

SOME ISSUES REGARDING THE EDUCATION OF LANGUAGE ENRICHED PUPILS (LEP) IN THE STATE OF FLORIDA: A RESTATEMENT.

(In response to an inquiry from one of the 67 school districts in Florida)

LEGAL BACKGROUND

Congress shall make no law . . . abridging the freedom of speech . . .

- Amendment 1, The Constitution of the United States, adopted 1791.

. . . Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

- Amendment 14, The Constitution of the United States, adopted 1868.

The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced with methods which conflict with the Constitution - a desirable end cannot be promoted by prohibited means.

- Meyer v. Nebraska, U.S. Supreme Court, 1923.

There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education.

- Lau v. Nichols, U.S. Supreme Court, 1974.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility . . . It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.

- Hernandez v. New York, U.S. Supreme Court, 1991 .

DISCUSSION

The [Consent Decree](#) (attachment A) entered in United States District Court on August 14, 1990 by agreement between the plaintiffs and the defendants in LULAC et al v. State Board of Education of Florida does not grant language enriched pupils (LEP) any new rights. The Consent Decree simply provides a structure for compliance with constitutional imperatives. By having a LEP Plan approved by the Department of Education, in conformity with the Consent Decree, each district ensures such compliance with constitutional imperatives. Each LEP Plan, though, is designed by each district to meet its specific needs and circumstances. (Attachment B, 233.058, Florida Statute.)

The Consent Decree (operationalized by 6A-6.0900 to 6A-6.0909, F.A.C.; attachment C) does not prescribe a specific instructional methodology. A school district may provide services utilizing a range of instructional delivery methods in a myriad of combinations: self-contained ESOL instruction, English instruction through inclusion, self-contained sheltered English instruction in the basic subjects, home language instruction in the basic subjects, instruction in the basic subjects through inclusion, etc. Instructional strategies may be ESOL strategies, transitional bilingual strategies, developmental bilingual strategies or any combination thereof. Regardless of the methodologies and instructional strategies selected, the following must be guaranteed: equal access to comprehensible instruction by appropriately certificated personnel (6.A-4.0242-6A-4.0245, F.A.C., attachment D; see also Course Code Directory and

Instructional Personnel Assignments) with such instruction validated, of course, by defensible assessment practices.

Initial assessment of LEP students involves two types of assessment: assessment for English language proficiency (Consent Decree 1C) and programmatic assessment (Consent Decree 1 D).

ESOL instruction is to be provided to LEP students based on English language proficiency. ESOL integrates instructional techniques of the teaching of English as a foreign language with the instructional requirements of English language arts. An exclusive reliance on the English-as-a-foreign-language component of ESOL would deprive students of equal access to the language arts curriculum; an exclusive reliance on English language arts requirements may not provide the warranted comprehensible instruction. (A curriculum program in which the two components of ESOL are assured congruence is the language arts program codeveloped by Jostens Corporation and Florida DOE in association with Dade County Public Schools which has been described, correctly, as a language-enriched-program for language-enriched-pupils).

ESOL instruction requires teachers who possess appropriate basal coverage (elementary, exceptional education, English) and the ESOL Endorsement. ESOL, as a certificate coverage by itself, appropriately qualifies a teacher for the teaching of ESOL, exclusively, at all levels.

Instruction in basic subject areas is to be provided LEP students based on programmatic assessment, irrespective of English language proficiency. Care must be taken when assessing basic subject competency not to vitiate that assessment with a reassessment of English Language proficiency. For example, students may not be grouped to be instructed in mathematics based on their English language proficiency, but based, primarily, on their knowledge of mathematics, even though their English language proficiency may be taken into account to further refine such grouping and for the effectiveness of instruction. Basic subject instruction of LEP students may be accomplished through home language instruction, through sheltered-English-self-contained instruction or

through inclusion instruction using ESOL modifications. It must be accomplished by teachers who are certificated in the basic subjects. (A district, for instance, routinely does not ask that the teacher exclusively certificated in English teach mathematics, social studies, science or computer literacy to non-LEP students.) It is appropriate to group LEP students for the teaching of basic subjects. (T.A.P. 002- ESOL-91, Clustering, attachment E and T.A.P. 018-ESOL-93, Clustering II, attachment F.) Such grouping, once again, may be done based on subject area competence and English language competency; may not be done exclusively based on English language proficiency.

As *Lau v. Nichols*, Supreme Court, 1974, made extraordinarily clear, a student may not be denied equal access to basic subject instruction or to any program offered by the educational entity because of that student's limited English proficiency. There is not a threshold of English competency that a student must reach before such a student is given access to curricular and extracurricular offerings for which such a student is qualified, irrespective of English proficiency. The certification requirements of teachers who teach to LEP students subjects other than English language arts are no different than the requirements for teachers who teach such subjects to non-LEP students. Options to be assigned out-of-field exist likewise for teachers who teach LEP students as well as for teachers who teach non- LEP students. Certification requirements, other than the ESOL Endorsement, for dropout prevention programs apply equally to LEP and to non-LEP students. The appropriateness of the elementary coverage to teach basic subjects at the sixth grade level, even in a middle school setting, applies equally to LEP and to non-LEP students.

The progress of LEP students is to be assessed in as meaningful a manner as the progress of non-LEP students. The allowable exemptions of LEP students from assessment using standardized instruments (DPS memorandum 94-060, attachment G) may not be interpreted as a waiver of all assessment practices. LEP students who are required to take the High School Competency Test must be afforded the accommodations approved by Florida DOE (DPS memorandum

95-067, attachment H). Such accommodations would be tailored to individually meet the needs of students.

To conclude circularly at the beginning: The Consent Decree has not created new rights for LEP students. The LEP Plans that the Consent Decree mandates at the county level merely ensure the respect for and the protection of the long-established constitutional rights of LEP students. That is why the superintendent of schools of each county has signed an assurance page so stating. (District Limited English Proficient (LEP) Plan Assurances and Certifications, attachment I.) Each county, though, complies with these constitutional requirements in its own approved way.