

The Legal Rights of English Language Learners

(Limited English Proficient - LEP)

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Access to education for English Language Learners (ELLs) is governed by both state and federal law. The protections provided can be technical and confusing, but they provide a framework for aggressive advocacy to assist ELL students.

Connecticut Law

Connecticut has a statutory scheme that recognizes English as the medium of instruction and also allows school districts to establish a bilingual/bicultural program of study (CGS § 10-17 et seq). Every Board of Education is required to annually report the number of students whose dominant language is other than English and those who are not proficient in English (CGS. § 10-17f). These numbers are used to determine school districts' responsibilities to ELL students under state law. Here's how it works:

- Where a school has 20 or more students who are dominant in any one language other than English, the school district is required to provide native language support (bilingual programming) the **following** school year (CGS § 10-17f(b)). So, if a school is currently required to provide native language instruction in Karen (West Middle School, Hartford) or Creole-Haitian (Bassick High School, Bridgeport), this determination comes from the previous year's enrollment numbers.
- Bilingual or native language instruction is limited by statute to 30 months (CGS § 10-17f(d)).
- Parents can opt-out of bilingual programming by signing a document at the school (CGS § 10-17f(e)).
- Bilingual programming provides for the continuous increase in the use of English and corresponding decrease in the use of the native language support within each year and annually (CGS § 10-17e(2)).
- If a student does not meet English mastery standard at the end of 30 months, the school district is required to provide language transition support services (LTSS) to the student. These can include English as a second language programs (which use only English as the instructional language), sheltered English programs, English immersion programs, tutoring and homework assistance (CGS § 10-17f(d)).
- Students in bilingual programs must be assessed annually to determine progress made toward meeting English mastery (CGS § 10-17f(c)).
- Connecticut uses the Language Assessment Scales (LAS Links) to determine bilingual students' progress toward English mastery.

Federal Protections

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin, in any of their activities. Title VI, 42 U.S.C. §2000(d) provides:

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 otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

The term "program or activity" is broadly defined and includes programs and services offered by public schools (42 U.S.C. §2000d-4a). These provisions have been interpreted to require that school districts ensure that persons with limited-English proficiency are not excluded, because of a language barrier, from effective participation in the district's program and services (Lau v. Nichols, 414 U.S. 563 (1974); Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981)).

This obligation includes the duty to provide an effective alternative language program to students not yet able to participate effectively in the regular instructional program (Castaneda; OCR Memorandum of December 3, 1985). A school district must also ensure that information provided to LEP students is supplied in a language and mode of communication that they understand (*Ibid*). In a September 1991 memorandum, the then-Assistant Secretary for Civil Rights stated that schools have an obligation to comply with "the regulation implementing Title VI of the Civil Rights Act of 1964 to provide any alternative language programs necessary to ensure that national origin minority students with limited-English proficiency (LEP students) have meaningful access to the schools' programs."

What does this mean for your ELL or LEP clients?

Students in Connecticut whose parents don't opt out of bilingual programming, and who are in a state mandated bilingual school in their dominant language, are entitled to 30 months of native language support. It is important to find out what the native language support is for the student and where s/he is in his/her 30 months. Additionally, it is important to get the student's LAS scores on an annual basis in order to determine progress in meeting the English mastery standard and to determine what the appropriate supports might be.

ELL students who are not in a mandated bilingual school are entitled to support in order to have meaningful access to the curriculum, but not necessarily native language support. This can take various forms, including ESL classes, curriculum modifications, tutoring, and summer programming.

A good resource for more information about supports for ELL students is the Center for Applied Linguistics (www.cal.org).

Connecticut Resources

For a list of the schools required to provide bilingual programming, please go to (http://www.kidscounsel.org/legalresources_teenrights.htm).

In Connecticut, the Department of Education's ELL/Bilingual Consultant is Marie Salazar Glowski. Her contact information, as well as information about educating ELLs, can be found at <http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=320822>.

Federal Resources

The U.S. Department of Education's Office for Civil Rights (OCR) ensures equal access to education through enforcement of federal civil rights laws on behalf of ELL students.

Information about OCR, its compliance reviews of school districts, and Know Your Rights materials can be found at <http://www2.ed.gov/about/offices/list/ocr/index.html>.