

*Diana v.
State Board of
Education (1970)*

The children of nine Mexican families were given IQ tests in English, a language they were not competent in, and then placed in special education classrooms based on their results. The families showed that a disproportionate percentage of Mexican American children were placed in special education classrooms across the state. The settlement agreed that the children should be tested in their native language and English and given nonverbal IQ tests.

*Larry P v.
Riles (1979)*

Where *Diana* focused on language difficulties of students taking IQ tests, *Riles* focused on cultural difficulties with IQ tests that resulted in a disproportionate number of African American children being placed in special education classrooms.

The court ordered the state to no longer use invalidated IQ tests and to develop plans to eliminate the disproportionate representation of African American children in special education classrooms.

Supporting
English
Language
Learners
in the
Classroom

9.1% of public school students
(4.4 million children)
are classified as English Language Learners nationwide.

An overview of significant
legislation and cases
concerning English Language
Learners in the classroom.

Relevant Text of

Section 9101(25) of the Elementary and Secondary Education Act

The term limited English proficient means an individual —

(C)(i) who was not born in the United States or whose native language is a language other than English; and (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; and (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —

- (i) the ability to meet the State's proficient level of achievement on State assessments;
- (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
- (iii) the opportunity to participate fully in society.

Relevant Text of

Individuals with Disabilities Education Act

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of

referral and placement of limited English proficient children in special education.

In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is (C) limited English proficiency.

(B) improve the knowledge of special education and regular education teachers and principals concerning effective instructional practices, and that--

(i) provide training in how to teach and

address the needs of children who are limited English proficient;

(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of limited English proficient children with disabilities;

(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to prevent the misidentification, inappropriate overidentification, or underidentification of children as having a disability, especially limited English proficient children.

20 U.S. Code § 1703

Denial of Equal Educational Opportunity Prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

Castaneda v. Pickard (1981)

Castaneda is considered the seminal decision concerning education of language minority students.

Castaneda held that schools are “free to determine the sequence and manner in which limited English speaking students tackle this dual challenge so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the

standard instructional program within a reasonable length of time after they enter the school system.” *Castaneda*, 648 F.2d at 1011.

Acknowledging that some schools might not meet the standards set forth by Congress, a three-part test was developed by the court to assess bilingual education systems. *Castaneda*, 648 F.2d at 1009.

First, the court examines the program in light of its educational theory.

Second, the court looks at whether the school is actually implementing the program they have chosen.

Third, the court analyzes the ability of the program “to produce results indicating that the language barriers confronting students are actually being overcome.”

In 2011–12, English Language Learners
in cities made up an average of
14.2%
of total public school enrollment

Title VI of the Civil Rights Act of 1964

The Memorandum of May 25 established that schools should comply with Title VI of the Civil Rights act of 1964. In relevant part:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special

language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which 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 (1974)

A group of Chinese students brought suit against their school for failing to provide an adequate education. Many were educated in English only and only some were given supplemental English classes to help with language development. The court relied solely on § 601 of the Civil Rights Act of 1964, which bans discrimination based on the ground of race, color, or national origin, in any program or activity receiving Federal financial assistance. School was required to fashion an appropriate relief.

‘Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.’

Relevant Text of Title III

Language Instruction for Limited English Proficient and Immigrant Students

- (1) to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;
- (2) to assist all limited English proficient children, to achieve at high levels in the core academic subjects so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;
- (3) to develop high-quality language instruction educational programs designed to assist State educational agencies, local educational agencies, and schools in teaching limited English proficient children and serving immigrant children and youth;
- (4) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children, including immigrant children and youth, to enter all-English instruction settings;
- (5) to assist State educational agencies, local educational agencies, and schools to build their capacity to establish, implement, and sustain language instruction educational programs and programs of English language development for limited English proficient children;
- (8) to hold State educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children by requiring —
 - (A) demonstrated improvements in the English proficiency of limited English proficient children each fiscal year; and
 - (B) adequate yearly progress for limited English proficient children, including immigrant children and youth; and
- (9) to provide State educational agencies and local educational agencies with the flexibility to implement language instruction educational programs, based on scientifically based research on teaching limited English proficient children, that the agencies believe to be the most effective for teaching English.