

Inquiry Project

Legal Aspects of Unmet Special Education Needs of English Language Learners (ELLs)

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EDLP 6110 – 60 Problems in Practice: Legal and School Centered Issues

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### Abstract

This inquiry project will focus on how the ever-increasing population of bilingual students whose native language is one other than English and who present with difficulty in language acquisition of even their own first language are impacted by failure to receive the appropriate services. After surveying 19 educators of varying levels, there was an array of opinions based on empirical data, but the majority concluded that there is scarcity of litigation by bilingual parents on behalf of their children. I will examine the current state of affairs for ELLs who present with language learning disabilities relative to the level of legal recourse which exists for these students.

Many parents of English Language Learners (ELLs) are foreigners to the United States and consequently unaccustomed to how the education and legal structures run which makes it hard for them to navigate the system. The results are that there is not a plethora of legal cases to examine. “Parents of ELLs are less likely to seek legal services even when the evidence is clear because they do not know how to navigate the system or may be undocumented” (personal communication, Administrator, March 30, 2018). The majority of this study, therefore, is based on empirical data, which “is a central part of the scientific method.” (Bradford, 2017)

As our communities become more and more bilingual, school districts are becoming more accountable to the laws that govern teaching ELLs. For a variety of reasons, in districts which have limited funding, there is often a disconnect between what these students need (a needs assessment is perform) and what the district can actually provide despite the legal ramifications. In *Lau v. Nichols* the Supreme Court made it very clear that ELLs should receive equal exposure despite their lack of English-proficiency. There are fewer lawsuits connected to identifying students who have both bilingual and special education needs in the area of language. I plan to examine what I am predicting will be an onslaught of litigation in the 21<sup>st</sup> Century because these multilingual students are underserved. The squeaky wheel gets the grease and as long as the immigrant parents of these children do not speak up, the litigation against school districts who fail to supply their needs will be few and far between.

Unfortunately, there is a counterargument to this dilemma, which is that too many ELLs in some districts are being inappropriately identified as needing special education services. This dilemma has caused the pendulum to swing too far the other way with those ELLs who do fall into the special education spectrum not receiving the help they need.

The following is an examination of the current state of affairs. Although the focus of my study is Spanish speaking students, it should be noted that this study encompasses all multilingual populations.

### Personal Experience

During the course of my tenure as a general education English Language Arts teacher, I have encountered several bilingual students who demonstrate a below grade level ability to acquire English language basic skills. This year in particular, I have a student (Student X) who demonstrates low level language skills in both English and his native language, Spanish. Since I am a certified dyslexia therapist, I have performed a few of screening elements on him and discovered that he exhibits signs of dyslexia. His mother also indicated that there is another family member displayed similar signs of the specific learning disability. Dyslexia has a hereditary component. “Dyslexia is regarded as a neurobiological condition that is genetic in origin. This means that individuals can inherit this condition from a parent and it affects the performance of the neurological system (specifically, the parts of the brain responsible for learning to read).” (Schultz, 2008)

The mom of Student X met me at Back-to-School night and discussed, with the help of a translator, how she could best help her son and we confirmed that she would write a request letter immediately to the Child Study Team (CST). This occurred at the end of September, 2017. The Parental Rights In Special Education (PRISE) booklet requires a response from the school district within 30 days. Student X, as of April 13, 2018 was finally moved to receive pull-out services as indicated by his newly created IEP. The year is practically over, but at least he will be in a better situation learning with other special education students. The truth, though, is that the special education teacher who will be servicing him, speaks English well but that is not her

first language nor is it Spanish, plus she is not aware of the resources needed to teach a student who potentially has dyslexia. The district is, nevertheless, satisfying its obligation as stated in his IEP.

### Literature Review

The complaint filed Friday [July 16, 2017] in U.S. District Court came after the city's Human Rights Department found probable cause that the district discriminated against a Como Park Senior High student who moved to the United States from Thailand in 2012. The suit alleges the student, Lor Ler Kaw, was inappropriately placed in "mainstream" English and social studies classes alongside students who could speak English fluently — despite the fact that he was reading at a second-grade level. The family also accuses the district of waiting too long — more than 14 months — to address what his parents suspected was a need for special-education services. Kaw also has a sibling who is a party to the suit. (Lonetree, 2017)

In "Samira's Story" a young American teacher, Kristina was working with a Somalian child named Samira. The more she worked with Samira on her literacy the more she suspected something was wrong that surpassed her inability to learn English. Kristina determined that she just needed more time to process the language in written and spoken formats.

Samira was obviously struggling, and at the time Kristina attributed it to her refugee experience and lack of formal education. She thought that she just needed more time and English language exposure. ...Kristina had the benefit of collaborating with Special Education teachers who have experience working with ELLs. [From that opportunity] she believes it is likely that Samira had a learning disability that went undiagnosed because she and her colleagues had not received training in how to recognize and address special education needs for ELL students. Kristina also remembers a student who was having significant struggles with learning; when his teacher met with the family and a bilingual interpreter, she was told that the boy had

had a brain injury in his home country and that learning had always been difficult for him. There were no special supports available to him in prior school. So his parents never thought to ask for them. (Robertson)

Faced with the challenge of failing or faltering in the area of language and literacy, only a handful of parents of ELLs demand solutions from their school district. One such case was *Lau v. Nichols* (*Lau v. Nichols, 1974*), a Supreme Court case ruled in strong disagreement to the district after confirming that a Chinese-American student was left to “sink or swim” in a general education classroom that this student was entitled to receive a remedy which would address the disproportionate inequality of learning environment. Justice William Douglas wrote the following court opinion:

Under these state-imposed standards 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.... We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

“The influence of *Lau* on federal policy was substantial. After the court's decision, the U.S. Department of Education's Office of Civil Rights created the **Lau Remedies**. Whereas Title VII Bilingual Education Act regulations applied only to funded programs, the Lau Remedies applied to all school districts and functioned as de facto compliance standards”.

## Methodology

### Participants & Procedure

The survey was distributed to the entire School X, with the request to complete it anonymously returning it to me. I enlisted a reliable set of students to deliver the survey

The feedback that I received and will discuss comes from 19 educators. They were asked a total of seven questions, with one of them addressing on the Child Study team (CST) members. Three members of the CST gave me their responses along with our Speech Language Specialist. Together, these four (4) people remain on the front line of this incident. Some them privately discussed frustrations at how slowly the winds of change.

### Materials

The only materials revolved around producing the survey which was paper based. General Education teachers, special education teachers, bilingual teachers, para-educators, a speech language specialist, several child study team members, administrators and parents. I did not distribute the survey to any parents because of the language barrier.

**Question 1:** How many bilingual students (ELLs) have you taught this year who struggle to read and write in their native language?

Population responded

**Question 2:** As a child study team member in the district on average annually, how many bilingual students (ELLs) do you refer to special education for language disorders and who, as a result, are now receiving an IEP?

Population responded

**Question 3:** Are you aware of any lawsuits that have been filed by parents against the district due to lack of services received for an ELL who was diagnosed with a specific learning disability/dyslexia? If yes, briefly explain the circumstances/scenario. This can also apply to parents with limited English proficiency filing lawsuits on behalf of their children.

Population responded

**Question 4:** In your experience, are ELLs more or less likely to be identified as having a learning disability in the area of language acquisition?

**Question 5:** Are you aware of any program in any district that is designed to service ELLs who also have special needs?

**Question 6:** Are you aware of any program in the district you work in that is designed to service ELLs who also have special needs? If so can you describe it?

**Question 7:** Do you have any recommendations for this study on identifying ELLs with special needs and addressing solutions/remediation? (all responses are anonymous and confidential)

### Data Collection & Findings

Almost all of the educators concluded that they knew of no litigation that had occurred where parents had filed lawsuits against the district we work in or any other district. There seemed to be a dearth of information, nationwide, which addressed bilingual students failing to be identified for any potential learning disability that may have presented itself.

One middle school educator indicated that students should be tested at the Board Of Education before being assigned to a school. His impression was that “reading and math assessments can be given to quickly determine whether further testing is needed should a deficiency be identified during initial assessments.” (Personal communication, April 18, 2018)

Of the 19 educators surveyed, all agreed that they knew of no legal ramifications in this district or any other for the lack of services for ELLs who struggle to read. Other than that, there was not really any consensus opinion on the seven questions posed to them.

Regarding the question of whether the question of whether ELLs are more or less likely to receive referrals for or identification of a language learning disability, the jury was split 10 saying more likely and 9 believing that is less likely for an ELL to receive the recommendation for services. So my conclusion is that enough educators have encountered the scenario enough to come down firmly on one side or the other.

Regarding any programs currently facilitating these struggling reading and writers. one educator stated that she “was told by a Special Education supervisor that a bilingual student was placed in a cognitive impaired, self-contained [environment] because no bilingual program exists.” (personal communication, March 2018). Another colleague listed a program called, “Port of Entry”

but did not provide any details or a description. All he said was that it was currently an active program used in one of the district's high schools.

There is an assortment of recommendations for this study on identifying ELLs with special needs and addressing solutions/remediation. Aside from the previously mentioned comments about testing students at the Board of Education level before immersing them in the school setting, the following were additional comments to further warrant action at the district level to avoid possible litigation for not complying with the 14<sup>th</sup> amendment. Our Speech Language Specialist had just been introduced to the work of Dr. Samuel Ortiz, a renowned specialist in the area of bilingual language acquisition. She told me that our district was currently looking into putting this system into place to screen out ELLs vs. ELL with true language impairment and that my inquiry was extremely timely. Although Dr. Ortiz is presenting a theory which is great for developing the language skills for students who have not received education, this program may not address the screening for dyslexia, which encompasses "students who have been exposed to the appropriate literacy training but are still at least two grade levels beneath their peers. Another colleague recommended that we first "have to understand the special needs of our ELLs. Some come to this country with interrupted or no education at all. Knowing their background could make a difference in their education in this country."

Children should get in-class support teachers, one educator remarked. On the other end of the spectrum, a teacher said, "They should have a school designated for these students and have a certified staff to teach them." One Special Education teacher remarked,

I am not sure of the process of how they are identified, but when the IEP says ELL/ESL then they should get the services and right now my students are not

[receiving these services]. I also have children who only understand Spanish, but ESL is not written in the IEP. Again these children are even refused to be looked at. I have emailed administration about assessing these students and receive the response, ‘Special Ed trumps ESL.’

The following is the breakdown from my survey:

### INSTITUTIONAL REVIEW BOARD FOR HUMAN SUBJECT RESEARCH

#### **MASTER** Survey Questions- Deirdre Wilson-Redmond's project

1. How many bilingual students (ELLs) have you taught this year who struggle to read and write in their native language?

1. none **IIII. II (7)**

2. one

3. two **I (1)**

4. three

5. four or more **IIII.IIII (9)**

2. As a child study team member in the district on average annually, how many bilingual students (ELLs) do you refer to special education for language disorders and who, as a result, are now receiving an IEP?

1. none **IIII. III (8)**

2. one **I (1)**

3. two. **II (2)**

4. three **I (1)**

5. four or more. **II (2)**

3. Are you aware of any lawsuits that have been filed by parents against the district due to lack of services received for an ELL who was diagnosed with a specific learning disability/dyslexia? If yes, briefly explain the circumstances/scenario. This can also apply to parents with limited English proficiency filing lawsuits on behalf of their children.

1. yes

2. no **IIII IIII. IIII IIII (19)**

4. In your experience, are ELLs more or less likely to be identified as having a learning disability in the area of language acquisition?

More likely \_\_\_\_\_ IIII IIII (10)

Less likely \_\_\_\_\_ IIII III (9)

5. Are you aware of any program in any district that is designed to service ELLs who also have special needs?

Yes \_\_\_\_\_ I I(2)

NO \_\_\_\_\_ IIII. IIII. IIII. II (17)

If so can you describe it? Port of Entry, Eastside High School

6. Are you aware of any program in the district you work in that is designed to service ELLs who also have special needs?

Yes \_\_\_\_\_ I I(2)

NO \_\_\_\_\_ IIII. IIII. IIII. III (18)

If so can you describe it? Port of Entry

7. Do you have any recommendations for this study on identifying ELLs with special needs and addressing solutions/remediation? (all responses are anonymous and confidential)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**What is your role in the school? \_\_\_\_\_ CURRENT GRADE LEVEL(s) that you work with**

IIII. I (6) General Education Teacher III (3) Special Education Teacher

II (2) Administrator IIII (4) Child Study Team Member I I (2) Bilingual Teacher

II Paraeducator III (3) Other (Please specify) Music, Spanish teacher, Speech Language Specialist

### Conclusions

“As educators begin to collaborate more [with each other] and look more deeply into students’ experiences and needs, there is a better chance that students will get the support they need to succeed. Building a more culturally and linguistically responsive RtI/MTSS process will help to address the needs of ELLs who are having significant framework for making more informed decisions about ELLs who may also have special education needs” (Robertson, Sanchez-Lopez & Breiseth, 2013)

In this world of dollars and cents public education, we are sometimes unable to make sense of what is right in front of us. “The cost is too prohibitive,” you might hear some administrators mutter. In the long run, we may discover that it might be more costly (future litigations) to sweep the need to address the struggling literacy issue of ELLs under the rug.

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