Educational Policy in the United States for Linguistically and Culturally Diverse Students:

Foundation or Barrier

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Introduction

Educating children from non-English speaking immigrant and non-immigrant families is a major concern of school systems throughout the United States given that the population of students who come to school not speaking English has grown over 60% in the last decade (Garcia, 2005; Hernandez, 2006). In addition, education is not a successful experience for many of these students (August and Shanahan, 2006). Confronted with this reality, policy makers and the public have urged changing teaching methods, adopting new curricula, allocating more funding and holding educational institutions accountable. Such actions at the federal level coupled with, state, and local school district levels have and will continue to affect these students directly.

The present discussion is an attempt to identify and describe federal, state, and local policy, both litigation and legislation, in order to further an understanding of how such declarations either disadvantage or enhance the education of these students. At the national level the aim has been to provide equal educational opportunity to underachieving students. The challenge today is for those opportunities to produce excellence in academic outcomes. Therefore, the U.S. five-decade effort in serving these students since the historic Brown vs. Board of Education ruling in the 1950's, today focuses on providing both equity in opportunity with academic excellence a measured result.

Key policy “players” have included the federal courts, the US Congress, state related agencies and state referendums. Still, the active track record of policy action has not left a clear path; it is one still being negotiated (Weise and Garcia, 2004). It is this complex collage of policy and practice that this chapter addresses with the goal of informing policy as well as those that are providing direct instructional services to these students. It is in new innovations in policy and practice that I will place further emphasis. Educational “reform” as we have practiced it, particularly at the national level with No Child Left Behind (NCLB) legislation, has had almost no verifiable impact on reducing the academic achievement gap between these students and their English-only, U.S. student peers.

For example, recent analyses of the Early Childhood Longitudinal Study—Kindergarten (ECLS-K) indicate that achievement gaps between various Hispanic ethnic groups and whites differs across a
number of dimensions form kindergarten through 5th grade (Garcia, in press). Mexican-origin students, from first generation immigrant families with limited opportunities to access English in the home and Spanish in school, are the most at risk for academic underachievement. Moreover, access to resources prior to schooling—preschool participation—and support outside of school can significantly impact early school performance in both reading and math. In addition, academic underachievement is primarily related to absence “complex” language structures that most standardized tests associated with NCLB do not assess adequately. This evidence would suggest that a simple “reform” accountability policy that whose primary focus is progress on standardized test to demonstrate Academic Yearly Progress (AYP) does not do justice to the challenges of raising academic achievement for linguistically and culturally diverse students. A new set of education “innovations” must clearly take into consideration the language and cultural characteristics of these students, the policies that drive accountability and instructions, and the instructional setting itself—the individual who provide the architecture for that instruction and the attributes of that architecture.

Who are these Children?

We are reminded today that there are some 7,000 living languages throughout the globe with many individuals speaking more that one of those languages. Moreover countries around the world have a great diversity of languages within their own borders. Papua New Guinea records 820 distinct languages, ranking first in diversity of languages within its borders. The United States ranks fifth with over 300 languages serving as primary or first language for its residents. Of course in the European continent, specifically in the European Union, 47% of residents speak English, but 70% speak more that one language and 32% speak more than two languages.

Since children of Hispanic (or Latino) heritage in the United States make up the bulk of students arriving at U.S. schools with a primary language other than English, my treatment of
policy and practice issues will concentrate on these students, but not to the exclusion of some
25% of the non-English speaking students that do not reside in Spanish speaking, non-school
environments. Moreover, I will concentrate on early schooling, since this has been the focus of
both policy and practice interventions for non-English speaking students. Clearly, these
students, most often referred to in the present literature as English Language Learners (ELL)
are not a homogenous group. They come in various shades of proficiencies in their native
language and English and some may speak several languages prior to the introduction of
English in U.S. schools. For instance, Southeast Asian immigrants may have learned their
native language as well as French in refugee camps while they awaited immigration clearance
to the U.S. (Garcia 2005). Recent Mexican immigrant children may speak Spanish and an
indigenous Mexican language upon entry into U.S. schools (Hernandez, 2005). For U.S.
Hispanics, Spanish dominates their early environment with access to English a significant
factor. Hispanic children represent, for example, long-term native born populations of the U.S.
along with various countries-of-origin, each of which is associated with a unique combination of
histories, cultural practices, perspectives, and traditions. At this age level much like the
Hispanic population in general, the growth in the population has been driven to a high degree by
immigration patterns of Hispanics to the US. In 2003, almost 25% of the total US birth cohort
(some 4 million new-born) can be attributed to Hispanic mothers. Of this birth cohort, 68% were
born into a family where on parent was born outside the US. A large majority of young Hispanic
children are of Mexican-origin (68%), but substantial proportions have origins in Puerto Rico
(9%), Central America (7%), South America (6%), or are Cuban or Dominican (3% each). With
the exception only of Puerto Ricans (who are U.S. citizens by birth), the majority of these
children (62% of all Hispanic children) live in immigrant families with at least one foreign-born
parent. Indeed, two-thirds of Mexican-origin and Cuban-origin young children live in immigrant
families, and this rises to about nine-in-ten for those with origins in the Dominican Republic and
Central or South America. Especially important is that the vast majority of young Hispanic
children are, themselves, U.S. citizens: 85% for those with South American origins, 88% for the Mexican-origin, and 91-92% for those with origins in the Dominican Republic and Central or South America (Capps et al., 2004; Hernandez, 2005).

Due to this variety in immigrant national origin and related social factors, language development and language-use vary for ELL student populations. Some young Hispanics, for example, acquire English as their first language and maintain only monolingual proficiency throughout their life. The ELL populations in the U.S. tend to acquire their first language in the home and formally learn English as they enter public schooling. The proportional size of this particular subpopulation has been growing rapidly over the past few decades. Indeed, the percentage of the overall child population in the US who spoke a non-English native language rose from 6% in 1979 to 14% in 1999. In 1999 there were approximately 14 million language minority children (1-17 years of age)—72-75% of whom spoke Spanish as their native language (August, 2006; NCES, 2004). A final (and smaller) subset of ELL children develops English and Spanish fluency simultaneously and at comparable levels in the home and in school. Differences in language development are most commonly attributable to differing linguistic practices in the home. As we look forward to education policies and practices, let me turn specifically to the attributes of young children, since they will soon significantly populate U.S. schools.

In an analysis of data from the Early Childhood Longitudinal Study, Birth Cohort (ECLS-B), López and Sarrueco (2005) describe the home language environments of Hispanic 9-month-olds in the country (Table 2). Representing a national sample of children born between December 2001 and January 2002, López and Sarrueco found that Hispanic infants (constituting 26% of the total infant population) resided in various sorts of home language environments. The largest group (34%) of Hispanic infants lived in a home in which Spanish was the primary language, with some English. Twenty-two percent lived in a home in which English was primarily spoken, with some Spanish; 21% in English-only homes; and 19% in
Spanish only homes. The “other” category (4%) includes homes in which languages other than Spanish and English (e.g., indigenous Central American languages) are used. In other words, approximately 75% of all homes of Hispanic children 9-months of age spoke at least some Spanish. It should be no surprise, therefore, that the United States is the fifth largest Spanish-speaking country in the world (González, 2005).

In another study, data from the US Census 2000 reveal that many parents of young Hispanic children have limited English proficiency (Hernandez, 2005). For example, three-fourths of young Hispanic children in immigrant families (73%) live with at least one parent who is Limited English Proficient (LEP), not speaking English exclusively or very well, and one-half (50%) live with two such parents (Hernandez, 2005). Most likely to live with a parent whose English is limited are young children in immigrant families from Central America (70%), the Dominican Republic (73%) and Mexico (78%). On the other hand, only 5% of young Hispanic children in U.S.-born families live with two parents who are Limited English proficient, and 14% live with at least one such parent. Therefore, only 20% of U.S. born Hispanics in this sample are raised in a primary English-only parental language contexts. These children may still be exposed to Spanish language environments that include their grandparents and other extended family members who may be significantly involved in their care and upbringing (Zentella, 2005).

**Correlates with Home Language Environments**

While one-third of all young Hispanic children (ages 5-8) are bilingual—fluent in both English and Spanish—Hispanics are more likely than other racial/ethnic groups to be ELL, and to have one or two parents who are also ELL. That is, over 50% of all Hispanic children ages 0-8 years old have either a mother or father whose primary language is Spanish. Moreover, Hispanic children, including those from native and immigrant families, are more likely than any other racial/ethnic group to live in linguistically isolated homes, households in which no one over the age of 13 speaks English exclusively or very well (Hernandez, 2005).
Notably, compared to other Hispanics ages 5-8 years old, children of Mexican ancestry are the least likely to be bilingual. Furthermore, Hispanic children from Dominican, Mexican, and Central American backgrounds are more likely than Hispanics from others national origins to be LEP and to have one or two LEP parents—e.g., 66% of children of Central American decent have a LEP mother or father, compared to Mexican (56%), Dominican (66%), Mexican (66%), Puerto Rican (28%), Cuban (30%), and South American (46%).

In addition to country-of-origin, it is important to evaluate Hispanic children's bilingual proficiency by other demographic features. Geography, for example, appears to be related with parent reports of their children's bilingual proficiency. Whereas 79% of Hispanic children live in just nine states (AZ, CA, CO, FL, IL, NJ, NM, NY, and TX), the linguistic profile of Hispanic children ages 5-8 differs between these states as well as other regions (Hernandez, 2005). Table 5 shows differences between states and national regions in terms of bilingual as well as limited English proficiency. As a nation, in 2000, 33.4% of Hispanic children ages 5-8 were reported as being bilingual, while 33.5% were categorized as being LEP. In terms of regional differences, Hispanic children in the Northeast region (excluding NJ, NY) have a relatively high rate of reported bilingual proficiency (39.5%) and those in the Midwest (excluding IL) have a relatively low rate of reported bilingual proficiency (24.3%) as well as a lower rate of limited English proficiency (21.5%). Regarding differences between the 9 states with the highest proportions of Hispanics, children from Florida and New Jersey have the relatively highest rates of reported bilingual proficiency (46.8% in FL; 44.2% in NJ) whereas Hispanic children from Colorado have the lowest (21.3%). Arizona, California, Illinois, and Texas have the highest relative proportions of Hispanic children who are potentially ELL students (33.4% in AZ; 39.9% in CA; 40.7% in IL; 35.2% in TX). This is particularly notable since Hispanic children in these four states constitute nearly 59% of the total Hispanic child population (ages 0-8).

Analyses by Hernandez (2005) also offer some information regarding the relationship between language and poverty. Compared to the children ages 0-8 in the general population,
Hispanics are more likely to live below the official poverty level: 17.4% of children in the general population live in official poverty compared to 27.7% of Hispanics. The proportionality of Hispanics in poverty is intensified for those groups of children who live in homes in which little or no English is spoken. This trend can be illustrated by examining differences in poverty level by Hispanic father’s English fluency. For those Hispanic homes in which the father is fluent in English, 16.3% live below the official poverty line, compared to 30.2% of those Hispanic homes in which the father is not fluent in English.

The Federal Courts and ELL’s: Establishing Legal Rights

The 1974 United States Supreme Court decision of Lau v. Nichols is the landmark case that established language minority status as a claim for discrimination and indicated that limited English proficient students (LEP) must be provided support to access the curriculum:

“(T)here is no equality of treatment merely by providing students with English instruction. Students without the ability to understand English are effectively foreclosed from any meaningful discourse. 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 education 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.” (p. 18)

This articulation of the rights of language minority students prevails today. The class action lawsuit was filed against the San Francisco Unified School District on March 25, 1970 and involved twelve American-born and foreign-born Chinese students. Prior to the suit, the district initiated pullout program in 1966, at the request of parents of Limited English Proficient (LEP) students—this has recognized as the legal term for these students. In a 1967 school census, the district identified 2,456 LEP Chinese students. By 1970, the district had identified 2,856 such students. Of this number, more than half (1,790) received no special instruction. In addition, over 2,600 of these students were taught by teachers who could not speak Chinese. Still, the district argued that it had made initial attempts to
serve this population of students. The Supreme Court’s majority opinion overruled an appeals court that had ruled in favor of the district. Instead, the Court ruled in favor of the students and parents.

The opinion relied on statutory (legislative) grounds, and avoided any reference to constitutional determination, although plaintiffs had argued that the equal protection clause of the Fourteenth Amendment of the U.S. Constitution was relevant to the case. A student’s right to special educational services flowed from the district’s obligations under the Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving federal financial assistance. A May 25, 1970 memorandum issued by the Department of Health, Education, and Welfare (HEW) also justified the requirement of special educational services.

After Lau, the domain of the language minority education lawsuits belonged almost exclusively to Hispanic litigants. Although some cases were litigated to ensure compliance with the Lau requirements of “affirmative steps,” most subsequent cases involved issues left unanswered by Lau: Who are these students? What form of additional educational services must be provided? In Aspia of New York, Inc. v. Board of Education (1975), a suit was brought by a community action group on behalf of all Hispanic children in the New York School District. The plaintiff argued that these students could not successfully participate in an English schooling context because of their lack of English proficiency, but that they could successfully participate in a Spanish language curriculum (Roos, 1984). The United States district court hearing this case adopted a language dominance procedure to identify those students eligible for non-English, Spanish-language instructional programs.

The procedure called for parallel examinations to obtain language proficiency estimates on Spanish and English standardized achievement tests. All students scoring below the 20th percentile on an English language test were given the same (or a parallel) achievement test in Spanish. Students who scored higher on the Spanish achievement test and Spanish language proficiency test were to be placed in a Spanish-language program. These procedures assumed adequate reliability and validity for the language and achievement tests administered. Such an assumption was, and still is, highly questionable. However, the court argued that it acted in "reasonable manner," admitting that in the
absence of better assessment procedures it was forced to follow previous (Lau) precedents. A subsequent case, Otero v. Mesa County School District No. 51 (1975), concluded that a clear relationship between low academic achievement and a lack of English proficiency must be clearly demonstrated before a court could mandate special instructional services.

In the key Fifth Circuit decision of Castaneda v. Pickard (1981), the court interpreted Section 1703(f) of the Equal Education Opportunity Act of (1974) as substantiating the holding of Lau that schools cannot ignore the special language needs of students. The Equal Educational Opportunities Act of 1974 (EEOA) extended Title VI of the Civil Rights Act to all educational institutions, not just those receiving federal funding. Section 1703 (f) of the EEOA provides:

"No state shall deny equal educational opportunities to an individual on account of his or her race, color, sex, or national origin by - the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." (EEOA, 1974, §1703 (f))

Furthermore, the court then pondered whether the statutory requirement of the EEOA that districts take "appropriate action to overcome language barriers" should be further delineated. The plaintiffs urged on the court a construction of "appropriate action" that would necessitate bilingual programs that incorporated bilingual students' primary language. The court concluded, however, that Section 1703(f) did not embody a congressional mandate that any particular form of remedy be uniformly adopted. However, the court did conclude that Congress required districts to adopt an appropriate program, and that by creating a cause of action in federal court to enforce Section 1703(f), it left to federal judges the task of determining whether a given program was appropriate. While the court noted that Congress had not provided guidance in that statute or in its brief legislative history on what it intended by selecting "appropriateness" as the operative standard, it continued with reluctance and hesitancy and described a mode of analysis for a Section 1703(f) case:

1. The court will determine whether a district's program is "informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy." The court explicitly declined to be an arbiter
among competing theorists. The appropriate question is whether some justification exists, not the relative merits of competing alternatives.

2. The court will determine whether the district is implementing its program in a reasonably effective manner (e.g., adequate funding, qualified staffing).

3. The court will determine whether the program, after operating long enough to be a legitimate trial, produces results that indicate the language barriers are being overcome. A plan that is initially appropriate may have to be revised if expectations are not met or if the district's circumstances significantly change in such a way that the original plan is no longer sufficient. (p. 73)

As a result of Castaneda, it became legally possible to substantiate a violation of Section 1703(f), following from Lau, on three grounds: (a) The program providing special language services to eligible language minority students is not based on sound educational theory; (b) the program is not being implemented in an effective manner; or (c) the program, after a period of "reasonable implementation," does not produce results that substantiate language barriers are being overcome so as to eliminate achievement gaps between bilingual and English-only speaking students. It is obvious that these criteria allow a local school district to continue to implement a program with some educational theoretical support for a "reasonable" time before it will make judgments upon its "positive" or "negative" effects.

Furthermore, in the Castaneda decision, the court again spoke, reluctantly but firmly, to the issue of program implementation. In particular, the court indicated that the district must provide adequate resources, including trained instructional personnel, materials, and other relevant support that would ensure effective program implementation. Therefore, a district that chooses a particular program model for addressing the needs of its bilingual students must demonstrate that its staffing and materials are adequate for such a program. Implicit in these standards is the requirement that districts staff their programs with language minority education specialists, typically defined by state-approved credentials or professional course work (similar to devices used to judge professional expertise in other areas of professional education).
Summarizing the Rights of Language Minority Students

The previous discussion highlighted the increasing number of court initiatives influencing the educational services for language minority students. The court opinions in particular have generated some understanding of a language minority pupil’s legal standing as it relates to the educational treatment received. At the national level, this legal standing stems from court opinions specifically interpreting Section 1703(f) of the 1974 U.S. Equal Educational Opportunity Act. The courts have consistently refused to invoke a corollary to the Fourteenth Amendment to the U.S. Constitution within respect to educational treatment. Even so it is evident that litigation has increased (and is likely to continue) and has been an avenue of educational reform that has produced significant changes in educational programs for language minority students. However, like almost all litigation, it has been a long (range of 4-13 years in court prior to an operational decision) and often highly complicated and resource-consuming enterprise.

Although hesitant, United States federal courts have played a significant role in shaping educational policy for bilingual students. They have spoken to issues of student identification, program implementation, resource allocation, professional staffing, and program effectiveness. Moreover, they have obligated both local and state educational agencies to language minority education responsibilities. Most significantly, they have offered to language minority students and their families a forum in which minority status is not disadvantageous. It has been a highly ritualized forum, extremely time-and-resource-consuming. Still, the federal courts have been a responsive institution and will likely continue to be used as a mechanism to air and resolve the challenges of educating language minority students.

Federal Legislation: No Child Left Behind and the Demise of the Bilingual Education Act

As part of a larger 2001 reauthorization of the Elementary and Secondary Education Act of 1965, a measure known as No Child Left Behind (NCLB), the Bilingual Education Act was eliminated. Under provisions of this new reauthorization, specifically Title III: Language Instruction for Limited
English Proficient and Immigrant Students, federal funds will continue to support the education of bilingual students, referred to in the new law as LEP students. However, Title III differs markedly from the initial enactment of Title VII: The Bilingual Education Act and any of its five subsequent reauthorizations.

**The Bilingual Education Act, 1968-1988**

Since its inception in 1968 through its final reauthorization in 1994, Title VII of ESEA: The Bilingual Education Act stood as the United States’ primary federal legislative effort to provide equal educational opportunity to language minority students. The legislation was reauthorized on five occasions (1974, 1978, 1984, 1988, 1994). While the aim of the legislation was never one of establishing language policy, the role of language became a prominent marker as the legislation articulated the goals and nature of education for language minority students.

Like *Lau v. Nichols*, The initial Title VII legislation built upon the Civil Rights Act of 1964 and originated as part of the “war on poverty” legislation. The legislation was primarily a “crisis intervention” (Garcia & Gonzalez, 1995), a political strategy to funnel poverty funds to the second largest minority group in the Southwest, Mexican Americans (Casanova, 1991). The BEA was intended as a demonstration program to meet the educational needs of low-income, limited English speaking children. The legislation was intended as a remedial effort, aimed at overcoming students’ “language deficiencies,” and these “compensatory efforts were considered to be a sound educational response to the call for equality of educational opportunity” (Navarro, 1990, p. 291). No particular program of instruction was recommended in fact financial assistance was to be provided to local educational agencies (LEA) “to develop and carry out new and imaginative . . . programs” (BEA, 1968, §702). Among the approved activities were the following programs: bilingual education, history and culture, early childhood education, and adult education for parents.
While the role of native language instruction was not specifically addressed until the 1974 reauthorization, as a practical matter, all of the programs funded under the BEA in its early years featured native language instruction. The 1974 reauthorization even defined bilingual education as, “instruction given in, and study of, English, and, to the extent necessary to allow a child to progress effectively through the educational system, the native language” (§703(a)(4)(A)(i)). Other significant changes in terms of eligibility included the elimination of poverty as a requirement; the inclusion of Native American children as an eligible population; and a provision for English speaking children to enroll in bilingual education programs to “acquire an understanding of the cultural heritage of the children of limited English-speaking ability” (§703 (a)(4)(B)).

Over the next 15 years the national sentiment shifted to focus on English acquisition as the primary goal of education for language minority students. As such, the 1978 reauthorization added language to the 1974 definition of bilingual education emphasizing the goal of English language proficiency. Bilingual education programs that encouraged native language maintenance would only foster children's allegiance to minority languages and cultures, and this was not an acceptable responsibility for schools. Native language maintenance was the responsibility of families, churches, and other institutions outside the school (Casanova, 1991; Crawford, 1999). So, while bilingualism was viewed as a laudable goal, the ultimate benefit of programs would be judged in terms of English language acquisition and subject matter learning.

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1 The inclusion of native language instruction in the definition of bilingual education was influenced by bilingual programs in Dade County, Florida which were founded to address the needs of the first wave of professional class Cuban immigrants. These same programs were some of those featured in the congressional hearings for the 1968 law. The Cuban immigrants saw themselves as temporary residents of the United States who would soon return to their country, and therefore, wanted to preserve their culture and language. Thus, the bilingual programs encouraged Spanish language maintenance and English language acquisition (Casanova, 1991). At the same time, the success of the programs gave encouragement to the idea of bilingual education as a method of instruction for students from disadvantaged backgrounds (Hakuta, 1986). Native language instruction could serve as a bridge to English language acquisition, by providing equal access to the curriculum until students were English proficient. While the BEA acknowledged the role native language could play in supporting a transition to English, it did not promote bilingual education as an enrichment program where the native language was maintained. These very programs were amongst those described in hearings on the 1968 law.
The 1984 reauthorization of the BEA targeted funds to transitional bilingual education: 60% of Title VII funds were allocated to the various grant categories, and 75% of these funds were reserved for transitional bilingual education programs. Transitional bilingual education programs were specified as providing “structured English-language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child’s native language” (§703 (a)(4)(A)). So, the purpose of native language instruction was to support transition to English instruction. In contrast, developmental bilingual education programs were defined as providing “structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills” (§703 (a)(5)(A)). So, the goal of this program included native language and English language competence, yet no funding allocations were specified.

In addition to delineating these two bilingual education programs, the grant categories included special alternative instructional programs (SAIPS) that did not require the use of native language and four percent of Title VII funds were allocated to SAIPS. These programs were created in recognition “that in some school districts establishment of bilingual education programs may be administratively impractical” (§702 (a)(7)). While the 1984 grant categories remained the same for the 1988 reauthorization, funds allocated to SAIPS were increased to 25%. Furthermore, the 1998 legislation included a three year limit on an individual’s participation in transitional bilingual education programs or SAIPS: “No student may be enrolled in a bilingual program . . . for a period of more than 3 years” (§7021 (d)(3)(A)).

**ESEA Reauthorizations of 1994 and 2001: From Bilingual Education to English Only**

With regards to limited English proficient students, the 2001 reauthorization of the Elementary and Secondary Education Act marks a complete reversal from the reauthorization in 1994. Whereas the 1994 version of the Bilingual Education Act included among its goals "developing the English skills
and to the extent possible, the native-language skills” of LEP students, the new law focuses only on attaining “English proficiency.” In fact, the word "bilingual" has been completely eliminated from the law and any government office affiliated with the law. A new federal office has been created to replace the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) and oversee the provisions of the new law. It is now the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited-English-Proficient Students (OELA) or as it is commonly referred to, OELA). What was formerly known as the National Clearinghouse for Bilingual Education, is now known as the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs.

Through Title III of NCLB, federal funds to serve ELL students will no longer be federally administered via competitive grants designed to ensure equity and promote quality programs; programs that served as guiding lights to the larger nation. Instead, resources will be allocated primarily through a state formula program for language instruction educational programs (LIEPs) that are “based on scientifically-based research” (U.S. Department of Education, 2002a). LIEPs are defined as “an instruction course in which LEP students are placed for the purpose of developing and attaining English proficiency, while meeting challenging State and academic content and student academic achievement standards. A LIEP may make use of both English and a child’s native language to enable the child to develop and attain English proficiency” (U.S. Department of Education, 2003, p. 20).

The formula grants will be distributed to each state based on their enrollments of LEP and immigrant students. Each state must then allocate 95% of the funds to individual local education agencies (LEAs). The argument for the formula grants claims that the previous system of competitive grants “benefited a small percentage of LEP students in relatively few schools” (U.S. Department of Education, n.d.). In fact, resources will be spread more thinly than before - between more states, more programs, and more students. Through competitive grants,
Title VII support for instructional programs previously served about 500,000 "eligible" bilingual students out of an estimated 3.5 million nationwide. Under the new law, districts will automatically receive funding based on the enrollments of LEP and immigrant students. However, the impact of federal dollars will be reduced. Pre-NCLB, for example, about $360 was spent per student in Title VII-supported instructional programs. Post-NCLB, despite the overall increase in appropriations, Title III will provide less than $135 per student. Funding for all other purposes—including teacher-training, research, and support services—have been restricted to 6.5 percent of the total budget. That amounts to about $43 million. In 2001, pre-NCLB, by contrast, $100 million was spent on professional development alone in order to address the critical shortage of teachers qualified to meet the needs of bilingual students.

Accountability provisions mandate annual assessment in English for any student who has attended school in the United States (excluding Puerto Rico) for three or more consecutive years and attainment of "annual measurable achievement objectives" (U.S. Department of Education, 2002a). States are required to hold subgrantees accountable for making adequately yearly progress (AYP). Subgrantees must report every second fiscal year and include a description of the program as well as the progress made by children in learning English, meeting state standards, and attaining English proficiency. States report every second year to the Department of Education, and the Department of Education reports every second year to Congress. Subgrantees failing to meet AYP must develop an improvement plan with sanctions if they continue to fail for four years (U.S. Department of Education, 2002b). In fact, failure to meet AYP can eventually result in the loss of Title III funds.

In summary, federal policies have begun to emphasize the teaching and learning of English with little regard for the development of academic bilingual competency for students coming to school

2 Those programs awarded funds under the 1994 reauthorization will continue to be eligible.
3 As of February of 2004, for AYP calculations states can include in the LEP subgroup, students who have achieved English language proficiency to ensure they receive credit for improving English language proficiency from year to year (2004).
speaking a language other than English. It is unclear whether this reflects only a swing in policy direction or if it will "stay the course" in a political climate that is likely to change as the demographic increase in US bilingual populations become a reality. For now, state policies have begun to mirror this shift, and in particularly dramatic ways in three states with significant populations of bilingual children.

**Convergence/Non-Congruence of Policies and Achievement**

In the wake of the contemporary educational "zeitgeist" which embraces excellence and equity for all students, best reflected in *A Nation at Risk* (U.S. Department of Education, 1983), the articulation of national goals in *Goals 2000* (1994), and the more recent initiatives by President Bush in the No Child Left Behind Act of 2001 attention to ELL and immigrant children and their families has been significant. The major thrust of any such effort aimed at these populations has been centered on identifying why such populations are not thriving, and how institutions serving them can be "reformed" or "restructured" to meet this educational challenge.

As indicated previously, California and Texas are the homes of large populations of ELL students and I will turn to them specifically regarding the impact of NCLB. It is important to note that California has also targeted ELL students with "language of instruction" policies with the passage of Proposition 227 in 1998 (García & Curry, 2000), and soon thereafter an "English only" state school accountability program followed (García, 2001b). These two recent state policies, further enhanced by district level policies, dictate the move towards "English Only" reading programs (Stritikus, 2002). What emerges at the local level from the varied perspectives of teachers and principals (Stritikus, 2002) is that these multiple policies are significantly altering the educational landscape for California’s student population, especially for ELL students. Teachers are experiencing these policies as top-down reforms. This has in effect reduced teacher autonomy regarding classroom instruction. As teachers suggested, current educational trends posit higher test scores and a school’s API ranking as the educational goals of students and teachers. This misplaced focus, argue teachers, leads to the impoverishment of student
learning in the classroom (Stritikus, 2002). For bilingual educators, this further means the erosion of their primary language instruction and curriculum.

Most disheartening is the recent analysis of the achievement gap between bilingual and non-bilingual student in California. According to Stanford 9 data published in 2004 (California State Department of Education, 2004), the gap between English-fluent and non-English-fluent students has increased. According to this same data, since California’s Proposition 227 passed in 1998, 88% of California’s non-English fluent students have been placed into English immersion classes that are designed to not normally exceed one year. Since 1998, Stanford 9 achievement test scores in reading have shown a widening gap between non-English fluent and English fluent students.

The impact of California’s "English Only" reform policies on bilingual students find strong parallels in the research findings of Valenzuela (2004) for ELL students in Texas. Drawing on emerging research on high stakes testing and their individual investigations (McNeil, 1988, 2000; Valenzuela, 1997, 1999, 2004), the authors identify a set of alarming educational trends regarding the impact of the Texas Assessment of Academic Skills (TAAS). Some of the critical issues identified by McNeil and Valenzuela mirror the set of concerns raised by teachers in California: TAAS-based teaching and test preparation are usurping a substantive curriculum; TAAS is divorced from children’s experience and culture and is widening the educational gap between rich and poor, and between mainstream and language minority students.

The educational trends in California and Texas are similar. Under NCLB, both states use one test to determine academic outcomes for students. Both have placed a tremendous emphasis on school ranking and are witness to a drastic increase in the implementation of mandated scripted reading programs at the expense of other effective instructional practices for second language learners. California’s educational system is growing more and more prescriptive, just as Texas has, discrediting the cultural and linguistic assets students bring to the classroom. McNeil and Valenzuela state that the

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4 It is important to note that Texas accountability policies allow for the use of a Spanish language academic test.
TAAS system in Texas is “playing out its inherent logic at the expense of our poorest minority children” (2001, p. 63). In sum, in California, and to some degree in other states like Texas, “English only” policy initiatives continue to have negative effects on ELL students. They are subtractive in nature, ignoring the linguistic resources bilingual students bring to the classroom, and, disregard responsive attributes of programs that work well for these students.

**Academic Assessment.** One of the most significant attributes of NCLB policy is related to the assessment of academic gains for ELL students. From a policy perspective, ELL students are not to be left out of the realm of accountability. Unfortunately for ELL students, the practice of assessing them appropriately within this policy is a significant challenge. Cognitive and linguistic abilities and educational performance of children are generally obtained by measuring specific skills—typically through standardized testing. Several concerns and problematic issues (including litigations) have come to bear over the past few decades in relation to test development and assessment practices for culturally and linguistically diverse students. Present efforts continue to strive to develop appropriate measures and procedures which take into account children’s cultural and linguistic backgrounds so as to not penalize those who fall outside the cultural mainstream in the U.S. The goal of these tests and procedures, in general, is to create culturally and linguistically relevant means and scores that accurately portray the abilities and concurrent performance levels for a diverse body of children.

Though important strides have been made in the development of appropriate tests and testing procedures for culturally and linguistically diverse students (Rhodes, Ochoa, & Ortiz, 2005), much research and development is still needed. Tests are still limited in terms of their overall number as well as the domains and skills they cover (Espinosa & López, 2006). Moreover, several tests developed for specific language minority groups are merely translations of original English versions, which tend to be based on Euroamerican cultural values. Their view of competence, in many cases, is simply not applicable to other groups with different backgrounds. As such the content and construct validity of an English measure may not be the same when translated into Spanish. Furthermore, tests with appropriate content and construct validity should contain enough items to assess an identified skill, and
be standardized with representative samples of Hispanic children from diverse national origins, language backgrounds, and socioeconomic conditions.

The National Association for the Education of Young Children recently adopted a series of recommendations on the screening and assessment of young ELL students (Clifford et al., 2005). These are particularly useful for those serving young Hispanic children. First, they recommend that assessments be guided by specific purposes with appropriate applications to meet the needs of the child. Assessments and screenings should be used to offer better services and to develop more informed interventions. Moreover, this approach encourages ELL students to be included into accountability systems and to provide meaningful measures which improve learning outcomes.

Second, instruments used to assess young ELL students should align with the specific cultural and linguistic characteristics of the child being assessed. This means the cultural and linguistic content and context of the tests are congruent with the child’s background.

Third, the main purpose of assessment should be to improve learning and development of the child. In order for this to occur, multiple methods, measures, and people should be incorporated in an assessment of the child’s ongoing performance, given the curricular content and instructional approaches used in class.

Fourth, the use of formal standardized assessments should be done wisely. Such assessments are appropriate to identify disabilities, evaluate programs (for accountability purposes), and/or to monitor and improve individual learning. However, test developers, evaluators, and decision makers should be aware of the limitations and biases many of these tests introduce—e.g., sampling and norming, test equivalence, test administration, and test content.

Fifth, those conducting assessments should have cultural and linguistic competence, knowledge of the child being assessed, and specific assessment-related knowledge and skills. It is important to remember that assessments are more likely to be reliable when carried out by teams of professionals who are bicultural, bilingual, and who are knowledgeable about first and second language acquisition.
Lastly, families of young ELL students should play critical roles in the assessment process. Parents (or legal guardians) should be queried as sources of data and should be involved in the interpretation process of comprehensive assessments. In addition, parents (or legal guardians) should always be aware of reasons for assessment, the procedures involved, and the significance of the outcomes. Their voices should be sought out and influence program placement and other intervention strategies (Lazarin, 2005).

The Need for Innovation and Reform

As the United States advances educational policy for any of its students in an ever-diversified population, it is even more important to understand the dramatic shifts in technology, globalization, and democratization. For now, policy is almost characterized by a “blind spot” when it comes to the new demographic reality, particularly the growth of ELL students.

These circumstances pose a particular challenge to educators and those among us who look to educational agencies for help in realizing the moral imperatives of equity and social justice. These agencies are being called on to develop and implement models of culturally competent practices in creating and delivering services to growing numbers of bilingual students. Furthermore, class has become increasingly more important in today's policy context than race, ethnicity, national origin, or English speaking abilities in determining access to opportunities, power and privilege in American society (Wilson, 1978). Still, West (1993) reminds us that race is still important, and if we conclude that class and race counts, we also conclude that language does so as well. Garcia (2001a, 2001b) indicates that language will continue to be at the forefront of federal and state policy activity. As such, this chapter, has attempted to deepen an understanding of the education of bilingual students through educational policy at the federal and state levels. If we can attend to policy that “counts,” then one could predict that as more bilingual students enter the “right” kind of schools, barriers to their academic,
social and economic success and mobility will fall. In that policy arena, language distinctions will blend with other features of our society to create a more “equalitarian” society (Garcia, 2001b), a society in which the negative effects of racial, ethnic, linguistic and class, differences are eliminated. This is, of course, a highly optimistic scenario of the future of bilingual students and American society in general. Still, it is most certainly a preferable prediction to one that argues that America could become another Bosnian nightmare, where racial and ethnic conflicts could escalate into major avenues of social unrest.

Policy Innovation: Rights of Language Minority Groups in the International Arena

Skutnabb-Kangas (Skutnab-Kangas, 2000; 2002) and Crawford (2002) remind us that the US is only one of the world’s many nation-states that must deal with issues of students coming to public schools not speaking the schooling language. In particular, the United Nations has spoken directly to the rights of a minority group to its language by explicitly indicating,

“Prohibiting the use of the language of a group in daily discourse or in schools or the printing and circulation of publications in the language of the group falls within the agreed upon constraints regarding linguistic genocide.” (United Nations, 1948)

In 1994, the United Nations Human Rights Committee spoke again to this international issue (United Nations, 1994). It is the most far-reaching human rights articulation of an international body addressing linguistic rights:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Skutnabb-Kangas (2002) has summarized this UN position as:

• Protecting all individuals on the State’s territory or under its jurisdiction such as immigrants and refugees irrespective of their legal status,

• Recognizing the existence of a linguistic "right,"

• Imposing positive obligations on the State to protect that "right."

Under this interpretation, the US is in violation of this international standard. Still, throughout this chapter, several important conclusions regarding the responsibilities of educational agencies have been
established. Using a question-and-answer format, Table 3 sets out some of these responsibilities. These are adapted from Roos (1984) and Garcia (2001b) and are still legally valid today. They represent a practical guide for understanding the legal status of bilingual students and the legal liability of the educational agencies that serve them.

**Practice Innovation: Developing responsive pedagogy and learning communities**

I frame this discussion in a broad educationally relevant theoretical continuum. At one end of this continuum, it is argued that addressing linguistically and culturally diverse populations calls for a deeper understanding of the interaction of a students' language and culture and the prevailing school language and culture (Cole, 1996; Garcia, 1999, 2001). This cultural significance position is supported by a rich contribution of research which suggests that the educational failure of "diverse" student populations is related to this culture clash between home and school. In essence, these researchers have suggested that without attending to the distinctiveness of the contribution of culture, educational endeavors for these culturally distinct students are likely to fail.
To facilitate the discussion of how considerations of cultural diversity can be integrated into the development of a pedagogy and practices that improve the educational conditions of diverse students, Figure 1 provides a depiction of the continuum of approaches suggested by the literature reviewed briefly here. Theoretically, students do not succeed because the difference between school culture and home culture lead to an educationally harmful dissonance. The challenge for educators is to identify critical differences between and within ethnic minority groups and individuals within those groups and to incorporate this information into classroom practice. In this manner, the individual and the cultural milieu in which that individual resides receives educational attention.

At the other extreme of this theoretical continuum lies the position that instructional programs must insure the implementation of appropriate general principles of teaching and learning. The academic failure of any student rests on the failure of instructional personnel to implement what we know "works". Using the now common educational analytical tool known as meta-analysis, Walberg (1986) suggests that educational research synthesis has identified robust indicators of instructional conditions which have academically significant effects across various conditions, and student groups. In this vein, a number of specific instructional strategies including direct instruction, tutoring, frequent evaluation of academic progress, and cooperative learning have been particular candidates for the "what works" category. Expectations play an important role in other formulations of this underachievement dilemma. Noguera (2004) has suggested that students, teachers and school professionals in general have low academic expectations of culturally and linguistically diverse students. Raising student motivation in conjunction with enhancing academic expectations with challenging curriculum is a prescribed solution. Implied in this "general principle" position is that the educational failure of "diverse" populations can be eradicated by the systemic and effective implementation of these understood general principles of instruction which work with "all" students.

Interspersed within this continuum are other significant conceptual contributions which attempt to explain the academic underachievement of culturally and linguistically diverse
students. Paulo Freire (1970) has argued that educational initiatives cannot expect academic or intellectual success under social circumstances which are oppressive. He and others (Cummins, 1986; Pearl, 1991) suggest that such oppression taints any curriculum or pedagogy and only a pedagogy of empowerment can fulfill the lofty goals of educational equity and achievement. Similarly, Bernstein (1971), Laosa (1982), and Wilson (1987) point to socio-economic factors which influence the organization of schools and instruction. Extensive exposure, over generations, to poverty and related disparaging socio-economic conditions, significantly influence the teaching/learning process at home, in the community and in schools. The result is disastrous, long-term educational failure and social disruption of family and community. Ogbu (1999) offers an alternative, macro-sociological perspective with regard to the academic failure of culturally and linguistically diverse students. Such a conceptualization interprets this country's present social approach to several immigrant and minority populations as "caste-like." In this theoretical attempt to explain underachievement, these theorists argue that these populations form a layer of our society that are not expected to excel academically or economically and are therefore treated as a "caste-like population." These expectations are transformed into parallel self-perceptions by these populations with academic underachievement and social withdrawal as the result.

Clearly, the above conceptualizations are not presented here in any comprehensive manner. Moreover, the "cultural dissonance" to "general principles" continuum need not be interpreted as a set of incompatible approaches in the attempt to understand the educational circumstances of culturally diverse students. Instead, this short introduction should make evident that a wide variety of constructs have seriously dealt with this topic of attempting to understand why so many culturally and linguistically diverse students are not well served by today's educational institutions. These conceptual contributions have attempted to address the issues surrounding the challenges of educating a linguistically and culturally diverse population by searching for explanations for those conditions.

These contributions take into consideration that the schooling vulnerability of linguistically and culturally diverse students must be understood within the broader contexts of this society's circumstances for students in and out of schools. That is, no quick fix is likely under social and schooling conditions which mark the student for special treatment of his/her cultural difference without consideration for the psychological and social circumstances in which that student resides. This approach warns us against the isolation of any single attribute (poverty, language difference, learning potential, etc.) as the only variable of importance. This more comprehensive view of the schooling process includes an understanding of the relationship
between home and school, the psycho-socio-cultural incongruities between the two and the resulting effects on learning and achievement (Brown and Campione, 1998).

Imbedded in this perspective is the understanding that language, culture, and their accompanying values, are acquired in the home and community environment, that children come to school with some knowledge about what language is, how it works, and what it is used for, that children learn higher level cognitive and communicative skills as they engage in socially meaningful activities, and that children's development and learning is best understood as the interaction of linguistic, socio-cultural, and cognitive knowledge and experiences. A more appropriate perspective of learning, then, is one which recognizes that learning is enhanced when it occurs in contexts that are both socio-culturally and linguistically meaningful for the learner. Covington (1996) further emphasizes that students learn best and teachers feel most satisfied when both are encouraged to become allies in the learning process and encouraging the cooperation and sharing.

How do we as educators begin to understand such a complex set of interactions? One framework for understanding is founded on the concept of “act psychology.” First formulated at the end of the nineteenth century, the notion of act psychology proposes a model for human cognitive processes, or how we come to know. It focuses on the assertion that the mental functions of perceiving, remembering, and organizing—ultimately, knowing—are all acts of construction. It also asserts that what we know is closely related to the circumstances in which we come to know it.

The term “constructivist” really is an apt one. The constructivist perspective is rooted in the notion that for humans knowing is a result of continual building and rebuilding. Our “construction materials” consist of give and take between the organization and content of old information and new information, processes of organizing that information, and the specific physical and social circumstances in which this all occurs. We come to understand a new concept by applying knowledge of previous concepts to the new information we are given. For example, in order to teach negative numbers, a math teacher can use the analogy of digging a hole—the more dirt you take out of the hole, the greater the hole becomes; the more one subtracts from a negative number, the greater the negative number becomes. But a math teacher cannot use this example with children who have no experience digging holes. It won’t work. As you can see, this theory of how the mind works implies that continual revisions (or “renovations,” as an architect might say) are to be expected. Therefore, when we organize teaching and learning environments, we must recognize the nature of those environments. As educators, we “build” teaching and learning environments out of what we know and how we come to know it. And we must continue to build. To ignore that is to discount the relevance of previous
Educational environments to the ones we are considering now. They got us to here, but that does not mean they will get us to tomorrow.

Embedded in the constructivist approach to education is the understanding that language and culture, and the values that accompany them, are constructed in both home and community environments (Cummins, 1986; Goldman and Trueba, 1987; Heath, 1981). This approach acknowledges that children come to school with some constructed knowledge about many things (Goodman, 1980; Hall, 1987; Smith, 1971) and points out that children’s development and learning is best understood as the interaction of past and present linguistic, sociocultural, and cognitive constructions (Cole and Cole, 2001). A more appropriate perspective of development and learning, then, is one that recognizes that development and learning is enhanced when it occurs in contexts that are socioculturally, linguistically, and cognitively meaningful for the learner. These meaningful contexts bridge previous “constructions” to present “constructions” (Heath, 1986; Scribner and Cole, 1981; Ladson-Billings and Grant, 1997; Cole and Cole, 2001).

Such meaningful contexts have been notoriously inaccessible to linguistically and culturally diverse children. On the contrary, schooling practices often contribute to their educational vulnerability. The monolithic culture transmitted by the US schools in the form of pedagogy, curricula, instruction, classroom configuration, and language (Walker, 1987) dramatizes the lack of fit between the culturally diverse student and the school experience. The culture of the U.S. schools is reflected in such practices as:

- The systematic exclusion of the histories, languages, experiences, and values of these students from classroom curricula and activities (Banks and Banks, 1995).
- “Tracking,” which limits access to academic courses and which justifies learning environments that do not foster academic development and socialization (Noguera, 1999) or perception of self as a competent learner and language user.
- A lack of opportunities to engage in developmentally and culturally appropriate learning in ways other than by teacher-led instruction (García, 1999; Ladson Billings and Grant, 1997;).

**Responsive Pedagogy and Learning Communities.** The implication of this re-thinking has profound effects for the teaching/learning enterprise related to culturally diverse students (Garcia, 2001). This new pedagogy is one that redefines the classroom as a community of learners in which speakers, readers, and writers come together to define and redefine the meaning of the academic experience. It might be described by some as a pedagogy of empowerment (Cummins, 1986), by others as cultural learning (Heath, 1986; Trueba, 1987),
and others as a cultural view of providing instructional assistance/guidance (Tharp and Gallimore, 1989). In any case, it argues for the respect and integration of the students’ values, beliefs, histories, and experiences and recognizes the active role that students must play in the learning process. It is therefore a responsive pedagogy, one that encompasses practical, contextual, and empirical knowledge and a “world view” of education that evolves through meaningful interactions among teachers, students, and other school community members. This responsive set of strategies expands students’ knowledge beyond their own immediate experiences while using those experiences as a sound foundation for appropriating new knowledge.

Of course, a teaching and learning community that is responsive to the dynamics of social, cultural, and linguistic diversity within the broader concerns for high academic achievement both requires and emerges from a particular schooling environment. While considerable work has been devoted to restructure schools and change the fundamental relationships that exist among school personnel, students, families, and community members, seldom have these efforts included attention to the unique influences of the linguistic and sociocultural dimensions of these same relationships and structures. The environments that potentially support and nurture the development of responsive learning communities are not unlike those promoted by leading school reform and restructuring advocates; however, we further suggest that the incorporation of social, cultural, and linguistic diversity concerns creates a set of educational principles and dimensions that are more likely to address the challenges faced by schools that must attend to the needs of growing populations of diverse students.

Responsive Learning Communities. The learning environments that we consider essential to the development of a responsive pedagogy are referred to as "Effective Schooling" (Garcia, 1994, 1999, 2001 and 2005) and "High Performance Learning Communities (Berman, 1996). The focus on the social, cultural, and linguistic diversity represented by students in today’s public schools further challenges us to consider the theoretical and practical concerns relative to ensuring educational success for diverse students. That is, responsive learning communities must necessarily address issues of diversity in order to maximize their potential and to sustain educational improvement over time. To further examine this challenge, Chart 1 summarizes the conceptual dimensions for high performing responsive learning communities.
Chart 1 Conceptual Dimensions of Addressing Cultural and Linguistic Diversity in Responsive Learning Communities

Federal, State and Local Policy

• Federal research efforts targeted at solid longitudinal experimental and qualitative studies linking non-school variables with school related variables associated with academic student outcomes sparking innovation in this field.
• Federal investments in the development of “language and literacy specialists” who work in Title I and Title III classrooms/schools with ELL students
• Federal and state accountability that considers longitudinal academic development outcomes for ELL students over a minimum period of three years
• Federal and state elimination of prohibitions on the use of the students non-school languages(s) for instruction
• Local district and school development of language and global education architectures that generate multi-language and multi-cultural learning for all students

School-wide Practices

• A vision defined by the acceptance and valuing of diversity
• Treatment of classroom practitioners as professionals, colleagues in school development decisions
• Characterized by collaboration, flexibility, enhanced professional development
• Elimination (gradual or immediate) of policies that seek to categorize diverse students thereby rendering their educational experiences as inferior or limiting for further academic learning--
• Reflection of and connection to surrounding community--particularly with the families of the students attending the school

Teacher/Instructional Practices

• Bilingual/bicultural skills and awareness
• High expectations of diverse students
• Treatment of diversity as an asset to the classroom
• Ongoing professional development on issues of cultural and linguistic diversity and practices that are most effective
• Basis of curriculum development to address cultural and linguistic diversity:
  1. Attention to and integration of home culture/practices
  2. Focus on maximizing student interactions across categories of English proficiency, academic performance, recency of immigration, etc.
  3. Regular and consistent attempts to illicit ideas from students for planning units, themes, activities
  4. Thematic approach to learning activities--with the integration of various skills, events, learning opportunities
CONCLUSION

In summary, present federal and state (and to some degree local district) policies are out of sync with the practices that can assist in the reduction of the achievement gap for ELL students in this country. The architects of our policies have not drawn on the designs of the practitioners as they both move, through NCLB and related policies, to address the academic shortfalls of a growing population of US students. In practice, a Responsive Learning Community recognizes that academic learning has its roots in processes both out-of-school and in-school. Such a conceptual framework rejects the "Americanization" strategy, extends beyond the policy and practice frameworks of "Equal Educational Opportunity" and concludes that a focus on broader issues of culture, like those represented in the "Multicultural Education" movement is useful but not enough for serving, effectively, culturally and linguistically diverse students in today's schools. Instead, a focus on responsive instructional engagement encourages students to construct and reconstruct meaning and to seek reinterpretations and augmentations to past knowledge within compatible and nurturing schooling contexts. Diversity is perceived and acted on as a resource for teaching and learning instead of a problem. A focus on what students bring to the schooling process generates a more asset/resource oriented approach versus a deficit/needs assessment approach. Within this knowledge-driven, responsive and engaging learning environment, skills are tools for acquiring knowledge, not a fundamental target of teaching events.

In addition, the search for general principles of learning that work for all students must be redirected. This redirection considers a search for and documentation of particular implementations of "general" and "non-general" principles of teaching and learning which serve a diverse set of environments, in and out of school. This mission requires an understanding of how individuals with diverse sets of experiences, packaged individually into cultures, "make meaning", communicate that meaning and extend that meaning, particularly in social contexts we call schools. Such a mission requires in-depth treatment of the processes associated with producing diversity, issues of socialization in and out of schools, coupled with a clear examination of how such understanding is actually transformed into pedagogy and curriculum which results in high academic performance for all students. Policy must align itself with this mission.
Table 1. Significant Differences in the 1994 and 2001 Reauthorizations of the ESEA

<table>
<thead>
<tr>
<th>Issue</th>
<th>1994 Title VII: Bilingual Education Act</th>
<th>2001 Title III: Language Instruction, Limited English Proficient, and Immigrant Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Populations</td>
<td>Limited English proficient students</td>
<td>Limited English proficient students</td>
</tr>
<tr>
<td></td>
<td>Recent immigrants which: “have not been attending one or more schools in any one or more States for more than three full years.” (§7501(7))</td>
<td>Immigrant children and youth: 3-21 years of age, not born in any state, “have not been attending one or more schools in any one or more states for more than 3 full academic years.” §3301(6)</td>
</tr>
<tr>
<td></td>
<td>Native Americans, Native Alaskans, Native Hawaiians, Native American Pacific Islanders</td>
<td>Native Americans, Native Alaskans, Native Hawaiians, Native American Pacific Islanders</td>
</tr>
<tr>
<td>Purpose</td>
<td>&quot;(A) To help such children and youth develop proficiency in English, and to the extent possible, their native language; and (B) meet the same challenging State content standards and challenging State student performance standards expected of all children.&quot; (§7111(2))</td>
<td>&quot;To help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.&quot; (§3102(1))</td>
</tr>
<tr>
<td></td>
<td>The use of a child or youth’s native language and culture in classroom instruction can – (A) promote self-esteem and contribute to academic achievement and learning English by limited English proficient children and youth.” §7102(14))</td>
<td>Program for Native Americans: &quot;develop English proficiency and, to the extent possible, proficiency in their native language.” §3211(2)</td>
</tr>
<tr>
<td></td>
<td>The “unique status of Native American languages” and language enhancement.</td>
<td></td>
</tr>
<tr>
<td>Programs</td>
<td>Competitive grants to local education agencies (schools, districts). State education agencies approve the grant application before submission but play no official role in the grant’s implementation.</td>
<td>&quot;To streamline language instruction educational programs into a program carried out through formula grants to State educational agencies and local educational agencies.” (§3102(7))</td>
</tr>
<tr>
<td></td>
<td>&quot;Quality bilingual education programs enable children and youth to learn English and meet high academic standards including proficiency in more than one language.” (§7102(9))</td>
<td>&quot;To implement language instruction educational programs, based on scientifically-based research on teaching limited English proficient children.” (§3102.9))</td>
</tr>
<tr>
<td></td>
<td>Priority is given to programs which &quot;provide for development of bilingual proficiency both in English and another language for all participating students.” (§7116 (i)(1))</td>
<td></td>
</tr>
<tr>
<td>Allocation of</td>
<td>Cap of 25% of funds for SAIPs, can be</td>
<td>95% of funds must be used for grants at</td>
</tr>
</tbody>
</table>
Funds lifted if an applicant has demonstrated that developing and implementing a bilingual education program is not feasible.

the local level to teach LEP children; each state must spend this percentage to award formula subgrants to districts.

Accountability and Assessment

Local education agency (LEA) is the locus of control and is granted great flexibility on how to best serve students. LEA sets own goals and ways of assessing them.

To hold various educational agencies accountable for “increases in English proficiency and core academic content knowledge . . . by requiring – (A) demonstrated improvements in the English proficiency of limited English proficient students each fiscal year; and (B) adequate yearly progress” (§3102(b)).

Table 2. “English Only” Initiatives in Three States

<table>
<thead>
<tr>
<th>Election</th>
<th>California: Proposition 227</th>
<th>Arizona: Proposition 203</th>
<th>Massachusetts: Question 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Election</td>
<td>General Election</td>
<td>General Election</td>
<td></td>
</tr>
<tr>
<td>Passed: 69% to 31%</td>
<td>Passed: 63% to 37%</td>
<td>Passed: 66% to 32%</td>
<td></td>
</tr>
</tbody>
</table>

Purpose/Goals

"All children in California public schools shall be taught in English as rapidly and effectively as possible." (§1.300(f))

"All children in Arizona public schools shall be taught in English as rapidly and effectively as possible." (§1.2)

"All children in Massachusetts public schools shall be taught in English as rapidly and effectively as possible." (§1(f))

Educational Program

"All children in California public schools shall be taught English by begin taught in English. In particular, this shall require that all children be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year." (Article 2.305)

"All children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally to exceed one year." (§15-752)

"All children in Massachusetts public schools shall be taught English by English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally to exceed one year." (§4)

Definition of term:

"English language classroom’ means a classroom in which the language of instruction used by personnel is overwhelmingly the English language, and in which such teaching personnel possess a good knowledge..."
<table>
<thead>
<tr>
<th><strong>Native Language</strong></th>
<th>Not specifically addressed.</th>
<th>&quot;Although teachers may use a minimal amount of the child’s native language when necessary, no subject matter shall be taught in any language other than English, and children in this program learn to read and write solely in English.&quot; (§15-751)</th>
<th>&quot;Although teachers may use a minimal amount of a child’s native language when necessary, no subject matter shall be taught in any language other than English, and children in this program learn to read and write solely in English.&quot; (§2(e))</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assessment</strong></td>
<td>Not specifically addressed.</td>
<td>&quot;Standardized, nationally-normed written test of academic subject matter given in English shall be administered at least once each year to all Arizona public school children in grades 2 and higher.&quot; (§15-755) Only students classified as severely learning disabled may be exempted from this test.&quot; (§15-755)</td>
<td>&quot;Standardized, nationally-normed written test of academic subject matter given in English shall be administered at least once each year to all Arizona public school children in grades 2 and higher who are English learners.&quot; (§7) &quot;A nationally-normed test of English proficiency shall be similarly administered at least once each year to all Massachusetts...&quot;</td>
</tr>
<tr>
<td>&quot;The scores for students classified as 'limited-English' shall be separately sub-aggregated . . . although administration of this test is solely required for monitoring educational progress, Arizona public school officials and administrators may utilize these test scores for other purposes as well if they so choose.&quot; (§15-755)</td>
<td>&quot;Only English learners classified as severely learning disabled may be exempted from these tests.&quot; (§7)</td>
<td>schoolchildren in grades Kindergarten and higher who are English learners.&quot; (§7)</td>
<td></td>
</tr>
</tbody>
</table>
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U.S. Department of Education, Office of English Language Acquisition, Language
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