Office for Civil Rights
U.S. Department of Education

This presentation provides general information and does not represent a complete recitation of the applicable law and OCR policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

ENSURING EQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS

LEGAL STANDARDS

- Title VI of the Civil Rights Act of 1964
- *Lau v. Nichols*
- *Castañeda* Standards
- OCR Policy

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

42 U.S.C. Section 2000d states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

OCR 1970 MEMORANDUM

* Requires school districts to take affirmative steps to rectify language deficiencies in order to open its instructional program to national origin minority group students, where inability to speak and understand English excludes the students from effective participation in the district's educational program.

* Prohibits school districts from assigning ELL students to special education classes on criteria which essentially measure or evaluate English language skills.

OCR 1970 MEMORANDUM, CONT.

* Forbids specialized programs for ELL students to operate as an educational dead-end or permanent track.

* Requires school districts to adequately notify language-minority parents of school activities that are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.
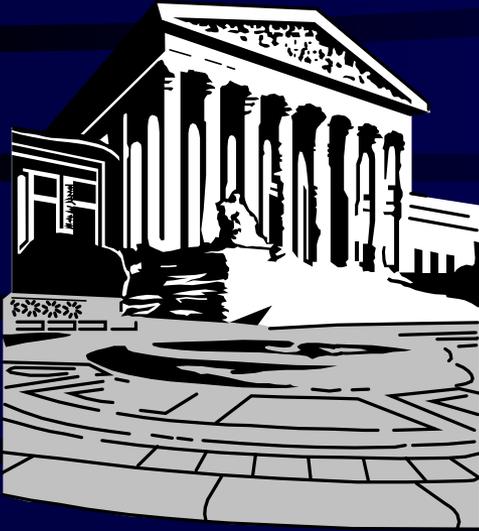
LAU V. NICHOLS
414 U.S. 563 (1974)

". . . there is no equality of treatment merely by providing [ELL] students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

OCR POLICY

SELECTED HIGHLIGHTS

Two areas are examined in determining Title VI compliance:

- Is there a need for the district to provide an alternative program designed to meet the educational needs of all language minority students?

- Is the district's program likely to be effective in meeting the educational needs of its language minority students?

OCR POLICY
Need for Alternative Program

★ District should have procedures in place for identifying and assessing language-minority students who are in need of alternative language services to participate meaningfully in recipient's educational program.

OCR POLICY
Need for Alternative Program

* To assess whether there is meaningful participation, OCR considers whether LEP students are:
  * Performing as well as their non-LEP peers;
  * Successfully participating in essentially all aspects of the school's curriculum without the use of simplified English materials;
  * Dropping out or being retained-in-grade at rates comparable to those of their non-LEP peers.

OCR POLICY
Adequacy of Program

Is an alternative program adequate?

- To determine the adequacy of an alternative program, OCR adopts the three prongs of *Castañeda*.

CASTAÑEDA

648 F. 2d 989 (5th Cir. 1981)

- **1ST PRONG:** Sound Educational Theory

- **2ND PRONG:** Effective Implementation

- **3RD PRONG:** Program Evaluation and Modification

First Prong: Soundness of Educational Approach

* OCR does not require a particular educational approach or model.

* District may select any model it can show is considered sound by some experts in the field or is considered a legitimate experimental strategy.

Second Prong: Effective Implementation

Are the district's practices reasonably calculated to implement effectively its chosen program?

Second Prong: Effective Implementation
Staffing

Districts have an obligation to provide the qualified staff necessary to implement their chosen program properly within a reasonable period of time.

Second Prong: Effective Implementation
Resources

District must provide adequate resources, which is determined by the timely availability of required equipment and instructional material.

Second Prong: Effective Implementation
Exiting ELL Students

District provides ELL Students services until they are proficient enough in English to participate meaningfully in the regular education program.

- Exit criteria should include objective standards, such as standardized test scores.

- Students should continue to receive services until they can read, write, speak and comprehend English well enough to participate meaningfully in the district's program.

Second Prong: Effective Implementation
Special Education

* District ensures that ELL students are not inappropriately placed in special education services because of their inability to speak and understand English.

* District should ensure that evaluations accurately reflect a student's special education needs rather than lack of English language skills.

Second Prong: Effective Implementation
Other District Programs

ELL students are provided with opportunities to access other district programs:

* Gifted and Talented Services
* Honors and Advanced Placement

Third Prong:
Program Evaluation

The district periodically evaluates its program to ensure the program is working and modifies the program when necessary.

Third Prong:
Program Evaluation
Goals

- District considers its own program goals to determine if its program is working.

- If no goals have been established, the program is successful if participants are overcoming language barriers sufficiently well and sufficiently promptly to participate meaningfully in the program.

COMMUNICATION WITH LIMITED-ENGLISH PROFICIENT PARENTS

The 1970 Memorandum provides that districts have a responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents and that such notice in order to be adequate may have to be provided in a language other than English.

COMMUNICATION WITH LIMITED-ENGLISH PROFICIENT PARENTS

OCR addresses complaints raising the issue of meaningful communication with LEP parents in a manner consistent with Executive Order 13166, *Improving Access for Persons with Limited English Proficiency*.

NCLB

- **No Child Left Behind Act of 2001**

  (Also known as NCLB, Reauthorization of ESEA, Public Law 107-110, and H.R.1)

- **NCLB contains provisions for**:
  - Selecting a program approach / model
  - Implementing the program
  - Evaluating the program

www.NoChildLeftBehind.gov

OCR INTERNET RESOURCES

* Home page:
  www.ed.gov/ocr/

* ELL Resources:
  www.ed.gov/ocr/ellresources.html

* Programs for English Language Learners: Resource Materials for Planning and Self-Assessments ("ELL Guide")
  www.ed.gov/ocr/ell/