

Educational Justice Through Policy

The Unintended Consequences of Policy Decisions in the Education of Bi/Multilingual Learners

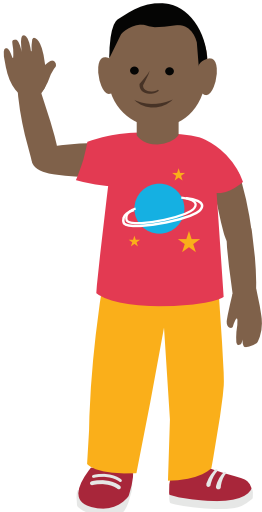


“Deslenguadas. Somos las del español deficiente. We are your linguistic nightmare, your linguistic aberration, your linguistic mestisaje, the subject of your burla. Because we speak with tongues of fire we are culturally crucified. Racially, culturally and linguistically somos huérfanos—we speak an orphan tongue” –Gloria E. Anzaldúa

Introduction

When Andrés attended his preschool graduation, he announced that when he grew up, he wanted to be a dad. He was a sweet boy full of curiosity and energy, and while his parents spoke Spanish to him at home, preschool was only available in English. Andrés was busy learning two languages at once, and he was already aware of the multilingual world around him, but his home literacy experiences were invisible at preschool. Then, when he started kindergarten, district staff felt that there was something wrong with him. Andrés had the knowledge, but his language skills appeared delayed, in both English and Spanish. Thus, he was recommended for autism and special education screenings.

This example, unfortunately, is not uncommon. Andrés spoke what Gloria E. Anzaldúa called “an orphan tongue.” His teachers automatically assuming he had a learning disability is part of the linguistic nightmare that many parents face when they bring their children to school, and it highlights some of the issues created by policies meant to support the education of bi/multilingual learners. This bulletin provides a historical overview of these policies, discusses some of the issues uncovered through research, and provides ideas from practitioners in the field who are facing similar challenges.



A Brief History of Language Policy

Based on Flores & García, 2017

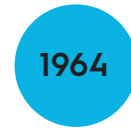
For the purpose of this bulletin, we will begin in 1968 with the passing of the Bilingual Education Act. But before we do this, let's recognize that bilingualism and multilingualism have always existed in what is today the United States. Colonization added to the linguistic landscape through the languages of enslaved African people and those of the colonizers, but ultimately eliminated a multitude of Indigenous and African languages. This history is complex and consequential. This bulletin, however, will focus on contemporary English learner (EL) policy.

Leading up to the passing of the Bilingual Education Act, not all proponents of bilingual education saw it as simply a program to educate children bilingually, but as part of a broader effort to bring about social justice for bilingual students. Some advocates saw bilingual education as a means to

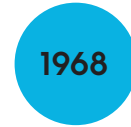
- Address racial inequalities
- Realize the promise of equal citizenship
- Improve self-esteem, resentment, and psychological withdrawal

The three different rationales above were not necessarily shared across all advocates and were at times contradictory to each other. Those seeing bilingual education as a means to address racial inequalities saw it as part of broader efforts to dismantle structural barriers faced by Latine communities. Those looking to bilingual education as a way to realize the promise of equal citizenship saw it as a way of providing Latine communities access to mainstream institutions without fundamentally transforming them. Finally, those seeking to improve bilingual students' self-esteem, resentment, and psychological withdrawal saw it as a way of fixing psychological damage and the cultural and linguistic deficiencies this damage produced. According to Flores and García, it is this third one that is the primary ideological foundation for the Bilingual Education Act.

As the legislation was introduced, politicians started to frame bilingual education as part of a campaign to unlock the full potential of bilingual children. However, Flores and García note that implied in this goal was the objective of fixing cultural and linguistic deficiencies of Latine children by building a "strong foundation" in Spanish they were said to lack. In this version of the story, poor bilingual students of color, in comparison to middle class white children, had limited language skills and did not have the capacity for abstract language. In other words, politicians moved the discussion away from one of social justice and redefined it as a language problem. Therefore, bilingual education became a language solution to a language problem. In the best cases, this thinking caused bilingual education to be seen as a safe space for bilingual students to feel proud of who they were. In the worst cases, the shift reaffirmed that monolingualism was the norm and that being bilingual was not. In other words, it allowed students to feel valued only by separating them from the rest. The separation transcended language, since many of these children were poor and Brown.



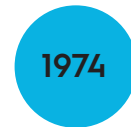
Civil Rights Act



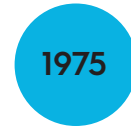
Bilingual Education Act



Bureau of Elementary and Secondary Education requires evidence for eligibility of language services



Lau v. Nichols



Office of Civil Rights requires Home Language Survey

As the Bilingual Education Act became law and funds were allocated, the Bureau of Secondary Education in 1971 required evidence, in the form of results of language tests in both English and the other language, to identify bilingual students who were eligible for language programs. Because of the remedial frame of the policy, schools had to both show that the students were “limited” enough in English to warrant access to the programs while having “sufficient proficiency” in Spanish to justify access to remedially oriented bilingual education programs. This was how the eligibility of services was codified into law.

In 1974, the Supreme Court Decision ruled on *Lau v. Nichols*, stating that simply providing the same facilities, textbooks, teachers, and curriculum for students who do not understand English violated Title VI of the Civil Rights Act of 1964. The following year, the Office of Civil Rights mandated the administration of a home language survey to identify students whose primary or home language was a language other than English to determine eligibility for language programs. This requirement further reinforced a dichotomous view of students: those with limited English proficiency in need of a special language program and those too proficient to justify any extra support. It is also at this point that the focus extended beyond bilingual education to all language programs, including English as a Second Language programs.

The process for identifying how “limited” bilingual students were in English became connected to standardized language assessments. At first, the discourse was that these students were semilingual, that is, that they knew two or more languages, but were limited in both. Eventually, the discourse shifted to bilingual students lacking academic language. According to Flores (personal communication, August 17, 2022), this was a product of the incentive to define “limited” as broadly as possible in order to ensure more students got access to bilingual education and/or other special language programs.

The purpose of reviewing the history of language policy is to help us understand how current policy came to be, along with the ideologies behind it. Decades later, our student Andrés faced the same deficit perspectives and assumptions that went into policy in the 1960s. The educators who screened him for kindergarten assumed Andrés had issues with language because he was bilingual, and that as a language learner he may also have academic deficits, which followed the historical framing of language policies. His scores were compared to monolingual students because they were the norm. His bilingualism was not.

Andrés was identified as an English learner (EL) and placed in an English-only, 4-year-old kindergarten program. After much advocacy, his parents moved him to a dual language program for kindergarten. Years later, Andrés became a long-term English learner (LTEL). Though this is not typically the case for LTELs who are typically framed as lacking “academic language” and placed into remediation throughout their entire schooling career, Andrés did well academically. His parents were bilingual and knew how to advocate for him, enlisting his pediatrician and others to request that his scores be compared to other bilingual and multilingual children, and not to monolingual speakers of either language.

But not all students have access to a team of professionals to help advocate for them. As educators, we wonder how these policies that help us support students like Andrés can also be responsible for the socially constructed identity of (as Anzaldúa calls us) racial, cultural, and linguistic orphans. In many cases, it is bilingual students’ educators who are their strongest supporters.

In the next sections, you will find issues related to eligibility, to LTEL status, to re-entry to the language program, and to deficit perspectives of underperformance. Each section has tools for teams of teachers to reflect on and to help them plan for advocacy.

The Issue of Eligibility

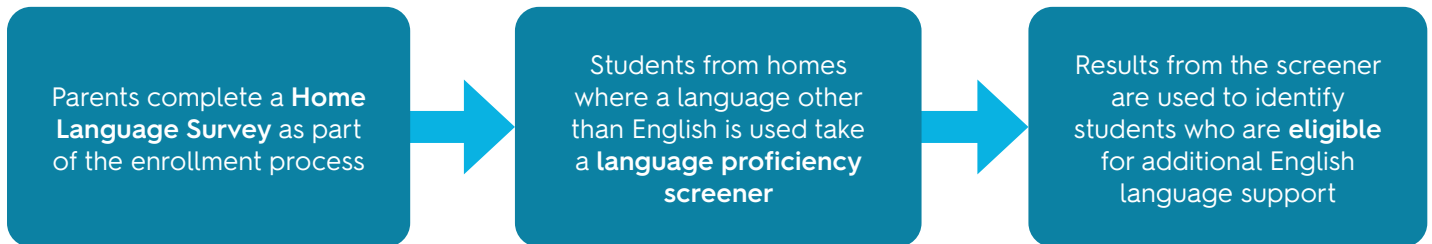
“One of our biggest concerns is how we determine a good evaluation and what instruments do we use [for identifying English Learners].”

—Pedro Ruiz, Director of Bilingual, ESL and World Languages Programs at Irvington Board of Education, Irvington, New Jersey



Dr. Pedro Ruiz

Dr. Ruiz is not alone in his concern for identifying ELs. In an upcoming article by Dr. Nelson Flores and Dr. Mark Lewis, a Pennsylvania educational leader also expressed concern about the identification of ELs, calling the issue one of “false positives.” According to federal guidance, the identification process goes like this:



Various obstacles can potentially crop up in the process described above. Sometimes, parents misunderstand the purposes of the **Home Language Survey** and complete it incorrectly, resulting in their children taking the English language screener unnecessarily (for example, children who speak only English or for whom English language support is not necessary).

Dr. Ruiz explained that the **language proficiency screener** is challenging. Over the last couple of decades, a higher focus on academic language has added to the challenge of language proficiency assessments. Educators often find that even students who do not speak a language other than English or who wouldn't benefit from a language program get scores that identify them as ELs. While eligibility can be determined through a screener, how you serve students can be informed by additional information beyond that assessment. Educators like Dr. Ruiz would like to see a suite of tools to help provide students with the best support and programming, rather than using the screener alone. “We collect a lot of data,” he explained. “How can we use that data to make better decisions?”

In reflecting on the process of eligibility, let's also revisit how we use the data and resources available to support students who are eligible for language programs and those who are not. One can think of labels as one indicator, but it is not the only one in identifying ways of supporting bi/multilingual students. We need policies that embrace bi/multilingualism. Once we develop that infrastructure, we can then begin to imagine and design ways to provide extra scaffolding for students officially classified as ELs in ways that are supportive rather than creating a deficit.

Leading Change

If you find yourself in a similar situation as Dr. Ruiz, here are two ideas to improve your process:

- *Collaborate with your community.* Having an understanding in your school community about the program and the supports it does and does not provide can help identify the students who would benefit the most from the program. Another important consideration is making sure families have information on the purpose of the program, so that they can speak to their children’s language practices and so that the process is transparent. Identifying school and community members who can help explain the rights and responsibilities involved in being part of the program can help bridge the gap of understanding policy.
- *Use data to inform your decisions.* Even when your formal eligibility criteria is based on a single score, using additional data to make decisions on placement and appropriate resources for students is not only useful, but critical in helping students succeed. Dr. Ruiz’s district collects data on academic achievement, language proficiency, literacy, and teacher input. This data can help make decisions for students who enter an EL program and also for those who may not be eligible, but who can still benefit from support. In doing this, it is important to
 1. Always follow your state guidelines.
 2. Clearly document and consistently execute procedures.

These two points are critical, because teacher bias or inconsistent execution of procedures can lead to discriminatory practices, which can lead to Office of Civil Rights and/or Department of Justice findings.

A Tool for Action

Program entry and exit procedures are set by the state and must be consistently executed in all schools. However, here is a tool you can use with your team to reflect on your local policies and practices around the services that your EL program offers:

1. What is our process for identifying ELs? Who knows about it? Who needs to learn more about it?

2. How accurately do we follow state and local processes? How often do we review data, including talking to teachers, to ensure children are where they need to be to receive the support they need?

3. Do we have a process for appealing eligibility and programming decisions? What is it? Who knows about it? How do our families learn about it?

4. How do we connect with our families in general? What supports do we offer to help them feel welcomed in our schools?

The Issue of Long-Term ELs (LTELs)

“The test...we get most students passing it in 4th and 5th grade, and then there is a pretty big jump in expectations between 5th grade and middle school. So, students may get close but not make it and then, they don’t get out until 8th grade.”

—Amber Kraus, EL Learning Services Coordinator at Abbotsford School District, Abbotsford, Wisconsin

What Ms. Kraus describes in her quote above is that the assessment gets more challenging in higher grades because the academic content is more complex. Additionally, the Every Student Succeeds Act (ESSA) asks states and districts to monitor LTELs to ensure they get support for their specific needs. Even without this policy, educators often highlight how ELs are held to higher academic language standards than non-ELs. We can make that claim by looking at performance on academic assessments (specifically, language arts). Large percentages of both non-ELs and ELs underperform on English language arts tests, but only ELs are required to also demonstrate English language proficiency. While the intention is good, Dr. Flores and Dr. Lewis found that education leaders thought that holding ELs to a higher academic standard was unfair. A leader in California noted how a student could be fluent in English, yet not do well academically. This is just what Ms. Kraus noted in her rural district in Wisconsin. “The increasing rigor of these English language proficiency standards and assessments,” explained Dr. Flores and Dr. Lewis, “has led to increasing numbers of students classified as LTELs.” While this is true, other factors need to be considered. For example, the quality of instruction, the implementation of language programs, and the socioeconomic status of students, among others, are strong predictors for performance on standardized academic assessments. Since language proficiency assessments have become increasingly aligned with academic standards over the years, it is not surprising that the aforementioned factors have contributed to the increase of students identified as LTELs.

For Ms. Kraus, Dr. Ruiz, and the leaders interviewed by Dr. Flores and Dr. Lewis, one of the main issues was that these students were not necessarily being well served by their continued classification as ELs. There is actually little evidence that continuing to segregate these students into separate remedial courses focused on English language development has been effective. Most concerning was students’ self-perception. Ms. Kraus commented that after taking the test for eight years, her students lose hope of ever passing it. For her, that is the challenge. This concern, then, calls for us to reframe the issue from one of capturing data on years in the program to how to support students in meaningful ways that meet their needs and in ways that lift them up rather than making them feel hopeless.

Leading Change

If your program has identified LTELs and you are wondering how to best support them, here are some ideas to lead change in this area:

- *Evaluate the quality of instruction, academic services, and access to advance coursework and extracurricular activities that students receive.* The continued evaluation of the educational opportunities offered to our bi/multilingual students can ensure the appropriateness for their needs and most importantly, that we do not create artificial or socially constructed barriers to their learning.
- *Build capacity for all teachers.* Provide professional development to all teachers to support students who are in the program but also those who are not in the program. At Abbotsford, Ms. Kraus provides ideas, insights, and support to all teachers during their monthly district meetings. Even 15-20 minutes a month, along with individual coaching, modeling, and consulting, counts when developing relationships and trust with colleagues!

A Tool for Action

This is a tool you can use for your team to reflect on your local policies and practices around LTELs:

1. What data is our district capturing about LTELs? Who are they? What are their stories? How is this data shared with teachers and families?

2. In which areas do our LTELs need help? How do these needs overlap with the needs of the general student population versus other ELs? How might this information shape the support we offer these students?

3. What are some ways to build capacity among our colleagues? In what areas do we need external expertise to complement existing knowledge and skills?

4. How might we serve LTELs differently? Programmatically? Academically? Linguistically?

The Issue of Exiting and Reentering the EL Program

What if instead of debating whether these students should be reentered into EL status, districts were provided with more guidance on developing a robust infrastructure for incorporating scaffolding across the curriculum in ways that ensured these students could be successful regardless of what their official classification might be without the need for remediation?

—Nelson Flores, Associate Professor at the Graduate School of Education at the University of Pennsylvania and Mark C. Lewis, Research and Evaluation Supervisor for the William Penn School District, Lansdowne, Pennsylvania

Educators worry about keeping students too long in the language program, but they are also concerned about students exiting the program too early. One Ohio district leader who participated in a research study with Dr. Flores and Dr. Lewis noted that students classified as ELs could test out based on the state English language proficiency assessment but remarked that these students could still struggle with meeting state academic standards. Neither the Abbotsford, Wisconsin nor the Irvington, New Jersey district have EL “re-entry” policies. In these districts, the exit policies require data beyond the score of the language proficiency assessment. In some cases, students who have exited the program do better than students who are bi/multilingual but who never received services. However, it is hard to determine if and how bi/multilingual students outside the program are being supported. This aligns with Dr. Flores and Dr. Lewis’s call for scaffolding students’ success rather than focusing on bringing the students back into the program.

While scaffolding success for all students sounds ideal, we acknowledge that support may be challenging without the funding that comes along with the designation. Both Dr. Ruiz and Ms. Kraus have focused efforts on professional development for all educators. Leaders who understand and support bi/multilingual students and who are aware of the potential impact of policies can help maintain professional development efforts. Dr. Ruiz offers access to district-developed professional development courses. For Ms. Kraus’ small district, the number of language specialists is small, so instead of creating full courses, she provides informal professional development. Ms. Kraus remarked that she asks her superintendent for time during each monthly district meetings and she makes space to share ideas, strategies, or approaches to scaffolding learning for bi/multilingual students.

Leading Change

As you decide how to build capacity for educators working with all bi/multilingual students, including those who were and those who were never part of the language program, consider these ideas:

- *Integrate your colleagues into your work with students.* While working directly with students can be satisfying and effective, this can be difficult at best and often impossible for districts with low numbers of language specialists spread across many schools or for districts with large numbers of students. Working with all teachers builds capacity and increases consistency in support for bi/multilingual students. It also creates a community of learners among teachers, which can help make changes in practice sustainable. Consider including in your practice direct work with both students and teacher colleagues.
- *Build consistency and depth over time.* One-time professional development is seldom transformational. Professional development can be powerful when the learning takes place over time, builds community with peers, and creates opportunities for reflection, application, and feedback. We invite language specialists to be the catalysts for learning together rather than the experts. Creating a plan for professional development and identifying resources can maximize time and build capacity, especially in districts where there are limited language specialists.

A Tool for Action

This is a tool you can use for your team to reflect on your local policies and practices around supporting all bi/multilingual learners:

1. What resources can we use to learn together as a school or as a district about language supports? What structures exist to disseminate these resources?

2. What new resources do we need? How do we stay up to date with current research and practice?

3. How do we make sure our learning is coherent and aligns to our goals as a school/district? How do we avoid getting distracted by trends and focus on learning that helps us fulfill our mission and vision for the education of bi/multilingual learners?

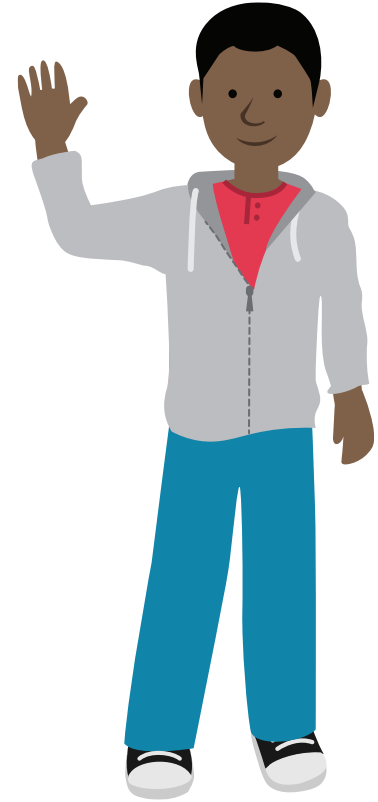
4. How do we ensure professional development is accessible and equitable for all adults in our school/district? How do we invite families and community stakeholders to be part of the learning in ways that are respectful and appropriate? How do we learn from them?

Moving Forward

The purpose of this bulletin is to bring into discussion language policies and associated practices and to interrogate their usefulness in the education of bi/multilingual learners. Knowing the history of these policies and associated practices is important for re-framing the conversation from what is required to what is possible, while understanding their original intention. Hopefully, it also helps caution against the unintended consequences of policies so that we can do better by our bi/multilingual students. We also hope that the voices from the field help you, the reader, realize you are not alone and that many schools and districts struggle with these issues. And through their stories, ideally you become inspired to take on new ideas and actions or share your own.

We have a lot of work to do, but collectively, we can advocate for the resources and the quality of education our children deserve, eventually creating racially, culturally, and linguistically just spaces for teaching and learning.

On a side note, Andrés is doing well. He will become a high school sophomore next year. His parents are excited that over time, he has become proud of being bilingual and bicultural. And in his teens, he has also become an emerging social justice advocate.



References Cited

- Flores, N. & García, O. (2017). A critical review of bilingual education in the United States: From basements and pride to boutiques and profit. *Annual Review of Applied Linguistics*, 37, 14-29. <https://doi.org/10.1017/S0267190517000162>
- Flores, N. & Lewis, M. C. (2022). “False positives,” “reentry programs,” and “long term English learners”: Undoing dichotomous frames in U.S. language education policy, *Equity & Excellence in Education*, 1-13. <https://doi.org/10.1080/10665684.2022.2047408>

Further Reading

If you want to read more about policy, we recommend these resources:

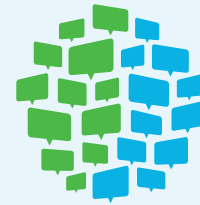
Be(com)ing an LTEL: Challenging policies and practices in the education of long-term English learners <https://wida.wisc.edu/about/news/becoming-ltel-challenging-policies-and-practices-education-long-term-english-learners>

Center on Standards, Alignment, Instruction and Learning (C-SAIL) <https://www.c-sail.org/>

Ensuring student success: Supporting bi/multilingual students after exiting English learner programming <https://wida.wisc.edu/about/news/ensuring-student-success-supporting-bimultilingual-students-after-exiting-english>

From False-Positives to Advocacy: Shifting Deficit Perspectives in the Identification of English Learners <https://wida.wisc.edu/about/news/false-positives-advocacy-shifting-deficit-perspectives-identification-english-learners>

Using active and former English learner data when creating a balanced picture of bi/multilingual students <https://wida.wisc.edu/about/news/using-active-and-former-english-learner-data-when-creating-balanced-picture>

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