

LEP student rights

Chronology of events

| Event | Significance for LEP individuals |
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| <p>1868 – Section 1 - Fourteenth Amendment to the constitution: The equal protection clause “<i>No state shall . . . deny to any person within it’s jurisdiction the equal protection of the laws.</i>”</p> | <p>Even though at the time it was passed, the purpose of the fourteenth amendment was to extend equal rights to former slaves; its significance to LEP individuals is that it provides equal protection (ie. non-discrimination) to people whose first language is not English. Later court rulings further explained and examined the relationship between LEP individuals and the equal protection clause.</p> |
| <p>1954: Brown vs. Board of Education (Supreme Court). <i>“Separate educational facilities are inherently unequal.”</i></p> | <p>Again, even though the purpose of this court ruling was to overturn de facto segregation, it has been cited in court cases involving LEP students since LEP students may not be able to access the curriculum even though they have the same materials and facilities.</p> |
| <p>Title VI – 1964 Civil Rights Act: <i>No person in the United States shall, on the ground of race, color, or <u>national origin</u>, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.</i></p> | <p>As demonstrated later in this chronology, courts have traditionally viewed “<u>national origin</u>” to include an individual’s first language. Title VI of the 1964 Civil Rights Act is often referenced when discussing the rights of LEP students.</p> |
| <p>1970 HEW (Department of Health, Education and Welfare) memo: <i>Identification of Discrimination and Denial of Services on the Basis of National Origin (NOM)</i></p> | <p>To assist agencies receiving federal funding in understanding how to meet the needs of “<i>Spanish surnamed</i>” students, the HEW issued this memo. The memo looks at areas of major concern with regard to national origin discrimination. To be in compliance with Title VI of the 1964 Civil Rights Act, the HEW states that:</p> <ol style="list-style-type: none"> 1. When you have NOM students, you must take affirmative steps to help these students overcome language deficiency. 2. Schools must not assign LEP students to classes for the “<i>mentally retarded</i>” based on criteria that essentially measure English language ability. 3. Any ability grouping of NOM students . . . must be designed to meet the language skills need as soon as possible, but cannot be a “dead-end.” |
| <p>1974 Lau v. Nichols: <i>Class action law suit brought on behalf of approximately 2,900 Chinese speaking students in the San Francisco unified school district. Plaintiffs claimed that the school district is not meeting the language needs of these Chinese students. Ninth Circuit finds in favor of the school</i></p> | <p>This is the seminal case for LEP student rights and set into motion a lot of the policy we see today regarding our instructional responsibilities to LEP students. The Supreme Court referenced and reconfirmed the validity of the 1970 HEW memo and Title VI of the 1964 Civil rights act in their decision. Justice Douglas wrote for the majority opinion of the court. “<i>Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for</i></p> |

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| <p><i>district. However, a certiorari appeal is made to US Supreme Court which overturns the lower court ruling.</i></p> | <p><i>students who do not understand English are effectively foreclosed from any meaningful education.” Because of this case, you may hear LEP student compliance referenced as “Lau compliance.” For a short time there existed “Lau remedies” which were seen as too restrictive and eventually were discarded during the Reagan administration.</i></p> |
| <p>1981 Castañeda v. Pickard: <i>Roy Casteñeda claimed that the Raymondville Independent School District (RISD) for the Southern District of Texas was discriminating against his children because of their ethnicity. He argued that they were segregated because of their cultural and language differences. Federal Court ruled in favor of RISD. Casteñeda appealed. US Court of Appeals for the 5th Circuit ruled in favor of Castañeda.</i></p> | <p>To determine whether or not a program was effective in meeting the needs of LEP students, the 5th Circuit Court of Appeals’ Casteñeda decision established criteria used to determine the effectiveness of a program.</p> <ol style="list-style-type: none"> 1. LEP program must be based on sound educational theory and pedagogy. 2. The program must be implemented with sufficient materials, resources and personnel. 3. A system must be established to evaluate the effectiveness of the LEP program. |
| <p>1985 United States Department of Education – Office of Civil Rights – Document titled “Title VI Language Minority Compliance Procedures.” <i>OCR reissued the memo/document in 1990.</i></p> | <p>Reiterates school districts’ responsibilities to LEP students. Gives the history of the demise of the Lau remedies and mandated bilingual education. OCR explicitly lists its current compliance procedures when working with LEP students.</p> <ol style="list-style-type: none"> 1. School districts may use any alternative instructional program to meet LEP student language needs. 2. Chosen program promises success or has been proven successful. <ol style="list-style-type: none"> a. Based on sound design; agreed upon by some experts. b. Can the alternate program effectively serve LEP students as soon as reasonably possible? c. Is the alternative program evaluated periodically? <p><i>“OCR staff is not in the position to make programmatic determinations and does not presume to make those decisions.”</i></p> |
| <p>1991 Memorandum from OCR: <i>Policy Update on Schools’ Obligations toward National Origin Minority Students with Limited English Proficiency (LEP Students).</i></p> | <p><i>“This policy update is primarily designed for use in conducting Lau compliance reviews” (M. Williams – Assistant Secretary for Civil Rights).</i></p> <p>As noted above, Lau compliance is the primary purpose of this document. This document also goes into greater detail regarding the alternative language instruction programs and repeats the Casteñeda three part standard mentioned above. The document repeatedly references the May 1970 HEW memo and the 1985 OCR memo.</p> <p>The detail in this OCR document is much greater than</p> |

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| | <p>anything previously released from OCR regarding LEP programs. Among some of the noteworthy pieces of guidance from this memo are:</p> <ul style="list-style-type: none"> • <i>“ESL teachers need not be bilingual if the evidence shows that they can teach effectively without bilingual skills.”</i> • This document addresses possible exit criteria (from ESL) for LEP students. • <i>“Many districts design their LEP programs to temporarily emphasize English over other subjects . . . once LEP students become proficient, schools retain an obligation to provide assistance necessary to remedy academic deficits that may have occurred in other subjects while the student was focusing on learning English.”</i> • Addresses the issue of double-service of LEP/EC students. <i>“In addition, compliance reviews should find out whether recipients have policies of “no-double service”: that is, refusing to provide both alternative language services and special education to students who need them.”</i> • Addresses the issue of LEP students in gifted and talented programs. <i>“The exclusion of LEP students from specialized programs such as gifted/talented programs may have the effect of excluding students from a recipient’s programs on the basis of national origin, in violation of [Title VI of the 1964 Civil Rights Act].</i> • This document states that programs must be evaluated to be deemed successful; however the document also gives flexibility in defining success. <i>“Generally, “success” is measured in terms of whether the program is achieving the particular goals the recipient has established . . .”</i> |
| <p>April 6, 2009 – North Carolina Department of Public Instruction – Title III Dept. Memorandum on Co-teaching: Clarification of Co-teaching as an approved method of a language instructional program.</p> | <p>This document defines what is considered acceptable and unacceptable in a co-teaching program for LEP students. The elements of co-teaching defined in this memo include:</p> <ul style="list-style-type: none"> • The ESL teacher co-teaches with equal responsibility as the mainstream teacher. • LEP students are thoughtfully and purposefully placed with teachers who agree to do the co-teaching model. • Planning time is purposefully scheduled so that the ESL and mainstream teachers can plan together. • Co-teaching is most appropriate with intermediate LEP students. • Generally the ESL teacher will work with no more than three teachers in the co-teaching model. |

Additional legal and policy precedents of interest to individuals
working with LEP students

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| FEDERAL | <p>1965 Elementary and Secondary Education Act (ESEA) – <i>This act was reauthorized in 1967 to include Title VII for bilingual education. This act was most recently reauthorized in 2000 and nicknamed the “No Child Left Behind” Act. During this reauthorization, Title VII (bilingual education) was changed to Title III – Language Instruction for Limited English Proficient and Immigrant Students.</i></p> <ul style="list-style-type: none"> • <i>Includes the way that federal funds for LEP programs are allotted to states who then determine how they allot to districts.</i> • <i>Includes AMAOs (Annual Measurable Achievement Objectives) for LEP students.</i> • <i>Includes need for an annual assessment for LEP students.</i> |
| FEDERAL | <p>1974 Equal Education Opportunities Act (EEOA): <i>This act bars segregation in schools and requires that districts work to overcome barriers to students’ equal participation. Note: that the 1970 HEW memo stated that any grouping of LEP students for instructional purposes must be short term and not a “dead end”</i></p> |
| FEDERAL | <p>1974 Family Educational Rights and Privacy Act (FERPA): <i>Parents and students should have access to their records with some control over who can access these records. Records must be securely transmitted.</i></p> |
| FEDERAL | <p>1982 Plyer v. Doe: <i>US Supreme Court struck down state law in Texas that denied a public education to undocumented students. Court found that this violated the 14th amendment of the U.S. constitution.</i></p> |
| North Carolina General Statute | <p>G.S. 115C-407.5 Educational program placement – <i>The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to:</i></p> <ol style="list-style-type: none"> 1) <i>gifted and talented programs; and</i> 2) English as a second language (ESL). <p><i>This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.</i></p> |
| North Carolina General Statute | <p>G.S. 99D-1. Interference with Civil Rights. – <i>Gives guidance on the protection of an individual’s civil rights.</i></p> |

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| <p>North Carolina Board of Ed.</p> | <p><u>GCS-A-012</u> – Annual Measureable Achievement Objectives for LEP students – <i>The North Carolina State board of education meets the NCLB directive to have annual measurable achievement objectives.</i></p> |
| <p>North Carolina Board of Ed.</p> | <p><u>GCS-K-000</u> - LIMITED ENGLISH PROFICIENCY PROGRAMS – This North Carolina Board of Education policy addresses the need to create an alternate program model for LEP students. It also addresses the program design, implementation and success as mentioned earlier in the <i>Casteñeda v. Pickard</i> court ruling. Likewise, you’ll also find the mandate that each child will take a <u>home language survey</u>.</p> <p><i>“A home language survey shall be administered to every student at the time of enrollment and maintained in the student's permanent record. LEAs shall then identify and assess every limited English proficient student who needs assistance in order to have access to the unit's instructional programs. Each LEA which identifies limited English proficient students who need assistance shall adopt an effective method of determining the students' current level of English proficiency in order to determine what types of assistance are needed.”</i></p> |