

II. Language Assistance Programs

Language assistance services or programs for EL students must be educationally sound in theory and effective in practice; however, the civil rights laws do not require any particular program or method of instruction for EL students.¹

In determining whether a school district's programs for EL students comply with the civil rights laws, the Departments apply the standards established by the United States Court of Appeals for the Fifth Circuit more than 30 years ago in *Castañeda v. Pickard*.² Specifically, the Departments consider whether:

- (1) The educational theory underlying the language assistance program is recognized as sound by some experts in the field or is considered a legitimate experimental strategy;
- (2) The program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and
- (3) The program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome within a reasonable period of time.

After ELs have been identified using a valid and reliable English language proficiency (ELP) assessment, LEAs must provide ELs with appropriate language assistance services and programs, commonly known as "EL services and programs." LEAs must also provide special education services to ELs who have been identified as children with disabilities under the Individuals with Disabilities Education Act (IDEA) or as qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 (Section 504).³

Some common EL programs for learning English that are considered educationally sound in theory under *Castañeda*'s first prong include:

- **English as a Second Language (ESL)**, also known as English Language Development (ELD), is a program of techniques, methodology, and special curriculum designed to teach EL students explicitly about the English language, including the academic vocabulary needed to access content instruction, and to develop their English language proficiency in all four language domains (i.e., speaking, listening, reading, and writing). ESL instruction is usually in English with little use of the EL students' primary language(s).
- **Structured English Immersion (SEI)** is a program designed to impart English language skills so that the EL student can transition and succeed in an English-only mainstream classroom once proficient. All instruction in an immersion strategy program is in English. Teachers have specialized training in meeting

¹ *Dear Colleagues Letter: English Learner Students and Limited English Proficient Parents*. (Jan. 7, 2015). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

² 648 F.2d 989 (5th Cir. 1981); see *United States v. Texas*, 601 F.3d 354, 366 (5th Cir. 2010) (reaffirming and applying the *Castañeda* test); see 1991 OCR Guidance ("In view of the similarity between the EEOA and the policy established in the 1970 OCR memorandum, in 1985 OCR adopted the *Castañeda* standard for determining whether recipients' programs for LEP students complied with the Title VI regulation.").

³ U.S. Department of Education, Office of English Language Acquisition. (2017). *English Learner Tool Kit* (2nd Rev. ed.). Washington, DC: Author.

⁴ *Castañeda*, 648 F.2d at 1009-10.

the needs of EL students (e.g., an ESL teaching credential and/or SEI training), and have demonstrated strong skills in promoting ELD and SEI strategies for ensuring EL students' access to content.

- **Transitional Bilingual Education (TBE)**, also known as early-exit bilingual education, is a program that utilizes a student's primary language in instruction. The program maintains and develops skills in the primary language while introducing, maintaining, and developing skills in English. The primary purpose of a TBE program is to facilitate the EL student's transition to an all-English instructional program, while the student receives academic subject instruction in the primary language to the extent necessary.
- **Dual Language Program**, also known as two-way or developmental, is a bilingual program where the goal is for students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom that is usually comprised of half primary-English speakers and half primary speakers of the other language.

In school districts or schools where the number of EL students is small, EL students still must receive language assistance services; however, the EL program may be less formal. Additional EL programs not mentioned above may also meet civil rights requirements.⁵

Appropriate EL services and programs enable ELs to attain both English proficiency and parity of participation in the standard instructional program within a reasonable amount of time. LEAs must offer appropriate EL services until ELs are proficient in English and can participate meaningfully in educational programs without EL support. This includes continuing to provide EL services to ELs at the highest levels of English proficiency until they have exited from EL services and programs.⁶

⁵ *Dear Colleagues Letter: English Learner Students and Limited English Proficient Parents*. (Jan. 7, 2015). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

⁶ U.S. Department of Education, Office of English Language Acquisition. (2017). *English Learner Tool Kit* (2nd Rev. ed.). Washington, DC: Author.