

The Condition of English Language Learners in Arizona: 2004

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Background

Two events – the *Flores v. State of Arizona*¹ (*Flores*) ruling in 2000 and the voter-approved Proposition 203² in 2002 – have significantly changed the legal landscape in Arizona for English Language Learners (ELLs).³ The *Flores* case imposed a number of duties on the State Board of Education and the State Superintendent of Public Instruction related to identifying and providing appropriate services to ELLs. Proposition 203 changed the state law governing the required services and assessments for ELLs, mandating that “all children in Arizona public schools shall be taught English by being taught in English.”⁴

Flores v. Arizona

Citing the Equal Educational Opportunities Act (EEOA) of 1974,⁵ in 1992 Miriam Flores sued in Federal District Court, accusing the State of Arizona of failing to provide ELLs with a program of instruction designed to make them proficient in English

and enable them to master the standard academic curriculum. Plaintiffs in the class action complained of under qualified teachers, inadequate processes for identifying and monitoring ELLs, and lack of funding for bilingual education programs.

After winding its way through the federal court system since 1992, the *Flores* case resulted in a Consent Order⁶ approved July 31, 2000, requiring the Arizona Department of Education (ADE) to provide detailed procedures to address the majority of complaints against the state. The consent order changed the process for monitoring the progress of ELLs. It assigned to the State Board and the Superintendent of Public Instruction new requirements for monitoring districts in addition to standardized achievement testing: classroom observations, curriculum reviews, faculty interviews, student record reviews, and an ELL program review. The order also required an evaluation of students in each of two years following their exit from ELL status, assessing them in reading, writing, math, and academic content area skills to determine if they are performing satisfactorily compared to other students of the same age or grade level in the state. Students who do not perform satisfactorily (subject to parental consent) will be re-enrolled in an ELL program, given compensatory instruction, or both.

The order left issues of teacher qualifications and funding unresolved (Teacher qualifications would be addressed later). A bench trial focused on whether ADE adequately funded programs for ELLs, rather than on the adequacy of the programs themselves. The District Court found the state in violation of the EEOA owing to inadequate funding of ELL programs. The court found numerous problems with a 1987-88 cost study presented in the trial, and further disapproved of the fact that the state was appropriating only an additional \$150.00 per ELL student. On October 12, 2000, Judge Marquez ordered the state to conduct a new study to ascertain the true cost of successful ELL programs. In response, the ADE conducted a comparative survey of districts and found that the cost of services for ELL students ranged from \$0 to \$4,600 per pupil.⁷ That study lacked a rationale for any specific funding recommendation, prompting the court to order a new study specifying appropriate services and the cost of providing them. This study is currently underway.

Proposition 203

Passage of the voter initiative Proposition 203 in 2000 significantly changed educational programs available to ELLs. The federal Bilingual Education Act of 1968⁸ and the U.S. Supreme Court case *Lau v. Nichols*⁹(1964) allowed districts flexibility to choose from a variety of program models for educating ELLs. Proposition 203 ended that flexibility in the state by repealing Article 3.1 of the Arizona Revised Statutes, which sanctioned a variety of program models, and replaced it with a requirement that all ELLs in the state be taught using Structured English Immersion (SEI).¹⁰ Prior to the passage of Proposition 203, only about a third of ELLs were enrolled in any of the bilingual education programs offered in the state, with twice as many placed in English as a Second Language (ESL) programs (a model essentially identical to the SEI approach prescribed by Proposition 203).

An especially controversial aspect of Proposition 203 was its suggestion that children would become proficient in English in a year.¹¹ The assumption that ELLs can learn English quickly in an all-English instructional setting is a crucial component of the SEI framework. In *Lau v. Nichols*, the Court had found that “students who do not know English are effectively foreclosed from any meaningful education” because they cannot understand classroom instruction. SEI advocates respond to the Court’s observation by contending that young children learn English so quickly that they can readily catch up to other students once classroom instruction has become understandable.¹² Proponents of bilingual education, on the other hand, maintain that learning English well enough to get by in an all-English classroom takes years, not months, and that classroom instruction in the native language is necessary to help children keep up academically in the meantime. Thus, opponents of the measure warned that the negative effects of SEI are likely to show up most prominently in later years, when the accumulative effects of incomprehensible classroom instruction would begin to take a toll.¹³

Proposition 203 does permit exemptions to the SEI rule. Waivers allowing students to participate in alternative educational programs such as bilingual education are available for “older children” (at least age 10), children with “special individual needs,”

or children who “already know English.” Waivers are granted at the discretion of the school superintendent.¹⁴

In addition to prescribing a specific language education program for ELLs, Proposition 203 also provided that “a standardized, nationally-normed written test of academic subject matter [be] given in English each year for children in grades two and higher.”¹⁵

Recent Developments

Important recent policy developments affecting ELLs in Arizona have revolved around the implementation of Proposition 203 and continued attention to meeting the requirements of the *Flores Consent Order*.

The Superintendent’s Guidelines and the Waiver Controversy

Tom Horne, Arizona State Superintendent of Public Instruction, issued guidelines on February 12, 2003 for implementing Proposition 203, focusing on requirements for waivers for children “who already know English.” The initiative defines a child who already knows English as one who “possesses good English language skills, as measured by oral evaluation or standardized tests of English vocabulary, comprehension, reading, and writing, in which the child scores approximately at or above the state average for his grade level or at or above the fifth grade average, whichever is lower.”¹⁶

Rather than use available Arizona district-level data to estimate an average score for ELLs by grade level, the Superintendent requested data from the test publishers based on national and regional samples of native speakers of English. As a result, many of the state’s few remaining bilingual education programs were disbanded.¹⁷

Arizona Native American Languages and Proposition 203

Navajo and other indigenous peoples have developed numerous language revitalization programs in schools on and off the reservation, sanctioned and supported by the federal Native American Languages Act (NALA) of 1990. These programs often use immersion techniques to teach monolingual English speakers of Native American

descent the language of their heritage. Arizona tribes had been led to believe that these efforts could continue. They had received assurances from the Proposition 203 campaign leadership that the measure would not apply to indigenous languages; moreover, following the proposition's passage, the Arizona Attorney General's Office had published an Opinion indicating that Native American language revitalization efforts were protected by federal law,¹⁸ and therefore could not be prohibited under the English-only provisions of Proposition 203.¹⁹

A recently reported statement from Margaret Dugan, now Associate Superintendent of Public Instruction and formerly part of the pro-Proposition 203 campaign leadership, casts doubt on these assurances. In February 2004, Dugan indicated that only schools run by the federal Bureau of Indian Affairs (BIA) are exempt from Proposition 203. She asserted that "if a public school has a large Native American student population, it must still adhere to the provisions set forth in Proposition 203 regardless of whether or not that school is on a reservation."²⁰ Additionally, because state-sanctioned oral tests of English measure English language ability concurrently with aspects of academic content, and are not specifically developed to assess language proficiency among Native American children, many monolingual English-speaking Native American children do not score at the prescribed levels to qualify for a waiver.²¹ Thus, it appears unlikely at this time that public schools serving Native American communities will be able to implement programs preserving indigenous languages.

Time Needed to Learn English

In May, 2003, the Superintendent of Public Instruction endorsed the view that although ELLs may develop oral fluency in English in one year, "full proficiency" (including reading and writing) may typically take three years²²—a departure from the assertion of Proposition 203 supporters that children would normally learn English within a year. Because children with limited knowledge of English cannot fully participate in an all-English curriculum, SEI defers aspects of the curriculum until they have mastered English, which critics have argued may harm ELL children, particularly as they progress into the higher grades.²³

Charter Schools and Proposition 203

In 1994, the Arizona Legislature authorized the establishment of public charter schools as alternatives to traditional public schools.²⁴ Responding to a request from Superintendent Tom Horne, the Attorney General published an Opinion on July 25, 2003, stating that charter schools are not subject to the requirements of Proposition 203 unless a particular school's charter provides otherwise.²⁵ Superintendent Horne then declared that charter schools permitting bilingual education are not eligible for the state-allotted \$300 per pupil to teach ELL students.²⁶ Nonetheless, some districts supporting alternatives to SEI have considered creating district-sponsored charter schools.

The Flores Order

Two parts of the 1992 *Flores* case have yet to be resolved. Although the court ordered the state to adequately fund instruction for ELLs by January 31, 2002, the state has taken no action other than the cost study, which is not due until August, 2004. Funding for ELL students is on the agenda for the January 2005 legislative session.

Required qualifications for teachers of ELLs are currently being written. A Stipulated Agreement on November 28, 2000, requires the Arizona Department of Education (ADE) to determine the training, background, and qualifications necessary for such teachers. After Tim Hogan, counsel for the plaintiff in the *Flores* case, identified deficiencies in the department's proposed teacher qualifications, the Board removed the qualifications for teachers of ELLs from proposed rules. Subsequent drafting of ELL teacher qualifications was to have included consideration of criteria for highly qualified teachers specified in the federal No Child Left Behind (NCLB) legislation. Meeting February 23, 2004, however, the State Board of Education reduced the qualifications required for teachers to work with ELLs from 21 academic credit hours to four credit hours. The new provision, drafted by the Department of Education, requires all new K-12 teachers to have a three-credit-hour course in SEI and one credit hour of training in SEI. By 2010, all existing teachers, administrators, and ELL coordinators will be required to complete a three-credit-hour SEI certification program. These developments remain controversial.

Available Data

At the state level, there appears to be no data collected explicitly to aid in evaluating the effectiveness of ELL policy. This section examines reported changes in available ELL program offerings and enrollments in these programs among students in the state's standardized testing program. It also reviews efforts to monitor the implementation of the *Flores Consent Order* and of Proposition 203. Finally, it reports state mean test scores and comments on the reliability of these data for evaluating the impact of policies on ELL student achievement.

Implementation of Policies

Three changes in ELL programs, mandated by Proposition 203, are most notable:

1. SEI programs have been introduced.
2. Bilingual options (transitional bilingual, bilingual/bicultural, and dual language) were available only by special waivers, and are now unavailable to ELL students who are younger than 10 and do not have special needs.
3. ESL programs (including ESL Pull-Out) and Individual Education Plans (IEPs) are no longer valid program options for ELLs.

By specifying our research interests and signing a confidentiality agreement with the ADE, the authors were able to obtain reported program enrollment information only for Arizona students included in the state's standardized testing program; these data were not available for students who were not tested. Student-level language program enrollment was coded during administration of the Stanford 9 standardized testing program for students in grades two through nine and returned in raw data files from the test publisher. Table 1 shows reported language program enrollments for the past three academic years for ELLs included in the state testing program grouped by elementary (2-6) and middle (7-9) grades. Program groupings are shown as named in the codebooks for the data file. Observed trends in reported enrollments for students tested were as expected, with the proportion of students in transitional bilingual and bilingual/bicultural programs dropping dramatically after implementation of Proposition 203 in the fall of

2001. Another drop in the proportion of students enrolled in bilingual programs, including dual language programs, was observed between the 2001-02 and 2002-03 school years, presumably reflecting the ADE's efforts to impose more restrictive procedures for obtaining waivers.

Although the total enrollment of ELLs across all programs appears on the surface to increase substantially across the three years, the raw numbers are misleading because these enrollment data were available only for students included in the standardized assessment program. Furthermore, teacher- and student-level program coding may be inaccurate because program placement and other demographic information is typically self-reported at the student and classroom level, and because of the ADE's pressure on schools and districts to demonstrate compliance with an SEI-only implementation of Proposition 203. Exemptions for ELLs were readily allowed in 2000-01, but not after Proposition 203 was implemented the following year, resulting in larger numbers of students tested and therefore included in these data.

Table 1: Language Program Enrollment for ELL Students in Arizona's Standardized Testing Program by Year and Grade Level

Grades	Program	Number Enrolled	Percent Enrolled
2000-01			
Grades 2-6	Transitional Bilingual K-6	5,069	10.2
	Secondary Bilingual 7-12	102	0.2
	Bilingual/Bicultural K-12	4,374	8.8
	ESL	34,816	70.3
	IEP	5,149	10.4
	Total:	49,510	100.0
Grades 7-9	Transitional Bilingual K-6	480	2.6
	Secondary Bilingual 7-12	1,350	7.4
	Bilingual/Bicultural K-12	2,102	11.6
	ESL	12,362	68.1
	IEP	1,850	10.2
	Total:	18,144	100.0
2001-02			
Grades 2-6	Structured English Immersion	45,151	66.8
	Mainstream	14,289	21.1
	Transitional Bilingual With Waiver	2,525	3.7
	Bilingual/Bicultural With Waiver	3,059	4.5
	Dual Language With Waiver	2,564	3.8
	Total:	67,588	100.0
Grades 7-9	Structured English Immersion	14,008	63.2
	Mainstream	6,094	27.5
	Transitional Bilingual With Waiver	1,185	5.3
	Bilingual/Bicultural With Waiver	671	3.0
	Dual Language With Waiver	196	0.9
	Total:	22,154	100.0

Grades	Program	Number Enrolled	Percent Enrolled
2002-03			
Grades 2-6	Structured English Immersion	69,813	81.7
	Mainstream English (FEP only)	7,694	9.0
	Transitional Bilingual With Waiver	2,276	2.7
	Bilingual/Bicultural With Waiver	2,759	3.2
	Dual Language With Waiver	2,958	3.5
	Total:	85,500	100.0
Grades 7-9	Structured English Immersion	24,437	79.8
	Mainstream English (FEP only)	4,492	14.7
	Transitional Bilingual With Waiver	961	3.1
	Bilingual/Bicultural With Waiver	539	1.8
	Dual Language With Waiver	182	0.6
	Total:	30,611	100.0

Source: Computed from Statewide Stanford 9 data file provided by the Arizona Department of Education.

It also is important to understand how program options for ELLs are implemented. For example, how are SEI program requirements being interpreted and implemented in classrooms? The *Flores Consent Order* requires ADE to monitor 32 school districts, including the 10 districts with the highest enrollment of ELLs, 12 districts with medium enrollment, and 10 districts with low enrollment. ADE monitoring teams now evaluate compliance with both the *Flores Consent Order* and Proposition 203²⁷ by administering a survey (last revised on September 9, 2002) that contains 10 interview questions focusing on program implementation and on the processes of identifying, monitoring, and reclassifying ELLs. These data have been collected from 32 school districts each year since 2000-01, and, according to the *Flores* agreement, are to be publicly available. Although ADE states that these data can be made available to interested researchers who complete a formal request, the authors were unable to obtain them in a timely manner for inclusion and review in this brief.

Several independent researchers have attempted to secure external funding to study extensively the impact of Proposition 203 in Arizona,²⁸ but the authors are unaware of any studies that have been funded and conducted to date. Lacking available descriptive data, the authors cannot evaluate how the mandates of *Flores* and Proposition 203 have been implemented in Arizona schools beyond noting the proportions of tested students enrolled in the various language programs (excluding those exempted from testing).

Impact on English Language Development and Student Achievement

No data collected to specifically evaluate the effects of recent ELL policy on the English language proficiency of ELL students or their academic achievement could be identified, so the authors again tapped the state standardized testing program data files obtained under a confidentiality contract from the ADE. In addition to test scores, these data files contain limited student demographic information. Although these data have substantial limitations for evaluating true achievement for ELLs and making program or policy evaluations, an attempt was made to examine general trends in Stanford 9 test scores separately for ELLs and non-ELLs.

Tables 2-5 show the Stanford 9 scaled score trends for students tested in reading, language, and mathematics, respectively. Scaled score means, standard deviations, and the size of the tested sample are given separately for ELLs and non-ELLs in grades two through nine across three academic years, designated by the spring testing year. As expected, the number of ELLs tested increases dramatically across the three years, nearly doubling in most grades from 2001 to 2003. This presumably reflects the Proposition 203 requirement that all ELL students be tested.

Table 2: Means (M), Standard Deviations (SD), and Sample Sizes (N) of Stanford 9 Scaled Scores for Reading by Grade, ELL Status, and Year

Grade		ELL			Non-ELL		
		2001	2002	2003	2001	2002	2003
2	<i>M</i>	557	553	559	589	592	589
	<i>SD</i>	32	31	36	41	41	41
	<i>N</i>	9,219	14,661	18,753	52,185	53,130	55,573
3	<i>M</i>	580	574	583	617	621	619
	<i>SD</i>	32	31	36	43	43	43
	<i>N</i>	9,979	14,114	18,597	55,597	53,573	58,662
4	<i>M</i>	607	601	610	646	648	647
	<i>SD</i>	33	31	37	41	41	41
	<i>N</i>	9,246	12,909	15,948	55,591	54,472	55,995
5	<i>M</i>	621	616	624	657	660	659
	<i>SD</i>	29	28	33	37	37	36
	<i>N</i>	9,868	11,338	15,309	56,798	56,590	58,320
6	<i>M</i>	634	631	639	669	670	670
	<i>SD</i>	27	25	32	34	34	34
	<i>N</i>	7,792	9,850	12,943	55,297	56,916	57,553
7	<i>M</i>	645	640	648	685	687	686
	<i>SD</i>	31	30	36	37	37	36
	<i>N</i>	6,546	8,493	11,862	54,812	55,470	57,393
8	<i>M</i>	660	654	663	698	698	698
	<i>SD</i>	28	27	33	34	33	33
	<i>N</i>	5,728	7,543	10,573	52,718	53,521	55,262
9	<i>M</i>	659	654	663	695	694	694
	<i>SD</i>	27	25	32	33	34	33
	<i>N</i>	4,729	5,204	7,792	51,645	52,528	53,707

Source: Computed from Statewide Stanford 9 data file provided by the Arizona Department of Education.

Table 3: Means (M), Standard Deviations (SD), and Sample Sizes (N) of Stanford 9 Scaled Scores for Language by Grade, ELL Status, and Year

Grade		ELL			Non-ELL		
		2001	2002	2003	2001	2002	2003
2	<i>M</i>	540	539	543	565	567	566
	<i>SD</i>	26	26	29	34	34	34
	<i>N</i>	9,909	15,515	19,999	54,663	55,203	58,161
3	<i>M</i>	563	560	567	591	594	593
	<i>SD</i>	31	31	33	40	40	40
	<i>N</i>	10,176	14,491	19,031	56,428	54,239	59,602
4	<i>M</i>	583	580	586	611	614	613
	<i>SD</i>	28	28	30	34	34	34
	<i>N</i>	9,644	13,634	16,651	56,721	55,384	57,139
5	<i>M</i>	592	589	596	621	623	623
	<i>SD</i>	29	29	32	35	35	35
	<i>N</i>	10,228	11,757	15,737	57,658	57,059	59,103
6	<i>M</i>	601	598	606	633	635	635
	<i>SD</i>	28	27	32	34	33	34
	<i>N</i>	8,035	10,205	13,279	55,760	57,314	58,087
7	<i>M</i>	610	607	615	646	648	649
	<i>SD</i>	31	31	35	39	38	38
	<i>N</i>	6,665	8,696	12,066	55,053	55,846	57,622
8	<i>M</i>	617	613	622	653	655	654
	<i>SD</i>	28	27	33	36	36	36
	<i>N</i>	5,827	7,695	10,720	53,105	53,680	55,575
9	<i>M</i>	618	615	625	651	652	652
	<i>SD</i>	27	26	33	35	35	34
	<i>N</i>	4,833	5,444	7,982	51,867	53,545	54,572

Source: Computed from Statewide Stanford 9 data file provided by the Arizona Department of Education.

Table 4: Means (M), Standard Deviations (SD), and Sample Sizes (N) of Stanford 9 Scaled Scores for Mathematics by Grade, ELL Status, and Year

Grade		ELL			Non-ELL		
		2001	2002	2003	2001	2002	2003
2	<i>M</i>	554	556	561	580	583	583
	<i>SD</i>	37	37	40	41	41	42
	<i>N</i>	9,945	15,779	19,495	54,701	55,265	56,997
3	<i>M</i>	576	576	583	604	608	607
	<i>SD</i>	35	36	38	42	42	42
	<i>N</i>	10,128	14,621	18,899	56,170	54,449	58,414
4	<i>M</i>	604	603	611	634	636	636
	<i>SD</i>	33	33	36	39	39	40
	<i>N</i>	9,628	13,810	16,884	56,640	55,856	56,994
5	<i>M</i>	626	626	633	655	658	658
	<i>SD</i>	31	31	34	39	39	39
	<i>N</i>	10,222	11,921	16,015	57,626	57,598	59,214
6	<i>M</i>	639	640	648	673	675	675
	<i>SD</i>	31	31	37	40	40	40
	<i>N</i>	8,041	10,316	13,455	55,767	57,807	58,482
7	<i>M</i>	652	652	660	682	684	684
	<i>SD</i>	27	26	34	39	39	39
	<i>N</i>	6,630	8,788	12,222	54,846	56,068	58,055
8	<i>M</i>	660	660	668	691	693	693
	<i>SD</i>	26	26	32	38	38	37
	<i>N</i>	5,804	7,734	10,797	52,721	53,910	55,791
9	<i>M</i>	671	671	680	699	701	701
	<i>SD</i>	26	25	32	35	36	35
	<i>N</i>	5,027	5,512	8,107	52,569	53,545	55,001

Source: Computed from Statewide Stanford 9 data file provided by the Arizona Department of Education.

For ELL designees, average scores in reading and language dipped in all grade levels from 2001 to 2002, coinciding with the implementation year of Proposition 203, whereas mathematics scores remained approximately constant. Average scores then rose slightly in 2003 in all content areas. For the much larger group of non-ELL students (native English speakers and non-native speakers with Fluent English Proficient status), average scores varied less across the years in all content areas, and no clear trends emerged.

Simultaneous policy changes (Proposition 301 and NCLB) decreased exemptions from testing, changes in program requirements for ELLs, and higher stakes attached to standardized tests—make it difficult to attribute ELLs’ score fluctuations to specific policies with any degree of confidence.

Evaluation of Available Data

Available data are insufficient to fairly evaluate the educational policies implemented by the *Flores* Order and Proposition 203. Indeed, these data were not collected with the aim of evaluating ELL policy. First, as noted, the data are incomplete. No studies could be located documenting how SEI is implemented in the classroom. Regarding student outcomes, the program enrollment and achievement data were available only for students included in the standardized assessment program. Given that many ELLs were exempt from testing in 2000-01, comparisons of achievement trends “before and after” Proposition 203 are of little or no value. Further, data are not readily available to address whether SEI programs help ELLs learn English in a timely manner. Although districts are required to report ELLs’ scores on language proficiency tests each year, the Arizona Department of Education (ADE) does not release these data on the grounds that they may be misleading because four different tests of language proficiency are used in Arizona. As required by the No Child Left Behind Act of 2001 (NCLB), the ADE has issued a request for proposals to develop a single measure of language proficiency to be used by all school districts, with the goal of implementing this new test in the 2004-05 school year. At the March 2004 Board meeting, the ADE granted approval to award the contract to develop the test to a specific test publisher. The ADE

committee responsible for selecting the test developer regrettably did not include representation from the research community, however.

Second, evaluations of policy implementations are best informed by planned longitudinal collection and analysis of both qualitative and quantitative data. Comparisons of ELL program effectiveness are complicated by changes over time in the type and form of programs offered to ELLs, as well as by the inability to track individual students over multiple years. The data acquired from the state assessment program are collected each year, but student data are not linked across years, making assessment of individual academic growth very difficult. Student growth can only be examined after attempting to match students by an algorithm based on names, birthdates, and other features, a procedure estimated to have an 80 to 90 percent match rate. Beginning in fall 2004, each student will have a unique identification number, which should increase the longitudinal consistency of the data and allow for more thorough analyses of future policy implementations.

Third, it is questionable whether standardized tests administered in English accurately assess what ELLs know. The relationship between language factors and student performance in content areas has been well established.²⁹ The American Educational Research Association, American Psychological Association, and National Council on Measurement in Education have warned about validity shortcomings of using scores on tests given in English to assess ELLs' academic achievement. The National Research Council³⁰ (NRC) also has cautioned that testing ELLs in English is likely to underestimate an ELL's knowledge of the subject tested. Despite considerable warning from the measurement community, both state and national education policy has shifted toward mandatory testing of ELLs, regardless of English proficiency level.

Fourth, the accuracy of crucial demographic information (language background, ethnicity, ELL status, grade, number of years in program, and so on) is in question. Although some districts provide pre-coded labels for each student, most rely on students and classroom teachers to provide this information the day the test is administered. As a result, numerous inaccuracies may be expected.

Finally, data to support evaluation of Proposition 203 are not readily accessible to the public. The ADE does help interested researchers and policy analysts access requested data, if available, and there are stated goals to improve the student-level data collection and management systems. Student test scores, aggregated to the school and district levels, are reported for ELL students annually on the ADE website.³¹ Open access to other data, such as scores on language proficiency tests and the reports from monitoring teams, would improve the ability to assess the impact of recent policy on ELLs.

Overall Quality of Available Data

Arizona has been working hard to improve the quality and reliability of data, but in their current form they are not suitable to evaluate the effects of specific policies for ELL students. Crucial demographic indicators do not appear to be accurately coded; there is limited confidence in year-to-year tracking of students within the dataset; and serious empirical questions exist as to the validity of the academic achievement measures for ELL students. As a result, it appears that no reliable or meaningful conclusions can be drawn from currently available data regarding policies affecting ELL students in Arizona.

Key Unanswered Policy Questions

How Is Proposition 203 Being Implemented?

In the context of changing legislation, court decisions, and leadership changes at ADE, administrators and teachers are confused about how to interpret laws governing the education of ELL students and how to communicate relevant information to families and communities. As a consequence, Proposition 203 is being implemented in the classrooms in a variety of ways, and there is no major effort to document the transition for classrooms, schools, and districts. An ADE survey to monitor and document compliance with Proposition 203 and the *Flores Consent Order* offers only limited potential for meaningful analysis due to its format and to the pressure on school officials to show compliance.

Questions regarding the implementation of Proposition 203 can be well served by collecting extensive qualitative data to describe the complex relationships among educational theories, Arizona language policies, teacher ideologies, and classroom implementation. Classroom and student ethnographies can help describe the implementation of Proposition 203. Research designs could compare various paths of program placement now available to ELLs in Arizona and qualitatively describe them. Because ADE has restricted or eliminated bilingual education programs for ELLs, however, meaningful comparisons of program effectiveness are not possible.

Is SEI Effective?

Nationally, a considerable number of scholarly studies and reviews of studies have been conducted to examine whether and to what extent native language instructional support helps English language learners; researchers have widely reported that the best designed studies show bilingual education programs to be more effective than alternatives such as ESL and SEI at increasing test scores on English-medium assessments of academic achievement.³² In Arizona, before the passage of Proposition 203, several studies examining academic achievement among English language learners in bilingual education classes and English-only classes obtained results similar to those reported in the national literature.³³

A recent study by Joseph Guzman³⁴ on the long-term benefits of bilingual education has been frequently cited by Superintendent Horne and others as evidence that English-only programs help students more than bilingual programs, contrary to the conclusions of most published research.³⁵ The study found that students who participated in bilingual education completed about a half-year less of school than students taught in an English-only approach, and further concluded that students taught through bilingual education were less likely to be in a high-skill occupation and earned less than students taught using English-only approaches. Although the advantages Guzman reported for English learners taught through English-only approaches were modest, it is important to point out that a significant flaw in the study's research design produced incorrect conclusions, resulting from inappropriate definition of the study's "bilingual education"

participants.³⁶ As a result, Guzman's findings, though only modestly critical of alternatives to English-only approaches, were incorrect.

To evaluate the effectiveness of educational policies for ELL students requires rigorous, reliable, and scientific methods of inquiry. A classic effectiveness research design would entail a quasi-experimental control group method comparing ELLs in different program models on several different educational outcomes, and over time. Alternatively, less convenient longitudinal studies with comparison cohorts focusing on long-range educational outcomes can inform this policy question. An aggregated report, using high-stakes standardized test scores of students for whom no reasonable comparison group exists, cannot.³⁷

A meaningful effectiveness study hinges on the ability to accurately describe the programs under investigation. Program labels, often oversimplified and misleading, and overlapping educational treatments have complicated conclusions of bilingual education effectiveness studies over the years. Clear program definitions based on sound qualitative evidence can lead to more valid conclusions regarding effectiveness of program models for ELLs.

Are Students Learning English Fast Enough to Progress Academically?

Since students learn far less when they cannot understand the teacher or classroom assignments, an educational deficit may begin to accrue for students taught using SEI approaches. The current administration of the ADE expects a typical ELL to become "orally proficient" in English in one year and "fully proficient" in three years, though no data have been presented to the public to justify this stipulation. A reasonable worry is that children in SEI classes will not be able to take full advantage of the academic content of the school curriculum due to their limited proficiency in English during the first years of schooling, and will begin to develop difficulties that surface in later years.

Studies addressing how long children actually need to become proficient in English have variously reported ranges of two to three years or two to five years; studies additionally addressing how much time ELLs need both to learn English and to reach

parity with monolingual students on measures of academic achievement report ranges of three to five years, two to seven years, and two to eight years.³⁸ A longitudinal study of ELL students in a bilingual program in Central Arizona, based on data collected before the passage of Proposition 203, showed that students achieved native-like proficiency in English in an average of three years, with a range of one to six years.³⁹ Furthermore, studies show that younger children require more time than older students to learn English, contrary to popular belief.⁴⁰ No scientifically rigorous studies have been conducted on how long it takes children to learn English in an SEI program in Arizona, so their rate of progress is unknown as well as whether progress is sufficiently speedy to deter sustained academic deficiencies over time.

What Is the State Average for ELL Students on Oral Tests of English Language Proficiency?

As mentioned, younger children who do not have special needs are eligible for a waiver from the SEI approach if they score “approximately at or above the state average for [their] grade level or at or above the fifth grade average, whichever is lower,”⁴¹ on an oral language proficiency test of English. Such a “state average” is not currently available. A depository of test data from school districts in the state could provide information needed to answer this important question.

An additional problem is that the Superintendent of Public Instruction interprets “average” in this context to refer to the average for native speakers of English. Scores for native speakers of English in Arizona are not available, however, because such tests are designed for use with English language learners and are only administered to native speakers of English for research purposes (to determine, for instance, whether the prescribed passing scores can be achieved by fluent speakers). Thus, an important policy decision will first be to determine whether “average score” here refers to an average for ELLs or for native speakers of English. The Attorney General’s Opinion regarding the Superintendent’s Guidelines appears to entrust such policy determinations to the Board of Education: “Any policy determinations that may be necessary regarding the scores required for (B)(1) waivers should be made by the Board; the Department’s monitoring guidelines should be consistent with those policies.”⁴²

How Should Academic Progress be Measured for ELLs?

The Evaluation of Available Data has already noted concerns regarding the validity of achievement tests administered in English to assess ELLs because such tests are not normed on ELL students and are not grounded in a theory of language proficiency.⁴³ How, then, might academic progress most meaningfully be assessed for ELLs?

State and federal legislation requires the participation of all children in large-scale assessments to provide equal learning opportunity. Mandatory testing of ELLs on academic tests administered in English is integral to Proposition 203 (2000), No Child Left Behind (2001), and Arizona LEARNS (2003). Nevertheless, the federal government has yielded to complaints about the inherent unfairness in testing a student not yet proficient in the language of the test. On February 19, 2004, Education Secretary Rod Paige announced a dramatic change in federal policy regarding the testing of ELLs.⁴⁴ In their first year at a U.S. school, ELLs will no longer be required to take content area assessments. In addition, ELL test scores will remain aggregated with the ELL subgroup two years after ELL students have been re-designated as Fluent English Proficient (FEP). Arizona state policy (Proposition 203 and Arizona LEARNS), however, continues to require that all ELLs take standardized achievement tests in English, even those in their first year at a U.S. school. Because of this, there is a need to know if ELLs are able to adequately express what they know on a standardized test administered in English, or whether, for ELLs, standardized achievement tests do not detect differences in academic content knowledge.⁴⁵

Investigating the validity of ELL test scores has been a scientific challenge.⁴⁶ Validity studies designed to address policy questions related to test scores must include large samples of ELL test scores, with item-level data and release of the actual test items. Larger samples are needed for reliable results and also to support use of current validity research methods (Item Response Theory, in particular). The required item-level data should include thorough demographic descriptions as well as theoretically sound multiple measures of English language proficiency. Release of test items is necessary to understand test score functioning in relation to an item's content and linguistic components.

Recommendations

Many of the shortcomings of Arizona's efforts to serve ELLs revolve around the absence of information. For instance, as noted earlier, one of the initial complaints in the *Flores* case was that ELLs, because of inadequate evaluation, were being mainstreamed into regular classrooms without the language skills needed to compete with their native English speaking peers. The policy community, research community, and general public are all concerned with the academic success of ELLs. How is Proposition 203 being implemented? Is SEI effective? How should academic progress be measured for ELLs?

In May of 2000, three years after the passage of Proposition 227 – a measure essentially identical to Arizona's Proposition 203 – the California State Legislature commissioned and funded an evaluation study of the effectiveness of the new law at a cost of \$500,000 a year for three years. A properly conducted study could tell us whether ELLs are learning English at a rate sufficient to prevent academic deficiencies from accruing later in their school experience. Thus, the following recommendations for ELL policy in Arizona generally entail providing the state better and more complete information about ELL students and their performance.

It is recommended that:

1. The Arizona Department of Education (ADE) improve reliability of state demographic data by collecting and coding each ELL's socioeconomic status, language proficiency measures, program placement, ELL status, length of time classified as an ELL student, and other relevant information. One way to achieve greater accuracy is to provide pre-coded, computer-generated labels for each student in the state at each administration of a test.
2. The ADE create an evaluation system to follow students that includes multiple measures of success over time to support longitudinal studies that can address unanswered policy questions. ADE's new unique identification code for each student will permit more reliable tracking of students across multiple years of schooling.

3. The ADE make both its qualitative and quantitative data more accessible so that researchers can design rigorous studies that produce valid and reliable results, and continuously collect and maintain data notwithstanding administration changes.
4. The Arizona legislature and ADE foster collaborative ventures between the policy community and research community situated in Arizona public universities.
5. The Arizona legislature commission an evaluation study of the impact of Proposition 203.

Notes and References

¹ *Flores v. Arizona*, 48 F. Supp.2d 937 (D. Ariz. 1999).

² A.R.S. § 15-751-755.

³ For additional information regarding ELLs in the state, readers are referred to the brief on “Minority Participation” in this report.

⁴ A.R. S. § 15-752.

⁵ Equal Educational Opportunities Act (EEOA), 20 United States Code Section 1703.

⁶ *Flores Consent Order* (CIV 92-596 TUC ACM).

⁷ Sjoberg, E. & The READ Institute (2001, May). English Acquisition Program Cost Study—Phases 1 through IV. Phoenix, AZ: Arizona Department of Education.

⁸ Enacted in 1968 as Title VII of the Elementary and Secondary Education Act, the Bilingual Education Act indicated that bilingual education programs were to be seen as part of federal educational policy.

⁹ A failure to provide bilingual education was alleged to violate both the equal protection clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. The verdict outlawed English submersion programs and resulted in nationwide “Lau remedies.”

¹⁰ A.R.S. §15-751-755.

¹¹ According to A.R. S. § 15-752, “Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year.”

¹² Rossell, C. (2000). Different Questions, Different answers: A critique of the Hakuta, Butler and Witt report, “How long does it take English learners to attain proficiency?” Washington, DC: Read Institute.

Rossell, C. (2002). *Dismantling Bilingual Education, Implementing English Immersion: The California Initiative*. Manuscript, Boston University.

¹³ Krashen, S. (1996). *Under Attack: The Case Against Bilingual Education*. Culver City, CA: Language Education Associates.

Crawford, J. (1999) *Bilingual Education: History, Politics, Theory and Practice*. 4th edition. Los Angeles: Bilingual Education Services.

¹⁴ A.R.S § 15-753.

¹⁵ A.R.S. § 15-755.

¹⁶ A.R.S. § 15-753.

¹⁷ For example, see: Bilingual Waivers to Be Voided (2003, August 30). *Tucson Daily Star*.

¹⁸ 25 U.S.C. §§ 2901-06. The Native American Languages Act (NALA) was enacted in 1990 to protect and promote the rights of Native American to preserve their native languages.

¹⁹ I01-006 (R00-062) Attorney General Opinions Regarding the Application of Proposition 203 to Schools Serving the Navajo Nation.

- ²⁰ AG: Public schools not exempt from Prop. 203 (2004, February 19). *Navajo Times*.
- ²¹ Regarding the special characteristics of Native American English, see:
Leap, W. (1993). *American Indian English*. Salt Lake City, UT: University of Utah Press.
Regarding the use of tests such as the Language Assessment Scales-English with Navajo children, see:
A. Yazzie, A., Rolstad, K., & MacSwan, J. (2002). (Mis)identifying limited English speakers of Navajo heritage: Some problems with the Language Assessment Scales (LAS)-English. Paper presented at the annual meeting of the American Educational Research Association (AERA).
- ²² English immersion study shows a clear superiority. (2003, May 10). *Arizona Republic*.
- ²³ August, D. & Hakuta, K. (Eds.) (1997). *Improving Schooling for Language-minority Children: A Research Agenda*. Washington, DC: National Academy Press.
- ²⁴ A.R.S. § 15-181(A).
- ²⁵ Arizona Attorney General Opinion I03-002. Retrieved April 29, 2004, from, <http://www.ag.state.az.us/opinions/index.html>
- ²⁶ Charters Bypass English-only Law (2003, July 23). *Arizona Republic*.
- ²⁷ ARS 15-752 to 755 and R7-2-306.
- ²⁸ For example, see:
Combs, M. C., Moll, L., & Crawford, J. (2001). Assessing school reform by referendum: The impact of Arizona's Proposition 203 on the education of English learners. Submitted to the Spencer Field-Initiated Studies grant program at the U.S. Department of Education.
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Cocking, R., & Mestre, J. (Eds.) (1988). *Linguistic and Cultural Influences on Learning Mathematics*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- ³⁰ National Research Council (1999). *High-stakes: Testing for tracking, promotion, and graduation*. Washington, DC: National Academy Press.
- ³¹ Arizona Department of Education website: <http://www.ade.state.az.us/>

- ³² Ramirez, D., Pasta, D., Yuen, S., Billings, D., & Ramey, D. (1991). Final report: *Longitudinal Study of Structured English Immersion Strategy, Early-exit and Late-exit Transitional Bilingual Education Programs for Language-minority Children*. (Vols. 1 & 2). San Mateo, CA: Aguirre International.
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- ³³ For example, see:
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- ³⁵ Although the report is often referred to as a publication of Stanford and Harvard University, it is actually published by the Hoover Institution, a think-tank endowed by Herbert Hoover in 1919 and housed at Stanford University. The critique is cited in the next note.
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- ⁴¹ A.R.S. 15-753.
- ⁴² Attorney General Opinion 103-001, page 10.
- ⁴³ Thompson, M., Dicerbo, K., Mahoney, K., & MacSwan, J. (2002). Exito en California? A validity critique of language program evaluations and analysis of English learner test scores. *Education Policy Analysis Archives, 10*(7), 1-41. Available at <http://epaa.asu.edu/epaa/v10n7/>
- ⁴⁴ An announcement by Education Secretary Rod Paige on February 19, 2004 stated two broad changes for some of the 5.5 million public school students learning English as a second language, effective immediately. In their first year at a U.S. school, students with limited English skills will be allowed to take only an English language proficiency test. That means the formerly required test in reading and writing academic ability will become optional. The second change will allow schools to consider students as having limited English skills for as long as two years after these students become proficient and leave the language program.
- ⁴⁵ Construct-irrelevant variance is a major threat to the validity of test scores for ELLs. This occurs when test scores contain excess reliable variance associated with other constructs. In other words, if an ELL struggles with reading the questions on a standardized mathematics test, then that test becomes some type of reading measure (irrelevant construct) more than it is a measure of true mathematics achievement (intended construct). When the test result contains irrelevant constructs, the test becomes easier or harder for some students in a manner unrelated to the intended construct.
- ⁴⁶ Part of this challenge has been defining the construct of academic achievement without considering language proficiency as also important to the construct. Separating the two constructs empirically has proven to be an even more difficult challenge. Although academic achievement and language proficiency function closely together, they are two distinct constructs and should be measured separately. Language proficiency signifies knowing a language, while academic achievement signifies knowing a particular domain of content made available through formal schooling. Academic achievement is the result of cognitive learning, whereas language proficiency is a result of language acquisition or language learning.