



Chapter 2: Federal and State Requirements

2.1 Federal Laws and Legal Requirements

In the last fifty years, the United States has made significant progress toward advocating for and improving educational opportunities for all students. Federal statutes prohibiting discrimination in educational programs have been enacted to protect the rights of students; most notably Title VI of the Civil Rights Act of 1964 prohibiting race, color, and national origin discrimination (U.S. Department of Education, 1999). This civil rights law and a number of other court cases represent a national commitment to end discrimination in education (U.S. Department of Education, 1999). Many state and federal laws are designed to help deliver the promise that every individual has the right to develop his or her talents to the fullest which have helped bring about profound changes in American education (U.S. Department of Education, 1999).

This chapter will provide an overview of state and federal laws that impact the way districts and schools serve English learners, as well as provide an explanation of the requirements that districts and schools are held accountable to in order to effectively enforce these statutes.

Below is a summary of federal laws and Supreme Court cases protecting English learners and district obligations in serving this population of students.

Title VI of the Civil Rights Act (1964)

- Prohibits discrimination based on race, color or national origin
- Students may not be excluded from any program or activity receiving federal financial assistance

Office for Civil Rights Memorandum (1970)

- Requires school districts to take affirmative steps to rectify language deficiencies
- Prohibits assignment to special education classes based on English language skills
- Requires parent notification of school activities
- Forbids specialized programs for English learners to operate as an educational dead-end or permanent track

Lau v. Nichols – 414 U.S 563 (1974): Supreme Court case which reaffirmed Title VI of the Civil Rights Act

- A civil rights case was brought by Chinese American English learners in San Francisco, California which claimed that lack of linguistically appropriate accommodations (e.g. educational services in English) effectively denied the students equal educational opportunities on the basis of their ethnicity, as required by Title VI of the Civil Rights Act of 1964.
- The U.S. Supreme Court in 1974 ruled in favor of the students
“There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”



Equal Educational Opportunities Act of (1974)

- Denial of equal educational opportunity prohibited
- Prohibits discrimination against faculty, staff and students, including racial segregation of students.
- Requires school districts to take action to overcome academic and linguistic barriers to students' equal participation

The Lau Remedies (1975)

- Specifies approved approaches, methods, and procedures for: Identifying and evaluating national origin minority students' English language skills;
- Districts and schools required to:
 - Determine instructional English language development program
 - Decide when English learners no longer need English language development services
 - Determine the professional standards educators must meet to deliver the English language development program

Castañeda v. Pickard (1981): Court case challenging a school district for not meeting Lau v. Nichols and the Equal Educational Opportunities Act

- Roy Castañeda, father of two Mexican-American children, filed suit against the Raymondville Independent School District (RISD) in Texas arguing
 - that the district failed to establish sufficient bilingual education programs, which would have aided his children in overcoming the language barriers that prevented them from participating equally in the classroom and
 - there was no way to sufficiently measure the Raymondville Independent School District's approach to overcoming language barriers, as required in Lau v. Nichols (1974)
- Court ruling established three prong approach to measure compliance with the Equal Educational Opportunities Act (1974) as it relates to English learner programs
 - Theory-ELD program must be based on sound educational theory
 - Practice-ELD program is implemented with fidelity and with appropriate fiscal and human resources, to transform theory into practice
 - Evaluation-Measures effectiveness of ELD program

Plyler v. Doe: Right to Attend Free Public School (1982)

The US Supreme Court struck down a state statute denying funding for education to unauthorized immigrant children and simultaneously struck down a municipal school district's attempt to charge unauthorized immigrants an annual \$1,000 tuition fee for each undocumented immigrant student to compensate for the lost state funding. As a result of Plyler ruling, public schools may not: Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.



OCR/DOJ Guidance and Resources:

- [Office for Civil Rights Reading Room](http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html)
www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html
- [Department of Justice Website](http://www.justice.gov)
www.justice.gov
- [Joint Dear Colleague letter \(Jan 7, 2015\)](http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html)
www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html
- [English Learner Toolkit – OELA](http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html)
www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html

2.2 Every Student Succeeds Act (ESSA)

President Obama signed the Every Student Succeeds Act into law on December 10, 2015. This bipartisan measure reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation’s national education law and longstanding commitment to equal opportunity for all students.

ESSA includes provisions that will help to ensure success for students and schools. Below are some of the key provisions. The law:

- Advances equity by upholding critical protections for America’s disadvantaged and high-need students.
- Requires—for the first time—that all students in America be taught to high academic standards that will prepare them to succeed in college and careers.
- Ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students’ progress toward those high standards.
- Helps to support and grow local innovations—including evidence-based and place-based interventions developed by local leaders and educators—consistent with our Investing in Innovation and Promise Neighborhoods.
- Sustains and expands this administration’s historic investments in increasing access to high-quality preschool.
- Maintains an expectation that there will be accountability and action to effect positive change in our lowest-performing schools, where groups of students are not making progress, and where graduation rates are low over extended periods of time.

[ESSA Legislation](http://www.govinfo.gov/content/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf) is available at www.govinfo.gov/content/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf.

To view the ESSA State Plan, visit [ESSA in Colorado](http://www.cde.state.co.us/fedprograms/essa) at www.cde.state.co.us/fedprograms/essa.



How Have Title I and Title III Changed under ESSA?

In a guide distributed by TransAct (2017), the organization succinctly outlines a number of changes that have occurred to Title I and Title III with the signing of ESSA.

One of the biggest shifts in responsibility is the move of accountability for EL progress toward English proficiency from Title III to Title I. Title I has always had the requirement to meet the academic needs of ELs, but now, under ESSA, it is more clearly noted that Title I funds can be used for programs to help EL students attain English proficiency.

The grade levels in which EL accountability is determined are also shifting. Under NCLB, Title III accountability determinations were made for ELs in all grades, but under ESSA these determinations will only be made for EL students in Title I-funded school districts in grades three through eight and once in high school. This change will require a heightened focus by Title I and Title III staff in the earlier grades so that EL programs in these grades provide quality language instruction and appropriate access to content knowledge.

These are Civil Rights requirements that include evaluation to ensure that EL programs are effective in helping ELs make progress toward English proficiency and meet grade level academic performance targets. Tracking EL student achievement and adjusting programs when there is a strength or deficiency will help ensure that when ELs reach the grade levels where accountability measures are calculated, those ELs will meet the State's EL accountability goals (p.4).

How do these changes impact schools and districts?

These changes will have a number of impacts on schools and districts. In a recent publication, TransAct (2017) notes:

The shifts in accountability under ESSA will require states and districts to establish a more robust structure that facilitates collaboration and allows for the sharing of expertise between Title I and Title III staff. This will mean a breakdown of silos so that Title I and Title III staff work together to design programs and interventions that address the unique language and academic needs of the ELs in their schools and districts. A one size fits all solution does not typically work with ELs and two competing programs (one under the Title I program and another under the Title III program) can lead to a waste of time, effort, and resources.

English Language Proficiency (ELP) assessment is no longer required under Title III, however Title III programs must provide an assurance that all ELs served by Title III will participate in the annual assessment of ELP required under Title I. This means Title I is responsible for the annual ELP assessment, which includes administration of this assessment. ELP assessment administration requires special training that in most cases has been provided to many more Title III staff than Title I staff. The implementation of the requirement for the administration of an annual ELP assessment will go much smoother if there is coordination between Title I and Title III (p.4).

Title I, Part A—Improving the Academic Achievement of At-Risk Students

Title I, Part A is the largest federal program supporting both elementary and secondary education. The program's resources are allocated based upon the poverty rates of students enrolled in schools and districts and are designed to help ensure that all children meet challenging state academic standards.

The purpose of Title I is to provide all children "significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps." (ESSA, Section 10011) To achieve that, states must develop accountability systems to identify and support schools with academically struggling students, and LEAs and schools must use their Title I funds to improve student outcomes, including academic achievement (CCSSO, p. 7, 2017).

**Title I accountability requires states to:**

- adopt challenging academic standards in at least math, reading/language arts, and science,
- develop high-quality academic assessments that measure how well students are mastering state standards in at least math, reading/language arts, and science,
- develop an accountability system that differentiates school performance based on a variety of indicators,
- develop a system to identify and support certain low-performing schools (known as “comprehensive support and improvement” (CSI) schools and “targeted support and improvement” (TSI) schools), and
- report student achievement and other data to ED and the public.

Districts/LEAs that receive Title I funds must carry out a variety of activities as a condition of participating in the program including, but not limited to:

- Developing and implementing plans to support and improve low-performing schools identified by the state through its accountability system,
- Reporting student achievement and other data to the SEA and the public,
- Notifying parents about issues such as teacher qualifications, assessments, and identification of students as English learners,
- Collaborating with child welfare agencies to ensure the educational stability of children in foster care,
- Providing services to homeless students that do not attend Title I schools,
- Providing services to children in local institutions for neglected children, and if appropriate, to children in local institutions for delinquent children, and neglected or delinquent children in community day programs,
- Allocating Title I funds to eligible schools through a poverty-based procedure known as “ranking and serving,”
- Developing policies and providing services to engage parents and families,
- Providing services to eligible private school students, and
- Overseeing Title I activities in Title I schools (CCSSO, 2017, pp. 7-8).

Schools that receive Title I funds must design and implement programs to support eligible Title I students using one of two models:

- A **schoolwide model**, available to any school with at least forty percent poverty (or to schools below forty percent poverty with a waiver, which, under ESSA, can be issued by the SEA).
 - Schools may use Title I funds to upgrade their entire educational program.



- All students are considered “Title I students,” and
- Schoolwide schools must develop a plan describing the services they will provide based on a comprehensive assessment of the school’s needs. This needs assessment must take into account the academic achievement of all students, particularly the needs of those of students struggling to meet state academic standards, and any other factors as determined by the LEA.
- A **targeted assistance model**, available to any Title I school that does not operate a schoolwide program.
 - Schools must use Title I funds to help educationally-disadvantaged students meet state standards, and
 - Students are eligible for Title I if they: (1) are failing, or at risk of failing, to meet state standards, (2) participated in certain federally-funded preschool programs, (3) received services under the Migrant Education Program, (4) are in a local institution for neglected or delinquent children or are attending a community day program, or (5) are homeless (CCSSO, p.8, 2017).

Title I-A: Improving the Academic Achievement of the Disadvantaged (Public Law 107–110) Legislation is available at www2.ed.gov/programs/titleiparta/legislation.html

To learn more about [Colorado Title I-A](http://www.cde.state.co.us/fedprograms/ti/a) programs, visit www.cde.state.co.us/fedprograms/ti/a

Title I, Part C—Education of Migratory Children

The Migrant Education Program (MEP) supports students to reach high standards of academic achievement and is the level of interstate cooperation through the transfer of migrant students’ education and health records. This high priority activity helps assure that migrant students are placed appropriately when they enroll in a new school. Their teachers are able to meet their needs and valuable time is not wasted. In addition, secondary students benefit significantly since the transfer of credits and/or partial credits assists them in meeting graduation requirements. The dropout rate among migrant students is high because of the frustration and hopelessness these students encounter when schools are not able to meet their academic needs.

To learn more about [Colorado Title I, Part C](http://www.cde.state.co.us/migrant) programs, visit www.cde.state.co.us/migrant

Title I, Part D—Prevention and Intervention Programs for Children and Youth

Who are Neglected, Delinquent, or At-risk

Title I, Part D provides funds for youth in state-operated institutions or community day programs. It also provides assistance to school districts who work with local correctional facilities. The U.S. Department of Education (ED) allocates funds for this subpart to the Colorado Department of Education (CDE) based on the number of children and youth in State- operated facilities and the State’s average per-pupil educational expenditures.

To learn more about [Colorado Title I, Part D](http://www.cde.state.co.us/fedprograms/ti/d) programs, visit www.cde.state.co.us/fedprograms/ti/d



Title II, Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders

Title II, Part A of the Every Student Succeeds Act (ESSA) of 2015 is intended to increase student academic achievement consistent with challenging State academic standards, improve the quality and effectiveness of educators, increase the number of educators who are effective in improving student academic achievement in schools, and provide low-income and minority students greater access to effective educators. The amount of Title II, Part A funds allocated to LEAs is calculated using the same US census data that is used to calculate Title I, Part A. Eighty percent of the LEA's Title II, Part A allocation is based on poverty and the remaining twenty percent is based on total population.

[Title II of the ESEA, as amended by the Every Student Succeeds Act](http://www2.ed.gov/documents/essa-act-of-1965.pdf) (ESSA) (20 U.S.C. 6421-6472) legislation available at www2.ed.gov/documents/essa-act-of-1965.pdf (see pages 155-196)

To learn more about [Colorado Title II](http://www.cde.state.co.us/fedprograms/tii/index) programs, visit www.cde.state.co.us/fedprograms/tii/index

Title III, Language Instruction for English Learners and Immigrant Students

Title III is a supplemental grant under the ESEA that is designed to improve and enhance the education of English learners (ELs) in becoming proficient in English, as well as meeting the Colorado Academic Content standards. The Title III Immigrant Set-Aside grant resides within this program and provides opportunities for LEAs to enhance the instructional opportunities for immigrant students and their families.

Colorado's Title III allocation is based on the number of ELs reported through the American Community Survey and U.S. Census data. CDE reserves 5% of its Title III allocation for the Immigrant Set-Aside grant. Annual local education agency (LEA), including district or consortia, allocations are based on the number of English learners reported through the annual Student October Count. The previous Student October count informs the subsequent school year Title III allocation. An LEA or consortium allocation must meet or exceed \$10,000 in order to apply for a Title III grant.

[Title III: Language Instruction for Limited English Proficient and Immigrant Students](http://www2.ed.gov/policy/elsec/leg/esea02/pg39.html) (Public Law 107–110) legislation available at www2.ed.gov/policy/elsec/leg/esea02/pg39.html

To learn more about [Colorado Title III](http://www.cde.state.co.us/fedprograms/tiii/index) programs, visit www.cde.state.co.us/fedprograms/tiii/index

Title III, Immigrant Set-Aside

The Title III Immigrant Set-Aside grant is designed to support school districts that have experienced a significant increase in immigrant students over the past two years. This program provides enhanced instructional and supplemental support opportunities for immigrant students and their families. Colorado's Title III allocation is based on the number of English learners (ELs) reported through the American Community Survey and U.S. Census data. Before determining local allocations, CDE reserves 5% of its Title III allocation for the Title III Immigrant Set-Aside (ISA) grant.

CDE determines local allocations based on the number and average number of immigrant students reported through the annual Student October Count in three school years prior to the current school year. Students who meet the federal definition for immigrant as a part of the ESSA Title III definition should be marked as a yes (1) in the immigrant field in the student demographic file that is submitted annually to CDE through the student October collection.



File layout for the student demographic file can be found on the [CDE Student Interchange](http://www.cde.state.co.us/datapipeline/inter_student) website at www.cde.state.co.us/datapipeline/inter_student.

[Title III: Language Instruction for Limited English Proficient and Immigrant Students](http://www2.ed.gov/policy/elsec/leg/esea02/pg39.html) (Public Law 107–110) legislation available at www2.ed.gov/policy/elsec/leg/esea02/pg39.html

To learn more about [Colorado Title III Immigrant Set-Aside](http://www.cde.state.co.us/fedprograms/titleiiiimmigrantsetaside) programs, visit www.cde.state.co.us/fedprograms/titleiiiimmigrantsetaside

District Responsibility for Charter and Private School EL Students

According to Federal law, districts are responsible for providing services and assessments for ELs in private or charter schools. Private schools can decline these services, but documentation must be kept showing the offer and the decline.

Section 8501(a)(1) of the ESEA requires LEAs to provide services under Title III, among other federal programs, to private school children, their teachers and other educational personnel. The responsibility under the Title VIII Uniform Provisions for providing Title III services to LEP students in private school lies with the LEA and, consequently, the LEA is responsible for assessing the English language proficiency of private school students if requested by private school representatives.

Participation of private school students, teachers and other education personnel in ESEA programs is governed by the Uniform Provisions in [Title IX of ESEA, sections 9501–9504](http://www2.ed.gov/policy/elsec/leg/esea02/pg111.html) (www2.ed.gov/policy/elsec/leg/esea02/pg111.html). Under the Uniform Provisions, LEAs or other entities receiving federal financial assistance are required to provide services to eligible private school students, teachers and other personnel consistent with the number of eligible students enrolled in private elementary and secondary schools in the LEA, or in the geographic area served by another entity receiving federal financial assistance. These services and other benefits must be comparable to the services and other benefits provided to public school students and teachers participating in the program, and they must be provided in a timely manner.

Public school districts are required to provide equitable services to eligible private school students through the *Elementary and Secondary Education Act (ESEA)*, as reauthorized by the *No Child Left Behind Act (NCLB) 2001*, and the *Individuals with Disabilities Education Act (IDEA)*, reauthorized in 2004. Twelve major ESEA programs require public school districts to provide services and benefits to private school participants on an equitable basis. IDEA requires that public school districts conduct a child-find process to locate students with disabilities enrolled in private schools, and to expend a proportionate amount of funding on special education and related services to such eligible children enrolled in private schools.

To ensure equitable participation, the LEA or other entity receiving federal financial assistance must assess, address and evaluate the needs of private school students and teachers; spend an equal amount of funds per student to provide services; provide private school students and teachers with an opportunity to participate in activities equivalent to the opportunity provided public school students and teachers; and offer services that are secular, neutral and non-ideological.

Both *ESEA* and *IDEA* also require that public school districts engage in timely and meaningful consultation with private schools about the provision of services to private school students and their teachers and parents. This consultation must occur before any decision is made that impacts the opportunities for participation of private school students, teachers, and parents and throughout the design, development, implementation, and assessment of those services.



2.3 Colorado State Laws

There are two state laws that specifically address English learners in Colorado:

- *Colorado Senate Bill 109 – C.R.S. 22-24-106 ELP Assessment*
- *Colorado House Bill 14-1298 – C.R.S. 22-24-101 English Language Proficiency Act (ELPA)*

Colorado Senate Bill 109, C.R.S. 22-24-106 requires the Colorado Department of Education to develop and adopt one common assessment to identify English learners and annually measure English language development. The current ELP assessments are:

- W-APT/WIDA Screener—state mandated assessment to identify English learners
- ACCESS for ELLs—annual assessment to measure English language development and attainment

Colorado House Bill 14-1298 – C.R.S. 22-24-101 English Language Proficiency Act (ELPA)

The English Language Proficiency Act (ELPA) is a state funded program that provides financial and technical assistance to districts implementing programs to serve the needs of English learners. The state definition of “English learner,” is derived from the 2014 Colorado Revised Statutes under the English Language Proficiency Act 22-24-103 (4) and is defined as “a student who is linguistically diverse and who is identified [using the state-approved English language proficiency assessment] as having a level of English language proficiency that requires language support to achieve standards in grade-level content in English.” ELPA establishes that districts must provide an evidence-based English language proficiency, or English language development (ELD), program to assist ELs in acquiring English and achieving and maintaining grade-level performance in academic content areas.

The current ELPA includes two programs which provide funding for all local education providers serving English learners: the English Language Proficiency Program (ELPA Program) and the Professional Development and Student Support Program (Support Program).

The ELPA Program is a categorical program that supports the requirement to provide an evidence-based English language development program for all English learners. The goal of the program is to increase the English language proficiency and academic performance of English learners. The ELPA Program is funded annually on a per pupil basis from a formula written in state statute. 75% of the annual allocation should be used to provide services to Non-English Proficient (NEP) and Limited English Proficient (LEP) students. The remaining 25% should be used to provide services to English learners reclassified as FEP Monitor Year 1 (M1) and FEP Monitor Year 2 (M2). Identified students may receive funding for up to a total of five budget years, including prior years of funding. Years in program are not required to be consecutive, regardless of whether the student transfers to another district or leaves the state.

The ELPA Professional Development and Student Support Program was introduced and created in 2014 by House Bill 14-1298. The ELPA Support Program funds are subject to annual appropriation by the Colorado legislature. 75% of the annual allocation should be used to provide services to Non-English Proficient (NEP) and Limited English Proficient (LEP) students. The remaining 25% should be used to provide services to English learners reclassified as FEP Monitor Year 1 (M1) and FEP Monitor Year 2 (M2). Districts and the Charter School Institute must distribute 100% of ELPA Support Program funds that the district receives to charter schools that identified and reported eligible English learners in the Student October Count.

Charter School Information

State Law: ELPA as it interfaces with [Charter and Private Schools](http://www2.ed.gov/parents/schools/choice/definitions.html).
(www2.ed.gov/parents/schools/choice/definitions.html).

There is no obligation to serve charter or private Schools unless districts claim those students on Student October. Only students on the district's Student October report are obligated to be served and only those students (charter and private) that districts report on Student October that are included on the ELPA report at the end of Student October. Districts may claim students that are not ELPA eligible. However, district charters schools have to abide by all rules and regulations that apply to the district.

The ELPA Excellence Award Program was also introduced and created in 2014 by House Bill 14-1298. It was developed to award grants to local education providers and charter schools that achieve the highest English language and academic growth among ELs and the highest academic achievement for ELs who exit out of the ELD program.

To learn more about the [Colorado ELPA](http://www.cde.state.co.us/cde_english/elpa) programs, visit www.cde.state.co.us/cde_english/elpa

[Colorado ELPA statute and Rules for the Administration of the Colorado English Language Proficiency Act](http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=7752&fileName=1%20CCR%20301-10) are available at www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=7752&fileName=1%20CCR%20301-10

To learn more about the [Colorado ELPA Excellence Award](http://www.cde.state.co.us/cde_english/elpaexcellenceaward), visit www.cde.state.co.us/cde_english/elpaexcellenceaward

