



# ENGLISH FOR THE CHILDREN

MANDATED BY THE PEOPLE, SKEWED BY  
POLITICIANS AND SPECIAL INTERESTS

JOHANNA J. HAVER

ROWMAN &  
LITTLEFIELD

# English for the Children

*Mandated by the People, Skewed by  
Politicians and Special Interests*

Johanna J. Haver

ROWMAN &  
LITTLEFIELD

ROWMAN & LITTLEFIELD EDUCATION  
A division of  
ROWMAN & LITTLEFIELD PUBLISHERS, INC.  
Lanham • New York • Toronto • Plymouth, UK

Published by Rowman & Littlefield Education  
A division of Rowman & Littlefield Publishers, Inc.  
A wholly owned subsidiary of The Rowman & Littlefield Publishing Group, Inc.  
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706  
www.rowman.com

10 Thornbury Road, Plymouth PL6 7PP, United Kingdom

Copyright © 2013 by Johanna J. Haver

*All rights reserved.* No part of this book may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without written permission from the publisher, except by a reviewer who may quote passages in a review.

British Library Cataloguing in Publication Information Available

**Library of Congress Cataloging-in-Publication Data Available**

ISBN 978-1-4758-0200-9 (cloth : alk. paper)—ISBN 978-1-4758-0201-6 (pbk. : alk. paper)—ISBN 978-1-4758-0202-3 (electronic)



<sup>TM</sup> The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

Dedicated to the leaders of English for the Children:

Ron Unz  
Originator and National Chairman

Gloria Matta Tuchman, the late Jaime Escalante, and Fernando Vega  
California Proposition 227

Maria Mendoza, Hector Ayala, Margaret Garcia Dugan,  
and Norma Alvarez  
Arizona Proposition 203

Rita Montero and Jeanine Chavez  
Colorado Amendment 31

Lincoln Jesus Tamayo, Rosalie Pedalino Porter, and Christine Rossell  
Massachusetts Question 2

ROWMAN &  
LITTLEFIELD

# Contents

Foreword	vii
Preface	xi
Acknowledgments	xv
Introduction	1
<b>1</b> Running the California Political Gauntlet	9
<b>2</b> Latinos versus Latinos: The Arizona Language War	21
<b>3</b> Resistance to Change in New York and Colorado	45
<b>4</b> Big Win in Massachusetts	59
<b>5</b> Under Attack	71
<b>6</b> Closing the “Loopholes”	83
<b>7</b> From Political Impasse to the U.S. Supreme Court	99
<b>8</b> Implementing Structured English Immersion	115
<b>9</b> Charges of Discrimination	131
<b>10</b> The Federal Role	149
<b>11</b> Commentary	159
Notes	167
Glossary	181
Index	189
About the Author	199

ROWMAN &  
LITTLEFIELD



# Foreword

It would be difficult to argue convincingly that the success of any single population of students in U.S. public education could be more crucial to our nation's economic livelihood than English language learners (ELLs). But low—and usually very low—levels of academic outcomes persist, especially in those communities where the ELL population is the largest or the fastest growing. In fact, despite an elevated profile in education policy discourse and substantial increases in funding levels in most jurisdictions, progress toward academic and fluency gains have tended to remain at the lowest measurable levels.

Over the past half century but especially in the past fifteen years, this dilemma has emerged from beneath the radar of public attention. It seems that nearly any time educational strategies for ELLs have arisen in the public discourse or deliberations of decision makers responsible for setting education policy at any level or arm of government have taken place, measured dialogue has swiftly given way to emotional debate. Especially at the state level but in many cities as well, what may start as evidence-based analysis by experts escalates to political theater complete with angry voices and children at public proceedings carrying painted signs bearing pithy slogans.

Such is the terrain on which career Arizona educator Johanna Haver has set her latest intuitive project, *English for the Children: Mandated by the People, Skewed by Politicians and Special Interests*. Those who have followed the “Language Wars,” as public debates over bilingual education have come to be known, will recognize all of the most consequential figures and memorable episodes in Haver's thoughtfully organized accounts.

The apt starting point she has chosen for her narrative is the emergence of Ron Unz, the California software executive who led that state's 1998 “English for the Children” ballot initiative movement. The book traces the enig-

matic and controversial Unz through the 1998 campaign in the state, which is home to the nation's largest ELL population.

The account captures the shrill and vehement opposition presented from the outset by education establishment interests, including the leaders of the state's teachers unions, school board associations, several prominent Latino advocacy organizations, and the billionaire chief executive of the nation's largest Spanish-language television network. Just as noteworthy was the widespread hostility from elected and appointed officials at all levels, including President Bill Clinton, federal education secretary Richard Riley, and the chairpersons and gubernatorial candidates representing both major political parties in California.

While the intent of the new law represented a radical departure for public education policies and practices, its implementation by school districts fell far short of its aim. In fact, perhaps the only aspect of this implementation that could not be called uneven is the fact that it was so drastically out of compliance with the law's provisions. As administrators and school boards in each district set their own policies for responding to the law, the reactions varied widely. And in the subsequent years following passage, so have the results in terms of ELL outcomes.

As Haver describes, the widespread resistance, even defiance, to Proposition 227 and the almost-identical initiatives that passed by large margins in Arizona and Massachusetts came as a major disappointment to Unz and his supporters. Most importantly, the educational opportunities offered to ELLs have improved only incrementally, a paltry progress reflected similarly on their academic outcomes. Even today, the rate at which ELLs are successfully reclassified as proficient in English as a result of their progress toward fluency remains just barely above 10 percent in most states.

Increasingly, schools have responded to the new accountability pressures and dubious funding mechanisms by first segregating ELLs in classrooms characterized by inferior instruction, often conducted in their non-English, native language (usually Spanish), and then simply pushing ELLs back into mainstream classrooms without first equipping them with the language tools they need to succeed there.

Through her work as educator, author, and public official, Johanna Haver has persistently illustrated that this educational crisis is a solvable one. In her first book, *Structured English Immersion: A Step-by-Step Guide for K-6 Teachers and Administrators*, she demonstrated that soundly designed and properly implemented English immersion programs can work, and they can produce substantially improved educational opportunities for this crucial population of students.

The fascinating story of the English for the Children movement told here, while troubling for the frequency with which these same opportunities are routinely denied for the children that it describes, represents a compelling

episode in what we must hope will be a broader trend in which, in increasing numbers, children can share in the benefits of meaningful accountability and improved results.

Don Soifer  
Executive Vice President  
Lexington Institute, Arlington, Virginia  
December 2012

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

## Preface

“English for the Children” differed from the typical citizen-initiated movement in that it was bipartisan: both the Republican and Democratic parties hated it. First of all, they frowned upon any outsider’s attempt to change legislation. Second, they assumed that a movement to dismantle bilingual education in favor of immersion techniques would anger the Hispanic population—a fast-expanding demographic voting block.

Minus support from the stalwarts of either party, software entrepreneur Ron Unz, the originator of the movement, sought and found community leaders who were willing to commit to a cause that would transform how mostly Spanish-speaking children were taught English. They were predominantly educators, mostly of Hispanic heritage, who as children had entered American schools not knowing English themselves.

When Ron Unz began the movement, I was teaching English as a second language (ESL) to mostly Spanish-speaking children in a Phoenix high school. I considered Unz’s California Proposition 227 to be the remedy that the children in classes like mine desperately needed. Whereas I was delighted when California voters approved Unz’s initiative in 1998, I was hesitant to become involved in Arizona’s movement because my opposition to bilingual education would pit me against my fellow teachers.

Entrenched in the orthodoxy of education, bilingual education had become an industry with tremendous support from politicians. Federal legislation provided hundreds of millions of dollars of grant money every year for those who wanted to pursue careers in bilingual education or to set up bilingual programs in schools. With that came the book publishers, the education theorists, and all the rest. These groups would not give up easily.

There were those who believed bilingual education to be the best way to teach ELLs. They had observed or been part of bilingual programs and feared

an antibilingual education initiative would end ELLs' opportunities to develop their first language. In addition, some former ELLs remembered, from their childhood, English-only teachers who had treated them harshly because of their inability to communicate in English. For them, the dismantling of bilingual education could mean a revival of intolerance in the schools toward children not proficient in English.

On the other hand, the implementation of an Unz-style initiative would fundamentally improve ELL instruction, beyond its obvious guarantee that the children would receive their instruction in English. The provision of the initiative mandating that ELLs be taught for one year intensively through structured English immersion would cut down on what had become a pattern of segregation that often continued for several years. Sequestered together, the ELLs were missing out on linguistic experiences and academic opportunities found only in the mainstream.

The initiative allowed for exceptions, which is important because of unforeseen situations that might arise in any school. As soon as ELLs tested proficient in English or turned ten years old, they could obtain waivers that would allow them bilingual instruction. Also, ELLs with individual special needs qualified for waivers.

After considering the pros and cons, I took the leap to become a full-fledged activist in Arizona's English for the Children campaign. Chairperson Maria Mendoza and her three cochairs had formed their group a year earlier and were now working hard to spread their message. I was able to help by writing newspaper columns and letters to the editor. Occasionally I filled in as a debater. The initiative, Proposition 203, passed with 63 percent of the vote on November 7, 2000.

After the election, I engaged in several writing and research projects, which are listed in my biography at the end of this book. My efforts toward improving ELL education resulted in my participation on committees dealing with ELL education and my appointment to the Arizona ELL Task Force from 2006 to the present.

The chapters of this book are based on my experiences and what I have been able to piece together from newspaper and other reports, as cited. Ron Unz is quoted in several places from his letters to his followers during the campaigns and from his published writings, some found at his website, English for the Children, at [www.onenation.org](http://www.onenation.org). I have tried to reach Ron to discuss my book project with him, but to no avail. Hopefully, he will read this book and be pleased.

This book tells a true story about conflicts among politicians, educators, and other interested parties regarding the education of ELLs. It depicts scenarios of political infighting, successful and not-so-successful programs, policies that worked or failed in some specific way, and pleas from actual teachers whose experiences in the classroom clashed with the expectations of

the policymakers. In other words, it presents opposing points of view regarding issues with which all ELL educators must struggle that go well beyond the bilingual versus immersion education debate.

By dealing with ELL education from a historical point of view, this book offers all stakeholders the opportunity to broaden their perspectives, expand their options, and avoid others' mistakes in creating optimum educational programs for the ELLs in their schools.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD



# Acknowledgments

Ron Unz and his multistate campaign to change the way English language learners are taught in this country inspired me to write this book. I was able to reconstruct significant events of his movement from newspaper and other articles found on Unz's website, English for the Children, at [www.onenation.org](http://www.onenation.org), and in addition, from a video of television broadcasts he gave me as a memento on election night, November 7, 2000.

I am appreciative of the Arizona English for the Children leaders for accepting me into their group. They impressed me with their commitment and willingness to withstand hardships for a cause that dominated their lives for more than two years.

My Massachusetts friends, Boston University professor Christine Rossell and author/editor Rosalie Pedalino Porter, shared with me information and perspectives of immeasurable value. I could count on Christine Rossell's research to be reliable and unideological. Rosalie Porter's guidance kept me on the right track.

Don Soifer, vice president of the Lexington Institute, proved indispensable. He provided me with firsthand information and in-depth analyses of the data.

Sal Gabaldón, a leader of the opposition to Arizona Proposition 203, has urged me to continue my book-writing project, although he realized that my point of view would be different from his. His assistance has contributed to the completeness of this book.

Editor Tom Koerner originated the idea of my writing about the entire Unz movement and its impact on ELL education. I would like to thank him for his faith in me, and I thank his assistant, Carlie Wall, for always being available to answer my questions.

I am grateful to my husband, Lloyd, who put up with my long hours of writing and examined the chapters critically. His encouragement kept my project alive.

ROWMAN &  
LITTLEFIELD

# Introduction

Bilingual education has changed considerably since the passage of the Bilingual Education Act in 1968. This law, known also as Title VII, is an amendment to the Elementary and Secondary Education Act (ESEA) of 1965. It provides school districts with federal funds to pay for programs for children whose first language is other than English.

Initially, the law did not require these children to be taught in their native language. However, as our society focused increasingly on the civil rights of minorities, the federal government encouraged through grant funding some degree of instruction in the home language for the mostly Spanish-speaking English language learners (ELLs).

Segregation from the regular students was supposed to be a temporary arrangement with three years considered an adequate amount of time for ELLs to make the transition to mainstream classes. Gradually the time period of participation extended to as many as seven years and sometimes even longer, with an unacceptably high number of Hispanic students either dropping out of school or graduating without having learned English beyond a basic level.

## BILINGUAL EDUCATION ACT AMENDMENT

In the early 1970s, U.S. senators Edward Kennedy and Walter Mondale, both Democrats, initiated a bill that would require schools receiving federal grants to provide instruction in the children's native language and culture "to the extent necessary to enable the student to participate effectively in a course of study."<sup>1</sup> Representative Herman Badillo, a Democrat from New York who had emigrated to the United States from Puerto Rico as a child, helped with

the senators' legislation by lobbying for it in the U.S. House of Representatives.

There was no question that the bill would pass in the Senate. However, it became increasingly obvious that Representative Badillo could not depend on his colleagues to pass it in the House.

Representative Badillo's staff then discovered an old, little-known rule that allowed legislation to pass with a yes/no vote in only one house of the Congress, as long as it was considered but not rejected in the other house. As a result, Badillo, with assistance from another congressman, read a carefully prepared script that made it possible for him to say that he had introduced the bilingual education title of the bill on the House floor and then again when it came up for debate. Both times Badillo withdrew the title before it could be voted on.<sup>2</sup>

Because of Senator Kennedy's influence, the Senate approved the bilingual ed title and the House/Senate conference committee adopted the measure as an amendment to the Bilingual Education Act, without the House of Representatives having voted on it. This succeeded because as soon as the conference committee had incorporated the measure into the total ESEA of 1974, individual yes/no votes on its separate sections were forbidden.<sup>3</sup> As a result, the term *bilingual education* became synonymous with *native language instruction*, although the requirement applied to grants only—not English language programs in general.

While lobbying for the bill, Representative Badillo had often talked about the success of a dual-language program in Dade County, Florida, as proof that native language instruction could work. He even suggested that his colleagues fly down to Florida to see for themselves.<sup>4</sup>

## DADE COUNTY DUAL-LANGUAGE PROGRAM

In the 1960s about one million refugees, most of them middle class and well educated, fled Cuba because of Fidel Castro's Communist revolution and began living in Dade County, Florida. Their intent was to return to their homeland after Castro had been overturned so it was understandable that they wanted their children to retain and further develop their proficiency in Spanish.

Beginning in 1961, a group of mostly exiled professors from the University of Havana implemented a dual-language program at a Dade County elementary school. The ELLs received their lessons in Spanish for half of the day and in English during the other half. In subsequent years, the program was extended to additional schools with high enrollments of Cuban students.

When the program was evaluated by district officials in 1966, the Cuban ELLs showed academic progress equal to or better than that of comparable

ELLs in English-only schools.<sup>5</sup> As Representative Badillo explained, “The quality of instructors was so high and the motivation of the parents and students to retain their Spanish was so strong that anyone who visited their classrooms left impressed.”<sup>6</sup>

Specific aspects of the Dade County dual-language program contributed to its success: (1) many students in these programs were English-dominant so the Cuban children were able to mix with native speakers of English every day; (2) the parents were well educated and highly motivated; and (3) the instructors were not only proficient at a high academic level in both languages, but also above average in their ability to teach.

Three decades later Representative Badillo expressed regret regarding the implementation of the amendment he had helped pass into law. In his autobiography he made the statement, “The reality of what has occurred since 1974 has been a complete distortion of the bilingual-education law.”<sup>7</sup> He spoke as a citizen of Hispanic heritage in an open letter, “We are proud of our heritage and our culture, but to keep children in classes where their own native language is used in the hope that they will somehow make the transition to English after five or six years is unacceptable to us.”<sup>8</sup>

What had worked so well in Dade County could not be easily replicated. Sadly, many of the various bilingual programs that sprang up throughout the country in the following decades did not come close to the success of the one in Dade County and, too often, failed miserably.

#### LAU V. NICHOLS

In 1970, a few years before the amendment, a San Francisco poverty lawyer, Edward Steinman, filed a class action suit on behalf of Kinney Lau and 1,789 other Chinese students who were failing in school because of their inability to understand and speak English. Steinman won his case when the Supreme Court ruled in 1974 in *Lau v. Nichols* that school children who do not know English must be provided with special assistance so they can participate equally in the school program.

Soon thereafter, schools were found to be committing infractions against the *Lau* decision. For that reason, U.S. commissioner of education Terrel Bell, a Republican appointee of President Richard Nixon, introduced “Lau remedies” in 1975. These were guidelines that told districts how to identify and evaluate children with limited English, what instruction to use, when children could be considered ready for mainstream classrooms, and what professional training should be provided for teachers. Also, these guidelines set time limits and were used for negotiating consent agreements.

When elementary schools were found to be out of compliance with *Lau*, they were directed to provide bilingual education, that is, native language

instruction, and English as a Second Language (ESL) lessons. English-only instruction was considered sufficient in secondary schools. School districts had no choice but to comply or face losing federal funding.<sup>9</sup>

In 1981, a month after President Ronald Reagan's inauguration, former education commissioner and newly appointed secretary of education Terrel Bell rescinded the "Lau remedies" that he had issued six years earlier. Bell now called the guidelines "harsh, inflexible, burdensome, unworkable, and incredibly costly."<sup>10</sup>

### AMERICAN INSTITUTE FOR RESEARCH STUDY

In 1977, the American Institutes for Research (AIR) reported on a study of Spanish/English projects that encompassed 286 classrooms and had been in operation for at least four years. The ELLs in the bilingual programs had scored not only more poorly on tests of English but also no better in mathematics than comparable ELLs who were not enrolled in bilingual education.<sup>11</sup>

The critics of bilingual education pointed to the study as proof of its ineffectiveness. The bilingual education advocates blamed the poor results on data gained from the study indicating that 49.6 percent of the teachers in those projects were not proficient in their students' mother tongue.<sup>12</sup>

Undoubtedly, a shortage of truly bilingual teachers was and remains a problem for teaching children in two languages on a large scale. Most people who consider themselves to be bilingual favor one language, with limited conversational and literacy ability in any additional one. Attaining oral and academic proficiency in two or more languages is an amazing feat that requires years of study and continual perseverance. Consequently, it is likely that there will always be a shortage of bilingual instructors able to teach effectively in two languages.

### CULTURAL DEMOCRACY

In 1978 Alfredo Castaneda, P. Leslie Herold, and Manuel Ramirez III, three noted professors of education, coined the phrase *cultural democracy*, which they identified as a new philosophy for Mexican American children.<sup>13</sup> They believed that American public education had failed culturally diverse children by not providing them with their language and their heritage as part of their school experience:

The fundamental message to the child whose home and community socialization experiences have been different has been, "Learn our ways and forget about your own." To do so, however, implies betrayal of home and community

as well as forsaking everything that is familiar and comfortable. Not to switch loyalties is to risk nearly unmanageable conflicts at school.<sup>14</sup>

Indeed, a movement was under foot that was promoting the development of the first language, Spanish in most cases. Also, schools were beginning to incorporate aspects of the ELLs' cultures into their lessons, not only to benefit the ELLs, but also to broaden the knowledge of their English-dominant peers.

## MOMENTUM CONTINUED

Advocacy for bilingual and bicultural education increased during the late 1970s and early 1980s in the form of theories by college of education professors Jim Cummins of the University of Toronto and Stephen Krashen of the University of Southern California. Both of these professors insist to this day that multiculturalism and instruction in the native language are essential to the academic achievement of ELLs.

Teacher candidates interested in second language instruction have been required to read and master the views of Cummins and Krashen in most colleges of education in the United States. For this reason, many new teachers begin their careers enthused about bilingual education. Usually they have learned little or nothing about carefully formulated immersion techniques in which the children learn English from the first day.

Although bilingual education began losing popularity among the general public in the early 1980s, it thrived among educators, politicians, and Hispanic activists. Passed in 1988, a provision of the ESEA stipulated that at least 75 percent of federal bilingual dollars be spent to support native language instruction. Also, five states—California, Illinois, Massachusetts, New Jersey, and Texas—had enacted their own legislation that mandated bilingual education be offered in their states' public schools where a large number of ELLs shared the same native language.

## DISSATISFACTION GREW

As the so-called bilingual programs spread throughout the country, the low achievement of Hispanic ELLs became a serious concern. The bilingual education advocates insisted privately that the fault lay with the children, frequently the offspring of farm workers, who they believed did not have the capability to do well in school. Moreover, these advocates stated in public forums that it was important for these children to learn in their native languages in order to develop self-esteem and appreciation for their heritage.

Educators and parents rarely spoke up even if they had doubts whether learning mostly in Spanish would promote proficiency in English. They either accepted the bilingual education explanations or kept quiet because they feared being accused of either racism or insensitivity to the merits of bilingualism.

A few teachers and politicians protested against bilingual education occasionally, but were unable to do anything concrete about it—until Silicon Valley software entrepreneur Ron Unz let the world know that it was time to end bilingual education for ELLs. In 1996, he began English for the Children, a movement that continues to have an impact on ELL education.

## ENGLISH FOR THE CHILDREN

Ron Unz joined with mostly Hispanic educators and community leaders to create ballot measures in four states over a period of nearly seven years. The chairs and cochairs of the state movements sought to dismantle bilingual education in favor of sheltered or structured English immersion techniques.

They believed this was the only way to make sure the ELLs would learn English quickly and well enough to take advantage of the educational opportunities available to the other children. Their passion was so strong that some put their careers at risk and all put their lives on hold for two to three years to accomplish their objective.

As it turned out, winning elections was only the first step in reaching their goal. The efforts to nullify the initiatives in two states went on for several years. Also, legal disputes over structured English immersion (SEI) instruction remain unresolved to this day. This book tells the story and offers thorough analyses of the issues.

## THE CHAPTERS

The first four chapters trace the progress of Ron Unz as he became a national figure. He put forth and campaigned for anti-bilingual education ballot measures in California, Arizona, Colorado, and Massachusetts. Also, during this period he aspired to take his movement to New York, but met with insurmountable obstacles, as chapter 3 explains.

Chapter 5 details how far the opposition went to invalidate California Proposition 227: lawsuits that evolved into appeals to the liberal Ninth Circuit Court; attempts by the California School Board of Education to rescind the law; the California Bilingual Education Association's effort to stop a political appointment; and state/federal charges against a school district that had been nationally recognized for its remarkable gains in ELL achievement through immersion education.



Chapter 6 focuses on the aftermath of the successful Arizona Prop 203 campaign. Because the Arizona opposition forces were well aware of the failings to nullify California Prop 227, they pursued their own unique strategy. They convinced the state officeholders, both Democrats and Republicans, that the waivers in Arizona Prop 203 had created “loopholes” that allowed bilingual education to continue as before. As a result, Ron Unz and the leaders of English for the Children in Arizona retaliated by supporting a dark-horse candidate for state superintendent of public instruction.

Chapters 7 and 8 deal with the court battles and legislation that ensued regarding Arizona’s implementation of SEI, the second major mandate of Prop 203. In accordance with state law, an ELL Task Force, consisting of nine political appointees, created SEI models with the intent of addressing future problems as they arose.

Chapter 9 explains the time-requirement, ELL identification process, and other aspects of the models that have led to disputes among the Arizona ELL Task Force members and to complaints from the federal government, mostly the Office of Civil Rights (OCR). Three of the four complaints have been resolved but the very important one regarding long-term segregation of ELLs remains undecided. Also, Arizona is waiting for a judge to reach a decision on a separate decades-long federal lawsuit that deals with that same issue.

Chapter 10 focuses on the impact of the English for the Children movement on federal legislation and how bilingual education grant money has been misspent.

Chapter 11 presents a final commentary based on information presented in the previous ten chapters.

ROWMAN &  
LITTLEFIELD

## *Chapter One*

# **Running the California Political Gauntlet**

A sequence of events occurred in California in the mid-1990s that caused a political shift, which exists to this day. From 1996 forward, the Democrats there have been able to build and then maintain their lead over the Republicans in the State Assembly, State Senate, U.S. House of Representatives, and U.S. Senate. The political science experts have attributed this development to a surge in the turnout of Latino voters at the polls.

The trend began in 1994 after California became the first state in the country to pass legislation related to immigration with Proposition 187, a ballot referendum known as Save Our State (SOS). This measure banned the estimated 1.3 million illegal residents in California from receiving health care, public education, and other social services, plus it penalized anyone who failed to enforce its provisions.

Republican governor Pete Wilson and several Republican legislators campaigned vigorously for the referendum because they believed the state could no longer afford to pay for the social services of so many illegal people in their state. Their opponents insisted that the law was discriminatory against Latino and Asian immigrants.

Nearly 59 percent of the voters passed the initiative. An exit poll on Election Day showed that 78 percent of Republicans and 62 percent of Independents favored it, while 64 percent of Democrats opposed it. However, it was never enforced because it was found to be unconstitutional in federal court.

Two years later, in November 1996, another issue of concern to Latinos appeared on the ballot: Proposition 209, known as the California Civil Rights Initiative, an anti-affirmative-action measure led by Republican University of California regent Ward Connerly that prohibited any state institution from

considering race, sex, or ethnicity in the areas of public employment, public contracting, or public education. Already unhappy with the Republicans for approving Proposition 187, the Latinos registered en masse and voted as Democrats at the polls against Proposition 209.

The Latinos' vote was not strong enough to defeat Proposition 209; it passed with 54 percent of the vote. However, their vote added Democrats to the U.S. Congress and gave them control of the State Assembly. Thus began the decline of the Republican Party's clout in California.

## AWARENESS OF BILINGUAL EDUCATION'S FAILINGS

During this politically turbulent time, a wave of dissatisfaction with bilingual education arose among Californians. For nearly thirty years, the state had sustained the most rigorous bilingual programs in the country, but they were not working. Of the approximately 1.3 million children identified as limited English proficient in 1995, approximately 79 percent were Spanish speakers and were required to participate in the bilingual programs. The cost per annum for educating all language-minority children had amounted to \$300 to \$400 million, with only sixty thousand students (5 percent) reaching English proficiency each year.

In 1995, California Democratic superintendent of public instruction Delaine Eastin and the State Board of Education considered many proposals to loosen the bilingual education restrictions. Eastin stated, "We have to be honest enough with one another to say, when something isn't working, it's time to re-examine it. There has to be a point at which we bite the bullet and say, 'At least they have to learn English.'"<sup>1</sup>

In other parts of the country, similar awareness was growing. Linda Chavez, a conservative, nationally syndicated columnist, wrote frequently about the inadequacies of native language instruction. In *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (New York: Basic Books, 1991), Chavez called for political changes that would lead to Hispanic assimilation. In 1995, she founded the Center for Equal Opportunity (CEO) to provide legal support to parents in New Mexico who were opposing bilingual education in their state. Since that time, the CEO has expanded to include several services related to race and ethnicity.

Rosalie Pedalino Porter's book *Forked Tongue: The Politics of Bilingual Education*, published by Basic Books in 1990 and as a paperback by Transaction Publishers in 1996, tells about Porter's personal experiences with the politics and failures of bilingual education. Porter is featured throughout chapter 4 of this book as a leader of the English for the Children movement in Massachusetts.

Boston University professor Christine Rossell, with social science researcher Keith Baker, put forth the book *Bilingual Education in Massachusetts: The Emperor Has No Clothes* (Boston: Pioneer Institute, 1997), a thoroughly researched work that exposes the pitfalls of native language instruction as a means of teaching English to language-minority children. Rossell is mentioned throughout this book as an expert researcher in the area of bilingual and immersion education. She was also a leader of the Massachusetts movement.

California education officials urged the federal authorities to allow California school districts more say regarding their programs. However, Eugene Garcia, director of bilingual education and minority languages affairs at the U.S. Department of Education, demurred. In Garcia's opinion, local control of the program could result in immigrant children's language needs being ignored. He explained, "I've seen this before and kids will be hurt by this climate, directly and indirectly."<sup>2</sup>

Republican Massachusetts governor William Weld had proposed a three-year limit on bilingual education, but then the state's legislature rejected it in 1995 (see chapter 4, pp. 60–61). Other state legislatures were considering similar measures at the time but passed nothing of significance. In other words, an increasing number of people had become aware of the problem but were unable or unwilling to do anything about it.

#### BIRTH OF ENGLISH FOR THE CHILDREN

The movement to dismantle bilingual education actually began on February 14, 1996, when financial software developer Ron Unz picked up the *Los Angeles Times* and read the article, "80 Students Stay Out of School in Latino Boycott." Latino parents had boycotted Ninth Street School, located in downtown Los Angeles, because their children were not learning English.

Alice Callaghan, an Episcopal priest who was running *Las Familias del Pueblo*, a community program for some of the school's students, had led the boycott. At one time a supporter of bilingual education, Callaghan stated later that she did not care if it worked in theory because it did not work in practice. To make her point to reporters, she distributed a homework assignment from a sixth grader that read, "I my parens permi in dis shool en I so I feol essayrin too old in the shool my border o reri can grier das mony putni gire and I sisairin aliro sceer."<sup>3</sup>

Soon thereafter Unz established and became chairman of the English for the Children movement in California. Highly successful with his software company, he had the time and the money necessary for organizing and funding a movement that would ultimately derail bilingual education in three states and curtail the funding of it at the federal level.

Influential Latino Californians tried to dissuade Unz from going forward with his movement. Linda Chavez, the most famous foe of bilingual education in the country, warned him against creating another proposition so close on the heels of Propositions 187 and 209. She feared it could worsen California's racially charged political climate. Pointing to the Ninth Street School protest, Unz assured the doubters that Latino parents would be his most ardent supporters.<sup>4</sup>

Unz found people to join his cause who were used to taking hits for criticizing bilingual education and so knew what to expect. University of Boston professor Christine Rossell, whose research had debunked bilingual education, helped Unz write the initiative that would give citizens the opportunity to vote on the issue. Gloria Matta Tuchman, an admired California Hispanic educator who had been advocating immersion techniques for years, became cochair of the movement and cosponsor of the initiative.

The famous math teacher Jaime Escalante, whose experiences teaching calculus to Hispanic children are chronicled in the book *Escalante: The Best Teacher in America* by Jay Mathews (New York: Owl Book, 1989) and the movie *Stand and Deliver*, was named honorary chairman. Fernando Vega, a respected Hispanic political figure in the San Francisco area, was given the same title.

Unz provided extensive information about the progress of his initiative through emails and on his website English for the Children at [www.englishforthechildren.org](http://www.englishforthechildren.org). His followers were kept abreast of daily happenings at a time when people were first becoming accustomed to the Internet. Also, the website invited people to contribute personal narratives, which ended up being mostly bilingual education horror stories. To this day, Ron Unz's website remains a great source of information regarding the initiatives.

## FIRST UNZ INITIATIVE

The Unz initiative for California states that all children “shall be taught English by being taught in English and all children shall be placed in English language classrooms.” Furthermore, “children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year.” Waivers are allowed for “children who already know English,” for “older children” (age ten or older), and “children with special needs.”<sup>5</sup>

Starting with the first year of the enactment of the initiative, a sum of \$50 million is allocated every year for ten years for adult English language instruction to “parents or other members of the community who pledge to provide personal English language tutoring” to limited-English-proficient children. Also, the parent or legal guardian “shall have legal standing to sue

for enforcement of the provisions of this statute” and “any school board member or other elected official or administrator who willfully and repeatedly refuses to implement the terms . . . may be held personally liable.”<sup>6</sup>

## SUPPORT AND OPPOSITION

Unz had credibility among the California Latino population because of his strong, vocal opposition to Proposition 187 and national identity cards, an issue associated with that initiative. Also, he was well known in that state because of his challenge to Governor Pete Wilson in the 1994 Republican primary when, at the age of thirty-four, he had drawn 34 percent of the vote away from the incumbent. Anyone with less impressive credentials and money to invest in the movement would likely have been defeated because of the powerful entities determined to maintain bilingual education programs.

Unz’s initiative was opposed by the following groups: the Mexican American Legal Defense and Educational Fund; the California Bilingual Education Association; the American Civil Liberties Union; the California Latino Civil Rights Network; the Educational Alliance for the California School Boards Association; the California Association of School Administrators; both teachers unions (the California Federation of Teachers and the California Teachers Association); and others.

Whereas the major opponents leaned Democratic, it would have seemed that Republican officeholders would have offered at least some support to Unz, but that rarely happened. Throughout Unz’s campaigns, which he waged in four states over a period of nearly seven years, only a handful of independently minded Republicans and even fewer Democrats spoke up in favor of his initiatives. Both parties tiptoed around his measures, probably because they assumed that the Latinos opposed them, as they had California Propositions 187 and 209.

Like many Democrats against Unz’s California initiative, state assembly majority leader and future mayor of Los Angeles Antonio Villaraigosa tried to link Unz’s initiative to the other two propositions: “I think the Unz initiative is the third installment in the Republican trilogy of polarizing initiatives. We will fight it.”<sup>7</sup>

Throughout the campaign, Unz responded to attacks on him and his initiative quickly and sharply. When an Orange County school board member accused Unz of anti-Latino racism, he brought up how he had been one of the most vehement critics of Proposition 187 and was actually a featured speaker at the huge seventy-thousand-person anti-187 rally in downtown Los Angeles, while “too many Republicans and Democrats were supporting Prop 187, or at least refusing to oppose it.”<sup>8</sup> When questioned about his political

motive, he shot back, “Some issues are liberal versus conservative. This is sanity versus insanity!”<sup>9</sup>

California Spanish-language radio stations, book companies, and education consultants joined together to defeat Unz’s initiative. Also, teachers worked hard to protect the several hundred dollars per student in bilingual education that the California schools were receiving and the bonuses for teaching bilingual education that ranged from \$3,000 to \$5,000.

## THE POLLS

To the surprise of people on both sides of the issue, the assumption that Latinos would oppose Unz’s initiative proved wrong. In June 1997, the *Los Angeles Times* reported the results of a poll that the newspaper had recently conducted. It showed that 83 percent of the Orange County Latinos favored English language classes for all children when starting school. Only 17 percent supported the native language instruction methods of bilingual education. The non-Latinos favored English language instruction by 90 percent!<sup>10</sup>

Six months later, in early December 1997, the results of a statewide field poll of registered California voters showed less support for the Unz initiative than the earlier *Los Angeles Times* poll, but it still indicated a likely win. The respondents to the poll were read a summary of the initiative. When asked about requiring English to become the language of instruction in public school, the responses were as follows: Latinos approved by 66 percent; African Americans, 71 percent; people of Asian descent and other backgrounds, 55 percent; Democrats, 62 percent; Republicans, 76 percent; and people with other political affiliations, 71 percent.<sup>11</sup>

The poll respondents had problems with some of the initiative’s details. Some 55 percent of them preferred that school districts, not the state, make decisions regarding the instruction of English language learners. Some 25 percent of them thought that one year to learn English was sufficient, but nearly equal numbers thought it should take two or three years.<sup>12</sup>

When asked about this poll, a consultant hired by the California Teachers Association and the Association of School Administrators stated, “We’re making progress.” She went on to explain that many voters did not know and would likely disapprove that teachers and administrators could be held liable for not following the particulars of the initiative.<sup>13</sup>

On his website, Ron Unz explained that the numbers in the field poll were somewhat down because, unlike the *Los Angeles Times* poll, this poll included the information that the initiative would spend \$50 million per year for ten years to fund adult English-literacy programs. He elaborated that the poll had failed to mention that on balance the initiative would save large amounts of money each year.<sup>14</sup>



## PICKING UP STEAM

On Tuesday, December 23, 1997, Ron Unz and his supporters received word that their initiative had officially qualified for the June ballot. More than a month prior, they had filed petitions in excess of seven hundred thousand signatures, of which 510,796 were now deemed valid, a number that exceeded the 433,269-signature requirement. In celebration of this, on January 1, 1998, Ron Unz posted “A New Year’s Resolution for California,” of which the following is an excerpt:

After years of divisive initiatives, we now have an opportunity to reunify our fractured society around “English for the Children.” Reduced to a single sentence, our initiative would simply ensure that all the little immigrant children in California are sent to school and taught English so that they can become successful members of American society—which should be the most uncontroversial proposal imaginable.<sup>15</sup>

One week later, on January 8, 1998, state assemblyman Mike Honda (D-San Jose) put forth Assembly Constitutional Amendment 28, a measure aimed at derailing the initiative, now officially called Proposition 227. It stated, “No school board should be forced by a state bureaucracy to implement an untested, unproven, arbitrarily created teaching methodology.”<sup>16</sup> For this proposal to get on the ballot, Honda needed a two-thirds majority in both the State Assembly and Senate by January 22. The bill stalled and then died in the Assembly Education Committee.

Throughout the next few months, the polls predicted that Proposition 227 would succeed easily at the polls on June 2. In reaction to this, the State Board of Education canceled bilingual education regulations and provided new guidelines that would allow school districts to design their own programs for their minority-language students.

On April 20, 1998, the State Assembly passed a compromise bill, Senate Bill 6, that would create a law based on the board’s new guidelines. A version of that bill had already passed the Senate nearly a year prior but then had stalled in the Assembly. According to one policy analyst, “This bill would give the voters a choice between local discretion and centralized reform.”<sup>17</sup> Even if the bill had become law, a majority of school boards would have continued with bilingual education because of state and federal funding incentives.

Unz’s former foe, Governor Pete Wilson, now a supporter of Proposition 227, vetoed the bill on May 18, 1998. The governor made a statement to the California Senate:

Bilingual education in California has been a serious failure. It has done a serious disservice by keeping LEP [“limited English proficient”] students de-

pendent on their primary language for far too long. By denying them early fluency in English, bilingual programs have seriously short-changed these children educationally.

Despite its purported deference to local decision making and its stated intention to create greater flexibility for implementing school districts, SB 6 in fact fails to provide much hope of improvement.<sup>18</sup>

## BROAD MEDIA COVERAGE

Proposition 227 received widespread national media attention via articles and interviews in the *Economist*, Associated Press, *New York Times*, *Chicago Tribune*, *Washington Post*, *Christian Science Monitor*, *Education Week*, *Nation*, Chicago's *La Raza*, *Asian Week*, *Reason*, National Public Radio, and all of the California newspapers. Generally, the accounts were critical of bilingual education while at the same time leery that Proposition 227 would go too far.

The *Wall Street Journal* quoted Latinos in favor of the initiative and then explained that it was not clear whether ending bilingual education would help or hurt the children. In the same article, Harvard College of Education professor Catherine Snow was quoted as disapproving of the initiative. She predicted the students "will end up with poorer literacy skills and more disaffected from society than they are now."<sup>19</sup>

Calling Proposition 227 the "Son of 187," William Wong, columnist for the *San Francisco Examiner*, said that bilingual education did not need "an assault weapon approach." He was critical that the English immersion classes would hold back the students from receiving instruction in core subjects and that Proposition 227 was not addressing children over ten years old who still needed language support.<sup>20</sup>

In general, the media criticized Proposition 227 for the following: designating a time limit to learn English "not normally intended to exceed one year"; requiring \$50 million per year spent on adult English instruction; specifying that parents could bring lawsuits against school board members and other elected officials for intentionally not following the law; creating a "one-size-fits-all" program for all schools; and allowing children to fall behind in content-area subjects because they would no longer be allowed instruction in their native language.

Occasionally a media outlet would tell about a successful bilingual education program. However, for the most part, the news stories concerned children who had been segregated for several years and not taught enough English to ever become competitive with their native-English-speaking peers. On the other hand, the education experts warned frequently that without bilingual education the English learners would lose enthusiasm, not want to attend school, and fall even more behind academically.

## LAST LAP OF CAMPAIGN

The political atmosphere around Proposition 227 became especially heated in the last couple of months of the campaign. There were protests, criticisms from President Bill Clinton, disparaging remarks from the U.S. secretary of education, and last-minute donations of huge sums of money on both sides.

On April 22, 1998, about two thousand students from high schools in the Bay Area left their classrooms in the morning to protest the provisions of Propositions 187, 209, and 227. The members of Voices of Struggle had organized the teenagers to take a stand against racial intolerance. Fortunately, the students were well behaved, with the exception of single incidents of fruit throwing and rock tossing.<sup>21</sup>

At a public forum held at the University of California in Irvine on April 26, 1998, a fourteen-member panel from the *Harvard Educational Review* discussed Proposition 227. They all agreed that limited English language students would suffer should the initiative pass. Jose Moreno, a member of the Harvard board, stated that it would be a setback for California children because it offered "a singular model to a diverse population."<sup>22</sup>

On April 29, 1998, Ron Unz and Holli Thier, chief spokesman in opposition to the measure, squared off to a crowd of 250 people at a televised public forum in Contra Costa. Unz talked about the failings of the present bilingual education system, and Thier called his plan "an educational straitjacket" that would take away decision making from the local schools. After about fifteen minutes into the forum, about fifteen young people stood up and refused to sit down. Security guards had to escort them out of the room. Unz explained that such hostility toward him was usual at such events.<sup>23</sup>

President Bill Clinton criticized Proposition 227 at a Democratic fundraiser on May 1, 1998, stating that Proposition 227 set "rigid and unrealistic deadlines." He said that the measure would "consign countless children of immigrants to a lifetime of 'intellectual purgatory.'"<sup>24</sup> A few days earlier, the U.S. secretary of education Richard Riley had called it "a disaster," "counter-productive," and "just plain wrong."<sup>25</sup>

On May 20, 1998, Los Angeles Republican mayor Richard Riordan contributed \$250,000 of his own money to put an ad on Spanish-language television in favor of Proposition 227. It would run three hundred times up to Election Day. He had already gained support from the Latinos by donating to education programs, many of them beneficial to Latinos, over a span of several years.<sup>26</sup>

In late May 1998, billionaire A. Jerrold Perenchio, chairman and chief executive of Univision Communications, Incorporated, the largest Spanish-language television network in the nation, contributed \$650,000 to the California Teachers Association (CTA) to help the organization defeat the initiative. Altogether, the CTA was able to buy \$2.7 million in television time

statewide, with the latest ad featuring the four major candidates for governor as opposing Proposition 227.<sup>27</sup> At the same time, Perenchio was running anti-Proposition-227 editorials on his Spanish-language stations four times daily, without representation from the other side.<sup>28</sup>

A spokeswoman for Ron Unz explained, “Perenchio is certainly placing financial gain ahead of children’s interests by attempting to ensure that Latino children do not learn English for many, many years. His large contribution makes it clear that it would be bad for his profits if children are to learn English.”<sup>29</sup>

## VICTORY

On June 2, 1998, California’s Proposition 227 won a landslide victory at the polls with 61 percent of the vote. Ron Unz rejoiced at his press conference:

We overcame enormous odds to win this victory. Our initiative was opposed by the President of the United States. The Chairman of the state Republican Party and the chair of the state Democratic Party opposed it. It was opposed by all four candidates for Governor, Democrat and Republican alike. It was opposed by nearly all the state’s major newspapers and virtually every educational organization, large union, and establishment group. Our only strong support came from the people of California, but that was enough for victory.<sup>30</sup>

According to the California Fair Political Practices Commission (FPPC), Ron Unz had raised and spent \$1,250,000 on his campaign. The bulk of the campaign money was used for gathering the nearly eight hundred thousand signatures needed to qualify the initiative for the ballot.<sup>31</sup>

The opposition, the “No on 227” campaign, had raised and spent about \$4.4 million, mostly on advertising and voter contact. Two smaller committees had raised and spent another \$50,000. In addition, the free airtime for editorials protesting Proposition 227 provided by Perenchio on Univision was estimated to be worth \$1 to \$2 million.<sup>32</sup>

This was the first victory of its kind in the United States. Almost single-handedly, citizen Ron Unz had used the political process successfully to eliminate a federally funded, state-mandated program that had proven detrimental to the education of children whose first language was not English. And he had only just begun!

## POINTS TO REMEMBER

In 1996, Silicon Valley software entrepreneur Ron Unz created California Proposition 227, a citizen’s initiative that would curtail bilingual education for ELLs and replace it with immersion methodology, in a climate of anti-

illegal-immigration sentiment. Those who agreed with his cause warned him that the timing was wrong because of two recent ethnically charged initiatives that Latinos had opposed vigorously. Nevertheless, he forged ahead.

Unz received no backing from either Democratic or Republican officials until the end of his campaign. In the final two months, Governor Pete Wilson vetoed a bill that had the potential of dismantling Unz's initiative, and Los Angeles mayor Richard Riordan contributed \$250,000 to Unz's campaign.

Unz faced a myriad of protests from politicians, teachers' organizations, and Hispanic activist groups. President Clinton and his secretary of education both expressed strong disapproval of Proposition 227 a month before the election. At about the same time, the chairman and chief executive of the largest Spanish-language television network in the nation contributed \$650,000 to the California Teachers Association to help that group defeat the initiative. In addition, he ran anti-initiative editorials on his California stations four times per day.

Unz was able to attract an impressive group of individuals to leadership positions in his movement: respected educators Gloria Matta Tuchman and Jaime Escalante along with Fernando Vega, a popular Hispanic political figure in San Francisco. Also, the polls showed enormous support among the citizens of California across all political, ideological, and ethnic lines.

The Californians approved Proposition 227 on June 2, 1998, with 61 percent of the vote.

R  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

## *Chapter Two*

# **Latinos versus Latinos: The Arizona Language War**

Maria Mendoza had followed the California English for the Children campaign for several months through the news media. She was jubilant when Proposition 227 passed by a landslide because in her opinion bilingual education was the single most negative factor in the education of Hispanic students.<sup>1</sup> She hoped something could be done about it in Arizona, where she had lived for forty-one years.

In the 1960s Maria had taken on the Tucson bilingual education establishment single-handedly. Eventually she sued the Tucson Unified School District (TUSD) based on her strong objections to what she had witnessed in the classroom and had heard from parents.

As a bilingual instructional aide at a TUSD school, she was required to translate the lessons into Spanish for the children who didn't understand English. The children did not pay attention to the English because they knew Maria would explain everything in Spanish. Having learned English herself as a small child in a school in New Mexico, she knew this was not a good way to teach English to Hispanic children.<sup>2</sup>

In 1965, Maria went before the TUSD Governing Board. She was representing Spanish-speaking parents who wanted their children removed from bilingual education classes because they were not learning to speak and read English. When nothing came of her efforts, she took her case before the Arizona State Board of Education. That action proved futile as well.

Finally, Maria initiated the lawsuit *Mendoza v. Tucson Unified School District #1* in 1974. She won the judgment in 1978, which resulted in school officials not being allowed to put children into bilingual education classes without their parents' knowledge and consent.

However, according to Maria, the stipulation was not being honored: TUSD school officials were not notifying the parents. Also, when parents requested that their children be taken out of the bilingual classes, the school authorities tried to change the parents' minds with the threat that the school would not be held responsible for their children learning to read and write English if removed from those classes.<sup>3</sup>

It did not take a lot of thought for Maria to decide to start a movement similar to the one that had just succeeded in California. However, she realized she could not do it alone.

## FINDING AND ORGANIZING SUPPORTERS

Maria remembered a lengthy telephone conversation she had had a few weeks prior with Tucson high school English teacher Hector Ayala concerning a commentary Hector had written for the *Tucson Citizen*, a local newspaper. He had taken to task a TUSD official for blaming the low achievement of Hispanic students on a lack of a Mexican American studies program. Hector considered bilingual education to be the true cause of the problem.

Like Maria, Hector had learned English in school. His family had moved from Mexico to Nogales, Arizona, when he was nine years old. He recalled that he, along with several of his classmates from Mexico, had been immersed in English and picked up the language at a good pace. He believed there was no excuse for so many children not to learn English.

Maria called Hector, and he agreed immediately to help her dismantle bilingual education in Arizona. About a week later they met to make their plans. Soon after that, Maria arranged a debate on a local television station where Hector felt he had held his own opposite a school administrator in charge of bilingual education in Avondale, Arizona, a farm community to the west of Phoenix.<sup>4</sup>

Hector talked some friends into helping him create flyers on his computer that publicized the movement and a future meeting. He posted them on telephone poles, car windshields in shopping malls, and other highly visible places in Tucson. While canvassing predominantly Hispanic neighborhoods, he talked to parents who were willing to help him spread the word. He found that there were hundreds of Hispanic people who would support their antibilingual education cause. Their enthusiasm convinced him that Maria and he were on the right track.<sup>5</sup>

Maria and Hector held meetings in churches and homes to inform the public about the purpose of their group. Turnout was meager at first, about six or seven people. That number increased to ten, then twelve, and ultimately it reached fifty people. It wasn't until their fifth or sixth meeting that they began to be taken seriously enough that opponents made their appearances.



Education professors and education VIPs such as Ken and Yetta Goodman, originators of Whole Language, a controversial reading program, came to oppose Maria and Hector's efforts. As a result, the gatherings were morphing into shouting matches and even worse.

Once after Hector had stepped into his car to leave one of the meetings, a man pounded on his window and shouted, "I know where you live now, mother——." After another meeting, Hector discovered that his car had been sandpapered. People shouted and carried signs with the words *Vendido* (sell-out), *Coconut*, *Racist*, and other insults directed at him.<sup>6</sup>

This harassment continued throughout the campaign. Such incidents made it necessary for Maria and Hector to become discreet about when and where to hold their meetings, as well as whom to invite.

By July 1998, a small circle of enthusiastic, committed supporters had evolved. Maria decided to take the next step and connect with Ron Unz, whom she reached after many tries by telephone. When she explained that she wanted to create an Arizona initiative similar to Proposition 227, he agreed to contribute both financial and legal assistance for whatever she needed.<sup>7</sup>

Ron Unz traveled to Tucson later that July and met with seven of the solid core members. Ron explained that they could run a low-cost campaign by handing out flyers, writing letters to newspapers, doing interviews, and speaking to forums across the state. Maria and Hector expressed their concern that meetings were drawing people from organizations that supported immigration reform and English-only laws. After some discussion, the group decided to exclude those with motives other than dismantling bilingual education and not to accept donations from them.<sup>8</sup>

## MOVEMENT SPREAD TO PHOENIX AREA

In early August, Margaret Garcia Dugan and Norma Alvarez attended one of the group's meetings in Tucson. The ladies worked in Glendale, a town with a large Hispanic community that borders northwest Phoenix. Both ladies had grown up in Spanish-speaking families.

As principal of Glendale High School for eight years, Margaret had become recognized nationally for her leadership skills and successful ELL program. Margaret had found that the Hispanic students who had learned English through immersion methods in elementary school were considerably better prepared for high school than those who had been enrolled in bilingual programs. She wanted to do something about this discrepancy.<sup>9</sup>

Margaret's friend, Norma Alvarez, a social worker for the city of Glendale, had become a strong voice for the Latino community. Also, she was

well acquainted with the most powerful Hispanic movers and shakers in Arizona.

Norma had been a supporter of bilingual education until the early 1980s, when she became stunned to discover that her own son, Jeff, a third grader who spoke only English, had been put in a bilingual program. Her determination to pull her son out of the program angered the school officials, who insisted that the boy would fail miserably without it. Nevertheless, with the help of Rosie Lopez, the wife of a prominent Arizona politician, Norma was able to have her son transferred into a regular, mainstream class. After that, Norma helped other parents have their children removed from bilingual classes.

Years later, Jeff Alvarez, now a medical doctor, recalled that most of his classmates in elementary school had been from Spanish-speaking homes and in bilingual education. He had progressed because he was fluent in English at the time he entered school. Often he was used as a tutor to those students who were struggling with English.

According to Dr. Alvarez, “The students in bilingual ed could not speak English any better at the end of 8th grade than they could in the early grades.” He believed strongly that if those students had been immersed in English in the early grades, their academic achievement would have been much greater.<sup>10</sup>

After attending Maria and Hector’s Tucson meeting, Margaret and Norma arranged their own gatherings for people in the Phoenix-Glendale area by invitation only and usually held them in the refurbished garage at Norma’s home. The twenty to thirty participants who attended regularly were mostly Latino parents. The ladies kept in contact with Maria and Hector, talking to one or the other on the telephone every other night throughout the campaign.

Ron Unz made his second trip to Tucson in mid-August 1998. This time he helped Hector turn his home into the main office for the movement. Ron provided Maria with fax and copy machines. She arranged to have two separate telephone lines, which rang constantly as the campaign intensified.

During that same visit, Ron went to Phoenix. He met with Margaret and then with a Phoenix lawyer who could give advice on how to word their initiative in accordance with Arizona law. Together, Margaret and Ron figured out the particulars—which Ron later discussed and finalized with the lawyer.<sup>11</sup>

Maria Mendoza became the official statewide chairperson. Hector Ayala, Margaret Garcia Dugan, and Norma Alvarez acted as cochairs of their new organization: English for the Children—Arizona.

## ARIZONA INITIATIVE

Like California Proposition 227, the Arizona initiative states that all children in each state's public schools "shall be taught English by being taught in English and all children shall be placed in English language classrooms." It allows for the same three waivers, and it mandates sheltered English immersion, or "structured English immersion," for a time period "not normally intended to exceed one year."

However, the Arizona initiative broadens the definition of a child who already knows English as one "who already 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 at or above the state average for his or her grade level or at or above the 5th grade average, whichever is lower."<sup>12</sup> After the initiative became law, the three-word addition *oral evaluation* or to the original California measure gave the bilingual education advocates in Arizona an excuse for circumventing the measure (see chapter 6, pp. 85–86).

Unlike Proposition 227, the Arizona initiative does not fund adult English language instruction. Moreover, it demands more punitive action than Proposition 227 against those who are guilty of "willfully and repeatedly" not implementing the law: "Any individual found so liable shall be immediately removed from office, and shall be barred from holding any position of authority anywhere within the Arizona public school system for an additional period of five years."<sup>13</sup>

In addition, unlike Proposition 227, the Arizona measure states that "teachers and local school districts may reject waiver requests without explanation or legal consequences."<sup>14</sup> This prerogative imposes "virtually air-tight restrictions on the use of native language instruction in public schools,"<sup>15</sup> according to bilingual education advocate and author James Crawford.

When Ron Unz was interviewed on KVOA in Tucson on August 14, 1998, Ron explained, "If something hasn't worked after 20 to 30 years, it is time to try something different." He added that, according to statistics, very few bilingual education students were being mainstreamed each year and that children in other language groups who were not in bilingual classes had made much better progress in learning English.<sup>16</sup>

On the same telecast, the bilingual education advocates explained that bilingual education works when done right, but some programs needed to be improved. They said that it would be a mistake to get rid of all programs because without them, many students would be lost in class and not progress as they should.<sup>17</sup>

## REGISTERING THE INITIATIVE

On January 6, 1999, Maria Mendoza, Hector Ayala, Ron Unz, about ten supporters, and a few children appeared at the El Rio Neighborhood Center in Tucson. Their purpose was to announce their intent to register their initiative at the secretary of state's office in Phoenix later that day.

A crowd of about one hundred irate demonstrators had gathered at the center. Many held signs high that read "Unz go home," while shouting those words repeatedly and in unison. Some sign-waving bilingual education backers called the proposition proponents Ku Klux Klan members and child abusers. Maria Mendoza and the others were forced against a wall. A few of the accompanying children who were wearing English for the Children T-shirts sobbed while their parents and grandparents hugged them. The children were finally led away from the ruckus.<sup>18</sup>

After the crowd had settled down, Hector Ayala read from his prepared text, "Hispanic students have been relegated to lowly positions in our society because of bilingual education's gross inability to educate them adequately."<sup>19</sup> He elaborated that his group felt encouraged that their initiative would succeed.

Later that afternoon the English for the Children officers drove 125 miles to Phoenix and filed their paperwork at the Capitol Building without incident.

## POOR ACHIEVEMENT

Less than a month later, on February 1, 1999, Arizona's Republican superintendent of public instruction Lisa Graham Keegan's report to the state legislature regarding the bilingual and English as a second language (ESL) programs for the school year 1997 to 1998 was released. The 112,522 English language learners (ELLs) comprised about 15 percent of the total student population. Only about 4 percent of these ELLs had learned enough English to be reclassified as "fluent English proficient" (FEP), according to the results of the English proficiency tests.

The school districts, the state, and the federal government had invested more than \$361 million that year into educating these children. This amount was in addition to the per-student funding provided to all Arizona K-12 students.

State senator Joe Eddie Lopez, a Democrat and strong advocate for bilingual education, blamed the low results on the state education officials, who he said had failed to monitor the programs. He went on to state, "These programs do work, and they (the officials) are mandated to make them work and try to correct failures, and they have not."<sup>20</sup>

## INCONCLUSIVE DATA

The schools in Arizona, unlike the ones in California, were not restricted by law to implement bilingual education approaches for instructing ELLs. As a result, many schools chose programs that consisted of variations of bilingual education and/or ESL.

The Arizona Department of Education (ADE) could not analyze whether bilingual education worked better or worse than ESL. According to Superintendent Keegan's cover letter to her report to the legislature, schools and districts were submitting "conflicting information, causing confusion and making analysis difficult."<sup>21</sup> Moreover, 40 percent of the schools had sent their data in too late to be analyzed for the report, in spite of three deadline extensions.<sup>22</sup>

Although questionable, the data gave the achievement edge to bilingual education. The students identified by the schools to be learning through bilingual techniques had scored higher than those in ESL programs on the standardized, nationally norm-referenced Stanford 9 (SAT-9) achievement test, in which the fiftieth percentile is the national norm. The bilingual education students scored at the twenty-third to twenty-fifth percentiles on the reading portion and at the twentieth to twenty-third percentiles on the language segment. The scores for ELLs in ESL were at the eighteenth percentile on both sections.<sup>23</sup>

These figures lacked reliability. To begin with, the schools had different interpretations of what constituted "bilingual education." For example, the data listed the very large Phoenix Union High School District as ESL, although most of its schools offered ELLs content-area classes in Spanish. In addition, because of the philosophy of the leadership of most school districts, the teachers felt free to use Spanish while teaching ESL. Only in a few districts were the ELLs taught predominantly in English.

Moreover, many bilingual education students took advantage of the three-year exemption from the SAT-9, and, instead, they took the Aprenda, the Spanish version of that test. This would result in a small, elite percentage of bilingual education students being compared on the SAT-9 to a large percentage of the ESL population.

## INITIATIVE TO REMEDY PROBLEMS

Senator Joe Eddie Lopez often complained that the training of ELL teachers was inadequate and should be addressed. He stated that about three thousand (later reported to be fewer than 2,500<sup>24</sup>) teachers of bilingual education did not have the proper training and credentials.<sup>25</sup>

There were several other reasons for the ELLs' low achievement:

- Perverse monetary incentive: The districts would lose federal and state funds once the children were reclassified “English proficient” or “fluent.”
- Proficiency tests: In order to be reclassified and mainstreamed, the students had to score at specified levels on each part of a norm-referenced test that was chosen by each school district. All tests evaluated the students’ oral, listening, reading, and writing abilities but differed from each other in substance and difficulty. It is worth noting that the experts had found that only 47 percent of English-only students would likely score “English proficient” on the reading portion of the Language Assessment Scales (LAS),<sup>26</sup> one of the most reputable and popular English proficiency tests. Other tests demanded even higher standards for exit out of an English language acquisition program.
- Segregation: Bilingual education and ESL students were frequently taught in a setting separate from their English-dominant peers for most of the day. This resulted in students speaking their native language more often than English and reinforcing among themselves English errors common to their language group. They were missing out on the all-important experience of conversing with native speakers, the only way students can attain true proficiency in a language.
- High mobility rate: The families of ELLs tended to move frequently. As a result, students could end up in classes that were too difficult for them or have to repeat what they had already learned.
- Literacy problems: Children who were fluent in English became stuck in ELL programs because of their scores on the reading and writing portions of an English proficiency test. Year after year, they would be taught lessons meant for children learning English when in actuality they needed intense remediation in reading.
- Teacher training: Prospective teachers learned simplistic, “natural” approaches and not much else. The college of education programs offered little or no guidance on how to teach important elements of English grammar sequentially and lacked the goal of moving students into the mainstream as soon as possible.
- Excessive use of Spanish in classrooms: To various degrees, large numbers of ELLs, whether formally in bilingual education or not, received a great deal of their instruction in Spanish rather than in English.

The passage of the antibilingual education initiative would guarantee not only that the ELLs, specifically those under the age of ten, would be immersed in English, but also that they would learn through sheltered or structured English immersion (SEI), a systematic method that would bring continuity to their instruction. Also, by limiting the time in the program “normally not to exceed a year,” ELLs would not languish in programs when they would be better off in the mainstream.

## CONFLICTS IN THE LEGISLATURE

In the early months of 1998, when California Proposition 227 was gaining momentum, Arizona state representative Laura Knaperek, a Republican, introduced House Bill 2532, which limited the funding for Arizona bilingual and ESL programs to four years.

Leonardo Basurto, TUSD bilingual education director, said that Knaperek's bill would cause TUSD to lose as much as three-quarters of a million dollars in funding every year. He explained that approximately 7,500 ELLs, out of the total of about ten thousand ELLs at TUSD, had been in bilingual and ESL programs for more than four years. He stated that, according to some research, it took four to seven years to master a language. Basurto was backed by a TUSD high school principal who insisted that not everyone could learn English in only four years.<sup>27</sup>

HB 2532 passed in the State House but did not come to a vote in the Senate, due mostly to the efforts of Sen. Joe Eddie Lopez, who planned to sponsor his own bill in early 1999, which he said would be endorsed "by most of the education establishment." In describing how bilingual education worked in Arizona, he added, "We cannot be very proud of what's out there."<sup>28</sup>

Lopez's bill would require schools to pay certified bilingual education teachers \$2,000 per year above their regular salaries and to reimburse them for the cost of acquiring their bilingual education or ESL certificates. Also, ELLs would be excused from having to pass the Arizona Instrument to Measure Standards (AIMS) test, which was a requirement for graduation from high school.

The bill would have mandates: the state superintendent of public instruction would be responsible for setting standard criteria that would determine entry into and exit out of bilingual and ESL programs; schools would be required to remove children from programs within five days after their parents had submitted written requests; and state and district administrators would have to compile and report a wide range of statistical data concerning ELLs.<sup>29</sup>

In April 1999, in response to Arizona's English for the Children movement and Lopez's proposed bill, Representative Knaperek introduced House Bill 2387, which restricted the ELL funding to three years, rather than four. Like Lopez's bill, it provided a system for evaluating ELL programs and allowed parents the opportunity to choose a program for their children.

Lopez would not agree to the three-year limit and dismissed the concern of the other legislators that the antibilingual education initiative would be successful. "Of course I do not believe they [voters] will pass the initiative. Passing the bill has nothing to do with the initiative."<sup>30</sup> With the help of

Senate education chairman John Huppenthal, a Republican, Lopez was successful in killing Knaperek's bill.<sup>31</sup>

Knaperek had no choice but to revise HB 2387 to not limit bilingual education or ESL in any way. The new bill required schools to notify parents of their children's placement in the programs, allowed the parents to opt out of them, and created a legislative committee to study the issue. In that form, the bill passed and was then signed by the governor.

*Arizona Republic* columnist Ruben Navarrette Jr. described what had occurred: "By letting pettiness, personal ambition and political opportunism get in the way of mending a flawed program, the Legislature has all but ensured the success of a proposed ballot initiative that would end it altogether."<sup>32</sup>

According to Navarrette, if Rep. Knaperek's original HB 2387 had passed, it might have stopped the momentum of the antibilingual education initiative, which would have been a good thing in the eyes of the Republicans. Because it hadn't passed, the Democrats now hoped that they could scare the Hispanic voters into showing up and rejecting the initiative at the ballot box.

Maria Mendoza, chair of the Arizona antibilingual education movement, called the bill a "worthless piece of legislation." This otherwise gentle and dignified lady did not mince her words: "We're not paying attention to politicians any more. They don't have the guts to come out and say bilingual education programs don't work."<sup>33</sup>

## MEETING IN GLENDALE

In early February 1999, about thirty Hispanic parents and students gathered for a meeting in cochair Norma Alvarez's refurbished garage in Glendale, Arizona. Two high school students, having learned English through immersion, explained how much better off they were than their friends who had remained in bilingual classes and still couldn't speak or write decent English.

Parents talked about having moved from their homes to escape schools that had forced their children into bilingual education. Some wanted to take up residence where their children could attend schools in the Alhambra Elementary School District in west Phoenix. The Latinos enrolled in those schools were making impressive academic gains through immersion methods. Unfortunately, the demand for homes in that area was exceeding availability.

Norma expressed bewilderment that state senator Joe Eddie Lopez had become the leading opponent to their initiative. Having known the senator and his wife, Rosie, for about thirty years, Norma recalled not only Rosie's help with her son, Jeff, but also that the senator and Rosie had insisted on



having their own son removed from a bilingual class, at a junior high school in southwest Phoenix, about twenty years prior.

The others in the room shook their heads and opined that the senator was being pressured by the bilingual education lobby “that nearly swallowed up his own son.”<sup>34</sup> While this conversation was going on, columnist Ruben Navarrette Jr., a guest at the meeting, was taking notes for a column that appeared a few days later under the headline “Sen. Lopez’s Stance on Bilingual Education a Mystery” (*Arizona Republic*, February 10, 1999).

## ISSUES DEBATED IN PUBLIC FORUMS

Both the proponents and opponents of the initiative spent hours preparing and participating in debates that were set up in town halls, community centers, colleges, and television stations throughout the state. Almost always, the proponents were cochairs Margaret Garcia-Dugan and Hector Ayala, appearing either individually or together as a team.

Senator Joe Eddie Lopez and Sal Gabaldón, English Department chairman at TUSD Pueblo Magnet High School, were the main debaters on the other side. Occasionally they drew upon a pool of articulate school administrators and education professors to help out.

Many of the people in attendance at these debates were affiliated with bilingual education through their jobs. Occasionally non-Hispanic parents showed up whose children were enrolled in dual-language programs. Their children were learning Spanish in classes that offered both English and Spanish to both their children and the Hispanic ELLs. The funding of these dual-language programs relied on the money designated solely for the education of ELLs.

The actual Latino parents of the ELLs did not show up except in small numbers on rare occasions. Sometimes Hispanic teenagers who felt bilingual education had either served them well or hindered their academic progress came to speak.

There was evidence that not just the parents whom Hector had canvassed supported immersion over bilingual education. Data from *A Lot to Be Thankful For*, a national study completed in 1998 by Public Agenda, showed that 66 percent of Hispanic parents preferred for their children to be taught English as quickly as possible, even if it meant the students would fall behind in other subjects. The parents felt they could catch up. Another national survey of six hundred Hispanic parents found that more than 80 percent of them wanted their children taught in English and not in Spanish, with 63 percent wanting them to learn English as quickly as possible.<sup>35</sup>

At some forums, especially as the campaign advanced, Margaret and Hector were booed before they had begun to speak, and then, a few minutes

later, Joe Eddie, Sal, and other initiative opponents received enthusiastic applause. Other times, the hosts and audience were quite polite and interested in the issues. The televised debates were particularly helpful in that a wide audience could be reached.

On February 7, 1999, shortly after Superintendent Keegan's report appeared regarding the 4 percent rate at which ELLs had reached English proficiency, Margaret and Joe Eddie talked to television commentator John Hook (*Face the State*, Fox Channel 10).

Margaret asserted that it made no sense to teach the ELLs in Spanish and then assess them in English. She was emphatic that ELLs must be immersed and learn English as quickly as possible to succeed in Arizona schools. She was specific about how it was being done at Glendale High School, where she was principal: before- and after-school assistance; integration into the regular classes; and assimilation into mainstream school activities. She went on to state that, after thirty years, bilingual education had not proven effective, so it should be put to a vote.

Joe Eddie admitted to problems but explained that the data and science favored bilingual education. He mentioned that from 1919 to 1967 the high school graduation rate for Hispanics at TUSD did not exceed 40 percent but was now at about 87 percent, which he attributed to bilingual education.

On March 20, 1999, Delores Tropiano interviewed *Arizona Republic* columnist Ruben Navarrette for the television program *The Phoenix File* on Channel 45 KUTP. Navarrette made it clear that he would like to see bilingual education improved (rather than eliminated) but that the bilingual education establishment refused to allow standards, accountability, parental control, or limitation to children's time in the program.

On the second part of *The Phoenix File*, Delores hosted a debate of two elementary school administrators, Kent Scribner and Dan Wegener, versus Hector and Margaret.

Kent Scribner, director of Multilingual and Cultural Curriculum at the Roosevelt Elementary School District (RESA) in Phoenix, appeared thoroughly convinced of the superiority of bilingual education over the initiative's alternative. He explained that bilingual education was academically sound because the learning of math, science, social studies, and other subjects was not delayed while ELLs gained fluency in English.

Scribner added that students were better off learning both English and the core subjects simultaneously rather than sequentially, as would be the case should the initiative pass. He insisted that he would not support bilingual education if it were not good for learning English.

When Hector explained that parents had told him their children were sequestered in either a separate classroom or a separate area in the same classroom where they learned in Spanish, Scribner replied, "That sounds like a very poor bilingual program." He called it "de facto segregation." His

positive attitude gave the impression that he had made sure that the bilingual education program in his district worked well.

Unfortunately, the SAT-9 results for Scribner's district, Roosevelt Elementary, a district in which the student population was about 73 percent Hispanic, with nearly four thousand of them identified as ELLs, told quite a different story. The average scores of all children in the Roosevelt district ranged from the twenty-third to twenty-ninth percentiles in grades three through eight in 1998.<sup>36</sup>

Whereas it would have been difficult to gauge whether bilingual education was to blame for the students' extremely low achievement scores, obviously it had not helped them. Scribner should have been alarmed and willing to admit his district's deficiencies rather than emoting confidence on a television show regarding one of his district's major programs.

In contrast, Alhambra Elementary School District in west Phoenix, where many Hispanic parents wanted to move because of the schools, had an enrollment that same year that was 61 percent Hispanic, with more than six thousand of them ELLs and all immersed in English. The Alhambra students' average scores ranged from the forty-ninth to the fifty-eighth percentile in grades three through eight.<sup>37</sup>

Dan Wegener, the director of Bilingual Education in Avondale Schools and debate partner to Scribner, expounded upon the merits of bilingualism, stating that being bilingual was a hallmark of education throughout the world. Margaret countered that the *bi* in *bilingual education* was a misnomer because the students remained monolingual after being taught in Spanish for five to six years. Citing recent research on the brain, she elaborated that learning a second language needed to occur between the ages of zero and ten.

Wegener praised his district's dual-language program, which he mentioned was popular with the parents in his district. However, he didn't specify whether it was the English-speaking parents or the parents of the ELLs who favored it. About 59 percent of the Avondale students were Hispanics, with more than one thousand of them ELLs. The Avondale students' average scores ranged from the thirty-third to the forty-fourth percentiles in grades three through eight.<sup>38</sup> They did better than the Roosevelt students but worse than the Alhambra ones.

#### ALHAMBRA'S SUCCESSFUL IMMERSION PROGRAM

It would have seemed that more Arizona elementary schools, especially those with high numbers of ELLs, would have chosen to model their ELL program after Alhambra's. However, to do so would have forced them to forfeit millions of dollars in federal funds. At the time, the government

required that at least 75 percent of the grant money designated for the education of ELLs go to schools with native language programs.

Alhambra Elementary superintendent Carol Peck had not taken the federal funds that were tied to bilingual education. Instead, she had been able to fund her district's many programs for at-risk students through 130 partnerships with businesses and community groups.<sup>39</sup> Also, the low-income citizens in the district voted for an increase in their local taxes so the district could provide prekindergarten and all-day kindergarten classes. This made it possible for many ELLs to reach English proficiency before entering first grade.

Also, the Alhambra schools offered fifteen-minute-per-day Spanish lessons based on the vocabulary of a particular class. Thus, English-dominant children had the opportunity to develop Spanish skills with their ELL peers at a basic level.

## POSITIVE NATIONAL MEDIA COVERAGE

The national media expressed praise for the California initiative's success after the California English proficiency test scores were released in early May 2000. The *Los Angeles Daily News*, *Orange County Register*, *Richmond Times Dispatch*, and *Washington Times* reported on the percentage of ELLs who had been "reclassified," that is, had made the transition from limited English proficiency to fluent English proficiency.

According to the data, the reclassification rate had increased from 8 percent in the last year of bilingual education to over 10 percent two years after California Proposition 227 had passed. The articles attributed the success to Proposition 227 and common sense.

Ron Unz mocked the term *reclassification* and called it "a bizarre and meaningless statistic . . . much beloved by bilingual education advocates, and represents their primary means of judging the success or failure of a program." He elaborated further that should the "more meaningful" SAT-9 results of 2000 indicate similar progress then he would hope there would be appropriate coverage for that story.<sup>40</sup>

Michael Barone of *U.S. News & World Report* was impressed by the improvement of ELLs in the Oceanside, California, school district, where the initiative had been strictly enforced. He actually visited one of that district's second-grade ELL classrooms.

In a commentary, Barone chided the teachers' union and politicians for having looked the other way in spite of the obvious failure of bilingual education:

Latino politicians and foundation-funded activist groups gave loud public support to it while often admitting privately that it wasn't working. Education

schools spun theories of how kids would learn English better by learning in Spanish, and teachers' unions pocketed dues from "bilingual" teachers who got \$5,000 bonuses. Democrats reflexively voted for it, and Republicans paid it no heed: It wasn't their kids.<sup>41</sup>

Not everyone praised the California results. David Leibowitz, a popular Phoenix radio host, described California's 1999 increase in SAT-9 results as "mostly from the level of dismal failure to sad failure." He mentioned further that the scores had improved also for the students still in bilingual education classes.<sup>42</sup>

### U.S. CONGRESSMAN'S ENDORSEMENT

On June 5, 2000, Oceanside, California, superintendent Ken Noonan, a strong supporter of immersion education due to his students' rise in achievement, and about seventy-five others joined the four leaders of English for the Children—Arizona and their national chairman Ron Unz for a press conference in Phoenix. U.S. representative Matt Salmon was endorsing the new initiative.

Salmon stated that bilingual education had failed in its mission to teach children English and had denied thousands of young Americans the opportunity to fully realize the American dream. He attempted to diffuse any effort to paint him as a racist: "There are a lot of people that are going to come forward tomorrow and say Matt Salmon is a racist. All I can say is the results in California have been phenomenal."<sup>43</sup>

### OFFICIALLY "PROPOSITION 203"

On Tuesday, June 27, 2000, the Arizona officials of English for the Children, national chairman Ron Unz, and about fifty supporters submitted several boxes of petitions to the Arizona Secretary of State at the Capitol Building in Phoenix. They had amassed about 165,000 signatures, an amount that far exceeded the 101,762-signature requirement. Local television stations at the event caught on camera about fifty educators, parents, and children, most of them Hispanic, carrying signs that read "English for the children" and "Inglés para los niños."

When *Arizona Republic* reporter Daniel Gonzalez stopped Ron Unz to ask him about the financing of the initiative, Ron answered frankly that he had contributed \$100,000 to the campaign.<sup>44</sup> Most of the money was used to pay petitioners who had collected the required signatures, a practice commonly employed by anyone seeking political office or change through the initiative process in Arizona, but it is frowned upon by the press.

After Unz had talked about immersion's superiority to bilingual education at the gathering, John Petrovic, Arizona State University (ASU) bilingual education researcher, told the reporter that Ron's assertion was "a lie." He said that ELLs in bilingual education programs had consistently outperformed children in English immersion programs in regard to standardized testing. He added that a majority of Arizona ELLs were in English immersion programs.<sup>45</sup> He questioned, "This experiment in California has been a dismal failure, so why should we think that it is going to do any better here?"<sup>46</sup>

Petrovic was correct to say that the majority of ELLs in Arizona were not officially in bilingual programs. However, his claim that the bilingual education students had actually "out-performed" the other ELLs was questionable and probably based on the ADE's faulty data.

Within the next two months Petrovic's standardized-test-score argument would backfire. The 2000 California SAT-9 results would show that the 1.4 million ELLs in that state had made gains beyond anyone's expectations.

In the meantime, the signatures on the Arizona petitions were found sufficient to put the Arizona initiative on the ballot. Thereafter it was known officially as "Proposition 203."

#### CALIFORNIA SUCCESS HELPED ARIZONA CAUSE

The initiative gained support when the *New York Times* celebrated the SAT-9 gains of the ELLs on Sunday, August 20, 2000, with the front-page article "Increase in Test Scores Counters Dire Forecasts for Bilingual Ban" by Jacques Steinberg. It revealed the second-grade ELLs' reading scores to have increased from the nineteenth to the twenty-ninth percentile in national rankings, and in mathematics, from the twenty-seventh to the forty-first.

The article elaborated further that it was too early to know how much the rise in scores was due to the "erasure" of bilingual education because class size in the second grade had been reduced as well. Nevertheless, the outcome was noteworthy because of the bilingual education proponents' prediction that the Spanish-speaking students' scores would plummet.<sup>47</sup>

Steinberg's article focused on Oceanside superintendent Ken Noonan, who thirty years prior had helped found the California Association of Bilingual Educators. Noonan had predicted that newly arrived children from Latin America would stop coming to school if deprived of bilingual education, but he was now saying that he had been wrong. For the first time Oceanside had outscored the neighboring Vista school district, where about half of the ELLs had been able to continue in bilingual education due to parental pressure and the district's use of the waivers.

The *Wall Street Journal* told a similar story about the Oceanside and Vista school districts with praise for Ron Unz: “Neither political party had the nerve to challenge either the special interests—especially the entrenched teachers—of the bilingual lobby or Latino politicians who played the race card. Then in 1998, software entrepreneur Ron Unz put a citizen initiative on the ballot to stop the insanity.”<sup>48</sup>

*USA Today* ran the editorial “Bilingual Education Fails Test, Exposing Deeper Problem” eight days after the *New York Times* article. It accused the education establishment of poor research: “If the trend continues, as appears likely, it would suggest hundreds of thousands of children in California and elsewhere were hobbled by flawed bilingual programs.”<sup>49</sup>

On September 21, 2000, State Representative Laura Knaperek endorsed Proposition 203. She stated that the California test scores had convinced her. She went on to say, “Our best hope for providing ELLs with a decent education is by supporting Proposition 203, dismantling bilingual education, and relying on programs which work.”<sup>50</sup>

According to “Test Scores Show Failure of Bilingual Ed” (*School Reform News*, October 1, 2000) by Don Soifer, vice president of the Lexington Institute, bilingual education lost support from members of both major political parties because of the California 2000 SAT-9 results. Soifer elaborated that Santa Ana school board member Rosemarie Avila blamed her district’s marginal growth in scores on failing to get rid of bilingual education. Moreover, Governor Gray Davis, formerly against the initiative, now praised the test score increases as “important gains.”

Table 2.1, compiled by Don Soifer, shows a comparison of the nationally normed SAT-9 results for ELLs in major California School districts. (*Note*: San Jose continued its bilingual education programs due to a prior agreement with federal authorities.) The numbers are percentile rank scores. Fifty is the national percentile rank score.

Regarding the California achievement, Maria Mendoza said, “We will have the same success stories.” She warned that the bilingual education advocates would see it differently. “They’ll take a look at this and come up with stats that show otherwise to try to discredit. This is the way they do it. They will do anything or say anything to scare the parents.”<sup>51</sup>

Leonardo Basurto, TUSD bilingual education director, said it was too soon to draw conclusions. He explained that Vista, the school district near Oceanside where ELLs were still in bilingual programs, had twice as many students as Oceanside who had tested English proficient. He said that if Proposition 227 were truly successful, the percent of students redesignated “English proficient” in Oceanside would be closer to 100 percent.<sup>52</sup>

Don Soifer explained that other changes at Oceanside, besides the elimination of bilingual education, had most likely contributed to the dramatic rise in scores. The school day had been extended by one hour, a phonics-based

**Table 2.1. Long-Term Trend in Reading**

<i>School District</i>	<i>2000 Reading</i>	<i>1999 Reading</i>	<i>1998 Reading</i>	<i>Total Change</i>	<i>2000 Math</i>	<i>1999 Math</i>	<i>1998 Math</i>	<i>Total Change</i>
Oceanside SD	23.2	17.8	12.0	+11.2	37.2	27.2	18.6	+18.6
Santa Barbara SD	27.0	21.2	16.4	+10.6	39.0	31.8	23.2	+15.8
Los Angeles SD	17.2	14.6	13.4	+3.8	27.0	24.0	20.8	+6.2
San Jose SD	16.6	15.6	15.0	+1.6	28.6	23.4	20.0	+8.6
Statewide LEP	21.0	18.4	15.6	+5.4	33.8	28.6	23.6	+10.2
Statewide All Students	45.6	42.2	39.6	+6.0	54.8	48.0	42.6	+12.2

*Source:* Don Soifer, "Test Scores Show Failure of Bilingual Ed," *School Reform New*, October 2000.



language arts program had been implemented, and a zero tolerance for violence policy had been put into effect.<sup>53</sup>

Bilingual education advocate Professor Stephen Krashen elaborated on numerous occasions that the California ELL achievement increase overall was due to the fact that the SAT-9 was new to the California students and that an emphasis had been put on test preparation. He cited research that showed “after new tests are introduced, test scores rise.” Also, some test-taking skills could have raised scores without an increase in competence, and “even if we accept the SAT-9 scores as valid, there is no evidence linking test score increases to dropping bilingual education.”<sup>54</sup>

Krashen was right to scrutinize the data that the media believed favored immersion over bilingual education. However, Krashen’s credibility was in doubt because he had not assessed bilingual education programs with the same meticulousness.

The rise in SAT-9 scores for ELLs in immersion programs could be considered an indication but definitely not proof that immersion methodology was superior to bilingual education. A correct assessment of any academic program can be made only after following the same students over several years and charting their progress accordingly, even after they have exited the specific program. Also, it is often difficult to measure the success of a program for ELLs because of their families’ high mobility rate.

Whereas virtually all Arizona newspapers opposed Proposition 203 and advised people to vote against it, the national media favored it. In 2002 an Arizona State University study analyzed news stories from August 20, the date of the *New York Times* front-page article praising Proposition 227 for the California results, up to Election Day, November 7, 2000. The articles in nine major national newspapers and their affiliates showed a strong bias in favor of Arizona Proposition 203 with very little representation from the other side.<sup>55</sup>

With so much of the national press favoring California Proposition 227, the polls showed that 70 to 74 percent of the Arizona voters favored the initiative in the two to three months preceding the election. Consequently, the bilingual education advocates resorted to desperate measures.

## LAWSUIT CHALLENGE

On August 16, 2000, as the news reports circulated about the success of the ELLs on the SAT-9, the Mexican American Legal Defense and Educational Fund (MALDEF) filed a lawsuit against the initiative. The organization asked the Arizona Supreme Court to reject the wording in Proposition 203 that would appear as an analysis in the voters’ guide. If there wasn’t time for rewording, the group asked the court to throw out the initiative altogether.

Hector Ayala called this a “last ditch effort” to keep the initiative off the ballot.<sup>56</sup>

Two days later, the Arizona Supreme Court ruled that one part of the initiative description had to be changed, something easy to do. The other objections were overruled.

### NATIVE AMERICANS' RALLY

Several hundred members of the Navajo, Hopi, Salt River, and other tribes rallied at the State Capitol in Phoenix on Friday, October 13, 2000, against Proposition 203, after having been warned by bilingual education advocates that the initiative would end Native American language programs. Some of the elderly members of the Navajo Nation who had served as code talkers during World War II carried signs at the rally to remind people of their role in winning World War II.

State senator Jack Jackson of Window Rock said that he could not remember a larger Native American protest at the State Capitol since his election sixteen years earlier. According to another official, there were about nineteen thousand Navajo children classified as ELLs who could be affected by the initiative,<sup>57</sup> and many more belonging to other tribes.

Ron Unz had explained in an *Arizona Republic* letter to the editor (September 8, 2000) that a legal opinion regarding the almost-identical proposition in California stated that the initiative would not affect the Native Americans' educational programs.

However, according to Andrew Andreoli, who oversaw Native American education for the California Department of Education, the California initiative had had no effect on native language programs in that state because the issue had not been challenged in court.<sup>58</sup> Because few Native Americans in California spoke their native language, there hadn't been the need for bilingual programs on reservations.

When asked about the controversy, a spokesman for Attorney General Janet Napolitano said that it was not the attorney general's policy to give a legal opinion on an initiative before an election.<sup>59</sup> Three months after Proposition 203 had passed, on February 15, 2001, Napolitano informed the tribes, “Proposition 203 cannot prohibit a State public school located on the Reservation or elsewhere from teaching students Native American language and culture.” She expressed further that these classes might be offered whether or not the children were already proficient in English.<sup>60</sup>

Had Attorney General Napolitano presented a legal opinion on this matter a few months earlier, she could have saved the Native Americans \$85,000, the amount they had contributed to “Arizona Citizens Opposed to Prop. 203.” Interestingly, two years later in 2002, Janet Napolitano defeated former

congressman Matt Salmon for the position of governor of Arizona because of the overwhelming support she received from the Native Americans.

## UP TO ELECTION DAY

Although generally supportive of bilingual education, *Republic* writer Richard Ruelas accused the bilingual education supporters of having “decided to play politics” through a commercial that was running ten times a day on five of the Valley’s top-rated radio stations. According to Ruelas, the commercial was pushing “parental choice” and not even mentioning bilingual education. Terms such as *outsiders* and *hidden agendas* were used to appeal to the listeners. Ruelas found it especially ironic that the major funding for the ad about education came from gambling casino profits, that is, mostly Native Americans in the Salt River Community.<sup>61</sup>

Through the month of October, there were rallies—mostly in opposition to Proposition 203—and highly contentious debates. People held up signs that read “Bilingualism instead of Ethnocentrism” and the common “Ron Unz, go home!” at various functions. Several times opponents to the initiative stated that the measure was a threat to deaf children learning sign language, although Margaret Garcia Dugan pointed out frequently that the measure exempted children with special needs.

At the last debate, on October 26, 2000, at Arizona State University, the debaters were met by students from Movimiento Estudiantil Chicano de Aztlán (MEChA), who were wearing T-shirts that read, “Ask me why I’m fasting.” Others were carrying signs with the slogans “No on Prop 203,” “Takes Away Parental Choice,” and “My Money My Choice.”

Once in the hall, the students showed hostility to the two speakers in favor of the initiative, Margaret Garcia Dugan and Ron Unz. They booed them loudly.

Margaret Garcia Dugan looked directly at a student before beginning her speech and said, “Young man, who is flipping me the bird, I do not believe that I would do that to another person. This is my opinion, this is my practice, and this is my life. I am not here saying this because I have a vested interest in it. My life will continue whether this proposition passes or not.”<sup>62</sup> The room suddenly quieted down and, later, Margaret received polite applause.

According to Ron Unz, the polls continued to show an easy win for the initiative. However, throughout the weekend before the election, various groups were running ads on TV and radio that claimed the ELLs enrolled in bilingual education had shown greater academic achievement than those in ESL, according to ADE data. The Proposition 203 proponents ran no ads.

## VICTORY

On the night of Tuesday, November 7, 2000, Proposition 203 won by a large margin, later computed to equal 63 percent of the vote. Margaret Garcia Dugan stated to the media, “I am very happy that Arizona voters have given us the compassionate vote to help our children be proficient in English so they can pursue their dreams in this country.”<sup>63</sup>

The triumphant, beaming leaders and supporters of Proposition 203 clapped loudly after state superintendent Lisa Graham Keegan vowed to the media that she would respect the will of the people and make sure that the new law would be enforced in the schools.

On the following day, Senator Joe Eddie Lopez threatened a court challenge: “Besides being bad public policy, it is a very poorly crafted instrument, so there definitely will be some legal challenge to six or seven different aspects of it.” He admitted, however, that it would be difficult because legal action against the similar California law had failed.<sup>64</sup>

According to the Arizona secretary of state’s records on campaign expenditures, the anti-Proposition-203 groups had spent altogether \$348,848. Of that amount, \$85,000 had come from Native American tribes and \$85,150 from the teachers’ unions. English for the Children–Arizona had spent \$229,789, with Ron Unz contributing \$186,886—81 percent of the total.

## POINTS TO REMEMBER

The Arizona Proposition 203 and California Proposition 227 campaigns differed from each other in two significant ways. Bilingual education had never been mandated in Arizona, as had been the case in California before Proposition 227. In addition, Ron Unz participated only occasionally in the Arizona campaign, whereas he played an important leadership role in the California movement.

The Proposition 203 opponents focused on the following: bilingual education research and the ADE achievement scores; “one year” of separate instruction as not long enough to learn English; the elimination of parental choice; California Proposition 227 as a disaster and not responsible for the rise in test scores; the probability that Native American language programs would end; and Ron Unz as an “outsider” and “California millionaire” who had “bankrolled” the initiative.

The Proposition 203 supporters said the opposite: bilingual education research and the ADE data were faulty; students needing more than one year of separate instruction would receive it; their initiative offered true choice to parents because their children would be able to move more rapidly into the mainstream; the media’s reporting of the success of California Proposition

227 was accurate; and Proposition 203 would have no effect on Native American language programs.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

## *Chapter Three*

# **Resistance to Change in New York and Colorado**

In December 2000, about one month after Arizona had passed Proposition 203, Ron Unz ate lunch with *Sacramento Bee* reporter Daniel Weintraub at Jing Jing's, an inexpensive Chinese restaurant in Palo Alto, California, where Ron lived. Exuberant over his recent Arizona win, Ron became so animated and loud in talking about his crusade to dismantle bilingual education that people at a nearby table moved to the other side of the room. A couple that had sat behind the two men later stopped by the men's table to admit that they had been listening in to the men's conversation and had found it quite interesting.<sup>1</sup>

Ron was explaining to the reporter that he had hoped for a 70 percent win in Arizona until the opponents of Proposition 203 had convinced the Native Americans that the initiative would end their native language programs. He said it wasn't true but, nevertheless, voters believed it and changed their minds about supporting Proposition 203 at the last minute.<sup>2</sup>

Ron elaborated further, "I really want to nationalize this issue. I'm sick of going state by state. New York is the media center of the country. It's the immigrant center of the country. It's also a very liberal, Democratic city."<sup>3</sup>

"If he can make it there, in other words, he can make it anywhere," quipped reporter Weintraub in his column, which appeared a few days later.<sup>4</sup>

### **BILINGUAL EDUCATION IN NEW YORK CITY**

Republican leaders in New York City, like the ones in California and Arizona, were reluctant to embrace Ron Unz's movement—due partly to the pow-

erful special interest groups favoring bilingual education and to the usual fear of losing the fast-growing Latino vote.

Mayor Giuliani agreed somewhat with the initiatives, but he decided against supporting Ron's cause. He was well aware that New York was different from Arizona and California in major ways:

- New York did not allow citizens to put initiatives on their state ballot. This could be done only by the state legislature and required thirty thousand signatures. However, even with the signatures, the New York Board of Education could refuse to accept an initiative. Ron Unz's only remaining option would be to sue either New York City or the state.
- There was no organized group to dismantle bilingual education in New York.
- The New York Board of Education had entered into a federal consent decree with ASPIRA, a Hispanic education advocacy group, which meant that New York was mandated to teach students with Hispanic surnames in their native language to some degree. Even fourth-generation Americans who spoke only English were assigned to that program until 1996.<sup>5</sup>
- Although many parents did not approve of bilingual education, they preferred parental choice to mandating a particular instructional program.

Approximately 176,000 out of 1.1 million students in New York had been classified as ELLs. About half of those were enrolled in bilingual education and therefore were learning their regular curriculum in their native language. Like the ELLs in California and Arizona, nearly all of the bilingual education students in New York spoke Spanish, a language many teachers knew at a basic level. Few teachers had even rudimentary proficiency in the other languages. Thus, generally, the ELLs who spoke languages other than Spanish were put in English as a second language (ESL) classes and taught exclusively in English.

Rudy Giuliani's appointed Mayoral Task Force on Bilingual Education made a comparison between the two programs in 2001. The task force found that only 73 percent of the kindergartners, 58 percent of the second-graders, and 43 percent of third-graders enrolled in New York bilingual education programs had transferred into the mainstream within the state-mandated three years. The English as a second language (ESL) students had done considerably better with 84 percent of kindergartners, 75 percent of second graders, and 70 percent of third graders making the three-year cutoff.<sup>6</sup>



## A PLAN FOR IMPROVEMENT

The New York civic leaders sought to find their own solutions within the ASPIRA consent decree in order to avoid the dissension that had resulted from the citizens' initiatives in California and Arizona. On February 28, 2001, the New York seven-member Board of Education approved unanimously a \$75 million plan for English language learners (ELLs) as a compromise. It would expand parental choice but not defy the ASPIRA consent decree. It included the following:

- Parents would be able to choose among several programs, including English immersion.
- New, intense English immersion programs would be created for sixth-graders and beyond.
- More qualified bilingual teachers would be hired for more dual-language programs.

Ron Unz objected to the board's decision because the Hispanic ELLs would still be put into bilingual education classes unless their parents insisted that they be transferred to ESL programs. In a commentary he wrote for the *New York Times*, Ron complained, "Faced with pressure from bilingual activists to do nothing and pressure from the media to do something, the conflicted leaders of New York schools have decided to do nothing but call it something."<sup>7</sup>

Mayor Giuliani would have preferred paring down the bureaucracy by moving ELLs into the mainstream sooner—possibly in two years. Former assistant U.S. secretary of education Diane Ravitch agreed that the push should be to teach children English. "Surely in that budget of \$11 billion, they [New York Board of Education members] should be able to eke out the money to teach everyone the language that's commonly used in most parts of this society."<sup>8</sup>

## PROGRAM UNDERFUNDED

Five months later, in July 2001, New York schools chancellor Harold Levy admitted that the city had not been able to come up with the \$19.5 million, the city's portion of the \$75 million for the new program. It would have to be scaled back: each district would have only one intensive English program; five dual-language academies would be created, instead of twenty; and no new teachers would be hired and trained.<sup>9</sup>

The *New York Daily News* had not agreed with the new program in the first place. In an editorial it recommended that the chancellor "should be

fighting to eliminate the \$169 million sham of a program [bilingual education and ESL] and take the lead in making sure New York City school children are educated in English. And that they learn it well.”<sup>10</sup>

### BLOOMBERG’S REVERSAL

During the fall 2001 election for New York City mayor to replace termed-out Rudy Giuliani, Democratic candidate Mark Green insisted that more money was needed to hire bilingual teachers. He was addressing the fact that many bilingual education teachers were uncertified, and some were weak in English. Michael Bloomberg, the Republican candidate, stated that there were more pressing needs and that the first priority should be teaching children English.<sup>11</sup> Very likely Bloomberg had seen the polls that indicated New Yorkers favored immersion over bilingual education.

Thus, bilingual education became one of the candidates’ main issues—with Bloomberg seeming to oppose it—until he was elected on November 6, 2001, with 49 to 47 percent of the vote, and then everything changed. In June 2003, just eighteen months after taking office, Mayor Bloomberg agreed to expand the city’s bilingual education programs by spending an additional \$20 million for students to take their core courses in their native languages.

As much as Ron Unz wanted to do something about the flawed New York bilingual education programs, he was wise to take his movement elsewhere.

### BILINGUAL EDUCATION IN COLORADO

On Wednesday, June 4, 1998, one day after California Proposition 227’s victory, about seventy Hispanic activists, parents, children, and other interested Coloradoans rallied at the Denver capitol. They were opposing the California English for the Children movement out of fear that Ron Unz might initiate an antibilingual education amendment to their state constitution, the only way education policy can be altered in Colorado. They were correct to be concerned because the polls in Colorado were showing that Latinos wanted to limit bilingual education.

D. J. Ida, a director of child and adolescent services for the Asian Pacific Development Center, lamented, “Our children deserve no less than anybody else. What you do is start with the children’s strengths. We blame bilingual education programs when we don’t even give them the proper resources.”<sup>12</sup>

At the time, the issue was being debated among parents and school officials in the Denver Public Schools (DPS), the largest school district in the state. The DPS served more than eighty thousand students, of which about 13,700 were ELLs. The Spanish-speaking ELLs, who comprised 87 percent of the total, were remaining in bilingual classes on average for five years,

with the district negotiating with federal authorities to reduce the time to three years.

A *Rocky Mountain News* editorial criticized the backers of bilingual education for refusing to admit there was any need for reform. The newspaper did not want a Colorado version of California Proposition 227, but it reflected on the reason for the process: “to function as a safety valve for citizen frustration when the civic elite simply refuses to respond to grass-roots pressure.”<sup>13</sup>

The editorial scolded President Bill Clinton’s administrative officials for saying that maybe bilingual education should be limited to three years but then opposing the U.S. House committee’s vote on a three-year limit. Also, the newspaper was critical of Clinton’s officials for refusing to accept the modest reform that the DPS had requested ten months earlier.<sup>14</sup>

### FEDERAL COMPLAINT AGAINST DENVER PUBLIC SCHOOLS

In August 1997, ten months before California 227’s win, the Office for Civil Rights (OCR) of the U.S. Department of Education had sent a twenty-two-page letter in response to a complaint from the Denver parent group *Padres Unidos*, a group supported by the National Council of La Raza. The letter stated that DPS had discriminated against ELLs by not providing them with the services they needed to get a proper education:

- DPS had not hired enough qualified teachers;
- ELLs had not been provided with adequate instructional materials;
- some ELLs had been wrongly classified as special education students;
- the district lacked an effective transition from a language program to the mainstream;
- there had been no follow-up on the progress of former ELLs after they had been placed in mainstream classrooms.<sup>15</sup>

The OCR gave DPS superintendent Irv Moskowitz ten days to respond or face an investigation. Three years earlier, the Congress of Hispanic Educators had won their lawsuit against DPS for failing to provide adequate bilingual education. More recently, the National Science Foundation had revoked a science education grant for minority students until the district had made the requested changes. It appeared that the DPS officials would be punished in one way or the other no matter what they did.

Some Hispanic leaders suggested that bilingual programs be extended to include more of a Latino curriculum. Others urged that Latino ELLs be taught like other immigrants—through English immersion with minimal bilingual education.

In late September 1997, DPS superintendent Moskowitz and Denver Board of Education member Rita Montero, who believed DPS was keeping ELLs too long in bilingual education, took their first of many trips to Washington, DC, to work out a compromise with the federal government. The DPS officials wanted to use multiple measures of achievement for placing students into the mainstream, more freedom to waive students from language programs, and more time to train teachers. The OCR insisted on maintaining the requirement that students could not exit the program until they had performed at the thirtieth percentile on a standardized, nationally normed test.

At stake was \$30 million in federal school funding. The DPS officials followed up with a revised plan with the goal of gradually transitioning the ELLs into the mainstream in three years. It would allow more time for those who needed it and quicker access to the mainstream for those who were ready for more challenging curricula. There would be frequent evaluations, even of those students who had moved totally into regular classes.

A year later, in April 1998, the conflict between the DPS and the federal government remained unresolved. Pierre Jimenez, a spokesman for Padres Unidos, opposed the three-year limit: “Three years is just not enough time to acquire high levels of proficiency. We believe a child can become literate faster in a bilingual education approach lasting five to seven years, provided it is properly funded and implemented—which has never happened in Denver.”<sup>16</sup>

DPS superintendent Moskowitz called opposition to their plan “neurotic,” and added, “We’re saying three years might be the limit, but a teacher can defend the position to keep a kid in bilingual education longer if needed. There seems to be a deliberate misinterpretation of our policy going on. That is a shame because it’s over the heads of our kids and driven by adult values and issues.”<sup>17</sup>

Finally, in February 1999, eighteen months after the delivery of the OCR complaint, the U.S. Department of Justice, which had taken over the case, approved the three-year-limit approach that DPS had asked for. It had cost the DPS more than \$100,000 in lawyers’ fees and travel expenses to finally reach an agreement that included the following:

- instead of the sole reliance on standardized test scores to determine an exit out of bilingual education, a team of teachers and administrators would consider other measures of academic progress;
- extensive district training in bilingual education for the four thousand teachers of mostly Spanish-speaking students;
- the authority to exempt some students from the goal of mainstreaming in three years.

As expected, there was opposition from the activists. Ramon Del Castillo, cochairman of Denver's Latino Education Coalition, compared limiting bilingual education to what happened with the Native Americans, calling it "cultural genocide."<sup>18</sup> Roberto Cruz of the National Hispanic University in San Jose, California, said, "If you want to destroy a people, take away the language, because the culture will follow."<sup>19</sup>

The supporters had their say as well. Parent Lorraine Dominguez lamented that her son was getting so confused between Spanish and English that he was making up his own words, so she moved him into an English-only class.<sup>20</sup> Others said that the main reason test scores among Hispanics were so low was because the students had languished in bilingual classes too long.

Regardless, finally the issue appeared to be resolved. Both sides were getting something out of the agreement.

### THE \$3.3 MILLION BILINGUAL EDUCATION GRANT

A year after the resolution agreement, in March 2000, the newly hired DPS superintendent, Sidney "Chip" Zullinger, submitted a bilingual education grant proposal to the U.S. Department of Education. Acting independently of the Denver School Board, Zullinger worked with the Latino/Latina Research and Policy Center at the University of Colorado in Denver and the federally funded BUENO Center for Multicultural Education at the University of Colorado in Boulder to create a \$3.3 million draft proposal that included the following:

- \$1 million for office space and bilingual education teachers' salaries;
- \$66,000 salary for the first year and then increasing to \$75,737 for the fifth year to be paid for a full-time program director with more than \$85,000 for fringe benefits, including health, dental, and life insurance;
- \$10,000 for each of the five years in which ten teachers and staff members would attend the National Association of Bilingual Education conferences;
- \$104,000 for forty bilingual education teachers to study in Mexico for a week;
- the remainder of the \$3.3 million to be paid for additional salaries, office supplies, and instructional materials.<sup>21</sup>

The Denver board members fired Superintendent Zullinger two months later for making decisions without consulting them. The board president called it "a mutually-agreed-upon parting of the ways." Zullinger would continue to receive his \$140,000-per-year salary for eighteen months, as his contract required.<sup>22</sup>

Amazingly, after the commotion over Zullinger's independent action, four of the seven board members approved the grant! They allowed Spanish-language literacy as an optional enrichment plan beyond the three-year limit. Bilingual education training would be included in the arrangement, but not as a replacement for DPS district training.

Denver board member James Mejia defended the new program. "Here we have an opportunity to work with a community that has been disengaged from the district for a long time. The direction we're headed in now is to provide more options for teachers, parents and students in the district, and this grant will be an additional option."<sup>23</sup>

In August 2000, Rita Montero, no longer on the Denver Board of Education, and teacher Joseph C'de Baca, a former supporter but now a critic of bilingual education, joined together to ask lawyers to file an injunction to postpone the grant program. They insisted that it was not compatible with the district's plan that had been approved by the U.S. Department of Justice. C'de Baca explained, "Bilingual education has always been a cash cow. These programs take on a life of their own, and as long as bilingual programs are perpetuated, there will need to be more money for more bilingual teachers, more training and a bureaucracy to support it."<sup>24</sup>

C'de Baca's argument had merit. A federal grant stipulates that a school district must enroll a certain number of students in the new program and maintain that enrollment in order for the program to continue. Without that, the grant money dries up. Thus, it becomes imperative that school officials convince parents to enroll their children in the program for the sake of maintaining what C'de Baca called "a cash cow."

### CALIFORNIA PROPOSITION 227 CLONE

In April 2000, while the dispute regarding the \$3.3 million grant was waging, U.S. representative Tom Tancredo (R-Colo.) and Linda Chavez, president of the Center for Equal Opportunity, located in Washington, DC, decided to create an English-immersion amendment to the Colorado constitution. This ballot measure was similar to the Unz initiatives, but tougher. It offered no waivers, whereas the Unz initiatives allowed for three.

In June 2000, teacher C'de Baca became a leader of the Tancredo-Chavez movement. He expressed to the media his reason for opposing bilingual education:

I'd have these kids from Mexico that I knew from Hamilton Middle School when they were in sixth grade, and they were nice kids, good kids. Then I'd see them a few years later at West High School, where I also taught, and they're still in the bilingual program. And they're in 12th grade. And I'd say, "What the hell is going on here?" Because now they're bi-illiterate.<sup>25</sup>

The Tancredo-Chavez ballot proposal was rejected in July 2000. The Colorado Supreme Court had found the wording of the measure to be “unclear and misleading.”<sup>26</sup> Justice Gregory Hobbs said that the ballot title had failed to mention the provision that no schools shall be required to offer bilingual programs and that the phrase that children must be taught “as rapidly and effectively as possible” would cause confusion.<sup>27</sup>

Tancredo called the ruling “completely predictable” and explained, “I warned Ms. Chavez that this court has a proclivity to postpone a decision until it’s too late to proceed.”<sup>28</sup> Indeed, even if they had changed the amendment to be acceptable to the high court, the supporters of the measure would not have had enough time to gather the necessary 62,600 signatures of registered voters on petitions by the cutoff date of August 7, 2000.

Chavez said, “I believe this decision was motivated more by politics than by good legal reasoning. Both state and federal courts have upheld the constitutionality of the California initiative, which includes the very language the Colorado Supreme Court objected to.”<sup>29</sup>

Ron Unz had not supported the amendment and made a statement regarding the demise of what he termed a “Proposition 227 clone” on his website in August 2000:

Our organization, English for the Children, was *not* involved in this effort, which was organized by Linda Chavez and her Washington DC based organization. . . . The Colorado campaign had already been encountering serious difficulties since its most prominent local proponent was Rep. Tom Tancredo, an extremely conservative Republican and arguably the most anti-immigrant member of the House of Representatives. This allowed the opposition to portray the campaign as anti-immigrant and anti-Latino.<sup>30</sup>

## UNZ AND RITA MONTERO’S BALLOT MEASURES

On Wednesday, June 20, 2001, less than one year after the Tancredo-Chavez measure had been rejected, Rita Montero began her campaign formally to replace bilingual with immersion education. Jeanine Chavez and she filed two citizens-initiated amendments to the Colorado constitution, one of which, if approved, would go before the voters in November 2002. With Ron Unz standing by her side at the State Capitol, Montero explained that she had turned liberal activist after not being able to get her son out of a DPS bilingual program.

Montero described bilingual education as “a program with great intentions that went far astray” and had been taken over by radicals of “the last bastion of the Chicano movement.” Also, she accused bilingual educators of exploiting Hispanic children to perpetuate their jobs.<sup>31</sup>

On November 30, 2001, two other former members of the Denver board, Laura Lefkowitz and Lynn Coleman, gave their support to Montero's proposal. Having worked closely with Montero and former superintendent Irv Moskowitz on reforming Denver's system of bilingual education, Lefkowitz expressed her concern regarding recent developments: "We spent years of our lives trying to reform that entrenched system of Spanish-almost-only classes, yet once we left the Board, everything went back to business as usual, despite clear legal agreements to the contrary. There have been repeated violations of the Bilingual Plan throughout the execution of our newly reformed program."<sup>32</sup>

Coleman agreed with what Lefkowitz had said. She added, "The English for the Children initiative is the only hope for changing things."<sup>33</sup>

On December 5, 2001, a three-member review panel approved the two amendments that Montero had submitted, of which one was chosen for the ballot. In opposition to the decision, Gully Stanford, cochair of English Plus and chair of the Colorado State Board of Education, said he would file a petition for a rehearing, and should that fail, he would challenge the measure before the Colorado Supreme Court. He stated, "This is the wrong solution in the wrong place at the wrong time. Everyone in our coalition believes that English must be taught and learned, but this constitutional amendment almost assures it cannot."<sup>34</sup>

In July 2002 the polls showed that 80 percent of the voters supported the proposal. It appeared that the Colorado amendment would have the same success as the similar California and Arizona measures. Soon that changed.

### DEMISE OF AMENDMENT 31

In August 2002 the Colorado Supreme Court ruled that the measure could be placed on the ballot as Amendment 31. Immediately members of English Plus were working hard to defeat it, renaming their movement "No-on-31."

Chairman Gully Stanford shared his leadership of No-on-31 with Beverly Ausfahl, former president of the Colorado Education Association, an affiliate of the National Education Association, the biggest teachers' union in the United States. The consultant firm of Welchert & Britz agreed to run the campaign. This left-leaning group had taken down voucher initiatives in Colorado and helped elect Federico Peña as first Latino mayor of Denver.

The No-on-31 members decided to pursue the issue beyond Denver to all Coloradoans. They said that the measure would likely impact virtually every school district except DPS because DPS was still under a federal court order.

No-on-31 focused on what the group claimed to be the unintended consequences of the measure: (1) parental involvement and choice would be eliminated; (2) the measure allowed for too much litigation, especially against



teachers; and (3) the cost to the taxpayers would “skyrocket,”<sup>35</sup> based on a provision of the amendment that appropriated \$5 million per year for ten years toward English tutoring. They took their message to the rural, suburban, and urban Colorado communities. In fact, the group was able to convince the state’s popular Republican governor Bill Owens into opposing the measure because of its punitive provisions.

Like Propositions 227 and 203, Amendment 31 would punish any district employee or school board member for “willfully and repeatedly” refusing to implement the terms of the waiver section. They would be not only removed from office, but also “barred from holding any position of authority anywhere within the Colorado government or the public school system for a subsequent period of five years.”<sup>36</sup>

However, Amendment 31 went beyond the California and Arizona measures regarding the litigious rights of the parents of ELLs: “Parents who apply for and are granted exception waivers . . . still retain for ten years thereafter the full legal right to sue the individuals who granted such waivers if they subsequently conclude during that period that the waivers were granted in error and ultimately injured the education of their child.”<sup>37</sup>

Those issues combined with a single, generous contribution to No-on-31 made the difference. In late September, heiress and parent Pat Stryker, a resident of Fort Collins, Colorado, bought \$3.3 million worth of TV time to defeat Amendment 31. She was concerned that Amendment 31 put in jeopardy the dual-language program in which her child participated.

Amendment 31 did not allow for the Spanish-speaking students to partake in dual-language programs as long as they were classified as ELLs. Thus, if the measure passed, the schools could not justify using state and federal funds meant for ELLs for dual language or any other program that included native language instruction. The dual-language programs would end, unless other funding sources were made available.

Because of Stryker’s huge contribution, No-on-31 had the means to create a television ad referred to as “chaos in the classroom,” which ran several times every day on mainstream Colorado television stations. With dramatically morbid music playing in the background, the images of little children who looked Hispanic appeared on the screen with a dire warning from a voice, “Amendment 31 will knowingly force children who can barely speak English into regular classrooms, creating chaos and disrupting learning.”<sup>38</sup>

The *Rocky Mountain News*’ “Ad Watch” called the ad “inexcusable.”<sup>39</sup> The *Wall Street Journal* asked, “Where are the La Raza, MALDEF [Mexican American Legal Defense and Education Fund] and the other self-styled Hispanic lobbies in response to this demagoguery? They don’t seem to mind anti-immigrant innuendo as long as it helps preserve bilingual ed booty.”<sup>40</sup>

## RON UNZ'S GAFFE

Amendment 31 continued to lose support, as one poll after another indicated. Ron Unz had been waging his battle for more than six years. He was now not only combating opponents of antibilingual education measures simultaneously in Colorado and Massachusetts but also fighting for the implementation of the initiatives that had passed by wide margins in California and Arizona. Under so much pressure, even someone as bright, disciplined, and committed as Ron Unz can err.

On July 14, 2002, Ron made the Colorado situation worse by describing U.S. secretary of education Rod Paige as a “black former football coach” and the “dimmiest member of the Bush Cabinet” in his newsletter that went out weekly via email to Ron’s supporters.<sup>41</sup> The media began immediately circulating the quotation throughout the country.

While in Denver, Paige had aroused Ron’s ire. After having been asked his opinion of Amendment 31, Paige responded, “Whether or not it is advisable to completely shut the door on native language instruction is a decision that has to be made at the point of instruction.”<sup>42</sup>

Predictably, Ron’s unkind remarks about Secretary Paige drew harsh criticisms.

Chairwoman of English for the Children of Colorado, Rita Montero, stated, “This doesn’t have anything to do with whether you’re black, white or brown. I have indicated to him I thought he was clearly insensitive.”<sup>43</sup> Dan Langan, spokesman for the U.S. Department of Education, called Ron’s remarks “insulting, and frankly outrageous.”<sup>44</sup>

A few days later Ron attempted to explain himself. He admitted that he had never met Secretary Paige and that his comments were “quite, quite insensitive.” He explained that his remarks were based on media reports. He went on to explain that Paige’s race was relevant because blacks in general had been speaking English in the United States for probably three hundred years and [unlike other ethnic populations] had less “personal connection” to the pros and cons of bilingual education.<sup>45</sup>

## DEFEAT

On November 5, 2002, Colorado voters defeated Amendment 31 by a margin of 56 to 44 percent. According to the publication “Breaking the Code,” Ron Unz was the sole contributor to the Amendment 31 campaign, donating approximately \$350,000 in loans. The same essay states that contributions from between eight hundred and one thousand different individuals and organizations as well as Pat Stryker’s \$3.3 million had provided ample funding for the defeat of the measure.<sup>46</sup>

## POINTS TO REMEMBER

As much as Ron Unz wanted to take his movement to New York, the situation there was discouraging because New York City was under a court order that required native language instruction, no group had formed to oppose bilingual education, and the New York City politicians were against it. Also, it was almost impossible to make changes to state law in New York through its initiative process. Very likely litigation would be necessary.

Putting forth an amendment in Colorado was challenging but hopeful. The judges maintained a high bar for allowing an amendment to their state constitution to appear on a Colorado ballot.

However, motivation to do that was aroused when a new superintendent of DPS initiated a \$3.3 million bilingual education grant that would interfere with an agreement the district had already negotiated with the federal government. As a result, two amendments were attempted: one in 2000 and another in 2002. The second one, Amendment 31, made it to the ballot, but the forces opposing it ran a well-funded campaign that defeated it.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

## Chapter Four

# Big Win in Massachusetts

No one has been more vilified by the bilingual education establishment, and more adored by the immersion advocates, than Rosalie Pedalino Porter—a perky, articulate, Italian-born lady who immigrated to the United States as a small child. Rosalie experienced the challenge of learning English as a second language at her neighborhood school in Newark, New Jersey, when she was only six years old. Several years after mastering English and then Spanish while growing up, Rosalie became a bilingual education teacher, but she soon ran into conflicts regarding the Massachusetts mandate that required her to teach her English language learners (ELLs) mostly in Spanish.

Rosalie's *Forked Tongue: The Politics of Bilingual Education* (Transaction Publishers, 1995) chronicles her struggles with the bilingual education adherents as a teacher and then as a director of programs for English language learners in the Newton, Massachusetts, public schools in the 1980s. She was director of the Institute for Research in English Acquisition and Development (READ) throughout the 1990s and early into the 2000s. Rosalie has lectured, edited manuscripts, written articles for national education publications, and testified in court and before the U.S. Congress as an expert on immersion education.

### CONTACT WITH ROSALIE PEDALINO PORTER

Ron Unz telephoned Rosalie at her Amherst, Massachusetts, home in the early months of 2001 to discuss with her the possibility of her becoming a leader of a movement to place an antibilingual education initiative on her state's ballot. As much as Rosalie liked the idea of doing something about the bilingual education programs in Massachusetts, she let Ron know that she did not think such a measure could succeed with the voters:

“Ron, the two victories must have unhinged your mind, temporarily. Massachusetts is the most left-liberal state in the universe, it’s where political correctness is an inherited gene; it is the state that passed the first bilingual education law in the country, a place full of true believers in the education establishment and inattentive legislators in the State House—groups that will fight hard against change.”<sup>1</sup>

Ron disagreed. He argued that Massachusetts was the best place after the dramatic successes in the West.<sup>2</sup> He believed in his mission and wanted to take it to the East.

Rosalie and Ron were both right. While most Massachusetts politicians and educators still valued highly the state’s bilingual education law, which was considered to be the strongest of its kind in the country, a few disapproved of it vehemently. By the time Ron Unz had set his sights on the state, the groundwork to change the law had already been laid by two maverick politicians: Republican governor William Weld and Democratic state legislator Guy Glodis.

#### MANDATED IN MASSACHUSETTS

Massachusetts had become the first state to pass the law that mandated bilingual education in 1971. The amount of time designated for learning English was originally set at three years; however, through a waiver system that was not properly enforced, large numbers of students spent four, five, and six years in the program. The officials at the state level had failed to oversee the waiver process as well as the requirement that ELLs be tested annually.<sup>3</sup>

The law required native language instruction by a certified teacher in school districts where there were at least twenty minority-language students of the same language group, even if there were only two such students in the same grade. As a result, forty thousand students were officially enrolled in bilingual education in fifty-one Massachusetts districts during the 1993 to 1994 school year.<sup>4</sup>

The language-minority students made up approximately 12 percent of the student population in Massachusetts, whereas language-minority students equaled about 4 percent of the total U.S. student population in 1990.<sup>5</sup> In the 1991 to 1992 school year, 58 percent of the Massachusetts ELL population spoke Spanish.<sup>6</sup>

In 1994, twenty-three years after passing the bilingual education law, the Massachusetts Bilingual Education Commission was unable to say whether the mandated program, transitional bilingual education (TBE), which instructed students in their first language and gradually transitioned them into English, had produced good or poor results.<sup>7</sup>

The high cost of TBE had brought the issue to the political forefront. The expense had amounted to an extra \$1,179 per ELL during the 1992 to 1993 school year.<sup>8</sup>

In January 1995 Governor William Weld proposed the following requirements for improving the education of ELLs: (1) parental permission before enrolling their children in bilingual education; (2) English instruction for at least one-third of the school day; (3) time in a program limited to three years; (4) teacher fluency in English; and (5) oversight by the Board of Education. When the Joint Committee on Education held a hearing on this proposal in April 1995, hundreds of high school students showed up to protest.

The Hispanic students clapped enthusiastically in response to Rosalie Pedalino Porter's statement in favor of the proposal. Their teacher translated Rosalie's words into Spanish, and then they booed. The students spoke before the committee individually, but only in Spanish, while the Asian students explained what they did not like about the proposal solely in English.

Boston University professor Christine Rossell commented on the students' presentations at the hearing: "No one, including the students themselves, acknowledged or even seemed to realize that the programs in which these distinct groups were enrolled bore no resemblance to each other, a fact suggested by the language in which each group testified."<sup>9</sup>

The state House of Representatives defeated Weld's bill in a 124 to 30 vote. The *Boston Globe* claimed that the Weld administration was wrong to call bilingual education in Massachusetts a failure because the average time spent in a program was only three years. It chided the administration for wanting to cut costs at the expense of children.<sup>10</sup>

### "THE EMPEROR HAS NO CLOTHES"

In her book *Bilingual Education in Massachusetts: The Emperor Has No Clothes*, published by the Pioneer Institute for Public Policy Research in 1996, Christine Rossell concluded that the schools had mostly ignored the stiff requirements of the 1971 law. Only about half of the state's forty thousand ELLs, overwhelmingly the Spanish speakers, were actually being taught in their own language as required by law.<sup>11</sup>

Having visited seventy-five TBE classrooms in Massachusetts and analyzed the data on TBE programs in the Massachusetts school districts thoroughly, Rossell, with agreement from her coauthor Keith Baker, made several suggestions:

- Native language instruction should be used minimally and only when ELLs' English ability is very low.

- The need for native language instruction may be only for a matter of months.
- Teachers who are familiar with but not fluent in the child's language are better teachers for these children because they will not emphasize native language maintenance that is detrimental to ELLs' academic achievement.
- Students of the same language group should not be placed in the same classroom because it will delay their development of English.<sup>12</sup>

In an interview with a *Boston Globe* reporter, Rossell explained the importance of mixing ELLs with non-ELLs: "These programs should be fully integrated into regular schools so that students are exposed to English speakers on the playground, in the cafeterias, the halls, assemblies and other areas before, during and after school."<sup>13</sup> Moreover, she opined that ELLs should not be taught separately for more than a year.

The education and political leaders did not heed Rossell's advice. Most likely, they realized her recommendation to assimilate ELLs into the mainstream as rapidly as possible would decrease federal and state funding for all the involved entities. The jobs of federal and state ELL coordinators, district ELL program directors, secretaries to ELL officials, ELL teachers, ELL teachers' aides, and so on would be at risk and possibly eliminated.

Having been a recipient of several awards for her thoroughly researched studies, Rossell should have been taken seriously. Boston University professor James Schmidt described Rossell as "really precise, careful and rigorous."<sup>14</sup> He recalled how convinced she had been that school desegregation had not caused white flight to the suburbs until the data had proven otherwise. He went on, "She is absolutely un-dogmatic and un-ideological. She is willing to change her own views based on what she has found in her own work."<sup>15</sup>

## PROGRAMS SHARED COMMON PROBLEMS

Don Soifer, executive vice president of the Lexington Institute in Arlington, Virginia, found through his research of Title VII Bilingual Education Act grant documents that Massachusetts bilingual education programs shared the same deficiencies as similar programs in other states:

- *There is little or no accountability.* Students were not being evaluated until their third consecutive year in the state. When test scores were reported, they were done so selectively to make them appear better than they were in actuality.
- *Academic progress is inadequate.* Students in some schools scored lower in their posttest than their pretest. Reading scores of native-English speak-



ers in two-way bilingual programs declined in all four of the program's schools. As a result, a Boston middle school report stated, "The data show no evidence of improvement."

- *Segregation lasts several years.* The claim that bilingual education students were transitioning on average in three years was likely exaggerated. The State Department of Education had not compiled sufficient data.
- *There are not enough resources and time devoted to English instruction.* Questionable activities such as teacher workshops, translating a dictionary into Cape Verdean Creole, and clubs for Chinese yo-yo and palm reading were paid for with funds for ELL instruction.
- *Parents are denied choices for their children.* Because of the state bilingual education law, parents were not offered the choice of putting their children in immersion programs.<sup>16</sup>

### CONCERN OVER CALIFORNIA WIN

After Ron Unz's win in California in 1998, the people of Massachusetts, like those of Arizona and Colorado, discussed the possibility that Unz might bring his cause to their state. Abigail Thernstrom, a member of the Massachusetts Board of Education, described herself as a longtime friend of Unz and agreed with him: "Kids need to learn English if they are to have decent-paying jobs."<sup>17</sup>

Sandra Alvarado, director of the Latino Parents Association in Boston, objected. "What happened in California is not based on fact, but on personal feelings and fear. The reality is those children will not learn in a year. They will sink or swim. We will not let that happen here."<sup>18</sup>

State representative Guy Glodis expressed his disdain for bilingual education: "We need to abolish bilingual education as soon as possible. California has taken the lead. Bilingual does not work. . . . We as a state and we as a government have an obligation to help minorities and to help people help themselves. Bilingual does not do that."<sup>19</sup>

The usual arguments in support of bilingual education were offered: some students need more time; subject matter is best taught in the native language until the students have reached fluency in English; preserving the native language has merit; and many students educated through TBE have ended up with good careers. The arguments on the other side were that the immersion process took less time so students didn't have to be segregated for several years and were more likely to succeed in academics as well as careers if totally proficient in English.

The progress of TBE in Massachusetts could not be measured because, like other states, ELLs were exempt from taking the standardized test; in this case, the Iowa Tests of Basic Skills. Thus, it was not possible to evaluate

whether the program was working or not. The *Boston Globe* reported that 58 percent of the 5,582 third graders in TBE were excused from taking the reading portion of the Iowa test in 1998, although 71 percent of them had attended Massachusetts public schools for at least three years. By comparison, only 2 percent of all special education students were pardoned from taking the tests.<sup>20</sup>

In 1999 the Massachusetts Board of Education reversed its policy of exempting ELLs from the Iowa test and required them to be administered the newly created Massachusetts Comprehensive Assessment System (MCAS) test. Also, starting with the 2003 tenth graders, all students would be required to pass the MCAS test in order to receive a high school diploma.<sup>21</sup>

### REFORM BILL IN THE SENATE

On January 11, 2000, Guy Glodis, now a state senator, appeared at the State House on top of Beacon Hill in Boston to announce his filing of a bill similar to California Proposition 227. The bill would eliminate bilingual education in that state and allow for a sheltered English immersion approach for up to one year.

Glodis pointed to the high failure rate of the bilingual education students on the MCAS test for the 1998 to 1999 school year.<sup>22</sup> Some 47 percent had failed English language arts; 87 percent, mathematics; and 91 percent, science, technology, and history.<sup>23</sup> (*Note:* Such test scores offer only a limited view of ELLs' progress unless other factors are considered, such as years in the program, descriptions of the specific instruction, and general demographics.)

Glodis spoke further: "Non-English speaking students get little English at home or with their friends. So, if not at school, where will they learn English? We need to give them the tools to succeed, and bilingual education is just not working."<sup>24</sup>

Ron Unz stood next to Glodis at the State House. When it was his turn to speak, Ron talked about a recent *San Jose Mercury News* report of test scores. It showed students who spoke little or no English were learning more in English immersion classes than the 12 percent of students still in bilingual education. Ron stated, "The children and parents want to be in the mainstream. Why should Massachusetts be any different?"<sup>25</sup>

State representative Jarrett Barrios, a Democrat, had organized a protest to Glodis's presentation, which was made up of about fifty people, mostly members of the Massachusetts Coalition for Bilingual Education. This newly formed group included the Massachusetts Federation of Teachers, Latino Parents Association, Massachusetts English Plus Coalition, and the National Coalition of Advocates for Students.

Barrios and others said that bilingual education in Massachusetts had not received the proper resources, support, and funding. Supporters mentioned Amigos, a dual-language (Spanish and English) program in Cambridge in which the fourth-graders had excelled in both math and English on the MCAS. (*Note:* Unlike most schools with high enrollment of ELLs, Amigos served students of well-educated parents, most who spoke English in the home and who put much effort into their children's academic progress.)

Barrios explained, "Children must learn English, beautiful English. Transitional bilingual education in all its 28 years has never been fully applied. We've known that for a long time, and we've been looking at the bilingual education debacle."<sup>26</sup>

Representative Antonio Cabral, a Democrat, called Glodis's proposal "anti-immigrant propaganda," and went on to say, "Since I've been here, these bills have come and gone. I'm going to predict this bill will come and go."<sup>27</sup>

Because of efforts by both Barrios and Cabral, Glodis's bill failed in the state Democratic-controlled legislature in 2000, as did a similar second one in 2001. All the while, the reports from the national media were praising the increase in achievement of ELLs in California and crediting California Proposition 227 with that success. The atmosphere had become ripe for Unz to bring his movement to Massachusetts.

#### ANNOUNCEMENT OF UNZ BALLOT INITIATIVE

On Tuesday, July 31, 2001, Ron Unz stood at the State House with his Massachusetts leadership group for a press conference to announce his plan for an initiative, modeled after Propositions 227 and 203. He stated, "I believe that the parents and voters of Massachusetts should have the right to decide whether their children should be taught in English or not taught in English."<sup>28</sup>

The night before Rep. Guy Glodis had tried to reach a last-minute compromise with Representative Antonio Cabral, but the talks had fallen apart. He was not at the press conference but said in an interview, "The fact is that bilingual education is an embarrassment and is failing the kids it needs to help. I am confident that when this goes on the ballot, it will receive an even higher percentage of votes than it did in California or Arizona."<sup>29</sup> He gave his full support to the campaign and said that he would help collect the necessary 57,100 signatures as soon as the question had approval at the state attorney general's office.<sup>30</sup>

Both supporters and protesters appeared that day at the State House. Some carried placards and shouted to Ron Unz, "Go back to California," while others stood firmly with him. Roger Rice of the Multicultural Educa-

tion and Training Alliance criticized Ron harshly. “Not only is Unz not an educator, he’s not a bilingual educator and he’s not a parent. He got a few bucks and ran for governor (of California) and failed, and now it’s his whole mission in life to stamp out Spanish.”<sup>31</sup>

Representative Jarrett Barrios explained, “We’re in this for the long haul. We don’t have a plane back to California. The problem with Ron Unz is he wants to get rid of a one-size-fits-all solution and replace it with another one-size-fits-all solution.”<sup>32</sup> The legislator gathered with other legislators, city politicians, and activist groups inside the State House after the press conference to discuss how to oppose the Unz movement.

On September 5, 2001, the Massachusetts attorney general’s office approved not only Ron Unz’s measure but also a ballot initiative written by Representative Barrios. The latter measure offered bilingual education options, but it was not pursued.

## QUESTION 2 CAMPAIGN

Unz had put together an impressive threesome, all fluent in Spanish, whom he had personally chosen to lead the English for the Children of Massachusetts movement:

- as statewide chairman, Cuban-born and Harvard Law School graduate Lincoln Tamayo, the principal of Chelsea High School in Chelsea, Massachusetts, a heavily immigrant community considered to be among the poorest in the state;
- as cochair, Boston University professor Christine Rossell, whose research had convinced her that immersion instruction was more effective than bilingual education;
- also as cochair, Rosalie Pedalino Porter, who decided to join the movement because she “couldn’t resist,” although initially she doubted that the people of Massachusetts would go along with it.<sup>33</sup>

Chairman Lincoln Tamayo stated, “It never made sense to me, that it’s best for a child to learn English by learning all subjects in another language. . . . I’ve seen what a strong education and an ability to learn English has done for me and my ability to provide for my wife and children, and I want that for every kid who comes here not speaking English.”<sup>34</sup> Like Rosalie, Lincoln had entered school unable to speak English as a small child in Tampa, Florida.

Chairman Lincoln Tamayo had given up his job as principal because his superintendent had forbidden him to participate in the movement. His disgust with the failure of bilingual education that he had witnessed at his school

made it unfathomable for him not to take advantage of an opportunity to do something about it.

On December 4, 2001, the English for the Children of Massachusetts supporters turned in petitions with more than one hundred thousand signatures, far exceeding the required 57,100. As happened in the other states, Ron Unz had hired professional signature gatherers. Also, volunteers had amassed thousands of signatures. On December 20, 2001, the Massachusetts secretary of state certified the initiative, and it became officially Question 2.

Like the other campaigns, the leaders involved themselves in as many public debates and appearances as possible while Ron helped with the finances. They wrote newspaper articles and gave interviews. Ron Unz provided upgraded technology to ensure their good communication. In addition, Ron subsidized Lincoln Tamayo for a year to help make up the loss he was experiencing from having given up his job as principal to run the campaign.

Mount Holyoke, Northeastern, Harvard, and Wellesley were among the colleges and universities that provided forums for the ballot measure to be debated. These institutes of higher learning insisted on fair debates in which each side was represented by the same number of speakers and shared identical time restrictions.

Other schools and forums were less fair minded. Chairman Tamayo was refused a place on the Simmons College panel that was discussing Question 2. He was told he could comment, but only from the audience. At Brandeis University, cochair Rosalie Pedalino Porter was the sole speaker in favor of Question 2, opposite five opponents. The dean of the School of Education at the University of Massachusetts in Amherst invited Rosalie to speak but admitted that no one on his faculty was willing to debate her. At the Town Hall, Rosalie's would-be opponent canceled her appearance upon learning that Rosalie had also been invited to speak.<sup>35</sup>

## OPPOSITION

The main opposing force to Question 2, the Committee for Fairness to Children and Teachers, was led by Tim Duncan, a lawyer and a member of Democrat and acting-governor Jane Swift's reelection committee and the parent of a seven-year-old son in the Amigos dual-language school. Because Amigos relied on ELL funding, Duncan feared Amigos would close if the measure passed.

According to Rosalie Pedalino Porter, many important groups supported the committee's cause. The deans of eight colleges of education; leaders of both teachers' unions; most Democratic officials, who made up about 90 percent of the state legislature; editorial staffs of most newspapers in the state; and Hispanic advocacy organizations urged people to vote against the

initiative. In addition, U.S. senators Edward Kennedy and John Kerry signed a full-page ad in the *Boston Globe* that asked people to vote “No” on Question 2.<sup>36</sup>

Two years had passed since the deluge of national press reports that had celebrated the rise in the California ELLs’ Stanford 9 Test scores, so its impact on the public had softened. As a result, the opposition was able to insist that smaller class size and improved reading instruction had been the two main reasons for the increase in achievement, not Proposition 227.

Furthermore, the Massachusetts opposition made the case, similar to the one put forth at the same time in Colorado, that the law would be overly punitive to teachers. They coined the slogan “Don’t sue teachers.” However, Question 2 was different from Colorado Amendment 31. Whereas the Colorado initiative allowed parents *ten years* to sue, the Massachusetts measure required that the parents had to “discover before the child reaches the age of eighteen that the application for waivers was induced by fraud or intentional misrepresentation and injured the education of their child.”<sup>37</sup>

## SUPPORT

The *Wall Street Journal* denounced the bilingual education advocates in Massachusetts for their depictions of Ron Unz as “hateful” and “spiteful.” In addition, the newspaper chided Gerardo Villacres, director of the Massachusetts Hispanic-American Chamber of Commerce, for attacking Ron Unz’s name by saying that “half of the words in his name says Nazi on it, and that says a lot.”<sup>38</sup>

The Unz group had an important politician on their side—Mitt Romney, Republican candidate for Massachusetts governor. His stand on the issues was like those of his Democratic opponent Shannon O’Brien, except that he supported Question 2. He spoke firmly:

Shannon O’Brien is as wrong as wrong can be for not supporting the teaching of our children in English. Bilingual education is a well-intentioned program that became a dismal failure. Currently, we have two school systems in Massachusetts—one for children who speak English and another for non-English speakers. If our children cannot speak English fluently, it robs them of their ability to compete for jobs in today’s economy.<sup>39</sup>

Romney was not expected to win. In a *Boston Globe*-WBZ-TV poll completed in late September 2002, O’Brien had 42 percent of the vote, whereas Romney trailed with 36 percent. The undecided vote was at 12 percent, with 2 percent refusing to answer.

In response to the charge that Question 2 would be too punitive to teachers, the initiative backers said no one had sued in either California or Arizo-

na. Also, both candidate Romney and state senator Guy Glodis said frequently that they would work to create legislation that would protect teachers from being sued, should Question 2 pass.

### BILL PASSED TO DISMANTLE INITIATIVE

On August 6, 2002, acting-governor Jane Swift signed the bill “English Opportunities for All,” a law originally cosponsored by two state Democratic legislators, Robert Antonioni and Peter Harkin, in response to Question 2. It limited ELLs to two years of bilingual education, strengthened the qualification of bilingual teachers, and increased funding to school districts. Nevertheless, state senator Guy Glodis did not like it: “This law will not change the status quo. It just demonstrates how out of touch Jane Swift is with the majority of the electorate.”<sup>40</sup>

### VICTORY

The people of Massachusetts surprised the country on November 5, 2002, when Mitt Romney won with 50 percent of the vote, as opposed to 45 percent for O’Brien, and Question 2 passed by a huge margin, 68 to 32 percent of the vote. Mitt Romney, the newly elected governor, was praised for having campaigned “vigorously” for the initiative.<sup>41</sup> Romney had supported Question 2 on television ads with the statement, “English is the door to opportunity in America. If our children cannot speak English fluently, it robs them of their ability to compete for jobs.”<sup>42</sup>

Not counting Romney’s ad, the Question 2 campaign had spent \$425,000; the opposition to the measure spent \$725,000. A large increase in the Latino vote occurred in urban districts such as Boston, Worcester, and Chelsea. According to Rosalie Pedalino Porter, the districts that had the longest experience with bilingual education voted in favor of Question 2.<sup>43</sup>

### RON UNZ’S REFLECTIONS

Three days after the election, in a commentary to his supporters, Ron Unz expressed the following regarding how the Colorado and Massachusetts campaigns had played out:

Thus, with “the Best Conservative Governor in America” [Colorado governor Bill Owens] essentially quoting the Teddy Kennedy line on bilingual education, with Colorado’s multiculturalist Latino activists enthusiastically backing a multi-million-dollar [California] Prop. 187–style advertising campaign [“Chaos in the classroom”] to defend their programs, and with the most liberal

[Massachusetts] voters in America setting record margins in requiring an all-English curriculum from the first day of school, Tuesday's initiative votes followed a strange and ironic path.

Who says that politics in America is never interesting?<sup>44</sup>

### POINTS TO REMEMBER

Initially, it seemed unlikely that the people of liberal Massachusetts would vote to dismantle bilingual education in their state. Both Governor William Weld and legislator Guy Glodis had tried to improve their state's bilingual education law through legislation, but they had failed.

The three devoted leaders of the Massachusetts English for the Children movement, state legislator Guy Glodis, and gubernatorial candidate Mitt Romney worked hard for the cause. Their victory was likely due to the weak case made against Question 2 by the opposition and to the fact that the people of Massachusetts had dealt with bilingual education for thirty-one years and so were well aware of its failure to produce decent results.

### POSTSCRIPT

The Colorado and Massachusetts elections on November 5, 2002, ended the Unz campaigns to dismantle bilingual education in the United States. Seldom heard from again on the subject of bilingual education, Ron Unz moved on to other projects.

The following chapters reveal the many challenges to the initiatives that Ron Unz combated up to the 2002 elections and the problems regarding structured English immersion education that have ensued after that. Unz's English for the Children movement has continued to impact court decisions and legislation at the federal and state levels to this day.



## Chapter Five

# Under Attack

Education professor Jeff MacSwan called Arizona Proposition 203 “absurd and ridiculous” at the last Proposition 203 debate at Arizona State University.<sup>1</sup> Were Professor MacSwan correct in his appraisal, it would seem Proposition 203 would have been easy to overturn in federal court. Yet no one in Arizona filed a lawsuit of significance against Proposition 203 after it had become law.

By the time Proposition 203 had passed, litigation involving the almost-identical California Proposition 227 had already been attempted several times and failed. Moreover, the Ninth Circuit Appeals Court in San Francisco had upheld Proposition 227 in toto. Because the Ninth Circuit has jurisdiction in Arizona, the anti-Proposition 203 forces were wise not to challenge the measure.

The Unz initiatives were carefully constructed to withstand litigation. In May 1998, shortly before the passage of the California measure, President Bill Clinton’s White House legal analysts concluded that the provisions of Proposition 227 would not violate any federal civil rights laws and therefore were unlikely to be struck down in court. The analysts elaborated that the intensive English immersion program of Proposition 227 was fully consistent with *Lau v. Nichols*, the constitutional basis for what was considered to be “bilingual education” by the U.S. Supreme Court in 1974.<sup>2</sup>

The Ninth Circuit Court of Appeals ruling in 1978 (*Guadalupe v. Tempe*) states that bilingual education is not required under the U.S. Constitution nor the 1964 Civil Rights Act, so providing extra English language assistance satisfies the requirement of *Lau v. Nichols*.<sup>3</sup> Nevertheless, foes of Proposition 227 pursued costly litigation early and often in California.

*VALERIA G., ET AL., V. PETE WILSON, ET AL.*

On June 3, 1998, one day after the California Proposition 227 victory, a lawsuit in opposition to the initiative was filed in federal court in San Francisco. It claimed that Proposition 227 provisions violated the Equal Educational Opportunities Act (EEOA) by imposing “an experimental instructional program” on the limited English proficient (LEP) California students, without regard to their individual needs.

The plaintiffs were made up of several, mostly left-leaning, groups:

- Multicultural Education, Training, and Advocacy (META) Incorporated;
- American Civil Liberties Union (ACLU);
- Hispanic activist groups that included the Mexican American Legal Defense and Education Fund (MALDEF), Parents for Unity, Mujeres Unidas y Activas, Chinese for Affirmative Action, and the California Latino Civil Rights Network;
- The Los Angeles Unified School District and the Educational Alliance for the California School Boards Association;
- Students represented by the California Rural Legal Assistance Foundation that filed amicus briefs in support of the Plaintiffs’ Motion for Preliminary Injunction, an order to prohibit the implementation of Proposition 227.

The defense argued that immersion methods were not experimental in that they had been successfully implemented for many years in Canada, Europe, and Israel. Moreover, the third waiver allowed exemptions for students with special needs.

The defense was made up of two groups:

- Governor Pete Wilson, the California State Board of Education, and state superintendent of public instruction Delaine Eastin
- The individuals and organizations supporting Proposition 227 who were allowed intervention status in the suit. They included Ron Unz and Gloria Matta Tuchman, as well as Linda Chavez, president of the Center for Equal Opportunity.

On July 15, 1998, federal district judge Charles Legge ruled in favor of the initiative. He stated that the immersion program of Proposition 227 was pedagogically sound and was what the people of California preferred, as their votes proved. He agreed with the defendants that students with special needs were provided for through the third waiver. He found no legal basis for requiring bilingual education.<sup>4</sup>

## APPEALS AGAINST VALERIA G. V. WILSON RULING

The plaintiffs appealed this decision right away to the Ninth Circuit Federal Court. On July 31, 1998, the court's two-member panel reaffirmed Judge Legge's opinion. On that same day, Southern Federal District Court judge Lourdes Baird of Los Angeles ruled to implement Proposition 227 immediately.

These rulings contrasted sharply with other controversial California ballot measures that had been blocked in court for months and even years. Ron Unz made the following comment:

California voters have grown increasingly cynical in recent years that their election-day votes are inevitably nullified by unelected judges. The solid legal construction of our own initiative and the thoughtful analysis of Judge Legge means that Proposition 227 will not be delayed a single day or diminished in any respect by the Courts, and popular faith in the democratic process can begin to be reestablished.<sup>5</sup>

Four years later in 2002, the plaintiffs appealed Judge Legge's decision again. This time they charged that Proposition 227 violated the equal protection guarantee of the Constitution because it required English-learning students to be taught through English immersion rather than in a language other than English, such as Spanish. In addition, they claimed that specially designed English immersion classes did "irreparable harm" to children trying to learn English.

The three judges of the Ninth Circuit Court ruled in favor of the defendants on October 7, 2002. They ruled that immersion was a valid educational theory and did not violate the Constitution. According to the Pacific Legal Foundation, this ruling coincided with a national study by New Mexico State University that had found English immersion to be less costly and more effective than bilingual instruction in improving student performance.<sup>6</sup>

A few months later, the same plaintiffs petitioned for a hearing of the case before the same Ninth Circuit Court of Appeals for a third time. On February 25, 2003, the court denied the plaintiffs their request.

*CALIFORNIA TEACHERS ASSOCIATION (CTA), ET AL., V. STATE BOARD OF EDUCATION*

The California Teachers Association (CTA) and other professional organizations filed a petition in federal court on December 4, 1998, for an injunction against the section of Proposition 227 that gave parents the right to sue school officials for willfully and repeatedly refusing to implement the terms of the statute. The claim was made that the proposition provision was vague

and that the constitutional rights to free speech and due process would be violated.

On September 8, 1999, U.S. federal district judge Edward Rafeedie ruled that the personal liability provision allowing parents to sue school officials for not following the provisions of the proposition was constitutional. He added that teachers were not to be prohibited from using “languages other than English in disciplining students, emergency training, social interactions, tutoring, parent-teacher conferences, or any of the other situations listed by the plaintiffs.”<sup>7</sup>

A spokesperson for the teachers’ association, Tommye Hutto, said that she thought the judge had misunderstood the law and that an appeal was likely. She complained further that the teachers couldn’t tell what they were supposed to do and what was prohibited, such as how much of the speech in a classroom could be in the Spanish language.<sup>8</sup>

Sharon Browne, the Pacific Legal Foundation attorney who represented the parents in favor of Proposition 227, asserted that the judge’s decision “preserves the spirit and intent behind Proposition 227.” She added that without an enforcement mechanism in place, Proposition 227 was of little value to parents whose children attended schools in districts that refused to comply with the law.<sup>9</sup>

#### APPEALS AGAINST *CTA V. STATE BOARD* OF EDUCATION RULING

On August 29, 2001, the U.S. Court of Appeals for the Ninth Circuit upheld Judge Rafeedie’s ruling in a two-to-one decision. Judge Robert Boochever wrote for the majority that the provision allowing parents to sue school officials for violating the initiative was constitutional.

Judge A. Wallace Tashima presented a dissenting opinion that the proposition was insufficiently clear in that its enforcement was left up to the parents as to whether the teachers were in compliance. He was concerned that the law allowed parents to sue “without providing the teachers with sufficient clarity as to how much English is required and in what circumstances and settings.”<sup>10</sup>

On August 31, 2001, Ron Unz expressed satisfaction with the Ninth Circuit Court’s decision, but he criticized the media for not covering it. “Once again, a major public event—the complete victory of Proposition 227 and its unprecedented enforcement mechanism over California’s most powerful union in the important and generally liberal Ninth Circuit—went almost unnoticed in the media.”<sup>11</sup>

An important aspect of this issue was that no parent had actually sued a teacher for violating the initiative during its three-year existence. Randall

Olson, superintendent of a California high school district, explained, “This really isn’t an issue and I don’t think it ever will be. Besides, people can already sue you for any reason they want.”<sup>12</sup>

The decision was appealed for a second time in December 2001. The Ninth U.S. Circuit Court of Appeals ruled against the teachers’ organization again with the explanation that educators would violate the law under its terms only if they “willfully” and “repeatedly” refused to implement it. The court ruling made clear that the statute required teachers to provide an “overwhelming” portion of their instruction in English, not all instruction, and that “the facial invalidation of a statute was an extreme remedy and should be used sparingly.”<sup>13</sup>

### *MCLAUGHLIN V. CALIFORNIA STATE BOARD OF EDUCATION*

Several San Francisco–area school districts wanted to obtain waivers that would allow them exemption from the waiver provisions of Proposition 227. In this challenge, justices of the Court of Appeals of the First Appellate District in San Francisco decided on September 27, 1999, that only individual parents could request waivers.

On February 25, 2000, California state attorney general Bill Lockyer added his own ruling to the Appeals’ Court decision. “A school district may not deny a parental request for an individual waiver from the statutory mandate that all students be instructed in English on the sole ground that the district has no alternative program.”<sup>14</sup> Bilingual education advocate James Crawford agreed with the attorney general’s decision: “The parents’ right to choose bilingual education, even after Proposition 227, was reaffirmed.”<sup>15</sup>

### FEDERAL COURT RULING REGARDING SAN JOSE SCHOOLS

On December 16, 1998, U.S. district judge Ronald M. Whyte gave San Jose Unified School District permission to continue its bilingual education program throughout its sixteen elementary schools. Unlike the other California school districts, San Jose was under a federal court order that required it to desegregate its schools and offer native language instruction to Spanish-speaking students. According to San Jose superintendent Linda Murray, the district had worked very hard to get to the point to minimize conflict with state law and the court order.<sup>16</sup>

According to the agreement made with the court, the parents and not the school administration would decide whether a student was to be placed in a bilingual program. Also, the parents would have to visit the school, attend information meetings, and sign waivers annually. However, the students

would not be required to spend their first thirty days in an English-immersion program, a requirement of Proposition 227.<sup>17</sup>

As stated by Mike Hersher, general counsel for the California Department of Education, and reiterated by Ron Unz, this ruling would not affect the other districts because they didn't have the court order. However, Ron added, "[Judge Whyte] made the decision based on the assumption that the program was working well, and it's not."<sup>18</sup>

## POLITICAL ACTION AT BILINGUAL EDUCATION CONFERENCE

Governor Gray Davis had nominated former principal Nancy Ichinaga to the California Board of Education in 2000. The California Senate Rules Committee was scheduled on February 7, 2001, to decide whether to recommend her appointment for a full vote in the Senate.

No one expected there to be a problem with Ichinaga's confirmation. Her policies had brought about impressive academic achievement at Bennett-Kew Elementary School in Inglewood, California, an elementary school attended predominantly by at-risk, poverty-stricken children. The home language of about 50 percent of the students was Spanish.

By implementing a systematic phonics-based reading program and eliminating bilingual education, both practices considered illegal in California at the time, Ichinaga had fully transformed this poor-performing, low-income school into one of the highest performers in all of Los Angeles County. However, due to the school's noncompliance to state law, the school had almost lost its Title I funding. As the school's test scores soared and the Hispanic students became proficient in English, Ichinaga received a waiver from the California Department of Education, which she referred to as an "achievement based excuse."<sup>19</sup>

Nevertheless, at the January 2001 California Association for Bilingual Education (CABE) annual conference in Los Angeles, the nearly twenty thousand participants were encouraged to oppose Ichinaga's appointment. Each attendee was provided with a magenta-colored flyer that contained the urgent message in bold, black letters: "Action Alert: Stop Ichinaga's Appointment to the State Board of Education!" Ichinaga was then described as an opponent of bilingual education and a supporter of Proposition 227. No mention was made of her accomplishments.

The flyer listed the telephone numbers, emails, and addresses of the members of the State Senate Rules Committee who would vote on Ichinaga's appointment. The attendees were directed to go to a specific area of the conference hall where computers were available for them to contact the specified state senators.

The resulting barrage of letters and phone calls to the state senators stalled the vote for one week. Meanwhile, newspaper reporters throughout California learned what had happened and informed the public about the CAFE conference attendees' campaign to undermine Ichinaga's appointment. An overwhelming response in favor of Ichinaga ensued.

On February 22, 2001, following approval from the Senate Rules Committee, the California full state senate confirmed Nancy Ichinaga's appointment to the California Board of Education. The vote was unanimous, twenty-nine to zero.

### CALIFORNIA BOARD OF EDUCATION'S ATTEMPT TO UNDO PROPOSITION 227

A year later, on February 7, 2002, the California Board of Education proposed regulations that had the potential of dismantling Proposition 227. One regulation eliminated the requirement that all ELLs under ten years old spend the first thirty days of every school year in an English language program before being allowed to qualify for a waiver to go into bilingual programs. Even worse, another regulation gave teachers the right to apply for and be granted waivers so they could assign the students to bilingual education classes as they saw fit.

After a board member moved that the amendments to the proposed regulations be approved, another member seconded the motion. The motion was voted on and approved seven to one. The single dissenting vote came from Nancy Ichinaga.

According to Ron Unz, documents from the State Board of Education offered evidence that the new anti-Proposition 227 regulations had been developed at a series of secret meetings. Certain board members and bilingual education advocates had met at the office of state senator Richard Polanco, chairman of the Latino Caucus. It was Unz's belief that "these regulations were due to massive quiet political pressure by the bilingual ed industry and its powerful lobby . . . intended to restore Spanish-almost-only instruction by nullifying Proposition 227."<sup>20</sup>

The California board's action aroused concern in the national and state media:

- "A set of regulations proposed by an obscure administrative agency in Sacramento threatens to undo one of the most successful and momentous reform of public policy in the United States over the past 10 years." (Michael Barone, "Debating Bilingual Education: The California State Board of Education Is on the Verge of Undoing Proposition 227," *U.S. News*, Web exclusive, February 8, 2002)

- “In short, the bilingual-ed establishment would have limited-English children back in its clutches, where it would condemn them to a mis-education lasting for years—and with consequences lasting for lifetimes.” (John J. Miller, “Bilingual Boondoggle: Beating Gray Davis, in English,” *National Review*, February 14, 2002)
- “NEVER underestimate the ability of unelected bureaucrats to overturn the expressed will of the people if it threatens their power. The latest example comes from Sacramento, California, where the unelected State Board of Education voted to nullify key provisions of a 1998 state constitutional amendment passed overwhelmingly by the voters.” (Linda Chavez, “No Habla Democracy,” *New York Post*, February 19, 2002)
- “It would be a grave mistake to do anything to jeopardize California’s pullback from bilingual education at a time when the current system is making such strides.” (“Save Bilingual Reform,” *Contra Costa Times*, Editorial, February 24, 2002)
- “Gov. Davis should urge his appointees to reject the changes. It would also be helpful to hear from gubernatorial candidates Bill Simon and Bill Jones on this important issue.” (“Bringing Back Bilingual?” *Orange County Register*, Editorial, February 27, 2002)

In response to the clamor from the media and the public, the California board retreated from allowing teachers to apply for waivers. The board took the following stand in March: “The parents are the ones who make the decision to seek a waiver to place their children in an alternative program. The educational staff at a school do not make this decision.”<sup>21</sup>

Finally, on April 25, 2002, the board eliminated the final proposed regulation. The following day Ron Unz praised the state board for this action. “I am very pleased to report that the California State Board of Education apparently eliminated the last of the proposed regulations that had threatened to nullify core provisions of Proposition 227. I commend them for their change of heart on this important matter.”<sup>22</sup>

#### STATE ASSEMBLY BILL 2711

In the meantime, Assemblyman Mark Wyland (R-Vista) introduced Assembly Bill 2711, which disallowed anyone from overtly recruiting parents to request waivers and mandated a written description of a legitimate educational reason for granting a waiver. The bill also required the State Department of Education to monitor and enforce the language in the proposition that requires English language learners (ELLs) to learn English by being in English-speaking classrooms.



On April 24, 2002, Assembly Bill 2711 was heard in the Assembly Committee on Education with testimonies from Ron Unz and Oceanside Unified School District superintendent Ken Noonan. However, according to a report by Noonan and Wyland that ran in the *San Diego Union-Tribune*, “Succumbing to pressure from the bilingual and teachers’ union lobbies, the committee’s Democratic majority voted to kill the bill.”<sup>23</sup>

### COMPLAINT FROM THE CALIFORNIA DEPARTMENT OF EDUCATION

In spite of having been one of the original founders of the California Bilingual Education Association and against Proposition 227, Superintendent Ken Noonan had implemented the provisions of Proposition 227 to the *n*th degree after its passage in 1998 in the Oceanside Unified School District. After two years of immersion, the mean percentile test scores of his district’s immigrant children soared. Noonan noticed other positive changes, such as ELLs mixing more frequently than before with their English-only peers on the playground.<sup>24</sup> As a result, he turned into a staunch supporter of immersion education.

Because of the district’s rising test scores, Oceanside had become the focus of national media coverage in the *New York Times*, *Washington Post*, *USA Today*, *Wall Street Journal*, *Newsweek*, and national television networks. The district was described as the one that had most thoroughly implemented Proposition 227 (see chapter 2, pp. 36–40).<sup>25</sup>

Nevertheless, in October 2000, Oceanside Unified School District came under fire from the California Department of Education and the federal Office for Civil Rights (OCR). The school district was forced to defend itself against a claim that the district was restricting ELLs from access to alternative programs such as bilingual education. It was in response to a complaint filed in July 1999 by Multicultural Education, Training, and Advocacy, Inc. (META), and California Rural Legal Assistance on behalf of the United Coalition for the Education of Our Children, a group of parents seeking continued Spanish-language instruction for their children.

Ron Unz lambasted the Department of Education for their action:

California Superintendent Delaine Eastin and all of the pro-bilingual fanatics in her Department of Education were fervent opponents of Proposition 227, and the people of California crushed them at the polls in 1998. Now they are claiming black is white and they want to punish Oceanside Superintendent Ken Noonan for obeying the law and doubling his students’ test scores as a result.

Perhaps if Noonan had managed to triple his test scores, they would have tried to arrest him. Punishing a California district for its academic success

shows everyone in America why our state's scores dropped to dead last in the country during the 1980s. This is the craziest thing since Stalinist Russia arrested its peasant farmers if they worked too hard.<sup>26</sup>

Noonan said that the report had omitted the improved performance of his ELLs: "If you read the report it sounds like our students are in a deep dark hole."<sup>27</sup> He appealed the report and eventually was able to work out a solution with the state and the OCR.

Admired by his colleagues for his accomplishments and willingness to find solutions, Noonan became the California Latino Superintendents' Association Superintendent of the Year in 2002.

### PROGRAMS NOT FOLLOWING PROVISIONS OF PROPOSITION 227

The bilingual education advocates claimed that Proposition 227 took away the rights of the parents. However, there was no evidence that parents of ELLs had ever been given much choice regarding the education of their children, according to Boston University professor Christine Rossell, who had analyzed data collected from her visits to more than three hundred classrooms from 1986 to 2001.

In an article written for *Education Next* (Fall 2003), Rossell concluded that the California teachers had remained the "primary decision makers" as to whether or not a child was put into bilingual education. She likened the situation to medical care. "Teachers, like doctors, create supply by the criteria they use to define a child as needing treatment and they create demand by telling the patient what treatment he or she needs."

Rossell elaborated further that in every California school she visited in the spring of 1999, teachers admitted that they had "worked very hard" to get parents to sign waivers. The teachers had held meetings and called parents "to persuade them that their child would be better off in the bilingual-education program."<sup>28</sup>

Rossell's research showed that the California state board had allowed school districts to follow guidelines that contradicted the provisions of Proposition 227:

- What was described in the initiative as a "sheltered English immersion classroom" had become redefined. (*Note:* "Sheltered" English immersion is the broader term for "structured" English immersion. See glossary.) The school districts considered such a classroom to be not only one of English learners taught in English at a pace they could understand but also "mainstream classrooms with English as a Second Language (ESL) pullout in-

struction and self-contained classrooms of English Learners receiving up to 30 percent of their instruction in Spanish.”

- Teachers had been permitted to recruit children for bilingual classrooms, although the proposition clearly stated that parents were supposed to initiate this process.
- Parents had been allowed to mail in requests for waivers instead of visiting the schools as the measure specified.
- The Proposition 227 requirement that English learners spend a year in a sheltered immersion classroom was unilaterally changed from a maximum (the initiative stated “not normally intended to exceed one year”<sup>29</sup>) to a minimum time period by the California State Board of Education. Consequently, a student could be allowed to stay in a sheltered program for years, even if the child was no longer benefiting from it.
- Documentation of the need for bilingual education was required in the initiative but was ignored by many school districts.
- The California school board’s interpretation of vague parts of the legislation subverted the intent of Proposition 227, according to many supporters of Proposition 227 such as Christine Rossell, Rosalie Pedalino Porter, and Ron Unz. Whereas the legislation required limited English proficiency (LEP) [now called “ELL”] children to spend thirty days in an English-language classroom, the State Board of Education decided that this would occur only at the time of the child’s first enrollment as an LEP child in a California school. The Proposition 227 authors had intended the thirty-day time period to transpire every year for students still in bilingual education.<sup>30</sup>

## DECLINE OF BILINGUAL EDUCATION

In spite of the many attempts to either change or ignore the provisions of Proposition 227, officially there was a drop in bilingual education programs throughout California every year since the passage of the initiative in 1998. Whereas at least 29 percent of all LEP students were placed in bilingual education during the 1997 to 1998 school year, fewer than 10 percent were enrolled during the 2001 to 2002 school year, and the trend was clearly downward.<sup>31</sup>

More recently, figures from the California English Learner Services have indicated that approximately 7 percent of ELLs received primary language instruction in 2004 and 2005 and 5 percent in 2008 to 2009. Moreover, 35 percent of the California students learned in a structured, also defined as “sheltered,” English immersion (SEI) setting in 2000 to 2001; the number rose to 50 percent in 2004 to 2005 and to 55 percent in 2008 to 2009.<sup>32</sup> However, regarding SEI programs, this is a very unreliable number because

of the confusion of many educators in distinguishing between a regular classroom that combines ELLs with non-ELLs and an SEI classroom.

Unfortunately, the monitoring of these programs has been poor. Moreover, the data that the school districts submitted to the California Department of Education has been generally unreliable, particularly with regard to the numbers enrolled in SEI.

#### POINTS TO REMEMBER

The anti-Proposition 227 forces did everything possible to nullify California Proposition 227 and to return bilingual education to the schools. This included filing federal lawsuits, appealing federal rulings to the Ninth Circuit Court, putting pressure on the California Board of Education, and bringing charges against the Oceanside school district in spite of the schools' rise in academic achievement. Whereas these attempts failed for the most part, many schools have continued to skirt the law in various ways. To this day it is impossible to estimate to what degree Proposition 227 has made a difference in California.

ROWMAN &  
LITTLEFIELD

## *Chapter Six*

# **Closing the “Loopholes”**

The Arizona landslide victory on November 7, 2000, encouraged people in other states to consider creating similar ballot initiatives. In Dallas, Texas, a Spanish-language radio talk show host, who had interviewed Proposition 203 chairperson Maria Mendoza on Election Day, said that her program became flooded with calls from people who agreed that bilingual education was a failure. The talk show host explained, “What I heard from listeners is people want their children to learn English as quickly as possible.”<sup>1</sup>

In Colorado, Rita Montero, in the midst of her dispute with the Denver Public School (DPS) Board of Education over the DPS bilingual education policy, commented, “It inspires others to see it can be done and we are not alone.”<sup>2</sup>

Indeed, the back-to-back wins in California and Arizona had made an impact nationally and would soon be followed by ballot measures in Colorado and Massachusetts. Unfortunately, enthusiasm was sadly lacking among educators and politicians in the state that had most recently passed its antibilingual education initiative.

### PROPOSITION 203 NOT ENFORCED

The day after the election, the school board president of a large southwest Phoenix district urged other Arizona districts to continue offering bilingual education in spite of the new law. He added that he was talking to lawyers to weigh the ramifications of ignoring Proposition 203 before asking his school district’s board members to adopt a proposal that would officially defy it.<sup>3</sup>

The board president would soon discover that a formal action opposing the law was unnecessary because bilingual education would continue in Arizona schools, pretty much the same as before the election. The politicians

and bilingual education proponents would circumvent Proposition 203 by interpreting its provisions guilefully and then calling them “loopholes.” Amazingly, not a single government official would question this transgression.

Ultimately, the English for the Children proposition would prevail, but only after another long, hard-fought political campaign.

## LAW UNDERMINED

Arizona superintendent of public instruction Lisa Graham Keegan, a Republican, talked about the new law before the Scottsdale Parent Council on January 9, 2001, two months after the election. In a front-page *Arizona Republic* article, Keegan was quoted as saying that she would allow Arizona schools to continue bilingual education, “as long as students are learning English and making academic progress.”<sup>4</sup>

Keegan went on to state, “Bilingual programs are successful when kids are speaking two languages, and their academics are on par. Do what you want and make it work, and nobody is going to go ballistic.”<sup>5</sup>

Scottsdale superintendent of schools Barbara Erwin appeared confused after listening to Keegan at the council meeting. Erwin interpreted Keegan’s words to mean that bilingual education could continue as long as it was successful.<sup>6</sup>

According to Keegan, “The way we’ll know if they’re not following 203 is if the kids are making zero progress. Then yes, we’ll talk to the school.” She added that the provision of Proposition 203 to test the English language learners (ELLs) annually on their English skills would be followed and that would determine what was working.<sup>7</sup>

Ron Unz responded immediately to Keegan’s statements, “She is indicating by her quotes that she is above the law, that she, rather than the people of Arizona, can decide the law.”<sup>8</sup>

Democratic state senator Joe Eddie Lopez found Keegan’s approach to be “most practical.” However, he warned that anyone who interpreted Keegan’s comments “as providing the freedom to continue teaching in a child’s home language, most often Spanish, could open themselves up to lawsuits under the new law.”<sup>9</sup>

Unz expressed amazement that state senator Joe Eddie Lopez, the leader of the anti-Proposition 203 campaign, was warning the bilingual advocates about penalties they faced if they disobeyed the law.<sup>10</sup>

Proposition 203 cochair Norma Alvarez insisted, “If there’s a law, we have to enforce it. If not, our work has been for nothing.”<sup>11</sup>

The day after the controversial front-page article appeared, Keegan attempted to clarify her point of view to assure the public that she would

comply with the new law. She asserted, “Of course I’m going to enforce the proposition. But I’ve never interpreted the initiative as English-only. . . . Specific details, such as the amount of time that can be spent in other language instruction or what penalties can or will be enforced for noncompliance, are being worked out.”<sup>12</sup>

Superintendent Keegan’s vow on election night to respect the will of the people and enforce Proposition 203 was now in doubt. In fact, she had emboldened the bilingual education advocates to circumvent the law.

### THE “TOO FEW TESTS” PROBLEM

Proposition 203 eliminated the exemption that excused ELLs from taking a standardized test in English for three consecutive years. It mandated the schools to administer yearly “a standardized, nationally-normed written test of academic subject matter” to all Arizona public school students grades two and higher.<sup>13</sup> Thus, the English for the Children leaders were correct to expect the Arizona Department of Education (ADE) to give the state-designated Stanford 9 to all students, including the ELLs, in the spring of 2001.

It was especially important to cochair Margaret Garcia Dugan because she had hoped that the test results could be used to establish baseline data from which the achievement of ELLs could be measured accurately after Proposition 203 was implemented. However, surprisingly, the ADE authorities said that they could not administer the test to everyone because they had not ordered enough test booklets! In addition, the Aprenda, a Spanish version of the Stanford 9 (SAT-9), would be given to ELLs in bilingual classes.

### “A WORKING KNOWLEDGE OF ENGLISH”

Proposition 203 opponent Sal Gabaldón explained in a column for *Arizona Daily Star* that a provision of the law actually required bilingual education. He quoted the initiative that “any school in which 20 or more students receive waivers for bilingual education must provide bilingual education.”

Sal elaborated further that the students eligible for a waiver would include “all students who are under 10 years of age and have a ‘working knowledge of English.’”<sup>14</sup>

He was referring to the provision that a child who already “possesses good English language skills, as measured by oral evaluation *or* standardized tests”<sup>15</sup> qualified for a waiver and to be allowed bilingual instruction.

In an email to me, state senator Joe Eddie Lopez elaborated further: “The law does not specify how an oral evaluation should be conducted or what scores to use. In fact, the law would appear to allow a teacher to determine

from a simple conversation with an English learner that he or she already knew enough English to qualify for a waiver.”<sup>16</sup>

Both Sal and the senator were omitting an important detail. Whether the child’s English ability was measured by oral evaluation or by a standardized test, the child would have to score “approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower” to qualify for that waiver.<sup>17</sup> Thus, an oral evaluation would suffice, but it would have to be equal in difficulty and depth to a standardized test of English vocabulary comprehension, reading, and writing at the specified grade level.

### TWO-WEEK SUMMER PROGRAMS

The schools accepted Joe Eddie Lopez’s questionable interpretation of the provision as accurate but decided it best to provide official documentation. Thus, the teachers set up a two-week, intense English summer program during which they were able to bring ELLs who knew little or no English to a basic level of oral competence. As proof of this amazing feat, the teachers administered the oral section of an officially acceptable English language proficiency test to the students, and virtually all of them passed. According to the teachers, this qualified the ELLs for the waiver that exempted “children who already know English.”<sup>18</sup>

There were some serious problems with this process: (1) the teachers had access to the specific items on the test, so the test results lacked validity; (2) the test was so short and limited in scope that it was easy for the teachers to prepare the children to give the correct responses even if the children didn’t understand much of the language; and (3) the level designated “pass” was still “limited English,” and so it did not meet the oral language proficiency standard of Proposition 203. Indeed, the teachers, with help from Senator Lopez, had put together a scheme for saving bilingual education.

### PARENTS ENCOURAGED TO SIGN WAIVERS

For the next several months, English for the Children officials Maria Mendoza, Hector Ayala, Margaret Garcia Dugan, and Norma Alvarez heard reports from school employees that parents were being coerced in various ways:

- Schools were putting on social events such as barbecues for the parents of ELLs to coax the parents into applying for waivers.
- Parents were being warned of possible deportation if they refused to sign waivers.



- At least one employee of a high school district was calling parents of Spanish-speaking children to promise honors credits to the children who enrolled in bilingual classes.

Cochair Hector Ayala lamented, “What it tells me is that we were all exactly right when we said the bilingual education establishment won’t go away very easily. . . . I suspect that 95 percent of the people signing waivers are not coming forward of their own accord. I believe they are being recruited.”<sup>19</sup>

A teacher of ELLs at an elementary school in west Phoenix explained to a newspaper reporter the system they used at her school. “We waiver all the kids in. We have to explain everything in Spanish and convince the parents to sign the waivers.” In addition, the school had created a form letter on which parents could fill in certain blanks to make it specific to their child.<sup>20</sup>

Occasionally, segments on local news programs featured ELL classes conducted in Spanish. The explanation was given that the schools could continue bilingual education because of the Proposition 203 “loopholes.”

#### SUPERINTENDENT KEEGAN’S RESIGNATION AND REPLACEMENT

Quite unexpectedly, Arizona superintendent of public instruction Lisa Graham Keegan resigned in May 2001 to head the Education Leaders Council in Washington, DC. Shortly thereafter, Arizona Republican governor Jane Hull appointed thirty-three-year-old Jaime Molera, Hull’s top education advisor and also a Republican, to Keegan’s former position.

Superintendent Molera did not approve of Proposition 203. In the fall of 2001, after having been in office for about four months, he expressed his opinion in an interview that appeared in the *AEA Advocate*, a publication of the Arizona Education Association (AEA), the largest teachers’ union in Arizona:

In my opinion, Prop 203 was a big mistake. It’s throwing the baby out with the bath water. It’s true that major reforms were needed in bilingual education when kids aren’t mastering English after a certain number of years. But we had two polarized camps. One said, “Do absolutely nothing.” The other said, “Destroy the system.” That side had a lot of money. So they won.

Now we’re stuck with a one-size-fits-all approach. Kids learn in so many different ways. 203 is very limiting. But it’s law now, so we have to implement it in the way that we can help teachers make sure kids are still getting a quality education. It’s tough. I know teachers are struggling. I know kids are struggling.<sup>21</sup>

Molera stated further in the interview that he knew “some districts went too far in interpreting the law because they were afraid what would happen to them if they didn’t.” He mentioned that the ADE had sent out guidelines that should “dispel myths” surrounding Proposition 203.<sup>22</sup>

Molera’s guidance pamphlet was not helpful for anyone serious about implementing the new law. It offered excerpts from the actual initiative verbatim but was missing interpretations of those excerpts as well as anything that clarified the changes the schools needed to make. The schools were expected to figure it out themselves, with the implication that whatever they decided to do regarding Proposition 203 would be acceptable to the ADE.

A new election in which the citizens of Arizona would be voting for the top state officials, including Arizona superintendent of public instruction, was scheduled for November 5, 2002. Superintendent Jaime Molera, very popular among the top leaders of the Republican Party, was considered a shoo-in for winning the Republican primary, mostly because no Republican incumbent holding high office in Arizona had ever been defeated in a primary. Candidate Molera would then compete in the general election with one of the Democratic candidates, who like Molera supported bilingual education.

#### NO ASSISTANCE FROM LEGISLATORS

Occasionally, during the summer and fall of 2001, the state legislature scheduled hearings that dealt with Proposition 203. To anyone who attended, it soon became obvious that the legislators and their aides intended to do as little as possible to enforce this law. For example, they agreed among themselves that Proposition 203 permitted the placement of even beginning ELLs with regular students in the mainstream, rather than in their own classroom(s). This contradicted what was actually written in the law:

Local schools shall be encouraged to mix together in the same classroom English learners from different native language groups but with the same degree of English fluency. Once English learners have acquired a good working knowledge of English and are able to do regular school work in English, they shall no longer be classified as English learners and shall be transferred to English language mainstream classrooms.<sup>23</sup>

When Margaret Garcia Dugan occasionally showed up at meetings, her points of view and concerns would be politely dismissed. It didn’t appear to matter to the legislators that Margaret had helped write Proposition 203 and was the principal of Glendale High School, a “minority-majority” high school that the ADE had designated as having a “model structured English immersion ELL program.”

On July 24, 2001, Sal Gabaldón and Leonardo Basurto of the Tucson Unified School District (TUSD) addressed an Arizona House and Senate working group, of which Senator Joe Eddie Lopez was a member. The implementation of Proposition 203 was a major focus of the bipartisan group. Gabaldón and Basurto explained how their district was supposedly enforcing Proposition 203 and recommended that the results of bilingual education and English immersion programs be compared before the so-called implementation of the law in the fall.<sup>24</sup>

No one was there to explain the discrepancies regarding the state achievement test results that had made such a comparison impossible (see chapter 2, p. 27). Representative Linda Gray (R-Phoenix), head of the group and chairperson of the House Education Committee, turned the subject back to student achievement. "My concern is, what are the most effective programs so that we are not leaving students behind . . . at the 30th percentile."<sup>25</sup>

After attending one of the legislative meetings, *Arizona Republic* columnist Robert Robb, who had recommended against voting for Proposition 203, remarked in his September 9, 2001, column, "In the last election the people of Arizona decreed that a particular method of instructing English learners, immersion, be used in our public schools. Instead of implementing the will of the voters in good faith, school districts around the state are scrambling to circumvent it."<sup>26</sup>

#### THE ARIZONA DEPARTMENT OF EDUCATION COST STUDY

The legislators should have taken the time to read the ADE English Acquisition Program Cost Study that had been completed by the Institute for Research in English Acquisition and Development (READ) and a reputable accounting group from California in May 2001 (see chapter 7, pp. 101–2). This study offered details about the Arizona school districts' ELL programs. The cost study consultants were scheduled to come before the legislature to answer questions and offer suggestions. However, the meeting was canceled and not rescheduled after Superintendent Lisa Graham Keegan's resignation. The \$213,000 cost study was then disregarded.

Nevertheless, *READ Perspectives* published a thorough analysis of the Arizona cost study. In the introduction to the report, editor Rosalie Pedalino Porter explained what could be concluded from the data:

Elementary schools with English immersion teaching produced higher student test scores and tested a much higher percentage of their LEP [limited-English-proficient] students than schools using bilingual education methods. In fact, in the schools with English immersion programs, 100 percent of the students took the statewide tests each year. The longer the English teaching program was in place, the higher the achievement scores of students on the reading, language,

and math tests in English, a finding that is clearly documented in the individual school profiles.<sup>27</sup>

Perhaps the legislators and the public would have appreciated knowing that the teaching method the voters had mandated for Arizona ELLs was actually the most effective way for children to learn English. It may have even inspired a legislator or other government official to push for this law to finally be enforced!

### POLITICIANS SHUNNED PROPOSITION 203 LEADERS

Cochair Hector Ayala called U.S. representative Matt Salmon (R-Mesa) several times. Salmon, a major supporter of Proposition 203, was now vying for the Republican gubernatorial nomination. It seemed likely at the time that he would be open to making sure Proposition 203 was implemented. Nevertheless, Salmon did not respond to any communication from Hector in spite of their earlier friendly relationship. Later a government official learned that Salmon did not want to appear critical of Superintendent Jaime Molera in any way and had been advised by his political consultant to stay clear of English for the Children representatives.

Superintendent Molera himself continued to give the Proposition 203 group the cold shoulder by avoiding their several requests for a meeting with him. It was an error on Molera's part because the group—Maria Mendoza, Hector Ayala, Margaret Garcia Dugan, and Norma Alvarez—had been pleased with his appointment to the position of Arizona superintendent of public instruction. Had Molera merely met with the group and assured them that he was doing what he could, it is likely they would have believed him and not interfered with his campaign to win election to his appointed office in 2002.

The group assumed that Jaime Molera, a conservative Hispanic from Nogales, Arizona, would surely agree with the people of Nogales, who had voted overwhelmingly for Proposition 203. In fact, the people of Nogales had ended bilingual education and implemented SEI in their schools even before the initiative had passed out of disgust that their predominantly Hispanic young people had not gained proficiency in English after attending their schools for a full thirteen years.

Unfortunately, Superintendent Molera did not live up to the group's expectations. Consequently, the demise of Proposition 203 appeared inevitable.

## A CHAMPION OF ENGLISH FOR THE CHILDREN EMERGED

Finally, after months of one disappointment after another, Ron Unz and the Arizona leadership of English for the Children found a champion for their cause in attorney and former state legislator Tom Horne, a candidate in the Republican primary against Jaime Molera for the office of state superintendent. As president of the governing board of a very large north Phoenix/Scottsdale unified school district, Horne was frequently credited for having raised academic achievement, cutting administrative costs, and bringing discipline to that district.

On Monday, March 18, 2002, Horne officially announced his candidacy. He was described by *Arizona Republic* as coming out "swinging" with his criticisms that Superintendent Molera would water down the state's high school graduation exam and that he was not enforcing Proposition 203.<sup>28</sup>

In response, Molera's spokesman, Tom Collins, accused Tom Horne of missing the facts. Moreover, Collins "castigated Horne for unnecessarily injecting race into the campaign."<sup>29</sup>

Collins insisted, "Is the assumption that because Superintendent Molera is Hispanic that he won't enforce the law [replacing bilingual education with English immersion]? He is implementing the law. I don't know what the basis for all this is."<sup>30</sup>

In a press release dated March 20, Tom responded that Collins's accusation was outrageous. He said, "Molera's opposition to the referendum replacing bilingual education with English immersion is well documented, and his failure to enforce the law even though it was overwhelmingly passed by the voters is also well documented."

Tom continued, "This criticism has nothing whatsoever to do with Molera's race. The public is fed up with the technique by which someone, who is unable to deal with the substance of a legitimate disagreement, instead plays the race card. This technique has been overdone, and people are wise to it."

## CANDIDATE TOM HORNE ENDORSED

On Tuesday, July 16, Tom received a formal endorsement from the Arizona English for the Children leaders at a press conference. Maria Mendoza stated the following:

Although Arizona voters passed Proposition 203, dismantling bilingual education, by nearly a 2-to-1 margin in November 2000, news reports have indicated that thousands of Hispanic students still remain in bilingual education classes throughout Arizona. Most of these students have been placed in Spanish-language classes after their school districts declared them to have a good knowledge of English. Proposition 203 leaders have repeatedly declared this

waiver procedure an illegal fraud and have bitterly denounced it for most of the last year. Tom Horne, a Harvard-educated attorney and long-time school board official, has made full enforcement of Proposition 203 one of the center-pieces of his campaign against Mr. Molera in the Republican Primary.<sup>31</sup>

### HORNE FORGED AHEAD

Tom Horne went from mostly unknown to a favored candidate of the Republican voters within a few months. He put two effective ads on television that stated his vision and ridiculed Superintendent Molera for his plan to allow students to substitute projects for passing the mandatory high school Arizona Instrument to Measure Standards (AIMS) test. He continued to hammer away at Molera's unwillingness to enforce Proposition 203, a point that Molera could not defend. Horne and Molera discussed the issue in a debate on *Horizon*, a popular Arizona news program on the Public Broadcasting Service KAET:

Host Michael Grant (directing his question to Tom): You have accused Mr. Molera of failing to enforce Proposition 203's English immersion standards. On what do you base that?

Horne: Yes, this is not something that I made up. The people who came to me were Maria Mendoza, Hector Ayala, Margaret Garcia Dugan, people that were the sponsors of English for the Children that sponsored this initiative. They came to me because schools were abusing the waiver process. One person told the *State Press* that we waiver all the kids in. Districts like Tucson had 40%. Still has 40% on bilingual. They [Mendoza et al.] went to Mr. Molera, they wrote to him and called and asked him to enforce the law. He didn't even give them the courtesy of a response to their letters, so they've endorsed me. And they have no motive to do that. They didn't know me before. The reason they came to me is because they couldn't get Mr. Molera to enforce the law. The pro bilingual people are laughing up their sleeves at them. They [Mendoza et al.] are furious about it because the bilingual is continuing. They want the law enforced. They couldn't get Mr. Molera to enforce it, so they came to me and endorsed me.

Michael Grant: Mr. Molera, your response?

Molera: Well, the fact of the matter is there were a number of loopholes in that law that Mr. Horne knows about that parents were allowed to sign waivers. [Molera then mentioned a bilingual education program in the district where Horne was school board president and followed that up with a tirade of attacks against Ron Unz.]<sup>32</sup>

### MOLERA'S CAMPAIGN LOST GROUND

Before the start of the 2002 to 2003 school year, the bilingual program in Horne's district that Molera had talked about was dismantled.

Horne was spending more than \$500,000 of his own money on the primary contest. This put Superintendent Molera at a disadvantage because, as a publicly funded “Clean Elections” candidate, Molera was being outspent by nearly five to one. Consequently, Molera showed desperation and angered many so-called religious right Republicans by appearing for about thirty seconds in a television ad in which he endorsed a ballot proposition in support of gambling that was paid for by Native American tribes.

Also, Molera had made the foolish mistake of not submitting a picture and a statement to “The Candidates Statement Pamphlet” that the Citizens Clean Election Committee sent to every registered voter. Thus, he missed out on an opportunity early in his campaign to sell himself in a way that would have cost him nothing.

In addition, Molera was late in supporting vouchers—probably because he had avoided the subject in order to secure the support of the teachers’ unions—something he lost, nevertheless. On the other hand, Tom Horne was clear about supporting charter schools and tax credits but not vouchers because he explained that the Arizona constitution had specifically outlawed them.

Moreover, Molera had backed a Phoenix superintendent who attempted to ban Spanish from his schools’ campuses during recess. In an attempt to appear in favor of Proposition 203, Molera was showing himself to be ignorant of the initiative because anyone who had read it knew that it did not restrict students from speaking their native language on school grounds. As Penny Kotterman, president of the state’s largest teachers’ union, stated, “It harkens back to the days when children were punished for speaking Spanish on campus.”<sup>33</sup>

## 2002 REPUBLICAN PRIMARY RESULTS

On September 10, 2002, Tom Horne beat Jaime Molera with 41.2 percent of the vote to Molera’s 30.3 percent. A third candidate, Keith Bee, received 28.5 percent.

On the following day the *Arizona Republic* editorial board, a group that had supported Jaime Molera for the nomination, put forth in their newspaper a scathing response to Tom’s victory:

A close second on the disappointment scale [the first being Matt Salmon’s big win as the Republican gubernatorial candidate] was the poor showing by Republican superintendent of public instruction Jaime Molera. Perhaps this race was about money, which self-financed Tom Horne had in bucketsful. More darkly, it also raises questions about the willingness of Republicans to elect anyone but Anglos.<sup>34</sup>

Two days later on KAET's television show *The Journalists Roundtable*, Mark Flatten, a writer for the *East Valley Tribune*, sparred with Keven Willey, editor of *Arizona Republic* editorial page, about her editorial board's remarks concerning Tom's win:

Mark Flatten: Well, really there are sort of two competing theories. . . . The first one goes like this, across the board, conservatives turned out in huge numbers. . . . Jaime was weak on AIMS. Jaime was weak on bilingual. Jaime never defined a big picture vision for education. And Tom Horne spent a lot of money. The second theory from the editorial board is Republicans are all racists. If you look at the numbers . . .

Keven Willey: To portray this as the fact that the conservative Republicans won is ludicrous. Horne is a former Democrat. I don't think it was the partisan—what it was was the spending. I mean, he outspent five to one. It's not just the act of spending, it's what you do with the money. What he did with the money was run a set of commercials that lays the race issue in a way that was unfair and reflected poorly on Jaime Molera and that's why he won.

Mark Flatten: No, what he ran on the race—the so-called race issue was bilingual education [i.e., Proposition 203], which was approved by a fairly substantial margin by Arizona voters. He convinced people that Jaime was not committed to it, that he was not enforcing it.

## 2002 GENERAL ELECTION

Less than a week after the primary election, "Learning English," an in-depth study on bilingual education by Professor Joseph M. Guzman, appeared in the nonpartisan periodical *Education Next*. In his stump speech during the general election, Tom Horne talked effectively about two of Guzman's revelations: (1) Hispanic former ESL students had obtained three-quarters of a year more education than students from bilingual programs; and (2) Hispanic former ESL students had entered high-skill professional occupations at almost twice the rate of students educated through bilingual education.<sup>35</sup>

Democratic nominee Jay Blanchard and Tom Horne held very different points of view on how to improve education in Arizona. Blanchard said that he would enforce Proposition 203 but allow parents to choose bilingual education. Blanchard opposed the AIMS test, while Tom promised to strengthen it. Whereas Blanchard claimed to support charter schools, which were very popular in Arizona, he also wanted to require them to hire only certified teachers, something that would have put many charters out of business. Horne fully supported charter schools and intended to increase their numbers.

On November 5, 2002, Tom Horne won his election to the office of Arizona Superintendent of Public Instruction with support from 50 percent of



Arizona voters. Democrat Jay Blanchard received 46 percent, and Libertarian John Zajac received 4 percent.

### PROMISE KEPT

On December 17, 2002, Superintendent of Public Instruction—Elect Tom Horne announced who would be on his leadership team. He named Margaret Garcia Dugan as the new associate superintendent of academic support of the Arizona Department of Education (ADE). He stated, "Her appointment should erase any uncertainties as to whether I will fulfill my campaign promise to enforce that initiative."<sup>36</sup>

On February 13, 2003, Tom Horne announced new guidelines for the implementation of what was now called Arizona English Language Immersion Laws as he spoke at Andalucia Middle School, a highly acclaimed traditional school in the Alhambra Elementary School District in west Phoenix (see chapter 2, pp. 30, 33–34).

Horne stated that the first waiver "has been abused by school districts qualifying students whose test scores show that they have 'limited' English language skills, as defined by the publishers of the tests." He explained that the students would be required to demonstrate "good English language skills," that is, proficiency in English, to qualify for dual-language programs.<sup>37</sup> Moreover, should schools choose not to comply with the guidelines, they would face several penalties, such as a loss of accreditation and funding.<sup>38</sup>

Horne's guidelines set the cutoff scores for English fluency at four out of five on the state-approved Language Assessment Scales (LAS), rather than the three out of five that many schools preferred, and at equivalent levels on the three other state-approved proficiency tests. A Tucson school superintendent said that this act alone would have a major impact on the number of students who would qualify for bilingual education.<sup>39</sup>

Margaret Garcia Dugan agreed with the new cutoff scores. She explained that some schools had deemed students competent in English even though, according to the test publishers' definitions, their scores on English tests showed they still had limited proficiency. According to Margaret, "Now if you're fluent [in English] you can go into bilingual education, and not until."<sup>40</sup>

Raquel Rubio-Goldsmith, community activist and lecturer in the Mexican American studies department at the University of Arizona, disagreed strongly with the guidelines. "When laws are passed that do not reflect social reality, it's difficult to enforce them properly. The waiver is the one safety valve to help a very bad situation. Anything that makes it more difficult to get a waiver is problematic."<sup>41</sup>

In border towns such as Nogales and Douglas, not a single parent had requested a waiver. According to a newspaper report, many parents along the border could speak little or no English themselves and viewed “learning the language well to be just as important as learning math, reading and the other subjects.”<sup>42</sup>

According to an ADE spokesperson, the Tucson Unified School District (TUSD) had submitted 3,296 waiver requests; the Sunnyside Unified School District (SUSD) in south Tucson submitted 1,400 waiver requests.<sup>43</sup> The proponents of Proposition 203 suspected that the high number of waiver requests in Tucson was due to coercion brought upon parents by school officials who were bent on keeping their dual-language programs afloat.

According to Tom Horne, complaints regarding the guidelines were not coming from Hispanic parents but, instead, from the Anglo ones whose children were enrolled in those programs. “They want their kids to learn Spanish from the Latino kids. I can see their point. It is good for their children to be bilingual . . . but not at the expense of the Latino kids. They [Latino ELLs] need to be in an English immersion program.”<sup>44</sup>

Superintendent Horne clarified that he recognized the value of speaking two languages and, for that reason, had no problem with dual-language instruction, “so long as students first meet tough English fluency standards at their grade level.”<sup>45</sup>

Finally, after four years of spending most of their spare time campaigning on the issue, Maria Mendoza, Hector Ayala, Margaret Garcia Dugan, and Norma Alvarez were successful in dismantling bilingual education in Arizona. However, implementing SEI would present yet another challenge.

### POINTS TO REMEMBER

In spite of the media attention put on the Proposition 203 victory, the schools continued their bilingual education programs. Because of Arizona superintendents Lisa Graham Keegan and Jaime Molera’s weak positions on the new law, the schools could do this unabashedly. Also, the members of the Arizona legislature seemed disinterested in enforcing Proposition 203. No one was standing up for the leaders of English for the Children—Arizona. In fact, the government officials ignored the groups’ concerns as well as the ADE-sponsored cost study that indicated immersion was working better than bilingual education in Arizona.

The four leaders of the Arizona antibilingual education group found support in attorney Tom Horne. He made his case to the public, and the public responded by voting him into office as Arizona Superintendent of Public Instruction on November 5, 2002, a full two years after Proposition 203 had passed with support from 63 percent of the Arizona electorate.

POSTSCRIPT

In 2006 Superintendent Tom Horne named Margaret Garcia Dugan to the office of Deputy Superintendent for Public Instruction, a position that put her second in command over the ADE. She continued to work in that capacity until January 3, 2011, the last day of Tom Horne's second term as state superintendent. On that same day, Tom Horne was sworn in as Arizona attorney general, and Margaret became Tom's chief of staff.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

## Chapter Seven

# From Political Impasse to the U.S. Supreme Court

The State of Arizona has dealt with the class-action lawsuit *Flores, et al., v. the State of Arizona, et al.* for two decades. It is a case regarding the education of English language learners (ELLs) that has been reported to be resolved, but then not really, or not completely. It has taken up time in court, not to mention the hours of preparation necessary for court proceedings, and it has cost the taxpayers an enormous, incalculable amount of money.

*Flores* charges the state with violating the Equal Educational Opportunities Act (EEOA) of 1974, originating from *Lau v. Nichols*, which “requires that school districts provide LEP [limited-English-proficient] students with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English so that they can achieve the same academic standards required of all other students.”<sup>1</sup> As straightforward and worthwhile as this goal may seem, the two sides have not been able to agree on what it takes to achieve it.

### THE FLORES RULING OF 2000

On January 24, 2000, the *Flores* case appeared resolved when U.S. District Court judge Alfredo Marquez made a ruling in favor of the plaintiffs. He charged the state for discrimination against LEP students by not providing sufficient funding to educate them. (*Note: the term limited English proficient was officially changed to English language learner in 2001.*)

Judge Marquez had found the Arizona legislature’s funding of \$150 yearly per LEP student to be “arbitrary and capricious” because it was derived from a 1987 to 1988 estimate that had not been updated or adjusted for

inflation since that time. He accused the schools of placing students in overcrowded classrooms with unqualified teachers and teachers' aides. Furthermore, he noted that the students were not provided with the tutoring or instructional materials they needed.<sup>2</sup>

The case had originated in the Mexican border town of Nogales, Arizona, in 1992. Analizabeth Doan, a Nogales native who was the bilingual education and curriculum director for the Nogales Unified School District at the time, worked with William Morris of the Arizona Justice Institute to help a group of parents file a class-action lawsuit against the Arizona Department of Education. Nogales parent Miriam Flores and other parents claimed that their children were not learning English well enough to participate academically in the school programs.

Now, eight years later, after Judge Marquez's ruling, attorney Tim Hogan of the Arizona Center for Law in the Public Interest had every reason to believe that he had finally succeeded in winning the plaintiffs' case in federal court. Also, in his favor, state superintendent of public instruction Lisa Graham Keegan chose not to appeal the judge's decision. Six months later, she entered into a consent decree with the plaintiffs. Hogan appeared to have secured a great victory.

However, there was dissension over the outcome. State legislators were infuriated and said they wouldn't "kowtow to a federal judge." According to one Republican state representative, "Essentially you have a federal judge trying to create statute from the bench. That's a violation of separation of powers. I have no idea why Lisa Keegan signed the consent decree so fast. The Legislature was excluded from all that."<sup>3</sup>

Attorney Tim Hogan responded, "The Legislature is breaking a federal law, plain and simple. They grumble about courts telling them what to do, but they won't do things the right way. This is the state's main job: to educate kids."<sup>4</sup>

### THE ARIZONA LEGISLATURE'S DILEMMA

The Arizona legislature was faced with a dilemma. Compliance with Judge Marquez's consent order could require at least \$45 million in additional yearly funding for the state's LEP programs at a time in which they were facing a \$1.5 billion budget deficit. On the other hand, noncompliance could result in losing more than \$7 billion in federal funds.

The legislators saw the passage of Proposition 203 in November of 2000 as another aspect of the funding problem. Concerned that the provisions of the *Flores* lawsuit would be incompatible with those of Proposition 203, they feared to what extent the state could be faced with additional litigation and how much it would all cost.

## THE COST STUDIES

The Flores consent order of July 31, 2000, mandated a cost study be completed to find out the total amount of money being provided by the state, federal government, and communities in educating LEP children. In the opinion of Judge Marquez, this would be the first step in setting a minimum base funding level for Lau programs “that would not be arbitrary and capricious.”<sup>5</sup> This undertaking would require thorough descriptions of the elements specific to LEP instruction in individual schools as well as their costs.

For this purpose, the Arizona Department of Education (ADE) awarded two separate contracts: one to the Institute for Research in English Acquisition and Development (READ) to provide qualitative analyses of the structured English immersion (SEI) and bilingual education programs chosen for the project, and another to Sjoberg Evashenk Consulting, LLC, in Sacramento, California, to identify and analyze the cost elements of those same programs. The latter specialized in audits and evaluations of government programs.

According to Sjoberg Evashenk’s “Executive Summary,” the responses from 174 school districts and charter schools out of 435 surveyed had revealed no patterns or correlations between the proportions of LEPs in district/charter schools and the incremental costs of providing services to them. Also, the group had found no link between incremental per-student costs and the type of district or school such as elementary, high school, unified, or charter. The costs ranged from zero to a high of \$4,676.<sup>6</sup> (See chapter 6, pp. 89–90.)

The READ Institute had not been able to establish a correlation between student performance on standardized tests and the cost of the program that had been implemented. Moreover, it noted that the Nogales schools had shown higher achievement since its implementation of SEI methods.<sup>7</sup>

The press reported that some legislators considered the cost study to have raised more questions than answers. State senator Ruth Solomon (D-Tucson), the head of the Senate Appropriations Committee, stated, “I’m very, very disappointed. This [the cost study] makes it worse than it was before.”<sup>8</sup> Consequently, the ADE cost study was discarded.

Four years later in February 2005, in compliance with new legislation and the original Flores consent order, the National Conference of State Legislatures (NCSL) presented a new cost study that recommended increases that ranged from \$670 to \$2,571 per “ELL” (no longer referred to as “LEP”). These amounts were based on responses from seven of the sixteen school districts that the NCSL group had contacted.

Tim Hogan, the lawyer for the plaintiffs, found the NCSL study flawed “in one sense because it collected current ELL costs from too few school districts.” He added, “The important part of the cost study is the exercise of

figuring out what they should be spending, not what they are spending; we've already figured out from court that what they are spending is inadequate."<sup>9</sup>

State superintendent of public instruction Tom Horne stated, "The draft that they [the NCSL] came up with had no scientific basis and it was so bad that they actually wrote off their fee." He contended that an analysis of the techniques of the best-performing schools would be preferable.<sup>10</sup>

## POLITICAL GRIDLOCK

For more than five years after Judge Marquez's ruling in 2000, the Arizona legislature failed to create legislation the court accepted as compliant with the Flores consent order. It hadn't helped that neither the ADE cost study of 2001 nor the more recent one by the NCSL had come up with a dollar amount that was based on solid data and could guarantee student success.

In May of 2005 Governor Napolitano vetoed House Bill 2718, legislation that included revisions to the assessment and other specifics to comply with the Flores consent order. Exasperated with the state government's continual deadlock, Tim Hogan took the issue back to Federal District Court. On October 31, 2005, Hogan requested that U.S. District judge Raner C. Collins, who had taken over the case after Judge Marquez's retirement, put a freeze on more than \$500 million in federal highway construction funding until the state could come up with a reasonable compromise.

After questioning attorneys on both sides and becoming frustrated by the lack of action to resolve the issue, Judge Collins asked José Cardenas, the lawyer for the state, "Who would you lock up?" Then he directed a similar question to Hogan, "So, hypothetically speaking, if we were talking about throwing someone in jail, who would be the first three names off your lips?"<sup>11</sup>

Cardenas answered that no one should be locked up.

Hogan showed himself to be bipartisan in his choices. "Governor Janet Napolitano [Democrat], Senate President Ken Bennett [Republican] and House Speaker Jim Weiers [Republican]." Hogan argued further that more than 80 percent of the ELLs had failed the high-stakes Arizona Instrument to Measure Standards (AIMS) test because the funding issue had not been resolved. With that in mind, he requested that the ELLs be exempted from the AIMS test.<sup>12</sup>

Ronald Messerly, a lawyer representing a national engineering and general contractors organization, listed the many freeway projects that would cease should the money be held back and then threatened an appeal. An *Arizona Republic* reporter noted that "Collins leaned forward in his chair



before dismissing Messerly and asked, ‘What course in law school prepares you to tell a judge what he can and can’t do?’”<sup>13</sup>

In December 2005 Judge Collins ordered the Arizona legislature and Governor Janet Napolitano to develop a plan for educating ELLs or be fined up to \$1 million per day. In addition, the ELL pupils were excluded from having to pass the AIMS test as a graduation requirement.

### NOGALES OPPOSITION TO ELL EXEMPTION

A month later, Nogales high school English teacher Kathy Scott expressed disagreement with Judge Collins’s exemption of ELLs from the AIMS test in a column for the *Nogales International*, the town’s daily newspaper. According to Scott, Collins’s ruling was “an insult to the thousands of ELL students who have indeed shined academically” and was “unfair to non-ELL students who must sit on the sidelines graduation night because they did not reach mastery.”<sup>14</sup>

Scott stated further that it was a “fallacy that increased funding alone would account for a higher number of ELL students passing the AIMS.” She elaborated that the Nogales students had been offered extra AIMS classes, after-school tutoring, and the use of study guides to help them—all made possible through supplemental funding provided by federal grants. She also believed that treating the fifty-seven ELLs differently from their peers, by not holding them accountable “for their own lack of achievement,” was sending a message that an ELL label was a “ticket to a diploma,” that is, an incentive for ELLs to purposely fail future English-proficiency tests.<sup>15</sup>

### IMPRESSIVE ACADEMIC IMPROVEMENT

The Nogales schools were becoming famous for their progress under the leadership of Nogales Unified School District superintendent Kelt Cooper, who had been hired in August 2000 as part of the community’s decision to convert from bilingual to immersion education. The program had succeeded beyond expectations.

According to school data, more than 90 percent of the Nogales students entering kindergarten spoke mostly Spanish—which meant that most Nogales students had English language issues, especially in the primary grades. Moreover, unlike many border towns, Nogales had a low mobility rate. Thus, because the students shared the same first language and had attended Nogales schools from kindergarten through high school, their achievement could be measured with a reasonable amount of accuracy.

The scores of all students moved closer, with each consecutive grade, to the Arizona and national percentile rank scores on the standardized, norm-

### Nogales Schools Percentile Rank Scores

		-----Stanford 9-----						-----TerraNova-----					
(School Year)		2000–2001		2001–2002		2002–2003		2003–2004		2004–2005		2005–2006	
GRADE	SUBJ	NUSD	AZ	NUSD	AZ	NUSD	AZ	NUSD	AZ	NUSD	AZ	NUSD	AZ
2	RDG	33	53	35	44	37	50	NA	58	41	47	39	46
	LANG	42	45	28	39	30	43	46	50	49	47	54	48
	MATH	42	56	51	52	50	57	64	64	47	50	50	52
3	RDG	33	50	27	43	38	47	NA	55	40	44	44	46
	LANG	46	55	43	50	55	54	67	61	45	44	46	46
	MATH	44	53	45	50	59	54	67	61	49	51	54	52
4	RDG	37	55	36	47	39	52	NA	56	44	48	44	52
	LANG	38	50	43	45	44	48	50	52	49	49	48	52
	MATH	44	56	56	52	56	57	61	61	56	53	56	58
5	RDG	32	51	31	46	38	50	NA	55	45	50	50	56
	LANG	35	46	37	43	42	46	48	49	49	50	56	54
	MATH	44	54	52	54	55	57	60	63	49	49	54	52
6	RDG	36	54	31	49	37	53	NA	56	39	51	50	56
	LANG	30	46	28	42	33	45	40	48	37	47	46	50
	MATH	57	61	52	58	61	62	62	66	44	52	56	58
7	RDG	34	53	32	48	30	51	NA	54	38	50	41	54
	LANG	41	55	38	51	39	54	43	58	40	52	44	58
	MATH	45	57	50	54	46	58	52	62	45	50	50	54
8	RDG	40	55	37	49	42	53	NA	55	41	51	50	58
	LANG	33	50	31	46	36	49	36	52	42	50	52	56
	MATH	39	57	45	54	52	58	53	61	50	53	58	58

*Note:* The national, average percentile rank scores for each grade and subject is the fiftieth percentile. Until the 2001 to 2002 school year, the ADE allowed ELLs who had attended Arizona schools for fewer than three years to be exempted from taking the test, so the scores for grades two and three prior to 2001 to 2002 would likely have been lower had all ELLs been included. There is no record of how many students took advantage of the exemption.

referenced Stanford 9 and then the TerraNova after SEI had fully replaced bilingual education in the 2001 to 2002 school year. Table 7.1 shows the progression of the Nogales Unified (NUSD) average students' percentile rank scores alongside those of the state of Arizona (AZ), according to ADE data.

Not a single Nogales score in grades two through eight measured up to or came within two percentile points of the state's average percentile scores in 2000 to 2001. On the other hand, nine Nogales scores in the same grades and subjects came within two percentile points, equaled, or surpassed the state averages in the 2005 to 2006 school year. In addition, not a single percentile score of 2000 to 2001 measured up to the national norms, whereas thirteen scores from 2005 to 2006 met or surpassed them.

The scores at the high school level, not included in a graph, lagged behind the Arizona averages fourteen to nineteen percentile points in the 2001 to 2002 school year and then improved gradually until the gap amounted to five to eight percentile points in 2007 to 2008. It is worth noting that a large number of high school students up to the 2010 to 2011 school year were subjected to various degrees of bilingual education while in the primary grades.

While visiting the Nogales schools in mid-April 2006, I observed many positive factors that had likely contributed to the Nogales district's academic gains:

- The teachers had organized the instruction to such a degree that teachers were able to track the progress of each student. When a student was faltering, steps were taken immediately to bring that student up to par.
- The collaboration and camaraderie of the teachers led to a sharing of desired outcomes and a variety of methods for reaching them. Whereas the teachers at a particular grade level were teaching the same material, the activities varied considerably based on the individual teacher's personality and the makeup of each class.
- The English language development classes were intense and covered vocabulary as well as elements of morphology effectively.
- Teachers looked upon the students as their children, so their expectations were high. In this small community everyone was connected through friendships or family ties. As a result, the disregarding of students as "other people's children," often prevalent in inner-city schools, was absent.
- English prevailed in the schools, whereas Spanish was spoken throughout the town. Outside of school, the children spoke both Spanish and English to each other, exhibiting an excellent grasp of both languages. Although bilingual education had disappeared, Spanish was offered as an elective from seventh grade through high school.

## ENACTMENT OF HOUSE BILL 2064

From January until March of 2006, the legislature passed two bills, SB 1198 and HB 2002. Governor Napolitano vetoed both bills mostly because they established new individual and corporate income tax credits for ELLs to attend private schools. Finally, the legislature passed HB 2064, which, unlike the three previous bills, excluded the tax credits for ELLs. In addition, it increased the funding to \$423 per ELL, which was based on a “group B weight” formula (see the glossary) and was contingent on the district court’s acceptance that the bill fulfilled the consent order.

On March 3 the governor announced that she would allow HB 2064 to become law without her signature but would send a letter to Judge Collins expressing her objections to it. She disagreed with ending the per-student state funding after two years because she believed that many ELLs needed more time to learn English. Also, she feared HB 2064’s requirement for schools to use federal funds for ELL programs would prove illegal, and she considered the per-student funding amount to be inadequate.

In an *Arizona Republic* column (March 5, 2006), Governor Napolitano stated, “Despite my efforts to negotiate a solid English-learner bill—one that not only satisfies the court, but actually works—the Legislature has sent to me a measure that does not satisfy our needs. And although it was tempting to veto this bill for the fourth time, I decided that the Legislature would do no more without judicial intervention.”<sup>16</sup>

On March 13, 2006, Judge Collins of the District Court ordered that the \$21 million accumulated in daily fines be distributed among school districts and for the ELL exemption from the AIMS test graduation requirement to continue, both in accordance with Collins’s 2005 decision. Furthermore, on April 27, 2006, Judge Collins ruled that HB 2064 did not comply with the consent order.

## BACK AND FORTH BETWEEN DISTRICT AND APPEALS COURTS

In May 2006, in response to a motion by state superintendent of public instruction Tom Horne, the U.S. Ninth Circuit Court of Appeals issued a stay on Judge Collins’s AIMS test exemption. It heard the case again two months later in July.

The appeals court handed down a decision on August 24, 2006, to remand the case back to the district court in Tucson for an evidentiary hearing, because “the landscape of educational funding has changed significantly” since the 2000 court order.<sup>17</sup> At the same time, it threw out the \$21 million in fines that Judge Collins had imposed on Arizona and annulled Collins’s exemption of the ELLs from the AIMS test.

The subsequent mandatory evidentiary hearing resulted in Judge Collins ruling again on March 22, 2007, that HB 2064 did not satisfy the consent order. Collins had found that nothing had changed to justify amending the original decision. He ruled that the state was in violation of multiple federal laws because of its “under-funding” and that \$600 million of federal education funding may be in jeopardy.<sup>18</sup> Judge Collins gave the state until the end of 2007 to comply with the original Flores consent order of 2000.

*Arizona Republic* columnist Robert Robb lambasted Collins’s decision, explaining that the lawsuit had always been “a fool’s errand” because there was “no magical figure” that “if spent, would make the achievement gap between English learners and native speakers disappear.” Robb explained further that the “underpinnings” of the *Flores* lawsuit had always been “the poor performance of Nogales students on standardized tests.”<sup>19</sup>

Robb criticized Collins for overlooking the fact that the Nogales ELLs “were becoming proficient and scoring above state averages on the AIMS test.” That Collins had discounted the ELLs’ impressive academic improvement as well as the additional federal, state, and local resources that had poured into Nogales schools constituted, according to Robb, “the most amazing adventure yet in this legal Neverland.”<sup>20</sup>

Rather than comply with Judge Collins’s deadline, the state appealed his order again to the Ninth Circuit Court of Appeals, which, in turn, on February 22, 2008, ruled against the state and in favor of the plaintiffs. As a result, in September 2008, Superintendent Tom Horne, along with Arizona Speaker of the House Jim Weiers, petitioned the U.S. Supreme Court to review the Circuit Court’s decision.

## U.S. SUPREME COURT TO HEAR FLORES CASE

On January 9, 2009, the U.S. Supreme Court agreed to hear the Arizona officials’ appeals. According to the appeal written partly by former U.S. solicitor general and independent counsel Ken Starr, who was now acting on behalf of the state officials, “Arizona needs this court’s help to return control over the funding of Arizona’s school programs to where it rightly belongs—out of the hands of a single federal district court judge and back into the hands of Arizona’s democratically accountable officials.”<sup>21</sup>

## COURT’S ORAL ARGUMENTS

The U.S. Supreme Court heard *Thomas C. Horne, Superintendent, Arizona Public Instruction, Petitioner, v. Miriam Flores, et al.* (Nos. 08-289) and *Speaker of the Arizona House of Representatives, Petitioner, v. Miriam Flores, et al.* (No. 08-294) on April 20, 2009. The quotations from those

proceedings have been taken from the “Official–Subject to Final Review” account (Alderson Reporting Company).

Kenneth Starr made the following points on behalf of the petitioners:

- Since the original *Flores* lawsuit, a “sea change” had occurred in education policy in Arizona. The old system in Nogales was done away with throughout the state due to the voters’ approval of Proposition 203 in 2000, which replaced bilingual education with “intense immersion” and the requirements of the federal No Child Left Behind Act, which passed in 2001.
- The fact that the elected Arizona officials [Superintendent Lisa Graham Keegan, Attorney General Janet Napolitano, and Governor Jane Hull] at the time did not appeal the district court ruling of 2000 “should be in fact a cause for concern.”
- The new leadership of Nogales schools led by Superintendent Kelt Cooper had brought in additional “changed circumstances.” According to the Ninth Circuit, Nogales was doing “substantially better,” and the state had developed “a significantly improved infrastructure.” The key would be to measure that progress.
- The increase in funding, as established in House Bill 2064, was substantial in that it had paid for “an effective program” in Nogales.
- Contrary to the accusation, there had been “good faith efforts toward compliance” with the *Flores* consent order.

Justice David Souter laid out the problems with HB 2064:

- HB 2064 had limited the funding to two years when evidence showed two years to be not enough to “get a kid up to par.”
- Federal funds were being used to supplant rather than merely supplement the costs for educating ELLs.

Justice Ruth Bader Ginsburg inserted how the case had been expanded from Nogales to the entire state: “That was the fault of the Arizona Attorney General [Janet Napolitano at the time], who told the court: You cannot deal with Nogales alone because under the Arizona Constitution all the school districts have to be treated equally. So, it wasn’t the plaintiffs that initiated that move to make it statewide; it was in fact the Arizona Attorney General.”

Justice Antonin Scalia elaborated on the same topic:

I also assume the State law does not require that any judicial decree with respect to a particular district be expanded to the whole State. It seems to me you could comply with the State Constitution. If and when a judgment is rendered as to the district, it would then be, under the State Constitution, the responsibility of the State executive to make sure that the other districts are

equalized. But why the attorney general had to come into the Federal court and say, do it to the whole State, because the whole State has to be equal, I can't understand that, to tell you the truth.

Ken Starr explained the political reality:

There is no question that there was a division of the opinion within the State and that in fact the Attorney General [Janet Napolitano from 1999 to 2003 and then Terry Goddard after that] was essentially siding with the plaintiffs in their litigation. There is now a very different perspective and you have that before you, that the Governor [Janet Napolitano from 2003 to 2009] who controls the litigation in the State is the chief executive of the State in terms of determining what the State's position is.

After Justice Anthony Kennedy had asked whether any remedy based on funding was inappropriate due to the methodology of No Child Left Behind, Ken Starr explained that "a funding remedy is in fact inappropriate presumptively statewide." He continued, "That is our key submission, because of the variation in costs, district by district." After further discussion, Starr added that "the oddity about this case" was that the district court had not determined whether there was an effective program in place.

Ken Starr explained further that the district court had failed to note the change from bilingual to immersion education, "which has an entirely different methodology." He pointed out that the district court acknowledged "a significantly improved infrastructure for ELL programming" but still held that the state had "not complied with the original judgment." He gave an example: "Superintendent Cooper comes in and says: I don't want to spend money on teachers' aides; they are standing in the way. Yet the Respondents say: We need money for teachers' aides. That's part of No Child Left Behind."

Starr elaborated that "the entire State funding mechanism had been interfered with by the order" and that the NCSL had given up on its cost study because they could not do it statewide. Starr argued that only Nogales should be considered in the lawsuit.

Justice Scalia questioned the attorney general's intent "to fund the whole State . . . to fix Nogales." He pointed out that there exist "vast" differences among the Arizona school districts.

Sri Srinivasan, a native of India and noted lecturer at Harvard Law School, argued the case on behalf of the respondents. He admitted that the achievement of the ELLs in Nogales had improved in most grades but not at the high school level. He added that it was premature to make assessments of the changes because new standards were still evolving. He explained, "In order to justify complete dissolution [of the Flores order] in a case like this,

the Petitioners would have to show, not only that conditions have improved, but they have improved in a way that is durable and sustainable over time.”

Justice Scalia asked the questions, “What degree of improvement do you think is necessary?” and “Do you really think that you haven’t complied with adequate funding of ELL programs until you raise all of the ELL students up to the level of native English speakers?”

Mr. Srinivasan responded negatively and then elaborated that the two Nogales high schools had ranked at the very bottom of the survey for ELL students. Srinivasan stated further that the so-called new plan occurred as a result of HB 2064. He urged that the court “fortify the district court’s conclusion that complete dissolution [of HB 2064] was warranted” for these reasons:

- No matter the progress to date, it did not suffice because the net effect of HB 2064 was to decrease the resources by half.
- It was premature to make an assessment until enough time had passed to determine what had happened on the ground as a consequence (of HB 2064).

Chief Justice Roberts exclaimed, “Does that stay true without regard to what is happening economically to the State? In other words, the district court can say: You’ve got to spend this much money on this program, and I don’t care what it means for jails, roads, anything else, when there are profound changes in economic circumstances of the sort that everybody’s experiencing lately.”

After Srinivasan answered that the state would have to make the argument that funding constraints were in existence that didn’t allow for an optimal program, Justice Scalia exclaimed:

I find it bizarre that we are sitting here talking about what the whole State has to do on the basis of one district which is concededly the district that has the most non-native English speakers and has been a problem district all along. And we are saying whatever this district court says for this school district applies statewide. . . . And the mere fact that the State Attorney General acquiesced in that kind of a system at the outset, does that force us to still accept at this time that whatever is necessary for Nogales is also necessary for the entire State?

Justices Scalia, Kennedy, and Roberts continued to express dismay that the remedies to the problems found in Nogales schools had been applied to the entire state. They considered this to have happened as a result of former attorney general Janet Napolitano’s questionable interpretation of the Arizona constitution’s “equality clause.”



## THE AMICUS CURIAE BRIEF

As an “amicus curiae” representing the United States and President Barack Obama, the solicitor general assistant Nicole A. Saharsky presented arguments on behalf of the respondents and in support of the Ninth Circuit Court ruling. She focused on the district eight-day evidentiary hearing that she said made factual findings that the troubles in Nogales had continued.

She explained three specific problems with HB 2064: the two-year cutoff of funding; using federal funds “to supplant, not supplement”; and the state’s allotment of \$450 per ELL as insufficient. In addition, she brought up that the respondents had not come up with a cost study regarding how much a good program would cost in the nine years since the original *Flores* judgment.

## THE COURT’S FIVE-TO-FOUR DECISION

Justice Samuel Alito wrote for the majority. He was joined by Chief Justice John Roberts and justices Antonin Scalia, Anthony Kennedy, and Clarence Thomas. He criticized the lower court for not engaging in a particular “Rule” adequately and for keeping to a standard that was “too strict”:

Rather than applying a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied, the Court of Appeals used a heightened standard that paid insufficient attention to federalism concerns. And rather than inquiring broadly into whether changed conditions in Nogales provided evidence of an ELL program that complied with the EEOA [Equal Educational Opportunities Act of 1974], the Court of Appeals concerned itself only with determining whether increased ELL funding complied with the original declaratory judgment order. The court erred on both counts.

Justice Alito named the specific “changed circumstances”:

- Arizona voters passed Proposition 203 in November 2000, which mandated statewide implementation of a “structured English immersion” (SEI) approach.
- In HB 2064, the state legislature had implemented SEI as follows: (1) it had created the Arizona ELL Task Force that developed and adopted research-based models of SEI programs; (2) it had required that all school districts and charter schools select one of the adopted SEI models; (3) it had created an “Office of English Language Acquisition Services” to aid school districts in its implementation of the models; and (4) it had required the State Board of Education to institute a uniform and mandatory training program for all SEI instructors.

- Congress had enacted No Child Left Behind (NCLB) in 2001, which requires states to make sure that ELL students “attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic standards as all children are expected to meet.”
- States must set annual objective achievement goals for the students to progress toward proficiency, to achieve proficiency, and to make “adequate yearly progress” with respect to academic achievement. Also, it holds local schools and agencies accountable for meeting these objectives.
- Reforms were led by Kelt Cooper, the Nogales superintendent from 2000 to 2005, who “adopted policies that ameliorated or eliminated many of the most glaring inadequacies discussed by the district court.” Cooper “reduced class sizes,” “significantly improved student/teacher ratios,” “improved teacher quality,” “pioneered a uniform system of textbook and curriculum planning,” and “largely eliminated what had been a severe shortage of instructional materials.”

According to Justice Alito, the lower courts and the dissenters had “misperceived both the nature of the obligation imposed by the EEOA and the breadth of the inquiry.” He ordered that the cases be remanded back to the district court for a proper examination of “four important factual and legal changes that may warrant the granting of relief from the judgment [Flores consent order, 2000]: the State’s adoption of a new ELL instructional methodology, Congress’s enactment of NCLB, structural and management reforms in Nogales, and increased over-all education funding.”

Alito stated that there were no factual findings that any school district other than Nogales failed to provide equal educational opportunities to ELL students. In other words, the respondents had not explained how a statewide injunction could be justified because of the EEOA. Alito ruled, “Unless the District Court concludes that Arizona is violating the EEOA statewide, it should vacate the injunction insofar as it extends beyond Nogales.”

### THE COURT’S DISSENTING OPINION

U.S. Supreme Court justice Stephen Breyer dissented and was joined by justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg regarding the state’s claim of “changed circumstances”:

The lower courts did “fairly consider” every change in circumstances that the parties called to their attention. The record more than adequately supports this conclusion. In a word, I fear that the Court misapplies an inappropriate procedural framework, reaching a result that neither the record nor the law adequately supports. In doing so, it risks denying schoolchildren the English-learning

instruction necessary “to overcome language barriers that impede” their “equal participation.”

Justice Breyer objected also to the court’s order that the District Court “vacate the injunction insofar as it extends beyond Nogales”:

Nothing in the law, as far as I know, makes the relief somehow clearly erroneous. Indeed, as the majority recognizes, the reason that the injunction runs statewide is that the State of Arizona, the defendant in the litigation, *asked the Court to enter that relief*. The State pointed to a state constitutional provision requiring educational uniformity. . . . There is no indication that anyone disputed whether the injunction should have statewide scope. A statewide program harmed Nogales’ students . . . and the State wanted statewide relief. What in the law makes this relief erroneous?

### FLORES TO BE CONTINUED

*Arizona Republic* writer Pat Kossan explained that the high court’s five-to-four decision had “taken a major step towards ending a 17-year legal battle” by reversing the federal appeals court ruling that Arizona needed to improve its funding of ELL instruction.<sup>22</sup> As a result, Arizona would no longer need to fear that the lower court would impose million-dollar fines on the state for noncompliance.

Tom Horne’s press secretary issued a release on June 25, 2009, that included a quote from Horne: “The U.S. Supreme Court has taken a major step to stop federal district judges from micromanaging the state’s education systems. We the people should rule ourselves through our elected representatives and should not be ruled by an aristocracy of lifetime federal judges. By its ruling, the U.S. Supreme Court reaffirmed this important principle.”

Attorney Tim Hogan of the Arizona Center for Law in the Public Interest admitted he was disappointed in the decision that reversed the appeals court but added that remanding the case back to the lower court would keep the legal battle alive. He stated further, “This will give us an opportunity now to fully test the existing program that’s in place for English language learners in Arizona and whether or not that program is working.”<sup>23</sup> Hogan was talking about the ELL models of instruction created by the Arizona ELL Task Force to fulfill requirements of HB 2064, Proposition 203, and the Flores consent order.

In the fall of 2010 Hogan took the case back to the U.S. District Court in Tucson. Two years later, in December of 2012, Judge Raner C. Collins had still not ruled on the case.

## POINTS TO REMEMBER

The class-action lawsuit *Flores et al. v. State of Arizona et al.*, initiated by parents in Nogales, Arizona, has endured and not been fully resolved through more than two decades. Although Arizona superintendent of public instruction signed off on the Flores consent order of 2000, the Arizona legislature opposed it. The Arizona legislature created bills to satisfy the Flores consent order, but Governor Napolitano vetoed them. Finally, the legislature dropped the provision that authorized the ELLs to receive vouchers to attend private schools. Governor Napolitano would not veto that bill, nor would she sign it. Ultimately the judge found it unacceptable as well.

Eventually, after three hearings at the Ninth Circuit Appeals Court over a two-year period, the case went to the U.S. Supreme Court. The funding issue appeared to be resolved in favor of the state. However, issues concerning the instruction of ELLs were remanded back to District Court, and a new court trial ensued in 2010; to this date, the district judge has not decided the case.

ROWMAN &  
LITTLEFIELD

## *Chapter Eight*

# **Implementing Structured English Immersion**

Arizona is the only state to attempt to implement structured English immersion (SEI) in all of its school districts and charter schools where English language learners (ELLs) are in attendance. The state is following a provision of Arizona Proposition 203 that requires schools to place English language learners (ELLs) together in a classroom, in accordance with their degree of fluency, to learn English through sheltered or SEI techniques.

The law describes the ELLs' time in SEI as a "temporary transition period not normally intended to exceed a year." Once they "have acquired a good working knowledge of English and are able to do regular school work in English," they shall no longer be classified as ELLs and will be moved to the mainstream.<sup>1</sup>

There are many factors involved in deciding the point at which children classified as ELLs have learned enough English to do reasonably well in the mainstream. For example, the "mainstream" of a school with mostly poor, at-risk students looks quite different from a school where most of the students' parents are college educated. Also, like all children, the ELLs enter school with a broad range of aptitudes and abilities. Thus, some ELLs can survive in a regular class more easily than others at the same level of English proficiency. To set up a uniform state program to meet the needs of all ELLs is a huge challenge.

In accordance with Proposition 203, the policymakers at the Arizona Department of Education (ADE) concluded that most of the ELLs would be better off in the mainstream after about a year than together in a separate setting, although they would still need extra help in reading and writing. Thus, they opted for "proficiency" to be a composite score on the Arizona English Language Learner Assessment (AZELLA), which put more weight

on the oral/listening than on the reading and writing subtests. At the same time, it became a requirement for state certification that all Arizona mainstream teachers receive SEI training in order to accommodate the former ELLs as they transferred into their classes.

The following chapter summarizes the process by which a politically appointed task force took on the chore of developing further the Arizona SEI models.

### THE HB 2064 REQUIREMENTS

In compliance with the Flores consent order and Arizona Proposition 203, Arizona House Bill 2064 authorizes the creation of a nine-member Arizona English Language Learner (ELL) Task Force to be established in the Arizona Department of Education (ADE) and provided with ADE staff support. This task force is responsible for items related to the development, adoption, and continual monitoring of the most cost-efficient, research-based SEI models that are also in line with state and federal laws.<sup>2</sup>

HB 2064, enacted in 2006, states that the SEI models must include four hours daily of English language development (ELD) for the first year in which a pupil is classified as an ELL. A school district or charter school is allowed to seek an alternative model, but it has to be approved by the task force members. These individuals serve four-year terms and are chosen by Arizona state government officials: three members by the superintendent of public instruction; two members by the governor; two members by the House of Representatives; and two members by the Senate.<sup>3</sup>

In addition, HB 2064 creates the Office of English Language Acquisition Services (OELAS) to carry out the policy decisions of the task force. OELAS is charged with helping school districts and charter schools implement the new models. Their responsibilities include the development and publication of guidelines, consultation with county officials to develop regional programs, technical assistance, teacher training, and continual monitoring of ELL programs. Moreover, OELAS officials are expected to keep the task force and the State Department of Education abreast of their findings and progress.<sup>4</sup>

### MEMBERS OF THE TASK FORCE

Both Superintendent Tom Horne and Governor Janet Napolitano picked people with experience in education. The House and Senate chose education experts and politicians.

Superintendent Tom Horne's choices included deputy superintendent and former Proposition 203 cochair Margaret Garcia Dugan; Nogales elementary

school principal Anna Rosas, who had been director of ELL programs at the time the Nogales schools transitioned from bilingual to immersion education; and Karen Merritt, Glendale Union High School District ELL coordinator.

Governor Janet Napolitano selected Scottsdale Unified School District superintendent Dr. John Baracy, noted as a former top administrator at three very large, at-risk Valley school districts, and Dr. Eugene Garcia, former dean of the Arizona State University (ASU) College of Education, who had recently been promoted to ASU vice president. Dr. Garcia had served as director of Bilingual Education and Minority Languages Affairs at the U.S. Department of Education during President Bill Clinton's administration (see chapter 1, p. 11).

The Arizona House picked a school superintendent who soon resigned and was then replaced by Eileen Klein, who had served as director of policy to the Arizona House and as a major advisor to four House Speakers. The House also chose Jim DiCello, a person who had held various leadership positions in the area of school finance.

The Senate decided on Johanna Haver, author of this book, and Alan Maguire, an economist and financial advisor, who had served as chief deputy to the state treasurer (1983 to 1987) and more recently as leading financial advisor to the state senate.

#### FIRST MEETING IN THE FALL OF 2006

At the first meeting on September 21, 2006, Alan Maguire was chosen chairman. He came across as a good choice because he had experience in leading other government-related committees and knowledge of the policymaking procedures of the Arizona legislature.

At that same meeting, member Anna Rosas talked about the Nogales SEI model, which had already proven quite successful when compared to other school districts with large numbers of ELLs (see chapter 7, pp. 103–6). She explained that the Nogales students were receiving three to four hours of intense English language development (ELD) during their first year in the program and, if not proficient according to the state's proficiency test after one year, they continued with one to two hours of ELD instruction during the second year.<sup>5</sup>

#### PRESENTATIONS FROM ELL PRACTITIONERS

The members decided to examine SEI programs currently in operation and, for that reason, requested that the ADE arrange for school districts and charter schools to give presentations about their SEI programs to the task force. Also, the members specified that they wanted to see how schools were deal-

ing with special situations such as Native American ELLs, low enrollments of ELLs, and high refugee populations. In addition, they requested that schools from urban, rural, and border districts be represented. They realized that the ELL models had to encompass all possible situations.<sup>6</sup>

During the first five meetings in September and October of 2006 and then frequently throughout 2007, the task force heard descriptions of dozens of ELL programs that included single schools, entire districts, and charter school organizations. The teachers and program directors talked about their ELL instructional models that consisted of variations of the following: separate instruction in ELD daily for one to three hours; content-area classes exclusively for ELLs in a “sheltered” setting; and accommodations for ELLs in mainstream classes where ELLs were combined with non-ELLs.

In several elementary schools, the ELLs received their reading instruction with non-ELLs in small ability groupings through systematic phonics-based programs such as Success for All and Reading First, national programs that have proven especially effective for ELLs. The ELLs were well integrated among the non-ELLs during this ninety-minute-per-day instruction because, like the non-ELLs, their reading abilities ranged from poor to excellent. The fact that the ELLs did not necessarily fall into low-ability reading groups remains an indication that ELLs are better off being taught reading in the mainstream, rather than in a separate setting.

The schools differed in regard to the average time it took for their ELLs to reach proficiency. Usually, elementary-age ELLs qualified for the mainstream after two or three years, whereas this process could take as long as five years for older children, especially for illiterate new immigrant ELLs enrolled in high school. Understandably, the youngest ELLs reached proficiency soonest while the high school students took the longest because of the high-academic-level material they were expected to master.

The ELLs in a school with mostly non-ELLs advanced more rapidly than those in schools where the majority of the students were ELLs. The smaller the number of ELLs, the greater the opportunity and incentive for them to practice their English.

## INTEGRATION VERSUS SEGREGATION

At the October 24 meeting of 2006, Dr. Don Hotz, ELL coordinator and K–6 SEI teacher in the Blue Ridge Unified School District, expressed opposition to imposing four-hour SEI models on ELLs because “by placing all newcomers in one classroom, they will only socialize with themselves and rely on their classroom peers during recess or playtime. They will rely on their native language rather than using their new language, English.”<sup>7</sup> Other teachers and program directors shared his point of view.



Some school practitioners agreed with the plan of segregating the ELLs from the others for at least part of the day. This would make it easier for the teachers to create English language development (ELD) lessons to meet the specific linguistics needs of the ELLs. Also, the ELLs would be less inhibited to express themselves among other ELLs than in a setting of mostly non-ELLs, where frequently the ELLs did not understand the language surrounding them.

As Margaret Garcia Dugan often stated, HB 2064 and Proposition 203 both require separation of the ELLs from the other students, whether anyone agrees with it or not. However, both laws specify a time period of one year with the goal that the ELLs become proficient in English and advance to the mainstream classes as quickly as possible. The members of the task force appeared to understand for the most part that keeping the ELLs too long in ELD classes could be as damaging to them as not providing any special instruction in the first place.

### SUGGESTIONS FROM THREE EDUCATION PROFESSORS

On November 20, 2006, Chairman Alan Maguire introduced to the task force three noted experts on educating ELLs: (1) Dr. Richard Ruiz, professor of language, reading, and culture and head of the Department of Teaching and Teacher Education at the University of Arizona; (2) Dr. Christian Faltis, professor of education, Division of Curriculum and Instruction, Mary Lou Fulton College of Education at Arizona State University; and (3) Dr. Norbert Francis, associate professor of bilingual/multicultural education, College of Education at Northern Arizona University.

The subject of bilingual education came up. Dr. Ruiz and Dr. Faltis both recommended emphatically that ELLs receive support in their primary language. This was an exercise in futility. Bilingual education was now against the law in Arizona, and the panel they were talking to had no power to make the changes they wanted.

Dr. Francis differed from the other two professors when he stated that literacy in the first language may not be necessary to gain literacy in the second one. In response, Dr. Ruiz asked Dr. Francis directly about the law that did not permit any language but English in the classroom. Dr. Francis replied that some use of the native language should be allowed. Margaret Garcia Dugan explained that a minimal amount of native language may be used for clarification or quick translation.

The professors offered general information as follows: (1) ELLs vary in the time they take to become English proficient; (2) ELLs can benefit from both heterogeneous and homogeneous instructional groupings; (3) the best way to deal with the high mobility rate of ELLs is to have a standard assess-

ment measure [which the ADE had already developed with the AZELLA]; (4) ELLs in a high-ELL population may take longer to learn English; (5) the learning of English should be promoted beyond the classroom; and (6) the process for achieving literacy should not be limited.

The professors put forth some specific suggestions:

- “ELL programs should facilitate opportunities to use the language being learned in different contexts and functions, so that one is not merely learning a language for the sake of learning a language.” (Professor Ruiz)
- “There should be two assessments, one for placement and one for reclassification.” [He mentioned specifically the AZELLA for placement and the state-mandated Arizona Instrument to Measure Standards (AIMS) test for reclassification.] (Professor Faltis)
- “All ELL programs can be effective. The summary [regarding the Carnegie Corporation research project summary ‘Double the Work’] agreed that immersion overall is the most effective way to learn a second language, especially teaching through content.” (Professor Francis)
- “Math and science could also be considered as part of the four-hour instruction with a language development emphasis. Universities need more classes in teaching content through language development methodologies.” (Professor Francis)

#### RECOMMENDATIONS FROM THREE SEI EXPERTS

On November 30, Chairman Alan Maguire introduced to the task force three SEI experts: Kevin Clark, senior consultant with Clark Consulting and Training Incorporated; Dr. Rosalie Pedalino Porter, director of the Institute for Research in English Acquisition and Development (READ) and former Massachusetts cochair of English for the Children; and Dr. Ken Noonan, superintendent of California Oceanside Unified School District, a district that had transitioned successfully from bilingual to immersion education after California Proposition 227 had passed in 1998. (*Note:* Porter has been mentioned throughout chapter 4, Noonan in chapters 2 and 5.)

The three of them answered questions and provided firsthand information about schools where the ELLs’ achievement levels had improved due to SEI instruction. They discussed the importance of parental involvement, community backing, teacher training, after-school/summer programs, and making sure ELLs spent a good portion of the day with non-ELLs. They came up with ways to encourage colleges of education to include SEI practices in their curriculum.

Kevin Clark explained that he had worked with many school districts in implementing SEI programs. He understood it was the mission of the task

force to help schools move toward compliance with the law. He expressed support for the four-hour ELD mandate of HB 206 and mentioned that assumptions about language learning (not in line with the models) would need to be addressed: (1) it takes a long time to learn a second language; (2) students can only learn when they are ready; (3) if students do not have elementary-level literacy in their primary language, they will never be literate in the second language; and (4) only young children can learn English.

Clark's "assumptions" deserved attention. The length it takes to learn a second language is dependent on many factors such as the age, disposition, and natural ability of the learner as well as how different the second language is from the first. Some people need a great deal of exposure to a language before they are willing to communicate in it. Children who enter our schools literate in any language, whether native or otherwise, are at a big advantage of becoming literate in English. The earlier a child is exposed to a second language, the more likely that child will gain the fluency and pronunciation of a native speaker of that language.

Mr. Clark named important elements of teaching a language, including phonemic awareness, syntax, verb tenses, and vocabulary. He showed a chart that illustrated a breakdown of four hours of ELD that consisted of twenty minutes of pronunciation, thirty minutes of sentence structure, fifty minutes of vocabulary, up to ninety minutes of reading, and sixty minutes of writing as an example of how SEI could be set up.<sup>8</sup>

Mr. Clark convinced most members in attendance at the meeting that he could help them reach their goal of developing educationally sound SEI models that corresponded to HB 2064. As a result, from that day forward, Kevin Clark worked closely with the task force for this purpose.

## DEVELOPMENT OF SEI MODELS

In response to a request from the task force, the ADE sent out a survey to schools in early 2007 to find out which schools had the most effective ELL programs. As a result, the task force was able to examine a great deal of data from both schools and experts. They developed their model based on the following principles: (1) English is fundamental to mastery of the content; (2) language-ability-based grouping facilitates rapid language learning; (3) time on task increases academic learning; and (4) the discrete language skills approach facilitates language learning.

Unfortunately, nothing was included regarding the importance of making sure the ELLs spent time with non-ELLs, although many schools had indicated that they were practicing "differentiated" teaching techniques in which all students were learning content together in small groups. The omission of this element would lead to problems later on.

With assistance from Kevin Clark, the members discussed and then adopted in May of 2007 an SEI model that consisted of four hours of ELD. They submitted this “draft” model to the Arizona legislature for review and then held public hearings. The model included the following:

- *The identification, placement, and reclassification of the ELLs would be determined solely by the students’ scores on the state-mandated AZELLA proficiency test, which would provide a composite proficiency-level score as well as separate subtest scores for listening, speaking, reading, and total writing.* The test would be administered at least twice, in the fall and in the spring, to first-year ELLs and once in the spring to continuing students. It would be permissible to administer the AZELLA to an ELL at a midpoint for the purpose of measuring that specific student’s progress. However, no student would be allowed to take the AZELLA more than three times in a school year.
- *The ELLs would be placed in SEI classrooms according to their proficiency levels.* Because not all schools would have enough ELLs at a particular level to justify an SEI class, a grouping prioritization plan would allow elementary, middle, and high schools to make adjustments by combining students into “bands” according to proficiency levels and/or grades. The target class size for the lowest groups, “pre-emergent” and “emergent,” would be twenty, with the maximum number at twenty-three. For the two higher levels, “basic” and “intermediate,” the target class size would be twenty-five, with the maximum at twenty-eight.
- *The SEI content of four hours daily of English language development (ELD) would focus on the teaching of the English language, as distinguished from the content of a particular subject such as science or history.* It would include phonology (pronunciation), morphology (formation of words), syntax (word order), lexicon (vocabulary), and semantics (variations in context).
- *The scheduling and time allocations of the four-hour ELD instruction would be divided according to proficiency and grade levels.* This would result in every ELL receiving daily the following: fifteen to forty-five minutes of oral language; sixty minutes of grammar; sixty minutes of reading; sixty minutes of vocabulary development; and fifteen to forty-five minutes of writing. For kindergarten students on half-day schedules, the time allocations would be proportionately reduced. Intermediate ELLs who scored proficient only on the reading subtest would be excused from the reading ELD class and, likewise, those who scored proficient only on the total writing subtest would be excused from the writing and grammar class.
- *The class instruction, textbooks, materials, and assessments would align with specific categories of skills identified in the Arizona K–12 ELL Profi-*

*ciency Standards, which would be further refined as needed by the Discrete Skills Inventory (DSI). Each district superintendent or charter administrator would have to sign an attestation to this. The ADE would oversee an independent review of the DSI to make sure that its content was consistent with the ELL Proficiency Standards.*

- *SEI classroom teachers in the classroom would be required to have the same certification as the regular teachers at the elementary, middle school, and high school levels. In addition, all SEI classroom teachers would be required to have SEI provisional or full endorsements—or English as a second language (ESL) or bilingual provisional or full endorsements. These teachers would have to meet the standard of “highly qualified” in English as defined by the federal No Child Left Behind Act of 2001.*
- *All SEI classroom teachers would receive training on implementation and teaching methods. Moreover, in time, all administrators and teachers would be required to obtain full SEI endorsements, which amount to sixty to ninety instructional hours.*

This model became accepted by the task force on September 13, 2007, and then approved for funding by the Arizona legislature on April 14, 2008. Only one correction was made to the original draft model: charter school SEI teachers would be exempt from the requirement that they must hold the same certification as teachers in traditional public schools.

#### ALTERNATIVES TO MODEL

During the 2007 to 2008 school year, the task force created two alternative ELL models for high school. Pending approval from the task force, a school district has the option of implementing either the alternative model for the Glendale Union High School District or that for the Phoenix Union High School District.

The Glendale Union Model is meant solely for eleventh- and twelfth-grade ELL students who would not be able to graduate as planned due to the time requirement of the basic ELL model. It allows a reduction of ELD hours from four to two or three for intermediate ELLs who have scored “approaches the standard” on the AIMS test and have a grade of C or better in core subjects.

The Phoenix Union Model allows basic and intermediate ELLs to receive their ELD reading instruction through content-based texts and then earn high school credits in those content areas. The teachers of these two-pronged classes have to meet the requirements as “highly qualified” in SEI instruc-

tion, which includes English, and also be certified in the specific content areas.

Whereas the Glendale Union model is still being used in Glendale Union high schools and a few other districts, the required documentation has limited its use in many schools. The Phoenix Union model has not continued, although it is still offered as an option. The ADE found Phoenix Union to be in “non-compliance” because the teachers in that district were not providing a sufficient amount of ELD instruction while teaching the content. Moreover, finding teachers certified in both SEI and the content proved difficult.

Individual language-learner plans (ILLPs) are required if fewer than twenty ELLs are identified in a band consisting of three consecutive grades. Through these ILLPs, teachers can make sure their ELLs receive the mandated four hours of ELD. The teachers can do this by adjusting their instruction to include strategies helpful to all students, although they are designed for ELLs. The advantage of ILLPs is that the ELLs are integrated with mainstream students.

### PILOT PROGRAMS

During the 2007 to 2008 school year many districts implemented the models to some degree, although they were not required to. Three school districts volunteered to implement the ELL models in their entirety: Glendale Elementary, Humboldt Unified, and Florence Unified School Districts.

According to ADE data, the percentage of students testing proficient on the AZELLA in those schools had more than doubled by the end of that school year when compared to the ELL scores of the previous year. In other words, there was reason to believe that the models could improve ELL achievement throughout Arizona. Thus, beginning with the 2008 to 2009 school year, all Arizona public schools with ELLs were mandated to implement the Arizona SEI models.

### COMPLAINTS ABOUT MODELS

Understandably, many ELL instructors, program directors, and school administrators found fault with this highly prescribed model, especially at the start of its implementation. They protested through letters to the ADE and appearances at the task force meetings as follows:

- The models are too prescriptive in that they specify the exact number of hours, type of instruction, and teaching methods. Such restriction could not possibly meet the needs of every community.

- Four hours of ELD instruction is excessive in that the ELLs are allowed only two hours of daily non-ELD instruction. Thus, it becomes impossible for them to receive sufficient instruction in math, science, and social studies, especially in grades three and up, to progress and graduate from high school within a reasonable amount of time.
- Separating the ELLs from the non-ELLs is a form of segregation that keeps the ELLs from participating in the critical thinking that goes on in mainstream classes. In addition, the ELLs are stereotyped as “slow learners” and develop low self-esteem.
- The research indicates that ELLs should learn language through context that is based on prior knowledge and includes the required content areas.
- It is very difficult for some schools, rural ones in particular, to find highly qualified SEI classroom teachers for these ELD classes.
- Because the model has specific rules about SEI class size and the mixing of proficiency and grade levels, many schools cannot find space for the SEI classes.

### SEI TRAINING

OELAS, under the leadership of Arizona deputy associate superintendent Adela Santa Cruz, developed training sessions for teachers and administrators to attend at various times throughout the school year. As explained fully at the ADE website, teachers have the opportunity to complete hours toward their SEI endorsements, at no cost to them or their school districts, by attending three consecutive sessions throughout the school year throughout the school year. Authorized agencies also offer these classes for a fee:

- Round IIA—twenty hours. ELD classroom practices that encompass the English Language Proficiency (ELP) Standards, the Discrete Skills Inventory (DSI), Teacher’s Guide, and related classroom methodologies, as well as legal and historical background information on the SEI Program Models of the Arizona ELL Task Force.
- Round IIB—thirteen hours. ELD classroom practices with the focus on the ELP Standards in the listening and speaking domains with use of the DSI. Participants receive training in both the reading and writing domains. The morphology component is emphasized, which includes a verb tense study.
- Round IIC—twelve hours. This final session provides ELD classroom training that includes “Assessment, Data Analysis, and Parent/Home/School/Community Involvement.” In addition, participants receive training in three new ELD methodologies.

- Round II Condensed—twelve hours. A shortened format of the above forty-five-hour training that lacks the depth of knowledge available in Rounds IIA, IIB, and IIC.
- Finalized ELP Standards Training—three hours. Train-the-trainer model to which each local education authority (LEA) is asked to send no more than three participants. The major focus is lesson plan development with the use of the ELD standards.

### 2009 SEI SUMMER SCHOOL PROGRAM

According to ADE data, the ELLs at the beginning levels called “pre-emergent” and “emergent” were moving rapidly to the third, “basic” level, where they were progressing at a decent pace as well. However, a huge percentage of ELLs, as many as 66 to 69 percent of all ELLs in Arizona, were becoming “stuck” at the fourth, “intermediate” level, the final stage before “proficiency.”

Thus, OELAS requested and received backing to launch the Arizona High Intensity Summer ELD Program of 2009, which focused on bringing intermediate-level students to “proficiency.” As a result, six school districts with large numbers of ELLs provided instruction exclusively for Intermediate-level ELLs in grades two through eight at their school sites for twenty days, six hours per day.

I personally observed classes at two different schools and was impressed to see small children fully engaged in putting together lengthy sentences and increasing their vocabularies with words that expressed complex concepts. The idea was to move them beyond their comfort level of everyday English communication into higher-level language needed for academic pursuits.

The program appeared successful and proved that children, ELLs specifically, are capable of learning a great deal more than previously thought if the instruction is both motivational and well organized. Some 44 percent of the ELL participants, or 152 out of 349, reached English proficiency according to the AZELLA by the end of the twenty days.

### PROGRESS CONTINUED

Results were looking positive. According to ADE data, the ELL reclassification rate had increased from about 12 percent to 31 percent in the early years of the models’ implementation. In addition, the students identified as “fluent English proficient” (FEPs), who continued to be administered the AZELLA for two years after scoring “proficient,” in accordance with the law, were reported to be passing the AIMS test in large numbers. Most likely, the



composite scoring on the AZELLA and the aligning of the SEI instruction as well as the AZELLA with the AIMS had a lot to do with this success.

## 2010 ELECTION

The Arizona Republicans defeated the Democrats handily in the 2010 election:

- Jan Brewer won her election as governor after having served in that office already for two years due to Napolitano's departure to become U.S. head of homeland security under President Obama.
- Tom Horne became Arizona attorney general after an extremely close Republican primary contest followed by a contentious general election.
- John Huppenthal defeated Margaret Garcia Dugan in the Republican primary and then beat former state teachers' union head Penny Kotterman to become state superintendent of public instruction.

Before leaving his office as Arizona superintendent, Tom Horne reappointed Margaret Garcia Dugan to the task force for the 2010 to 2014 term. Also, he chose Hector Ayala, former cochair of English for the Children and English teacher in the Tucson Unified School District, and Johanna Haver (the author of this book) to replace Anna Rosas of Nogales and Karen Merritt of Glendale Union. Later, Hector Ayala resigned and was replaced by the deputy state superintendent John Stollar.

Governor Brewer chose Mark Joraanstad, superintendent of the Saddle Mountain Unified School District K–12, where approximately 11 percent of the student body had been identified as ELLs. Her other choice was Jodi Jerich, the director of Arizona Residential Utility Consumer Office and previously a staff member at the Arizona House of Representatives.

The Arizona House of Representatives reappointed Jim DiCello, who resigned in August of 2011. The House then appointed Mariela Bean, the public relations and language acquisition director for Humboldt Unified School District. Member Eileen Klein, who had become chief of staff to Governor Brewer, was replaced by Dawn Wallace, a majority policy advisor in education and budget to the Speaker of the House.

The Arizona Senate reappointed Alan Maguire and chose Pam Pickard, an education consultant who had over thirty years of experience in education as a teacher, staff development specialist, principal, and university instructor.

The number of ELL Task Force members with no actual experience in education had increased from two members in the first term to three members in the second term. Thus, one-third of the task force not only had not

dealt with issues related to ELLs but also knew little about language acquisition practices and education in general.

## SECOND MEETING OF SECOND-TERM TASK FORCE

At the 2010 OELAS conference, Alan Maguire sought support to continue as chairman of the ELL Task Force. This was surprising because the position demanded hard work with no pay. It seemed he would have been relieved to pass the responsibility on to someone else, especially because Margaret Garcia Dugan was seeking the position.

After several months of no meetings due to the fact that it was taking so long for the political officials to choose new members, finally, on March 10, 2011, the task force came together to elect a chairman and for the new members to learn about the models. At the beginning of the meeting, the new Arizona superintendent of public instruction, John Huppenthal, approached the lectern, where he praised the task force for its service, stating that their work “amounts to one of the public policy tour de forces of the last century.”<sup>9</sup>

He had found the results of the ELL standard model to be “incredible” according to a rigorous analysis. He marveled that the academic gains of students had more than doubled and reclassification rates had improved as well. He elaborated that lessons could be learned from the model that would benefit all students. He pledged to be supportive of the task force and to follow through with fidelity on the implementation of their model.<sup>10</sup>

Huppenthal made no mention of the fact that the so-called success of the model could have been due to other factors, such as an increase in the state monitoring of ELL teachers and a decrease in how high the ELLs had to score in reading to be considered English proficient on the AZELLA. Also, at the time of entry, 64 to 66 percent of the ELLs were already within one level of the cut score required for reclassification into the mainstream. Perhaps he didn’t realize that he was jumping to conclusions over an issue that needed to be examined thoroughly over time.

As soon as Superintendent Huppenthal had finished his speech, Chairman Alan Maguire presided over the election of a new chairman for the second term. It was a strange situation in that Alan called for a group “yea” and then “nay” vote after member Jim DiCello had nominated him, rather than inquire whether a member wanted to nominate anyone else. According to the official minutes, there was only one “nay” vote, probably because the members who supported Margaret Garcia Dugan were unsure as to what was going on.<sup>11</sup> Also, member Pam Pickard was scheduled to call in her vote, but had been given the wrong number.

Hector Ayala had to ask permission to nominate Margaret. Alan Maguire responded to his request by calling for “a substitute vote,” and then almost immediately asking for “yeas” and then “nays” without explaining the purpose of this “substitute vote.” In an authoritative manner, Alan Maguire appointed himself chairman for the new term.

Seven members were present and three of them favored Margaret, so it did not seem Alan had the required five votes. A member explained that new member Dawn Wallace had been in attendance just long enough to vote for Alan. She returned later.

After the meeting, it was discovered that at least one of the new members had been advised strongly by someone in the governor’s office to vote for Alan Maguire. In other words, politics was involved to keep Margaret Garcia Dugan from the chairmanship.

Superintendent Huppenthal’s rave review of the ELL models and then Alan Maguire’s unorthodox handling of his reelection to chairman appeared suspicious.

#### POINTS TO REMEMBER

An Arizona nine-member task force was established in 2006 as part of Arizona HB 2064, a law created to comply with the Flores consent order and Proposition 203. The members have followed specifics of HB 2064 that require them to develop four-hour SEI models for first-year Arizona students identified as ELLs and to then oversee them.

During the 2006 to 2007 school year, the task force gathered data and listened to presentations from several individuals and groups: education professors, immersion experts, ELL program directors, ELL teachers, and other interested parties. Ultimately, they relied mostly on consultant Kevin Clark to help them create the models in accordance with the law.

The task force created a model that included exceptions for low-enrollment situations and then two alternatives for students in the upper grades. Because schools must measure up to specific criteria and receive permission from the task force to implement an alternative, these models have been used only occasionally.

In 2007 to 2008 three schools implemented the standard four-hour SEI model, and ultimately their ELLs reached proficiency at twice the rate as the year before. As a result, all Arizona schools have been mandated to use the official ELL model, beginning with the 2008 to 2009 school year.

The task force didn’t meet for several months. In March 2011, the members of the task force came together. Four of those members had served in the first term, of which one was the chairman, Alan Maguire, who went to great lengths to maintain his chairmanship. Also, John Huppenthal, the new state

superintendent of public instruction, praised excessively the task force for their efforts in creating the model.

ROWMAN &  
LITTLEFIELD

## *Chapter Nine*

# **Charges of Discrimination**

The Office for Civil Rights (OCR), an agency of the U.S. Department of Education, enforces civil rights laws that forbid discrimination based on race, color, or national origin in a school program or activity that is receiving federal funding. OCR officials review complaints and then investigate them through various means that may include random site visits. Should they discover violations, they provide technical assistance to help institutions reach voluntary compliance. The OCR's authority is based on provisions of Title VI of the Civil Rights Act of 1964.

The entire process of resolving OCR complaints frequently costs a school entity hundreds of thousands of dollars and takes several years. If the entity fails to take steps to reach an agreement with the OCR, the entity stands to lose millions of dollars of federal funding. Thus, the OCR wields a great deal of authority.

It is possible for a school entity to appeal a charge and then reach a compromise, as happened with the Denver Public Schools in Colorado (see chapter 3, pp. 49–51) and Oceanside Unified School District in California (see chapter 5, pp. 79–80). It is important to note that an entity's response to complaints and its determination to defend itself have weight with the OCR. Thus, the entity bears a certain amount of responsibility for the outcome.

The federal government has filed four charges against Arizona for components of its structured English immersion (SEI) models. The resolution agreements of two of the complaints have increased the number of English language learners (ELLs) and the years they must remain segregated daily in four hours of English language development (ELD). Ironically, the last complaint, not yet resolved, accuses Arizona of excessive segregation.

Another resolution agreement came about due to a charge that monitors from the Office of English Language Acquisition Services (OELAS) of the

Arizona Department of Education (ADE) had discriminated against ELL teachers by citing them for poor English pronunciation and grammar. Interestingly, the No Child Left Behind Act of 2001 (NCLB) requires ELL teachers to be proficient in English. Thus, it would seem the monitors were doing their job.

There is no guarantee that compliance with the federal rulings will actually improve the instruction and achievement of the Arizona ELLs. On the other hand, it will most definitely burden school administrators and teachers for a very long time with extra work—which means they will have to put other significant educational concerns on the back burners.

This chapter explains the complaints against Arizona, how they are being resolved, and their effect ultimately on Arizona's program for ELLs. Whereas the following federal complaints apply particularly to Arizona, other states with high numbers of ELLs are subject to similar scrutiny and rulings.

## FEDERAL COMPLAINTS

In September 2009, attorney Tim Hogan of the Arizona Center for Law in the Public Interest began the process of challenging in federal district court the four-hour SEI models, which he did in accordance with the U.S. Supreme Court *Flores, et al., v. Horne* ruling. Hogan claimed that the models were violating the Equal Educational Opportunity Act (EEOA) because they did not provide ELLs with the same access to academic curriculum as what non-ELLs were receiving.

In addition, during the summer of 2010, the OCR and the Civil Rights Division of the U.S. Department of Justice filed four lawsuits against the ADE regarding its ELL education. They made the following claims:

- The ADE had violated the Civil Rights Act of 1964 by reducing the Home Language Survey from three questions to one.
- By allowing ADE monitors to cite teachers of ELLs for their errors in English pronunciation and/or grammar during ELL instruction, the ADE had engaged in national-origin discrimination against Hispanics and other nonnative speakers of English who had become teachers of the SEI models.
- The Stanford English Language Proficiency (SELP) test and its successor, the Arizona English Language Learner Assessment (AZELLA), had not complied with federal law because they had failed to ensure a valid measure of whether ELL students were truly “proficient” before being exited from the program.
- Arizona's Department of Education (ADE) had discriminated against students based on race and national origin by segregating minority students

identified as ELLs and denying them equal access to and meaningful participation in educational programs available to the other students. This charge corresponded to Tim Hogan's complaints regarding the ELL models in the lawsuit *Flores, et al., v. Horne*.

### HOME LANGUAGE SURVEY QUESTIONS

For decades, Arizona school officials had required all parents to answer the following three Home Language Survey questions at the time they enrolled their children into Arizona public schools:

- What is the primary language used in the home regardless of the language of the student?
- What is the language most often spoken by the student?
- What is the language that the student first acquired?

If the parents' response was not "English" to any of the three survey questions, their children were identified as "PHLOTEs"; that is, students with a "primary home language other than English." The children were then administered an English language proficiency test. The Arizona English Language Learner Assessment (AZELLA) has been the official state English proficiency test since 2006.

It had been the policy of the ADE and remains the policy of most states to use this three-question survey, or one similar, for its initial screening. The assumption has been that children from households where the dominant language is other than English are at a disadvantage in an English-only school setting.

Unfortunately, an overidentification of ELLs at the kindergarten level was occurring in Arizona due to an NCLB provision that requires five-year-olds to demonstrate reading and writing skills before they have learned them! Very likely, this situation influenced state superintendent of public instruction Tom Horne into changing the Arizona survey in March 2009 from the three questions to a single question: "What is the primary language of the student?"

Horne took steps to make sure the reduction to one question did not exclude children who might qualify. He sent a memorandum to schools that allowed mainstream classroom teachers the option of requesting that students who may be potential ELLs be administered the AZELLA. Nevertheless, Horne's solution backfired mostly because a single question that did not even mention "home language" could not qualify as a "home language" survey, according to federal officials.

It is noteworthy that both Superintendent Tom Horne and deputy state superintendent Margaret Garcia Dugan would have been identified as PHLOTEs when they entered elementary school, had ELL programs existed at the time. Tom's parents were Polish immigrants, and Margaret's parents spoke mostly Spanish in the home. Because of their own experiences, Tom and Margaret were reluctant to segregate children into separate ELL classes unless those children truly needed the help. They believed strongly that ELLs should be given every possible opportunity to learn with the other children.

On August 3, 2010, the OCR officials sent Superintendent Tom Horne a letter that stated they had investigated two complaints regarding the Arizona Home Language Survey. Based on their "careful review of this information, existing OCR policy, and Federal law," the OCR officials had determined that "the one-question Survey, even when supplemented by the teacher referral process," was out of compliance with Title VI "because these identification procedures did not adequately identify and serve ELL students who needed English language development services and, at a minimum, unnecessarily delayed their identification and services."

On March 25, 2011, two months after taking office, state superintendent of public instruction John Huppenthal voluntarily entered into a resolution agreement that brought back the three-question survey. Tucson English language specialist and former Proposition 203 foe Sal Gabaldón approved of Huppenthal's decision. "It will cost more time and more money, but ultimately that's the purpose of it: to serve all the kids that we should have been serving." Noemi Cortes, language acquisition curriculum specialist at a central Phoenix district, stated, "What happened was the [one-question] survey didn't allow us to capture all of the kids."<sup>1</sup>

Mike Smith, an adviser to the Arizona school administrators, preferred the one-question survey. "If we open the door on the front end for more kids, there will be more kids in the program. What will happen with more kids in the program is that there will be less intensive [English-learning] opportunities, so they will stay in the program longer."<sup>2</sup>

When asked about the teachers' option of recommending a child to take the proficiency test in case that child had been missed with the one-question survey, Stanford University education professor Claude Goldenberg said it wasn't happening. He declared that it "wasn't really an adequate fail-safe mechanism because many students fell through cracks."<sup>3</sup>

This single action increased the enrollment of ELL students threefold in some schools, according to school officials. Those who supported the three-question Home Language Survey considered it better to overidentify than to overlook potential ELLs. Those who agreed with the one-question survey believed that students were better off in the mainstream unless it was obvious that they were having difficulty because of poor English language ability.



## ELL TEACHERS' ENGLISH SKILLS

Before the passage of Arizona Proposition 203 in 2000, some Arizona districts recruited Spanish speakers from Central American countries to teach the Spanish sections of their dual-language programs. As a result, several years later, many of these teachers, still weak in English, were “grandfathered in” as instructors of the four-hour SEI models.

In accordance with HB 2064 and the federal NCLB, monitors from OE-LAS at the ADE observed and evaluated teachers who taught English language development (ELD). Aware that correct pronunciation and grammar were two of its major elements, the monitors cited the teachers whom they could not always understand due to their strong Spanish accents and/or poor grammar.

Officials from the Civil Rights Division of the U.S. Department of Justice sent a letter of complaint, dated August 5, 2010, to Arizona attorney general Terry Goddard. It stated that “Hispanics and others who are not native-English speakers who work as public school teachers in the State” had been discriminated against.

The officials requested cooperation in its investigation. They sought to determine “whether the State was (1) engaged in a pattern or practice of national origin discrimination, in violation of Title VII; and/or (2) engaged in national origin discrimination in the employment, employment conditions, or assignments to schools of its faculty or staff, in violation of the Equal Educational Opportunity Act.”

According to Sal Gabaldón, the ADE monitors’ action against the teachers was unacceptable because the ADE was not able to provide hard, statistical evidence that a teacher’s accent had adversely affected the rate at which the students of that teacher were learning English. In addition, the ADE had no objective system for determining sufficient English fluency of teachers. Consequently, a teacher’s language ability might be found acceptable one year and then cited as unacceptable the following year.<sup>4</sup>

A *Wall Street Journal* article by Miriam Jordan quoted a Phoenix elementary school principal, a parent, a superintendent, and the spokesperson for the state’s largest teachers’ union. They stated in various ways that it was wrong to punish teachers for their “accents.”<sup>5</sup>

The national media had recently portrayed Arizona as a state that was discriminating against Hispanics through its recent, tough law regarding illegal immigrants, mostly from Mexico. Arizona State University professor Bruce Merrill remarked about the citing of teachers for using poor English: “This is just one more indication of the incredible anti-immigrant sentiment in the state.”<sup>6</sup>

In defense of the citations, ADE deputy superintendent Margaret Garcia Dugan said that the critics were “politicizing the educational environment.”

Adela Santa Cruz, director of the Office of English Language Acquisition Services, explained that it was up to school districts to decide whether to fire or reassign teachers to mainstream classes because they should not continue to work in classes for nonnative English speakers.

Not a single teacher lost his or her job because of the monitoring. Instead, some of these teachers were transferred to areas in which they taught subjects other than ELD. Many were encouraged to take classes to improve their English.

In September 2011, as a response to the original complaint, it became illegal for ADE monitors to cite teachers for speaking incomprehensible English to ELLs during ELD instruction. Instead, the schools and districts were required to file assurances with the state that their teachers of ELD were fluent in English. Superintendent Huppenthal explained, “We still are going to be conscious of these articulation problems. Students should be in a class where teachers can articulate.”<sup>7</sup>

The *Arizona Republic* criticized the decision in the editorial “Teachers’ Gain May Hurt Kids” (September 14, 2011). The newspaper stated that the ELLs were the students “in greatest need of high-quality, precise English-language instruction” and that “ending language monitoring may be a victory for teachers who felt stigmatized” but that “it is hard to see what this decision does for the kids.”

Don Soifer, vice president of the Lexington Institute in Arlington, Virginia, remarked, “This latest case of federal activism demonstrates how protecting the job interests of adults can interfere with the educational opportunities for children. With a population whose success is as crucial as the nation’s English learners, the missed opportunities associated with inadequate English skills elevate the stakes even further.”<sup>8</sup>

## THE SELP AND THE AZELLA

Harcourt Assessments and the ADE developed the SELP Test in 2004, which evolved in 2006 into the AZELLA. Having taken over Harcourt in 2008, Pearson Assessments revised it in 2009. These tests were used to evaluate the English proficiency of all students who had been identified as PHLOTEs on the Arizona Home Language Survey. Through a process that involved educational experts as judges, the test publisher and ADE established test items and cut scores for the purpose of evaluating each PHLOTE’s listening, speaking, reading, and writing skills.

The AZELLA cutoff scores had become the sole measure allowed in Arizona schools for determining ELLs’ identification, placement, and reclassification, that is, full entry into the mainstream, although many respected organizations had objected to using a single proficiency test for this purpose.

The Southwest Comprehensive Center for the Education and Study of Diverse Populations at New Mexico Highlands University Center had advised schools to develop a “bandwidth” of scores, instead of cut scores, to indicate that further testing was necessary.<sup>9</sup>

The National Association for the Education of Young Children and the National Association of Early Childhood Specialists had warned against basing such “high-stakes” decisions on standardized tests that require young children to demonstrate skills in predetermined ways.<sup>10</sup> In addition, the National Center for Research on Evaluation, Standards, and Student Testing at the University of California in Los Angeles (UCLA) had recommended that teachers be allowed to use other measures, besides a proficiency test, for evaluating the English ability of their ELLs.<sup>11</sup>

In a memorandum to the Arizona ELL Task Force (May 11, 2011), Boston University professor Christine Rossell noted that virtually all states except Arizona were allowing teachers and ELL coordinators to override English proficiency test results in reclassifying students. According to her research, “Teachers are the equal of foreign language experts and are better judges of a student’s English language proficiency than are standardized tests.”<sup>12</sup>

Ida Rose Florez, Arizona State University assistant professor of early childhood education, published an article in July 2010 that questioned the validity of the AZELLA. Florez found the following problems with the proficiency test:

- The procedure for establishing cut scores, called the Angoff method, is ineffective and obsolete in that it requires panels of judges to review test items to establish the minimal competence of the test takers (see the glossary).
- The test developers have not adequately established the expertise of the judges who set the cut scores.
- The judges did not come to a consensus regarding the cut scores at the kindergarten level.
- An analysis of empirical evidence suggests that the cut scores have been overidentifying kindergarten children and underidentifying older children.<sup>13</sup>

Florez made the following statement in her conclusion:

The AZELLA test developers have failed to provide convincing evidence that they have met widely-established standards for establishing the cut scores used to determine which ELL children receive English language support and which are educated in mainstream classes. To date, there is no publicly available empirical evidence that AZELLA cut scores accurately differentiate those children who need English language support and those who do not.<sup>14</sup>

According to the AZELLA “Technical Manual,” a modified Angoff procedure was used in which seventy-seven Arizona educators came together for a two-day meeting. The purpose was to obtain preliminary recommendations for the AZELLA cut scores for the five performance levels (pre-emergent, emergent, basic, intermediate, and proficient) for each of five grade bands (K, one through two, three through five, six through eight, and nine through twelve). After that, Harcourt Assessment performed several poststandard-setting analyses and then developed the approved AZELLA cut score ranges in scaled scores for the reported strands for all grades.<sup>15</sup>

A majority of school district program directors and teachers insisted vehemently that the AZELLA test for kindergartners was too difficult. In fact, they stated that most normal children at that age whose only language is English would score less than proficient. Also, according to both ADE research and teachers in the field, the third-to-fifth-grade version was inappropriate in that third-graders were expected to know what they had not yet been taught. The evaluations of the AZELLA in grades higher than fifth were mixed.

However, no proficiency test is infallible because students can score less than proficient for reasons other than language:

- Young children may be innately shy and feel uncomfortable responding to one-to-one oral questions from either a machine or a stranger.
- The listening portion requires students to focus on what they hear on a recording—which could prove difficult for those students whose minds may be easily distracted or preoccupied at the time of the test.
- Both the writing and reading sections require literacy skills that in many schools at least half of the regular English-only students have not acquired.
- Children who have scored less than proficient on the reading subtest may suffer from reading deficits that are more easily identified and addressed by a reading specialist in the mainstream than by an SEI teacher.
- Children identified as ELLs at any age may not perform up to their ability on the test because of a lack of motivation or fear of entering the mainstream full time.

In a letter to Superintendent Horne, dated August 27, 2010, the OCR alleged that the ADE had reclassified “many thousands” of ELL students as “proficient” and exited them from an ELL program, although test scores on one or more of the SELP or the AZELLA subtests indicated that those students were not proficient. According to an investigation by the OCR, both the prior and present proficiency tests were not “valid for the purpose of identifying ELL students.”

The OCR officials stated further that they had obtained their evidence from several sources at the state, district, and local levels. Moreover, they had used the work of a consultant with expertise in psychometrics, a field of study concerned with the theory and technique of psychological measurements, and English language proficiency assessments. That person had analyzed the scoring procedures and validity of the AZELLA.

The ADE had provided the OCR with state-mandated Arizona Instrument to Measure Standards (AIMS) test data that showed the students who had been reclassified as “fluent English proficient” (FEP) for two or more years were passing the AIMS test in greater numbers than *all* students in grades three, eight, and ten. However, the OCR officials considered this data to be faulty because *all* students in the computation included ELLs and excluded students who had exited the program as many as two years prior.

According to the letter, the OCR psychometricians had completed their own analyses. They compared the 2006 to 2009 performance of first-year FEPs with that of their English-only peers. The results indicated that an achievement gap existed, especially in the higher grades, between the two groups—with the FEPs scoring lower. Therefore, the OCR concluded that the FEPs had been exited from ELL services prematurely.

An analysis of the more recent 2010 AIMS test results painted a different picture. The ADE chart below (table 9.1) shows that the “gap” depended upon the demographics of the non-ELL group. FEPs in 2010 outscored non-ELLs of low socioeconomic status (low SES) in the three domains of the AIMS test. However, the FEPs fell behind when compared to the non-ELLs without low SES. There was little difference between FEPs of low SES and those without low SES.

The performance of the FEPs as a whole on the 2010 AIMS test does not signify that students have been falsely designated “proficient” by the thousands, as the OCR letter had claimed upon examination of the AIMS tests of prior years. However, this chart is limited because it offers comparisons of only one broad category. If additional subgroups were included that showed percentages of students at the low and high ends—who exceeded, approached, and fell below the standard score—a different and more accurate picture would emerge.<sup>16</sup>

HB 2064 mandates, in accordance with the Flores consent order, that schools continue to administer the AZELLA to FEPs for two years after they have scored “English proficient.” The ones who exited but later scored less than proficient have to either receive compensatory instruction in the mainstream or return to the four-hour ELD class. Unfortunately, the funding for compensatory funding was eliminated from the Arizona budget as part of a cost-saving measure.

Thus, these children have to reenter the ELD class unless their parents request that they be withdrawn entirely from the program, which forfeits

Percent Passing AIMS 2010						
Subject	Non-ELL (neither FEP nor ELL)		FEP All Years		ELL	
	Not Low SES	Low SES	Not Low SES	Low SES	Not Low SES	Low SES
Reading	85%	68%	79%	76%	24%	23%
Writing	82%	65%	73%	71%	25%	27%
Math	71%	49%	58%	56%	19%	19%
	Large Achievement Gap		Low Achievement Gap		Low Achievement Gap	

Table 9.1.

their right to any language assistance except what is available in the mainstream. It is noteworthy that all Arizona teachers have been trained in SEI strategies, and students in the mainstream are provided with extra assistance through Title I. Whether or not this extra instruction suffices for students who scored as FEP at one time but not repeatedly is a debatable issue and most likely differs from school to school.

On August 30, 2012, ADE superintendent John Huppenthal signed a resolution agreement that addressed the OCR complaint regarding the SELP and the AZELLA. It appears that he did not dispute the charge in any way. The agreement requires changes in the AZELLA with considerably more weight put on the reading and writing subtests before ELLs can be reclassified as FEPs.

The OCR had come to the conclusion that the composite cut scores on the English proficiency tests, before the recent revisions, allowed students to be exited from the program before they had acquired enough English language skills, particularly in the reading and writing domains, to be successful in the mainstream. For that reason, the resolution requires the schools to identify former ELLs who were reclassified as FEPs incorrectly (according to the OCR) and to provide them with English language intervention services, if needed.

Some 189,852 ELLs were reclassified as FEPs and transferred out of the four-hour ELD program between the 2007 to 2008 and the 2011 to 2012

school years. According to the ADE, more than 71 percent of them, that is, 135,188 students, scored proficient in reading and writing on the AZELLA and/or the AIMS test. However, more than 28 percent, approximately fifty-four thousand students, have not scored proficient on a subtest of the recent AZELLA and/or the AIMS test, so these students qualify for intervention services. The school authorities must contact and meet with these students' parents individually so they can become part of the decision-making process. This will require assistance from interpreters.

The school officials must evaluate these students through various measures that include teacher recommendations, parental input, student grades, and other means. Those who are found to be eligible for English language intervention services will receive them through a wide choice of options. The interventions, whether in an ELD class or the mainstream, may not exceed two hours daily and will continue until these students have passed the most recent version of the AZELLA or the AIMS test. No funding has been provided for this.

#### THE MOST CONTENTIOUS ISSUE: SEGREGATION

It is not unusual to separate beginning ELLs for most of the school day from the regular students until those ELLs have gained the confidence and basic English skills to enter the mainstream. Thus, the members of the task force and other interested parties have agreed on the merits of creating separate classes for ELLs for about a year, or until the ELLs have "acquired a good working knowledge of English," as stated in Proposition 203. Unfortunately, this process has played out in such a way that many ELLs have become stuck in the standard four-hour model for years.

The task force members have not come to an agreement on whether or not this four-hour separation from mainstream instruction and students should continue indefinitely. Up to and including the 2012 to 2013 school year, thousands of intermediates—students at the highest ELL level before designated "fluent"—have been required to take four hours of ELD every school year from 2008 to the present. The focus has been entirely on ELD rather than on the various content areas.

In some schools, the ELLs have been able to take math and something else with the mainstream non-ELLs for the remaining two hours. In other schools, the ELLs have remained segregated not only for the four hours of ELD but also for the entire school day.

It is noteworthy that ELLs who have passed either the reading or writing subtest of the AZELLA can be excused from that subject. However, this has happened rarely because those subtests tend to be the most challenging for the ELLs. In addition, just because a student has passed one of those subtests,

that student should not be excused from the subject entirely, as happens occasionally.

## PLACEMENT PROCESS

There is little if any difference in English ability between a student who scores a few points above the AZELLA cut score and a student who scores just short of it. Yet, the outcome for each of these students differs tremendously in that the former is classified as FEP and put into the mainstream entirely. The latter must continue in four hours of ELD and be separated from his or her English-dominant peers.

At the March 10, 2011, ELL Task Force meeting, the members discussed the time requirement for intermediates. Chairman Alan Maguire said that they needed to find a balance, “not too little and not too much.” Member Margaret Garcia Dugan suggested that the schools should be allowed to reduce the intermediates’ hours to as few as two “on a case by case basis.”

Member Dawn Wallace expressed concern about putting nonproficient children into content classes before they had achieved proficiency in English. She mentioned that the mainstream teachers were not necessarily trained to integrate language with content and that the intent of the bill (HB 2064) was to require intensive English acquisition. Ironically, Wallace overlooked the reality that many ELLs were already learning math and other content successfully in the mainstream during the two hours outside of the ELL requirement.

In the summer of 2010, Rick Bistrow, the lead attorney for the ADE in the *Flores* case, created the amendment “Modification of Models,” with help from ELL experts, which he was confident at the time would end the *Flores* lawsuit as well as the other complaints from the federal government. The proposal allowed school authorities to reduce an ELL’s four hours in ELD to as few as two if that student had reached the intermediate level and already completed a year of the four hours of ELD. Also, ELLs who had remained for two years or more at the lowest three levels could also have their ELD hours reduced from four to two.

The proposal did not come to a vote by the task force in time for the 2011 to 2012 school year, although five out of the nine members of the task force favored it. With support from the offices of Governor Brewer and Superintendent Huppenthal, Chairman Alan Maguire had used his power to keep the proposal off the agenda. Nevertheless, in May 2011, the five supporters of the amendment attempted to hold their own meeting to discuss and most likely pass Bistrow’s amendment. The effort failed seemingly because of outside political interference.



## PRESENTATION TO TASK FORCE IN APRIL 2011

On April 28, 2011, consultant Kevin Clark, in response to an invitation from Chairman Maguire, gave a presentation to the ELL Task Force. The agenda item stated that this would be an “Informational Discussion on the History, Development and Components of the ELL Task Force’s Models of Structured English Immersion.”

The presentation could be described best as an impressive piece of salesmanship, complete with hype, meant to persuade the newly selected task force members into believing that Arizona’s models far surpassed the ELL programs of other states because of the state’s 31 percent reclassification rate. Clark explained that Arizona had been following a “learning” model that offered structured, sequential instruction as opposed to a “natural acquisition” approach in which the ELLs would acquire English in the mainstream while learning content.

Clark warned that the ELLs must either “pay now, or pay later.” In other words, they would suffer if their ELD hours were reduced. It became apparent that both Kevin Clark and Chairman Maguire believed that nothing about the models should change, certainly not the daily four hours of ELD that could go on year after year for intermediates.

In a memo to the task force, dated May 11, 2011, Boston University professor Christine Rossell criticized harshly Kevin Clark’s claims after viewing the video of the meeting. She brought up the fact that she was the source for the provision of California Proposition 227 and Arizona Proposition 203 that “SEI is not normally intended to extend beyond one year,” which was based on her extensive classroom observations, interviews with teachers, and considerable research. She disagreed vehemently with Kevin’s rationale for keeping intermediate-level ELLs in separate ELD classes for several years because of their scores on the AZELLA:

With regard to Mr. Clark’s presentation, I found nothing that he said that demonstrated that you should “stay the course.” His continual citation of your “outstanding” RFEP (reclassification) rate of 31% compared to other states as evidence for this was rather shocking to me. Although he claims that RFEP rates are the only national standard that we have, he is very wrong and I would have expected him to know that. There is no national standard . . . only one state uses the AZELLA—Arizona.

States not only use different tests and standards to reclassify their ELL students, but virtually all of them allow teachers and coordinators to override test results in reclassifying students. Therefore, it may not even be possible to compare the reclassification rates of states that use the same test and standards since we do not know what is going on at the local schools.<sup>17</sup>

Professor Rossell spent her personal time, minus any monetary compensation, in putting together her three-page memo, plus two appendixes, for the task force. She said she would be available in her office to be questioned via telephone during the upcoming task force meeting on May 12, 2011.

### TASK FORCE CHALLENGED AT MAY 2011 MEETING

Chairman Maguire refused to allow Rossell's memo to be discussed or even handed out at the May 12 meeting. Nevertheless, during the meeting, I mentioned the memo and put copies of it on the dais. Some task force and ADE staff members picked them up.

Sal Gabaldón, representing Tucson Unified School District (TUSD), approached the lectern during the "Call to the Public" segment of that same meeting. He presented his concerns and questioned the validity of the data compiled by the ADE to evaluate the progress of ELLs in the models:

- The task force has not developed "separate models for the first year" as mandated by law but, instead, is allowing "the use of the exact same model for the first year as for subsequent years." He stated that such "segregation is a serious issue."
- The review process appears broken in that the task force "does not consider possible changes in the models until long after schools have made the year's staffing decisions."
- The current 31 percent reclassification rate has been used to measure success but is faulty because "no effort has been made to ensure that the comparisons are valid." For example, the 31 percent rate has been compared to the 14 percent reclassification rate of 2004 when the students could only take the proficiency test once a year and could not reclassify unless they scored proficient on every portion of the assessment (as opposed to as many as twice a year for first-year ELLs and in some cases also midyear, with reclassification based on a "composite" score rather than the passing of each subtest).
- Whereas many ELLs are fully in the mainstream and put on "individual language learner plans" (ILLPs) because their population in a particular school is too small to justify a separate class, their reclassification rate should be compared to that of the ELLs in the four-hour models to see if the "segregation" of ELLs in general is beneficial. In fact, other comparisons can be made due to at least eight different modifications to the four-hour model.

Sal Gabaldón had sat through more than three hours of discussion in order to make his case. After he had spoken, he handed the task force members a

one-page, well-organized report that detailed his points. He made the plea to the members that they address his concerns and offer “answers to such basic questions.”

### THE CHAIRMAN AVOIDED ISSUES

Neither the proposal to allow schools to reduce the hours spent by second-year ELLs at the intermediate level nor any of Sal Gabaldón’s questions were addressed at the monthly task force meetings for the remaining seven months of 2011. Some members offered suggestions to Chairman Maguire about topics that needed to be covered, but not one was put on the agenda.

Chairman Alan Maguire ignored the pleas of school officials and other task force members. Whereas his inaction could be described as despotic, it was also legal. Only the chairman of an Arizona public forum has the authority to establish the agenda for any meeting according to Arizona’s Open Meeting Law. In addition, the members of that public body are not allowed to discuss at a meeting anything that is not specifically on that agenda. In other words, the only recourse was to deal with the issue outside the task force.

### SENATE BILL 1033

In response to my concerns, state senator Nancy Barto sponsored Senate Bill 1033 in January 2012. This amendment was an exact copy of the “Modification of Models” by *Flores* lead attorney Rick Bistrow. It allowed the schools the following flexibility:

- “If an ELL student at the end of his first year, were classified as an Intermediate [the level before ‘proficient’], schools would be accorded flexibility as to the four-hour requirement so that school districts/schools may reduce, but are not required to reduce, the four-hour ELD requirement to a minimum of two hours of ELD. The content of the minimum shall consist of at least one hour of grammar.”
- “For any ELL student who continues to be classified as Basic or lower for two or more years in the four-hours of ELD, school districts/schools shall assess that ELL student and determine an appropriate plan of ELD instruction. The plan shall include a minimum of two hours of ELD instruction up to a maximum of four hours of ELD instruction. The content of the minimum hours of ELD shall consist of at least one hour of grammar.”

On January 23, 2012, the Arizona Senate Education Committee passed SB 1033 unanimously (seven to zero). On February 2, 2012, the full State

Senate passed the bill unanimously (twenty-nine to zero). School districts and organizations associated with public education throughout Arizona weighed in that they supported the bill in its entirety. Not a single entity came forth to oppose the bill. Nevertheless, in spite of its overwhelming popularity, Republican state representative Doris Goodale, as chairperson of the House Education Committee, refused to put the bill on her committee's agenda, and so it died.

### SEGREGATION COMPLAINT UNRESOLVED

The ELL Task Force held meetings in February, March, and May of 2012. Teachers and program directors came forth with their concerns in "Call to the Public," generally asking for the timeline flexibility in SB 1033. The members discussed the issue in a general way, but Chairman Maguire promised nothing specific. At the May meeting, he indicated a willingness to adjust the hours. Unfortunately, this spark of hope for flexibility expired because Maguire refused to hold meetings throughout the remaining months of 2012.

In a column that appeared in the *Arizona Republic*, Eugene Garcia, professor emeritus at Arizona State University and former member of the Arizona ELL Task Force, insisted that "prolonged daily segregation and the grouping of students by language proficiency" contradicts research in the field of second-language acquisition and cognitive-infrastructure theories. According to Garcia, "ELLs need ample opportunities to interact with those beyond their own level of proficiency, as well as to hear and participate in language and cognitive activities within academic content."<sup>18</sup>

It is unlikely the segregation issue will be resolved through the Arizona ELL Task Force, as long as Alan Maguire is the chairman. However, the judge deciding the case *Flores, et al., v. Horne*, the OCR, or the Arizona legislature could reach the conclusion that more than one year of four-hour ELD instruction in a segregated setting for intermediates is discriminatory and rule in favor of flexibility. If this should happen, the prior three rulings that actually encourage segregation will become less a problem and more in line with the tenets of SEI instruction.

### POINTS TO REMEMBER

The Arizona ELL four-hour SEI models have come under scrutiny. Tim Hogan of the Arizona Center for Law in the Public Interest, the OCR, and the Department of Justice have charged the ADE with violating federal law that outlaws discrimination.

Arizona superintendent of public instruction John Huppenthal has resolved three of the complaints by agreeing to the following: (1) the Arizona

Home Language Survey will consist of three questions instead of one; (2) OELAS monitors, as representatives of the ADE, will no longer be allowed to cite teachers of ELLs for speaking faulty English; and (3) the ELLs will be held to a higher standard on the reading and writing subtests of the AZELLA, the state English proficiency test.

The fourth OCR complaint and Tim Hogan's lawsuit accuse the ADE of segregation. This is probably the most meaningful charge because ELLs need exposure to native speakers of English in order to practice and improve their English language skills. By ruling on the first three complaints, but not the fourth, which deals specifically with segregation, the situation of segregation has worsened.

The ELL Arizona Task Force could have resolved the segregation issue as early as 2010. It has not happened because the chairman of the group has stood firm against any changes to the SEI models that the task force developed in accordance with HB 2064. As a result, state senator Nancy Barto brought a bill in the form of an amendment before the Arizona Senate. It would have allowed schools the flexibility to reduce intermediate-level ELLs' instruction in their second year of ELD from four to two hours. It passed in the full Senate unanimously but died in the House.

The three resolution agreements and the unresolved charge of segregation have brought hardship on the schools. Not only do they have to bring back thousands of former ELLs for reevaluation at their own expense but also they must continue a policy that keeps more ELLs than ever locked into at least four hours daily of ELD indefinitely.

ROWMAN &  
LITTLEFIELD

## *Chapter Ten*

# **The Federal Role**

While Ron Unz was taking his anti-bilingual education movement from state to state, his success had not escaped the notice of the politicians on Capitol Hill. In 1999, a U.S. congressional subcommittee invited proponents on both sides of the bilingual education debate to Washington, DC, to testify and discuss how the education of ELLs could be improved. Two years later, the No Child Left Behind Act passed. This law eliminated bilingual education's 75 percent grant funding advantage and made other changes favorable to immersion education.

It is impossible to estimate how much Ron Unz's movement influenced this legislation and the improvements to the education of ELLs that ensued. At the very least, Unz's take-no-prisoner approach sped up the process and aroused the public's ire to such a degree that the politicians had no choice but to act.

### U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE HEARING

On June 1999, a subcommittee of the Committee on Education and the Workforce of the U.S. House of Representatives held a hearing. Its purpose was to examine the Bilingual Education Act, as an amendment of the Elementary and Secondary Education Act (ESEA), to determine what changes may be necessary for improving the education of the ELLs, referred to at the time as "limited English proficient" (LEP).

House Education Committee chairman Rep. Bill Goodling (R-PA) and Rep. Matt Salmon (R-AZ) were sponsoring the bill House of Representative 2 (HR 2). This legislation added a provision to the Bilingual Education Act that would require the school districts to provide information to parents about LEP programs and to obtain parental consent before putting children into a

program. In addition, it eliminated the provision that required at least 75 percent of the funding be spent on programs that included native language instruction.

The chairman of the subcommittee, Rep. Michael Castle (D-DE), explained that bilingual education had already been debated for a long time and he did not think “any educator would dare say that it was not good for a child or young person to learn more than one language.” He pointed out that there had been a focus on the methods of instruction, whereas he believed it should be on children, with schools and parents deciding on the instructional programs based on the needs of the specific children.<sup>1</sup>

U.S. Rep. Carlos Romero-Barcelo (D-Puerto Rico) gave the opening statement. He said that if the child has another language by heritage, it is “ridiculous and absurd” to then say that child should not be proficient in that language. He elaborated that it is best to teach a child in the language the child knows best until the child becomes proficient in English. He added that it is better to stimulate and encourage an interest in the second language (English)—as has been done successfully in Puerto Rico—rather than force it.<sup>2</sup>

Rep. Matt Salmon responded that his first concern was the 40 percent dropout rate of Hispanic students nationwide. He stated that the best way for children to learn English was assimilation into English as fast as possible. He talked about his personal experience of learning Mandarin Chinese as a Mormon missionary at age nineteen. Whereas it was difficult to be immersed in Mandarin at first, within two years he was dreaming in Mandarin.<sup>3</sup>

Dr. Joseph Farley, principal of Mission Elementary School in the Ocean-side Unified School District in Oceanside, California, testified regarding Oceanside’s LEP children. Before Proposition 227 had passed, students were receiving about forty-five minutes per day of ESL (English as a second language) instruction, and all their textbooks were in Spanish. After Proposition 227, all teachers purposely immersed the students in English throughout the school day and all structural materials were in English. Farley expressed satisfaction with the outcome.

Answering a question regarding the importance of having certified teachers with bilingual skills, Dr. Farley explained, “The lack of that formal training had virtually no impact on their quality of instruction.” He remarked further that sometimes the teachers with the least training and experience were the better instructors. In his opinion, it was the amount of instruction in English that had led to success.<sup>4</sup>

Another witness, Martha Bujanda, had emigrated from Mexico to Texas at the age of five. She recounted how she was put in a bilingual program for three years and, consequently, learned almost no English until her family moved. At the new school, she was placed in a program that did not include bilingual education. It was only then that she was able to gain the English



skills that allowed her to eventually graduate from high school and in time earn her MBA at the University of Dallas.

As a community outreach director, Bujanda tutored students who had failed the Texas Assessment of Academic Skills (TAAS), the standardized test used in Texas at the time that students were required to pass to graduate from high school. She had met countless Hispanic parents who did not understand that their children were in bilingual classes and not being taught in English.

Bujando elaborated, “As parents became aware of this reality, a feeling of impotence came over them. Unable to speak English themselves, many of them felt they had no recourse as they saw their children continue to struggle with the English language even after several years of bilingual education.” She talked also about the school officials’ intimidation of parents.<sup>5</sup>

Rep. Ruben Hinojosa (D-TX) mentioned that he was the child of immigrants, like Martha Bujanda. He went on to explain that in the twenty-five years that he had served in making education policy, he found that the reason for the high dropout rate among Hispanic students in high school could be economics. He explained further that there was “inequity of the amount of money spent” among the various schools. He discussed the differences he had observed and suggested that money might be spent on teaching English to the parents.

Bujanda replied to Rep. Hinojosa that they should keep to the issue of the students. She went on to assert, “We need these kids to speak English well, not a combination, not a hybrid of English and Spanish, English well in order to succeed.” She said that she was very proud of her heritage and her ability to speak fluent Spanish. She stated opposition to native language instruction at the elementary school level but agreed to its usefulness in high school.<sup>6</sup>

Dr. Sylvia Hatton, executive director of the Region One Education Service Center, which serves thirty-seven school districts near the Mexican border in south Texas, identified herself as someone passionate about bilingual education. She discussed how she had learned through bilingual education in a parochial school after entering that school speaking only Spanish.

Hatton testified that just as bilingual education had worked well for her, it was benefiting the LEP children in her region. She said that in their 1993 to 1994 legislative report, they had found that former LEP children in grades three and four, during their first year after exit from a bilingual education program, had performed quite well on the TAAS. Over 75 percent of the LEP students and former LEP students had mastered one or more areas of the TAAS. Also, former LEP students had outperformed Hispanic and African American students who had been in all English programs.<sup>7</sup>

Hatton elaborated that the schools in her area, strongly supported by parents, offered both native language instruction and English in a two-way bilingual program in which the students were not segregated. She testified

that the school authorities had added rigor by establishing an accountability system in which they assessed the students' achievement gains in both Spanish and English.<sup>8</sup>

Hector Ayala, a guest of Matt Salmon and cochair of English for the Children—Arizona (see chapter 2), talked about his own educational experiences, those of his students, and what he had learned from talking to five hundred or more parents whom he had canvassed in Tucson. He complained that bilingual education had lost its focus of teaching non-English speakers the English language. Instead, it had been taken over by political groups bent on indoctrinating children into their political agendas, the Spanish language, the Mexican culture, and Mexican history.

Ayala described how Hispanic parents, already quite timid toward school authorities, had met resistance after requesting that their children be moved out of bilingual education. Instead of accommodating these parents, school officials overwhelmed them with bilingual education research few people would understand.

When Ayala and others in his group had occasionally accompanied a parent to the child's school, as they had done at least ten times, they were met and opposed by the teacher, the counselor, the principal, and the district director of bilingual education. They had to finally demand, "He wants out; get him out." It was only then, according to Hector, followed by a letter from the parent to three departments, that the authorities would finally remove the child from the bilingual class—virtually a class taught in Spanish.<sup>9</sup>

Don Soifer, executive vice president of the Lexington Institute in Arlington, Virginia, explained to the subcommittee that the main problem with the current bilingual education legislation under the ESEA was that it favored native language instruction. Consequently, the ELLs were not gaining the English skills they needed.

Soifer expressed concern that the various versions of bilingual education shared "a common reliance on segregated instruction in students' non-English native language."<sup>10</sup> He stated further that Title VII bilingual grant money had been spent in ways that did not improve English language skills, adding that the pending ESEA reauthorization gave Congress the opportunity to improve policy in this area.<sup>11</sup>

At the end of the hearing, Rep. Hinojosa mentioned that statistics concerning the schools were difficult to compare because the school agencies used formulas that differed from each other and from those used by the federal government. For example, a Texas education agency computed that the dropout rate was 3 percent in McAllen, Texas, although the U.S. Department of Education measured it to be between 30 to 40 percent. For that reason, he expressed a need for "information that both the State and Federal agree to."<sup>12</sup>

Oceanside principal Dr. Joseph Farley of Oceanside agreed, “And I would say that would be worthwhile if then the data drove some sort of innovation or improvement in those very dropout rates.”<sup>13</sup>

The problems with bilingual education were well described at the subcommittee hearing. Not only native language instruction but also how data were being collected appeared problematic. There was evidence of success with the dual-language program in Region One in South Texas, which was at least partly due to its accountability system, parental participation, and not segregating the ELLs from the non-ELLs. At this hearing, it became clear that solving the woes of ELL education would require more than switching from bilingual to immersion techniques.

### WHERE THE MONEY WENT

Four months after the U.S. House of Representatives subcommittee hearing, the Lexington Institute published Don Soifer’s report, “Title VII Grants: Bilingual Education Programs That Hurt Kids.” Soifer elaborated on what he had presented to the subcommittee regarding Title VII grants. He pointed out that the grants failed to meet most of their stated objectives, omitted standardized test scores for large portions of their ELLs, and even produced lower test scores after two years of implementation.<sup>14</sup>

According to the report, large amounts of the grant money, appropriated for improving the English skills of ELLs, had been spent on projects unrelated to learning English. Here are summaries of some of those questionable projects:

- \$1,239,508: a five-year comprehensive grant for “Summer School on Wheels” in Montana for ELLs plus teachers and chaperones to visit the rain forests in Costa Rica;
- \$240,039: a four-year comprehensive grant in South Dakota to develop educational software for students to learn Lakota (Sioux), the oral language for which there was no standard orthography, so one had to be developed;
- \$1,250,000: a five-year comprehensive grant in New York City available to six dual-language elementary-level classes for calligraphy lessons twice a week, Chinese brush painting, Tai chi, an introduction to Chinese instruments, Cantonese songs, and conversational Cantonese;
- \$1,323,900: a five-year comprehensive grant in Oregon that provided motivation “by setting up situations that require the use of Spanish and by presenting Spanish as a language of equal status with English”;

- \$922,785: a five-year grant in New Mexico for a computerized Zuni/English dictionary and training Zuni-speaking teaching staff to administer and score the Zuni Language Assessment as well as related activities.<sup>15</sup>

Another example of bilingual education Title VII excess occurred at Creighton Elementary in Phoenix, Arizona, a school district serving roughly 4,680 ELLs (over 56 percent of the student body) in the 2000 to 2001 school year. This district was spending more than \$1.5 million of its federal grant funding yearly on its bilingual education teacher-training program. This amount did not include the bilingual education and English as a second language (BLE/ESL) endorsement stipends and other special pay to bilingual teachers that amounted to an additional \$140,000 per annum expense.<sup>16</sup>

Creighton had set up “Creighton College,” which made it easy for teachers to take courses through Northern Arizona University (NAU) at Creighton school sites. As teachers accumulated NAU college credits by taking classes from NAU-approved Creighton teachers, not only did they receive stipends for obtaining their BLE/ESL endorsements but they also moved quickly up the salary schedule. In the end, everyone involved with “Creighton College” profited financially. The training may have improved the teachers’ instruction somewhat but at much too high a price.

No other Arizona school district reported spending even close to that amount on its teacher-training program. The ELL teacher training at Alhambra Elementary, a west Phoenix district with 6,669 ELLs and noted for its successful immersion program (see chapter 2, pp. 30, 33–34), cost \$112,425 per year. Their stipends and special pay added up to \$52,000.<sup>17</sup> Cartwright Elementary, a west Phoenix district with 7,533 ELLs, spent only \$51,000 on ELL teacher training and \$13,000 for special pay.<sup>18</sup>

The government had created a situation in which schools had become dependent on the federal government’s monetary handouts. The money was often spent on frivolous activities or came with strings attached that often led to minority-language children not learning English as well and as quickly as they could.

## NO CHILD LEFT BEHIND ACT

Representatives Goodling and Salmon’s bill, HR 2, passed in the U.S. House of Representatives in the fall of 1999. In the spring of 2000, U.S. senator Joseph Lieberman (D-CT) incorporated provisions of HR 2 into a larger Senate bill that increased funding significantly. Also, it included a three-year limit on federally funded programs and a requirement that teachers of ELLs be fluent in English. Lieberman’s bill did not pass, but the matter was taken up again the following year.

In 2001, U.S. senator Ted Kennedy (D-MA) and President George W. Bush moved forward with the reforms to ELL education as part of NCLB. This legislation incorporated the provisions of HR 2 and granted state education agencies greater control over the funding of ELL programs and the power to impose pedagogical methods. Formula grants that were based on percentages of poor children replaced the ESEA, Title VII competitive grants that had favored bilingual education.

NCLB mandated accountability standards that encouraged ELLs' rapid acquisition of English and discouraged the use of native language instruction. According to "Bilingual Education: An Annual Report" (January 2002) by Don Soifer, NCLB improved the education of ELLs considerably:

- Federal money for emergency immigrant assistance was added to the funding of ELL programs, which increased the formula grant amount from \$460 million to \$665 million. The plan required that 95 percent of the grant money be used for ELL assistance with 5 percent for professional development that included travel to a conference for ELL teachers.
- Schools were allowed to choose the way they taught ELLs, so schools were no longer required to offer native language instruction in order to qualify for the grant money.
- States receiving formula grants had to develop and meet annual measurable performance objectives or risk the loss of funds.
- Teachers of ELLs had to be fluent in English (see chapter 9, pp. 131, 132, 135–36).
- School districts were required to notify parents about why their children were chosen for an ELL program and to give them specific information about that program. Moreover, parents had the right to remove their children from the program and choose another if one was available at the school.<sup>19</sup>

The Office for Civil Rights of the U.S. Department of Education had come "under heavy criticism . . . for its aggressive role in encouraging school districts to adopt bilingual education." The General Accounting Office had found that nearly one in five school districts had reported that the OCR Region 11 office, with jurisdiction over 41 percent of the nation's ELLs, was attempting to influence school districts toward bilingual education.<sup>20</sup>

It was hoped that George W. Bush's appointment of Gerald Reynolds to the office of director of the OCR would remedy the situation. However, the office was so decentralized and certain procedures so established that only limited change was possible.

Nevertheless, reversals gradually occurred. Schools adjusted their instruction of ELLs to measure up to state and federal standards because of NCLB. For example, schools in the Los Angeles area decided in 2006 to eliminate

bilingual education programs, still available through waivers, in order to meet their annual test-score targets and rid themselves of the “underperforming” NCLB label. These schools improved their rating on California’s eight-hundred-point Academic Performance Index by at least 150 points, according to a Los Angeles District elementary coordinator.<sup>21</sup>

NCLB has led to additional accountability. This nation’s ELLs, over five million children in 2012, which equals more than 10 percent of the total U.S. student population, are increasingly being included on the National Assessment of Educational Progress (NAEP), as well as state accountability systems. Whereas 24 percent of all ELLs were excluded from the fourth-grade NAEP reading test in 2003, all but 11 percent took the test in 2011.<sup>22</sup> This matters because NAEP offers data that allow states to see how their schools are measuring up nationally in a variety of subjects and to work toward improvement.

## COMMON CORE STATE STANDARDS

The American Recovery and Reinvestment Act of 2009 allocated \$100 billion for the purpose of closing the academic gap between the students of the United States and those of other advanced countries where the students have outshone their American counterparts. The goal has been to move from each state having its own standards, in accordance with NCLB, to one set of core national standards. At the National Press Club in 2009, U.S. secretary of education Arne Duncan explained:

We want to raise the bar dramatically in terms of higher standards. What we have had as a country, I’m convinced, is what we call a race to the bottom. We have 50 different standards, 50 different goal posts. And due to political pressure, those have been dumbed down. We want to fundamentally reverse that. We want common, career-ready internationally benchmarked standards.<sup>23</sup>

During 2009 and 2010, state leaders from forty-nine states, two territories, and the District of Columbia came together to help draft a set of common academic standards for students in grades K–12. They named their project “The Common Core State Standards (CCSS) Initiative: Preparing America’s Students for College & Career.” The National Governors Association Center for Best Practices and the Council of Chief State School Officers coordinated this effort nationwide. In June 2010, final versions of the CCSS for English and math were released. Only four states have not adopted these standards: Alaska, Texas, Nebraska, and Virginia.

The CCSS offers general guidelines for applying the standards to the instruction of ELLs. California State University researcher Rhoda Coleman and Stanford University professor of education Claude Goldenberg described

the guidelines as “reasonable—as far as they go—but are vague at best.”<sup>24</sup> For them, the guidelines have limited value but are not detrimental.

The CCSS for literacy should be helpful to ELLs. Whereas most ELLs gain oral and listening skills within a year, they continue to falter in reading and writing, as do many English-dominant students. All of these students will profit from a plan that eases them step by step from the simple to the complex forms of the language while allowing them to experience literature through its various genres.

Hopefully, the CCSS will prove successful. To be sure, most industrialized nations have national school standards. However, they do not have to deal with typically American problems: frequent absenteeism and tardiness; gangs and drugs; inappropriate language and dress; teachers’ unions that protect incompetence; and the fear of losing funds due to “noncompliance” to a federal/state mandate or litigation initiated by a disgruntled parent over a disruptive or failing student. Perhaps, after the implementation of the CCSS, our politicians will seek to resolve the other issues so all students, including ELLs, have a better chance at academic success.

#### POINTS TO REMEMBER

Ron Unz’s state-by-state English for the Children movement created a national stir regarding how ELLs were taught. In 1999, the U.S. Congress held a hearing to consider the bill HR 2, which representatives Bill Gooding and Matt Salmon were sponsoring. If enacted, it would change the Bilingual Education Act by empowering the parents of the ELLs and allowing more funding for immersion education. At a congressional subcommittee hearing, supporters and opponents of bilingual education expressed their points of view, based on both personal and professional experience.

HR 2 eventually died. However, NCLB contained the provisions of HR 2 and passed in 2001. NCLB gave the states the power to impose teaching methods on the teachers and greater control over the funding. For the first time, the states had to make sure that ELLs, like other students, measured up to clearly defined state standards.

Accountability for the education of ELLs has improved considerably, as exemplified by the increase in the number of states that include ELLs in the NAEP testing. Whereas there are no separate standards for the ELLs on the CCSS, the guidelines provide schools with assistance in helping them to measure up to the same standards as the other students. It is hoped that in time other issues that are interfering with student achievement will be addressed.

ROWMAN &  
LITTLEFIELD



## *Chapter Eleven*

# **Commentary**

Ron Unz has contributed to the improvement of the education of English language learners (ELLs) in this country, probably more than any other individual, by shining a light on federal and state policies that were failing children. He constructed his ballot measures carefully, with help from Boston University professor Christine Rossell, and he came up with a feasible alternative to bilingual education. Also, he checked with attorneys regarding education law every step of the way. He had a singular goal: to force the schools into teaching English thoroughly to the mostly Hispanic ELLs.

His ballot measures offered six elements that at the time were essential to improving the educational process for ELLs:

- the implementation of “sheltered” and/or “structured” English immersion methods (SEI), which means instruction in English based on content, adjusted to the students’ English level, and/or sequential lessons that teach aspects of the English language;
- exceptions allowed for unforeseen situations through waivers;
- time in a separate immersion class “not normally intended to exceed one school year” to prevent long-term segregation;
- instruction predominantly in English, with teachers allowed to use the child’s native language “when necessary”—which includes occasional translations in the home language and vocabulary building based on cognates;
- parents to be informed and to give permission—originally meant for bilingual education, but it has come to include all ELL programs;
- accountability requirement that all students, including ELLs, in grades two and higher be administered a standardized, nationally normed written test

of academic subject matter in English at least once yearly (Arizona Proposition 203 and Massachusetts Question 2).

Nothing in the initiatives restricts ELLs from receiving instruction in their native language after they have reached “English proficiency,” a term that does not mean the same to everyone. The No Child Left Behind Act (NCLB) requires not only mastery of the spoken language but also literacy proficiency, according to acceptable English proficiency tests, that have measured it to be at a level that possibly 53 percent of the English-only students would fail to meet (see chapter 2, p. 28). As a result, a large number of ELLs never attain “proficiency,” just as their English-only peers would not.

On the other hand, both the Arizona and Massachusetts initiatives consider children who score at grade level on a test of oral and listening ability to be English proficient and eligible for all that the mainstream has to offer. Most ELLs, especially in the early grades kindergarten through three, reach this language benchmark within a year. Thus, dual language or any other bilingual format would then be allowable were it not for the federal literacy requirements.

However, instruction divided between two languages entails specific conditions, teacher qualifications, and parental support not easy to come by in our society. If any one of the specific requirements is not met, as usually happens, the results are dismal. Too often, the ELLs are not exposed to enough English in these programs to ever catch up to the other children. Although the Massachusetts legislature amended its law to allow for dual-language after the passage of Question 2, such programs are few in number in that state—as they should be.

Dual-language schools such as the ones in Dade County, Florida (see introduction, pp. 2–3), Amigos in Cambridge, Massachusetts (see chapter 4, p. 65), and the ones in South Texas Region One (see chapter 10, pp. 151–52) succeeded mostly because the schools had fully integrated their students so at least half of them were English dominant. These schools maintained high standards, offered excellent instruction, and had tremendous parental support.

It is important to note that bilingual education programs that are either poorly implemented or inappropriate for a particular school’s ELL population have not been the only reason for the low achievement of ELLs. Politicians have created state and federal laws with disregard for subsequent unintended consequences, such as ELLs’ poor literacy development, long-term segregation, and faulty placement. Whereas federal and state funding could have helped the situation, often it has been wasted on frivolous projects that had nothing to do with learning English (see chapter 10, pp. 152, 153–54).

## POOR LITERACY DEVELOPMENT

As mentioned several times in this book, ELLs gain conversational skills rapidly through English language development (ELD) techniques, but they often remain stuck in ELL programs due to the failure to reach reading and writing levels commensurate with mainstream students. Whereas it is appropriate for beginning ELLs to receive their content-area material in simplified English, too often this “easy” English continues at the higher levels of ELL instruction and hinders the students from ever reaching their academic potential.

Fortunately, linguists and educators have developed literacy strategies, proven highly successful, in a few American schools, specifically through the California History-Science Project at the University of California, Davis, and throughout Australia. The purpose has been to provide students with the tools they need to comprehend the complex language of standard texts used in core subjects such as social studies and science.

Based on what is termed *systemic, functional grammar*, teachers guide students into applying basic grammar and vocabulary-building techniques to sentences that often consist of thirty words or more. Ultimately, it means bringing the students up to a higher level of literacy, as opposed to accommodating them at a lower level.

ELLs, as well as other students with similar literacy problems, would profit from an extra hour of social studies or science instruction that combines this type of ELD instruction with a content area. Northern Arizona University professor Norbert Francis spoke in favor of something similar briefly at the Arizona ELL Task Force meeting on November 20, 2006 (see chapter 8, p. 120).

In the fall of 2011, I reached Professor Francis by e-mail. He appreciated my interest in the issue of how language learning (grammar) can be integrated with teaching content. He expressed a willingness to speak pro bono to the task force on the subject, which he had researched extensively and written about himself. As hard as I tried, I could not convince the task force chairman, Alan Maguire, into scheduling Professor Francis for a presentation.

## LONG-TERM SEGREGATION

Before Ron Unz’s initiatives passed, the English as a second language (ESL) and bilingual education classes tended to segregate ELLs for several years. The rate of reclassification into the mainstream was 4 to 5 percent for any given year, with fewer than 20 percent of the students having advanced there after three years (see chapters 1 through 4). Consequently, ELLs were miss-

ing out on opportunities to develop friendships with their English-dominant peers and to partake of interesting, challenging mainstream instruction.

The Alhambra Unified and Glendale Union High School districts in the Phoenix area were exceptions to this trend. Their programs purposely integrated ELLs with other students. Alhambra schools provided prekindergarten, all-day kindergarten, and extra instruction for ELLs within the classroom (see chapter 2, pp. 30, 33–34).

The Glendale District trained content-area high school teachers to work with ELLs in mainstream academic classrooms, all of which had reasonable teacher/student ratios (one teacher to 25.8 students). Moreover, the ELLs' instruction aligned with the mainstream language arts program. After the first year of the three-hour ELD instruction, ELLs learned the same English curriculum as the mainstream students but in two hours of instruction, rather than one.

In the four-hour Arizona SEI standard model, it has made sense to segregate for one year those ELLs who would be lost in the mainstream. Also, the structured, sequential approach of the Arizona models in which the ELLs learn and practice the elements of English grammar and vocabulary step by step has worked extremely well (see chapter 8, p. 124, 126–27, and chapter 9, pp. 139–40). However, as soon as ELLs have gained the skills needed to survive in the mainstream, school officials should have the authority to put them there and give them whatever additional instruction they may need.

This means that school officials must be allowed to make exceptions to the guidelines, mandated by the state or federal government, in deciding what is best for a child who has reached proficiency in one domain but not another. If schools are not allowed this flexibility, based on solid school data, many students are likely to “fall through the cracks,” as the saying goes.

## FAULTY PLACEMENT

ELLs cannot afford to waste time in classes that are too easy for them or so challenging that they become frustrated. Their time is precious in that they have started school behind in English and must catch up as much as possible in order to benefit fully from an American education. They need intense instruction at their correct level. Unfortunately, this does not always happen.

In Arizona, the sole measure for placement in an SEI program is the AZELLA, the state-authorized English proficiency test, which is administered to students normally once a year. In virtually all states except Arizona, the teachers of the students have some say regarding their students' placement, which is as it should be. Whereas English proficiency test scores are useful, they should not be considered infallible measures because they are

not. According to research data, teachers' recommendations are more accurate gauges of student achievement than tests (see chapter 9, p. 137).

ELL teachers should have the authority to move students to either higher- or lower-level ELD classes, based on reliable data, at any time during the year. In addition, they should work with mainstream teachers to arrange for ELLs to spend time in the regular classes. The teachers must prepare them for this experience so they can participate fully and, ultimately, overcome any fear of the mainstream. Indeed, teachers must continuously reevaluate their ELLs' progress and point them in one direction: the mainstream.

### AGE AND OTHER FACTORS

It defies common sense to require students at age five to pass a literacy test in order to qualify for entry into a mainstream kindergarten class, as has happened in Arizona (see chapter 9, pp. 137–38), and, most likely, in other states, due to NCLB. Kindergarten ELLs are at an age when language acquisition comes easy. Moreover, in kindergarten, these young ELLs can receive large doses of the new language, at a basic level, with ample opportunities to practice with native speakers of their same age. These ELLs should not be taught in a separate setting, but they may need occasional extra in-class assistance.

Some ELLs at the first-grade level are able to do well in the mainstream, while others are not. Probably the ELLs should begin in a separate class but be allowed frequent visits to the mainstream, until there are indications that they are ready for a full transition. Also, many schools have developed ninety-minute, all-school literacy programs that are especially effective with ELLs, so the ELLs should not be excluded from them, unless the teachers who work with the children consider separation to be absolutely necessary.

Children identified as ELLs at seven years of age or older offer a variety of challenges. Most ELLs who have attended schools in other countries are able to develop literacy in English more easily than the unschooled ones. Thus, schools must adjust their offerings to two distinctly different groups. Thus, flexibility should be coupled with accountability that shows the schools to be making reasonable progress with either population. Again, these ELLs must be allowed entry into mainstream classes, as much as possible, with whatever extra help is called for.

There has to be adjustments made for students who do not fit into the mold: the mathematically gifted high school ELL who is slow to learn conversational English but is able to read English well enough to excel in calculus; the very young, timid ELL who needs occasional reassurance from an adult who speaks his or her home language; the gifted ELL who becomes easily bored; and so many others. We must always aim to teach all the

children—with “no child left behind.” Rules are meant to be broken if it is for the sake of a child who is not responding well to the prescribed plan.

Schools have several accountability measures with which they can measure whether or not adequate academic progress is being made. Perhaps some thought should be given to how well these children have adjusted psychologically, because moving from one culture to another is stressful and requires various accommodations for the different age groups.

### ABOUT THE MONEY

Too often, funding concerns, rather than sound academic principles, have driven ELL policy. Intimidated by officials, immigrant parents from cultures less free than ours seldom go to the schools on their own to complain. Instead, they agree to whatever the school authorities suggest for their children (see chapter 5, p. 80). They are happy to be in the United States and that their children can attend school. However, like all parents, they want their children to succeed in life, and there is money available to make that happen—if only it would be spent wisely!

Too often, funding is based on the criteria of a grant, rather than on the needs of ELLs. For example, if a school must offer native language instruction to receive grant money, bilingual classes will be created, whether good bilingual teachers exist there or not, and all ELLs will be encouraged to enroll (see chapter 3, pp. 51–52). Many schools tend to overidentify ELLs and keep them in programs too long for the money. The greater the number of ELLs and the longer they remain identified as such, the more money the schools receive—based on states’ per-student extra funding formulas (see chapter 2, p. 29).

Chapter 10 presents only a small sample of all the grant money that has been wasted—millions and millions that in time have added up to billions of dollars spent on frivolous programs for ELLs who desperately needed and wanted to learn English. How much better to have spent that money on immersion summer schools and after-school activities where ELLs had opportunities to improve their English!

One solution is to eliminate grants altogether and distribute the money equally to schools so they can implement their own programs. In addition, funding for ELLs could and should be based on the demographics of a community, instead of per-student state formulas, such as the group B weight in Arizona (see glossary). Thus, a school that is able to move ELLs successfully into the mainstream in one year would receive as much money as another school that takes longer.

Rewarding schools monetarily for high ELL reclassification rates may seem to be a solution but is actually a bad idea because it could lead to a new

set of shenanigans. It is best to keep the plan simple and consistent while allowing for occasional flexibility that can be justified through data.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD



# Notes

## INTRODUCTION

1. Herman Badillo, *One Nation, One Standard* (New York: Sentinel of the Penguin Group, 2006), 63.
2. Badillo, *One Nation, One Standard*, 62.
3. Badillo, *One Nation, One Standard*, 60–63.
4. Badillo, *One Nation, One Standard*, 60–61.
5. James Crawford, *Bilingual Education: History, Politics, Theory and Practice* (Los Angeles: Bilingual Educational Services, 1999), 36.
6. Badillo, *One Nation, One Standard*, 60.
7. Badillo, *One Nation, One Standard*, 63.
8. Don Soifer, “Will Arizona Be Next? The Grand Canyon State Considers Reforming Bilingual Education,” *Lexington Institute Issue Brief*, November 30, 1998, [www.lexingtoninstitute.org/will-arizona-be-next-the-grand-canyon-state-considers-reforming-bilingual-education-?a=1&c=1136](http://www.lexingtoninstitute.org/will-arizona-be-next-the-grand-canyon-state-considers-reforming-bilingual-education-?a=1&c=1136).
9. James Crawford, *Bilingual Education: History, Politics, Theory and Practice*, 44–47.
10. Crawford, *Bilingual Education*, 53.
11. Linda Chavez, *Out of the Barrio* (New York: Basic Books, 1991), 19.
12. Crawford, *Bilingual Education*, 49–50.
13. Alfredo Castañeda, P. Leslie Herold, and Manuel Ramirez III, “A New Philosophy of Education,” *New Approaches to Bilingual, Bicultural Education* (Austin: Dissemination and Assessment Center for Bilingual Education, 1975), 3.
14. Castañeda, Herold, and Ramirez, “New Philosophy of Education,” 8.

## 1. RUNNING THE CALIFORNIA POLITICAL GAUNTLET

1. Amy Pyle, “Pressure Grows to Reform Bilingual Education in State,” *Los Angeles Times*, May 22, 1995, [www.onenation.org/1995/052295.html](http://www.onenation.org/1995/052295.html).
2. Pyle, “Pressure Grows to Reform Bilingual Education.”
3. Betsy Streisand, “Is It Hasta la Vista for Bilingual Ed?” *U.S. News & World Report*, November 24, 1997, 36–38, [www.usnews.com/usnews/news/articles/971124/archive\\_008331.htm](http://www.usnews.com/usnews/news/articles/971124/archive_008331.htm).

4. Gregory Rodriguez, "Speaking in Tongues: Divining Why California Latinos Voted as They Did on Proposition 227," *New Democrat*, July/August 1998, <http://oneration.org/0798/0798.html>.
5. "English Language in Public Schools, Proposition 227—Full Text of the Proposed Law," *Voter Guide*, 1998, [www.oneration.org/fulltext.html](http://www.oneration.org/fulltext.html).
6. "English Language in Public Schools."
7. Gregory Rodriguez, "Cause without Rebels," *LA Weekly*, August 15, 1997, [www.oneration.org/1997/081597b.html](http://www.oneration.org/1997/081597b.html).
8. Ron Unz, "English Isn't Racism," letter to *La Opinion*, May 27, 1997, [www.oneration.org/unzletter.html](http://www.oneration.org/unzletter.html).
9. K. L. Billingsley, "Bilingual Education Targeted for Ballot," *Washington Times*, June 16, 1997, [www.oneration.org/1997/061697.html](http://www.oneration.org/1997/061697.html).
10. Nick Anderson, "Times Orange County Poll: Public Schools Deserve Good Grades, Most Say," *Los Angeles Times*, June 1, 1997, [www.oneration.org/lat060197.html](http://www.oneration.org/lat060197.html).
11. Robert B. Gunnison and Nanette Asimov, "Big Majorities in Poll Support Bilingual Limit: Shorter Transitions Advocated for Pupils Learning English," *San Francisco Chronicle*, December 9, 1997, [www.oneration.org/1997/120997.html](http://www.oneration.org/1997/120997.html).
12. Gunnison and Asimov, "Big Majorities."
13. Gunnison and Asimov, "Big Majorities."
14. Ron Unz, "Field Poll Results," English for the Children, [www.oneration.org/notes/121397.html](http://www.oneration.org/notes/121397.html).
15. Ron Unz, "A New Year's Resolution for California, English for the Children," <http://oneration.org/0198/010198.html>.
16. Phil Garcia, "Proposal Would Undercut Bilingual-Ed Foes," *Sacramento Bee*, January 8, 1998, <http://oneration.org/0198/010898a.html>.
17. Andrea Lampros, "Rush to Beat Vote on 227 May Be Too Little, Too Late," *Contra Costa Times*, April 22, 1998, <http://oneration.org/0498/042298e.html>.
18. "California Governor Pete Wilson Veto Message for SB 6," May 18, 1998, [www.languagepolicy.net/archives/wilson.htm](http://www.languagepolicy.net/archives/wilson.htm).
19. June Kronholz, "Californians to Vote in June on Ending Bilingual Education," *Wall Street Journal*, January 9, 1998, <http://oneration.org/0198/010998b.html>.
20. William Wong, "Bilingual Education: The Next Cultural War," *San Francisco Examiner*, January 30, 1998, <http://oneration.org/0198/013098c.html>.
21. Tanya Schevitz, "Students Hold March in Concord: Protestors Target Lack of Educational Access," *San Francisco Chronicle*, April 23, 1998, <http://oneration.org/0498/042398b.html>.
22. Tina Nguyen, "Harvard Panel Assails Bilingual Measure," *Los Angeles Times*, April 26, 1998, <http://oneration.org/0498/042698a.html>.
23. Pam King, "Bilingual Education Foes Make Their Cases," *Contra Costa Times*, April 30, 1998, <http://oneration.org/0498/043098e.html>.
24. John M. Broder, "Clinton Criticizes California Effort to Cut Bilingual Education," *New York Times*, May 3, 1998, [www.nytimes.com/1998/05/03/us/clinton-criticizes-california-effort-to-cut-bilingual-education.html](http://www.nytimes.com/1998/05/03/us/clinton-criticizes-california-effort-to-cut-bilingual-education.html).
25. Louis Freedberg, "Education Secretary Blasts Proposition 227," *San Francisco Chronicle*, April 28, 1998, <http://oneration.org/0498/042898e.html>.
26. Jim Newton, "Riordan Plans Ads in Spanish Backing Measure," *Los Angeles Times*, May 21, 1998, <http://oneration.org/0598/052198e.html>.
27. Phil Garcia, "Spanish-TV Mogul Funds Prop. 227 Foes," *Sacramento Bee*, May 22, 1998, <http://oneration.org/0598/052298d.html>.
28. "Review of Prop. 227 Campaign Spending," English for the Children, [www.oneration.org/finan.html](http://www.oneration.org/finan.html).
29. Garcia, "Spanish-TV Mogul Funds Prop. 227 Foes."
30. Sherri Annis, "Despite Massive Opposition Campaign, Proposition 227 Sweeps to Landslide Victory," English for the Children, [www.oneration.org/pr060598.html](http://www.oneration.org/pr060598.html).
31. "Review of Prop. 227 Campaign Spending."
32. "Review of Prop. 227 Campaign Spending."

## 2. LATINOS VERSUS LATINOS: THE ARIZONA LANGUAGE WAR

1. "Maria Escalante Mendoza, Statewide Chair, English for the Children of Arizona Campaign," English for the Children, [www.onenation.org/azcampaign.html#M](http://www.onenation.org/azcampaign.html#M).
2. Maria Mendoza, telephone interview by author, October 12, 2000.
3. Maria Mendoza, telephone interview.
4. Hector Ayala, interview by author, September 10, 2003.
5. Hector Ayala, interview.
6. Hector Ayala, interview.
7. Maria Mendoza, telephone interview.
8. Maria Mendoza, telephone interview.
9. Margaret Garcia Dugan, interview by author, November 25, 2000.
10. Jeff Alvarez, telephone interview by author, September 13, 2003.
11. Margaret Garcia Dugan, interview by author.
12. Maria Mendoza and Hector Ayala, "English Language Education for Children in Public Schools, AZ Prop 203," January 6, 1999, English for the Children, [www.onenation.org/aztext.html](http://www.onenation.org/aztext.html).
13. Mendoza and Ayala, "English Language Education for Children."
14. Mendoza and Ayala, "English Language Education for Children."
15. James Crawford, "English-Only vs. English-Only, a Tale of Two Initiatives: California and Arizona," under "Commentary" at *Proposition 203: Anti-Bilingual Initiative in Arizona*, 2000, [www.languagepolicy.net/archives/az-unz.htm](http://www.languagepolicy.net/archives/az-unz.htm)
16. Tony Paniagua, 6 p.m. News, KVOA/Channel 4, Tucson, August 14, 1998.
17. Tony Paniagua, 6 p.m. News.
18. Sarah Tully Tapia, "Rowdy Group Disrupts Anti-Bilingual Education Event," *Arizona Daily Star*, January 7, 1999, [www.onenation.org/9901/010799.html](http://www.onenation.org/9901/010799.html).
19. Channel 12 News, KPNX/Channel 12, Phoenix, January 6, 1999.
20. Karina Bland, "Report Faults Bilingual Ed: Data Suggest Kids' Grasp of English Insufficient for Regular Classrooms," *Arizona Republic*, February 2, 1999, [www.onenation.org/9902/020299c.html](http://www.onenation.org/9902/020299c.html).
21. Lisa Graham Keegan, "English Acquisition Services: A Summary of Bilingual Programs and English as a Second Language Programs for School Year 1997-8," *Report of the Superintendent of Public Instruction to the Arizona Legislature*, January 1999, cover letter.
22. Keegan, "English Acquisition Services," cover letter.
23. Keegan, "English Acquisition Services," 13-14.
24. Lori Baker, "Committee Looking at Improving Bilingual Ed," *Arizona Republic*, December 8, 1999, [www.onenation.org/9912/120899a.html](http://www.onenation.org/9912/120899a.html).
25. *Face the State*, KSAZ/Channel 10, Phoenix, February 7, 1999.
26. "What's New in Reclassification Research?" *The Southwest Comprehensive Center at the Center for the Education and Study of Diverse Populations* (New Mexico Highlands University, Rio Rancho, New Mexico, May 2000), presented to the A.R.S. 15-756 Task Force Members in June 2000.
27. Maria Leon, "Bill Threatens to Limit Bilingual Education," *El Independiente, South Tucson's English/Spanish Newspaper*, April 1998, accessed September 3, 2003, University of Arizona School of Journalism archives, <http://journalism.arizona.edu/search/node/archives>.
28. Don Soifer, "Will Arizona Be Next? The Grand Canyon State Considers Reforming Bilingual Education," *Lexington Institute Issue Brief*, November 30, 1998, [www.lexingtoninstitute.org/will-arizona-be-next-the-grand-canyon-state-considers-reforming-bilingual-education-](http://www.lexingtoninstitute.org/will-arizona-be-next-the-grand-canyon-state-considers-reforming-bilingual-education-)
29. Soifer, "Will Arizona Be Next?"
30. David Madrid, "Bilingual Education Bills in Duel," *Tucson Citizen*, March 26, 1999, [www.onenation.org/9903/032699b.html](http://www.onenation.org/9903/032699b.html).
31. Madrid, "Bilingual Education Bills in Duel."
32. Ruben Navarrete Jr., "Legislature's Lapse Leaves Bilingual Education to Voters," *Arizona Republic*, May 5, 1999, [www.onenation.org/9905/050599.html](http://www.onenation.org/9905/050599.html).

33. Paul Davenport, "Compromise on Bilingual Education Focuses on Parents' Rights, Study," *Associated Press*, May 4, 1999.

34. Ruben Navarrette Jr., "Sen. Lopez's Stance on Bilingual Education a Mystery," *Arizona Republic*, February 10, 1999, B2.

35. Jorge Amselle, "Ingles, Si: Hispanic Parents Want What's Best for Their Children—and the Country," *National Review*, September 30, 1996.

36. Lori Baker, "Stanford Achievement Test Scores by School District," *Arizona Republic*, July 2, 1998.

37. Baker, "Stanford Achievement Test Scores by School District."

38. Baker, "Stanford Achievement Test Scores by School District."

39. Chip Scutari, "Alhambra's Success Bucks Poverty Trend," *Arizona Republic*, September 21, 2001.

40. Ron Unz, "Encouraging English," e-mail to supporters, May 18, 2000.

41. Michael Barone, "The National Interest: In Plain English," *U.S. News & World Report*, May 29, 2000, 47.

42. David Leibowitz, "Please, Leave Teaching of Bilingual Education to Teachers," *Arizona Republic Online*, June 28, 2000, [www.onenation.org/0006/062800b.html](http://www.onenation.org/0006/062800b.html).

43. Johanna Haver, "Time to End Bilingual Education," *Arizona Republic*, June 12, 2000, [www.onenation.org/0006/061200.html](http://www.onenation.org/0006/061200.html).

44. Daniel Gonzalez, "Bilingual Schooling Targeted," *Arizona Republic*, June 28, 2000, A12.

45. Gonzalez, "Bilingual Schooling Targeted."

46. Elisa Bongiovanni, "Petitions Filed for Initiative to Dismantle Bilingual Education," Associated Press, June 27, 2000, [www.onenation.org/0006/062700.html](http://www.onenation.org/0006/062700.html).

47. Jacques Steinberg, "Increase in Test Scores Counters Dire Forecasts for Bilingual Ban," *New York Times*, August 20, 2000, [www.onenation.org/0008/082000.html](http://www.onenation.org/0008/082000.html).

48. "California Scores," *Wall Street Journal*, Editorial, August 23, 2000, [www.onenation.org/0008/082300a.html](http://www.onenation.org/0008/082300a.html).

49. "Bilingual Education Fails Test, Exposing Deeper Problem," *USA Today*, Editorial, August 28, 2000, [www.onenation.org/0008/082800f.html](http://www.onenation.org/0008/082800f.html).

50. Maria Mendoza, "Rep. Laura Knaperek Endorses Prop. 203, Proposes 'English for the Families' Act," *English for the Children of Arizona Project* Press Release, September 21, 2000, [www.onenation.org/0009/pr092100.html](http://www.onenation.org/0009/pr092100.html).

51. Hipolito R. Corella, "Bilingual Ed Foes Point to Calif. Scores," *Arizona Daily Star*, August 28, 2000, [www.onenation.org/0008/082800d.html](http://www.onenation.org/0008/082800d.html).

52. Corella, "Bilingual Ed Foes."

53. Don Soifer, "Test Scores Show Failure of Bilingual Ed," *School Reform News* 4, no. 10 (October 2000): 3.

54. Stephen Krashen, "Comments on Johanna Haver, *Structured English Immersion*," April 2003, [www.sdkrashen.com/articles/response\\_to\\_haver/index.html](http://www.sdkrashen.com/articles/response_to_haver/index.html).

55. Marilyn S. Thompson, Kristen E. DiCerbo, Kate Mahone, Jeff MacSwan, and Arizona State University, "¿Exito en California? A Validity Critique of Language Program Evaluations and Analysis of English Learner Test Scores," *Education Policy Analysis Archives* 10, no. 7 (January 25, 2002), <http://epaa.asu.edu/epaa/v10n7/>.

56. Kathleen Ingley and Daniel Gonzalez, "2 Additional Initiatives Face Lawsuits," *Arizona Republic*, August 16, 2000, [www.onenation.org/0008/081600.html](http://www.onenation.org/0008/081600.html).

57. Daniel Gonzalez, "Tribes Protest Prop. 203," *Arizona Republic*, October 14, 2000, [www.onenation.org/0010/101400.html](http://www.onenation.org/0010/101400.html).

58. Gonzalez, "Tribes Protest Prop. 203."

59. Daniel Gonzalez, "Indians Protest Push for English," *Arizona Republic*, October 13, 2000, [www.onenation.org/0010/101300.html](http://www.onenation.org/0010/101300.html).

60. Attorney General Janet Napolitano, "To the Honorable Jack Jackson, Chairman, Citizens Clean Elections Commission re: Application of Proposition 203 to Schools Serving the Navajo Nation" 101-006 (R00-062), February 15, 2001, 1, [www.azag.gov/sites/default/files/sites/all/docs/Opinions/2001/101-006.pdf](http://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2001/101-006.pdf).

61. Richard Ruelas, "American Way to Save Bilingual Ed," *Arizona Republic*, October 18, 2000, [www.onenation.org/0010/101800c.html](http://www.onenation.org/0010/101800c.html).
62. Arizona State University Law School Federalist Society Sponsored Debate, October 26, 2000, videotape of entire debate provided by ASU professor Jeff MacSwan to author.
63. Daniel Gonzalez, "Bilingual Education Gets Rebuke from State Voters," *Arizona Republic*, November 8, 2000, [www.onenation.org/0011/110800a.htm](http://www.onenation.org/0011/110800a.htm).
64. Gonzalez, "Bilingual Education Gets Rebuke."

### 3. RESISTANCE TO CHANGE IN NEW YORK AND COLORADO

1. Daniel Weintraub, "Unz Anti-Bilingual Ed Crusade Goes Nationwide," *Sacramento Bee*, December 24, 2000, <http://www.onenation.org/0012/122400a.htm>.
2. Weintraub, "Unz Anti-Bilingual Ed Crusade."
3. Weintraub, "Unz Anti-Bilingual Ed Crusade."
4. Weintraub, "Unz Anti-Bilingual Ed Crusade."
5. Jacques Steinberg, "Answers to an English Question: Instead of Ending Program, New York May Offer a Choice," *New York Times*, October 22, 2000, [www.onenation.org/0010/102200.html](http://www.onenation.org/0010/102200.html).
6. *New York Daily News*, "Bothered, Bewildered by Bilingual Ed," Editorial, July 18, 2001, [www.onenation.org/0107/071801c.htm](http://www.onenation.org/0107/071801c.htm).
7. Ron Unz, "Bilingual Education Lives On," *New York Times*, March 2, 2001, [www.onenation.org/0103/030201.htm](http://www.onenation.org/0103/030201.htm).
8. Michael R. Blood and Paul H. B. Shin, "Mayor Rips Push to Up Funding for Bilingual Ed," *New York Daily News*, December 22, 2000, [www.nydailynews.com/archives/news/mayor-rips-push-funding-bilingual-ed-article-1.892130](http://www.nydailynews.com/archives/news/mayor-rips-push-funding-bilingual-ed-article-1.892130).
9. Lynette Holloway, "Bilingual Program Overhaul May Be Scaled Back, Levy Says," *New York Times*, July 31, 2001, [www.nytimes.com/2001/07/31/nyregion/bilingual-program-overhaul-may-be-scaled-back-levy-says.html](http://www.nytimes.com/2001/07/31/nyregion/bilingual-program-overhaul-may-be-scaled-back-levy-says.html).
10. *New York Daily News*, "Bothered, Bewildered by Bilingual Ed."
11. John Tierny, "In Debate, Candidates Go against Type," *New York Times*, November 2, 2001, [www.onenation.org/0111/110201.htm](http://www.onenation.org/0111/110201.htm).
12. Cathy Cummins, "Pollster: Colorado Backs Curbs on Bilingual Teaching," *Rocky Mountain News*, June 4, 1998, [www.onenation.org/0698/060498af.html](http://www.onenation.org/0698/060498af.html).
13. *Rocky Mountain News*, "Warning from California: Could Colorado Follow California's Lead and Banish Bilingual Education? Our View: Yes, if Federal Officials Don't Reconsider their Intransigence," Editorial, June 6, 1998, [www.onenation.org/0698/060698f.html](http://www.onenation.org/0698/060698f.html).
14. *Rocky Mountain News*, "Warning from California."
15. Tustin Amole, "DPS Receives Federal Warning: School District Failing to Adequately Instruct Non-English Speaking Students, Report Says," *Denver Rocky Mountain News*, August 1, 1997, [www.onenation.org/1997/080197.html](http://www.onenation.org/1997/080197.html).
16. Louis Sahagun, "In Any Language, the Fight Is On over Bilingual Instruction," *Los Angeles Times*, April 16, 1998, [www.onenation.org/0498/041698.html](http://www.onenation.org/0498/041698.html).
17. Sahagun, "In Any Language."
18. Carlos Illescas, "DPS Bilingual Plan a Cause for Concern," *Denver Post*, February 28, 1999, [www.onenation.org/9902/022899c.html](http://www.onenation.org/9902/022899c.html).
19. Illescas, "DPS Bilingual Plan."
20. Illescas, "DPS Bilingual Plan."
21. Julie Jargon, "Language Barrier," *Denver Westword*, August 10, 2000, [www.onenation.org/0008/081000a.html](http://www.onenation.org/0008/081000a.html).
22. Eric Hubler, "Denver Schools Chief Forced Out," *Denverpost.com*, May 17, 2000, <http://extras.denverpost.com/news/news0517a.htm>.
23. Jargon, "Language Barrier."
24. Jargon, "Language Barrier."

25. Valerie Richardson, "Colorado Teacher Leads Push for English-Immersion Plan," *Washington Times*, June 19, 2000, [www.onenation.org/0006/061900.html](http://www.onenation.org/0006/061900.html).
26. Fred Brown, "Bilingual Ed Issue Won't Be on Ballot," *Denver Post*, July 11, 2000, [www.onenation.org/0007/071100.html](http://www.onenation.org/0007/071100.html).
27. Brown, "Bilingual Ed Issue Won't Be on Ballot."
28. Brown, "Bilingual Ed Issue Won't Be on Ballot."
29. Brown, "Bilingual Ed Issue Won't Be on Ballot."
30. Kathy Escamilla, Sheila Shannon, Silvana Carlos, and Jorge Garcia, "Breaking the Code: Colorado's Defeat of the Anti-Bilingual Education Initiative (Amendment 31)," *Bilingual Research Journal* 27, no. 3 (Fall 2003): 361, citing posting by Ron Unz at English for the Children website, [www.onenation.com](http://www.onenation.com).
31. Eric Hubler, "Bilingual Fray May Go to Ballot," *Denver Post*, June 20, 2001, [www.onenation.org/0106/062001a.htm](http://www.onenation.org/0106/062001a.htm).
32. Rita Montero, "Former Denver School Board Members Endorse Ballot Initiative Campaign to Dismantle Bilingual Education in Colorado," November 30, 2001, English for the Children, [www.onenation.org/0111/113001a.htm](http://www.onenation.org/0111/113001a.htm).
33. Montero, "Former Denver School Board Members."
34. John Sanko, "Bilingual-Education Flap a Step Closer to Ballot," *Denver Rocky Mountain News*, December 6, 2001, [www.onenation.org/0112/120601.htm](http://www.onenation.org/0112/120601.htm).
35. Escamilla, Shannon, Carlos, and Garcia, "Breaking the Code," 367.
36. Rita Montero and Jeanine Chavez, "Text of Colorado Initiative, English for the Children of Colorado," English for the Children, June 19, 2001, [www.onenation.org/fulltext.html](http://www.onenation.org/fulltext.html).
37. Montero and Chavez, "Text of Colorado Initiative."
38. *Wall Street Journal*, "Bilingual Balderdash," Review & Outlook, October 11, 2002, <http://online.wsj.com/article/0,,SB103430393280794076.djm,00.html>.
39. *Wall Street Journal*, "Bilingual Balderdash."
40. *Wall Street Journal*, "Bilingual Balderdash."
41. James Fulford, "Ron Unz Fails to Communicate," VDARE.com, August 1, 2002, <http://vdare.com/fulford/unz.htm>.
42. Eric Hubler, "Education Chief: Keep Bilingual Option," *Denver Post*, July 14, 2002, [www.ronunz.org/wp-content/uploads/2012/04/Denver\\_Post\\_2002-07-13\\_1.html](http://www.ronunz.org/wp-content/uploads/2012/04/Denver_Post_2002-07-13_1.html).
43. Nancy Mitchell, "Bilingual-Ed Foe Chides Unz's Remarks," *Rocky Mountain News*, July 18, 2002, [www.languagepolicy.net/archives/RMN6.htm](http://www.languagepolicy.net/archives/RMN6.htm).
44. Mitchell, "Bilingual-Ed Foe."
45. Mitchell, "Bilingual-Ed Foe."
46. Escamilla, Shannon, Carlos, and Garcia, "Breaking the Code," 374-75.

#### 4. BIG WIN IN MASSACHUSETTS

1. Rosalie Pedalino Porter, *American Immigrant: My Life in Three Languages* (New York: iUniverse, 2009), 425.
2. Porter, *American Immigrant*, 425.
3. Rosalie Pedalino Porter, e-mail to author, August 6, 2012.
4. Christine H. Rossell and Keith Baker, *Bilingual Education in Massachusetts: The Emperor Has No Clothes* (Boston: Pioneer Institute for Public Policy Research, 1996), 1.
5. Rossell and Baker, *Bilingual Education in Massachusetts*, 67, citing the U.S. Bureau of the Census, "The Foreign-Born Population in the U.S.," July 1993, 129; U.S. Bureau of the Census, 1990 Census; Statistical Abstract of the U.S., 1991, table 222; Massachusetts Department of Education, Individual School Report, October 1, 1992, tables 3, 4, 5.
6. Rossell and Baker, *Bilingual Education in Massachusetts*, 71, citing the annual October "Individual Schools Reports" and the Transitional Bilingual Education Report.
7. Editorial, "Language Barrier: Minorities Need Assimilation, Not Segregation," *Worcester Telegram & Gazette*, April 24, 1996, [www.onenation.org/1996/042496.html](http://www.onenation.org/1996/042496.html).
8. Rossell and Baker, *Bilingual Education in Massachusetts*, 160.

9. Rossell and Baker, *Bilingual Education in Massachusetts*, 6–7.
10. *Boston Globe*, “A Wise Vote in Any Language,” April 13, 1995, [www.onenation.org/1995/041395.html](http://www.onenation.org/1995/041395.html).
11. Rossell and Baker, *Bilingual Education in Massachusetts*, 1.
12. Rossell and Baker, *Bilingual Education in Massachusetts*, 202–3.
13. Muriel Cohen, “Teach in English, Urges New Book on Bilingual Education,” *Boston Globe*, May 19, 1996, [www.onenation.org/1996/051996.html](http://www.onenation.org/1996/051996.html).
14. Cohen, “Teach in English.”
15. Cohen, “Teach in English.”
16. Don Soifer, “Bilingual Ed Must Translate to Results,” *Boston Herald*, July 28, 2002, [www.lexingtoninstitute.org/bilingual-ed-must-translate-to-results](http://www.lexingtoninstitute.org/bilingual-ed-must-translate-to-results).
17. Jordana Hart, “Bilingual Classes Expected to Be Hot Issue Here,” *Boston Globe*, June 4, 1998, [www.onenation.org/0698/060498z.html](http://www.onenation.org/0698/060498z.html).
18. Hart, “Bilingual Classes Expected to Be Hot Issue Here.”
19. Carol McDonald, “Calif. Law Fuels Mass. Debate on Fate of Bilingual Education,” *Worcester Telegram & Gazette*, August 24, 1998, [www.onenation.org/0898/082498.html](http://www.onenation.org/0898/082498.html).
20. Jordana Hart, “Bilingual Students Excuses from Test,” *Boston Globe*, November 1, 1998, [www.onenation.org/1198/110198a.html](http://www.onenation.org/1198/110198a.html).
21. Don Soifer, “U.S. Senate, Massachusetts Consider Bilingual Ed Reform,” *Heartlander*, April 1, 2000, <http://news.heartland.org/print/11030>.
22. Rebecca Duran, “Massachusetts Legislators Debate Fate of Bilingual Education System,” *Boston University Daily Free Press*, January 12, 2000, [www.onenation.org/0001/011200.html](http://www.onenation.org/0001/011200.html).
23. Guy W. Glodis, “Current Bilingual Education Fails,” *Worcester, MA Telegram & Gazette*, January 27, 2000, [www.onenation.org/0001/012700.html](http://www.onenation.org/0001/012700.html).
24. Jordana Hart, “Protesters Assail Filing of Bill to End State Bilingual Education,” *Boston Globe*, January 12, 2000, [www.onenation.org/0001/011200b.html](http://www.onenation.org/0001/011200b.html).
25. Hart, “Protesters Assail Filing of Bill.”
26. Hart, “Protesters Assail Filing of Bill.”
27. Martin Finucane, “Bilingual Ed Proposal Brings Swift Criticism,” *Associated Press*, January 11, 2000, [www.onenation.org/0001/011100b.html](http://www.onenation.org/0001/011100b.html).
28. Shaun Sutner, “Bilingual Reform Facing Battle,” *Worcester Telegram & Gazette*, August 1, 2001, [www.onenation.org/0108/080101c.htm](http://www.onenation.org/0108/080101c.htm).
29. Sutner, “Bilingual Reform Facing Battle.”
30. Sutner, “Bilingual Reform Facing Battle.”
31. Sutner, “Bilingual Reform Facing Battle.”
32. Sutner, “Bilingual Reform Facing Battle.”
33. Izzy Lyman, “‘English for the Children’ Was ‘David v. Goliath’ Victory,” *Mass-News.com*, April 15, 2003, [www.massnews.com/2003\\_Editions/4\\_April/041503\\_rm\\_english\\_for\\_the\\_children.shtml](http://www.massnews.com/2003_Editions/4_April/041503_rm_english_for_the_children.shtml).
34. Scott S. Greenberger, “Bilingual Ed Loses Favor with Some Educators,” *Boston Globe*, August 5, 2001, [www.puertorico-herald.org/issues/2001/vol5n33/BilingEd-en.html](http://www.puertorico-herald.org/issues/2001/vol5n33/BilingEd-en.html).
35. Porter, *American Immigrant*, 427.
36. Porter, *American Immigrant*, 426.
37. Lincoln Tamayo, Rosalie Porter, and Christine Rossell, “An Initiative Petition for a Law: An Act Relative to the Teaching of English in Public Schools,” *English for the Children*, [www.onenation.org/matext.html](http://www.onenation.org/matext.html).
38. *Wall Street Journal*, “Bilingual Balderdash,” *Review & Outlook*, October 11, 2002, <http://online.wsj.com/article/0,,SB103430393280794076.djm,00.html>.
39. Richard Nangle, “Bilingual Ed Produces Stark Divide,” *Worcester Telegram & Gazette*, October 6, 2002, accessed July 19, 2012, [www.telegram.com/static/archives/index.html](http://www.telegram.com/static/archives/index.html).
40. Clive McFarlane, “Swift OKs Bilingual Ed Reform Bill,” *Worcester Telegram & Gazette*, August 7, 2002, <http://184.168.112.47/onenation/2002/08/07/swift-oks-bilingual-ed-reform-bill/>.
41. Samuel L. Blumenfeld, “Massachusetts Embraces English,” *WorldNet Daily.com*, November 8, 2002, [www.freerepublic.com/focus/news/784961/posts](http://www.freerepublic.com/focus/news/784961/posts).

42. *Wall Street Journal*, “Bilingual Balderdash.”
43. Porter, *American Immigrant*, 428–29.
44. Ron Unz, “Liberal Massachusetts and Conservative Colorado,” *Writings and Perspectives*, November 8, 2002, <http://ronunz.org/2002/11/08/liberal-massachusetts-and-conservative-colorado>.

## 5. UNDER ATTACK

1. Arizona State University Law School Federalist Society–sponsored debate, October 26, 2000, videotape of entire debate provided by Jeff MacSwan to the author.
2. Sheri Annis, “Clinton Administration Legal Analysts Conclude Prop. 227 Is Fully Constitutional,” May 4, 1998, English for the Children, [www.onenation.org/pr050498.html](http://www.onenation.org/pr050498.html).
3. Annis, “Clinton Administration Legal Analysts.”
4. Charles Legge, District Judge, “Order Denying Motion for Preliminary Injunction,” Case name: *Valeria G. et al. v. Pete Wilson et al.*, July 15, 1998, [www.onenation.org/legge.html](http://www.onenation.org/legge.html).
5. Sheri Annis, “Federal Judge Backs Proposition 227, Implementation to Begin on Aug. 2nd,” July 15, 1998, English for the Children, [www.onenation.org/pr071598.html](http://www.onenation.org/pr071598.html).
6. “Court Ruling Upholding Proposition 227 Ensures That Public Schools Teach Students English by Teaching them *in English*,” *Pacific Legal Foundation*, October 2002, accessed October 6, 2003, [www.pacificlegal.org/CaseSearch](http://www.pacificlegal.org/CaseSearch).
7. *Sacramento Bee*, “State Teachers Association Loses Challenge to Portion of Proposition 227,” September 15, 1999, [www.usc.edu/dept/education/CMMR/NEWS/SacBee\\_Sept15\\_99.html](http://www.usc.edu/dept/education/CMMR/NEWS/SacBee_Sept15_99.html).
8. *Sacramento Bee*, “State Teachers Association Loses Challenge.”
9. *Sacramento Bee*, “State Teachers Association Loses Challenge.”
10. Jill Kerper Mora, “Proposition 227 Lawsuits against Teachers Challenged—and for Good Reason,” *San Diego State University*, updated October 21, 2002, <http://coe.sdsu.edu/people/jmora/CTA227Lawsuit.htm>.
11. Ron Unz, “Prop. 227 Wins Again: No New News,” e-mail from Ron Unz to supporters, August 31, 2001, [www.ronunz.org/2001/08/31/prop-227-wins-again-no-new-news/](http://www.ronunz.org/2001/08/31/prop-227-wins-again-no-new-news/).
12. Matt Sebastian, “Appeals Court Backs Right to Sue Teachers for Not Teaching in English,” *Contra Costa Times*, August 30, 2001, [www.onenation.org/0108/083001.htm](http://www.onenation.org/0108/083001.htm).
13. “9th Circuit Upholds Proposition 227 English Language Requirement,” Case Name: *California Teachers Association v. State Board of Education, No. 99-56784, Your School and the Law* 31, no. 23 (December 19, 2001), [www.onenation.org/0112/121901a.htm](http://www.onenation.org/0112/121901a.htm).
14. “Opinion of Bill Lockyer, Attorney General, Anthony S. Da Vigo, Deputy Attorney General,” Office of the Attorney General, State of California, February 25, 2000, <http://ag.ca.gov/opinions/pdfs/99-802.pdf>.
15. James Crawford, “English-Only vs. English-Only: A Tale of Two Initiatives: California and Arizona,” 2000, [www.languagepolicy.net/archives/203-227.htm](http://www.languagepolicy.net/archives/203-227.htm).
16. *Contra Costa Times*, “San Jose Schools Ruled Exempt from Prop. 227,” December 18, 1998, [www.languagepolicy.net/archives/CCT21.htm](http://www.languagepolicy.net/archives/CCT21.htm).
17. *Contra Costa Times*, “San Jose Schools Ruled Exempt from Prop. 227.”
18. *Contra Costa Times*, “San Jose Schools Ruled Exempt from Prop. 227.”
19. Samuel Casey Carter, *No Excuses: Seven Principals of Low-Income Schools Who Set the Standard for High Achievement* (Washington, DC: The Heritage Foundation, 1999), 23–26.
20. Ron Unz, “A Witness Protection Program for the California State Board of Education?,” February 20, 2002, [www.onenation.org/0202/022002a.html](http://www.onenation.org/0202/022002a.html).
21. “State Board Clarifies Regulations on Prop 227,” *California State Board of Education Policy Update*, March 21, 2002.
22. Ron Unz, “English for the Children in California and Massachusetts,” e-mail to supporters, April 26, 2002.



23. Ken Noonan and Mark Wyland, "Bringing English to State's Schools," *San Diego Union-Tribune*, May 9, 2002.

24. Johanna Haver, "Time to End Bilingual Education," *Arizona Republic*, June 12, 2000, [www.onenation.org/0006/061200.html](http://www.onenation.org/0006/061200.html).

25. Sarah Tully Tapia, "English Push Is Working in Calif.," *Arizona Daily Star*, October 18, 2000, [www.onenation.org/0010/101800e.html](http://www.onenation.org/0010/101800e.html).

26. Sheri Annis, "English for the Children Enforcement Project: Oceanside Unified Denounced by CA Department of Education for Doubling Immigrant Test Scores, Defended by Prop. 227 Author Ron Unz," English for the Children, Press Release, October 3, 2000, [www.onenation.org/0010/pr100300.html](http://www.onenation.org/0010/pr100300.html).

27. Sherry Parmet, "Oceanside Defends English Immersion," *San Diego Union-Tribune*, October 24, 2000, [www.onenation.org/0010/102400b.html](http://www.onenation.org/0010/102400b.html).

28. Christine H. Rossell, "The Near End of Bilingual Education," *Education Next* 3, no. 4 (Fall 2003): 49.

29. This timeframe was based on classroom research conducted by Christine Rossell over decades of visiting ESL classrooms and talking to ELLs who were playing at a computer because they no longer needed the intensive ESL that other students in the class were receiving. Almost all of these students had been in the United States for at least two years and stated that they could understand almost everything their teachers were teaching them by the middle of their first year, often mentioned as the Christmas break.

30. Rossell, "The Near End of Bilingual Education," 48.

31. Rossell, "The Near End of Bilingual Education," 49.

32. Laurie Olsen, "Reparable Harm: Fulfilling the Unkept Promise of Educational Opportunity for California's Long Term English Learners," *CaliforniansTogether.org*, 2010, 15, [www.californianstogether.org](http://www.californianstogether.org).

## 6. CLOSING THE "LOOPHOLES"

1. Daniel González, "Arizona Win Encourages Bilingual-Ed Opponents," *Arizona Republic*, November 20, 2000, [www.onenation.org/0011/112000a.htm](http://www.onenation.org/0011/112000a.htm).

2. González, "Arizona Win Encourages Bilingual-Ed Opponents."

3. Daniel González, "Bilingual-Ed Supporter: Defy Prop. 203," *Arizona Republic*, November 9, 2000, [www.onenation.org/0011/110900.htm](http://www.onenation.org/0011/110900.htm).

4. Anne Ryman, "Keegan to Allow Bilingual Teaching," *Arizona Republic*, January 10, 2001, [www.onenation.org/0101/011001.htm](http://www.onenation.org/0101/011001.htm).

5. Ryman, "Keegan to Allow Bilingual Teaching."

6. Ryman, "Keegan to Allow Bilingual Teaching."

7. Ryman, "Keegan to Allow Bilingual Teaching."

8. Hipolito R. Corella, "Keegan Says She'll Enforce Prop. 203," *Arizona Daily Star*, January 11, 2001, [www.onenation.org/0101/011101b.htm](http://www.onenation.org/0101/011101b.htm).

9. Ryman, "Keegan to Allow Bilingual Teaching."

10. Ron Unz, "Above the Law in Arizona?," *National Review Online*, January 12, 2001, English for the Children, [www.onenation.org/0101/011201.htm](http://www.onenation.org/0101/011201.htm).

11. Ryman, "Keegan to Allow Bilingual Teaching."

12. Corella, "Keegan Says She'll Enforce Prop. 203."

13. Maria Mendoza and Hector Ayala, "English Language Education for Children in Public Schools," Arizona Proposition 203, January 6, 1999, [www.onenation.org/aztext.html](http://www.onenation.org/aztext.html).

14. Salvador Gabaldón, "Prop. 203 Won't Banish Bilingual Ed," *Arizona Daily Star*, November 26, 2000, [www.onenation.org/0011/112600a.htm](http://www.onenation.org/0011/112600a.htm).

15. Mendoza and Ayala, "English Language Education for Children in Public Schools."

16. Joe Eddie Lopez, "Bilingual Education Waivers," e-mail to author et al., September 4, 2001.

17. Mendoza and Ayala, "English Language Education for Children in Public Schools."

18. Mendoza and Ayala, "English Language Education for Children in Public Schools."

19. Mary Bustamante and Dina Doolen, "Bilingual Ed: Fight Goes On," *Tucson Citizen*, July 9, 2001, [www.onenation.org/0107/070901.htm](http://www.onenation.org/0107/070901.htm).

20. Sara Thorson, "A Year Later: Schools Grapple with English Immersion Law," *State Press*, April 2, 2002, [www.statepress.com/global\\_user\\_elements/printpage.cfm?storyid=226786](http://www.statepress.com/global_user_elements/printpage.cfm?storyid=226786).

21. AEA Exclusive: At the Capitol Special, "A Visit with Jaime Molera: An Inside Look at the Man and His Mission," *AEA Advocate*, October/November 2001, 15.

22. AEA Exclusive, "A Visit with Jaime Molera," 15.

23. Mendoza and Ayala, "English Language Education for Children in Public Schools."

24. Arthur H. Rotstein, "Tucson Educators Tell Lawmakers of Steps Planned to Comply with Prop 203," Associated Press, July 24, 2001, [www.onenation.org/0107/072401.htm](http://www.onenation.org/0107/072401.htm).

25. Rotstein, "Tucson Educators Tell Lawmakers of Steps Planned."

26. Robert Robb, "Activist Judge, Vague Laws Trump Our Elected Officials," *Arizona Republic*, September 9, 2001, accessed October 7, 2010, <http://pqasb.pqarchiver.com/azcentral/offers.html>.

27. Rosalie Pedalino Porter, Introduction to "The Cost of English Acquisition Programs," *READ Perspectives: Arizona Department of Education English Acquisition Cost Study 8* (Fall 2001): 6.

28. Chip Scutari, "Former Lawmaker Seeks Schools Post," *Arizona Republic*, March 19, 2002.

29. Scutari, "Former Lawmaker Seeks Schools Post."

30. Scutari, "Former Lawmaker Seeks Schools Post."

31. Maria Mendoza, "English for the Children of Arizona Leaders Endorse Tom Horne, Oppose Jaime Molera in Race for State Superintendent of Schools," press release, English for the Children of Arizona, July 16, 2002, [www.ronunz.org/wp-content/uploads/2012/04/English\\_for\\_the\\_Children\\_of\\_Arizona\\_2002-07-16\\_1.html](http://www.ronunz.org/wp-content/uploads/2012/04/English_for_the_Children_of_Arizona_2002-07-16_1.html).

32. *Horizon* KAET transcript, August 19, 2002, accessed October 13, 2010, [www.azpbs.org/arizonahorizon/archives.php](http://www.azpbs.org/arizonahorizon/archives.php).

33. Mel Meléndez, "Molera Backs District on Its Spanish Ban," *Arizona Republic*, September 27, 2002, [http://azbilingualed.org/AABE%20Site/Bilingual%20Education%20in%20the%20News\\_files/molera\\_backs\\_district\\_on\\_its\\_spa.htm](http://azbilingualed.org/AABE%20Site/Bilingual%20Education%20in%20the%20News_files/molera_backs_district_on_its_spa.htm).

34. "Primary Results Offer Unpleasant Surprises; Our Stand: Good Folks Ushered Out," *Arizona Republic*, September 11, 2002, accessed December 27, 2010, <http://pqasb.pqarchiver.com/azcentral/offers.html>.

35. Joseph Guzman, "Learning English," *Education Next*, Fall 2002, 64–65.

36. "Superintendent Tom Horne Announces New Guidelines for Implementing English Immersion Instruction for Arizona Children," Arizona Department of Education News Release, December 17, 2002.

37. "Superintendent Tom Horne Announces New Guidelines."

38. Jennifer Sterba, Jonathan Higuera, and Barrett Marson, "Bilingual Waivers Restricted," *Arizona Daily Star*, February 14, 2003.

39. Mary Ann Zehr, "New Arizona Chief Clamps Down on Bilingual Rules," *Education Week*, February 26, 2003.

40. Zehr, "New Arizona Chief Clamps Down on Bilingual Rules."

41. Zehr, "New Arizona Chief Clamps Down on Bilingual Rules."

42. Ignacio Ibarra, "English-Only OK for Border Students," *Arizona Daily Star*, April 9, 2003.

43. Ibarra, "English-Only OK for Border Students."

44. Ibarra, "English-Only OK for Border Students."

45. Ibarra, "English-Only OK for Border Students."

## 7. FROM POLITICAL IMPASSE TO THE U.S. SUPREME COURT

1. *Lau v. Nichols*, 414 U.S. 563 (1974).

2. Senior District Judge Alfredo Marquez, “Conclusions of Law,” 1238\*1238 Lau Resource Issue #6 and #7, *Miriam Flores, individually and as a parent of Miriam Flores, a minor child, et al., Plaintiffs, v. State of Arizona, et al., Defendants*, January 24, 2000, 14.

3. Chip Scutari, “What Price English? Budget Crisis Complicates Bilingual Funding Fight,” *Arizona Republic*, November 15, 2001, [www.onenation.org/0111/111501.htm](http://www.onenation.org/0111/111501.htm).

4. Scutari, “What Price English?”

5. “Background Motion for Post-judgment Relief,” Judge Marquez’s Order for a Cost Study, U.S. District Court, District of Arizona, January 24, 2000.

6. Sjoberg Evasheck, Consulting, LLC, “Executive Summary,” *The Arizona Department of Education English Acquisition Program Cost Study—Phases I through IV*, May 2001, 2.

7. “READ Institute Provides First Comprehensive Study of Program Costs for Non-English-Speaking Students,” The Institute for Research in English Acquisition and Development, Washington, May 16, 2001.

8. Chip Scutari, “English at What Cost?” *Arizona Republic*, May 23, 2001, [www.onenation.org/0105/052301a.htm](http://www.onenation.org/0105/052301a.htm).

9. Sarah Auerback, “New Law May Break Long Deadlock in Arizona’s ELL Court Case,” *ELL Outlook*, March 3, 2006, [www.coursecrafters.com/ELL-Outlook/2006/mar\\_apr/ELLOutlookITIArticle4.htm](http://www.coursecrafters.com/ELL-Outlook/2006/mar_apr/ELLOutlookITIArticle4.htm).

10. Auerback, “New Law May Break Long Deadlock.”

11. Susan Carroll, “Judge Seeks End to Education Impasse by Jailing Governor and GOP Leaders,” *Arizona Republic*, November 1, 2005, [www.azcentral.com/families/education/articles/1101flores01.html?&wired](http://www.azcentral.com/families/education/articles/1101flores01.html?&wired).

12. Carroll, “Judge Seeks End to Education Impasse.”

13. Carroll, “Judge Seeks End to Education Impasse.”

14. Kathy Scott, “Judge’s Ruling Insults ELL Students in Nogales,” *Nogales International*, January 26, 2006, accessed April 21, 2006, [www.nogalesinternational.com](http://www.nogalesinternational.com) (archives no longer available).

15. Scott, “Judge’s Ruling Insults ELL Students in Nogales.”

16. Janet Napolitano, “State Must Find Way to Help Our Kids Learn English,” *Arizona Republic*, March 5, 2006, [www.azcentral.com/arizonarepublic/viewpoints/articles/0305napolitano0305.html](http://www.azcentral.com/arizonarepublic/viewpoints/articles/0305napolitano0305.html).

17. Arizona Senate Research Staff, *Flores vs. Arizona, Arizona State Senate Issue Paper*, August 27, 2008, 3–4.

18. “Arizona Historical Background: Flores ELL Case,” *Access Quality Education: Arizona Litigation*, Teachers College, Columbia University, updated July 2010, [www.schoolfunding.info/states/az/lit\\_az.php3](http://www.schoolfunding.info/states/az/lit_az.php3).

19. Robert Robb, “A Legal Leap into Neverland: Latest English-Learner Ruling Defies Logic, Translation,” *Arizona Republic*, March 28, 2007.

20. Robb, “A Legal Leap into Neverland.”

21. “Supreme Court to Hear Arizona ELL Case,” *Education Week*, January 9, 2009.

22. Pat Kossan, “Court Eases Rules on English Learner Program,” *Arizona Republic*, June 25, 2009.

23. Kossan, “Court Eases Rules.”

## 8. IMPLEMENTING STRUCTURED ENGLISH IMMERSION

1. Maria Mendoza and Hector Ayala, “English Language Education for Children in Public Schools,” Arizona Proposition 203, January 6, 1999, English for the Children, [www.onenation.org/aztext.html](http://www.onenation.org/aztext.html).

2. “House Bill 2064,” Arizona House of Representatives, Forty-Seventh Legislature, Second Regular Session, 2006, 7–8.

3. “House Bill 2064,” 7–8.

4. “House Bill 2064,” 7–8.

5. Minutes of the Meeting of the Arizona ELL Task Force, September 21, 2006.

6. Minutes of the Meeting of the Arizona ELL Task Force, September 21, 2006.
7. Minutes of the Meeting of the Arizona ELL Task Force, October 24, 2006.
8. Minutes of the Meeting of the Arizona ELL Task Force, November 30, 2006.
9. Minutes of the Meeting of the Arizona ELL Task Force, March 10, 2011.
10. Minutes of the Meeting of the Arizona ELL Task Force, March 10, 2011.
11. Minutes of the Meeting of the Arizona ELL Task Force, March 10, 2011.

## 9. CHARGES OF DISCRIMINATION

1. Lauren Gambino, "Survey Change Likely Means More ELL Students," Cronkite News Services, April 1, 2011, [www.tucson Sentinel.com/local/report/040111\\_ell\\_students/survey-change-likely-means-more-ell-students/](http://www.tucson Sentinel.com/local/report/040111_ell_students/survey-change-likely-means-more-ell-students/).
2. Gambino, "Survey Change Likely Means More ELL Students."
3. Gambino, "Survey Change Likely Means More ELL Students."
4. Sal Gabaldón, e-mail to the author, February 12, 2012.
5. Miriam Jordan, "Arizona Grades Teachers on Fluency," *Wall Street Journal*, April 30, 2010, <http://online.wsj.com/article/SB10001424052748703572504575213883276427528.html>.
6. Jordan, "Arizona Grades Teachers on Fluency."
7. Pat Kossan, "Arizona Teacher Accent Scrutiny Halted to Avoid Lawsuit," *Arizona Republic*, September 12, 2011, [www.azcentral.com/news/articles/2011/09/12/20110912arizona-teacher-accent-scrutiny-halted.html](http://www.azcentral.com/news/articles/2011/09/12/20110912arizona-teacher-accent-scrutiny-halted.html).
8. Don Soifer, "Feds' Arizona Investigation about Adults, Not Children," *Lexington Institute*, issue brief, September 30, 2011, [www.lexingtoninstitute.org/feds-arizona-investigation-about-adults-not-children?a=1&c=1136](http://www.lexingtoninstitute.org/feds-arizona-investigation-about-adults-not-children?a=1&c=1136).
9. Robert Linquanti and Judith Wilde, "Identification: Guidelines," *Issues in Defining and Assessing English Language Proficiency*, Presentation to the Arizona Department of Education Task Force ARS 15-756, Phoenix, April 4-5, 2000.
10. Ida Rose Florez, "Do the AZELLA Cut Scores Meet the Standards? A Validation Review of the Arizona English Language Learner Assessment," *Civil Rights Project*, University of California, July 2010, 4.
11. Robert Linquanti and Judith Wilde, "What's New in Reclassification Research," *Issues in Defining and Assessing English Language Proficiency*, Presentation to the Arizona Department of Education, Southwest Comprehensive Center, Center for the Education and Study of Diverse Populations, New Mexico Highlands University, Rio Rancho, New Mexico, Phoenix, April 4-5, 2000.
12. Christine Rossell, Abstract to "Nothing Matters? A Critique of the Ramirez, et al. Longitudinal Study of Instruction Programs for Language-Minority Children," *Bilingual Research Journal* 16, nos. 1 and 2 (Winter/Spring 1992): 184.
13. Ida Rose Florez, "Do the AZELLA Cut Scores Meet the Standards?," 2-16.
14. Florez, "Do the AZELLA Cut Scores Meet the Standards?," 16.
15. "Arizona English Language Learner Assessment," Technical Manual, Harcourt, 2007, 4.
16. Sal Gabaldón, e-mail to author.
17. Christine Rossell, "To Arizona English Language Task Force," memorandum, May 11, 2011.
18. Eugene Garcia, "State's Education of English Learners in Woefully Inadequate," *Arizona Republic*, October 5, 2012, [www.azcentral.com/arizonarepublic/opinions/articles/2012/10/04/20121004states-education-english-inadequate.html](http://www.azcentral.com/arizonarepublic/opinions/articles/2012/10/04/20121004states-education-english-inadequate.html).

## 10. THE FEDERAL ROLE

1. Committee on Education and the Workforce, House of Representatives, One Hundred Sixth Congress, First Session, "Examining the Bilingual Education Act," hearing held in Washington, DC (June 24, 1999), Serial No. 106-50, printed for the use of the Committee on Education and the Workforce, 4, <http://commdocs.house.gov/committees/edu/hedcew6-50.000/hedcew6-50.htm>.
2. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 5.
3. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 6–7.
4. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 21.
5. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 9–10.
6. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 18.
7. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 11–12.
8. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 22.
9. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 19.
10. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 13.
11. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 12–13.
12. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 29.
13. Committee on Education and the Workforce, "Examining the Bilingual Education Act," 29.
14. Don Soifer, executive summary to "Bilingual Education: An Annual Report," *Lexington Institute*, January 2002, [www.unz.org/Pub/LexingtonInstitute\\_SoiferDon-2002jan-00001](http://www.unz.org/Pub/LexingtonInstitute_SoiferDon-2002jan-00001).
15. Don Soifer, "Bilingual Education," 4–6.
16. Sjoberg Evashenk Consulting, LLC, "Creighton Elementary School District Bilingual Education Program—Kindergarten through Grade 8 Cost Worksheet, 2000–2001 School Year," *The Arizona Department of Education: English Acquisition Program Cost Study—Phases I through IV*, May 2001, III-13, <http://ceousa.org/READ/ADECostStudy.pdf>.
17. Sjoberg Evashenk Consulting, "Creighton Elementary School District Bilingual Education Program," II-C-4.
18. Sjoberg Evashenk Consulting, "Creighton Elementary School District Bilingual Education Program," II-C-14.
19. Don Soifer, "Bilingual Education," 1–2.
20. Don Soifer, "Bilingual Education," 2.
21. Heather MacDonald, "The Bilingual Ban That Worked," *City Journal* 19, no. 4 (Autumn 2009), [www.city-journal.org/2009/19\\_4\\_bilingual-education.html](http://www.city-journal.org/2009/19_4_bilingual-education.html).
22. Don Soifer, "English Language Learners and NAEP: Progress through Inclusion," *Lexington Institute*, March 2012, [www.lexingtoninstitute.org/library/resources/documents/Education/ELLandNAEP.pdf](http://www.lexingtoninstitute.org/library/resources/documents/Education/ELLandNAEP.pdf).
23. Willona Sloan, "Coming to Terms with Common Core Standards," *ASCD Info Brief* 16, no. 4 (December 2010), [www.ascd.org/publications/newsletters/policy-priorities/vol16/issue4/full/Coming-to-Terms-with-Common-Core-Standards.aspx](http://www.ascd.org/publications/newsletters/policy-priorities/vol16/issue4/full/Coming-to-Terms-with-Common-Core-Standards.aspx).
24. Rhoda Coleman and Claude Goldenberg, "The Common Core Challenge for ELLs," *Principal Leadership*, February 2012, [www.nassp.org/tabid/3788/default.aspx?topic=The\\_Common\\_Core\\_Challenge\\_for\\_ELLs](http://www.nassp.org/tabid/3788/default.aspx?topic=The_Common_Core_Challenge_for_ELLs).

ROWMAN &  
LITTLEFIELD

# Glossary

**Angoff Method.** A system that developers of tests use to determine the passing percentage (cut scores) for a test. Experts examine the test items and then predict how many minimally qualified candidates would answer each item correctly. The average of the judges' predictions for a test question becomes its "predicted difficulty." The Arizona English Language Learner Assessment (AZELLA) and, earlier, the Stanford English Language Proficiency test (SELP) were developed using this method.

**Apredna.** A standardized, norm-referenced test in the Spanish language given to Spanish-speaking ELLs in place of the Stanford 9 (SAT-9).

**Arizona Department of Education (ADE).** A branch of the Arizona state government, headed by the Arizona superintendent of public instruction, who oversees the K–12 public schools in Arizona, in accordance with the state's constitution. The people of Arizona elect the state superintendent to a four-year term. He or she may serve no more than two terms.

**Arizona English Language Learner Assessment (AZELLA).** The official Arizona standards-based measurement administered to all students identified as having a primary home language other than English (PHLOTEs). The AZELLA is the sole measure used to identify, place, and reclassify ELLs according to their English proficiency. The test is divided into four subgroups: listening, reading, writing, and speaking. The assessment includes multiple choice, constructed response, short answer, and extended response items. All students are classified from low to high as follows: pre-emergent, emergent, basic, intermediate, and proficient.

**Arizona Instrument to Measure Standards (AIMS) Test.** Arizona's state-mandated examination that is administered to Arizona students in grades three through eight and grade ten to measure their progress in mathematics, reading, writing, and, most recently, science. The test is based on the Arizona state standards, which defines what a student should be learning each year. The AIMS test results are used with other measures to rate all Arizona schools.

**ASPIRA.** A Puerto Rican activist group, supported by the Puerto Rican Legal Defense and Education Fund, that won a suit against the New York City Board of Education in 1972. This led to the ASPIRA Consent Decree in 1974, which requires bilingual education be provided to Hispanic ELLs. It justified the placement of all children with Spanish surnames into bilingual classes whether they were ELLs or not. A lawsuit initiated by Latino parents in 1995 brought attention to this situation and resulted in a decision by the schools' administration to end the practice of placing students in bilingual education based solely on their Hispanic surnames.

**bilingual education.** An instructional program that uses two languages, of which one is English. The programs can be divided into two types: (1) "early exit," "short-term," or "transitional" bilingual education (TBE), in which the students progress from instruction mostly in the native language to instruction totally in English over a period of at least three years; and (2) "late-exit," "two-way immersion," or "dual-language," in which students receive instruction over several years in what may or may not be their native language and English for the purpose of becoming fully bilingual.

**Bilingual Education Act of 1968.** Known also as Title VII, this law was introduced in 1967 by Texas senator Ralph Yarborough and signed into law by President Lyndon B. Johnson on January 2, 1968, as an amendment to the Elementary and Secondary Education Act. It was the first piece of federal legislation to deal with the educational needs of students limited in English. It has provided school districts with federal funds, in the form of competitive and later formula grants, to establish educational programs specifically for English language learners (ELLs).

**Carnegie Corporation research project "Double the Work."** A project completed in 2007 that has dealt with the challenges that secondary English language learners (ELLs) face in attempting to meet grade-level academic expectations while still acquiring English.



**consent decree, or consent order.** The final judgment regarding a voluntary agreement between both sides of a civil lawsuit in return for withdrawing the original criminal charge.

**content areas.** The main academic subjects taught in a school. They include English/language arts, geography, history, science, health, technology, and world languages.

**cost study of English language acquisition programs.** A study to ascertain how much it costs to educate an English language learner (ELL). Generally, this involves in-depth analyses of current programs for ELLs, how much they have cost, and whether they are successful.

**Discrete Skills Inventory (DSI).** A sequential grouping of English language skills that provides a guide for the teaching of grammatical foundations, respective of grade level, as required by the Arizona K–12 English Language Proficiency Standards. In addition, the DSI is fundamental to meeting Arizona’s Language Arts Academic Standards.

**Elementary and Secondary Education Act (ESEA) of 1965.** A law passed in 1965 as a part of President Lyndon B. Johnson’s “War on Poverty.” Its purpose has been to provide equal access to education and to establish high standards and accountability. The law authorizes federally funded education programs that the states administer. The U.S. Congress reauthorized the ESEA as the No Child Left Behind Act (NCLB) in 2001; President George W. Bush signed NCLB into law on January 8, 2002.

**empirical evidence.** Data acquired by means of observation and/or experimentation that justifies a belief in the truth or falseness of a particular claim.

**English as a second language (ESL).** English instruction specifically for students whose first language is other than English. This may or may not involve some use of the native language and is taught generally during specific school periods.

**English dominant.** A description of people who speak English more easily and fluently than any other language.

**English language development (ELD).** The process by which students learn English, usually in isolation, rather than combined with content-area instruction.

**English language learner (ELL).** A student with a home language other than English who has been identified as having limited English language

skills, based usually on how that student performed on an English proficiency test. The states differ as to whether or not other assessments may be used in addition to or in place of the proficiency test.

**English proficiency test for K–12 students** . An assessment of students' English ability. Generally, it is divided into subtests that evaluate listening, reading comprehension, writing, and speaking skills separately. The speaking segment is often administered one-to-one; the other segments, in a large group setting. The tests vary in difficulty with each state having its own system for classifying and reclassifying students. Thus, it is not possible to use this measure to compare one state's results, such as its reclassification rate, to that of another state.

**Equal Educational Opportunities Act (EEOA) of 1974.** A federal law that prohibits discrimination against faculty, staff, and students, including the racial segregation of students. It requires school districts to take action to overcome barriers to students' equal participation.

**fluent English proficient (FEP).** The level at which a student scores proficient in listening, speaking, reading, and writing in English on an acceptable English proficiency test or its equivalent.

**group B weight.** A formula system used in Arizona for providing extra funding to schools for each ELL as well as other individuals who need services beyond what is normally available. In accordance with Arizona law, the schools receive a percentage increase of the already-established per-student state funding.

**Institute for Research in English Acquisition and Development (READ).** A project that began in 1989 for the purpose of initiating research on effective programs for immigrant children and distributing that information to schools. From fall 1993 to 2001, READ published *READ Perspectives*, a scholarly magazine that offered articles, generally research based, regarding immersion and bilingual education under the leadership of Rosalie Pedalino Porter. In 2000, READ became affiliated with the Center for Equal Opportunity (CEO) in Washington, DC

**Lau v. Nichols.** An important case that was settled in San Francisco in 1970 and eventually was decided by the U.S. Supreme Court in 1974. The ruling did not mandate native language instruction for English language learners (ELLs) but did broaden the rights of ELLs nationwide so they would receive instructional accommodation from that time forward.

**limited English proficient (LEP).** A student who has been identified as lacking in English skills because his or her home language is other than English. Since 2001, many educators and government agencies have replaced the term *LEP* with *English language learner (ELL)*.

**mainstream classroom.** A classroom for regular students, as opposed to a class exclusively for ELLs or students in special education.

**mobility rate.** The rate at which students enroll late and/or exit early during the school year.

**National Assessment of Educational Progress (NAEP).** Assessments and comparisons of what American students know and can do in mathematics, reading, science, writing, U.S. history, geography, the arts, economics, and civics. Beginning in 2014, students will be assessed in the areas of technology and engineering literature as well. The tests are administered to students in the fourth, eighth, and twelfth grades throughout the United States.

**National Conference of State Legislatures (NCSL).** A bipartisan non-governmental organization, established in 1975, that serves state legislatures by providing research and other services.

**national origin discrimination.** Treating people unfavorably, for example, in the workplace, because of their national origin or association with organizations connected with that ethnic group. The charge can be made on behalf of the spouses and friends of those in a particular ethnic group as well as those assumed to be of that background, whether they are in actuality (Title VII of the Civil Rights Act of 1964).

**national percentile rank score.** A score that represents the percentage of scores that are the same or lower. For example, a test score that is the same or greater than 50 percent of the scores of people taking the test is said to be at the fiftieth percentile rank. This term has been used to interpret scores on standardized tests such as the Stanford 9 (SAT-9).

**native language instruction.** Instruction in the student's first or home language.

**No Child Left Behind Act of 2001 (NCLB).** The reauthorization of the Elementary and Secondary Education Act of 1965 that includes Title I, the federal aid program for disadvantaged students. NCLB favors standards-based education reform for the purpose of setting high standards and estab-

lishing measurable goals as a means of improving education outcomes. The standards are set by each state.

**Nonnative English speaker.** A person whose first language is other than English.

**Office for Civil Rights (OCR).** A U.S. Department of Education agency that investigates school programs to make sure they comply with federal civil rights requirements.

**Office of English Language Acquisition Services (OELAS).** Division in the Arizona Department of Education that oversees the education of English language learners (ELLs). At the federal level, it is called the Office of English Language Acquisition (OELA).

**phonemic awareness.** The ability to hear, identify, and manipulate individual sounds, that is, phonemes, in spoken words.

**primary home language other than English (PHLOTE).** The designation given to students who have been identified through a language survey of having a home language other than English. Generally, each PHLOTE is administered an English proficiency test to ascertain whether he or she qualifies for ELL instruction.

**reclassification rate.** The rate at which a state, a school district, or a school designates students previously identified as English language learners (ELLs) as “English proficient” or “fluent English proficient,” in which case they no longer receive ELL services.

**sheltered English immersion.** The methodology in which students identified as ELLs are taught English, based to a large degree on the mainstream curriculum, through carefully formulated English immersion techniques with little or no reliance on the native language.

**Stanford 9 Achievement Test (SAT-9).** A nationally norm-referenced standardized test, replaced recently by SAT-10, that compared each student’s performance on the test to the performance of a representative sample of public school students of the same age and grade throughout the country. The SAT-9 measured students’ ability in reading, language, and mathematics.

**structured English immersion (SEI).** A methodology for teaching ELLs that encompasses “sheltered English immersion” techniques while emphasizing instruction through structured, sequential lessons dealing specifically

with elements of the English language. The terms *structured English immersion* and *sheltered English immersion* are used interchangeably in the law.

**Title VI of the Civil Rights Act of 1964.** A law that prohibits discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance.

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD

# Index

- academic achievement, 162–163; Arizona, 22, 26–27, 32–34, 85, 89–90, 101, 103–105, 104, 138–140; California, 10, 34, 36–37, 38, 155–156; Colorado, 48–49; Massachusetts, 63–64; New York, 46
- adult English language instruction, 12, 14, 151
- AEA Advocate*, 87–88
- Alderson Reporting Company, 107
- Alhambra Elementary School District (AZ), 30, 33–34, 162; Andalucia Middle School, 95
- A Lot to Be Thankful For*, 31
- Alvarado, Sandra, 63
- Alvarez, Jeff, 24
- American Civil Liberties Union (ACLU), 13, 72
- American Institutes for Research (AIR), 4
- American Recovery and Reinvestment Act of 2009, 156–157
- Amigos School (MA). *See* bilingual education: dual-language
- Angoff method, 137, 138, 181
- Antonioni, Robert, 69
- Aprenada Test, 27, 85, 181
- Arizona *Candidates Statement Pamphlet*, 93
- Arizona Center for Law in the Public Interest, 100, 113, 132, 146
- Arizona charter schools, 93, 94, 101, 111, 115, 116, 117–118
- Arizona Citizens Clean Election Committee, 93
- Arizona constitution, 93, 108, 110; “equality clause,” 110
- Arizona Daily Star*, 85
- Arizona Department of Education (ADE), 115–116; *English Acquisition Cost Study*, 89–90, 96, 101–102, 109, 111, 183; Office of English Language Acquisition Services (OELAS), 116, 125–126, 131–132, 135, 146, 186
- Arizona Education Association (AEA), 87–88
- Arizona English Language (ELL) Immersion Laws, 95
- Arizona English Language Learner (ELL) Task Force members, xii, 7, 111, 113, 116–121, 123–125, 127–129, 137, 141–146, 147; Ayala, Hector (*See* English for the Children leaders); Baracy, John, 117; Bean, Mariela, 127; DiCello, Jim, 117, 127, 128; Dugan, Margaret Garcia (*See* English for the Children leaders); Garcia, Eugene, 11, 117, 146; Haver, Johanna, vii, viii, 117; Jerich, Jodi, 127; Joraanstad, Mark, 127; Klein, Eileen, 117, 127; Maguire, Alan (chairman), 117, 119, 127, 128–129, 142–143, 144, 145, 146, 161;

- Merritt, Karen, 116–117, 127; Pickard, Pam, 127; Rosas, Anna, 116–117, 127; Stollar, John, 127; Wallace, Dawn, 127, 129, 142
- Arizona English Language Learner Assessment (AZELLA), 115–116, 119–120, 122, 124, 126–127, 128, 132, 133, 136–142, 143–144, 146, 162, 181; cutoff scores, 122, 128, 136–138, 140, 142, 181; five performing levels, 138, 142; over- and under-identification, 133, 137; “Technical Manual,” 138
- Arizona House Education Committee, 89, 145
- Arizona Instrument to Measure Standards (AIMS), 29, 85, 92, 94, 102–103, 106–107, 120, 123, 126–127, 139–141, 182; classes and after-school tutoring, 103; study guides, 103
- Arizona Justice Institute, 100
- Arizona Legislature, 96, 99–100, 103, 114, 117, 122, 123, 146; House Bill 2002, 106; House Bill 2064, 106, 107–108, 110, 111, 113, 116, 119, 121, 129, 135, 139, 142, 147; Senate Bill 1033, 145–146; Senate Bill 1198, 106
- Arizona Open Meeting Law, 145
- Arizona Proposition 203, xii, xv, 7, 35, 36, 37, 39–42, 45, 71, 83–96, 100, 108, 111, 113, 115–117, 119, 129, 135, 141, 143, 159–160
- Arizona Republic*, 84, 91, 93–94, 102–134, 136
- Arizona Senate, 127, 147; Appropriations Committee, 101; Education Committee, 145
- Arizona Senate Education Committee, 145
- Arizona State Board of Education, 21, 111
- Arizona State University (ASU), 39, 41, 71
- Arizona Structured English Immersion (SEI) Models, 7, 111, 116, 118, 121–125, 129, 131, 132, 135, 146–147; compensatory instruction, 139; Discrete Skills Inventory (DSI), 122–123, 125, 183; endorsements, 116, 123, 125–126; English language development (ELD), 116, 117, 118, 119, 120–121, 122, 123–124, 125, 126, 131, 135, 136, 139–142, 143, 145, 146, 147, 161, 162, 163, 183; federal government complaints, 7, 131–142, 145–147; flexibility, 145–146, 147, 162; Glendale Union Model, 123–124; Home Language Survey, 132, 133–134, 136, 146, 186; identification, placement, and reclassification, 122; individual language learner plans (ILLPs), 124, 144; instruction, textbooks, materials, and assessments, 122; intervention services, 140–141; listening and speaking domains, 125; “Modification of Models,” 142, 145; monitoring, 131, 135–136; Phoenix Union Model, 123–124; phonology, morphology, syntax, lexicon, or semantics, 122; pilot programs, 124; reading and writing domains, 125, 140; resolution agreements, 131, 134, 136, 140–141, 147; scheduling and time allocations, 122; summer English language development (ELD) program, 126; time requirement, 125, 142, 146, 159; training of teachers and administrators, 115–116, 123, 125–126; verb tense study, 121, 125
- Arizona Supreme Court, 39–40
- Arizona teacher certification. *See* Arizona Structured English Immersion (SEI) Models: training of teachers and administrators
- Associated Press (AP), 16
- Avila, Rosemarie, 37
- Avondale Elementary School District (AZ), 22, 33
- Badillo, Herman, 1–2, 3
- Baker, Keith, 11, 61
- Barone, Michael, 34–35, 77
- Barrios, Jarrett, 64–65, 66
- Barto, Nancy, 145, 147
- Basurto, Leonard, 29, 37, 89
- Bee, Keith, 93
- Bell, Terrel, 3, 4
- Bennett, Ken, 102
- Bennett-Kew Elementary (CA), 76
- The Best Teacher in America*, 12
- bilingual education, vii, xi–xii, 1, 2, 5–6, 119, 149–153, 155, 159, 160, 161, 182,



- 184; dual-language, 2–3, 31, 33, 47, 55, 65, 67, 95, 96, 135, 151–152, 153, 160; professional development, 51, 154, 155; states' concerns regarding (*See specific ballot measures by state*); transitional (TBE), 60–62, 63, 182
- “Bilingual Education: An Annual Report,” 155
- Bilingual Education Act of 1968, 1–2, 3, 149–150, 157, 182; Title VII grants, 62–63, 103, 153–154, 164
- Bilingual Education in Massachusetts: The Emperor Has No Clothes*, 11, 61–62
- Bistrow, Rick, 142–143, 145
- Blanchard, Jay, 94–95
- Bloomberg, Michael, 48
- Blue Ridge Unified School District (AZ), 118
- Brandeis University (MA), 67
- BUENO Center for Multicultural Education at Colorado Univ.-Boulder, 51
- Bujanda, Martha, 150–151
- Bush, George W., 155
- Cabral, Antonio, 65
- California, University of, in Irvine, 17
- California Association of School Administrators, 13, 14
- California Bilingual Education Association (CABE), 13, 79; Annual 2001 Conference, 76–77
- California Civil Rights Initiative. *See* California Propositions: 209
- California English Learner Services, 81–82
- California Fair Political Practices Commission (FPPC), 18
- California Federation of Teachers, 13
- California History-Science Project at the University of California, Davis, 161
- California Latino Civil Rights Network, 72
- California Latino Superintendents' Association, 80
- California Propositions: **187**, 9–10, 12, 13, 13, 17, 69; **209**, 9–10, 12, 13, 17; **227**, viii, xi, 6–7, 12–19, 21, 23, 25, 29, 34, 37, 39, 42, 48, 49, 52–53, 55, 64, 65, 68, 71
- California rulings upholding Proposition 227, 74–76
- California's 800-point Academic Performance Index, 155–156
- California State Assembly, 9, 10, 13, 15–16; Bill 2711, 78–79
- California State Senate, 9, 76–77; Bill 6, 15–16; Latino Caucus, 77; Rules Committee, 76, 77
- California Teachers Association (CTA), 13, 14, 17, 19; *CTA et al. v. State Board of Education*, 73–75
- Callaghan, Alice, 11
- Carnegie Corporation research project, 120, 182
- Castaneda, Alfredo, 4, 5
- Castle, Michael, 150
- C'de Baca, Joseph, 52
- Center for Equal Opportunity, 10, 52, 72, 184
- Chavez, Linda, 10, 12, 52–53, 59, 72, 78
- Chicago La Raza*, 16
- Chicago Tribune*, 16
- Chicano movement, 53
- Chinese for Affirmative Action, 72
- Christian Science Monitor*, 16
- Civil Rights Act of 1964, 71, 131, 132, 185, 187; Title VI, 131, 134, 187; Title VII, 135
- Clark, Kevin, 120, 120–121, 122, 129, 143–144
- Clinton, Bill, viii, 17, 19, 49, 71
- Coleman, Lynn, 54
- Coleman, Rhoda, 156–157
- Collins, Tom, 91
- Colorado Amendment 31, 54–56, 57, 68
- Colorado constitution, 48, 52–54
- Colorado Education Association, 54
- Colorado State Board of Education, 54
- Colorado Supreme Court, 53, 54
- Committee for Fairness to Children and Teachers (MA), 67
- Common Core State Standards (CCSS) Initiative, 156–157
- Congress of Hispanic Educators, 49
- Connerly, Ward, 9
- Contra Costa Times*, 78
- Cooper, Kelt, 103, 108, 112
- Cortes, Noemi, 134

- costs and funding: Arizona budget cost-saving measure, 139; federal grant funding, 1, 2, 103, 153–155, 164, 182; group B weight, 106, 164, 184; incremental per-student formulas, 101; under-funding, 107
- Council of Chief State School Officers, 156
- Crawford, James, 25, 75
- Creighton Elementary School District (AZ), 154
- Cruz, Adela Santa, 125, 135–136
- Cruz, Roberto, 51
- cultural democracy, 4–5
- Cummins, Jim, 5
- Dade County dual-language program. *See* bilingual education: dual-language
- Davis, Gray, 37, 76, 78
- Del Castillo, Ramon, 51
- Democratic Party, xi, 18
- Denver Public Schools (DPS) (CO), 48–50, 51–52, 53, 54; Board of Education, 50–52, 54; Hamilton Middle School, 52; West High School, 52
- Denver Rocky Mountain News*, 49, 55
- Denver’s Latino Education Coalition, 51
- “differentiated” teaching techniques, 121–122
- Doan, Analizabeth, 100
- Dominguez, Lorraine, 51
- dual-language. *See* bilingual education: dual-language
- Dugan, Margaret Garcia. *See* English for the Children leaders
- Duncan, Arne, 156
- Duncan, Tim, 67
- early childhood education, 137
- Eastin, Delaine, 10, 72, 79
- East Valley Tribune* (AZ), 94
- Economist*, 16
- Educational Alliance for the California School Boards Association, 13, 72
- Education Leaders Council, 87
- Education Next*, 80, 94
- Education Week*, 16
- Elementary and Secondary Education Act (ESEA), 1, 2, 5, 149, 152, 155, 183
- empirical evidence, 137, 183
- English as a second language (ESL), xi, 3–4, 26, 27, 28, 29–30, 41, 46–48, 80–81, 94, 123, 150, 154, 161–162, 183
- English for the Children ballot initiatives. *See specific state’s ballot measure*
- English for the Children leaders: Alvarez, Norma, 23–24, 30–31, 84, 86, 90, 96; Ayala, Hector, 22–23, 24, 26, 31–32, 32, 39, 86–87, 90, 92, 96, 127, 129, 152; Chavez, Jeanine, 53; Dugan, Margaret Garcia, 23, 24, 31–33, 41–42, 85, 86–87, 88, 90, 92, 95, 96, 97, 116–117, 119, 127, 128–129, 134, 135–136, 142; Escalante, Jaime, 12, 19; Mendoza, Maria, xii, 21–26, 30, 37, 83, 86–87, 90, 91–92, 96; Montero, Rita, 50, 52, 53–54, 56, 83; Porter, Rosalie Pedalino, xv, 10, 59–60, 61, 66, 67, 69, 81, 89, 120, 184; Rossell, Christine, xv, 11, 12, 61, 66, 80–81, 137, 143–144, 159; Tamayo, Lincoln Jesus, 66–67; Tuchman, Gloria Matta, 12, 19, 72; Unz, Ron (*See* Unz, Ron, national chairman of English for the Children); Vega, Fernando, 12, 19
- English language learners (ELLs): adequate yearly progress, 112; age and other factors, 163–164; all-school literacy programs, 163; cognitive-infrastructure theories, 146; immersion methodology, 18–19, 39; instructional models, 118; intimidation of parents, 151, 152; kindergarten, 34, 103, 122, 133, 137, 160, 162, 163; literacy, 4, 14, 16, 28, 52, 119–120, 138, 157, 160, 161, 163; low socioeconomic status (low SES), 139; mobility rate, 28, 39, 103, 119, 185; natural acquisition method, 143; over-identification, 133; reclassification, 34, 120, 122, 128, 136, 143–144, 161–162, 164–165, 184, 186; reduced class size and student/teacher ratios, 112, 162; structured, sequential method, 143, 162, 186; under-identification, 134
- English Opportunities for All (MA), 69
- English Plus (CO), 54

- English proficiency tests, 26, 28, 34, 86, 95, 103, 117, 122, 133, 134, 136–137, 138, 140, 144, 146, 160, 162, 163, 181, 183–184, 186; bandwidth of scores, 136; cutoff scores, 46, 95, 136–137
- English proficient. *See* “fluent English proficient”
- Equal Educational Opportunities Act (EEOA), 72, 99, 111, 112, 132, 184
- Erwin, Barbara, 84
- Escalante, Jaime. *See* English for the Children leaders
- Faltis, Christian, 119–120
- Farley, Joseph, 150, 153
- Flatten, Mark, 94
- Flores, et al., v. Arizona, et al.*, 99–100, 114, 132, 146; *Flores* consent order, 100–114, 116, 129, 132, 139, 142
- Flores, Miriam, 100, 107
- Florez, Ida Rose, 137
- “fluent English proficient” (FEP), 26, 138–140, 142, 143–144, 184
- Forked Tongue*, 10, 59
- Francis, Norbert, 119–120, 161
- Gabaldón, Sal, xv, 31, 31–32, 85–86, 89, 134, 135, 144–145
- Garcia, Eugene. *See* Arizona English Language Learner Task Force members
- Giuliani, Rudy, 46, 47, 48
- Glendale Union High School District (AZ), 162; Glendale High School, 23, 32, 88
- Glodis, Guy, 60, 63, 64–65, 68–69, 70
- Goddard, Terry, 109, 135
- Goldenberg, Claude, 134, 156–157
- Gonzalez, Daniel, 35
- Goodale, Doris, 145
- Goodling, Bill, 149, 154
- Goodman, Ken, 22
- Goodman, Ute, 22
- Grant, Michael, 92
- Gray, Linda, 89
- Green, Mark, 48
- group B weight. *See* costs and funding
- Guadalupe v. Tempe*, 71
- Guzman, Joseph M., 94
- Harcourt Assessments, 136, 138
- Harkin, Peter, 69
- Harvard College of Education, 67
- Harvard Educational Review*, 17
- Hatton, Sylvia, 151–152
- Herold, P. Leslie, 4
- Hersher, Mike, 76
- Hinojosa, Ruben, 151–152
- Hispanic dropout rate, 150
- Hispanic graduation rate in the Tucson Unified School District (AZ), 32
- Hobbs, Gregory (justice), Colorado Supreme Court, 53
- Hogan, Tim, 100, 101–102, 113, 132–133, 146, 147
- Honda, Mike, 15
- Hook, John, 32
- Horne, Tom, 91–97, 102, 106, 107, 116–117, 127; *Flores, et al., v. Horne*, 107–114, 132
- Hotz, Don, 118
- Hull, Jane, 87, 108
- Humboldt Unified School District (AZ), 124
- Huppenthal, John, 29, 127–129, 134, 136, 140, 142–143
- Hutto, Tommye, 74
- Ichinaga, Nancy, 76–77
- Ida, D. J., 48
- Institute for Research in English Acquisition and Development (READ), 59, 89–90, 101, 120, 184
- interpreters, 140
- Jackson, Jack, 40
- Jimenez, Pierre, 50
- Jones, Bill, 78
- Keegan, Lisa Graham, 26, 27, 84–85, 87, 89, 96, 100, 108
- Kennedy, Edward, 1–2, 67, 69, 155
- Kerry, John, 67
- Kossan, Pat, 113
- Kotterman, Penny, 93, 127
- Knaperek, Laura, 29–30, 37
- Krashen, Stephen, 5, 39
- Langan, Dan, 56
- Language Assessment Scales (LAS), 28

- Las Familias del Pueblo, 11  
 Latino/Latina Parents Association (MA), 63, 64  
 Latino/Latina Research & Policy Center at University of Colorado in Denver, 51  
*Lau vs. Nichols*, 3–4, 71, 99, 101, 184  
 Lefkowitz, Laura, 54  
 Leibowitz, David, 35  
 Levy, Harold, 47  
 Lexington Institute, 153  
 Lieberman, Joseph, 154  
 limited English proficient. *See* English language learners (ELL)  
 Lockyer, Bill, 75  
 Lopez, Joe Eddie, 26, 27, 29, 30–31, 31–32, 42, 84, 85–86, 89  
 Lopez, Rosie, 24, 30  
*Los Angeles Daily News*, 34  
 Los Angeles Unified School District, 72;  
 Ninth Street School (CA), 11
- MacSwan, Jeff, 71  
 Massachusetts Bilingual Education Commission, 60  
 Massachusetts Board of Education, 61, 63, 64  
 Massachusetts Comprehensive Assessment System (MCAS), 64, 65  
 Massachusetts English Plus Coalition, 64–65  
 Massachusetts Federation of Teachers, 64–65  
 Massachusetts Hispanic-American Chamber of Commerce, 68  
 Massachusetts Question 2, 66–70  
 Massachusetts, University of, in Amherst, 67  
 Mathews, Jay, 12  
*McLaughlin v. CA State Board of Education*, 75  
 Mejia, James, 52  
 Merrill, Bruce, 135  
 Messerly, Ronald, 102–103  
 Mexican American Legal Defense and Educational Fund (MALDEF), 39, 55, 72  
 Miller, John J., 78  
 Molera, Jaime, 87–88, 90–94  
 Moreno, Jose, 17  
 Morris, William, 100  
 Moskowitz, Irv, 49–50, 54  
 Mount Holyoke College (MA), 67  
 Movimiento Estudiantil Chicano de Aztlán (MEChA), 41  
 Mujeres Unidas y Activas, 72  
 Multicultural Education and Training Alliance (META), 72, 79  
 Murray, Linda, 75
- Napolitano, Janet, 40, 102–103, 106, 108–109, 110, 114, 116, 117, 127  
*Nation*, 16  
 National Assessment of Educational Progress (NAEP), 156, 157, 185  
 National Association of Early Childhood Specialists, 137  
 National Center for Research on Evaluation, Standards, and Student Testing, 137  
 National Coalition of Advocates for Students, 64–65  
 National Conference of State Legislatures, 101, 185  
 National Council of La Raza, 49  
 National Education Association (NEA), 54  
 National Governors Association Center for Best Practices, 156  
 national-origin discrimination, 132  
*National Review*, 78  
 National Science Foundation, 49  
 Native Americans, 40–41, 45, 51  
 Navarrette, Ruben, Jr., 30, 31, 32  
 New Mexico State University in Las Cruces, 73  
*Newsweek*, 79  
*New York Daily News*, 47–48  
*New York Post*, 78  
*New York Times*, 16, 36, 37, 39, 47, 79  
 Nixon, Richard, 3  
*Nogales International*, 103  
 Nogales Unified School District (AZ), 100–103, 104  
 Noonan, Ken. *See* Oceanside Unified School District (CA)  
 No-on-31, 54–56  
 Northeastern University (MA), 67  
 Northern Arizona University (NAU), 154

- O'Brien, Shannon, 68
- Oceanside Unified School District (CA),  
34, 35–37, 37, 38, 79–82, 120, 131;  
Mission Elementary School, 150
- Olson, Randall, 74–75
- Orange County Register*, 34, 78
- Orange County school board, 13
- Out of the Barrio*, 10
- Owens, Bill, 54–55, 69
- Pacific Legal Foundation, 73, 74
- Padres Unidos (CO), 49, 50
- Paige, Rod, 56
- Parents for Unity (CA), 72
- Pearson Assessments, 136
- Peck, Carol, 34
- Peña, Federico, 54
- Perenchio, A. Jerrold, 17–18
- Petrovic, John, 36
- Phoenix Union High School District (AZ),  
27
- Polanco, Richard, 77
- polls on public opinion: Arizona, 39, 41;  
California, 9, 14, 15, 19; Colorado, 48,  
54; Massachusetts, 68; New York, 48
- Porter, Rosalie Pedalino. *See* English for  
the Children leaders
- primary home language other than English  
(PHLOTE), 133, 134, 136, 181, 186
- psychometrics, 139
- Public Agenda*, 31
- Ramirez, Manuel, III, 4
- Ravitch, Diane, 47
- READ Institute. *See* Institute for Research  
in English Acquisition and  
Development
- READ Perspectives*, 89–90
- Reason Magazine*, 16
- Region One Education Service Center  
(TX), 151–152; dual-language  
programs (*See* bilingual education:  
dual-language)
- Republican Party, 9–10, 127; “religious  
right,” 93
- Reynolds, Gerald, 155
- Rice, Roger, 65
- Richmond Times Dispatch*, 34
- Riley, Richard F., viii, 17
- Riordan, Richard, 17, 19
- Robb, Robert, 89, 107
- Rocky Mountain News*, 49, 55
- Romero-Barcelo, Carlos, 150
- Romney, Mitt, 68
- Roosevelt Elementary School District  
(AZ), 32–33
- Rossell, Christine. *See* English for the  
Children leaders
- Rubio-Goldsmith, Raquel, 95
- Ruelas, Richard, 41
- Ruiz, Richard, 119–120
- Saharsky, Nicole A., 111
- Salmon, Matt, 35, 149–150, 152, 154, 157
- San Jose Mercury-News*, 64
- San Jose Unified School District (CA),  
75–76
- Santa Ana school board (CA), 37
- Schmidt, James, 62
- Scott, Kathy, 103
- Scottsdale Parent Council, 84
- Scribner, Kent, 32–33
- segregation, xii, 1, 7, 28, 32, 63, 118–119,  
125, 131, 141–142, 144, 146, 147, 159,  
160, 161–162, 184
- sheltered English immersion, 25, 28, 64,  
80–82, 159, 186–187
- Simmons College (MA), 67
- Simon, Bill, 78
- Sjoberg Evasheck Consulting, LLC, 101
- Smith, Mike, 134
- Snow, Catherine, 16
- Soifer, Don, xv, 37, 62–63, 136, 152
- Solomon, Ruth, 101
- Southwest Comprehensive Center for the  
Education and Study of Diverse  
Populations, 136–137
- Speaker of the Arizona House of  
Representatives v. Miriam Flores, et  
al.*, 107
- Srinivasan, Sri, 109, 110
- Stand and Deliver*, 12
- Stanford, Gully, 54
- Stanford English Language Proficiency  
Test (SELP), 132, 136
- Stanford 9 (SAT-9), 27, 33, 34, 35, 36–39,  
38, 85, 103–105, 181, 185, 186
- Starr, Ken, 107–108, 109

- State Press*, 92
- Steinberg, Jacques, 36
- structured English immersion (SEI), viii, xii, 6, 7, 25, 28, 80, 81–82, 88, 90, 96, 101, 103, 111, 115–116, 117–118, 120–124, 125–127, 129, 131, 132, 135, 138, 139–140, 143–144, 146, 147, 159, 162, 186–187
- Structured English Immersion: A Step-by-Step Guide for K–6 Teachers and Administrators*, viii
- Stryker, Pat, 55, 56
- Summer School on Wheels, 153
- Sunnyside Unified School District (AZ), 96
- Swift, Jane, 67, 69
- systematic phonics, 76, 118
- systemic, functional grammar*, 161
- Tancredo, Tom. *See* Tancredo-Chavez movement
- Tancredo-Chavez movement, 52–53
- television and radio coverage: “Face the State” (Fox channel 10 in Phoenix), 32; “Horizon” (KAET channel 8 in Phoenix), 92; “The Journalists’ Roundtable” (KAET Channel 8 in Phoenix), 94; National Public Radio, 16; “The Phoenix File” (KUTP channel 45 in Phoenix), 32–33; “6 PM News” (KVOA channel 4 in Tucson), 25
- Texas Assessment of Academic Skills (TAAS), 151
- Thier, Holli, 17
- Title I, 76, 139–140
- Title VII. *See* Bilingual Education Act 1968
- transitional bilingual education (TBE). *See* bilingual education: transitional (TBE)
- Tropiano, Delores, 32
- Tuchman, Gloria Matta. *See* English for the Children leaders
- Tucson Citizen*, 22
- Tucson Unified School District (AZ), 21–22, 29, 31, 32, 89, 96, 144
- United Coalition for the Education of Our Children, 79
- Univision Communications Incorporated, 17–18
- Unz, Ron, national chairman of English for the Children, vii–viii, xi, xii, xv, 6–7, 45–46, 69, 70; Arizona, 23–26, 34–42; California, 11–19; Colorado, 48, 53–57; Massachusetts, 59–60, 63, 64, 65–67, 68, 69–70; New York, 45–46, 47, 48
- USA Today*, 37, 79
- U.S. Constitution, 71
- U.S. Department of Education (DOE), 11, 131, 152; Office for Civil Rights (OCR), 155, 186
- U.S. Department of Justice (DOJ), Civil Rights Division, 50, 52, 132, 135–136
- U.S. federal courts: U.S. District (Tucson, AZ), 99–103; U.S. First Appellate District Appeals (San Francisco, CA), 75; U.S. Ninth Circuit Appeals (San Francisco, CA), 71, 73–74, 82, 106–111, 114; U.S. Southern District (Los Angeles, CA), 73
- U.S. federal judges: Baird, Lourdes, 73; Boochever, Robert, 74; Legge, Charles, 72, 73; Marquez, Alfredo, 99–102; Rafeedie, Edward, 74; Whyte, Ronald M., 75–76
- U.S. General Accounting Office (GAO), 155
- U.S. House of Representatives (HR), 1–2, 9, 53, 149–153; HR 2, 149–150, 154–155, 157; subcommittee of HR Committee on Education and the Workforce hearing, 149–153
- U.S. Supreme Court, 107–114; Alito, Samuel, 111–112; Breyer, Stephen G., 112–113; Ginsburg, Ruth Bader, 108, 112; Kennedy, Anthony, 109, 110, 111; Roberts, John, 110, 111; Scalia, Antonin, 108, 109, 110, 111; Souter, David, 108, 112; Stevens, John Paul, 112; Thomas, Clarence, 111
- Valeria G., et al., v. Wilson, et al.*, 72–73
- Vega, Fernando. *See* English for the Children leaders
- Villacres, Gerardo, 68
- Villaraigosa, Antonio, 13
- Vista school district (CA), 36–37

- vouchers, 93, 114
- waiver provisions of Unz initiatives, xii, 7, 12, 25, 36, 52, 55, 60, 68, 72, 75–76, 77, 78, 80, 81, 85–87, 91–92, 95–96, 155–156, 159
- Wall Street Journal*, 16, 37, 55, 68, 79, 135
- Washington Post*, 16, 79
- Washington Times*, 34
- Wegener, Dan, 32–33
- Weiers, Jim, 102, 107
- Weintraub, Daniel, 45
- Welchert and Britz, 54
- Weld, William, 11, 60, 61, 70
- Wellesley College (MA), 67
- Willey, Keven, 94
- Wilson, Pete, 9, 13, 15–16
- Wong, William, 16
- Wyland, Mark, 78–79
- Zajac, John, 94–95
- Zullinger, Sidney “Chip,” 51–52

ROWMAN &  
LITTLEFIELD

ROWMAN &  
LITTLEFIELD



## About the Author

**Johanna J. Haver** is a retired teacher with thirty-two years of classroom experience in the areas of German, Latin, reading, English, and English as a second language (ESL). She has taught English as a visiting teacher at a German “Gymnasium” for one year (1970 to 1971) and as a Phoenix Sister City teacher at a Japanese high school for two years (1987 to 1989).

Since 1996, she has written “My Turn” and community columns—mostly on education—for the *Arizona Republic*. She has authored the following: extensive reviews of five model Arizona English language acquisition programs as part of the 2001 *Arizona Department of Education English Acquisition Program Cost Study*; the book *Structured English Immersion: A Step-by-Step Guide for K–6 Teachers and Administrators* (Corwin Press, 2002); and “Arizona’s Glendale High School ELL Program,” *Language and Literacy for English Learners: Grades 7–12*, edited by Rosalie Pedalino Porter and Kevin Clark (Sopris West, 2004).

Johanna has a BA in German from the University of Wyoming and an MA in German from the University of Arizona. She became certified as a reading specialist and ESL teacher through postgraduate study at Arizona State University.