



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUL 27 2015

The Honorable Rick Larsen
119 N Commercial St, STE 1350
Bellingham, WA 98225

Attn: Jamie Darnell

Dear Representative Larsen:

I am writing in response to your e-mail to Secretary Arne Duncan, U.S. Department of Education (ED). This e-mail was forwarded on behalf of your constituent, Ms. Jennifer Sherriff, regarding an interpretation by ED with respect to the eligibility of students who use American Sign Language (ASL) for federally funded services as English learners (ELs). Ms. Sherriff submitted a complaint stating that her children should be eligible for English Language Learner (ELL) services because ASL is the primary language of her family. Ms. Sherriff alleges that the position of ED, which ties ELL services to the national origin of students, discriminates against students from families in which both parents are deaf and who primarily use ASL in the home.

Our objective is to help ensure that students receive the services to which they are entitled and that they need in order to succeed in school. A student who has been raised by deaf parents and who uses ASL for communication may need services that are tailored to that unique situation, because the student may lag behind peers in reading and writing. The student may also benefit from services that are designed for students whose native language is not English. However, funds under Title III of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which provides grants for supplemental services to ELs, cannot be used for students who come from a family that primarily uses ASL. Although Ms. Sherriff does not identify the specific interpretation at the heart of her concerns, I assume that it is, or is similar to, that articulated in a January 27, 2011, letter from former Assistant Secretary for Elementary and Secondary Education Thelma Meléndez de Santa Ana. I am enclosing a copy for your reference. This letter explained that a student cannot be considered an EL, and thereby eligible for services funded by Title III, solely because he or she relies on ASL.

As explained in the 2011 letter, ED's interpretation of Title III stems from Title VI of the Civil Rights Act of 1964, which protects students from discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance. The U.S. Supreme Court in *Lau v. Nichols* held under Title VI that school districts must take affirmative steps to rectify the English language deficiencies of national origin-minority children who are not proficient in English. To assist districts in meeting their *Lau* obligation, Congress enacted Title VII of the ESEA, the predecessor to Title III, to address the needs of students whose language minority status was tied to their national origin status. Title III is similarly designed for ELs whose limited English proficiency is due to their national origin.

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<http://www.ed.gov/>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Thus the use of ASL would not, in and of itself, be a basis for determining that a student is an EL and eligible for services funded by Title III.


Title III provides funds to States, which then make subgrants to school districts. Those school districts use the Title III funds to provide supplemental services that benefit ELs. Not all ELs in a district will receive services funded by Title III, due sometimes to the limited funding and the discretion at the district level to determine how best to use the Title III funds. Thus, ELs do not have an entitlement to services funded by Title III, although there is a civil rights obligation on the part of States and districts to provide services to students from national origin-minority groups who are ELs.

Please note, however, that although Title III funds may not be used to serve students who use ASL and are not from national origin-minority groups, there are no Federal restrictions or limitations on which services a State or district provides. In other words, Title III does not prohibit a student from receiving English-language development services funded through other sources if the State or district determines those services are appropriate. Decisions as to what services should be provided are made on an individual case-by-case basis and are a district's responsibility. For example, if a student uses ASL instead of oral communication, but is proficient in the reading and writing domains of English, it may not be appropriate to place that student in a classroom of English learners who cannot read or write English.

If students who use ASL are achieving below their peers because they are learning English, they may be eligible for services under Title I, Part A of the ESEA. Title I, Part A serves students who are failing, or at risk of failing, to meet a State's academic achievement standards. Additionally, Ms. Sherriff has indicated in her correspondence that she does not believe that her daughter has a disability and that her daughter uses ASL in the home because her parents are deaf and use ASL. However, if Ms. Sherriff would like more information about the procedures for obtaining an evaluation to determine if her daughter has a disability and is eligible for disability-related services under Federal law because of her language deficit in school, she should contact her local school district.

I appreciate that you reached out to ED on behalf of Ms. Sherriff. If you have additional questions, please contact the Office of Legislation and Congressional Affairs at 202-401-1028.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Whalen', with a stylized, cursive script.

Ann Whalen
Delegated the authority to perform the functions
and duties of Assistant Secretary for Elementary
and Secondary Education

Enclosure

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.



UNITED STATES DEPARTMENT OF EDUCATION
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THE ASSISTANT SECRETARY

JAN 27 2011

Dear Title III Director:

I am writing to you regarding questions we have received about how to determine if an American Sign Language (ASL) user is limited English proficient (LEP) and whether or not this qualifies the user for Title III services.

Under the former Title VII of the Elementary and Secondary Education Act (ESEA), as amended by the Improving America's Schools Act (IASA), Title VII was designed to address the needs of students whose language minority status was tied to their national origin status, hence it provided services to students covered by the *Lau* obligation under Title VI of the Civil Rights Act of 1964, rather than students with disabilities. The U.S. Department of Education's position was that an individual cannot be considered LEP solely because of his or her reliance on ASL for communication due to deafness or a hearing impairment. That did not mean, however, that individuals with deafness or a hearing impairment who relied on ASL for communication can never be served under Title VII. For example, an individual whose native language was Spanish, and who also had a hearing impairment and relied on ASL for communication, could be considered LEP under Title VII because his or her native language was a language other than English.

Under Section 9101(25) of the ESEA, as amended under the No Child Left Behind Act (NCLB), an individual that might be considered LEP must also meet the following federal definition:

(25) LIMITED ENGLISH PROFICIENT.—The term "limited English proficient", when used with respect to an individual, means an individual—

(A) who is aged 3-21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; 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; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; 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 described in section 1111(b)(3);

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

A student who uses ASL for communication due to deafness or hearing impairment, who meets the definition of LEP as stated above, and whose primary language is based on national origin may qualify for Title III services.

If you have any further questions, please contact Supreet Anand, Title III Supervisor at Supreet.anand@ed.gov or 202-401-9795. Thank you for your efforts to meet the needs of students who are deaf or hearing impaired English learners.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Thelma', written in dark ink.

Thelma Meléndez de Santa Ana, Ph.D.

cc: Chief State School Officers