RIGHTS OF LINGUISTIC MINORITIES IN THE U.S.: 40 YEARS AFTER THE LAU V. NICHOLS DECISION

SAN FRANCISCO, CALIFORNIA
SEPTEMBER 12, 2014
“There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English…”
OVERVIEW

• Significance of Lau v Nichols
  • History
  • OCR Activities
• National Profile
• Enforcement Challenges
  • OCR data
• Renewed Focus
  • US Department of Ed
  • OELA
  • Moving Forward
HISTORICAL CONTEXT

60s
• Sink or Swim – little or no provision for English Learners
• Department of Ed’s Office for Civil Rights awareness

70s
• ED issued the 1970 memo
• Lau v. Nichols 1974
• Equal Education Opportunities Act of 1974

80-90s
• Castaneda v. Pickard 1981
• ED Policy Guidance issued ‘84, ‘85, ‘90, ‘91 remain in effect

WHERE ARE WE TODAY?
PERCENT CHANGE IN NUMBER OF ELs: 2011-12

**PROJECTED HISPANIC GROWTH**

![Bar chart showing Hispanic Population and Total Population projections from 2015 to 2060.](chart.png)

- **2015:** 18% of Total Population
  - Hispanic Population: 57.1 Million
  - Total Population: 321.4 Million

- **2060:** 31% of Total Population
  - Hispanic Population: 128.8 Million
  - Total Population: 420.3 Million

**Source:** U.S. Census Bureau, Population Division Projections of the Population by Sex, Race, and Hispanic Origin for the United States: 2015 to 2060 (2012).
UNACCOMPANIED CHILDREN

Unaccompanied Children Released to Sponsors by County
January 1 to July 31, 2014

# STATES WITH HIGHEST EL ENROLLMENT: 2011-12

<table>
<thead>
<tr>
<th>State</th>
<th>EL Enrollment</th>
<th>Total Enrollment</th>
<th>Percentage of ELs</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1,434,202</td>
<td>6,287,834</td>
<td>22.8%</td>
</tr>
<tr>
<td>Texas</td>
<td>746,466</td>
<td>5,000,470</td>
<td>14.9%</td>
</tr>
<tr>
<td>Florida</td>
<td>234,451</td>
<td>2,668,156</td>
<td>8.8%</td>
</tr>
<tr>
<td>New York</td>
<td>205,397</td>
<td>2,704,718</td>
<td>7.6%</td>
</tr>
<tr>
<td>Illinois</td>
<td>170,631</td>
<td>2,083,097</td>
<td>8.2%</td>
</tr>
</tbody>
</table>

## CALIFORNIA DISTRICTS WITH HIGHEST EL ENROLLMENT: 2012-13

<table>
<thead>
<tr>
<th>District</th>
<th>EL Enrollment</th>
<th>Total Enrollment</th>
<th>Percentage of ELs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles Unified</td>
<td>170,797</td>
<td>655,494</td>
<td>26.1</td>
</tr>
<tr>
<td>San Diego Unified</td>
<td>33,851</td>
<td>130,270</td>
<td>26.0</td>
</tr>
<tr>
<td>Santa Ana Unified</td>
<td>26,226</td>
<td>57,410</td>
<td>45.7</td>
</tr>
<tr>
<td>Garden Grove</td>
<td>18,825</td>
<td>47,599</td>
<td>39.5</td>
</tr>
<tr>
<td>Long Beach Unified</td>
<td>17,550</td>
<td>82,256</td>
<td>21.3</td>
</tr>
<tr>
<td>San Francisco Unified</td>
<td>14,826</td>
<td>56,970</td>
<td>26.0</td>
</tr>
<tr>
<td>Statewide Total</td>
<td>1,347,245</td>
<td>6,236,880</td>
<td>21.6</td>
</tr>
</tbody>
</table>

**Source:** California Department of Education.
## TOP FIVE LANGUAGES SPOKEN BY ELS NATIONALLY: 2011-12

<table>
<thead>
<tr>
<th>Language</th>
<th>Number of ELs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish</td>
<td>3,562,860</td>
</tr>
<tr>
<td>Chinese</td>
<td>88,798</td>
</tr>
<tr>
<td>Vietnamese</td>
<td>79,021</td>
</tr>
<tr>
<td>Arabic</td>
<td>64,487</td>
</tr>
<tr>
<td>Hmong</td>
<td>40,445</td>
</tr>
</tbody>
</table>

TOP FIVE LANGUAGES SPOKEN BY ELS IN CALIFORNIA: 2011-12

<table>
<thead>
<tr>
<th>Language</th>
<th>Number of ELs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish</td>
<td>1,173,839</td>
</tr>
<tr>
<td>Chinese</td>
<td>33,151</td>
</tr>
<tr>
<td>Vietnamese</td>
<td>33,065</td>
</tr>
<tr>
<td>Tagalog</td>
<td>20,203</td>
</tr>
<tr>
<td>Hmong</td>
<td>13,465</td>
</tr>
</tbody>
</table>

Other Facts

• ELs are more likely to live in a low-income household
  – 66% of ELs had a family income below 200% of the federal poverty level, compared to 37% of non-EL youths

• ELs are less likely to have a parent with a two-year or four-year college degree compared to 37% of non-EL youths
  – 22% of ELs had a parent with a postsecondary degree, compared to 44% of students from English-speaking households

• EL and immigrant populations also have lower high school graduation rates and higher dropout rates.
  – The 2011-2012 the nationwide dropout rate for EL students was 41%, compared to 20% for native-born students.

References
HIGH SCHOOL GRADUATION RATES BY RACIAL/ETHNIC CATEGORY

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>National average</td>
<td>80%</td>
</tr>
<tr>
<td>American Indian/Alaska Native</td>
<td>65%</td>
</tr>
<tr>
<td>Black</td>
<td>67%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>71%</td>
</tr>
<tr>
<td>White</td>
<td>86%</td>
</tr>
<tr>
<td>Asian/Pacific Islander</td>
<td>88%</td>
</tr>
</tbody>
</table>

HIGH SCHOOL GRADUATION RATES BY STUDENT GROUP

SY 2011-12

- National average: 80%
- Economically disadvantaged students: 72%
- Students with disabilities: 61%
- English learners: 59%

PERFORMANCE OF ELs VS. NON-ELs IN READING ON NAEP BETWEEN 2002 AND 2013

PERFORMANCE OF ELs VS. NON-ELs IN MATHEMATICS ON NAEP BETWEEN 2000 AND 2013

WHAT OTHER DATA CAN HELP

To assess whether there is equal participation under the EEOA and meaningful participation under Title VI, we consider whether ELs and former ELs are:

– Exiting within a reasonable period of time;
– Performing as well as their never-EL peers;
– Successfully participating in essentially all aspects of the school’s curriculum without the use of simplified English materials; and
– Dropping out or being retained-in-grade at rates similar to those of their never-EL peers.
RELEVANT CRDC DATA

• % of ELs in high school v. their % retained in HS and compare to % of non-ELs retained in HS

• % of ELs in high school v. their % with an out-of-school suspension (OSS), and compare to % of non-EL with OSS

• % of ELs in district v. their % among SWDs and compare the % of ELs with disabilities v. % of non-ELs with disabilities
RELEVANT CRDC DATA, Continued

• % of ELs v. % non-ELs enrolled in GT programs and compare to the % of non-ELs in GT programs

• % of ELs in high school v. their % in AP courses and compare to the % of non-ELs in AP courses

• % of ELs in the district v. their % in Algebra I and compare to the % of non-ELs in Algebra I
ALGEBRA I PERFORMANCE AND ACCESS TO A FULL RANGE OF MATH AND SCIENCE COURSES: SY 2011-12

<table>
<thead>
<tr>
<th>Passed Algebra I (in Grade 11 or 12)</th>
<th>Access to full range Math and Science Courses</th>
</tr>
</thead>
<tbody>
<tr>
<td>EL</td>
<td>69%</td>
</tr>
<tr>
<td>Non-EL</td>
<td>71%</td>
</tr>
<tr>
<td></td>
<td>65%</td>
</tr>
<tr>
<td></td>
<td>69%</td>
</tr>
</tbody>
</table>

PERCENTAGE OF ELs AND NON-ELs PARTICIPATING IN COLLEGE AND CAREER READINESS RELATED PROGRAMS: SY 2011-12

ENROLLMENT AND RETENTION PERCENTAGES OF ELs IN HIGH SCHOOL: 2011-12

Students Enrolled in High School (9-12)

- EL: 5%
- Non-EL: 95%

16 million high school students

Students Retained in High School (9-12)

- EL: 11%
- Non-EL: 89%

747,000 students retained in high school

PERCENTAGE OF HIGH SCHOOL ELs ENROLLED AND RECEIVING OUT-OF-SCHOOL SUSPENSION: 2011-12

Enrollment

EL 10%

Non-EL 90%

16 million high school students

Out-of-School Suspension

EL 7%

Non-EL 93%

747,000 students retained in high school

ENROLLMENT AND RETENTION PERCENTAGES OF ELs IN ELEMENTARY SCHOOL: 2011-12

Students Enrolled in Elementary School (K-6)

- EL: 14%
- Non-EL: 86%

22 million elementary school students

Students Retained in Elementary Schools (K-6)

- EL: 18%
- Non-EL: 82%

450,000 students retained in elementary school

STATES WITH THE HIGHEST PERCENTAGE OF EL STUDENTS IN GIFTED AND TALENTED PROGRAMS:
2011-12

PRESCHOOL DISCIPLINE: 2011-12

Out-of-school suspension (single)

- EL 11%
- Non-EL 89%
- 5,000 preschool students receiving one out-of-school suspension

Out-of-school suspension (multiple)

- EL 9%
- Non-EL 91%
- 2,500 preschool students receiving more than one out-of-school suspension

STATES WITH HIGHEST PERCENTAGE OF ELs IN PUBLIC PRESCHOOL: 2011-12

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>36%</td>
</tr>
<tr>
<td>Illinois</td>
<td>19%</td>
</tr>
<tr>
<td>Florida</td>
<td>18%</td>
</tr>
<tr>
<td>California</td>
<td>15%</td>
</tr>
<tr>
<td>Oregon</td>
<td>15%</td>
</tr>
</tbody>
</table>

STATES BY TYPES OF LIEPS OFFERED: SY 2011-12
NUMBER OF STATES WITH DUAL LANGUAGE AND TWO-WAY IMMERSION PROGRAMS

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>States (n)</th>
<th>Top Languages of Instruction (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dual Language</td>
<td>38</td>
<td>Spanish (37)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>French (8)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chinese (7)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Russian (4)</td>
</tr>
<tr>
<td>Two-Way Immersion</td>
<td>23</td>
<td>Spanish (21)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chinese (4)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>French (3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Italian (2) and Mandarin (2)</td>
</tr>
</tbody>
</table>

STATES OFFERING TWO-WAY IMMERSION PROGRAMS: 2011-12

STATES OFFERING DUAL LANGUAGE PROGRAMS: 2011-12

STATES ISSUING THE SEAL OF BILITERACY AND STATES OFFERING DUAL LANGUAGE PROGRAMS

Note: Data for dual language programs are from SY 2011-12; data for Seal of Biliteracy are from 2014.
Source: Seal of Biliteracy.
ENFORCEMENT CHALLENGES

414 U.S. 563: LAU VS. NICHOLS

YEAR: 1977

BACKSTORY: INTEGRATION OF PRIMARILY ENGLISH-SPEAKING CALIFORNIA SCHOOL DISTRICT WITH CHINESE STUDENTS MAKES EDUCATIONAL COMPETITIVENESS AMONG MINORITIES DIFFICULT DUE TO THEM BEING DENIED INSTRUCTION IN ENGLISH.

EXACTLY WHAT CONSTITUTES DISCRIMINATION?

- There is no equality of treatment merely by providing Chinese-speaking students with the same facilities, textbooks, teachers and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education.” - William O. Douglas

The Premise: Is the denial of instruction in English a form of discrimination in violation of the Civil Rights Act of 1964?

Supreme Court Position:
- Majority: The school system should find ways to instruct Chinese students effectively, disregarding the language barrier. Not providing them instruction in English is in violation of the 14th Amendment.
OUR COMMON GOALS

• Ensuring that ELs receive a quality education

• Protecting ELs’ civil rights so that they are not the victims of discrimination and harassment

• Promoting a more tolerant educational culture that values inclusion of students of different linguistic and ethnic backgrounds

• Working collaboratively to achieve common goals
SIMILARITIES AMONG TITLE III, EEOA, AND TITLE VI

• The purpose of Title III Part A is to help ensure that children and youth who are EL, Native American and/or immigrants, attain English language proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic standards that all children are expected to meet.

• Similar to Title VI, the purpose of §1703(f) of the EEOA is to ensure that states and school districts don’t discriminate against ELs by requiring these agencies to take appropriate action to overcome ELs’ language barriers so that they can participate equally in instructional programs.
SIMILARITIES AMONG TITLE III, EEOA, AND TITLE VI

• Under Title III, states are required to show that EL students are progressing in their proficiency of the English language by meeting annual measurable achievement objectives (AMAOs) (ESEA, § 3122(b)).

• Under Title III, states are required to demonstrate that students are proficient in state content and achievement standards in mathematics, reading or language arts, and science (ESEA, § 1111(b)(2)(B)).

• Under EEOA and Title VI, states and districts must evaluate whether ELL programs enable ELs to achieve proficiency in English and state content standards. Like Title III, this requires monitoring their progress in the EL program and after they have exited.
PRONG 3: THE RESULTS OF THE ELL PROGRAM

• ELs “cannot be permitted to incur irreparable academic deficits” while they master English.

• The only way to ensure this does not happen is to measure ELs’ progress in the content areas while they are in the EL program.

• Is there evidence that the EL program is “reasonably calculated to enable [EL] students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system?”

  *Castañeda, 648 F.2d at 1012.*
SIMILARITIES AND DIFFERENCES BETWEEN OCR AND DOJ

• OCR Addresses Discrimination Against ELLs under Title VI of the 1964 Civil Rights Act

• DOJ Shares Enforcement Authority for Title VI

• DOJ and Private Plaintiffs Enforce the EEOA

• Title VI is a funding-based civil rights statute

• EEOA is not a funding-based civil rights law
SIMILARITIES BETWEEN OCR AND DOJ

• Investigate EL-based complaints

• Initiate Compliance Reviews

• Request Data and Documents

• Conduct Interviews and Onsite Visits
EXAMPLE OF A JOINT OCR-DOJ REVIEW

• March 2010 – DOJ and OCR announce joint compliance review of Boston Public Schools (BPS)

• October 1, 2010 – DOJ, OCR, and BPS sign settlement agreement to address initial findings

• September 2011 – DOJ and OCR notify BPS of findings from comprehensive compliance review

• April 2012 – DOJ, OCR, and BPS sign Successor Agreement, which DOJ and OCR are monitoring
NUMBER OF OCR ENFORCEMENT CASES
FY2009-August 20, 2014

452 ELL complaints
397 resolved
116 resulted in change

OCR initiated 26 Compliance reviews involving ELL students with 99% resolved agreements
MOST COMMON COMPLAINTS

- Educational services
- Communication with EL parents/families
- Harassment and hostile school environment.
COMPLIANCE REVIEWS

OCR initiated 26 compliance reviews since FY2009

99% resolved in agreement
“While regrettably my schedule does not allow me to participate in the celebration of this momentous case, I am inspired by the progress that has been made since Lau and humbled by the work that still must be done. Forty years ago the supreme court held in *Lau* that schools must take “affirmative steps” to ensure that English language learners can participate meaningfully in their school’s educational program. The department of education’s office for civil right is committed to upholding the promise of *Lau*, and ensuring that no student is denied access to equal educational opportunity on the basis of their national origin.”
What We Know – and Don’t Yet Know – about Effective Instruction

By Claude Goldenberg

Succeeding With English Language Learners: Lessons Learned from the Great City Schools

Libia S. Gil, Ph.D.
Assistant Deputy Secretary and Director, Office of English Language Acquisition
U.S. Department of Education

English Language Learners: A Renewed Focus
U.S. DEPARTMENT OF EDUCATION

INVESTING IN ENGLISH LEARNERS

- ESEA Reauthorization - Title III
- Investing in Innovation (i3)
- School Improvement Grant (SIG)
- Adult English Literacy/Civic Ed. State Grants
- Promise Neighborhoods
- Race to the Top (RTT)
- My Brother’s Keeper Initiative
- Opportunity Proposal
OFFICE OF ENGLISH LANGUAGE ACQUISITION

OELA – TITLE III

• Policy
• Research
• Formula State Grants – Office of Elem & Sec Ed.
• Discretionary Grants - Teacher Preparation
  ▪ National Professional Development
  ▪ Native American and Alaska Native Children in School
• Technical Assistance
  ▪ National Clearinghouse for English Language Acquisition (NCELA)
Moving Forward

• How can we elevate an English Learner focus and integrate it with all ed initiatives?

• What supports are needed to ensure successful outcomes with a clearly defined performance system?

• How do we strengthen biliteracy/multiliteracy goals?
MOVING FORWARD

A FEW THOUGHTS

Knowledge Development, Practice and Policy

• Establish a national knowledge management system
• Establish and invest in research priorities
• Identify and facilitate adoption of effective practices
• Integrate across all areas – Early learning; higher education; technology; charters; Teacher effectiveness; leadership development; technology; etc.

Communication, Collaboration and Coalitions

• Recognize EL assets and use strength based language
• Convene a coalition(s) of national partners
• Publish joint briefs; Guidance publications; videos, webinars, etc.
• Engage families, communities and other agencies
• Promote policy and practice to support Biliteracy goals
ED’s Strategy for English Learners

Goal 1: Ensure all English Learners are college and career ready for a global society by building on students’ linguistic and cultural assets

Goal 2: Ensure that all education policies and initiatives successfully address opportunities for English Learners and multi-literate learners

English Learners: A National Asset

- Identify effective approaches and models that integrate native languages and cultures and promote multi-literacy
- Increase evidence-based knowledge and instructional practice
- Establish OELA as a credible national knowledge resource for EL education and all relevant issues
- Increase all school/district leaders’ and teachers’ effectiveness in serving ELs and students in multi-literate programs
- Elevate national focus on ELs and integrate ELs in all ED reform efforts
- Engage families and partners in promoting community coalitions to support implementation
- Ensure equity and opportunity gaps identified through data collection and dissemination are addressed

Updated 9.11.14
“My message to you today is that K-12 schools and higher education institutions must be part of the solution to our national language gap. The president and I want every child to have a world-class education – and today more than ever a world-class education requires students to be able to speak and read languages in addition to English. The department of education plays an important role in supporting second-language instruction starting in the earliest grades and to ensure that students are engaged in language all the way through high school.”

- Arne Duncan, U.S. Secretary of Education
A GLOBAL FUTURE VIDEO