

## **MAFSA Guidelines for Grade Placement of English Language Learners**

One of the primary functions of the Metropolitan Area Foreign Student Advisors (MAFSA) is to recommend grade placement of incoming international and / or English Language Learners (ELLs) into elementary and secondary public schools.

### **Existing Regulations**

Age appropriate grade placement of English Language Learners is necessary to ensure equal access to quality English language instruction and appropriate academic, cognitive, and social opportunities. This is in alignment with federal legislation (the *Civil Rights Act of 1964*, the *Elementary and Secondary Education Act of 1968*, the *Civil Rights Restoration Act of 1987*, and the *No Child Left Behind Act of 2001*) and is upheld by the United States Supreme Court.

Decisions regarding grade placement and retention should never be based solely upon a student's English language proficiency. In addition, any kind of participation in public education should not be limited due to English Language Proficiency (*Lau vs. Nichols, 1974*). Students are better supported by a comprehensive approach incorporating empirically supported prevention and intervention programs at multiple levels. (Jimerson et al., 2006)

### **Recommended Guidelines**

- Students should be placed closest to his / her chronological age and academic background
- Students should be placed no more than one year below or above his / her chronological age, regardless of interrupted education
- High school age students and others with special circumstances (such as international adoptees) may have unique grade placement considerations and should be placed according to individual county practices, provided they are in the best interest of the student.
- In all cases, decisions should be made with the student's best interest in mind and special consideration given to both the individual's current needs and future goals.

Jimerson, Graydon, Pletcher, Schnurr, Knudert & Nickerson. (2006). Grade Retention and Promotion. In Bear, G. and Minke, K. (Eds.), *Children's needs III: Development, prevention, and intervention*. (pp. 601-613) 3rd ed. Bethesda, MD: National Association of School Psychologists.

## ***Addendum to MAFSA Guidelines for Best Practices for Grade Placement of English Language Learners***

This addendum is included to provide supplemental information that is specific to the laws and legal decisions cited in the memo regarding grade placement and retention of English Language Learners.

### **Title VI of the Civil Rights Act of 1964**

“No person in the United States shall, on the grounds 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 accord with federal law, it is a violation of the Regulation Implementing Title VI of the Civil Rights Act of 1964 if limited English proficient students are retained in a grade for failure to demonstrate basic skills in English.”

Title VI prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance. The Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a language minority student’s limited proficiency in English.

### **Title VII of the Elementary and Secondary Education Act of 1968 (The Bilingual Education Act)**

The Bilingual Education Act recognizes the unique educational disadvantages faced by non-English speaking students. It establishes a Federal policy to assist educational agencies to serve students with limited English proficiency by authorizing funding to support those efforts. It also supports professional development and research activities.

### **Civil Rights Restoration Act of 1988**

All federal programs may risk a loss of funds if there is a failure to comply with statutes regarding the education of English language learners.

This law clarified previous laws to ensure that discrimination is prohibited throughout an entire institution or agency, if any part receives federal assistance. If any state and local agencies, school systems, and corporations were found to be in violation of civil rights laws and refused to comply with the law, all of the federal funding for that institution would be in jeopardy of being withdrawn.

### **Title III of the No Child Left Behind Act of 2001**

“...Requires that all English language learners (ELLs) receive quality instruction for learning both English and grade-level academic content.”

Not only is it important for English language learners to understand and be able to communicate in English, but also learn the same content as students in their same grade level. Inappropriate grade

placement does not allow that child equitable access to grade-level instruction, which is mandated by No Child Left Behind.

This act aims to help ensure that LEP students are provided the assistance needed to attain English proficiency and to meet the level of academic achievement that all children are expected to meet. Specifically, it provides flexibility in defining LEP students as a “subgroup” and in assessing LEP students.

### **Lau v. Nichols (1974)**

“The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program and thus violates 601 of the Civil Rights Act of 1964...”

“Districts must provide language instruction that is meaningful and gives non-English speaking students both the social and academic language skills they need to succeed academically.”

Implications for English Language Learners regarding grade placement:

- Classroom teachers must modify instruction for English language learners. Students should be placed age appropriately and the instruction must be modified.
- Schools must provide services aimed at teaching English to limited English proficient students. Retaining students or placing them in grades levels below the age appropriate grade level does not qualify as these kinds of services.

This case is significant because non-native English speakers had their right to education upheld by the court.