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**ABSTRACT**

The legal bases of federal and state requirements for addressing the linguistic and academic needs of national origin minority students are reviewed. A national origin minority student is defined as one whose home language is other than English and who is not performing up to district standards of proficiency. The legal milestone leading to requirement of educational services for minority students, the educational issues raised by the Lau v. Nichols decision, the minimum educational services for minorities required under the Lau remedies, issues raised in regard to minority educational rights over the past 7 years, and California statutes supporting the educational needs of minority students are discussed. In conclusion, the law requires equality of educational opportunity for minority students, but the operation of this principle and compliance with the law have been addressed only within the last 5 years. (RW)

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EQUALITY OF EDUCATIONAL OPPORTUNITY FOR  
NATIONAL ORIGIN MINORITY STUDENTS

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Equality of Educational Opportunity  
for National Origin Minority Students

Since the nineteenth century to the present America's democratic ideology has sought a means of providing equal opportunity for everyone. "Equality of opportunity" means that all members of society are given equal chances to enter any occupation or social class. Within this perspective, education has often been viewed as the means of assuring that all members of society can begin at the same starting line<sup>1</sup>.

However, for a student whose dominant language proficiency is other than English, the school curricula often offers the student a schooling environment that does not recognize his/her learning competence and potential.

As a nation concerned with equal educational opportunity for all students, one can trace the initial operationalization of this concept to the Brown v. Board of Education Supreme Court decision of 1954, only twenty-nine years ago. With respect to national origin minority students, our nation began to respond to their linguistic and academic rights with the passage of the Civil Rights Act of 1964, only nineteen years ago. Nevertheless, word reached school districts as to their responsibility to these children through the HEW May 25 Memorandum in 1970, only thirteen years ago.

In their recent publication, "With All Deliberate Speed: 1954-19??", the U.S. Commission on Civil Rights appeals to those in positions of responsibility to make a commitment to the operationalization of equal educational opportunity for all students. The U.S. Commission on Civil Rights states<sup>2</sup>

There is no middle ground. Either we are for desegregation and a system of education that provides equality of opportunity, or we are for a system of education that makes a mockery of our Constitution.

### Introduction

The purpose of this paper is to provide the reader with an overview of the legal bases that have led to federal and state educational requirements for addressing the linguistic and academic needs of national origin minority (NOM) students. Five questions will be discussed:

- What are the main legal milestones that have served as the legal base requiring educational services to NOM students who are limited English proficient (LEP) and/or are under-achieving?
- What educational issues are raised by the Lau v. Nichols Supreme Court Decision of 1974?
- What are the minimum educational services that should be provided to NOM students under the spirit of the Lau Task Force Remedies?
- What are some of the major legal and educational issues that have been raised in the last seven years with regard to the educational rights of NOM students?
- What state of California educational statutes support the spirit of the Civil Rights Act of 1964, the Lau v. Nichols Supreme Court decision and the educational needs of NOM students?

Before addressing the first question, an operational definition of a "national origin minority (Lau) student" is appropriate:

A NOM student is one whose home language is other than English, regardless of the language spoken by the student, and who is not performing conceptually and linguistically at a level equal to or better than the district standards of proficiency.

What are the main legal milestones that have served as the legal basis for addressing the educational needs of national origin minority (Lau) students?

Five specific historical milestones are fundamental:

- °The 14th Amendment of the U.S. Constitution
- °Plessy v. Ferguson Supreme Court Decision of 1896
- °Brown v. Board of Education Supreme Court Decision of 1954
- °Civil Rights Act of 1964
- °Department of HEW May 25, 1970 Memorandum to school districts in the nation

The concept of equal educational opportunity for language minority children, with bilingual/bicultural education as the primary educational response, has evolved from a series of judicial, legislative and administrative rulings that can be traced to the U.S. Constitution. The following overview traces the main historical milestones that serve as the legal bases for school districts to address the needs of NOM students.

The initial impetus for the equal educational opportunity concept can be found in the Fourteenth Amendment of the U.S. Constitution. The 14th Amendment was adopted in 1868. It was one of three civil war amendments<sup>3</sup> drafted by Congress to ensure the permanence of the Civil Rights Act of 1866, by placing it beyond the reach of Presidential, Congressional, or Supreme Court interference.

- °The 13th abolished slavery in the United States (1865)
- °The 15th guaranteed the right to vote to all citizens regardless of "race, color, or previous condition of servitude."

Section one of the 14th Amendment provides the following:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 laws.

Specifically the 14th Amendment (1868):

1. Protects the privileges and immunities of all citizens.
2. Provides equal protection under the law.
3. Gives Congress the power to enforce by legislation.
4. Establishes the principle of equal opportunity.

However, between 1868 and 1896, the courts of the nation struggled to define the application of the "equal protection" clause of the 14th Amendment; while Southern States enacted the Black Codes that restricted the newly gained freedom of ex-slaves. It was not until 1896 that the Supreme Court issued a decision in Plessy v. Ferguson.<sup>4</sup> This decision advanced the concept of equal opportunity as meaning "separate but equal."

Plessy was a challenge by a Black man to a Louisiana statute which required Blacks and Whites to sit in separate cars or trains. The statute was attacked on the grounds that it conflicted with the 14th Amendment equal protection of the laws and due process provisions. The Court, however, interpreted the equal protection clause as requiring the enforcement of absolute equality of the races before the law--not as requiring the abolition of distinctions based upon color or to enforce social, as distinguished from political equality.<sup>5</sup>

Thus, thirty-one years after slavery was abolished the Supreme Court upheld the constitutionality of the segregation of the races and established the "separate but equal" doctrine with regards to the concept of equal opportunity. Two separate societies--one black, one white was sanctioned by the Supreme Court. The "separate but equal doctrine" emerged in "Jim Crow" laws across the South. Laws were enacted that required the separation of people of color and whites in almost every realm of life: in schools, housing, jobs, public accommodations, cemeteries, hospitals, and labor unions. In the 1940's in California, as challenged by the court case in Mendez v. Westminster, school districts segregated Hispanic children solely on the basis of their national origin and language.<sup>6</sup>

By 1940, the issue of what constitutes segregation of the races is quite clear. The courts in a number of cases declare that any person of color other than white belonged to the colored race.<sup>7</sup>

It was not until the Brown v. Board of Education of Topeka, Kansas court case of 1954<sup>8</sup> that the Supreme Court of our nation overruled all its earlier "separate but equal" decisions, concluding that in the field of education the "separate but equal" doctrine had no place. Hence the Brown v. Board of Education decision accomplished the following:

1. Struck down the "separate but equal" doctrine.
2. Declared the separation of Black and White students to be unconstitutional.
3. Ordered desegregation of schools with "deliberate speed."
4. Established the principle of equal educational opportunity.

Ten years elapsed before the U.S. Congress legislated the Civil Rights Act of 1964 in response to Brown v. Board of Education. Title VI of the Civil Rights Act of 1964 declared:

No person in the United States shall, on the ground 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 activity receiving Federal financial assistance.

In addition, the provisions of Section 601 of the Civil Rights Act of 1964 called for the U.S. federal government to:<sup>9</sup>

1. Forbid discrimination on account of race, color, or national origin in any federally funded activity.
2. Authorize the Department of HEW to apply compliance procedures and to review and withhold funds.
3. Authorize the Department of Justice to sue in federal court to secure the desegregation of public facilities.
4. Establish the principle of equal opportunity for national origin minority groups.

Six more years went by before the U.S. Department of Education sent a memorandum to school districts with more than five percent national minority children. The May 25, 1970 Memorandum<sup>10</sup> specified how Title VI of the Civil Rights Act of 1964 applied to national origin minority students. The memo declared:

Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

The memo further stated the intent of affirmative steps to be taken by school districts:

Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

The HEW Memorandum provides for the following:

1. Affirms the application of the Civil Rights Act of 1964 to language minority children.
2. Identifies three main areas of concern:
  - a. unequal access to participation in school programs because of language,
  - b. segregation by tracking, ability grouping and assignment to Special Education and,
  - c. the exclusion of parents from school information.
3. Instructs the U.S. Office for Civil Rights to implement review and compliance procedures.
4. Establishes the principle of equal educational opportunity for language minority children.

What are the educational issues raised by the Lau v. Nichols Supreme Court decision of 1974?

A brief overview of the Lau v. Nichols<sup>11</sup> case and issues follows:<sup>12</sup>



On March 25, 1970, thirteen non-English speaking Chinese American students filed suit in the Federal District Court in San Francisco against the San Francisco Board of Education, whose president happened to be Alan Nichols, on behalf of nearly 3,000 Chinese-speaking students. Their class-action suit, Lau v. Nichols, alleged that Chinese-speaking children were being denied their rights to an education because they were unable to comprehend or speak the English language in which their classes were taught. The Chinese American community argued that by denying their children special instruction, the school district was not only violating their rights to an education and to equal educational opportunities as guaranteed by the State of California and by Federal and State legislation but the school district was also "dooming these children to become dropouts and to join the rolls of the unemployed."

In their complaint, the non English-speaking Chinese American students raised two educational issues: first, must the San Francisco Unified School District (SFUSD) be required to provide limited English proficient (LEP) students with English as a Second Language instruction; and second, whether it must provide content instruction in the basic skill areas in the target language of the students. The SFUSD argued that its sole responsibility to any child was equal access to the resources provided to all children on the same basis.

In 1970, the Federal Court agreed with the school district and denied the non-English speaking children any relief. In 1972, the case was appealed in the U.S. Court of Appeals for the Ninth Circuit Court. Again the Appellate Court expressed sympathy for the plight of the students, but concluded that rights to equal educational opportunities had been satisfied through the equal access perspective. The Federal Court findings ruled that the SFUSD had no legal duty to rectify this unhappy situation.

Faced with the devastating appellate court decision, the Chinese speaking children petitioned the U.S. Supreme Court to take their case and reverse the Appellate Court. On June 13, 1973, the U.S. Supreme Court granted the petition

to hear the case; and oral arguments were heard on December 10, 1973.

On January 21, 1974, the Supreme Court issued its unanimous decision reversing the Appellate Court opinion. Relying on Title VI of the Civil Rights Act of 1964, the Supreme Court ruled that the failure of any school system to provide English language instruction to its non-English speaking students constitutes a denial of "a meaningful opportunity to participate in the equal treatment of unequals," and refuting directly the position and language of the lower courts, the Supreme Court declared:

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.

The unanimous decision by a court well-known for its relative judicial conservatism in matters related to education and civil rights is extremely significant. First, it emphasizes loudly and clearly that the court in Lau was not concerned with the intentions or motivations of the school district. Regardless of how much good faith a school district might be exercising in trying to meet the problem, the only relevant factor is whether the child receives a "meaningful" and "comprehensible" education and "effective participation in the educational program." Thus, under the Lau v. Nichols decision, the highest court of our nation:

1. Determined a denial of equal educational opportunity under the Civil Rights Act of 1964.
2. Affirmed the authority of the Department of HEW to enforce the Civil Rights Act of 1964.
3. Affirmed the validity of the May 25th Memorandum, extending the Civil Rights Act to language-minority children.
4. Affirmed the authority of the Department of HEW to require affirmative remedial efforts to give special attention to linguistically distinct children.

In response to the Lau decision, the U.S. Office for Civil Rights issued

in July 1975, a set of guidelines for schools to follow in order to attain Lau compliance. The guidelines became known as the "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols." Between July 1975 through 1981, the guidelines also referred to as the Lau Task Force Remedies served as:

1. Interpretive federal guidelines by which the Office for Civil Rights conducts compliance reviews.
2. Specifications for minimal compliance requirements that may be used to develop and implement Lau compliance plans.
3. Educational minimal expectations for districts, should they desire to develop and implement guidelines that are equal to or better than the Lau Remedies.

What are the minimum educational services that should be provided to NOM students under the spirit of the Lau Task Force Remedies?

In response to Title VI of the Civil Rights Act of 1964, and the principle of equal educational opportunity for language minority children, the Lau guidelines called for the following steps be taken by school districts:

1. Ascertain which of their students have a language other than English;
2. Ascertain the language proficiency and abilities of their students;
3. Ascertain the achievement characteristics of their students;
4. Match an educational program to the characteristics of the students.
5. Implement an instructional program that provides for proficiency in the English language and maintains students' academic achievement at least at the district's standard of proficiency.
6. Provide certificated instructional personnel who are linguistically and culturally familiar with the background of the students to be served.
7. Provide information to parents on the instructional needs of their children, in a language they understand.

8. Assess the on-going implementation of the instructional services provided to language minority students for sound management and effectiveness of services.

In addition, as school districts develop comprehensive educational plans to meet the needs of limited English proficient students, major efforts need to be made in assessing available resources including time, staff, money, space, and curriculum, and in the systematic acquisition, redirection, adaptation, and utilization of these resources to meet the objectives of the district plan.

What are some of the major legal and educational issues that have been raised in the last seven years with regard to the educational rights of language minority/NOM students?

The following eleven issues have emerged in the last seven years as school districts began to address the spirit of the Lau v. Nichols Supreme Court decision throughout the nation:

1. What is the responsibility of States in the nation with respect to the educational needs of language minority students?
2. What is the responsibility of school districts for effective instructional programs for language minorities?
3. What guidelines should school districts use when facing decreased enrollment but with an increasing need for certificated personnel who can address the linguistic and academic needs of NOM students?
4. Should the instructional program for the limited English proficient student use the student's native language for his/her academic development?
5. What is the school district's responsibility for fiscal allocation and resources to implement Lau instructional services impacting NOM students?
6. What is the legal status of the Lau Task Force Remedies?
7. What is the present position of the U.S. Department of Education under the Regan administration with respect to evaluating school districts' services addressing the educational needs of NOM students?

8. What are the responsibilities of school districts in providing educational services to undocumented alien children?
9. Can a State be sued in federal court for failure to provide NOM students with equal educational opportunity?
10. What is the responsibility of a State in supervising school districts to ensure educational services for limited English proficient students?
11. Can school officials be subject to monetary damages if knowingly they violate the civil rights of students?

Each of the eleven issues will be treated in the following pages.

1. What is the responsibility of States in the nation with respect to the educational needs of NOM students?

This issue can be addressed through the examination of the Equal Educational Opportunity Act of 1974.<sup>13</sup> Through the passage of this Act, Congress included in this legislation provisions under Section 1703 prohibiting a State from denying equal educational opportunity.

The statute states that:

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 by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

This statute (E.E.O.A, Section 1703 f) recognizes the states role in assuring equal educational opportunity for national origin minority students.

2. What is the responsibility of school districts for effective instructional programs for NOM students?

In the U.S. District Court of New York, in the case of Rios v. Read<sup>14</sup> in 1977, the court discussed the school district's responsibilities for the adequacy of instructional programs for NOM students. The court indicated that unless the district's bilingual program were effective, a Lau violation would be triggered the same as if no program were offered.

Furthermore, the court ruled that "affirmative steps" required under Lau v. Nichols, means an educational program that emphasizes the "importance of bilingual education in the academic and personal growth of the language disadvantaged child." The court in its finding stated:

It is not enough simply to provide a program for language disadvantaged children or even to staff the program with bilingual teachers; rather, the critical question is whether the program is designed to assure as much as is reasonably possible the language deficient child's growth in the English language. An inadequate program is as harmful to a child who does not speak English as no program at all.

3. What guidelines should school districts use when facing decreased enrollment but with an increasing need for certificated personnel who can address the linguistic and academic needs of NOM students?

In the U.S. District Court, Eastern District of New York decisions of August 22, 1977 and January 10, 1978 in the case of Elis Cintron, et. al., v. Brentwood Union Free School District et. al.,<sup>15</sup> the court ordered the district to develop and implement instructional programs for Lau students. While the district was never found in noncompliance with Title VI of the Civil Rights Act, the district was facing decreased enrollment with an increase of NOM/Lau students. The district was faced with the issue of what criteria to use to retain certificated personnel --seniority/tenure or Educational necessity of its students. In its finding the court based its decision on the educational necessity of its students, and requested the district to "expend its best efforts in hiring sufficiently qualified and experienced personnel to staff" the bilingual education programs in the district. The court also declared:

The goal is instruction by competent bilingual teachers in the subject matter of the curriculum while at the same time teaching non-English speaking children the English language.

Two opinions issued by the California Attorney General in January

23, 1976 (Opinion No. CV 74-250) and in February 15, 1978 (Opinion No. CV 76-37) also support the responsibility of school districts for the educational needs of NOM students. In his first opinion, the Attorney General ruled that a school district with a bilingual education program may retain junior employees who have the competency to teach bilingually and terminate senior employees lacking such competency, pursuant to the Education Code Section 13447. In his second opinion, the Attorney General's Opinion reaffirmed his opinion of 1976.

The main issue addressed in both Cintron v. Brentwood and the California Attorney General's Opinions is the responsibility of districts to employ competent and skilled certificated personnel who can implement effective programs to meet the linguistic and academic needs of its school-community.

4. Should the instructional program for the limited English proficient student use the student's native language for his/her academic development?

A number of court decisions, resting upon federal statutes implementing Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunity Act of 1974, as well as the Lau Task Force Remedies, have required school districts to use the student's native language as part of the instructional program provided to NOM students. The findings of the following court cases support bilingual instruction for NOM students:

-United States v. Texas, U.S. Court of Appeals, Fifth Circuit, 342 f. Supp. 24 (E.D. Tex., 1971).

-Serna v. Portales Municipal Schools, U.S. Court of Appeals, Tenth Circuit, 49 F. 2nd. 1147 (10th Cir. 1974).

-Aspira v. Board of Education of New York City, U.S. Court of Appeals, New York, Consent Decree, 72 Cir. 4002 (S.D.N.Y., August 29, 1974).

-Morales v. Shannon, U.S. Court of Appeals, Fifth Circuit, 423 U.S. 1034 (1976).



-Rios v. Read, 480 F. Supp. 14 (E.D. N.Y., 1978).

-U.S. v. Texas, U.S. District Court for the District of Texas,  
Tyler Division, Civil Action No. 5281 (January 9, 1981).

Thus, the courts have requested that school districts take affirmative action in the form of instructional programs to improve the quality of services provided to limited English proficient students.

5. What is the school district's responsibility for fiscal allocation and resources to implement Lau instructional services impacting NOM students?

Many school districts faced with fiscal constraints due to the changing characteristics of their school communities--declining student enrollment, a decrease in state education aid, rising opposition from local tax payers' resistance to growing school budgets and collective bargaining--have sought relief from state and federal statutes requiring services to NOM students.

With the passage of Proposition 13 in California, Superintendent of Schools, Dr. Wilson Riles, wrote to the director of the U.S. Office for Civil Rights, Mr. David S. Tatel, asking for relief in the State's Lau Compliance efforts. On July of 1978, Mr. Tatel responded to Dr. Riles:

Clearly school districts must continue to provide bilingual education programs to all children eligible under the Lau Guidelines to receive such services. Therefore, bilingual teachers must be made available in sufficient numbers to allow the school district to meet its obligations under Lau. While we understand fully the economic crunch facing California school districts, the absence of funds cannot justify a failure to comply with Title VI.

In its request for districts' comprehensive Lau educational plans, the U.S. Office for Civil Rights recommends the re-allocation of A.D.A



(Average Daily Attendance) funds generated by NOM students, over a period of one to five years, in a manner that will impact positively on the implementation of programs for NOM Lau students. Thus, under the Lau v. Nichols decision, the re-allocation of existing fiscal and program resources is required.

6. What is the legal status of the Lau Task Force Remedies?

A number of school districts in the nation have questioned the U.S. Office for Civil Rights (OCR) in its enforcement of the Lau Task Force Remedies. While the U.S. OCR has presented the Lau Remedies of July 1975 as guidelines to be followed for meeting Lau Compliance, districts have challenged these guidelines. It should be noted, that the U.S. OCR non-compliance letters to school districts do specify to the districts that it has the option not to follow the Lau Remedies, the only condition given is that the district provide educational services equal to or better than those proposed in the Lau Remedies.

In the court case of Northwest Arctic School District, et. al. v. Joseph A. Califano, et. al.<sup>16</sup> 1978, the issue of the Lau Remedies was raised by the State of Alaska. The State argued that the Lau Remedies lacked the enforcement of the law and would not develop a Lau Compliance plan. The U.S. Dept. of HEW argued the rights of NOM/Lau students to equal educational opportunity under Title VI of the Civil Rights Act of 1964. In the settlement agreement, the State of Alaska agree to comply with the Lau decision and the U.S. Department of HEW agree to publish the Lau Task Force Remedies in the Federal Register. On August 5, 1980, the Department of Education published the Proposed Title VI Bilingual Education (Lau) Rules. A seventy-five day public comment period for citizen input was afforded through six public hearings across the nation.

With a change in government on November 1980, the present Reagan administration under its policy to reduce federal regulations on February 2, 1981, announced the withdrawal of the proposed bilingual education policies.

Secretary of Education, Terrel H. Bell in his press release stated:

I take this action for many reasons. The policies are harsh, inflexible, burdensome, unworkable and incredibly costly. The rules are fiercely opposed by many, supported by few. All these are sufficient reasons for withdrawing the proposed bilingual policies. There is no quicker way to kill a civil rights law than to enforce it with heavyhanded misdirection and I am sworn to uphold the law, not to kill it.

While most of the national newspapers reported the above statement, the last paragraph of Secretary Bell's press release was often not published. This paragraph declares:

I am committed to civil rights and to all the responsibilities that go with the job in this Department. No school administrator should read anything to the contrary in this action today, and no school administrator should misread this action as an invitation to discriminate against children who face language barriers. The responsibility of schools to provide equal educational opportunity for all children is recognized and will be honored by this Department.

It should also be noted that at the public hearings, while the ethnolinguistic communities applauded the federal government for proposing regulations addressing the linguistic and academic needs of LEP students, the same community identified twenty-one major concerns as to the educational soundness of the proposed four stage procedure for meeting the needs of LEP students.

Given that the proposed Title VI Bilingual Education (Lau) Rules were not published, since 1981 the U.S. Department of Education has taken a more flexible role in evaluating school districts' plans to eliminate Title VI Civil

Rights Act violations resulting from the exclusion of students whose English is limited.

7. What is the present position of the U.S. Department of Education, under the Reagan administration, with respect to evaluating school districts' services addressing the educational needs of NOM students?

In withdrawing the August 5, 1980, Title VI Notice of Proposed Rule-making, Secretary Bell emphasized that school districts be given latitude in devising and implementing special programs of instruction to meet the needs of LEP national origin minority students. This new policy approach by U.S. Department of Education has led to U.S. Office for Civil Rights to use a three-part test to school districts compliance with the Title VI of the Civil Rights Act of 1964, instead of the Lau Task Force Remedies. This three-part test to determine a school district's obligation in educating language minority students is based on the court case of Castaneda v. Pickard.<sup>17</sup>

The first requirement under Castaneda is for school districts to demonstrate that language minority students are being provided with programs based on sound educational theory and principles.

Under Castaneda the second inquiry would be whether the program practices actually used by the school system are being implemented effectively with adequate resources.

A third and final area of inquiry under Castaneda, is triggered only upon a positive finding in the first two areas, is whether the school district has persisted in maintaining the same approach over time when it is evident that it is failing. Although the Castaneda court case makes it clear that there is not an affirmative obligation to implement a bilingual program as such, the educational deficits suffered by delaying substantive instruction to language minority students cannot be ignored. The court stated:

"We understand 1703(f) to impose on educational agencies not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking ability students with assistance in other areas of the curriculum where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program."

8. What are the responsibilities of school districts in providing educational services to undocumented alien children?

On June 15, 1982, the United States Supreme Court in the case of Plyer v. Doe held that undocumented alien children cannot be denied a free public education because such a denial would violate their constitutional rights of equal protection. Because Plyer is a decision of the United States Supreme Court, it is binding on all school districts in all states. The court case of Plyer v. Doe argued that the denial of education to some isolated group of children poses an affront to the Equal Protection Clause of the 14th Amendment. Specifically, in 1975, the Texas Education Code was amended to bar the use of state funds for the education of undocumented alien children. Local school districts could either bar undocumented aliens entirely, or admit them to public school upon payment of a tuition charge. The Tyler Independent School District implemented the Education Code by requiring undocumented alien children to pay a tuition charge of \$1,000 per year, thus effectively barring them from the school system.

The alien children claimed that their exclusion from public school violated the Supremacy Clause, the Equal Protection Clause, and the Due Process Clause of the United States Constitution. The Supreme Clause precludes state laws that interfere with the accomplishment of federal objectives. The United States District Court agreed with the alien children that state efforts to impose what amounted to punishment upon undocumented aliens conflicted with a comprehensive federal scheme for immigration and naturalization. Therefore, it held that

the state law was invalid. The Court also held that the Texas School Code exclusion violated equal protection because the discrimination embodied in the law was not supported by a rational basis.

9. Can a State be sued in federal court for failure to provide NOM students with equal educational opportunity?

In the State of Texas, a suit was filed in June 1975 at the request of the G.I. Forum and the League of United Latin American Citizens. In this suit, the plaintiffs claimed that "Mexican American students were being denied equal educational opportunities by the State of Texas as required by federal statutes." The plaintiffs also included charges of violations under the equal protection clause of the 14th Amendment and Section 1703 (f) and 1703 (b) of the Equal Educational Opportunities Act of 1974.<sup>19</sup>

After reviewing the evidence and testimony presented, in the case of U.S. v. State of Texas, et. al., U.S. District Court, Eastern District of Texas, Tyler Division, the court findings under Civil Action No. 5281, signed in January 9, 1981, declared the State of Texas had demonstrated pervasive, system-wide discrimination against Mexican American children in the field of education. The judge concluded that:

.....it is found that Mexican Americans in Texas have been subjected to de jure discrimination by the defendants, the State of Texas and the Texas Education Agency, in violation of the Equal Protection Clause of Fourteenth Amendment. Accordingly, the learning difficulties of Mexican American students attributable to defendants' actions must be redressed, and the remaining vestiges of past discrimination must be eradicated.

As part of its finding, the court has requested that the State of Texas develop a comprehensive plan from K to 12th grade that will provide equal educational opportunity and the provision of bilingual instruction to all Mexican American children who are LEP and attend Texas public schools.

While the U.S. v. State of Texas court decision applies only to Texas and

the Mexican American student, the legal basis of the decision is consistent with the rights of LEP students under the principle of equal educational opportunity for language minority children.

10. What is the responsibility of State Agencies in supervising school districts to ensure educational services to language minority students?

Guidance on this issue is found in the case of Idaho Migrant Council v. Board of Education <sup>20</sup> brought by limited English proficient students against the Idaho Department of Education, State Board of Education and Superintendent of Public Instruction for failing to ensure the equal educational opportunities of LEP students. In this case, the appellate court found that the Equal Educational Opportunity Act of 1974, and Title VI of the Civil Rights Act of 1964, require the state education agencies to supervise local school districts to "ensure that needs of students with limited English proficiency are addressed."

The court remanded the case to the district court to determine whether federal requirements were being met. The court determined the obligation of state education agencies based on their contractual agreement with the U.S. government to comply with requirements outlined in the Equal Education Opportunity Act and other federal and state statutes.

In other court cases, such as in Debra P. v. Turlington, <sup>21</sup> under the Equal Educational Opportunity Act, the State of Florida was held responsible to enforce federal mandates. In Debra, the state of Florida could neither impose, nor permit, a testing scheme that unfairly impacted upon minority students. Using Title VI of the Civil Rights Act 1964, another court found the California State Department Agency (SEA) responsible to remedy discriminatory testing practices by local officials, Larry P. v. Riles. <sup>22</sup>

Thus, as a matter of federal law, every SEA must take responsibility for

insuring civil rights compliance by local officials and to monitor and require corrective action when violations are found.

11. Can school officials be subject to monetary damages if knowingly they violate the civil rights of students?

Based on the Constitution and laws, both federal and state, define the constitutional and civil rights of the students. Under the court case of Wood v. Strickland <sup>23</sup> the Supreme Court held that school officials who violate the civil rights of students, and SEA officials who fail to prevent violations by local educational officials, can be personally liable for money damages. Thus, if school officials who know, or should know, that they are violating student's constitutional rights, are personally liable.

What State of California educational statutes support the spirit of the Civil Rights Act of 1964, the Lau v. Nichols Supreme Court decision and the educational needs of language minority/NOM students?

The question of incompatibility between state and federal regulations for meeting the linguistic and academic needs of language minority NOM students, can be addressed through the following guideline:<sup>24</sup>

Where federal law governing the duties of school districts to limited English speakers confers additional rights and imposes additional obligations upon the school districts, the federal law should be followed. However, where compliance with State law also fulfills the federal obligations, adherence to State law will be satisfactory. Only where there is a positive conflict between federal and state law, and only where the effect of adhering to a particular State law mandate compromises or hinders the federal law, should the State law be eschewed.

In California, State statutes support and are compatible with Title VI Civil Rights Act provisions, the May 25, 1970 Memo, and the Lau v. Nichols Supreme Court decision for addressing the educational needs of language minority/NOM students. Specifically, the following chart demonstrates the compatibility between State and federal statutes and guidelines with



STATE AND FEDERAL STATUTES:  
Comptability Between Statutes

|   | <u>Federal Statutes &amp; Guidelines</u>   | <u>State Statutes &amp; Regulations</u>   | <u>Target Population</u>        |
|---|--|---|---------------------------------|
| Civil Rights  | Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin.   | AB803 (1977). Non-discrimination on the basis of ethnic group identification, religion, age, sex, color or a physical or a physical or mental disability. | Any person                      |
| Equal Educational Opportunity Principle                 | Equal Opportunity Act of 1974. Prohibits dual school system, segregation and discrimination on the basis of race, color, sex or national origin.                   | State Administrative Code Article V. California Constitution provides for the rights of children to public education and equal education opportunity.     | Any person                      |
| Educational Services to NEP/LEP Students                | HEW/OCR Lau Task Force Remedies, July 1975. Remedies to eliminate educational practices ruled unlawful under <u>Lau v. Nichols</u> Supreme Court decision of 1974. | AB 507/1980 Bilingual Education Act<br>AB 3408/1976 Standards of Proficiency  | K-12 students in public schools |
| Educational Services to FEP Underachieving NOM Students | HEW/OCR Lau Task Force Remedies, July 1975. Remedies to eliminate educational practices ruled unlawful under <u>Lau v. Nichols</u> Supreme Court decision of 1974. | AB 65/77 School Reform Legislation<br>AB 3408/76 Standards of Proficiency<br>AB 3369/80 Differential Standards of Proficiency                             | K-12 students in public schools |
| Special Education to LEP/FEP students                   | Public Law 94-142, Education for handicapped children. Guarantees full & appropriate educational opportunities for handicapped individuals.                        | SB 1870, Master Plan for Special Education, free & appropriate education for students with exceptional needs.   | K-12 students in public school  |

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respect to the educational rights of language minority/NOM students.

### Conclusion

In the next ten years, both absolute number and the proportion of ethnic minorities will continue to increase in California and in the United States. The number of language minority students will no doubt increase. As reported in the 1970 Census, California had 33.37% of all Spanish surname persons, and 36.60% of all American Asian persons in the nation. These percentages have surpassed 40% in 1980. The compliance issues with respect to the linguistic and academic needs of language minority/ NOM students have only begun to challenge districts in the 1980's.

With the passage and enforcement of civil rights statutes, the government of the U.S. has made the commitment to ensure that it does not support discrimination by providing federal financial assistance to entities that discriminate on the bases of race, national origin, sex, or handicap. However, while the law requires equality of educational opportunity for language minority/ NOM students, the operationalization of this principle has only in the last five years begun to be addressed. The effectiveness of programs that school districts offer to language minority/ NOM students will continue to provide answers to the question of whether these students will be doomed to become dropouts and join the rolls of the unemployed or be linguistically and academically competent to be active members in our economic system and technological society.

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