



# Using Data for Civil Rights Compliance

DOJ - Civil Rights Division - Educational Opportunities Section

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# Educational Opportunities Section U.S. Department of Justice



**This presentation provides general information about the Educational Opportunities Section's enforcement of federal statutes that protect the civil rights of English Language Learners. This presentation does not cover all aspects of the Section's enforcement efforts, nor does this presentation answer specific compliance questions because their answers are fact-dependent.**

# The EEOA and Title VI



- **Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d**
  - 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.
- **The Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq.**
  - Prohibits state and local educational agencies from denying an individual an equal educational opportunity on the basis of race, color, sex, and national origin in several ways, including failing to take appropriate action to overcome language barriers that impede students' equal participation in instructional programs. 20 U.S.C. § 1703(f).

# Similarities Among Title III, EEOA, and Title VI



## **Similar purposes:**

- The purpose of Title III Part A is to help ensure that children and youth who are LEP, 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 ELLs by requiring these agencies to take appropriate action to overcome ELLs' 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 ELL 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 ELLs to achieve proficiency in English and state content standards. Like Title III, this requires monitoring their progress in the ELL program and after they have exited.

# Differences between Title III and the EEOA



- U.S. Supreme Court held that compliance with NCLB's ELL terms did not necessarily constitute compliance with EEOA's § 1703(f) given significant differences between NCLB and the EEOA, but that NCLB's reporting was relevant evidence of whether an ELL program is effective.
  - **Horne v. Flores**, 129 S. Ct. 2579, 2602-03 (2009) .
- EEOA secures an individual's civil rights, and NCLB says: "[n]othing in this part shall be construed in a manner inconsistent with any Federal law guaranteeing a civil right."
- Title III's "supplement, not supplant" requirement.
  - Section 3115(g) of Title III of the ESEA

# ***Castañeda's Three-Prong Test***



- First, is the ELL program informed by sound educational theory?
- Second, are the “practices, resources and personnel” reasonably calculated to implement the ELL program “effectively”?
- Third, do program results show language barriers “actually being overcome” after a legitimate trial period?
  - *Castañeda*, 648 F.2d at 1009-1010.

## Prong 3: Evaluating the ELL Program



- Do program results show that students' language barriers are “actually being overcome” and that students are able to participate equally in instructional programs within a reasonable period of time? *Castañeda*, 648 F.2d at 1010.
- “[P]roper testing and evaluation is essential in determining the progress of students involved in a bilingual program and ultimately, in evaluating the program itself.” *Castañeda*, 648 F.2d at 1014.

## Prong 3: Equal Participation under the EEOA



To participate equally with non-ELLs, ELLs

- have to attain “English language proficiency comparable to that of the average native speakers,” and
- have “to recoup any deficits” in other areas caused by spending extra time on English language development.
  - ***Castañeda*, 648 F.2d at 1011.**

## Prong 3: The results of the ELL program



- ELLs “cannot be permitted to incur irreparable academic deficits” while they master English.
- The only way to ensure this does not happen is to measure ELLs’ progress in the content areas while they are in the ELL program.
- Is there evidence that the ELL program is “reasonably calculated to enable [ELL] 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.

# What data help answer these Prong 3 questions?



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

- Exiting within a reasonable period of time;
- Performing as well as their never-ELL 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-ELL peers.

# CRDC Data Relevant to the Prong 3 Analysis



Examples from CRD data comparing ELLs v. non-ELLs:

- % of ELLs in the district v. their % in Algebra I and compare to the % of non-ELLs in Algebra I
- % of ELLs v. % non-ELs enrolled in GT programs and compare to the % of non-ELLs in GT programs
- % of ELLs in high school v. their % in AP courses and compare to the % of non-ELLs in AP courses
- % of ELLs in high school v. their % retained in HS and compare to % of non-ELLs retained in HS
- % of ELLs in high school v. their % with an out-of-school suspension (OSS), and compare to % of non-ELL with OSS
- % of ELLs in district v. their % among SWDs and compare the % of ELLs with disabilities v. % of non-ELLs with disabilities

## Other data relevant to the Prong 3 Analysis



To evaluate whether an ELL program is effective, monitor longitudinally the progress of a cohort of:

- ELLs in the ELL program(s) with respect to English proficiency, grade-level content standards, advanced programs, vocational programs, special education, retention in grade, drop-outs, and graduation; and
- former ELLs relative to their never-ELL peers on these bases to see if former ELLs can meet exit criteria and participate comparably without ELL services within a reasonable period of time.

# What types of ELL data does your SEA have?



- What data does your State require school districts to report regarding their ELLs and ELL programs?
- What data does your State use to evaluate ELL programs at the state and district levels?
- Does your State track longitudinal ELL data?
- Does your State disaggregate data by ELLs, Former ELLs, never-ELLs, and type of ELL program?



Educational Opportunities Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania, Ave., PHB – 4300  
Washington, D.C. 20530  
Ph. (877) 292-3804; (202) 514-4092  
Fax: (202) 514-8337  
education@usdoj.gov  
<http://www.justice.gov/crt/about/edu/>