



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JAN 27 2011

Dear Title III Director:

I am writing to you regarding questions we have received about how to determine if an American Sign Language (ASL) user is limited English proficient (LEP) and whether or not this qualifies the user for Title III services.

Under the former Title VII of the Elementary and Secondary Education Act (ESEA), as amended by the Improving America's Schools Act (IASA), Title VII was designed to address the needs of students whose language minority status was tied to their national origin status, hence it provided services to students covered by the *Lau* obligation under Title VI of the Civil Rights Act of 1964, rather than students with disabilities. The U.S. Department of Education's position was that an individual cannot be considered LEP solely because of his or her reliance on ASL for communication due to deafness or a hearing impairment. That did not mean, however, that individuals with deafness or a hearing impairment who relied on ASL for communication can never be served under Title VII. For example, an individual whose native language was Spanish, and who also had a hearing impairment and relied on ASL for communication, could be considered LEP under Title VII because his or her native language was a language other than English.

Under Section 9101(25) of the ESEA, as amended under the No Child Left Behind Act (NCLB), an individual that might be considered LEP must also meet the following federal definition:

(25) LIMITED ENGLISH PROFICIENT.—The term ‘limited English proficient’, when used with respect to an individual, means an individual—

(A) who is aged 3-21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who 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

(D) 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.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

A student who uses ASL for communication due to deafness or hearing impairment, who meets the definition of LEP as stated above, and whose primary language is based on national origin may qualify for Title III services.

If you have any further questions, please contact Supreet Anand, Title III Supervisor at Supreet.anand@ed.gov or 202-401-9795. Thank you for your efforts to meet the needs of students who are deaf or hearing impaired English learners.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thelma', with a stylized flourish extending to the right.

Thelma Meléndez de Santa Ana, Ph.D.

cc: Chief State School Officers