

## **ENGLISH LANGUAGE LEARNER COURT RULINGS**

### **LAU vs. NICHOLS**

#### **ELLs and U.S. Schools**

English Language Learners may enter the U.S. school system with previous educational experience and literacy skills in their native language, or their schooling may have been interrupted by world events and they may not be able to read and write or perform academically at grade level in their mother tongue. ELL students not only enter U.S. schools at all ages and grade levels, but they also possess the same range of skills and educational needs as do any other students – they may be candidates for gifted and talented programs, or may be in need of special education services.

English Language Learners must learn the same academic content that fluent English-speaking students are learning in school, except that ELLs must do so at the same time as they are acquiring a new language. Learning a language is a difficult task which takes time. In school, a more formal and abstract form of English is employed by teachers and in textbooks; making it that more difficult to comprehend. In 1974, the Supreme Court ruled in *Lau v. Nichols* that school districts must provide special services to English Language Learners so that they have equal educational opportunity. In its ruling, the Court noted:

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. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. [414 U.S. 563 (1974)]

ELLs need language instruction educational programs which allow them to progress academically while they are acquiring English language skills. There are several different program models; however all include both academic content and English language development components. The specific model a school district implements will depend on the composition of the student population, resources available and the community's preferences.

**For more information on the Lau vs. Nichols US Supreme Court case please see the link below.**

<http://www.ncela.gwu.edu/faqs/view/6>

## PLYLER vs. DOE

In 1982, the Supreme Court rules in Plyler v. Doe, 457 U.S. 202 (1982), that public schools were prohibited from denying immigrant students access to a public education. The Court stated that undocumented children have the same right to a free public education as U.S. citizens and permanent residents. Undocumented immigrant students are obligated, as are all other students, to attend school until they reach the age mandated by state law.

Public schools and school personnel are prohibited under Plyler from adopting policies or taking actions that would deny students access to education based on their immigration status.

Based on the Supreme Court's ruling, public school districts should consider the following practices in working with ELL students:

- School officials may not require children to prove they are in this country legally by asking for documents such as green cards, citizenship papers, etc. They may only require proof that the child lives within the school district attendance zone, just as they might for any other child.
- Schools should be careful of unintentional attempts to document students' legal status which lead to the possible "chilling" of their Plyler rights.
- **The following school practices are prohibited:**
  - Barring access to a student on the basis of legal status or alleged legal status.
  - Treating students disparately for residency determination purposes on the basis of their undocumented status.
  - Inquiring about a student's immigration status, including requiring documentation of a student's legal status at initial registration or at any other time.
  - Making inquiries from a student or his/her parents which may expose their legal status.
- **Federal Program Requirements** - Federal education programs may ask for information from parents and students to determine if students are eligible for various programs, such as Emergency Immigrant Education. If that is the case, schools should ask for voluntary information from parents and students or find alternative ways of identifying and documenting the eligibility of students. However, schools are not required to check or document the immigrant status of each student in the school or of those students who may be eligible for such programs. The regulations do not require alien registration numbers or documentation of immigration status.
- **Social Security Numbers** - Schools should not require students to apply for Social Security numbers. If schools decide to pass out Social Security

registration forms to assist the Social Security Administration, they must tell parents and students, in appropriate languages, that the application forms are merely a service and it is up to the parents and students whether the applications are actually filed. They should stress that schools will not monitor the filing of these applications. Additionally, schools should not require any student to supply a social security number.

- **School Lunch Programs** - In order to qualify for Free or Reduced Lunch Programs, all applicants are required to furnish either of the two following types of information:
  - Social Security numbers of all household members over the age of 21, should they have one
  - For all household members above the age of 21 who do not have a Social Security number, an indication of the application that he or she does not possess one.
  - If a student or household members over the age of 21 do not have a Social Security number, "none" should be written in that space or another identifying number could be assigned by the school.
  - Parents and students should be reminded that the Family Educational Rights and Privacy Act (FERPA) prohibits any outside agency, including the Immigration and Naturalization Services (INS), from getting this information without obtaining permission from the student's parents or a valid court order.
  - School lunch programs are interested in determining household income, not in determining a student's legal status.
  
- **Communication with INS** - Any communication to INS initiated by a school or school official concerning a specific student is prohibited. If parents and/or students have questions about their immigration status, school personnel should refer them to legal service organizations, immigrant rights organizations, or local immigration attorneys. They should not advise immigrants to go directly to INS offices without first getting proper advice from an attorney or immigrant rights advocate.
  
- **Requests for information by INS** - School personnel are prohibited from cooperating with INS in any way that may jeopardize an immigrant students' right of access (with the exception of the administration of F-1 and J-1 visas). INS requests for information can only be released upon the presentation of a valid subpoena. All school personnel should be advised of this policy. If a subpoena is presented, it may be advisable to check with an attorney to properly check into the validity of the subpoena.
  
- **Requests by INS to enter a school** - School personnel should not cooperate with INS in any manner that jeopardizes immigrant students and their right of access. The school principal should meet with INS officials in the front office with a credible witness present, deny the INS officials consent, and request to see a legal warrant. If a warrant is presented, the principal should determine that it:

- Lists the school by its correct name and address
  - Lists students by name
  - Be signed by a judge
  - Be less than ten days old
  - Be served by an INS officer with proper identification.
- To protect other students in the school, the principal should bring the INS officials to the office and request that they remain there while the named student(s) is brought to them. The principal should immediately inform the Superintendent and school attorney.

**School District Personnel should always consult an attorney to clarify their duties and responsibilities under Plyler. This document is intended solely for guidance.**

**Source:**

"Immigrant Students: Their Legal Right of Access to Public Schools. A Guide for Advocates and Educators" by John Willshire Carrera, Esq. National Coalition of Advocates for Students. Boston, MA.

**For more information on the Plyler vs. Doe US Supreme Court case please see the link below.**

[http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0457\\_0202\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0202_ZS.html)