



Legal Responsibilities Of Education Agencies Serving Language Minority Students

The Mid-Atlantic Equity Center
The Mid-Atlantic Equity Consortium, Inc.

THE MID-ATLANTIC EQUITY CENTER

The Mid-Atlantic Equity Center, part of the Mid-Atlantic Equity Consortium, Inc., is one of ten regional Equity Assistance Centers (EACs) funded by the U.S. Department of Education. The purpose of the EACs is to help public schools eradicate racial, gender, and linguistic discrimination in accordance with the anti-discrimination provisions of the Civil Rights Act of 1964.

The Mid-Atlantic Equity Center offers assistance to schools working to improve educational services for female and minority students in order to increase their academic achievement. It serves public schools in the District of Columbia and in the states of Delaware, Maryland, Pennsylvania, Virginia and West Virginia. The Mid-Atlantic Equity Center provides technical assistance and training to improve school districts':

- understanding of their legal responsibilities to female and minority students;
- ability to assess their needs to resolve problems caused by discrimination or segregation;
- development of policies and programs to improve educational opportunities for female and minority students;
- use of tests and student assessment tools that are free of cultural and linguistic bias or prejudice.

SYNOPSIS

Learning opportunities in the United States are often limited for language minority students by differences between their respective language and culture and the dominant language and culture of public schools. This pamphlet will acquaint parents and local education authorities with the laws, court rulings, and administrative regulations that protect the rights of such students, so that they have access to a public education of the same extent and quality that is provided for all other children.

INTRODUCTION

As part of a national effort to guarantee equal educational opportunities for all students in the United States, the federal government has, over more than twenty years, created a body of law and judicial rulings that protects the rights of national origin minority students whose home language is other than English or whose proficiency in English is limited. A substantial body of federal and state legislation defines school districts' responsibilities with respect to such students. Even though the scope and interpretation of law vary according to specific circumstances, the legal base of schools' responsibility is firmly established and remains in force.

Parents and persons responsible for education policies and programs can -- and should -- turn to these laws and regulations for guidance. Compliance with these laws will ensure that the ever-increasing numbers of students of other-than-English-language background will benefit from the opportunities to learn that our democratic society promises to all.

FEDERAL LAW

The most important federal laws establishing the rights of language minority students are set forth in:

Constitution of the United States, Fourteenth Amendment (1868)

The 14th Amendment to the Constitution of the United States guarantees that **". . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."**

Civil Rights Act, Title VI (1964)

Title VI of the Civil Rights Act of 1964 declares that

. . . No person in the United States shall, on the grounds of race, color or national origin. . . be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Equal Educational Opportunities Act (1974)

The Equal Educational Opportunities Act makes educational institutions responsible for taking the necessary steps to overcome linguistic and/or cultural barriers that keep students from equal participation in instructional programs.

. . . No state shall deny an equal educational opportunity to an individual on account of his or her race, color, sex or national origin, by . . .the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs . . .

COURT RULINGS

In addition to the federal laws, the following court rulings consolidate and expand the rights of students who belong to language minority groups.

Supreme Court

Lau v. Nichols (1974)

In what began as a class action suit filed on behalf of Chinese-speaking children in San Francisco Schools, the case of *Lau v. Nichols* produced very important judicial decisions, among which the following deserve special notice:

- In a unanimous decision, the Supreme Court declared that equality of educational opportunity for students who do not understand English requires that they not only have access to "**the same facilities, textbooks, teachers and curriculum. . .**" but also requires that they have access to learning the English language. Regardless of other factors, the Court found that "**. . . students who do not understand English are effectively foreclosed from any meaningful education**" when their opportunities to learn are limited to exposure to instruction in a language they do not understand.
- The Supreme Court recognized the authority of the Office for Civil Rights (U.S. Department of Education) to establish regulations for compliance with the 1964 Civil Rights Act.

Plyler v. Doe (1982)

The Supreme Court ruled that the Fourteenth Amendment prohibits states from denying a free public education to immigrant children even if they or their parents are undocumented. In other words, the Court decreed that all children residing in the United States have the right to a free public education without regard to their own or their parents' legal status as immigrants. Further, the Court emphatically declared that school systems are not agents for enforcing immigration law and therefore are forbidden to make public any information about the legal status of their students, or to inform other agencies about such status.

Federal Courts

The following cases highlight victories won on behalf of language minority students in various federal courts. It should be noted that these cases were brought in different states and federal circuits by a variety of plaintiffs that included parents, community representatives and education authorities.

Serna v. Portales (New Mexico, 1974)

In *Serna*, the 10th Circuit Court of Appeals upheld an earlier district court decision which found that Portales Municipal Schools discriminated against Spanish-surnamed students. The Court not only found "undisputed evidence that Spanish surnamed students do not reach the achievement levels attained by their Anglo counterparts," but found also that Spanish surnamed students had higher truancy and dropout rates than the Anglo students. As a remedy, the Court ordered Portales Municipal Schools to design and implement programs of bilingual and bicultural instruction; to revise testing procedures to assess language minority students' achievement; and to recruit and hire bilingual school personnel.

Cintron v. Brentwood (New York, 1978)

In the *Cintron* case, suit was brought on behalf of 3,700 students (most of whom were Puerto Rican) to prevent the Brentwood School District from restructuring its bilingual program, *Avelino*.

The Federal District Court for the Eastern District of New York rejected Brentwood's planned alteration of its bilingual program on the grounds that the proposed revision would not meet the educational and cultural needs of the students. In the Court's words, ". . . **the underlying theory of [the proposed revision] is an immersion into English language and culture and a subordination of Spanish and Hispanic culture with a view towards accelerating the acquisition of English. . .**" However, the Court also rejected the continuation of the *Avelino* program as it was currently implemented, since ". . . **the bilingual program [Avelino] segregates the Spanish-speaking students from the rest of the student body. The children remain in the same classroom except for physical education and lunch. . .**" After rejecting both programs, the Court made various recommendations for restructuring the Brentwood School District's education plan.

Rios v. Reed (New York, 1978)

Ten months after the verdict in *Cintron v. Brentwood*, a suit was brought in the same court (Federal District Court for the Eastern District of New York) against the Patchogue-Medford School District. On behalf of 800 Puerto Rican students, plaintiffs charged that the District's transitional bilingual program did not meet the students' educational needs. The Court agreed for a number of reasons, notably the following: the lack of Spanish language ability among school administrators and teachers; the lack of knowledge about bilingual instruction methodology and evaluation among teaching personnel; the lack of educational materials in Spanish; and the improper use of procedures to identify and place students in instructional programs. The Court wrote:

While the District's goal of teaching Hispanic children the English language is certainly proper, it cannot be allowed to compromise a student's right to meaningful education before proficiency in English is obtained.

Castañeda v. Pickard (Texas, 1981)

While the cases discussed above are of great importance in the development of legal bases to defend the rights of language minority students, *Castañeda* has a special relevance, since it provided -- and still provides -- important criteria for determining a school's degree of compliance with the Equal Educational Opportunity Act of 1974.

In the *Castañeda* suit, parents of Mexican-American children charged the Raymondville Independent School District, Texas, with instructional practices that violated their children's rights. Those practices included "ability tracking" of students on the basis of discriminatory criteria that caused the segregation of Hispanic students; discriminating against Mexican-Americans in the recruitment and hiring of school personnel; and failing to develop bilingual programs that facilitated learning by language minority students.

Reversing an initial District Court finding, the Fifth Circuit Court of Appeals agreed with the Mexican-American plaintiffs. It then went on to formulate a test to determine school district compliance with the Equal Educational Opportunities Act (1974). Compliance requires the satisfaction of three criteria:

- 1) Theory: The school must pursue a program based on an educational theory recognized as sound or, at least, as a legitimate experimental strategy;
- 2) Practice: The school must actually implement the program with instructional practices, resources, and personnel necessary to transfer theory into reality.
- 3) Results: The school must not persist in a program that fails to produce results.

It is significant to note that, while the *Castañeda* ruling was handed down in the Fifth Circuit Court of Appeals -- whose jurisdiction includes Texas, Louisiana and Mississippi -- the *Castañeda* Test has been applied in a number of different states and other judicial Circuits, including the following:

Keyes v. School District #1 (Colorado, 1983)

An U. S. District Court found that Denver's public school district failed to satisfy the second of the *Castañeda* Test's three criteria when it failed to put into practice the plan it had adopted to meet its national origin minority students' needs.

Gomez v. Illinois (1987)

The Seventh Circuit Court of Appeals, which includes Wisconsin, Illinois and Indiana, ruled on the obligations of the states under the Equal Educational Opportunities Act of 1974 (EEOA). The Court applied the tripartite test established in *Castañeda* and extended to state education agencies, as well as to local education agencies, the obligation to ensure that the needs of students of limited English proficiency be met.

ENFORCEMENT POLICY

The Office for Civil Rights (OCR) of the U.S. Department of Education is charged with monitoring school districts' compliance with the Civil Rights Act of 1964. The OCR does not prescribe a specific educational program that will provide adequate learning opportunity for language minority students. Rather, each school district is at liberty to choose any proven approach, or any approach that promises to be successful, that it considers most appropriate to its own needs, conditions, and resources. The OCR, however, requires that all programs carry out certain basic functions by which schools will:

- properly identify students who need language services;
- develop programs that are effective in promoting learning;

- provide adequate teachers, educational materials and physical space;
- adequately evaluate students' progress;
- evaluate the whole program on an ongoing basis and implement changes when and where they are found to be needed.

The Office for Civil Rights investigates complaints that allege a District's failure to comply with these requirements or with the Civil Rights Act of 1964. According to the May 25, 1970, Memorandum of the Office for Civil Rights, school districts must meet four fundamental responsibilities, which are:

- 1) To take affirmative steps and employ adequate resources to ensure that students acquire proficiency in the language of instruction;
- 2) To refrain from placing students in classes for the mentally retarded on the basis of criteria which essentially measure English language skills, or to deny access to college preparatory courses as a result of the school's failure to impart necessary English language skills;
- 3) To employ no grouping or tracking systems which impede national origin students' educational development, or that operate as dead-end or permanent tracks, but to stimulate learning and the mastery of English as quickly as possible;
- 4) To ensure that parents with limited English proficiency receive information about school activities in a language that they understand.

NATIONAL ORIGIN DESEGREGATION ASSISTANCE

Upon request, the Mid-Atlantic Center provides technical assistance and training to school districts and state education agencies seeking to improve the educational opportunities of language minority students. This assistance includes:

- Needs assessment;
- Language identification and assessment procedures;
- Program planning, implementation and evaluation;
- Curriculum and materials review and development;
- Resource identification; and
- Staff development for regular classroom teachers and administrators in the following areas:
 - Legal responsibilities of education agencies serving language minority students;
 - Teaching methods to encourage learning for students of diverse language and cultural backgrounds;
 - Multicultural curriculum and program development;
 - Techniques for encouraging parent participation and communication.

For further information or assistance, please contact:

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