

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

From: Bentley-Memon, Millicent, U. S. Department of Education

Date: Wednesday, December 01, 2010

Subject: **Serving foreign students**

Below find the most current information that we have been offering to States from a Title III perspective related to identification, ELP assessment of, and services for foreign exchange students who are English learners, based on consultations with our Office of the General Counsel and Office for Civil Rights (OCR).

First, regarding ELP assessment, under the Elementary and Secondary Education Act (ESEA), as amended, an exchange student would not be exempt from any Title I required assessment, specifically, in this case, the annual State English language proficiency assessment. A limited English proficient (LEP) student, who happens to be a foreign exchange student, would also be included in a local educational agency's (LEA) count of LEP students for purposes of allocating funds under Title III section 3114(a) of the ESEA.

Second, we have the information below which pertains to identification of and services to foreign exchange students who are LEP. This information was obtained from ED's OCR, and addresses whether foreign exchange students enrolled in public elementary or secondary schools in the United States are covered by the Lau v. Nichols provisions:

For a foreign exchange student who is enrolled in a public elementary or secondary school in the United States, and who is LEP, based on the language of Title VI and the Lau holding, such a foreign exchange student is a "person in the United States," and the Lau provisions would therefore apply.

Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance. Title VI provides that "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." In Lau v. Nichols, the U.S. Supreme Court held that school districts must take affirmative steps to help students with limited English proficiency (LEP) overcome language barriers so that they can participate meaningfully in each school district's programs. See 414 U.S. 563 (1974).

OCR's December 1985 Title VI policy memorandum, Title VI Language Minority Compliance Procedures, is based in part on the court decision in Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981). In summary, OCR's 1985 policy states that a school district must identify which of its national-origin minority students have limited English proficiency and provide them with an effective program that affords meaningful access to the district's educational program. This document is available at http://www.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html.

In September 1991, OCR issued a "Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency" (1991 Policy Update). OCR's 1991 Policy Update lists three criteria for assessing whether a district is providing – consistent

with Title VI -- appropriate language services to LEP students: (1) whether the program the recipient chooses is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (2) whether the programs and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) whether the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome. The 1991 Policy Update also outlines ways to determine the Title VI sufficiency of criteria established by a district for determining whether LEP students no longer require alternative language services. This document is available at <http://www.ed.gov/about/offices/list/ocr/docs/lau1991.html>.

Millie Bentley-Memon, Ph.D.
Education Program Specialist
Title III State Consolidated Grant Group
Student Achievement and School Accountability Programs (SASA)
Office of Elementary and Secondary Education (OESE)
U. S. Department of Education
LBJ Building
400 MD Avenue, SW, 3W244
Washington, DC 20202-6132
Tel: 202-401-1427
Millicent.Bentley-Memon@ed.gov