



LEGAL FOUNDATIONS

Many experts involved in education, research, and the justice system acknowledge that the key factors leading to educational failure for minority students in the United States are linguistic and cultural differences. In 1974, the U.S. Supreme Court decided the “Lau vs. Nichols” case. This case required schools to provide services for English language learners. Additionally, the Minnesota Legislature passed the “Education for Limited English Proficient Students Act (LEP Act)” in 1980.

Lau vs. Nichols

With the recognition that the key factors of educational failure for minority students are linguistic and cultural differences, an important ruling was made in a legal case brought on behalf of ELL students in San Francisco Public Schools in 1974. The U.S. Supreme Court “Lau vs. Nichols” case ruled that school districts have a duty to see that students are not discriminated against because they do not speak English. Here is an excerpt from the court’s decision:

There is no equality of treatment merely by providing students with the same facilities, textbooks, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the heart of what these schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must have already acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. (U.S. Supreme Court, 414 U.S. 563).

Minnesota LEP Act

In 1980, the Minnesota Legislature passed the “**Education for Limited English Proficient Students Act.**” This Act provided legal definitions for limited English proficient students, general requirements for programs, aid authorization, teacher licensures, and parental rights.

Both the “Lau vs. Nichols” decision and the LEP Act have provided the general framework for the services provided to ELL students in Saint Paul Public Schools. Details of this framework have been specified in the LEP Compliance Plan submitted to the U.S. Office for Civil Rights (OCR), the Latino Consent Decree, and the ELL Parent Advisory Committees.

Following are some relevant excerpts from the Minnesota Education for Limited English Proficient Students Act (Statute 124D.58). You may read the entire statute at <http://www.leg.state.mn.us/>

Who is an ELL?

124D.59 DEFINITIONS.

Subd. 2. **Pupil of limited English proficiency.** "Pupil of limited English proficiency" means a pupil in kindergarten through grade 12 who meets the following requirements:

- (1) the pupil, as declared by a parent or guardian first learned a language other than English, comes from a home where the language usually spoken is other than English, or usually speaks a language other than English; and
- (2) the pupil is determined by developmentally appropriate measures, which might include observations, teacher judgment, parent recommendations, or developmentally appropriate assessment instruments, to lack the necessary English skills to participate fully in classes taught in English

What does the home language questionnaire identify?

124D.59 DEFINITIONS.

Subd. 6. **Primary language.** "Primary language" means a language other than English which is the language normally used by the child or the language which is spoken in the child's home environment.

What is an ESL or bilingual education program?

124D.59 DEFINITIONS

Subd. 4. **English as a second language program.** "English as a second language program" means a program for the instruction of pupils of limited English proficiency in the following English language skills: reading, writing, listening and speaking.

Subd. 5. **Bilingual education program.** "Bilingual education program" means an educational program in which instruction is given in both English and the primary language of the pupil of limited English proficiency to the extent necessary to allow the pupil to progress effectively through the educational system and to attain the basic skills of reading, writing, listening, and speaking in the English language so that the pupil will be able to perform ordinary classwork successfully in English.

Subd. 8. **Educational program for pupils of limited English proficiency.** "Educational program for pupils of limited English proficiency" means an English as a second language program, bilingual education program, or both an English as a second language and a bilingual education program.

What are the general requirements for ESL or bilingual education programs?

124D.61 GENERAL REQUIREMENTS FOR PROGRAMS.

A district that enrolls one or more children of limited English proficiency must implement an educational program that includes at a minimum the following requirements:

- (1) identification and reclassification criteria for children of limited English proficiency and program entrance and exit criteria for children with limited English proficiency must be documented by the district, applied uniformly to children of limited English proficiency, and made available to parents and other stakeholders upon request;
- (2) a written plan of services that describes programming by English proficiency level made available to parents upon request. The plan must articulate the amount and scope of service offered to children of limited English proficiency through an educational program for children of limited English proficiency;
- (3) professional development opportunities for ESL, bilingual education, mainstream, and all staff working with children of limited English proficiency which are:
 - (i) coordinated with the district's professional development activities;
 - (ii) related to the needs of children of limited English proficiency; and
 - (iii) ongoing;
- (4) to the extent possible, avoid isolating children of limited English proficiency for a substantial part of the school day; and
- (5) in predominantly nonverbal subjects, such as art, music, and physical education, permit pupils of limited English proficiency to participate fully and on an equal basis with their contemporaries in public school classes provided for these subjects. To the extent possible, the district must assure to pupils enrolled in a program for limited English proficient students an equal and meaningful opportunity to participate fully with other pupils in all extracurricular activities.

Improper classification of pupils

123B.30 IMPROPER CLASSIFICATION OF PUPILS.

No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semiannual apportionment the share of such district and the county auditor shall thereupon exclude such district from the apportionment for each period.