Opinion No. 76-03

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BY: OPINION OF TONEY ANAYA, Attorney General Jill Z. Cooper, Assistant Attorney General

TO: Legislative School Study Committee, Executive Legislative Building, Santa Fe, New Mexico 87501

QUESTIONS

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Is the New Mexico Bilingual Multi-Cultural Education Act [Sections 77-23-1 through 77-23-6, NMSA, 1953 Comp.] in compliance with the decision in Lau v. Nichols, 414 U.S. 563, 39 L. Ed. 2d 1, 94 S. Ct. 786 (1974)?

CONCLUSION

See Analysis.

OPINION

*{*48}* ANALYSIS

The decision in **Lau v. Nichols, supra,** essentially makes it "an unlawful educational practice to fail to take appropriate action to overcome language barriers." **Morales v. Shannon,** 516 F.2d 411, 415 (5th Cir. 1975). The Supreme Court in **Lau** found that "students who do not understand English are effectively foreclosed from any meaningful education" and held that under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, school districts receiving federal funds were required to institute programs to rectify such language deficiencies.

Clearly, the responsibility for compliance with the holding in **Lau** rests with the individual school districts. The **Lau** decision, particularly as applied in New Mexico by **Serna v. Portales Municipal Schools,** 499 F.2d 1147 (10th Cir. 1974), would require that the school district adopt a bilingual multi-cultural program to remedy discrimination against Spanish surnamed students whenever a "substantial group is being deprived of a meaningful education."

The Bilingual Multicultural Education Act, **supra,** (hereafter the "Act") encourages but does not essentially control such compliance. Therefore, the question of the Act itself being in compliance with **Lau** is not pertinent.

Generally, the Act provides that the State Board of Education "shall issue guidelines for the development and implementation" of bilingual multi-cultural programs (Section 77-23-4(A); that the State Department of Education "shall assist school boards in developing and evaluating" such programs (Section 77-23-4(C)); and that state financial support be given to eligible programs involving students in grades K through six (Section 77-23-6). It is the limitation on financial support which prompted this question but that limitation does not necessarily affect compliance with **Lau.**

In practical terms, the financial limitation means that in calculating the number of program units for the state equalization guarantee distribution, the bilingual multicultural cost differential will be applied only for pupils in lower grades. See Section 77-6-18.6, NMSA, 1953 Comp. It does not mean that schools cannot offer bilingual multi-cultural programs at all grade levels. That funds may be available under the Act for some programs is only a factor that a school board must take into *{*49}* account in planning a bilingual multi-cultural curriculum. In the Portales case, for example, the schools had been ordered to:

"investigate and utilize whenever possible the sources of available funds to provide equality of educational opportunity for Spanish surnamed students",

and the court noted that funds were available under the Federal Bilingual Education Act, 20 U.S.C. § 800b, as well as under the state act.

Under current law, a school district would not be justified in failing to take affirmative steps to rectify language deficiencies because the State did not provide additional funding for bilingual multi-cultural programs at each grade level. Neither **Lau** nor **Serna** even suggests that the State is responsible for providing any such additional funds. Thus, we conclude that in terms of the Act itself no question can be raised with respect to compliance with **Lau.**