

LAU Remedies

Appendix B

Text of Lau Remedies

The Lau v. Remedies resulted from the Supreme Court's decision in the Lau V. Nichols case. The Lau Remedies is now the Office for Civil Rights guidelines for assessing compliance with the legal principle of providing educational services to non-English speaking students by local school districts.

I. Identification of Student's Primary or Home Language

The first step to be included in a plan submitted by a district found to be in noncompliance with Title VI under Lau is the method by which the district will identify the student's primary or home language. A student's primary or home language, for the purpose of this report, is other than English if it meets at least one of the following descriptions:

- A. The student's first acquired language is other than English.
- B. The language most often spoken by the student is other than English.
- C. The language most often spoken in the student's home is other than English, regardless of the language spoken by the student.

These assessments (A-C, above) must be made by persons who can speak and understand the necessary language(s). Then the district must assess the degree of linguistic function or ability of the student(s) so as to place the student(s) in one of the following categories by language.

- A. Monolingual speaker of the language other than English (speaks the language other than English exclusively.)
- B. Predominantly speaks the language other than English (speaks mostly the language other than English, but speaks some English.)
- C. Bilingual (speaks both the language other than English and English with equal ease.)
- D. Predominantly speaks English (speaks mostly English, but some of the language other than English.)
- E. Monolingual speaker of English (speaks English exclusively.)

In the event that the student is multilingual (is functional in more than two languages in addition to English), such assessment must be made in all the necessary languages.

In order to make the aforementioned assessments, the district must, at a minimum, determine the language most often spoken in the student's home, regardless of the language spoken by the student, the language most often spoken by the student in the home and the language by the student in the social setting (by observation).

These assessments must be made of persons who can speak and understand the necessary language(s). An example of the latter would be to determine by observation the language used by the student to communicate with friends between classes or in informal situations. These assessments must cross-validate one another. (Example: student speaks Spanish at home and Spanish with classmates at

lunch.) Observers must estimate the frequency of use of each language spoken by the student in these situations.

In the event that the language determined is in conflict (Example: student speaks Spanish at home, but English with classmates at lunch) an additional method must be employed by the district to make such a determination. (Example: the district may wish to employ a test of language dominance as a third criterion.) In other words, two of the three criteria will cross-validate or the majority of criteria will cross-validate (yield the same language).

Due to staff limitations and priorities, we will require a plan under Lau during this initial stage of investigation when the district has one or more students of the same language group identified as having a primary or home language other than English. However, the district does have an obligation to serve a student whose primary or home language is other than English.

II. Diagnostic/Prescriptive Approach

The second part of a plan must describe the diagnostic/prescriptive measures to be used to identify the nature and extent of each student's educational needs and then prescribe an educational program utilizing the most effective teaching style to satisfy the diagnosed educational needs. The determination of which teaching style(s) are to be used will be based on a careful review of both the cognitive and affective domains and should include an assessment of the responsiveness of students to different types of cognitive learning styles and incentive motivational styles, e.g., competitive v. cooperative learning patterns. The diagnostic measures must include diagnoses of problems related to areas or subjects required of other students in the school program and prescriptive measures must serve to bring the linguistically/culturally different student(s) to the educational performance level that is expected by the Local Education Agency (LEA) and state of non-minority students. A program designed for students of limited English-speaking ability must not be operated in a manner so as to solely satisfy a set of objectives divorced or isolated from those educational objectives established for students in the regular school program.

III. Educational Program Selection

In the third step the district must implement the appropriate type(s) of educational program(s) listed in this Section (III. 1-5), dependent upon the degree of linguistic deficiency of the students in question. If none seem applicable, check with you Lau coordinator for further action.

1. In the case of the monolingual speaker of the language other than English (speaks the language other than English exclusively):

A. At the Elementary and Intermediate Levels:

Any one or combination of the following programs is acceptable.

1. Transitional Bilingual Education Program (TBE)

2. Bilingual/Bicultural Program In the case of a TBE, the district must provide predictive data which show that such student(s) are ready to make the transition into English and will succeed educationally in content areas and in the educational program(s) in which he/she is to be placed. This is necessary so the district will not prematurely place the linguistically/culturally different student who is not ready to participate effectively in an English language curriculum in the regular school program (conducted exclusively in English).

Because an ESL program does not consider the affective nor cognitive development of students in this category and time and maturation variables are different here than for students at the secondary level, an ESL program is not appropriate.

B. At the Secondary Level:

Option 1 -- Such students may receive instruction in subject matter (Example: math, science) in the native language(s) and receive English as a Second Language (ESL) as a class component.

Option 2 -- Such students may receive required and elective subject matter (Examples: math, science, industrial arts) in the native language(s) and bridge into English while combining English with the native language as appropriate (learning English as a first language, in a natural setting).

Option 3 -- Such students may receive ESL or High Intensive Language Training (HILT), in English (can operate equally successfully in school in English), then bridge into the school program for all other students.

A district may wish to utilize a TBE, Bilingual/Bicultural or Multi-cultural program in lieu of the three options presented in this section (III.1.B). This is permissible. However, if the necessary prerequisite skills in the native language(s) have not been taught to these students, some form of compensatory education in the native language must be provided. In any case, students in this category (III.1.B.) must receive such instruction in a manner that is expeditiously carried out so that the student in question will be able to participate to the greatest extent possible in the regular school program as soon as possible. At no time can a program be selected in this category (III.1.B.) to place the students in situations where the method of instruction will result in a substantial delay in providing these students with the necessary English language skills needed by or required of other students at the time of graduation.

NOTE: You will generally find that students in this category are recent immigrants.

3. In the case of the predominant speaker of the language other than English (speaks mostly the language other than English, but speaks some English):

A. At the Elementary Level:

Any one or combination of the following programs is acceptable.

1. TBE
2. Bilingual/Bicultural Program
3. Multilingual/Multicultural Program

In the case of a TBE, the district must provide predictive data which show that such student(s) are ready to make the transition into English and will educationally succeed in content areas and the educational program in which he/she is to be placed. Since an ESL program does not consider the affective nor cognitive development of the students in this category and the time and maturation variables are different here than for students at the secondary level, an ESL program is not appropriate.

B. At the Intermediate and High School Levels:

The district must provide data relative to the student's academic achievement and identify those students who have been in the school system for less than a year. If the student(s) who have been in the school

system for less than a year are achieving at grade level or better, the district is not required to provide additional educational programs. If, however, the students who have been in the school system for a year or more are underachieving (not achieving at grade level) (see definitions) the district must submit a plan to remedy the situation. This may include smaller class size, enrichment materials, etc. In either this case or the case of students who are underachieving and have been in the school system for less than a year, the remedy must include any one or combination of the following: (1) an ESL, (2) a TBE, (3) a Bilingual/Bicultural Program, (4) a Multilingual/Multicultural Program. But such students may not be placed in situations where the instruction is conducted in the native language as may be prescribed for the monolingual speaker of a language other than English, if the necessary prerequisite skills in the native language have not been taught. In this case, some form of compensatory education in the native language be provided.

NOTE: You will generally find that students in this category are not recent immigrants.

3. In the case of the bilingual speaker (speaks both the language other than English and English with equal ease) the district must provide data relative to the student(s) academic achievement. In this case the treatment is the same at the elementary, intermediate, and secondary levels and differs only in terms of underachievers and those students achieving at grade level or better.

A. For the students in this category who are underachieving, treatment corresponds to the regular program requirements for all racially/ethnically identifiable classes or classes composed of students who are underachieving, regardless of their language background.

B. For the students in this category who are achieving at grade level or better, the district is not required to provide additional educational programs.

4. In the case of the predominant speaker of English (speaks mostly English, but some of a language other than English), treatment for these students is the same as III,3 above.

5. In the case of the monolingual speaker of English (speaks English exclusively), treat the same as III, 3 above.

NOTE: ESL is a necessary component of all the aforementioned programs. However, an ESL program may not be sufficient as the only program operated by a district to respond to the educational needs of all the types of students described in this document.

IV. Required and Elective Courses

In the fourth step of such plan the district must show that the required and elective courses are not designed to have a discriminatory effect:

A. Required courses. Required courses (Example: American history) must not be designed to exclude pertinent minority developments which have contributed to or influenced such subjects.

B. Elective courses and Co-curricular Activities. Where a district has been found out of compliance and operates racially/ethnically identifiable elective courses or co-curricular activities, the plan must address this area by either educationally justifying the racial/ethnic identifiability of these courses or activities, eliminating them, or guaranteeing that these courses or co-curricular activities will not remain racially/ethnically identifiable. There is a prima facie case of discrimination if courses are racially/ethnically identifiable. Schools must develop strong incentives and encouragement for minority students to enroll in electives where minorities have not traditionally enrolled. In this regard, counselors, principals and teachers have had a most important role. Title IV compliance questions are raised by any analysis of

counseling practices which indicates that minorities are being advised in a manner which results in their being disproportionately channeled into certain subject areas or courses. The school district must see that all of its students are encouraged to fully participate and take advantage of all educational benefits. Close monitoring is necessary to evaluate to what degree minorities are in essence being discouraged from taking certain electives and encouraged to take other elective courses and insist that to eliminate discrimination and to provide equal educational opportunities, districts must take affirmative duties to see that minority students are not excluded from any elective courses and over included in others.

All newly established elective courses cannot be designed to have a discriminatory effect. This means that a district cannot, for example, initiate a course in Spanish literature designed exclusively for Spanish-speaking students so that enrollment in that subject is designed to result in the removal of the minority students in question from a general literature course which should be designed to be relevant for all the students served by this district.

V. Instructional Personnel Requirements (see definitions, section IX)

Instructional personnel teaching the students in question must be linguistically/culturally familiar with the background of the students to be affected. The student/teacher ratio for such programs should equal or be less than (fewer students per teacher) the student/teacher ratio for the district. However, we will not require corrective action by the district if the number of students in such programs are no more than five greater per teacher than the student/teacher ratio for the district.

If instructional staff is inadequate to implement program requirements, inservice training, directly related to improving student performance is acceptable as an immediate and temporary response.

Plans for providing this training must include at least the following:

1. Objectives of training (must be directly related to ultimately improving student performance).
2. Methods by which the objective(s) will be achieved.
3. Method for selection of teachers to receive training.
4. Names of personnel doing the training and location of training.
5. Content of training.
6. Evaluation design of training and performance criteria for individuals receiving the training.
7. Proposed timetables.

This temporary inservice training must continue until staff performance criteria has been met. Another temporary alternative is utilizing paraprofessional persons with the necessary language(s) and cultural background(s). Specific instructional roles of such personnel must be included in the plan. Such plan must show that this personnel will aid in teaching and not be restricted to those areas unrelated to the teaching process (checking roll, issuing tardy cards, etc.) In addition, the district must include a plan for securing the number of qualified teachers necessary to fully implement the instructional program. Development and training of paraprofessionals may be an important source for the development of bilingual/bicultural teachers.

VI. Racial/Ethnic Isolation and/or Identifiability of Schools and Classes

A. Racially/Ethnically Isolated and/or Identifiable Schools -- It is not educationally necessary nor legally permissible to create racially/ethnically identifiable schools in order to respond to student language characteristics as specified in the programs described herein.

B. Racially/Ethnically Isolated and/or Identifiable Classes -- The implementation of the aforementioned educational models do not justify the existence of racially/ethnically isolated or identifiable classes, per se. Since there is no conflict in this area as related to the application of the Emergency School Aid Act (ESAA) and existing Title VI regulations, standard application of those regulations is effective.

VII. Notification to Parents of Students Whose Primary or Home Language is Other Than English

A. School districts have the responsibility to effectively notify the parents of the students identified as having a primary or home language other than English of all school activities or notices which are called to the attention of other parents. Such notice, in order to be adequate, must be provided in English and in the necessary language(s) comprehensively paralleling the exact content in English. Be aware that a literal translation may not be sufficient.

B. The district must inform all minority and non-minority parents of all aspects of the programs designed for students of limited English speaking ability and that these programs constitute an integral part of the total school program.

VIII. Evaluation

A "Product and Process" evaluation is to be submitted in the plan. This type of evaluation, in addition to stating the "product" (and result), must include "process evaluation" (periodic evaluation throughout the implementation state). A description of the evaluation design is required. Time-lines (target for completion of steps) is an essential component.

IX. Definition of Terms

1. Bilingual/Bicultural Program

A program which utilizes the student's native language (Example: Navajo) and cultural factors in instruction maintaining and further developing all the necessary skills in the student's native language and culture while introducing, maintaining and developing all the necessary skills in the second language and culture (Example: English). The end result is a student who can function, totally, in both languages and cultures.

2. English as a Second Language (ESL)

A structured language acquisition program designed to teach English to students whose native language is not English.

3. High Intensive Language Training (HILT)

A total immersion program designed to teach students a new language.

4. Multilingual/Multicultural Program

A program operated under the same principles as a Bilingual/Bicultural Program except that more than one language and culture, in addition to English language and culture, is treated. The end result is a student who can function, totally, in more than two languages and cultures.

5. Transitional Bilingual Education Program (TBE)

A program operated in the same manner as a Bilingual/Bicultural Program, except that once the student is fully functional in the second language (English), further instruction in the native language is no longer required.

6. Underachievement

Underachievement is defined as performance in each subject area (e.g., reading, problem solving) at one or more standard deviations below district norms as determined by some objective measures for non-ethnic/racial minority students. Mental ability scores cannot be utilized for determining grade expectancy.

7. Instructional Personnel

Persons involved in teaching activities. Such personnel includes, but is not limited to, certified, credentialized teachers, paraprofessionals, teacher aides, parents, community volunteers, youth tutors, etc.