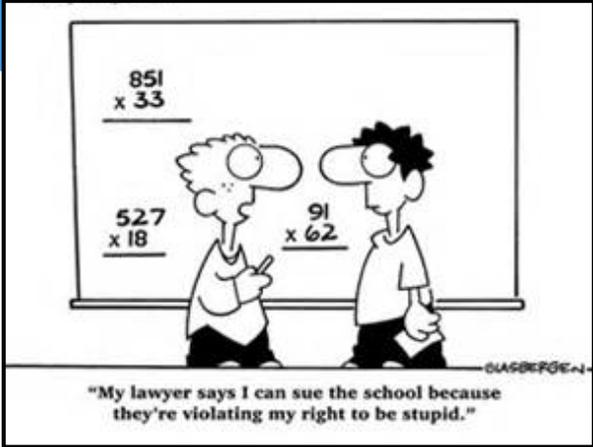




**NORTH DAKOTA DEPARTMENT OF
PUBLIC INSTRUCTION**

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851
x 33

527
x 18

91
x 62

—CHARLES SCHREYER—

"My lawyer says I can sue the school because they're violating my right to be stupid."



ESSA and Title III

AGENDA

- ▶ ESSA Timeline
- ▶ Title III in 2015/16-2016/17
- ▶ ESSA provisions for
 - Limited English proficient students
 - English language learners
 - English learners

ESSA Timeline

- ▶ President Obama signed into law on December 10, 2015
- ▶ USED has begun the regulatory process for ESSA
 - Negotiated rulemaking on assessments and “supplement not supplant” requirements in Title I Part A (March-April)
 - Draft Regulations on other issues at USDE discretion released (projected May-July)
 - Final regulations projected late fall 2016
- ▶ 2016-2017 (TRANSITION YEAR) Title III funds will continue under NCLB.
- ▶ 2017-2018 ESSA takes effect for formula grants (Title I, II, and III, etc.)

Title III in 2016–2017 (Transition Year)

- ▶ Accountability remains under NCLB
 - Frozen AMAO accountability (like Program Improvement)
 - ELL Program Requirements (handout)
 - Title III guidance
www.nd.gov/dpi/SchoolStaff/IME/ELL/guidance/
- ▶ Ensure Civil Rights are not violated
 - Student Rights guidance (handout)

Title III in ESSA (July 1, 2017)

Same:

- ▶ Subgrants of sufficient size and scope
- ▶ Must annually assess the English proficiency of English learners
- ▶ States must monitor subgrantees for compliance
- ▶ English language proficiency assessment must be aligned to the state's English language proficiency standards

Title III in ESSA

Changed:

- ▶ English learners (no longer LEP or ELL)
- ▶ Includes preschool teachers
- ▶ Includes family and families in the parent involvement
- ▶ Establish statewide entrance and exit procedures
- ▶ Annual measurable achievement objectives have been removed as previously defined
- ▶ State shall make every effort to develop annual academic assessments in native languages
- ▶ Moves accountability into Title I so the state has one accountability system

Subgrantee Required Activities

Subgrantees must provide effective language instruction educational programs (LIEP) that:

- ▶ Meet the needs of ELs
- ▶ Demonstrate successes in increasing ELP and student academic achievement
- ▶ Provide effective professional development to classroom teachers and other school staff
- ▶ Provide and implement other effective activities and strategies including parent, family, and community engagement

Subgrantee Allowable Activities

Subgrantees may use Title III funds to:

- ▶ Upgrade program objectives and effective instructional strategies
- ▶ Upgrade curricula and materials, etc.
- ▶ Provide ELs with
 - tutorials and/or career and technical education
 - intensified instruction including materials in a language students understand or translators
- ▶ Developing LIEPs at all levels PK-12
- ▶ Offer early college high school or dual credit courses

Title III in ESSA

LEA plan to the State (Consolidated Application)

- ▶ Contents similar
 - Describe effective programs and activities
 - Describe how the schools will assist ELs in achieving English language proficiency and meeting academic standards
 - Describe how entity will promote parent, family, and community engagement
- ▶ Assurances: Similar to before with 'other' requirements removed
 - AMAOs, parent notification, SBR, not in violation of laws, and will assess all EL students

Title III in ESSA

- ▶ Evaluations changed to 'Reporting'
 - Number and percentage of ELs making progress toward ELP
 - Number and percentage of ELs attaining proficiency
 - Number and percentage of ELs meeting State academic standards for each of the **FOUR** years after exit
 - Number and percentage of ELs who have not attained ELP within **FIVE** years of identification

LEAs report to the SEAs, which in turn report to the USDE

Where do we go from here?



ESSA

- ▶ Continue to carefully review law
- ▶ Continue to receive and review USDE ESSA guidance
- ▶ Engage with stakeholders to obtain insight and feedback
 - ESSA Planning Committee
 - Consolidated ESSA State Plan
- ▶ 2016-2017 Title III is under NCLB
 - with AMAO accountability frozen
- ▶ NDDPI website:
www.nd.gov/dpi/SchoolStaff/FTP/Reauthorization/

ESSA Planning Committee



Innovation and Options

- ▶ Increased state and local flexibility
- ▶ Provides well-rounded/wrap-around services
- ▶ Title III includes preschool and family
 - Allows for more wrap-around services
 - Allows for programs to work even more collaboratively



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ESSA Information:

<https://www.nd.gov/dpi/SchoolStaff/FTP/Reauthorization/>

ELL Program Requirements	
All	Title III
The district must have a local program plan (LAU Plan) or handbook describing the core Language Instruction Educational Program.	The district must have a local program plan (LAU Plan) or handbook describing the core Language Instruction Educational Program.
	The district must have a plan to identify and screen students who meet the LEP definition.
Fall MIS01 fall report must contain the most recent school board approval of the District's ELL Policy.	District policies must describe how the ELL program assists ELLs to develop English language proficiency.
The district must assign an ELL Director (holding an administrative credential) in the MIS01 Fall LEP Report to provide administrative oversight to the district's ELL program.	District policies regarding program design, implementation and evaluation must include staff, parents and community.
The district must assign an ELL Test Administrator (holding an ELL Endorsement and WIDA test administrator training) in the MIS01 Fall LEP Report.	Monitoring findings must be addressed and resolved in a timely manner.
	Ensures Title III funds supplements and does not supplant state and local funds.
The district must ensure all ELL teachers are licensed and highly qualified for their teaching assignments.	The district must ensure all ELL teachers are licensed and highly qualified for their teaching assignments.
The district must ensure ELL instructional paraprofessionals and other staff providing ELL services for ELL students work under the supervision of a certified ELL teacher.	District leadership must be able to explain the ways in which state, federal and local funds are allocated for the ELL program.
ELL programs must be developed with the goal to increase English proficiency and academic achievement by using program models that are scientifically research-based.	ELL programs must be developed with the goal to increase English proficiency and academic achievement by using program models that are scientifically research-based.
Each ELL student must have an annually updated Individualized Language Plan written by a team including the administrative designee and a highly qualified ELL teacher.	English language development standards must be implemented within the ELL program and in mainstream classes where appropriate.
North Dakota content standards must be implemented within the ELL program.	North Dakota content standards must be implemented within the ELL program.
All IEP teams must include an ELL teacher when an ELL student is being considered for special education services.	The district provides opportunities for general education, ELL and all staff to voice opinions and contribute to the process of program design.
The district must use interpreters that are qualified and must have each interpreter sign a privacy agreement.	The needs of ELLs are considered when general education materials are adopted for classroom instructional use.
The district must use instructional facilities that are comparable to that provided for non-ELLs and do not unreasonably segregate ELLs.	The district must use instructional facilities that are comparable to that provided for non-ELLs and do not unreasonably segregate ELLs.

<p>The district must conduct a timely and meaningful consultation with private schools located within the district boundaries.</p>	<p>The district’s ELL program must be evaluated in a systematic manner, including summative and formative data.</p>
<p>No student can be denied access to any course or activity because of his/her language or cultural background.</p>	<p>No student can be denied access to any course or activity because of his/her language or cultural background.</p>
<p>The district must ensure all ELLs are annually assessed and that assessment is in accordance with state and federal requirements, including parent notification of individual student status and progress.</p>	<p>The district must ensure all ELLs are annually assessed and that assessment is in accordance with state and federal requirements, including parent notification of individual student status and progress.</p>
<p>The annual ELP assessment must be supervised by an ELL teacher who has participated in initial training in person and online and has refreshed the speaking test training every other year.</p>	<p>The district must ensure professional development:</p> <ul style="list-style-type: none"> • Enhances the educational experience of ELLs • Is made available explicitly related to ELLs • Included in the long range PD Plan • Provided to all school staff, including general education staff • Based on accepted sound educational theory and best practice • Evaluated annually to best meet needs as shown by completed evaluations
<p>Student enrollment data must be submitted before deadlines (Sept 15, Dec 15, June 30) and data set must be complete (LEP, Immigrant, Refugee).</p>	
<p>STARS Enrollment Report must accurately describe the program models that are used with the ELL students in the district.</p>	
<p>The district must notify parents of the exit requirements for the ELL program and the expected graduation year of their student.</p>	<p>The district must notify parents of the following:</p> <ul style="list-style-type: none"> • A clear description of the ELL program • The reason for the identification and placement of their child in the ELL program • The child’s level of English language proficiency • The method of instruction used in the program in which their child will be participating • Other program model options that are available within the school district • The options available to choose another type of ELL program model • How the program in which the child will be participating will meet his/her educational strengths and needs • How the ELL program will help their child learn English • How the ELL program will help their child meet age appropriate academic achievement standards • How the ELL program will help students with disabilities meet the objectives of the IEP • Their parental rights • How to remove their child from the program • Parent notification/involvement must occur in a language or format the parents can understand, using interpreters when needed
<p>The district must monitor exited students for two years.</p>	



NORTH DAKOTA DEPARTMENT OF **PUBLIC INSTRUCTION**

Guidance on Student Rights

English Language Learners in North Dakota
Office of Indian/Multicultural Education
(701) 328-1876

April 2016

Kirsten Baesler
State Superintendent
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English Language Learner Student Rights

Federal and state legislation requires school districts provide appropriate language services to assist students who lack English language proficiency due to the influence of a language other than English. This section provides the historical development of English language learner (ELL) legislation and regulation in the United States and North Dakota.

Summary of Federal Legal Statutes

Equal Protection Clause – The 14th Amendment of 1868 states that “no state shall...deny any person within its jurisdiction the equal protection of the laws.” The “equal protection” in practice has included fair treatment, nondiscrimination, and the allowing for provision of equal opportunities.

Civil Rights Act of 1964, Title VI – This law prohibits discrimination in any federally funded programs. All schools must comply with the law established in the Civil Rights Act of 1964:

No person in the United States shall, on the grounds 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 activities receiving federal financial assistance (Section 2000d).

Additionally, all schools receiving federal funds must comply with providing services to ELLs that are comparable to the services provided to students who are native English speakers (Title VI of the Act). While language proficiency is not mentioned specifically, courts have ruled that discrimination based on language proficiency serves as a proxy to discrimination based national origin or race.

Bilingual Education Act (1968) – The first federal allocation for language-minority students, this law was initially known as Title VII and later named Title III in No Child Left Behind (2002). It did not require language instruction to be bilingual in nature; rather it encouraged programs to use bilingual education practices and methods with the goal of assisting students to learn English. This was also the first law that acknowledged having limited English proficiency is a barrier to “equal access” to educational opportunity.

May 25 Office of Civil Rights (OCR) Memorandum (1970) – This memo disallowed the practice of placing English learner students in special education classes using criteria used to evaluate English language proficiency or deny ELLs access to college preparatory courses based on the failure of the school system to effectively teach English to ELLs. In addition to the rules in the Bilingual Education Act, school districts were found responsible to assist students in overcoming the language barriers that prevent the full benefits of educational instruction. The practice of tracking or dead-ending was disallowed and schools were required to provide programs that accelerate the learning of language skills needed to participate in mainstream courses.

For activities in which native English speaking parents are notified, schools must provide notification to parents of ELLs and the notification may need to be in a language other than English. Districts are responsible to identify all ELLs and provide services to all identified ELLs. Schools must evaluate programs to determine their effectiveness and modify the program when programs no longer result in positive outcomes for ELs.

Equal Education Opportunities Act (1974) – This was built upon the earlier OCR memorandum and specified the requirements for schools to follow in order to ensure no educational discrimination was present. This act specifically addressed linguistically diverse students, requiring schools to help students by implementing language instruction programs.

No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or national origin, by –

(f) the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program (Section 1703).

Civil Rights Restoration Act (1988) – The definition of a “program or activity” was extended to include the prohibiting of discrimination throughout the entire agency or institution receiving federal assistance. If an agency or institution is found to be in violation of civil rights law, all federal funding could potentially be affected.

Summary of Relevant Case Law

Meyer v. Nebraska (1923) – This ruling came from the first Supreme Court case that addressed language instruction. Nebraska had a state rule prohibiting the teaching of “any modern language, other than English, to any child who has not attained and successfully passed the eighth grade.” A teacher was penalized for conducting a reading lesson to a 10-year-old student using the German language. The United States Supreme Court overturned the ruling against the teacher, citing the **14th Amendment**. The court found it unfair and noted that students and parents should not be prohibited from learning another language. The court questioned the logic of the law, noting that learning a second language is most successful when instruction begins at an early age.

Mendez v. Westminster (1947) – The Westminster school district claimed to separate Mexican-American students from others based on language needs, but did not give a language assessment to determine which school the children should attend. The school was cited for making decisions based on race rather than language proficiency. There were also inequalities between the schools. The court noted that even if students need different placement due to initial language needs, they should not be segregated from the general school population on a continual basis. The court reported that keeping the Spanish-speaking students segregated exacerbated the problem of limited English proficiency for the students, since they weren’t exposed to native English speakers.

This opinion also introduced the idea of using language screening tools to determine language program placement. See also *Brown v. Board of Education* on separate not equal ruling.

Brown v. Board of Education (1954) – This civil rights case established that racial segregation is unfair and unconstitutional based on the **14th amendment**.

Lau v. Nichols (1974) – The United States Supreme Court found the school was using federal funds to provide a lesser quality program for the ELLs in the district by failing to assist Chinese-American students to learn English. The district’s requirement of passing an English exam prior to graduation was found to be an unfair practice, especially in the context of the district failing to provide English language support for the students. The court noted that Spanish-speaking students in the same district were receiving language services and ruled that schools cannot pick and choose which students to serve based on the ease of creating programs.

All students deserve a quality educational program and it is also a civil right for students to receive language instruction. Schools must have a procedure in place to determine how it will serve the needs of ELLs. If a school does not have a language program in place, it is effectively denying the student the ability to access education opportunities. The Lau case also provided the ORC may establish regulations that prohibit discrimination, even if there is no intent to discriminate. Finally, if a school enrolls a significant number of ELLs, at the same grade level, who speak the same language, the school may be required to provide instruction in that language.

Aspira v. Board of Education (1975) – The case involved the practice of exiting students from the language support services when the English language proficiency was lower than 90% of their English-speaking peers. The board of education was required to increase the cut score.

Rios v. Read (1978) – The school had a bilingual program in place, but the program was inadequate. Students were dismissed from the program before they could be effectively instructed with their English-speaking peers. This case disallowed the practice of premature exit from a language program and required a valid and reliable test be used to establish an appropriate level of English proficiency to be used for exit from the language program.

Castañeda v. Pickard (1981) – The school in question placed ELL students in separate classes in order to provide a program for the students. The court noted that the practice of placing students according to intelligence rather than linguistic ability is “highly suspect” since English proficiency cannot be used as the sole indicator of a student’s ability. This case related specifically to the quality of an “appropriate program” (from the Equal Education Opportunities Act of 1974). The Court of Appeals defined appropriate programs as those that are based on sound educational theory, are implemented and practiced in full, and are evaluated to ensure students are overcoming linguistic barriers. Appropriate programs may be reviewed to ensure the program is continuing to aid students in overcoming language barriers.

Plyler v. Doe (1982) – The United States Supreme Court determined that states are required to provide full access to a free and appropriate education to all students in their jurisdiction, regardless of immigration status. The court found children should not be penalized for the “crimes” of their parents and noted that schools may not act as agents of the immigration office. Therefore, schools cannot require identification tools that effectively ascertain immigration status such as proof of citizenship, social security numbers, or other tools that would estimate immigration status as a condition of participation in the school program. The court also concluded the cost of providing an education would be less than the cost associated with having uneducated, illiterate members of society. Finally, all people within a “United States jurisdiction” qualified for equal protection, not just United States citizens.

Additional Cases Regarding the Use of English – It is important to note that the United States does not have an official language and, in fact, the use of a language other than English has been upheld in the areas of education, commerce, and to provide access to civic duties. (***Meyer v. Nebraska*** in 1923, ***Yu Cong v. Trinidad*** in 1925 and ***Cardona v. Power*** in 1966). Additionally, blanket English-only rules are in violation of **Title VI of the Civil Rights Act (1964)**.

State Century Code and Administrative Rules

North Dakota Century Code 15.1-38-01 – Program of Instruction

Each school district shall provide a program of instruction for students who are English language learners. The program may be provided by a school district or in conjunction with one or more districts.

North Dakota Century Code 15.1-38-02 – Program Establishment

The superintendent of public instruction shall:

1. Appoint a state advisory committee to assist with the establishment and administration of English language learner programs and the state English language proficiency assessment
2. Establish standards for English language learner programs
3. Ensure the English language learner programs use effective research-based methods to teach the students
4. Assist school districts with the development and administration of English language learner programs and services
5. Employ a program administrator and other necessary personnel

6. Coordinate federal, state, and local funding to maximize the services available to students

North Dakota Century Code 15.1-38-03 – English Language Learner Services – Individualized plans

If a school district determines through assessment that a student requires English language learner services, the school district shall convene a team to review the student's language and educational needs. The team may develop an individualized language plan and recommend specialized language instruction and related services.

Summary

Schools are responsible to provide a free and appropriate language instructional program for all students who live within their boundaries. Schools must use a valid language proficiency assessment to identify students who need assistance with learning the English language. School teams must meet to review each ELL's language and educational needs, which may result in an individualized language plan. Schools must develop a language instructional policy and program plan that is "appropriate."

Schools are responsible to assist ELLs in overcoming language barriers, and if a program is found to be ineffective, the school must redesign the program. Schools must support language development for the ELLs so they can participate with their English-speaking peers in mainstream courses as quickly as possible. ELLs may not be tracked, placed in dead-end programs, or labeled as special education students solely on the basis of English language proficiency. ELLs cannot be placed in schools or programs of lesser quality than their English-speaking peers. Schools cannot require documentation of immigration status and cannot act as immigration agents.

ELL Student Rights References

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- Berube, B. (2000). *Managing ESL Programs in Rural and Small Urban Schools*. Alexandria, VA: Teachers of English to Speakers of Other Languages.
- Forte, E. & Faulkner-Bond, M. (2010). *The Administrator's Guide to Federal Programs for English Learners*. Washington, DC: Thompson.

Contact Information

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