

Evolution of English Language Learning in US Schools

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This article will track the difference in language, legislation, and provisions for English Language Learners (ELLs) in the United States from the years 1995 to 2020 with a focus on changes within different presidential administrations and how those administrations attempted to address the education and rights of these students. In the 1995 Annual Report for the US Department of Education Office for Civil Rights (OCR), during the Clinton Administration, several issues and solutions were discussed concerning the Civil Rights of what was referred to as Limited English Proficiency (LEP) students within US schools. Since then, several steps have been taken to achieve equity for these students, including major amendments to the Elementary and Secondary Education Act. In 2002, the Bush Administration signed into law the No Child Left Behind Act (NCLB), which intended to institute greater regulations for schools to ensure marginalized students, including English Language Learners (ELLs), are receiving adequate education and having issues taken into account in programming and tools. In 2015, the Obama Administration passed a new version of this bill titled the Every Student Succeeds Act (ESSA), which attempted to address out-of-date regulations from NCLB as well as institute new expectations for schools, additional support for teachers, and increase access to quality preschools. This article will look at the changes implemented by these Acts and their efficacy using governmental and non-governmental sources, including the OCR's 2020 Annual Report to compare current issues facing ELLs with those from 1995.

This article will provide introductory literature on the issues related to English language learning in US schools, which we will build on in our timeline and discussion.

Timeline of Administrations and Legislation Impacting ELLs from 1993-2021

January 1993

- Bill Clinton (Dem.) assumes office as US President.
- Richard Riley (Dem.) serves as Secretary of Education.

October 1994

- The *Improving America's Schools Act*, signed into law by President Bill Clinton, increased funding for bilingual and immigrant education.

April 1996

- US Department of Education Office for Civil Rights 1995 Annual Report to Congress is published, addressing the unfair treatment of students with limited English proficiency.

January 2001

- George W. Bush (Rep.) assumes office as US president.
- Rod Paige (Rep.) and Margaret Spellings (Rep.) serve as Secretary of Education.

January 2002

- The *No Child Left Behind Act* (NCLB) is signed into law by President George W. Bush which required state implementation of standardized testing with accommodations for ELLs varying from state to state.

January 2009

- Barack Obama (Dem.) assumes office as US president.
- Arne Duncan (Dem.) and John King Jr. (Dem.) serve as Secretary of Education.

December 2015

- The *Every Student Succeeds Act* (ESSA) is signed by President Obama to replace (NCLB) and leave less evaluation up to the state on whether or not the English Proficiency of ELL students is satisfactory.

Emergent Bilinguals: How Policy Has Misunderstood a National Resource

English language learners are making scant progress in overcoming the achievement gap, not only because of inadequate funding, but also because federal and state educational policy actually create stumbling blocks by prohibiting or discouraging the use of the educational practices that research has clearly shown to be most effective for their needs. This was the basic message that Ofelia Garcia, Professor of Bilingual Education at Teachers College, Columbia University delivered to a standing room only audience on January 30, 2008.

Garcia's talk was the first of a series of forums being convened by the Campaign for Educational Equity at Teachers College. Her remarks were drawn from an extensive study of the research in this area entitled "From English Language Learners to Emergent Bilinguals" which she co-authored with Professor Jo Anne Kleifgen, and Lorraine Falchi.

The paper calls for a new attitude and a new approach to the students that are now generally referred to as English language learners (ELLs) or students with limited English proficiency (LEPs). By using the new term "emergent bilinguals," Professor Garcia urges educators to view these students as a national resource, not as a deficit. She argues that past policies have misunderstood bilingualism and led to educational inequities, and she sees a high potential in nurturing the bilingual capacity of these students in an increasingly globalized world.

Persistent Gap Between Research and Practice

Evidence shows that using a student's home language in the classroom helps emergent bilinguals reach higher levels of achievement and that through linguistic interdependence a student's native language can be used to bolster English acquisition and promote cognitive learning. Consequently, a great body of research supports bilingual education over monolingual education for ELL students. Yet, the report points out that state and federal policy orientation is tilted dramatically against bilingual education.

According to the report, between 1992 and 2002 the number of ELLs in grades K-12 grew by 72 percent, while their enrollment in bilingual programs declined from 37 percent to 17 percent. Several states, including , adopted legislation that prohibits or severely restricts use of these programs. This move towards an "English-only" approach was reinforced by the Bush administration when the No Child Left Behind (NCLB) Act was signed into law in 2002. The authors conclude that these policies have furthered inequities in educating and assessing emergent bilinguals, and they advocate a change in policy from English only instruction to bilingual and dual language programs.

The report concludes that current assessments do not measure the learning of emergent bilinguals because they contain built-in content and speech biases, and because subject matter is often tangled with academic language - making it difficult to measure cognitive knowledge. Furthermore, the report highlights the devastating effects of high-stakes testing required by NCLB, and it supports "dynamic" performance based assessments instead. According to the authors, ELL assessments raise key equity concerns regarding two main issues: content proficiency and validity. The validity of assessments for emergent bilinguals is often questioned because these assessments run the risk of not measuring what they intend to measure.

Figure 1-3. Screenshots of, Columbia University article. "Emergent Bilinguals: How Policy Has Misunderstood a National Resource." *Teacher's College, Columbia University*. November 11, 2009. <https://www.tc.columbia.edu/articles/2008/february/emergent-bilinguals-how-policy-has-misunderstood-a-national/>.

January 2017

- Donald J. Trump (Rep.) assumes office as US president.
- Betsy DeVos (Rep.) serves as Secretary of Education.

January 2021

- US Department of Education Office for Civil Rights 2020 Annual Report to Congress is published, which details cases of schools failing to provide sufficient English instruction to English Language Learners.

The United States of America is a country that has long prided itself on the diversity of its population and its famed "melting pot" status. From the early days of settlement, when multiple European countries claimed different areas of the land, and even before then, when the many indigenous tribes of the continent still had sovereignty, a multilingual population has been part of the culture. Today, according to Translators Without Borders, "There are between 350 and 430 languages spoken in the United States of America, making it one of the most linguistically diverse countries in the world."¹

James Crawford, President of the Institute for Language and Education Policy and a discussant at the event, provided a historical perspective that illustrated the sharp turn in policy regarding language proficiency at the federal level over the past few decades. Alluding to policy language in the major media, he demonstrated how references to education policy dramatically shifted from an overwhelming use of "equal opportunity" concepts in the 1960s and 1970s to an output oriented focus on accountability and achievement gaps in the 1990s and 2000s. Building on his presentation, the second discussant and Co-Director for the Center for Immigrant Families, Donna Nevel, provided a community organizers' perspective on the challenges involved in mounting a bilingual or dual language program that truly meets the needs of emergent bilingual students.

Equity Forums

In its equity forum series this spring and continuing into the next school year, the Campaign for Educational Equity at Teachers College, will cover issues in the following 11 other areas that define its conception of comprehensive educational equity [link to record article]:

- High quality early childhood education programs
- Rigorous and challenging curricula for all students
- High quality teaching
- Effective, sustained educational leadership
- Appropriate class sizes
- Mental and physical health care services
- Appropriate academic support for special education students
- Appropriate academic support for children in areas of highly concentrated poverty
- Effective after-school, community, and summer programs
- Effective parental involvement and family support
- Policies that foster racially and economically diverse schools

Despite this, standardization was necessary in the education system. Therefore, except for a handful of private institutions, schools in America are taught in the majority language of the US: English. Many students in America did not grow up speaking English, meaning that they must learn it in school while also taking the standard array of classes: all in English. This article will trace the evolution of the classification and expectations of these students as well as the legislation and research in relation to their education from 1995 to 2020.

The Department of Education's Office for Civil Rights (OCR) was rebuilding stronger than ever when it submitted its 1995 Annual Report to Congress. Fresh off the passing of the *Improving America's Schools Act* in 1994, an amendment to the *Elementary and Secondary Education Act* (ESEA), and now solidly within the Clinton administration, the OCR reprioritized their work to achieve the most possible impact. Also in 1994, a report was published by the Government Accountability Office (GAO) investigating the education of students learning English as a second language. This report looked at the intersectionality between ESL students and immigrant and low-income populations. It detailed the obstacles these students face in addition to the programs and practices being used to serve them and the best practices. This report offered considerable insight into the treatment of these students.

The OCR deals with many different types of discrimination within American schools, one of which being discrimination against students that the 1995 Report refers to as "Limited English Proficiency" or LEP, those students whose native language is not English and have not yet reached a level considered proficient or fluent in the English language. The OCR determined there were a significant number of cases of discrimination against LEP students in 1995. They noted that LEP students were not being fairly educated and evaluated within their schools. School districts failed to properly assess students in their own languages or implement programming for learning English, resulting in an overrepresentation of LEP students in Special Education programs. Teachers were not properly trained, dropout rates were well above average for LEP students, LEP students were being held back, and schools with higher percentages of LEP students were underfunded and underserved. In addition, schools were failing to find ways to communicate important information to parents who did not speak English or were themselves LEPs. Although this report only uses examples in which the OCR was able to work with the school districts in order to plan or implement changes to address the issues, all of the issues relating to LEP students were considered large and complex enough to be considered serious cases in need of investigation.

In 2001 President George W. Bush championed another amendment to the ESEA as one of his earliest moves as President. Just three days after taking office, Bush announced his plan to enforce bipartisan reform in education with the *No Child Left Behind Act* (NCLB). This amendment was designed to set rigorous standards of education for all schools to ensure a quality education for students regardless of demographics. This act made it so that funding for schools was highly based on their students' performance in accordance with the standards of individual states, especially the progress of underserved students, including those in English as a Second Language (ESL) programs. Many criticized this as punishing underperforming schools where instead, more resources should be provided to them to improve their education standards.² This was especially concerning as many schools with the highest percentage of underserved students were already underfunded areas. The NCLB Act was signed into law on January 8th, 2002.

Concerns of lack of funding for ESL programs were exacerbated in 2009 with the Supreme Court decision in *Horne v. Flores* "finding that structured English immersion is superior to other approaches and that money has little value in producing equal education conflict directly."³ Essentially ruling that schools were not required to fund their ESL programs and that they should be evaluated based purely on outcomes rather than the funding and resources given or the content of the programs. This not only disenfranchised many English Learners who could no longer claim discrimination based on underfunded or poorly run ESL programming, but it also reaffirmed the use of English-only ESL teaching as the best option. Despite using English-only ESL, facing significant criticism for being based on faulty research and alienating students from their native language.⁴

In 2015, the Obama administration implemented its own amendment to ESEA, titled the *Every Student Succeeds Act* (ESSA). ESSA was designed to fill in some of the holes in NCLB. One of this legislation's major parts includes allowing more education flexibility to states, schools, teachers, and parents. It is in the ESSA that the term "English Language Learner" or "English Learner" (ELL/EL) became part of the official governmental nomenclature for these students, largely replacing LEP. ELL was championed by activists as a replacement for LEP because of the belief that LEP terminology caused these students to be seen as deficient or underperforming as opposed to learning a new language.

Following the passage of the ESSA, the Department of Education created a page dedicated to ELLs which states:

Between the 2009–10 and 2014–15 school years, the percentage of EL students increased in more than half of the states, with increases of over 40 percent in five states. Under the *Every Student Succeeds Act*, states must annually assess the English language proficiency of ELs, provide reasonable accommodations for them on state assessments, and develop new accountability systems that include long-term goals and measures of progress for ELs.⁵

Much of the ESSA legislation surrounding ELs is the same or very similar to the NCLB, but it does offer some additional clarity and focus on issues that ELs face. As other laws before it did, the ESSA fails to account for bilingual ESL education. As mentioned above, the standard for ESL programs in the US is English-immersion based and includes no education in the students' native languages and no requirements for teachers to speak a language other than English. In recent years, however, we are seeing increased pushback against this method of instruction.

More schools have been implementing bilingual or “dual-language” programs, a method of teaching students half in English and half in their native language, for ELLs with astounding results.⁶ Not only has this method of instruction shown a significant increase in progress and test scores for ELLs, but it has also been shown to increase the performance of native English-speaking students in school and testing⁷ and may have a significant impact on cultural sensitivity and understanding within schools. This type of programming also allows ELLs to feel more confident in their identities and more connected to their families and native languages. This type of instruction is championed by many bilingual teachers, students, and activists but also by Indigenous Americans. Although most Indigenous Americans speak English as their first language, dual-language programming is seen as a way that they might preserve their Native languages and push back against the punishment and discrimination they have long faced for speaking those languages in schools. If taken further, bilingual or multilingual programming in schools, when not applied exclusively to English Learners, could also result in greater multilingualism in native English speakers.

This movement in education has been complimented by a push to change the language classifying this student population once again. The term currently being advocated for in many circles is “Emergent Bilingual” (EB) which can be seen in use in a recent Texas law.⁸ The argument for this terminology is twofold. For one, it focuses on the fact that these students are becoming bilingual which is an achievement. It

prioritizes the fact that these students already know one language and does not define them by the fact that they don't know English.⁹ For the other part, this terminology is cohesive with programs like the Seal of Biliteracy,¹⁰ which gives special recognition to students who have successfully learned a second language by the time they graduate high school, including students who have learned English in American schools. Using this terminology does not only reframe these students to take away negative connotations but actively celebrates their achievement in knowing multiple languages in a country where 78 percent of the population speaks exclusively English.¹¹ This could significantly affect American education in general, as 79 percent of Americans believe knowing a second language within the current job market is at least somewhat important.¹²

Interestingly, the 1994 Government Accountability Office report did talk about bilingual education for English Learners. Although they did not investigate whether bilingual or English immersion programs were superior, they noted that many people thought bilingual education was preferable even then. They also brought up that bilingual education programs can be difficult to implement for schools, especially schools that have many languages represented. At the time, answers to this problem were limited, but today it begs the question of whether programs outside of schools, especially online, might be used to help these students succeed. The report also notes that one of the major benefits of bilingual education is helping ELLs keep up with their peers in other aspects of education while they are in the process of learning English, a very important consideration for the success of these students.

The 2020 Annual Report for the OCR was published in the final year of the Trump administration when President Donald Trump was campaigning for reelection. This may be why the report focuses quite strongly on the performance of the OCR in relation to the Trump administration as well as Betsy DeVos' time as Secretary of Education. At the start of the document, Acting Assistant Secretary for Civil Rights Kimberley M. Richie states:

During the last four years, we achieved historic results and resolved more discrimination complaints than either of the previous two administrations did in any previous single term . . . In addition, under the Trump Administration, OCR's complaint resolutions outpaced the number of complaints received during each of the four years of the term. . . . During the eight years of the previous administration, OCR's resolutions unfortunately failed to keep pace . . . In

fact, under the previous administration, OCR's complaint backlog more than tripled.¹³

The entire document goes on to compare the OCR under the Trump administration directly to the OCR under the Obama administration. This is a strong departure from the 1995 annual report, which references the current administration only once in discussing how they have improved as an organization and never names President Clinton.

Despite this politically motivated commentary, the 2020 report also states that of the 10,185 complaints "resolved" in FY 2020, only 1,362 were "resolved with change."¹⁴ It is unclear how the remaining 8,859 cases were resolved or why no change was necessary. Like the 1995 report, the 2020 report focuses on cases where the OCR successfully implemented change. This report says that in 2020 the OCR resolved 35 cases of discrimination against ELLs,¹⁵ it is not clear how many were resolved with change. They offer two example cases they dealt with for discrimination against ELLs.¹⁶ The first deals with a school district that was not providing adequate ESL programming and lacked monitoring and interventions for Long-Term English Learners (LTELs), defined as students who have been in American schools for at least six years without significant improvement in the English language. The second deals with another school district failing to provide important documents and information to parents who are not fluent in English in a language they understand. This was particularly an issue with non-English speaking parents of disabled students. Both sample cases were resolved voluntarily by the school district.

Although many amendments have been made to the ESEA since 1994, all of which relate to ELLs, it is questionable how much this legislation has done for students. Issues are still seen in the funding, training, and general quality associated with ESL programming, including discrimination against ELL students. Research also shows that ELLs are still overrepresented in special education programs.¹⁷ There are still no strong federal regulations for ESL programs, with much left up to individual state laws and assessments. US schools continually fail to prioritize bilingual education for ELLs and all students. The lack of progress in this realm is largely due to the US government's failure to consistently prioritize and fund programs and resources for ELL students. Furthermore, due to rulings like *Horne v. Flores*, ELLs face limited options in claiming that schools discriminate against them. We do see some progress on the state level with Texas' use of the term "Emergent Bilingual" as well as the dual-language programs emerging in states such as California, but stronger regulations and resources are necessary to ensure the future of Emergent Bilinguals in this country.

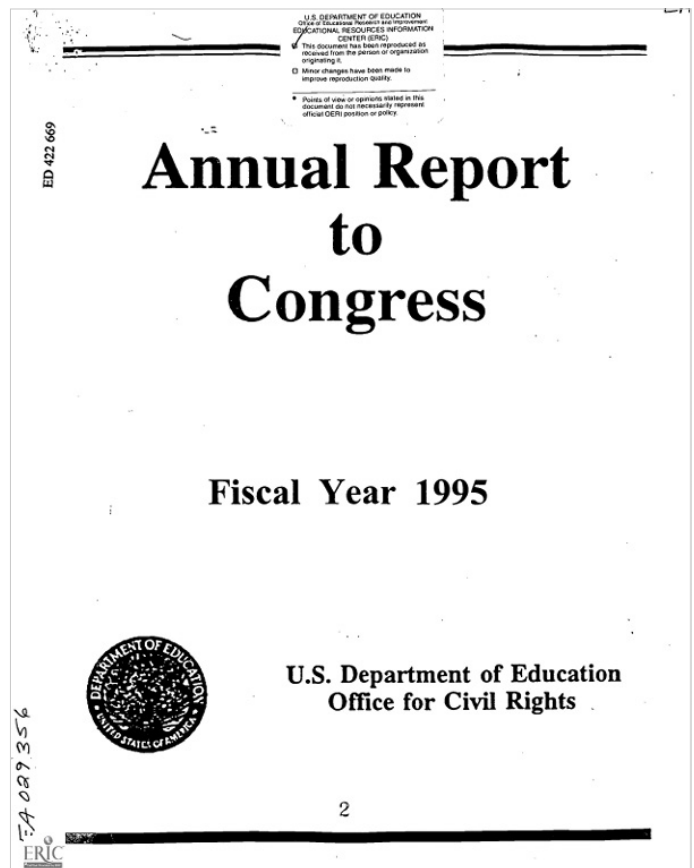


Figure 4. Screenshot of US Department of Education Office for Civil Rights Annual Report to Congress for Fiscal Year 1995. Source: United State, Office for Civil Rights, Department of Education. "U. S. Department of Education Office for Civil Rights 1995 Annual Report to Congress." US Department of Education. 1996. <https://www2.ed.gov/about/offices/list/ocr/congress.html>.

This report provides an overview of the work of the Department of Education's Office for Civil Rights for the 1995 fiscal year. Discusses the changes in the OCR over the past year and details the types of discrimination that the OCR responded to and how they responded to a sampling of cases, including those related to LEPs. This report is very useful in understanding the types of discrimination that ELLs were experiencing in schools in 1995 as well as the kinds of interventions that were implemented at that time. Offers considerable context for later legislation and documentation. Only notes cases where the OCRs intervention was successful and offers no outlets for follow-up with how those schools continued to perform in terms of English bilingual programs.

This report from the Government Accountability Office (GAO) investigates obstacles affecting LEPs as well as best practices for integrating, educating, and helping these students succeed in US schools. This report looks at a number of different methods of English education from bilingual teaching to the unconstitutional "submersion method" in which students

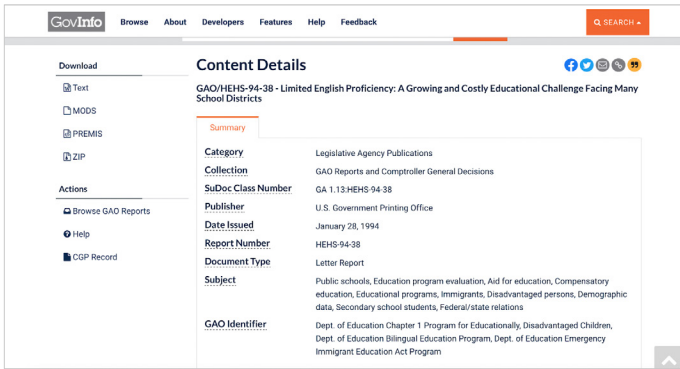


Figure 5. Screenshot of Government Accountability Office Report on Limited English Proficiency: A Growing and Costly Educational Challenge Facing Many School Districts. Source: Health, Education, and Human Services Division, Government Accountability Office. "GAO/HEHS-94-38—Limited English Proficiency: A Growing and Costly Educational Challenge Facing Many School Districts." US Government Printing Office. January 28, 1994. <https://www.govinfo.gov/app/details/GAOREPORTS-HEHS-94-38>.

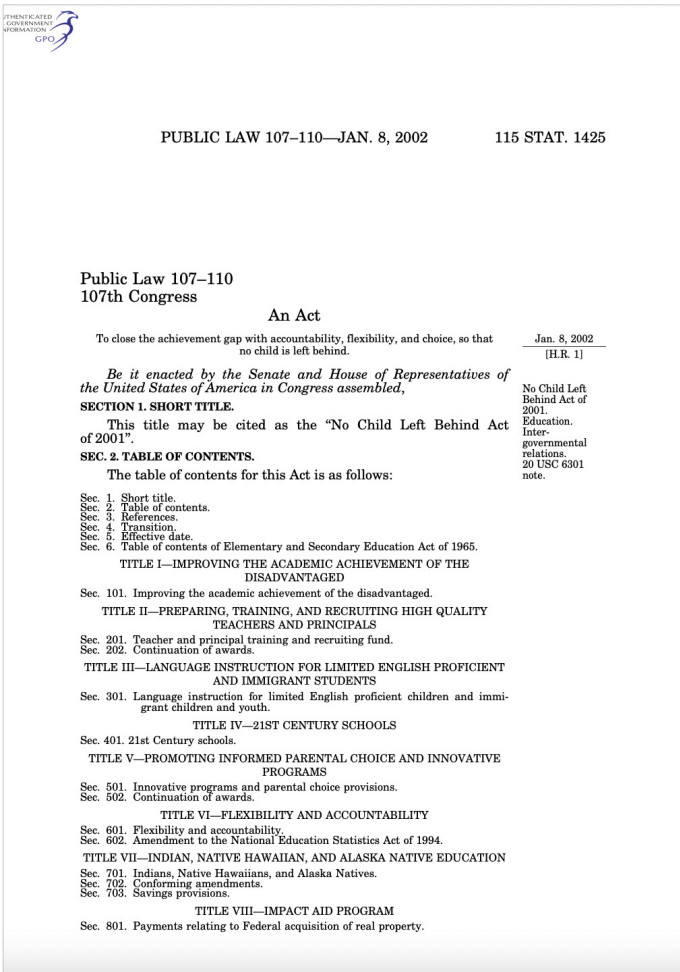


Figure 6. Screenshot of the No Child Left Behind Act of 2001. Source: "H.R.1—107th Congress (2001-2002): No Child Left Behind Act of 2001." Congress.gov, Library of Congress, 8 January 2002, <https://www.congress.gov/bill/107th-congress/house-bill/1/text>.

are simply placed in normal American classrooms. This report also tackles the cost of teaching these students and the funding

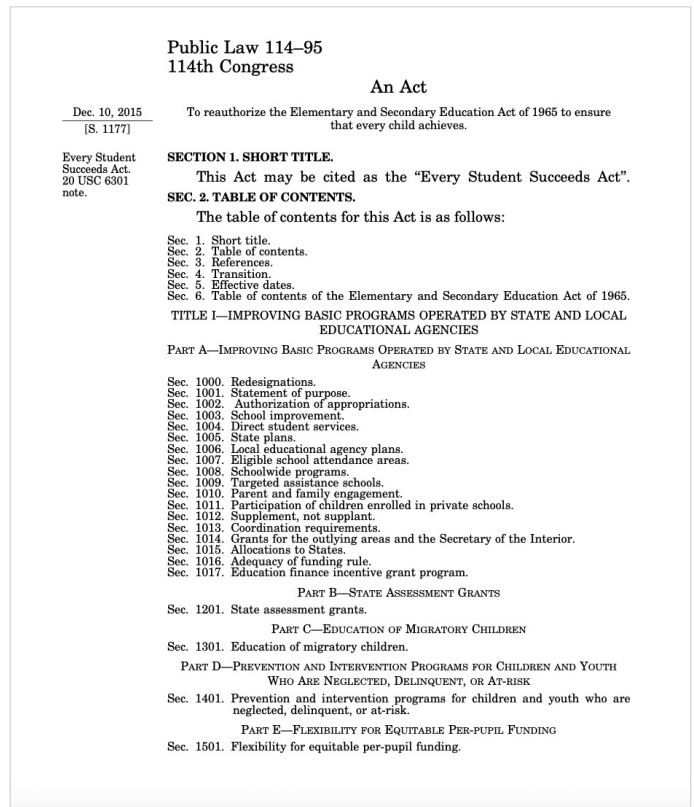


Figure 7. Screenshot of the Every Student Succeeds Act of 2015. Source: "S.1177—114th Congress (2015-2016): Every Student Succeeds Act." Congress.gov, Library of Congress. 10 December 2015. <https://www.congress.gov/bill/114th-congress/senate-bill/1177/text>.

needs of being able to serve them appropriately. This report offers significant context for the discussion on the needs of ELL students. It proves that discussions have been happening, including within the government, about these best practices and how these students are being taught in a way that is still highly relevant today as far back as 1994 despite the fact that legislation has not reflected this. It also raises very important concerns and facts that may be addressable today in a way they weren't in 1994 due to the development of new technologies.

This document is an Amendment to the *Elementary and Secondary Education Act* signed into law by George W. Bush on January 8th, 2002. This Act introduces increased regulations for the instruction of marginalized students with a focus on low-income, limited English proficiency, and racial minority students. It introduced basing funding for schools on their successful adherence to state educational standards and offered vouchers for other schools to families with students in schools where they were underserved. The NCLB Act is an important part of the history of these students and a very memorable part of the Bush administration to many people. This act was somewhat controversial because many view it as punishing schools that need more resources and consider that there may be an

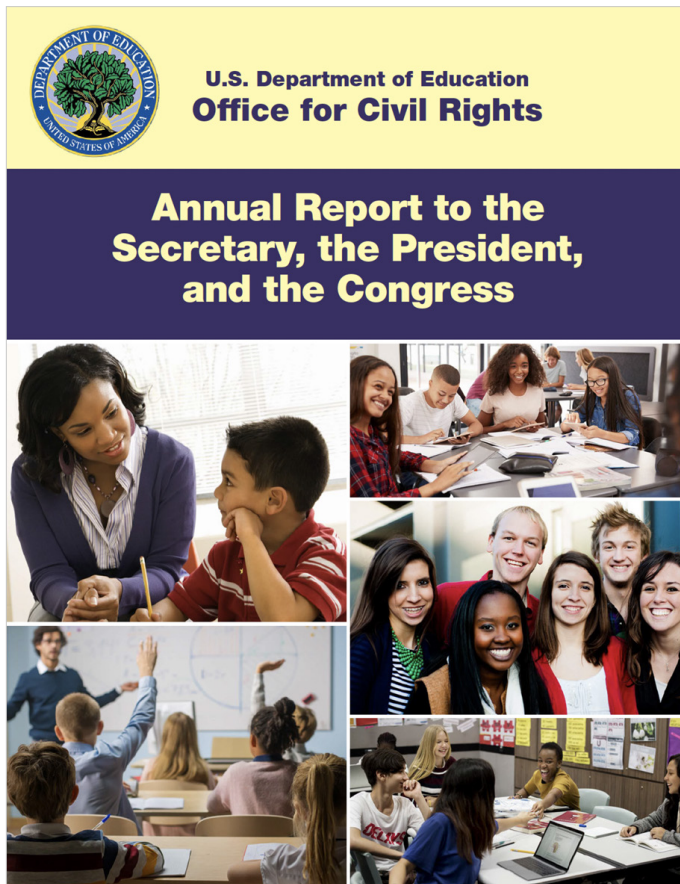


Figure 8. Screenshot of US Department of Education Office for Civil Rights Annual Report to Congress for Fiscal Year 2020. Source: United States, Office for Civil Rights, Department of Education. "Annual Report to the Secretary, the President, and the Congress." US Department of Education, 2021. <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2020.pdf>.

ulterior motive to provide private school vouchers. This Act is of highly questionable benefit, with many claiming it has done more harm than good but is undoubtedly central to modern considerations of this issue.

This Act of Congress is a 2015 amendment to the *Elementary and Secondary Education Act* signed into law by President Barack Obama. This Act is designed to improve upon the last amendment to the ESEA, *No Child Left Behind*. It changes the prescriptive regulations of NCLB to give schools more flexibility and create more realistic and helpful standards. It additionally offers more tools to teachers in addition to students. It also introduces regulations for preschool education. The ESSA did not implement many changes specifically in relation to ELLs over NCLB; however, it did create more flexibility for schools by getting rid of some of the outdated regulations implemented in NCLB and offered significant resources for low-income students and provided additional funding which significantly impacted ELL students, many of whom come from low-income backgrounds. Demonstrates the continual consideration of

presidential administrations to make changes to and hopefully improve the state of the US education system.

This report provides an overview of the actions of the OCR for the 2020 fiscal year, this document details examples of the types of discrimination cases that the OCR responded to in 2020, how they responded, and the outcomes. This report particularly focuses on exploring how they addressed those issues in an education system dealing with the ramifications of Covid-19. Additionally describes how the OCR developed not only between the 2019 and 2020 reports but in general during the Trump Administration. The 2020 report strongly focuses on the Trump Administration, which adds valuable context to tracking these issues by presidential term. Like the 1995 report, there is still a focus on positive outcomes, additionally, this report has fewer examples of discrimination against ELLs than the 1995 report. Offers valuable context to how Covid-19 changed the playing field when it comes to tackling discrimination.

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Notes

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