

# Definitions and Laws

## Introduction

Washington State serves approximately 135,000 students identified as multilingual/English learners. Districts implement transitional bilingual instruction programs– also referred to as English language development programs - guided by both state and federal laws, policies, sound educational theory, and effective, culturally responsive instructional practices. The OSPI Multilingual Education Program has compiled, over time and in conjunction with stakeholders, this guide which outlines the policies and practices for all district transitional bilingual instruction programs.

## Definitions, Laws & Guidance

### Federal Definition

#### *Multilingual/English Learner*

A student who

- A. is aged 3 through 21;
- B. is enrolled or preparing to enroll in an elementary school or secondary school;
- C. (i) was not born in the United States or whose native language is a language other than English;
  - (ii)(I) is a Native American or Alaska Native, or a native resident of the outlying areas; and
  - (II) 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 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.

### Immigrant Children and Youth

Definition of Immigrant Children and Youth under Title III (ESEA Title III, Sec. 3201(5))



The term “immigrant children and youth” refers to individuals who:

- Are aged 3 through 21.
- Were not born in any state.  
“State” means the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico (Section 3127 of ESEA). Children born to U.S. citizens abroad (e.g., children born on a military base overseas) may be considered immigrants if they meet all the criteria in the definition of immigrant.
- Have not been attending one or more schools in any one or more states for more than 3 full academic years. A full academic year is 10 months of school attendance, kindergarten through 12th grade. If a student has been in different schools in different school districts and even in different states, the number of months that the student has been in school in any one or more states must not add up to a total of more than 3 full academic years.

## Federal Laws & Cases

### Elementary and Secondary Education Act

[Title III, Part A](#) – The Language Instruction for Limited English Proficient and Immigrant Students purpose is 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. This statement of purpose is explained in greater detail in [Section 3102](#).

### Castañeda v. Pickard

English language development instruction must be designed to meet individual needs for sustained progress toward reaching English proficiency in the least amount of time (Castañeda v. Pickard, 1981, U.S. Court of Appeals). Castañeda v. Pickard provides a three-pronged test to guide districts in designing, evaluating, and improving their English language development program for multilingual/English learners:

- Program designed must be based on sound educational theory and/or high-quality research findings.
- Program must be sufficiently staffed and funded.
- District is obligated to evaluate the effectiveness of the services provided and make adjustments to ensure students are achieving language proficiency and academic success.

### Lau v. Nichols

Eligible multilingual/English learners must be provided appropriate supports for meaningful access to rigorous content (Lau v. Nichols, 1974, U.S. Supreme Court).

## Plyler v. Doe

The U.S. Supreme Court ruled in *Plyler v. Doe* (457 U.S. 202 (1982)) that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

## Federal Guidance & Supportive Documents

[Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\)](#)

The US Education Department issued this guidance to provide States and local educational agencies (LEAs) with information to assist them in meeting their obligations under Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Every Student Succeeds Act of 2015 (ESSA). This guidance also provides members of the public with information about their rights under this law and other relevant laws and regulations.

[Dear Colleague Letter - Joint Guidance from the U.S. Departments of Education and Justice](#)

The Departments (The Office for Civil Rights at the U.S. Department of Education and the Civil Rights Division at the U.S. Department of Justice) issued joint guidance to assist SEAs, school districts, and all public schools in meeting their legal obligations to ensure that EL students can participate meaningfully and equally in educational programs and services. This guidance provides an outline of the legal obligations of SEAs and school districts to EL students under the civil rights laws.

[The Equity and Civil Rights Office at OSPI](#) prepared a [presentation](#) and [Webinar](#) (June 12, 2015) which highlights critical guidance from the Dear Colleague Letter.

The U.S. Department of Education created [Fact sheets in English](#) and [Fact Sheets in Other Languages](#) to provide an overview of the guidance provided in the Dear Colleague Letter.

Guidelines for private school participation in federal programs is outlined in the following:

- [Private School Participation in Federal Programs](#)
- [Elementary and Secondary Education Act, Title XIII, Part F, Secs. 8501-8506](#)
- [Office of Non-Public Education Non-Regulatory Guidance: Title IX, Part E, Uniform Provisions Subpart 1 - Private Schools](#)
- [Non-Regulatory Guidance: Equitable Service Requirements Under Title VIII](#)
- [EDGAR 34 CFR 76](#). See parts 76 and 80.

## Washington State Definition and Laws

### Multilingual/English Learners

A student who meets the following two conditions is eligible for the Transitional Bilingual Instructional Program:

- The primary language of the student is other than English; and
- The student's English skills impact student's access to core/ content instruction.

Washington State defines "primary language" as the language most often used by a student (not necessarily by parents, guardians, or others) for communication in the student's place of residence or the language that the student first learned.

### Washington State Law - RCW and WAC

#### [Chapter 28A.180 RCW - Transitional Bilingual Instructional Program](#)

In Washington's Basic Education Act, this is the statute that provides the mandate for transitional bilingual education programs in public schools.

#### [Chapter 392-160 WAC - Transitional Bilingual Instructional Program](#)

State regulations that direct the administration of the Transitional Bilingual Instructional Program.