for Civ. Rts., [Civil Rights Data Collection 2020-2021](https://civilrightsdata.ed.gov/data) (2020-2021 Downloadable Data File available at <https://civilrightsdata.ed.gov/data>); see also U.S. Dep't of Educ., Off. for Civ. Rts., [Data Snapshot: Profile of English Learner Students in U.S. Public Schools During the 2020-21 School Year](#).

² See U.S. Dep't of Educ., Off. for Civ. Rts., [Civil Rights Data Collection 2020-2021](#); see also U.S. Dep't of Educ., Off. for Civ. Rts., [Data Snapshot: Profile of Students with Disabilities in U.S. Public Schools During the 2020-21 School Year](#) (noting that students who are ELs comprise twelve percent of students with disabilities receiving services under the Individuals with Disabilities Education Act (IDEA) and five percent of students with disabilities receiving services under Section 504).

³ Students with disabilities may receive protections under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA) of 1990 (Title II), and/or the IDEA. Also, the Elementary and Secondary Education Act of 1965 (ESEA) prescribes additional requirements related to ELs and the use of Title III, Part A funding. OCR enforces Section 504 and Title II, including the Section 504 and Title II rights of IDEA students with disabilities, but OCR does not enforce the IDEA or the ESEA. This fact sheet does not address IDEA or ESEA requirements but rather addresses requirements pertaining to Section 504 and Title II. For more information about the requirements of IDEA, please see the Department's [Individuals with Disabilities Education Act \(IDEA\)](#) website at www.idea.ed.gov. For more information about the ESEA, please see <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/english-language-acquisition-state-grants/>.

⁴ The U.S. Department of Justice also enforces Title III of the ADA, which bars certain private entities, whether or not they receive federal financial assistance, from discriminating against individuals with disabilities. For additional information about Title III, see the U.S. Department of Justice website at www.ada.gov.

⁵ Title VI and Section 504 apply to all recipients of federal financial assistance from the Department, including schools, charter schools, school districts, and local educational agencies. Title II applies to public entities, including public schools, public charter schools, public school districts, and local educational agencies. In this document, discussions of FAPE under Section 504 are applicable only to public school recipients, and discussions of Title II's requirements are applicable only to public schools.

⁶ See generally *Lau v. Nichols*, 414 U.S. 563 (1974); *Rios v. Read*, 480 F. Supp. 14, 23-24 (E.D.N.Y. 1978); *Cintron v. Brentwood Union Free Sch. Dist.*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978). See also U.S. Dep't of Educ., Off. for Civ. Rts. & U.S. Dep't of Just., Civ. Rts. Div., [Dear Colleague Letter: English Learner Students and Limited English Proficient Parents](#) (January 2015).

⁷ See 34 C.F.R. § 104.33. Though not discussed in this resource, under Section 504, schools must also make reasonable modifications to their criteria, policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 34 C.F.R. § 104.4 (Section 504 regulation prohibiting disability discrimination.). See also *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program to assure meaningful access to a qualified person with a disability.); *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 408-09 (1979) (stating that Section 504 regulations require recipients to make modifications in their programs to accommodate persons with disabilities unless the requested modifications would cause a fundamental alteration in the nature of the program). For more information on the use of reasonable modifications, see U.S. Dep't of Educ., Off. for Civ. Rts., [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Discipline under Section 504 of the Rehabilitation Act of 1973](#) (July 2022). Recipient schools are subject to the requirements of § 104.4 and to the obligation of making reasonable modifications. 34 C.F.R. § 104.4(a), (b). OCR notes that the Department of Justice interprets reasonable modification requirements under Section 504 consistently with those under Title II. See 28 C.F.R. § 35.130(b)(7) (Title II regulation requiring reasonable modifications where necessary to avoid disability discrimination).

⁸ See 28 C.F.R. § 35.160.

⁹ See *Lau*, 414 U.S. 563 (1974); *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); 42 U.S.C. § 2000d to d-7 (prohibiting race, color, and national origin discrimination in any program or activity receiving federal financial assistance); U.S. Dep't of Educ., Off. for Civ. Rts. & U.S. Dep't of Just., Civ. Rts. Div., [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#).

¹⁰ See *Id.*

¹¹ See 34 C.F.R. § 104.33. The IDEA also has FAPE requirements. 20 U.S.C. § 1401(9); 34 C.F.R. §300.17. Implementation of an individualized education program (IEP) developed in accordance with the IDEA is one means of meeting the Section 504 FAPE standard. 34 C.F.R. § 104.33(b)(2). For more information about the IDEA, see the IDEA website at www.idea.gov.

¹² See *Id.* § 104.36.

¹³ See 28 C.F.R. § 35.160.

¹⁴ As used within this fact sheet, “disability-related services” is intended to encompass either special education and related services provided to children with disabilities who are eligible for services under the IDEA or regular or special education and related aids and services provided to qualified students with disabilities under Section 504.

¹⁵ *Supra* note 6; 29 U.S.C. § 794, 34 C.F.R. Part 104.

¹⁶ See 42 U.S.C. § 2000d; see also U.S. Dep’t of Educ., Off. for Civ. Rts. & U.S. Dep’t of Just., Civ. Rts. Div., [Dear Colleague Letter: English Learner Students and Limited English Proficient Parents](#) (January 2015); U.S. Dep’t of Educ., Off. for Civ. Rts. & U.S. Dep’t of Just., Civ. Rts. Div., [Dear Colleague Letter: Preventing Racial Discrimination in Special Education](#) (December 2016); cf. 34 C.F.R. pt. 104, App. A at number 25 (discussing § 104.35 and noting that Title VI requires evaluations in a student’s primary language).

¹⁷ 34 C.F.R. § 104.35(c) (specifying that school district “shall . . . draw upon information from a variety of sources, including ... teacher recommendations ... social or cultural background”); see also 42 U.S.C. § 2000d; U.S. Dep’t of Educ., Off. for Civ. Rts. & U.S. Dep’t of Just., Civ. Rts. Div., [Dear Colleague Letter: English Learner Students and Limited English Proficient Parents](#) (January 2015); 34 C.F.R. pt. 104, App. A at number 25 (discussing § 104.35). Cf. 20 U.S.C. § 1414(d)(3)(B)(ii) (indicating that under the IDEA, the IEP team must consider the language needs of the child); 34 C.F.R. § 300.324(a)(2)(ii); *id.* § 300.324(b)(2).