



The Rights of Immigrant Children and English Learners in the Tennessee Public Schools

Roger Rosenthal – Keynote Speaker

2023 Federal Programs Institute

Title III Day

Nashville, Tennessee

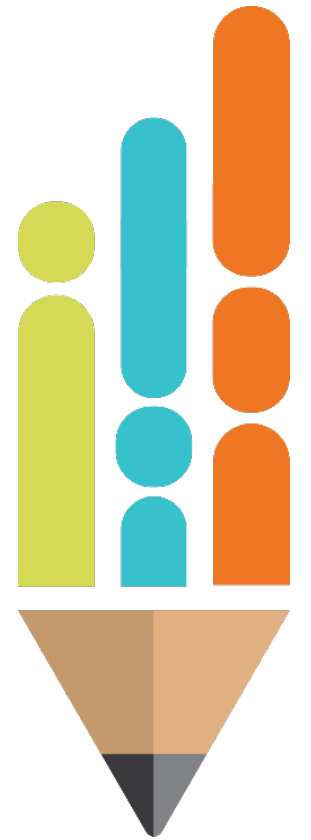
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Norms and Expectations

- Take calls and necessary phone communications outside of the session room.
- Remain engaged.
- Visit a team member at the registration table if you have questions about the conference.
- All session slide decks are available in ePlan > TDOE Resources > Federal Programs and Oversight (FPO) > Federal Programs Professional Development > 2023 Federal Programs Institute



Introductions

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I. Overview of the Issues

- Demographic changes
- Questions or confusion regarding the law and obligations of a school district
- Importance of school for all children



II. Fears of Immigrant Parents and Those Not Fluent in English

- Parents viewing public schools as Government institutions
- Public discourse about immigration/legislation
- Immigration enforcement

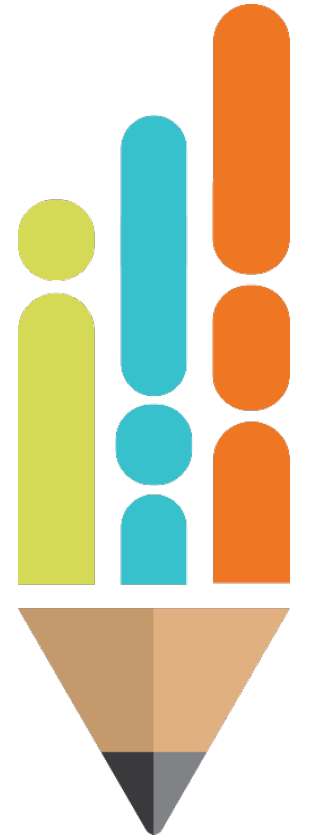


III. Basic Principles/Definitions



IV. Right to Attend Free Public School

- U.S. Supreme Court case of Plyler v. Doe
- History of the case
- Holding of the case and its meaning



V. Social Security Numbers Cannot Be Required for School Admission

- Impact of Plyler on this issue
- Privacy Act of 1974



VI. Five Other Enrollment Issues

- Immigration Documents
- Birth Certificates Are Not Required in Tennessee for School Enrollment
- Immunizations—Public Health Concerns
- Who Can Enroll A Child?
- Residency



Information on School District Websites



VII. School Lunch and Breakfast

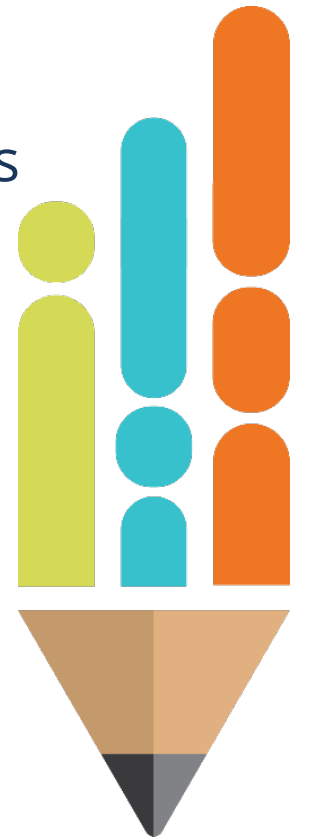
- No Social Security Number is Required
- Application and Instructions Must Be Translated or Explained in the Parent's Dominant Language
- Categorical Eligibility for Homeless Children, Migrant Children, Runaway Youth, and Foster Children



Free and Reduced Lunch Applications

PART 5. SIGNATURE AND LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER (ADULT MUST SIGN)

- An adult household member must sign the application. If Part 4 is completed, the adult signing the form also must list the last four digits of his or her Social Security Number or mark the “I do not have a Social Security Number” box. (See Statement on the back of this page.)
- *I certify (promise) that all information on this application is true, and that all income is reported. I understand that the school will get Federal funds based on the information I give. I understand that school officials may verify (check) the information. I understand that if I purposely give false information, my children may lose meal benefits, and I may be prosecuted.*



Free and Reduced Lunch Applications

■ Sign here:

Print name:

■ Date:

■ Address:

Phone Number:

■ City: State:

Zip Code:

■ Last four digits of Social Security Number: * * * - * * - _____

I do not have a Social Security Number



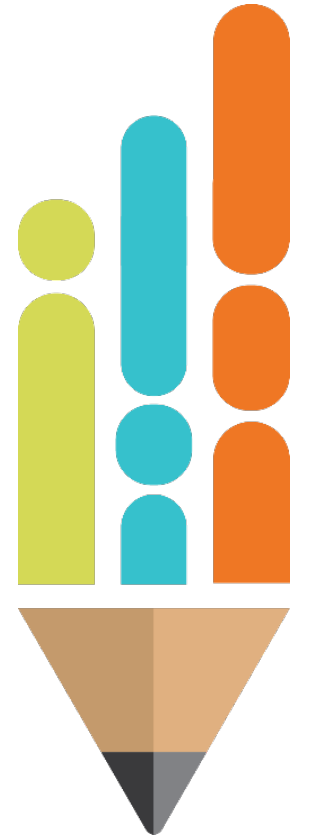
VIII. Language Rights Issues

Lau v. Nichols

414 U.S. 563 (1974)

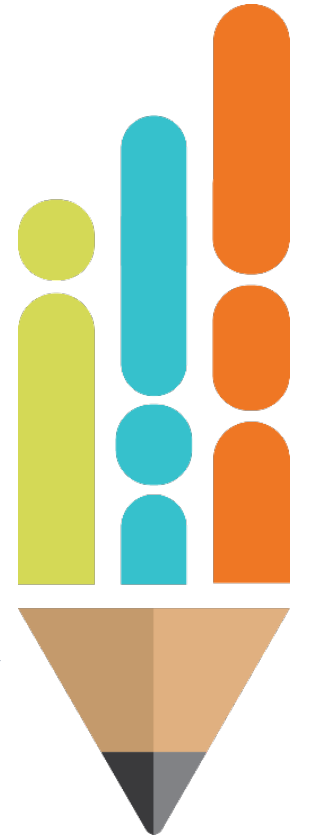
Title VI of the Civil Rights Act of 1964 states:

“No person in the United States shall, on the ground 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.”



VIII. Language Rights Issues

- The U.S. Supreme Court held (1) that discrimination on the basis of language proficiency is discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964 and (2) that treating people with different needs in the same way is not equal treatment.
- In Lau, the U.S. Supreme Court stated, in part, “Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired these basic skills, is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.”



Castaneda v. Pickard

648 F.2d 989 (5th Cir. 1981)

- The Court of Appeals articulated a three-part test for assessing a school system's treatment of limited English proficient students. The standard requires:
 - (1) a sound approach to the education of these students;
 - (2) reasonable implementation of the approach; and
 - (3) outcomes reflecting that the approach is working.



IX. Practical Issues

- School districts MUST translate or interpret documents for parents not fluent in English (into their language). This does not have to be in writing, so long as the parent understands what is in the content of the document.
- [e.g., OCR cases such as Cleveland Metropolitan School District, Tulsa Public Schools, Dearborn (MI) Public Schools, Paradise Valley Unified School District]



IX. Practical Issues

- Documents which must be translated or explained in the parent's native language include:
 - Permission slips for field trips
 - Manuals which have information about rules for students or parents that are enforced by district personnel. Often these rules pertain to disciplinary procedures, school hours, truancy, who is permitted to pick up a student, dress code, etc.
- Report cards



IX. Practical Issues

- Parent-teacher conferences must be interpreted!
- It is the legal obligation of the district to provide the interpreter
- The district cannot ask the parent to provide an interpreter.



IX. Practical Issues

- Translators/Interpreters provided by the district must be competent!
- It is illegal and inappropriate for a school district to use children/students to do the translation/interpretation!



Placement/Retention

- Placement cannot be made based on English language proficiency.
- Placement should be age appropriate.
- For example, if the child is 9 years old, the child should be placed in fourth grade.
- Retention cannot legally be made based on lack of English language proficiency.

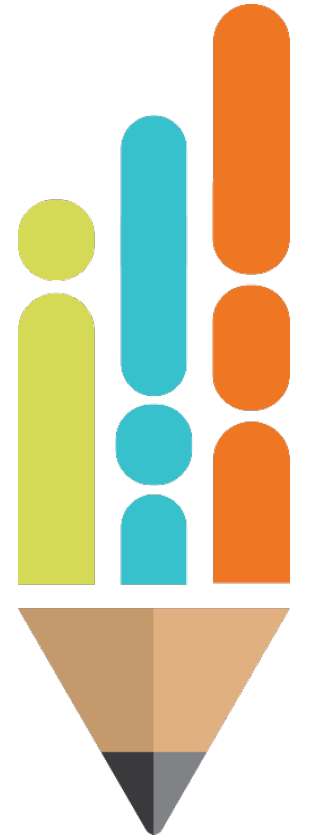


Third Grade Retention Policy

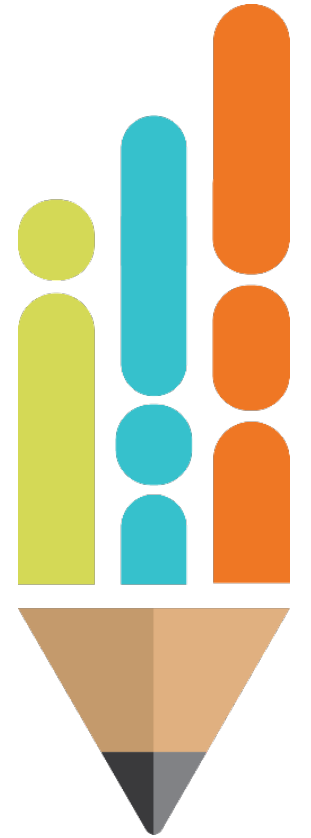


X. Special Ed and ELs

- Students who are eligible for Special Education and ESL services are protected by both IDEA and Title VI.



Testing ELs for Special Education



XI. Access to Post Secondary Education

- Immigrant children in Tennessee are not barred from enrolling in any public institution of higher learning.
- Undocumented students have to pay out-of-state tuition.
- Children who are undocumented, including DACA students, do not have a right to federal grants or loans.



XII. Deferred Action for Childhood Arrivals (DACA)

- On June 15, 2012, the Obama Administration issued a policy which is formally titled:
- Deferred Action for Childhood Arrivals (DACA)
- This policy is an exercise of “prosecutorial discretion.”
- It is, therefore, a policy set by the administrative branch.



XII. Deferred Action for Childhood Arrivals (DACA)

True or False?

The DACA policy allows eligible youth to gain legal status.

False.

XII. Deferred Action for Childhood Arrivals (DACA)

- This policy protects a qualified undocumented individual from deportation.
- The individual remains and is still **undocumented**. They are not “legalized” in any manner. They just will not be deported.



XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- To be eligible for deferred action, you must:
 - have come to the United States before your sixteenth birthday,
 - have continuously lived in the U.S. since June 15, 2007, and up to the present time, and
 - be present in the U.S. on June 15, 2012, and at the time of making your request for deferred action.



XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- Not have lawful immigration status on June 15, 2012. This means you must have entered the U.S. without papers before June 15, 2012, or, if you entered lawfully, your lawful immigration status must have expired as of June 15, 2012.
- Be at least 15 years old, if you have never been in deportation proceedings or your proceedings were terminated. (If you are currently in deportation proceedings, have a voluntary departure order, or have a deportation order, and are not in immigration detention, you may request deferred action even if you are not yet 15 years old).



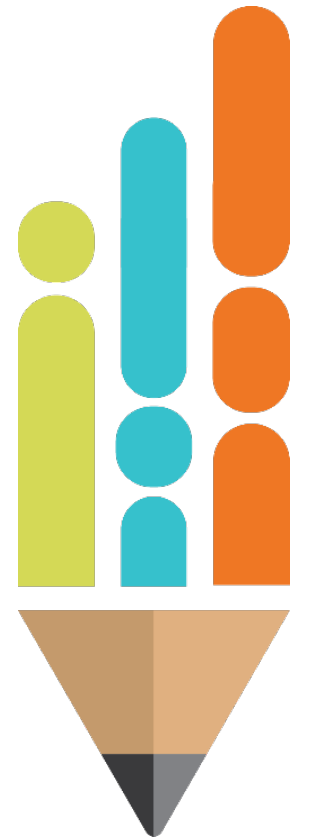
XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- Be 30 years old or younger as of June 15, 2012 (a person who had not yet turned 31 on that date is also eligible)
- Be in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or be an honorably discharged veteran of the Coast Guard or U.S. Armed Forces



XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- Have not been convicted of a felony offense. A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year
- Have not been convicted of a significant misdemeanor offense or three or more misdemeanor offenses
- Not pose a threat to national security or public safety
- Pass a background check



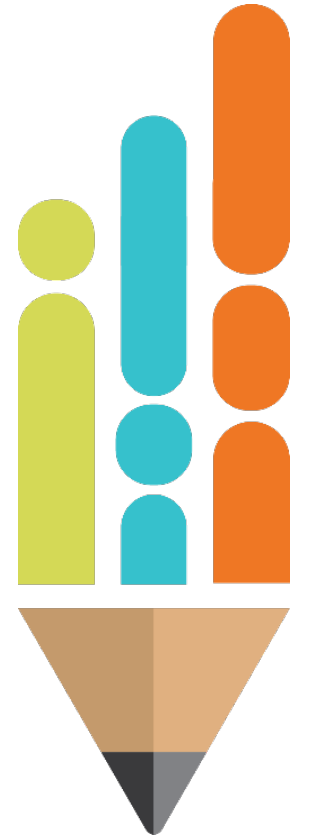
XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- What are the fees associated with the deferred action application?
- \$495, which includes a fee for the employment authorization application.



XII. Deferred Action for Childhood Arrivals (DACA) Application Process

- Those currently with DACA status may renew their status every two years.
- However, the DACA Program is being challenged in federal court at this time.

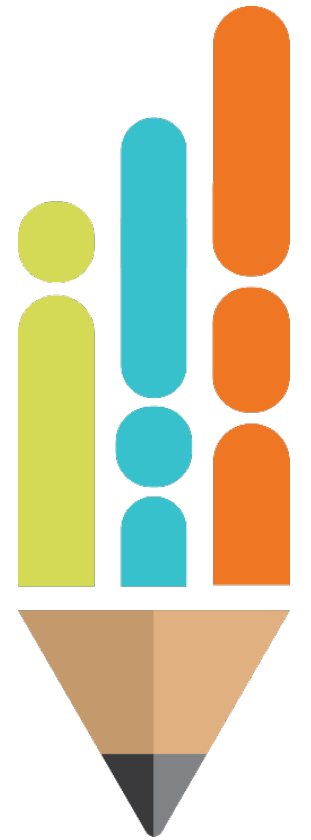


XIII. 2021 “Protected Areas” Memo

- Schools, houses of worship, hospitals



XIV. Scenarios



XV. Conclusion/Questions



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