



NORTH DAKOTA DEPARTMENT OF **PUBLIC INSTRUCTION**

Guidance on Student Rights

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

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Kirsten Baesler
State Superintendent
Department of Public Instruction
600 East Boulevard Avenue #201
Bismarck, ND 58505-0440
www.nd.gov/dpi

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English Language Learner Student Rights

Federal and state legislation requires that 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 that 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 that 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 effected.

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 that 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 that 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 that 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 that 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 that 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 that 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; and

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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- Forte, E. & Faulkner-Bond, M. (2010). *The Administrator's Guide to Federal Programs for English Learners*. Washington, DC: Thompson.

Contact Information

For clarification or more information about the ELL Program, please refer to one of the contacts:

Lodee Arnold, Assistant Director
(701) 328-1876
laarnold@nd.gov

Jill Frohlich, Administrative Staff Officer
(701) 328-2254
jmfrohlich@nd.gov