UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights
June 2023

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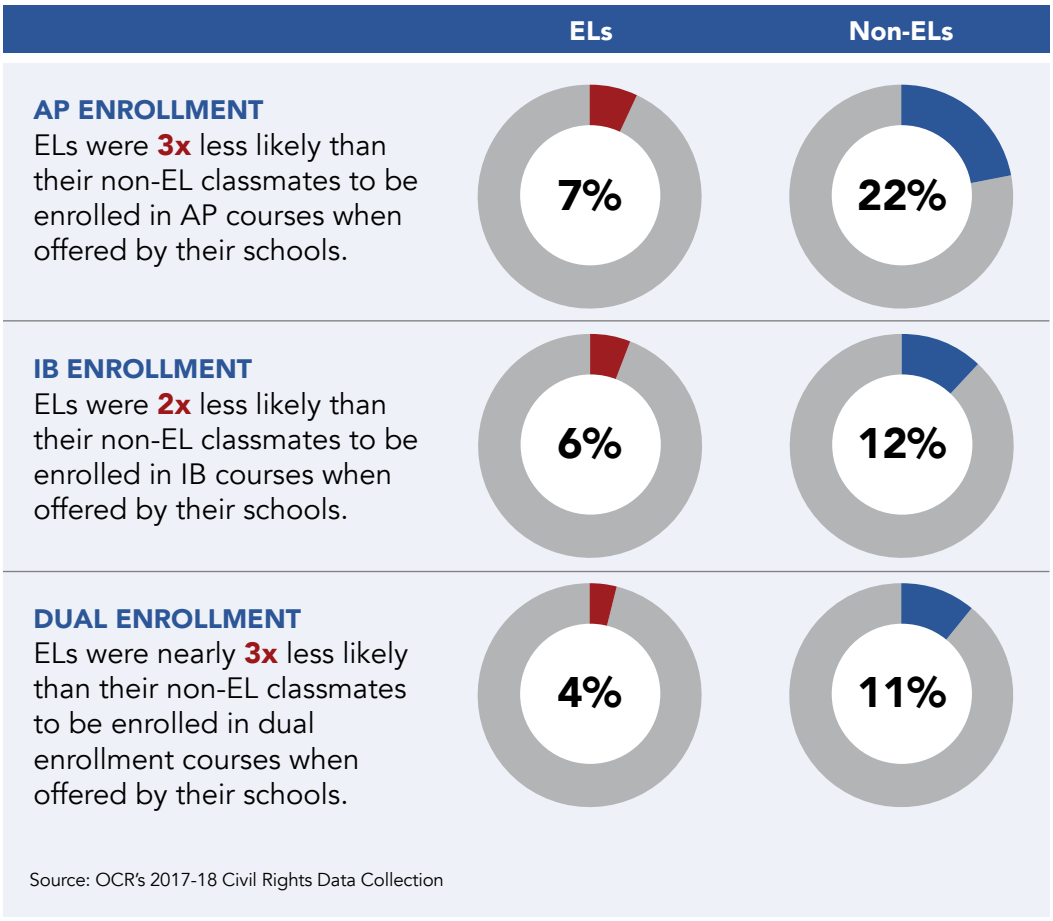
ENSURING MEANINGFUL PARTICIPATION IN ADVANCED COURSEWORK AND SPECIALIZED PROGRAMS FOR STUDENTS WHO ARE ENGLISH LEARNERS

Many elementary and secondary school districts offer educational programs and services that are specialized or advanced. Examples include Advanced Placement (AP), gifted and talented education, honors, International Baccalaureate (IB), career and technical education, pre-collegiate experiences, career pathways, dual enrollment, dual credit, and concurrent enrollment programs. Such programs are often designed to boost college access, degree attainment, and occupational skills, especially for students typically underrepresented in higher education. However, as shown in Figure 1, during the 2017-18 school year, the most recent year for which civil rights data are available,[1] students who are ELs had lower participation in such specialized or advanced programs.

Schools must ensure that eligibility for such programs, including appropriate evaluation and testing procedures, do not screen out students who are ELs because of their limited English proficiency unless an advanced or specialized program is demonstrated to require proficiency in English for meaningful participation. Additionally, students who are ELs remain entitled to appropriate language assistance services while participating in advanced or special programs.

Figure 1



Source: OCR's 2017-18 Civil Rights Data Collection

The U.S. Department of Education (Department), Office for Civil Rights (OCR) enforces Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination based on race, color, or national origin in any program or activity that receives federal financial assistance from the Department. In *Lau v. Nichols*, the U.S. Supreme Court determined that in order for public elementary and secondary schools to comply with their legal obligations under Title VI, they must take affirmative steps to ensure that students who are English learners (ELs) can meaningfully participate in their educational programs and services.

1. OCR postponed the 2019-20 Civil Rights Data Collection (CRDC) due to the pandemic and anticipates releasing data from the 2020-21 CRDC this year.

Examples of the kinds of practices that could, depending on facts and circumstances, raise Title VI discrimination concerns include the following:[2]

1. Categorically excluding students who are ELs from advanced or specialized programs.
2. Creating scheduling barriers for participation (e.g., scheduling the only AP calculus class for the same period as EL instruction).
3. Using selection criteria that are not directly related to the advanced course or specialized program, and that negatively affect students who are ELs (e.g., requiring a 3.75 GPA for students to be able to take any AP classes, including AP Spanish).
4. Using different selection criteria for students who are ELs.
5. Counseling students who are ELs against taking advanced or specialized programs based on a generalized view that such courses would be too difficult for them or based on a view that students who are ELs should focus on their language skills first.
6. Providing information about advanced or specialized programs exclusively to non-EL student populations.
7. Excluding teacher recommendations or failing to request recommendations from teachers of EL classes for students who are ELs to be admitted to specialized or advanced programs.

For additional information, please see these resources:[3]

- Dear Colleague Letter: English Learner Students and Limited English Proficient Parents (January 2015)
- Fact Sheet: Ensuring English Learners Can Participate Meaningfully and Equally in Educational Programs (January 2015)
- Fact Sheet: Confronting Discrimination Based on National Origin and Immigration Status (August 2021)

For examples and resources that may support schools' efforts to increase access to advanced or specialized programming for students who are ELs, please see the Office of English Language Acquisition's resource, Practices to Increase Access to Advanced Coursework and Specialized Programs for Students Who Are English Learners, *available at* https://ncela.ed.gov/resources/oela-resources/briefs.

How Can I File a Complaint with OCR?

If you believe a school district has discriminated against a student who is an EL by not taking appropriate steps to overcome language barriers and ensure that they can participate meaningfully in the district's educational programs, you can file a complaint with OCR at www.ed.gov/ocr/complaintintro.html (to file a complaint in English) or www.ed.gov/ocr/docs/howto.html (to file a complaint in a non-English language).

How Can I Learn More About the Rights of English Learners?

For more information, please contact OCR at 1-800-421-3481 (TDD 1-800-877- 8339) or ocr@ed.gov, or visit www.ed.gov/ocr. Information regarding schools' civil rights obligations to students who are ELs and parents and guardians with limited English proficiency is also available on OCR's Equal Opportunities for English Learners website at https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue03.html.

How Can I Request Translation Services?

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact OCR@ed.gov. If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0818 or ofo_eeos@ed.gov.

This fact sheet does not have the force and effect of law and is not meant to be binding, beyond what is required by statutory and regulatory requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.

2. *See generally* 42 U.S.C. § 2000d to d-7 (prohibiting race, color, or national origin discrimination in any program or activity receiving Federal financial assistance); *see also*, 34 C.F.R. § 100.3(b)(1) and (2) (describing discrimination prohibited under Title VI and identifying specific prohibited actions).

3. The U.S. Departments of Education and Justice both enforce Title VI of the Civil Rights Act of 1964. The Department of Justice also enforces the Equal Educational Opportunities Act of 1974, which requires state educational agencies and school districts to take appropriate action to overcome language barriers that impede English Learner students from participating equally in state and district educational programs. 20 U.S.C. §§ 1701-1758. You may file a complaint with the Civil Rights Division at the Department of Justice at civilrights.justice.gov.