

**INTRODUCTION TO BILINGUAL EDUCATION:
LEGAL ISSUES, TEXAS EDUCATION AGENCY
GUIDELINES, MODELS AND RESEARCH**

A TRAINING MODULE

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Table of Contents

INTRODUCTION

I. THE EVOLUTION OF BILINGUAL EDUCATION

- Early Beginnings
- Language Minority Students
- Limited English Speaking Ability [LESA]
- Limited English Proficient [LEP]
- English Language Learners [ELL]

II. STATE DEMOGRAPHICS

- Enrollment Trends [Overall]
- Enrollment Trends [Language Minority]
- Enrollment Trends [LEP]
- Grade Levels Impacted by Enrollment Growth
- Implications of Rapid Growth
- Teacher Diversity and Availability

III. BILINGUAL EDUCATION MANDATES

- Title VI of the Civil Rights Act of 1964
- Title VII of the Elementary and Secondary Education Act of 1968
- OCR National Origin Memorandum
- Lau vs. Nichols
- Equal Education Opportunity Act of 1974
- Lau Remedies
- Bilingual Education Legislation in Texas
- Civil Action 5281
- Senate Bill 477
- Title III

IV. STATE'S CURRENT POLICY, 19 TAC CHAPTER 89

- Policy and Implementing Regulations
- Definitions
- When is Bilingual Education or ESL required?
- Exceptions and Waivers
- Program Content; Method of Instruction
- Enrollment of Students
- Facilities and Classes
- Assignment of Teachers to a Program
- Compliance with Statute
- Language Proficiency Assessment Committees
- Evaluation

V. PROGRAM MODELS

- **Bilingual Education**
- **Dual Language Immersion**
- **ESL**

VI. THE TEXAS SUCCESSFUL SCHOOLS STUDY

- **Background**
- **Purpose**
- **Design**
- **Scope**
- **Criteria for Participation**
- **Findings**

VII. EXAMPLES OF NON COMPLIANCE CITATIONS

VIII. FREQUENTLY ASKED Q/A

APPENDIX

- **Senate Bill 477**
- **19 TAC Chapter 89. Subchapter BB**

REFERENCES

INTRODUCTION

This document, an *“Introduction to Bilingual Education: Legal Issues, Texas Education Agency Guidelines, Models and Research”* was developed as a training module as part of the LEP Student Success Initiative Grant of the Texas Education Agency for 2005-2006. Lead responsibility for production of the training module was commissioned to the Institute for Second Language Achievement (ISLA) at Texas A&M University—Corpus Christi. The Institute collaborated with the Advocacy Systems for Education of Cedar Park, Texas in the production of this training document.

The training module contains a multitude of information regarding how bilingual education evolved in the United States and Texas. This document provides: an overview of the mandates and legal issues associated with bilingual education and the education of language minority students, a section devoted to the Texas Education Agency guidelines that are currently in place, a description and findings of the *Texas Successful Schools Study: Quality Education for Limited English Proficient Students* (TEA, 2000), and information on the characteristics and features of program models that are required, or may be implemented within the framework of the state policies on educating the limited English proficient population in Texas public and charter schools. The module also includes sections on examples of noncompliance and frequently asked questions and answers, respectively. The training module is supplemented by a PowerPoint presentation with accompanying script for professional development and specific training of teachers, campus principals, other administrators, school board members and parents.

This publication is being shared with educators and administrators throughout the state as a leadership effort on the part of the Texas Education Agency and the Institute for Second Language Achievement at Texas A&M University—Corpus Christi. This document has been developed to assist them in capacity building efforts and implementation of bilingual education and English as a second language programs to address the linguistic and academic needs of limited English proficient students. In order to meet the challenging state content [TEKS] and student performance standards [TAKS] standards for all students, including the ever-increasing LEP population, Texas public and charter schools must ensure that no child is left behind in meeting these standards. This training module has been developed as a resource to assist in the teaching of, and learning by, language minority students in their efforts to acquire effective English proficiency. The module is intended to assist in teacher training, program design, implementation, and overall enhancement of developmentally appropriate language response programs for LEP students, be it a bilingual education, or English as a second language program, as may be required.

Questions on the publication: *Introduction to Bilingual Education: Legal Issues, Texas Education Agency Guidelines, Models and Research* may be directed to the Institute of Second Language Achievement at the Texas A&M University—Corpus Christi at 361-825-2198.

I. THE EVOLUTION OF BILINGUAL EDUCATION

Early Beginnings

This country has been referred to as “the melting pot” because of the continuous influx of immigrants since the landing at Plymouth Rock and the establishment of the Thirteen Colonies. Initially, the influx of immigrants was primarily from parts of Europe. As the number of immigrants grew, so did the fears of native-born Americans about the inability or unwillingness of these new immigrants to assimilate into the so-called Anglo-American culture. English was proposed as the national language by Noah Webster, who sought endorsement from the Supreme Court in 1831. His proposal was denied. Out of such concerns, the first English only movements surfaced, which politically contributed to restrictive immigration policies in the early 1900’s. (See website <http://www.sscnet.ucla.edu/aasc/unz/history.html>).

For children of parents who spoke a language other than English, getting an education in the early 1900’s and up to 1960, was very difficult, if not impossible. The method of instruction for the language minority students was English immersion, which has come to be known as the “sink or swim” approach. Under this method of instruction, students were held back until they mastered enough English to pass the courses of instruction in the curriculum. Texas school districts followed the national norm regarding the education of Mexican American children resulting in over-representation of these language minority students placed in mental retardation classes of special education, or dropping out of school. In the 1950s and 1960s, children (Mexican American) were placed in such classes, based on teacher determination and IQ testing and were programmed for an English-only remedial facility. The IQ tests administered were in English, requiring English language proficiency, which very few of the Mexican American children had. Even teachers were prohibited in the Texas Penal Code of 1925 from teaching in a language other than English. Any teacher violating the law could be fined, lose their teaching certificate, and/or be removed from office. This English only policy was repealed with the passage of the state law making bilingual education permissive in 1969. (Bernal, 1978) In Texas, corporal punishment continued to be administered to Mexican American children who were caught speaking Spanish in the classrooms, or the playground, even after the repeal of the English Only law in 1969.

The plight of language minority parents and students experienced some redress from a series of national and state laws/policies that focused on the language rights of language minority students and designation of a language minority group as a “protected class” under the Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution. A number of lawsuits were filed against states (example: U. S. vs. Texas) and school districts (example: Lau vs. Nichols) by civic organizations and legal advocacy groups as interveners on behalf of the language minority population. As a result of this litigation, the need and right to bilingual education became a national and state political and educational issue. The policies and laws which ensued evolved in response to federal court orders and summary judgments mandated of defendants for remedy to plaintiffs. The judicial, congressional and legislative history is detailed under Section III. BILINGUAL EDUCATION MANDATES starting on page 11 of this document.

Language Minority Students—Language Other Than English [LOTE]

The term language minority has been used for students who come from households where the language spoken or heard is other than English. According to the ethnic classification and distribution of a multi-lingual population in the United States, the U. S. Census and other federal reports compiled accept the number of language minority persons as different from the number of White and African American persons who are viewed as English-speaking. There have been challenges from African American advocacy groups that the nation's African American community-at-large has segments of its population that are also language minority, or multi-lingual, by virtue of the influx of immigrants from non-English speaking countries who are procedurally subsumed in the African American classification. When bilingual efforts first were embraced by the U. S. Office of Education as part of the Department of Health, Education and Welfare, the language minority student populations were referred to children with a language other than English and grouped under the acronym LOTE.

Limited English Speaking Ability [LESA]

The enactment of the Bilingual Education Act of 1968 gave birth to another classification of language minority students. This classification represented the student population who were limited in their English-speaking ability, and as a result, functioned at a lower level than children who were not limited in the English language. These students were classified as “limited English speaking ability” or LESA.

Limited English Proficient [LEP]

With subsequent amendments to Title VII, i.e., the Bilingual Education Act of 1968, a new term surfaced with regard to classification and reporting of students who had difficulty with the English language. This new term was “limited English proficient” and with it came still another acronym known as LEP. The term “limited English proficient” is not universally accepted because, according to segments of the professional bilingual educator and researcher communities, the descriptor “limited” is stigmatizing. In spite of continuous opposition to this classification, LEP is still the prevailing acronym in Title III of the No Child Left Behind Act of 2001, and the public policy on bilingual education in Texas since June 1981.

English Language Learner [ELL]

The term “English Language Learner” is a preference in some states and by some language minority educators, bilingual education advocacy groups, and researchers. It is not a formal classification, particularly in Texas, since it does not align within the policy framework of the state law. The trend appears to indicate that this term will be more pervasive when speaking of children from language minority backgrounds, who are having difficulty with the English language. For purposes of this training module, LEP and ELL are used interchangeably.

II. STATE DEMOGRAPHICS

Enrollment Trends [Overall]

According to PEIMS data available with the Texas Education Agency, the total student enrollment in our public schools went from 3,464,371 in 1991-92 to 3,748,167 in 1995-96. This represents an increase of 283,766 new students in Early Education through the twelfth grade (EE-12). The ethnic breakdown for the four years reviewed was:

Students	1991-92	1995-96	Gains
White	1,697,869 (49%)	1,739,613 (46%)	41,744 (2%)
Hispanic	1,192,063 (34%)	1,375,896 (37%)	183,833 (15%)
African American	495,658 (14%)	536,386 (14%)	40,728 (8%)
Asian/Native American	78,781 (2%)	96,272 (3%)	17,491 (22%)
TOTALS	3,464,371 (100%)	3,748,167 (100%)	283,796 (8%)

The figures above show a significant change in the ethnicity of the state's student enrollment from 51% minority in 1991-92 to 54% in 1995-96, making Texas a majority-minority public school population. While every ethnic group experienced an increase in sheer numbers during the four year period analyzed, it is important to note that White enrollment decreased by 3 percentage points, African American enrollment remained constant at 14%, while Asian and Native American enrollments combined increased by 1% point. Hispanic enrollment accounted for the most significant growth with an increase of three percentage points from 34% to 37%.

Enrollment Trends [Language Minority]

When the actual increase of 283,796 students as shown above is analyzed by ethnicity, the figures show a very different picture. To illustrate: The graphic below shows that White students represented only 15% of the new student enrollment during this time period, whereas Hispanics accounted for 65% of the new student growth. African American students were constant with no consequential growth, with Asian and Native American enrollments combined representing 6% of the growth.

White	41,724 (15%)
Hispanic	183,833 (65%)
African American	40,728 (14%)
Asian/Native American	17,491 (6%)
TOTAL	283,796 (100%)

When these figures and corresponding percentages are contrasted with the total State figures, the following is evident. The demographic changes in the State document that language minority students, e.g., Hispanic and Asian/Native American represented approximately 70% of all new growth over the four year period, while English-speaking students, e.g., White and African American only represent 29% of the new enrollment.

Enrollment Trends [LEP]

Recognizing that on the average 30% of the state's language minority student population is historically identified as limited English proficient, the following extrapolation methodology documents the statewide priority need for bilingual and ESL teachers. To illustrate:

Hispanic and Asian American students as shown in the previous page under Enrollment Trends [Language Minority] represented the new language minority student population. Combined, these two groups totaled 201,324 students. Thirty percent (percentage is equivalent to state average of limited English proficient student population) of the language minority total translated to 60,397 LEP students requiring either bilingual education or ESL depending on their grade level. When parent denials, waivers and exceptions were factored in, we can safely say that at least 50% of the new LEP population needed a specially trained teacher. This would mean that the new student population placed an additional demand for over 3,000 bilingual/ESL teachers throughout the state over this four-year period. All of the universities with approved teacher training programs produced less than 500 bilingual and ESL teachers each year. Relying on an expectation that all 500 bilingual and ESL teachers were employed in Texas school districts each year, there still remained a shortage of 1,000 teachers to work with the LEP population. The reality of these enrollment increases, which will continue according to state demographers, is that this growth is not a characteristic that occurs on an even keel across the state. The school districts with a high incidence of LEP students are faced with even a greater dilemma to hire and retain an adequate number of teachers for the bilingual education and ESL programs.

This demand is exacerbated more each year by the number of vacancies created by teachers (approximately 10% or 24,000) who leave the teacher workforce for other jobs, promotions, or retirement. Teacher demand in Texas is met through professional development; out-of-state recruitment, in-state recruitment of former teachers and the alternative certification program. Three years after alternative programs were instituted; a maximum of 15% teacher graduates could be attributed to this statewide effort.

School districts are unable to train, recruit and retain an adequate number of teachers who can work with special needs children, particularly those districts experiencing rapid growth rates. The consequence of this demographic phenomenon is that districts resort to hiring permanent substitutes "off the streets". This practice greatly detracts from the quality of program and the poor academic performance by the LEP students is reflected in the accountability ratings by TAKS reports.

Grade Levels Impacted by Enrollment Growth

The Texas Successful Schools Study devoted an effort to analyze the enrollment trends of limited English proficient students over a six-year period from 1991-92 to 1997-98. The analysis revealed that Texas public schools experienced an increase of 44 percent in the LEP population. Although the increase indicated a total growth of 44 percent in the LEP population, it is important to note that 122,526 or 77 percent of the 158,794 new LEP students were enrolled in elementary grades in 1997-98. The enrollment figures for each of the 20 education service centers in the state indicated that approximately 85 percent of all new LEP student enrollment was evident in six of the 20 service center areas. The growth trend of the LEP population in Texas public and charter

schools continues in similar fashion in 2005-2006. According to TEA PEIMS data, the LEP population increased by an additional 164,098 students from 1997-98 to 2005-2006. (TEA, 2005).

Implications of Rapid Growth

In numerous school districts throughout Texas, the challenge to have bilingual teachers to offer the required program can surface from one year to the next. Districts experiencing rapid growth can go from an ESL program requirement to a bilingual education program requirement. According to the state policy, a district that has one or more LEP students identified, but less than 20 in any grade level, is required to offer an ESL program to all LEP students in PreK thru the 12th grade. Once these districts have twenty or more LEP students of the same language classification, e.g., Spanish, in any one grade level, the bilingual program mandate is triggered in Grades PreK-5. These districts invariably are lacking the teachers, funding and materials to address the linguistic needs of the LEP students in the elementary grades.

The consequence of this rapid growth is that these school districts have to request an exception to the bilingual education program with the commissioner of education, or be cited for non-compliance with the state's policy. In 1997-98, over 40,000 of the state's LEP students in the elementary grades were reported in exceptions to the bilingual education program as requested by 85 of the 246 school districts required to provide bilingual education. For the 2005-2006 school year, over 300 school districts are required to offer bilingual education. This represents a 22 percent increase over the number of districts required to provide bilingual education in 1997-98.

Teacher Diversity and Availability

Based on the PEIMS data available at the Texas Education Agency, the total number of teachers in our public schools for the four year period went from 212,563 in 1991-92 to 240,593 in 1995-96. This represented an increase of 28,030 new teachers hired in the public schools across all grade levels during this four-year period. The ethnic breakdown for two of the four years analyzed was:

Teachers	1991-92	1995-96	Gains
White	164,549(77%)	183,090(76%)	18,541(11%)
Hispanic	29,065(14%)	36,180(15%)	7,115(24%)
African American	18,101(9%)	19,521(8%)	1,420(8%)
Asian/Native	848(.004%)	1,802(.074%)	954(113%)
TOTALS	212,563(100%)	240,593(100%)	28,030(13%)

When the actual increase of 28,030 new teachers is analyzed, the figures show a very different ethnic picture. To illustrate:

White	18,541(66%)
Hispanic	7,115(25%)
African American	1,420(5%)
Asian/Native American	954(3%)
TOTAL	28,030(100%)

A further correlation of percentages between cumulative student enrollment figures and cumulative teacher numbers for the same time period (1995-96) reflect a wide disparity between representation of student populations by ethnicity and representation of teacher availability by matched ethnicity. See graphic below:

Student Totals for 1995-96		Teacher Totals for 1995-96	
White	41,724 (15%)	18,541	(66%)
Hispanic	183,833 (65%)	7,115	(25%)
Afr Amer	40,728 (14%)	1,420	(5%)
Asian and Native Amer	17,491 (6%)	954	(3%)
TOTAL	283,796 (100%)	28,030	(100%)

According to information available from the State Board for Educator Certification (SBEC) for 1996-97, approximately 95 percent of the total number of teachers assigned to non-bilingual classrooms in Grades 1-6 were certified for the assignment. For bilingual classrooms, the data revealed that only 59 percent of the total number of teachers assigned to the LEP population in Grades 1-6 were certified for the assignment.

III. BILINGUAL EDUCATION MANDATES

The most significant Supreme Court decision that contributed to a national sensitizing regarding the needs of disadvantaged students came in 1954 by way of the *Brown v. Board of Education* decree. Although the court's ruling pertained to discriminatory practices or segregation on the basis of race, it surfaced a clear concept of unequal education. This decision overturned the 1896 Supreme Court ruling on *Plessey v. Ferguson* which supported the "separate but equal" practice. (NCELA, 2002). This formed the basis for subsequent court rulings and congressional posturing in the context of educating limited English speaking ability (LESA) students, later classified as limited English proficient (LEP). The remainder of this section describes the primary focus of public policy mandates and court orders that have impacted bilingual education, ESL and language minority students.

Title VI of the Civil Rights Act of 1964

The U. S. Congress passed this legislation which stated the concept of equality in federal law. This bill prohibited discrimination on the basis of race, color, or national origin. The full force of the law applies to federal grantees, e.g., entities that receive federal funds. Today, the U. S. Office for Civil Rights (OCR) of the Department of Education uses the Title VI Act of 1964 to conduct compliance monitoring/visits to school districts throughout the country. (See National Origin Memorandum of 1970 in the following page).

In Texas, based on a Memorandum of Understanding, between the Texas Education Agency and the Office for Civil Rights, OCR conducts compliance monitoring using the rules and regulations promulgated by the commissioner of education to educate the LEP population. When a district is in violation of the Texas policies on bilingual education, it is usually considered to be in violation of Title VI of the Civil Rights Act of 1964 as amended.

Title VII of the Elementary and Secondary Education Act of 1968

The first official federal recognition of the needs of LESA students came about with the enactment of Title VII of the Elementary and Secondary Education Act (ESEA) of 1968. ESEA was first passed as a law of the "Great Society Programs" under President Lyndon Johnson. The Bilingual Education Act, as Title VII was known, attempted to remedy civil rights violations in school districts throughout the country by encouraging instruction in a language other than English, as well as cultural awareness. Districts wishing to receive federal funds under Title VII had to compete for the funds and were not explicitly required to offer bilingual education or the use of the students' native language for educational purposes. Federal grants were awarded from three to five years, after which time a school district was to assume the continued costs of the program. The Bilingual Education Act was revised numerous times by subsequent congressional amendments until it became Title III of the No Child Left Behind Act of 2001. See Title III on page 16 of this document.

National Origin Memorandum

The U. S. Office of Civil Rights issued a national memorandum to school districts with more than five percent national origin-minority group children. This memorandum came to be known as the May 25th 1970 National Origin Memorandum. The Memorandum clarified the Department of Health Education and Welfare's (DHEW) policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. (DHEW, 1970) In order to be in compliance with Title VI of the Civil Rights Act of 1964, school districts receiving federal funds had to:

- Take effective steps to rectify the language deficiency in order to open its instructional program to these [LESA] students
- Not assign students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills
- Design any ability grouping or tracking system ...to deal with the special language skill needs of these children to meet such language skills as soon as possible and must not operate as an educational dead-end or permanent track
- Notify national origin-minority group parents of school activities which are called to the attention of other parents, in a language other than English in order to be adequate, and
- Conduct a self-assessment to determine if any of these requirements were not being presently met and communicate with the U. S. Office for Civil Rights of this determination and submit a corrective action plan to remedy these practices

Lau vs. Nichols

Under the Supreme Court ruling of *Lau v. Nichols* in 1974, and pursuant to a lawsuit brought about on behalf of 1,800 Chinese American students against the San Francisco Unified School District, the district as defendant was ordered by the Court to fashion appropriate relief that would discontinue the denial of “a meaningful opportunity to participate in the public educational program, ...subject to Court approval.”

The *Lau* decision triggered many other significant developments. It raised the nation's consciousness for the need of bilingual education, encouraged Congressional passage of the Equal Educational Opportunities Act of 1974, provided federal funding for nine *Lau* centers, and generated more lawsuits favorable to bilingual education. (Bernal, 1978). The Court found that OCR had correctly interpreted the Civil Rights Act of 1964, and that the rules laid out in the agency's 1970 memorandum essentially carried the weight of law. (TEA, Report 10)

Equal Education Opportunity Act of 1974

The educational needs of the student language minority community of this country were once again protected and highlighted by virtue of the enactment of the Equal Education Opportunity Act in August of 1974. The federal law gave an individual the right to file a complaint or lawsuit if s/he was denied equal educational opportunity.

Circumstances which constituted a denial included “the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program.” Under this law, a violation of equal educational opportunity includes a disparate or different impact and not just discriminatory intent. Twenty years after *Brown v. Board of Education*, the practice of unequal education for children was legislated by the Equal Education Opportunity Act of 1974—a federal law that had to be carried out by thousands of school districts in the United States. The wording of the law obliged all school districts, and not only those receiving federal funds to comply with Title VI of the Civil Rights Act and the OCR guidelines of 1970. The court decision, e.g., Civil Action 5281, affecting limited English proficient students in Texas was predicated in part on the guidelines imposed by the Equal Education Opportunity Act of 1974. See Civil Action 5281 on page 14 of this document. (TEA, Report 10)

Lau Remedies

The Department of Health, Education and Welfare followed in similar fashion as it did when the Department distributed the May 25th National Origin Memorandum. To assist school districts with the 1974 *Lau* Supreme Court ruling, the *Lau* Remedies were issued as guidelines by the Department in 1975. Basically, the guidelines incorporated the intent of the Department’s policies noted for national origin-minority group students issued by the U. S. for Civil Rights in the May 25th National Origin Memorandum. The difference was that where the National Origin Memorandum focused on school districts with five percent or more national origin-minority group children in a district, the *Lau* Remedies required school districts to submit a voluntary Civil Rights compliance plan if they had 20 or more students of the same language group. The *Lau* Remedies served as the guidelines for the development of the educational plan required.

Bilingual Education Legislation in Texas

Bilingual education in Texas public schools was first legislated as early as 1959 under a law intended to improve the communication skills of non-English speaking children before they entered first grade. In 1964, Laredo United Consolidated ISD and the San Antonio ISD were experimenting with bilingual education programs in the elementary grades. The first bilingual education bill, however, did not come about until five years later. This legislation is credited to the 61st Texas Legislature for passing House Bill 103 in May 1969. This law allowed, but did not require, school districts to provide bilingual education through Grade 6. As a result of this law, and a year later, a total of 27 bilingual programs were implemented in Texas schools districts.

Much legislative deliberation, amendments, and formulation of interpretative policy by the State Board of Education (SBOE) took place since the first law on bilingual education was enacted in 1969. This section primarily reports on the legislative pieces that impacted the implementation of bilingual education and the educational rights and opportunities for the language minority student population in Texas public schools. (TEA, Report 10). The subsequent legislation that was enacted and the scope of the laws include:

- Senate Bill 121 passed by the 63rd Legislature as the Texas Bilingual Education and Training Act of 1973. The law required a bilingual education

program, beginning with the 1974-75 school year, in districts that enrolled 20 or more LEP students in the same grade level who shared the same language classification. The program was to be a full-time program of dual-language instruction in all subjects required by law. The Act applied only to Grade 1 the first year, but required that one grade be added each succeeding year until bilingual education was offered in all elementary grades through Grade 6.

- House Bill 1126 was passed in 1975 and included an amendment to the Bilingual Education Act that added kindergarten to the mandatory program, but removed Grades 4-6. Under the rule-making process, the SBOE adopted rules in 1978 that expanded the mandatory program beyond the statutory limit of Grade 3 to include Grades 4 and 5. Obviously the action taken by the SBOE came in response to the intensified federal scrutiny and mandates issued by the DHEW and OCR. The SBOE rules applied to all school districts and not just those with 20 or more LEP student with the same language classification in any one grade level.
- Senate Bill 477 was passed in June 1, 1981 in response to Civil Action 5281, a court decree by Judge William Wayne Justice in January 1981. Specific detail regarding the scope of the court mandate and the legislation enacted in response to the court mandate are found immediately following

Civil Action 5281

The educational welfare of the Mexican American children in Texas public schools, particularly all the students in need of bilingual education, was brought to the political and educational forefront by Judge William Wayne Justice. In his opinion of January 9, 1981 the judge wrote that the state plan was “wholly inadequate” and that the state discriminated against Mexican American children, in violation of the equal protection clause of the 14th Amendment of the U. S. Constitution. By virtue of this court decision, Mexican American children were designated as a “protected class.” The ruling also found that the state had violated the Equal Educational Opportunities Act of 1974. (Bernal, 1994) In their response to the ruling, the state was ordered to produce a compliance plan within 60 days by March 9, 1981. Some of the points that the judge included in his order as deficiencies of the state plan at that time were:

- Half of the identified LEP children were not in bilingual programs
- Procedures for identifying LEP children were inadequate
- TEA guidelines were frequently ignored by districts
- Monitoring and enforcement of the law by TEA was deficient
- Exiting of children out of the bilingual education programs was arbitrary and unjustifiably low
- Training of administrators was inadequate, and
- The state failed to utilize all the available teachers with bilingual certification

Judge Justice’s order called for bilingual education beginning with K-5 in 1981-82 and adding the remainder of the grades through grade 12 by 1985-86. Between the time that Judge Justice ordered the state to remedy the violations he had cited in January 1981 and an appeal by the Texas Attorney General to the 5th U. S. Circuit Court in July, Senate Bill 477 had been introduced by Senator Carlos Truan and passed by the Texas

Legislature. The new law contained similar provisions as found in Justice's court order, but only required bilingual education through the elementary grades, followed by ESL requirements in grades 6-12. Judge Justice did not accept S. B. 477 as the remedy to the violations he had cited and ordered the state once again to comply with the provisions of his previous orders.

As a result of the appeal on the part of the state, however, the 5th District Court stayed Judge Justice's order and sent it back to Judge Justice for him to take a look at his ruling. With this opinion by the appeals court, the state was not under mandate to carry out the exact provisions of Justice's original order. Beginning with the 1981-82 school year, school districts had to comply with the provisions of Senate Bill 477, the Texas law on bilingual education that is still in effect today—May 2006. Senate Bill 477 is perhaps one of the most comprehensive state laws that protect the rights of limited English proficient students (LEP) and their parents. Both the supporters and opponents of bilingual education attribute the establishment of the Texas policies and required language response programs for LEP students to the honorable Judge William Wayne Justice, who has maintained perpetual jurisdiction over Civil Action 5281.

Senate Bill 477

Since its enactment in June 1, 1981 Senate Bill 477 has had minor changes over the last 25 years. The law adopted some of the provisions found in Judge Justice's order including the establishment of Language Proficiency Assessment Committees (LPAC) and specifying that a LEP student had to score at or above the 40th percentile on the reading and language arts sections of a TEA-approved achievement test before exiting the bilingual education or ESL program. The bill also required that the TEA monitor local compliance by visiting each school district at least once every three years. (TEA, Report 10). As a result of one major change to S. B. 477, the Legislature has lifted this requirement of the TEA by way of an amendment.

The bill authorized the commissioner of education, for the first time, to grant school districts an exception to the mandatory program of bilingual education in the elementary grades when districts documented an insufficient number of bilingually certified teachers. The exception was to be granted for one year at a time, and under the conditions that the district would make aggressive and sincere recruitment efforts to eliminate the need for an exception the subsequent school year. During the period for the exception, districts had to implement alternative methods to meet the needs of its LEP elementary population as approved by the commissioner of education. Greater detail regarding the scope of S. B. 477 is found in Section IV. STATE'S CURRENT POLICY, 19 TAC CHAPTER 89 of this document.

Title III Part A

The original and first Bilingual Education Act of 1968 was subsumed in the No Child Left Behind Act of 2001 as Title III. Among the numerous purposes of Title III, the following are some of the most significant:

- To help ensure that children who are limited English proficient attain English proficiency and meet the same challenging state academic content and student academic achievement standards as all children are expected to meet;

- To assist all limited English proficient students to achieve at high levels in the core academic subjects;
- To develop high-quality language instruction educational programs designed to assist state educational agencies in teaching limited English proficient children;
- To assist state educational agencies and local educational agencies to develop and enhance their capacity to prepare limited English proficient children to enter all-English instruction settings
- To streamline language instruction educational programs into a program carried out through formula grants to state educational agencies and local educational agencies

Title III became a formula grant that provides funding to states based on the number of limited English proficient and immigrant children reported by each state, similar to the formula grant funding that is carried out under Chapter I for economically disadvantaged children. This legislation altered the previous Title VII funding that was distributed through competitive grants of one or more years. Title III remained as a supplementary funding, e.g., above and beyond local and state funds expended for limited English proficient students, as Title VII had been. One of the major difference in this legislation is that the Title III funds may be used to implement a program for restructuring, reforming, and upgrading all relevant programs, activities relating to language instruction and academic content instruction for LEP and immigrant students within an individual campus, or within the district as a whole. (Title III, 2001)

IV. STATE'S CURRENT POLICY, 19 TAC CHAPTER 89

Policy and Implementing Regulations

The state's policies regarding bilingual education and ESL are codified in the *Texas Education Code*—Law Bulletin as §29.051 thru 29.064. The policies reflect the state statute enacted as Senate Bill 477 by the Texas Legislature in 1981 and amended by the 74th Legislature in May 1995. The implementing regulations that correspond to the state policies were promulgated by the Texas Education Agency as part of the Texas Administrative Code as Commissioner's Rules. These are titled: *Chapter 89 Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Education of Limited English Proficient Students*. The state policy reads in part, "Therefore, in accordance with the policy of the state to ensure equal educational opportunity to every student, and in recognition of the educational needs of students of limited English proficiency, this subchapter provides for the establishment of bilingual education and special language programs in the public schools and provides supplemental financial assistance to help school districts meet the extra costs of the programs" [TEC 2002]

Definitions

The law defines a LEP student as, "...a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary class work in English." A "parent" includes a legal guardian of the student [TEC §29.052] Under the provisions of Subchapter C. Compensatory Education Programs, a LEP student is further defined as a "...student at risk of dropping out of school..." [TEC §29.081(d)]

When is Bilingual Education or ESL required?

The state policies require school districts in Texas to offer a bilingual education program in PreK-5 whenever 20 or more LEP students, of the same language group other than English, are identified in the same grade level on a district wide basis. For example, if 21 Hispanic LEP students were identified in Grade 4, or Grade 7, the district is required to offer the bilingual education program to all Hispanic LEP students enrolled in Grades PreK-5. The same would apply if the LEP students were Vietnamese, or German, etc. For LEP students identified in Grades 6-12, the district must offer a special language program, which has been interpreted to mean English as a second language (ESL) program. There are a little over 300 school districts that are required to offer bilingual education, but a significant number of districts are not providing the program because of teacher shortages. In order to avoid citing of non-compliance with the state policy, school districts must request an exception to the bilingual education program from the commissioner of education. [TEC §29.053] Districts that have at least one, but not more than 20 LEP students enrolled in any one grade level are required to offer an ESL program to all LEP students in Grades PreK-12 regardless of language group(s).

Exceptions and Waivers

The state policies have provisions for an exception to the bilingual education program for school districts that do not have a sufficient number of bilingual certified

teachers to offer the required program. In those instances, districts have to submit an application to the TEA with ample justification to request an exception. An exception may be for one or more grade levels, or for one or more campuses as may be justified. One of the conditions for the approval of an exception is an assurance that all available certified bilingual teachers will be assigned at the lowest grade levels beginning with Pre-Kindergarten. The exception is approved for one year at a time based on the efforts the district will take to eliminate the need for an exception the subsequent school year. During the period covered by the exception, districts must describe the alternative program to be offered, which at a minimum must be an ESL program for the LEP students affected by the exception.[TEC §29.054]. In 1996, 84 of the 246 school districts required to offer the bilingual education program requested an exception. Approximately 40,000 LEP were affected by the exceptions and were not offered bilingual education. It is anticipated that the number of exceptions today is growing in view of a rapid growth of the LEP enrollment in comparison to 1996.

The provisions for waivers are found in the commissioner's rules. The waivers are for the ESL certification requirements, and not for approval not to offer the required ESL program in PreK-12. As a condition for approval, districts requesting waivers must identify the teachers who will be enrolled in a university training program leading to ESL certification, the anticipated date of completion, and the type of ESL instruction to be provided to Beginners, Intermediate and Advanced LEP students by teachers trained in ESL methods and second language acquisition. [TAC §89.1205(h)].

Program Content—Method of Instruction

Districts are required to provide the required bilingual education and ESL program with appropriate modifications, including differentiating levels of instruction, pacing and materials to afford the LEP students enrolled in the program a genuine opportunity to master the Texas Essential Knowledge and Skills (TEKS) of the state's required curriculum. Students enrolled in the bilingual education program may demonstrate mastery of the TEKS in either their home language or English. [TEC §29.055].

The bilingual program shall be a fulltime program that is offered as an integral part of the regular educational program required under the Curriculum Requirements. The students' home language, Spanish, or for other languages, e.g., Vietnamese, German, Korean, Chinese, etc, whenever possible, and English shall be used as mediums of instruction. The required ESL program shall be designed to develop proficiency in the comprehension, speaking, reading and composition (writing) in the English language. Both the bilingual education and ESL programs shall provide for learning basic skills in the primary language of the students enrolled in the bilingual education program, and for carefully structured and sequenced mastery of English language skills. This section of the state policy articulates the safeguard to premature exiting of LEP students from the bilingual education and the ESL programs.

The amount of instructional time to be devoted to each language, as well as the type of treatment for linguistic and academic success shall be aligned with each LEP student's level of proficiency in each language, and their level of academic achievement. (See Section V—Program Models of this document). In Spanish and English bilingual education programs, districts must use state-adopted English and Spanish textbooks and

instructional materials as curriculum tools. Both the bilingual education and the ESL program shall offer sequential and developmentally appropriate instruction to address the affective, linguistic and cognitive needs of the LEP students enrolled in the program at every grade level. At a minimum, to address affective needs, teachers will use both the home language and English to introduce basic concepts of the school environment and instill a positive identify with the students' cultural heritage. Teachers will provide intensive instruction to develop proficiency in the comprehension, speaking, reading and composition of the English language to address the linguistic needs of the LEP students. In the maintenance and dual language programs, equitable attention and prestige is given to develop proficiency of both languages. To address the cognitive needs, teachers shall provide LEP students with appropriate instruction in English in the content areas of math, science and social studies using second language methods. In the maintenance and dual language programs, appropriate instruction in English and Spanish in the content areas is provided to LEP students in an effort to have bilingual and bi-literate students.

Enrollment of Students

The state statute authorized the Texas Education Agency, comprised of the State Board of Education and the commissioner of education, to develop the implementing rules and regulations regarding the identification, classification and placement of LEP students in the required bilingual education and ESL programs. The law articulates the policy parameters for the rules and regulations to be adopted. The rules and regulations that govern bilingual education and ESL programs are known as *Chapter 89 Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Education of Limited English Proficient Students*.

The rules require in part that the parents of each student who enrolls in a Texas public school for the first time in Grades PreK-8, including student transfers from out of state, must complete a home language survey for the district to determine if the students come from a home where the language spoken or heard is other than English. New students enrolling for the first time in Grades 9-12 may complete their own home language survey, provided that their school records do not reflect a survey previously signed by their parents. Only students who come from homes where the language spoken or heard is other than English may be identified and classified as a LEP student.

If the home language survey indicates a language other than English is spoken or heard in a student's home, all such students must be assessed with the following measures. In school districts required to offer a bilingual education program, students must be assessed with an agency approved oral language proficiency test (OLPT) in Spanish in Grades PreK-5, and in English in Grades PreK-12. For students of languages other than Spanish, districts may use persons who are able to interpret the English OLPT in those languages. Some of these other languages would include: Vietnamese, German, Chinese, Tagalog, Korean, etc.

In school districts required to offer an ESL program only, students must be assessed with an agency approved Oral Language Proficiency Test (OLPT) in English in Grades PreK-12. Additionally, in all school districts, students must be assessed with an agency approved norm-referenced test (NRT) in the reading and language arts sections in Grades 2-12. All students shall be classified by language categories as Beginner, Intermediate, Advanced or Advanced High according to their scores on each of the

OLPTs, as applicable. Students who are classified as Beginner or Intermediate are identified by the language proficiency assessment committee (LPAC) as LEP using the OLPT. Any student, including a student who scores Advanced or Advanced High in the OLPT, who scores below the 40th percentile on either the reading or language arts section or both on the English NRT shall also be identified as a LEP student by the LPAC.
[TEC §29.056]

Facilities and Classes

The bilingual education and ESL programs shall be offered in the regular facilities of the school district.[TEC §29.057]. LEP students shall be placed in classes with other students of similar age and level of educational attainment provided that the placement of these students does not result in racial isolation of the LEP students and a possible violation of Title VI of the Civil Rights Act of 1964. The bilingual education or ESL program may be offered in a centrally located campus within a school district to maximize limited teaching resources.

Enrollment of Students Who Do Not Have Limited English Proficiency

A district may enroll Non-LEP students in the bilingual education or ESL program if students have parental permission to participate, and provided that the number of Non-LEP students does not exceed 40 percent of the total number of students (LEP and Non-LEP) enrolled in the program. [TEC §29.058]. Districts implementing a Dual Language Immersion program need to be cautious about this prohibition since invariably the participation of LEP and Non-LEP students in such programs are at a 50:50 ratio.

Assignment of Teachers to a Program

Teachers assigned to the bilingual education program and teachers assigned to the ESL program shall be appropriately certified for the program by the State Board of Educator Certification, respectively. A teacher on an emergency certificate or special assignment permit shall be viewed as a certified teacher.

Compliance with Statute

Districts shall ensure that all aspects of the bilingual education and ESL programs are implemented as required by the implementing rules and regulations of the state policies to be in compliance with the state mandate. The areas subject to monitoring for compliance by the Texas Education Agency and/or the U. S. Office for Civil Rights include [TEC §29.062]:

- Program content and design
- Program coverage
- Identification procedures
- Classification procedures
- Staffing
- Learning materials
- Testing materials

Districts are subject to compliance visits, desk audits and accountability reviews based on district, campus and student group performance on the TAKS and the state's

accountability system, as may be determined by the Texas Education Agency, the Texas Legislature and/or the U. S. Office for Civil Rights of the U. S. Department of Education, Region VI in Dallas, Texas. Districts are also subject to onsite investigations pursuant to formal complaints filed with the Commissioner of Education or the Secretary of Education.

Language Proficiency Assessment Committees

According to the state policy, districts are required to have one language proficiency assessment committee (LPAC) [TEC §29.063]. Because of the four week requirement to identify, classify and report every LEP student in every school district in the state, and the continuous increase in LEP enrollment each year, the rules of the commissioner has instructed school districts to “establish and operate a sufficient number of LPACs to enable them to discharge their duties...” (TAC, 1999)

The LPAC shall be established by local board policy. In the elementary campuses where a bilingual education program is required, the membership shall consist of a bilingual education teacher, an ESL teacher, a parent of a participating LEP student in the bilingual education program and a campus administrator. In campuses required to offer ESL only, the LPAC shall consist of a campus administrator, an ESL teacher and a parent of a LEP student participating in the ESL program. [TEC 2002].

The LPACs shall carry out the responsibilities and related duties as noted below including [TAC 89.1220]:

1. designating the language proficiency level of each LEP student
2. designating the academic level of each LEP student
3. notifying and explaining the benefits of the program to the parents of students identified as LEP, and soliciting parental approval
4. designating, subject to parental approval, the initial instructional placement of each LEP student
5. facilitate and coordinate the participation of LEP students in other special programs, including special education as provided for by other federal and state funds
6. classify students as English proficient in accordance with exiting criteria
7. determining the appropriate assessment option for LEP students on the TAKS test
8. maintaining records of LPAC meetings and all deliberations on every LEP student in the fall and spring of each year

Evaluation

The evaluation requirements for school districts offering a bilingual education and/or an ESL program were first adopted in the rules of the State Board of Education in September 1996. These rules were subsequently amended and adopted once again in the Rules of the Commissioner in April 2002. The evaluation requirements found in 19 TAC §89.1265 are still in effect and must meet the state compliance standards for the bilingual education and ESL programs as part of the accountability requirements for public and charter schools.

The rules state that all districts required to offer a bilingual education or ESL program shall conduct periodic assessment and continuous diagnosis in the languages of instruction (English and Spanish) to determine program impact and student outcomes in all subject areas. The districts shall prepare annual reports of educational performance that reflect the academic progress in English and Spanish (where bilingual education is offered) of the LEP students. The report must indicate the extent to which the students are becoming English proficient, the number of students who have been exited from the program, and the number of teachers and aides trained, including the results of the training. These Commissioner's rules additionally require that districts are to report to parents regarding the progress of their child as a result of participation in the program at least once a year. (TAC, 1999) Finally, using the evaluation results required under this section, the principal, with the assistance of the campus level committee, shall revise the campus improvement plan for the purpose of improving LEP student performance. (*TEC* §11.253)

VI. PROGRAM MODELS

Which is the best type of program to educate the LEP students in our school district? How long does a child have to be in the program? Do we have to provide a bilingual education program? These and many other questions continue to loom in the minds of administrators and policy decision makers throughout school districts and campuses. Upon reviewing the literature, one will find that no one program is considered to be the best type of program. The type of program, whether it is bilingual education, transitional or maintenance, a dual language program, or English as a Second Language (ESL) program should depend on the linguistic and academic needs of the LEP population of the educational institution. The success of the program will depend on the assessment component of that program.

Under the provisions of §89.1225 Testing and Classification of Students of the Commissioners Rules (TAC, 1999), all students in Grades PreK-12, whose home language survey indicate a language other than English, have to be assessed with an English oral language proficiency test. Additionally, these students in Grades 2-12 have to be tested in the language arts and reading sections of an English achievement test. In districts required to offer bilingual education, the oral language proficiency test must be given in Spanish, or other language if possible, in grades PreK-5. The results of both the oral and English achievement test assessments will be used to identify the LEP population of a school district. These assessment procedures must be carried out as part of the bilingual education and ESL mandate in the state.

The assessment procedures that surfaced from the seven campuses investigated as part of the Texas Successful Schools Study reflect some common characteristics and procedures that were in place at the seven study sites. The Study shows that an effective bilingual education, dual language and ESL program must implement the following assessment practices (TEA, 2001):

- continuous assessment
- utilize informal inventories, portfolios, benchmarking, and end-of-unit tests
- determine LEP students' success by monitoring literacy in both languages
- assess the use of each language for basic communication as well as for learning
- modify instruction according to the continuous assessment
- assess oral (linguistic) and written (cognitive) proficiency in both languages
- identify Spanish and English language abilities early in the school year. These are usually aligned with the oral proficiency test results in Spanish and English and the Reading Proficiency Test in English from the prior school year.
- test instruments were administered by teachers or persons trained in administering the test(s)
- tests were given within the norming date of the test according to the publisher's manual
- refrain from administering the required achievement test in English in Grades 2-12 if the students' ability is so limited that the test at his/her grade level would not be valid

The Texas policies on educating the limited English proficient student population in Grades PreK-12 are described in Section IV of this document. The program to be offered depends on the number of LEP students found in the same language classification and in different language classifications. (See When is Bilingual Education or ESL required? on page 17 of this document). Chapter 89 of the Texas Administrative Code tracks the requirements of law as found in Senate Bill 477. These implementing rules contain the minimum requirements for both bilingual education and ESL programs. Since LEP students may only be exited based on scores above the 40th percentile on a TEA approved achievement test, the Commissioner's rules prohibit the exiting of LEP students in Grades PreK-1. Moreover, the exiting of students can only take place at the end of a school year. LEP students enrolling in PreK in either a bilingual education or ESL program must be allowed to participate for a minimum of four years, and may not be considered for exiting until the end of the Second grade with an achievement test. These requirements prescribe a transitional bilingual education program and an appropriate ESL program. A transitional bilingual program is one which provides appropriate instruction in both the primary language and English and facilitates the transition from LEP to Non-LEP status.

By virtue of these minimum requirements, school districts have the option to design and implement value-added programs such as a maintenance program which provides appropriate instruction in both languages, Spanish (or other language) and English through the elementary grades until such time that the LEP students acquire a relative proficiency in both languages and become bilingual and bi-literate. The dual language program is still another alternative program that districts may offer in place of a transitional program. The ESL program may vary from one period of ESL to every LEP student in every grade level to an intensified offering that is based on the language and academic levels of the LEP students. This intensification can include the sheltered content-based ESL curriculum or instructional approach with ESL certified/trained teachers. The remainder of this section describes the characteristics and components of a bilingual education model according to Texas policies, a dual language model and an ESL program model.

Bilingual Education

According to §89.1210 Program Content and Design, the required bilingual education program must have two components. The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The first component is referred to as the "primary language instruction" component, which in Texas public and charter schools is usually Spanish. The second component of the program is the English, or the English as a second language part of the bilingual education program. A bilingual education program must have both components to meet the test of the state policy. Spanish is referred to as the primary language since it is the first language that LEP students hear and speak in their homes. This language is designated as L¹ for first language. English is considered to be the second language that LEP students are exposed to in the school setting. For purposes of the program description, the English language is designated as L² for second language.

This section of the rules points out that the amount of instruction in each language "shall be commensurate with the students' level of proficiency in each language and their

level of academic achievement.” (§89.1210[b]). The proficiency levels in English and Spanish have historically been categorized as Beginner, Intermediate and Advanced by the language proficiency assessment committees. As of recent time, these levels have added one category, that being Advanced High, to be consistent with the Texas Observation Protocol. The state policy articulates the expectation that the amount of instructional time in Spanish should vary according to the proficiency levels of the LEP students. The same holds true for the English language (ESL) instruction to be provided.

Districts have designed transitional time and treatment frameworks to have consistency in the implementation of the bilingual education program in PreK-5 and be in compliance with the state policy. The framework is developed to focus on a process that utilizes both languages in all grade levels and in all areas of the curriculum. In order to be “commensurate with the students’ level of proficiency,” the following percentages of the instructional day are devoted to LEP students by language category in a transitional bilingual education program.

Language Category	Spanish L¹ (PLI)	English L² (ESL)
Beginner (English)	80 to 90% in all core subjects, focus on basic skills development and the acquisition of language skills for successful academic achievement and meeting the linguistic needs. Content area instruction shall be structured to master the TEKS and higher-order thinking skills to meet the cognitive needs	10 to 20% in all core subjects, focus on basic skills development and the acquisition of language skills for successful academic achievement and meeting the linguistic needs. Instructional focus is on similar concepts found in the same texts with the ESL teacher adapting the materials and instruction to the students’ English language level to meet cognitive needs.

NOTE: The ratio of English L² to Spanish L¹ gradually increases as the LEP student progresses from one language category to the next. Percentage of time that may be devoted to the beginner LEP student making progress towards an intermediate level could change to 60 to 70% in L¹ and 30 to 40% in L². Movement of LEP students between language categories does not take place until the end of the school year. All LEP students receive mainstream English in Art, Music and PE.

Intermediate (English)	40 to 50% in all core subjects, focus on literacy and fluency in	50 to 60% in all core subjects with ESL sheltered content
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	language arts by focusing on primary language cognitive development and mastery of TEKS and higher-order thinking skills.	instruction. Facilitate transition from basic communication skills to reading comprehension and composition.
Advanced (English)	10 to 20% in primary language cognitive development in language arts, mastery of TEKS and higher-order thinking skills	80 to 90% in language arts until evidence of literacy is evident, or exit criteria is met

It is important to note that the variation in time and treatment takes place between language categories, and not with each grade level. One of the major flaws in implementation of a bilingual education program is that districts start reducing the amount of primary language instruction as each LEP student moves on to a higher grade. A LEP student normally will take two years to move from a Beginner category in English to an Intermediate category. In the case of students without prior schooling, this may take up to three years. When the percentage of time for Spanish L¹ is reduced based on a grade level, this practice is counter-productive to acquiring literacy and fluency in Spanish and English. By the same token, a student who enrolls in any grade level above PreK must be provided the bilingual program according to the time and treatment framework illustrated above.

Districts that are required to offer a bilingual education program must staff the program with certified bilingual education and ESL teachers. In recruiting teachers for the bilingual education program, districts should look for candidates who: have had training in bilingual methods and materials, are familiar with the research on second language learning, understand the benefits of second language learning for LEP students, and who have confidence in their training to address the needs of LEP students. Finally, districts should develop a comprehensive evaluation plan to determine program impact, report to parents on the progress of their children as a result of participation in the bilingual education program, and report on the number of LEP students who move from one language category to the next. Limited English proficient students may demonstrate mastery of the state standards in Spanish or English, depending on the language categories and the type of program being offered to them.

The Texas Successful Schools Study identified numerous effective practices that contribute to LEP students' linguistic and academic success enrolled in a bilingual education program. (TEA, 2001) These practices included:

- ✓ Instructional leadership at both the campus and district levels
- ✓ Use of L¹ and L² for instruction with equal prestige given to both languages
- ✓ No early exit (PK-3) from bilingual education programs
- ✓ Literacy-rich environments in both languages

- ✓ Balanced literacy approaches
- ✓ Staff development focused on second language learning
- ✓ Vertical and horizontal team planning
- ✓ Culture infused throughout the curriculum
- ✓ Continuous monitoring (process evaluation) and assessment of language and academic growth
- ✓ Extensive parental involvement
- ✓ After school enrichment/tutoring
- ✓ Sustained silent reading
- ✓ Strong and comprehensive ESL methodologies

Dual Language Immersion

A dual language program is not required under the state policies for bilingual education, but it is an acceptable approach to educating LEP students. The dual language program has the same two components as the transitional bilingual education program, e.g., one for primary language instruction and one for ESL instruction to develop English proficiency. The major differences in this program when compared to the transitional program are found in the population being served, the amount of time devoted to Spanish and English instruction, the focus on late-exit, and the goals of bilingualism and bi-literacy. Oftentimes, even transitional bilingual education programs, which have English proficiency as the goal, are also referred to as a dual language program. This reference is based on the use of two languages, but it does not meet the technical definition of a dual language program.

Dual language programs are enrichment education programs that foster language equity and are organized with the goals of bilingualism and bi-literacy for all children, language minority and mainstream students alike. (Guzman, 2002). These programs, although described as using the 50/50 model, attempt to have an equal number of English proficient and limited English proficient students. A review of the literature reveals that there is significant overlap in discussing language development and language enrichment programs. For example, two-way language development programs are also referred to as bilingual immersion, dual language, and developmental bilingual education since all can be full-time programs that use two languages, one of which is English, for purposes of instruction. (ERIC, 2000). Districts should take caution not to count Non-LEP students in a dual language program for the bilingual state funds per LEP child.

Generally, the ethnic makeup of the participants is White and Hispanic (or other language minority group). These are known as dual language two-way programs. In South Texas, the dual language programs serve primarily Hispanic children who are Non-LEP and LEP. These programs are known as dual language one-way programs. (See example of program design offered in Hidalgo ISD below. This information is provided with approval of Dr. Daniel King, Superintendent of Schools of the Hidalgo ISD. The description is based on the 2005-2006 program offering in Grades PreK-4, which is designed to add 5th grade in 2006-2007 and 6th grade in 2007-2008).

Hidalgo Independent School District
Dual Language Program
Project STEP (South Texas Enrichment Program)

Project Participants: District will continuously strive to have 50% English speakers and 50% Spanish speakers in Grades PreK-5

Project Goal: To Provide for the development of bilingualism and bi-literacy for all students

Desired Outcome: To prepare students to be proficient in two languages, Spanish and English who understand and appreciate other cultures, and who have high self-esteem.

Program Features:

- Initial literacy is provided in the primary language of the student (PreK-K)
- Language arts is provided to all students in English and Spanish (1st-5th)
- Learning/Resource centers play a major role for children working in bilingual pairs
- All content area instruction at all grade levels, will occur in heterogeneous groups and will be thematically based (L1/L2 Specialized Content Vocabulary Enrichment)
- Literacy development and reinforcement mechanisms are in place to assist the linguistic and cognitive needs of all students
- Rigorous standards and assessments for all curricular areas in both languages are clearly defined and stated. (TEKS/TAKS)
- Students are instructed by highly qualified teachers that are proficient in both languages (Bilingual certification required)
- Parent involvement and understanding of the program ensures academic achievement and success of the program

Instructional Format (50% Spanish Instruction and 50% English Instruction)

Spanish Instruction	English Instruction
Language Arts for LEP students	Language Arts for Non-LEP students
Science for all students	Math for all students
Social Studies for all students	ESL for LEP or all students
SSL for Non-LEP or all students	

Equal consistency will be given to the use of each language. Languages will be separated by subjects, themes, and Language of the Day (LOD). The LOD will be alternated on a daily basis. Art, PE, Computers, Breakfast/Lunch and non-instructional language will be conducted in the LOD.

The language for content-area instruction will be separated for English and Spanish by the number of days and subjects as shown in the following table.

	Science E S	Social Studies E S	Math E S	Lang Arts E S	PE, Music, Library Computer E S
PK4	0 5	0 5	5 0	L1 L1	1 1
K	0 5	0 5	5 0	L1 L1	1 1
G1	0 5	0 5	5 0	5 5	1 1
G2	1 4	1 4	4 1	5 5	1 1
G3	1 4	1 4	4 1	5 5	1 1
G4	2 3	2 3	3 2	5 5	1 1
*G5	3 2	3 2	2 3	5 5	1 1

*2006-2007 school year

The Hidalgo ISD is located on the Texas border between McAllen and Reynosa. It has an enrollment of approximately 3,100 students, with an ethnic makeup of 99.7% Hispanic, 0.1% White, and 0.2% Asian/Pacific Islander. Its student population is 92.2% economically disadvantaged and 54.1% are limited English proficient. For the last eight consecutive years, the District as a whole has been rated either “Recognized” or “Exemplary.” These are the two top ratings of the Texas accountability system.

English as a Second Language

English as a Second Language programs must be offered in school districts required to offer bilingual education in the elementary grades as the second component of the bilingual education program. An ESL program must also be offered to all LEP students in Grades 6-12. All other school districts in Texas who enroll at least one LEP student, regardless of language classification, must offer an ESL program to such student(s) in Grades PreK-12. The state policies on ESL are basically those that apply to a bilingual education program that require the ESL program to be an integral part of the regular program, and that it be intensive to develop proficiency in the comprehension, speaking, reading and composition in the English language. ESL instruction shall be offered according to the students’ level of English proficiency. In PreK-8, the amount of ESL instruction for LEP students may vary from the same amount of time accorded to English language arts for Non-LEP students, to a full-time program using second language methods. In Grades 9-12, ESL instruction may be provided in any of the courses or electives required for promotion or graduation to assist the LEP students master the Texas Essential Knowledge and Skills. The rules specifically point out that “the use of English as second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.” (TEA, 1999).

The requirements to use ESL state adopted materials and to assign appropriately certified teachers to the program are also applicable to the ESL program as a component of the bilingual education program, or as a district wide ESL program. The Commissioner’s Rules allow the use of other curriculum adaptations which may have been developed locally, or commercially available. The ESL program shall focus the instruction, including the integration of sheltered content-based ESL instruction, on the affective, linguistic and cognitive needs of the LEP students in every grade level.

ESL methodology is used in the affective domain to introduce basic communication skills to instill a positive self-concept in the LEP students. In the linguistic domain, the ESL instruction will help students in developing the listening and speaking language skills through sequential English language development. The language development eventually will lead to proficiency in English reading and writing. The base of content knowledge in math, science, health and social studies is introduced through ESL approaches in the cognitive domain.

Many of the program features, instructional and implementation practices for bilingual education programs that were documented by the Texas Successful Schools Study can be adapted or replicated in an ESL program. An ESL program can provide added-value to program offering to assist LEP students transform their social English skills to academic English skills. One key reminder is that the state policies require that the amount of time devoted to ESL instruction must be greater for the Beginner LEP student than it is for the Intermediate student and the Advanced student. One of the major obstacles to academic success and English proficiency on the part of LEP students in many school districts is that only one period of ESL instruction is provided to every LEP student, regardless of language category. This limitation on the essential and appropriate methods for LEP students will yield inconsequential linguistic and academic results. In order to facilitate effective English proficiency and academic success, ESL instruction should be provided according to the following model.

Elementary Level

Beginner Student: student receives mainstream English instruction in art, music, and PE, and sheltered ESL instruction (three-fourths to the entire instructional day) in all core subjects, e.g., language arts, math, science and social studies, of TEKS. The sheltered concept means that LEP students use the same texts and materials as are used in the regular classroom with the ESL teacher adapting the materials and instruction to the students' English language level.

Intermediate Student: student receives mainstream English instruction in art, music, and PE, and sheltered ESL instruction (one-half to three-fourths of the instructional day) in science or social studies and language arts.

Advanced Student: student receives mainstream English instruction in art, music, and PE, and sheltered ESL instruction (one-fourth to one-half of the instructional day) in language arts until evidence of reading literacy is documented, or exit criteria is met.

Secondary Level

Beginner Student: student receives a minimum of three periods to full-day of sheltered ESL instruction in language arts, science or social studies and math until student demonstrates English language literacy and can progress to the next linguistic level at the end of the school year, and meets the passing requirements for such courses.

Intermediate Student: student receives a minimum of two periods of sheltered ESL instruction in language arts and science or social studies until student demonstrates English language literacy and can progress to the next linguistic level at the end of the school year, and meets the passing requirements for such courses, or exit criteria is met

Advanced Student: student receives a minimum of one period of sheltered ESL instruction in language arts until student demonstrates English language literacy and can

progress to the next linguistic level at the end of the school year, and meets the passing requirements for such courses, or exit criteria is met. (TEA, 2001)

VI. The Texas Successful Schools Study: Quality Education For Limited English Proficient Students

Background

Twenty years ago, the federal government at the national level was the principal entity that conducted research regarding the effectiveness of program efforts. Since school districts and state departments of education were financially constrained to conduct research studies on their own, the trend was to rely on research undertaken and promulgated by the Department of Education, national associations and other reputable organizations such as the RAND Corporation with dedicated resources to research. Unfortunately, local and state entities could only avail themselves of what the national research agenda produced. This traditional paradigm invariably dedicated little, if any, attention to effective leadership and implementation practices at the local school level that resulted in great success regarding the education of students with special needs.

Today, public and private entities at the federal, state, local and private sector levels are guided by the research agenda relating to the National Goals for Public Education, or mandated by state policy to conduct a focused educational research initiative. For example, the Texas Education Agency (TEA), as the state department of education, is charged by state statute with the duty to, "...conduct research, analysis and reporting to improve teaching and learning." (TEC §7.021(b)(2). To comply with this charge, the commissioner of education established the Commissioner's Educational Research Initiative. The Initiative resulted in a partnership between the TEA and the Texas A&M University System that provided funding for researchers at Texas A&M institutions to conduct studies in areas of high interest to the commissioner of education and/or other senior officials at TEA.

The Texas Successful Schools Study (Study), designed to examine the variables contributing to the academic success of economically disadvantaged and language minority students, was one of the research projects approved as part of the Commissioner's Educational Research Initiative for 1998-99. Although the Study was approved in March 1998, The TEA had contemplated undertaking such an initiative as evidenced by a recommendation made in *A Report to the 75th Texas Legislature from the Texas Education Agency—December 1996* (1996c). This recommendation proposed to conduct research studies to "...further educational research concerning the instruction and assessment of limited English proficient students."

Purpose of the Study

The Successful Schools Study was conducted by TEA in an effort to assist school districts faced with a continued increase in enrollment and challenged by a high incidence of LEP students and teacher shortages. The Study was developed to assist school districts facing the increase in LEP enrollment and other school districts presently implementing programs for LEP, particularly bilingual education and ESL programs. The Study was developed to assist school district administrators and teachers with the evaluation of their efforts and make appropriate adjustments that could result in greater academic success of all students. The purpose of the Study was to discern what factors and practices contributed to the academic success of the LEP students.

Design of the Study

The Study relied on the unique framework of a *Multiple Operations Descriptive Longitudinal* [MODL] design. This framework differs significantly from traditional *quasi-experimental* designs. The MODL framework was used because:

1. The design provided a widened scope to describe outcomes and identify practices, which were aligned with the scope of the Study
2. The design allowed for the creation of several comparison groups, e.g., target, external campus, and peer campus groups. The formation of these Study groups differed in underlying assumptions of traditional control groups. Study cohorts were formed from both target and external campuses based on enrollment in Kindergarten, classifications as LEP and served in a bilingual education program for either of two years, i.e., 1994 Cohort and 1995 Cohort. Both student cohorts were tracked using a vertical progression model, until the data showed that students had transitioned from LEP to former LEP status. It was only during the 97, 98 and 99 school years that comparisons could be made with the availability of TAAS data for 3rd grade, 4th grade and 5th grade
3. The design focused on why the outcomes came about
4. The design utilized both qualitative and quantitative approaches to illustrate both outcomes and effective practices
5. The design allowed applications of:
 - multiple theories, which resulted from a review of the literature
 - multiple methods, which employed qualitative and quantitative approaches that contributed to the validity of the design and provided for a triangulation of outcomes
 - multiple investigators, which included the administrative and principal investigating team at TEA, a five-member research team from the Texas A&M University—Corpus Christi, and a third-party professional consulting team from Austin, and
 - multiple sources of data, which included data-collection from Agency databases including the Public Education Information Management System (PEIMS), the Academic Excellence Indicator System (AEIS), onsite classroom observations and campus administrator and teacher interviews

- The MODL design provided reliable descriptive, exploratory, explanatory, and confirmatory benefits of the data collected and analyzed

Scope of the Study

The Study was to examine the significant features of successful school programs for limited English proficient (LEP) students, as evidenced by test results on the Texas Assessment of Academic Skills (TAAS) for a five-year period. The Study was also designed to address specific research questions that delved into demographics, effective practices in use, characteristics of the seven Study sites, and the educational background and experience of educational personnel assigned to the LEP population in Grades PreK-5. The Study included a review of national and reputable research studies, journals and public policy documents. The review of the literature regarding the education of language minority children allowed for observations regarding the relationship of the instructional and assessment practices in the seven successful schools to theory found in the literature. The research questions included:

- 1) What are the district leadership practices that facilitate academic and linguistic growth/success for language minority students?
- 2) What are the campus leadership practices that facilitate academic and linguistic growth/success for language minority students?
- 3) What are the characteristics of the teaching staff that facilitate academic and linguistic growth/success for language minority students?
- 4) What are the effective teaching practices that facilitate academic and linguistic growth/success for language minority students?
- 5) What are the characteristics of parents and parental involvement on the seven campuses?
- 6) What are the characteristics of program(s) serving language minority students?

Criteria for Participation in the Study

Initially, when the Study commenced in March 1998, the Study sites were selected by having a rating as either “Recognized” or “Exemplary” schools by the Agency’s school accountability system for each of three years. These included the 1994-95, 1995-96 and 1996-97 school years. Twenty four months later upon conclusion of the Study, the accountability system ratings were also added for the 1997-98 and 1998-1999 school years. School districts that had one or more schools to participate in the Study had to sign an agreement with TEA that they would allow the school(s) to participate in the Study from start to finish. In addition to the accountability ratings mentioned above, the seven Study sites had to meet established criteria that included the following school characteristics:

- Schools enrolled more than 40 percent LEP students during the 1996-97 school year
- School enrolled more than 50 percent economically disadvantaged students during the 1996-97 school year, and
- Schools had zero TAAS exemptions during the 1996-97 school year

The Program Evaluation Unit in the Office for Special Populations at TEA submitted a series of PEIMS queries to identify all schools that met the established criteria for the Study. The result was that only 11 schools met the criteria. The superintendents of the 11 schools were invited by the Associate Commissioner for Special Populations to participate in the Study. When the timeline for selection of the Study sites came, only seven schools had responded in the affirmative. The principals of the seven schools were notified of their selection to be a part of the Study as a statewide leadership effort. The seven schools and respective school districts that participated in the Successful Schools Study were:

- ✓ Bowie Elementary, Pharr-San Juan-Alamo ISD—Pharr, Texas
- ✓ Clover Elementary, Pharr-San Juan-Alamo ISD—Pharr, Texas
- ✓ Campestre Elementary, Socorro ISD—El Paso, Texas
- ✓ Castañeda Elementary, Brownsville ISD—Brownsville, Texas
- ✓ Kelly Elementary, Hidalgo ISD—Hidalgo, Texas
- ✓ La Encantada Elementary, San Benito CISD—San Benito, Texas
- ✓ Scott Elementary, Roma ISD—Roma, Texas

Findings of the Study

This section provides a listing, not in rank order, of the findings that were documented from data and information contained in the Study. This list is not all inclusive of all findings reported by the Study. The findings include:

- 1) The academic performance of 3rd grade LEP students in the seven Study campuses significantly exceeded the performance of 3rd grade LEP students in the cohort comparison group in external campuses
- 2) The academic performance of former LEP students in the 5th grade in the seven Study campuses exceeded the performance of former LEP students in 5th grade students in the cohort comparison group in external campuses
- 3) The most significant difference in 5th grade academic performance between former LEP students in the seven Study campuses and former LEP students in the cohort of external campuses was noted when students had been in the bilingual education program for 5 and 6 years
- 4) In the *Late-Exit* model at Bowie Elementary, the exiting of LEP students was more evident in Grade 4 and Grade 5, after students had been in the bilingual education program for 6 and 7 years
- 5) Transition to all-English instruction was not evident for LEP students in the “Beginner” level
- 6) The language categories utilized for LEP student classification in six of the seven Study sites were “Beginner,” “Intermediate” and “Advanced.” The remaining site relied on categories of A, B, C, D, and E (formerly required under the LAU Remedies of 1975)
- 7) The program offering for LEP students was enhanced by coordinating different funding categories that included the Foundation adjusted basic allotment, Bilingual allotment (10% of the adjusted basic allotment), State Compensatory allotment (20% of the adjusted basic allotment), Title I Regular/Migrant, Title VII Bilingual Education, and the Emergency Immigrant Education Program

- 8) According to teacher questionnaire responses, 85 percent to 100 percent of the teachers were trained in bilingual methods, trained in language assessment, knowledgeable of the benefits of second language learning, and confident in their training to address the needs of LEP students
- 9) The results of two of the assessment features surveyed for the Study show that there is a tendency to assess English proficiency more often than Spanish proficiency. According to the Rules of the Commissioner, assessment of LEP students in English is required to reclassify students who meet the required exit criteria to Non-LEP status. This procedural requirement invariably results in a greater effort to assess the English language than there is to assess the Spanish language
- 10) Bilingual education was provided to the LEP students as integral parts of the regular school program in all seven Study sites
- 11) The Study sites implemented the appropriate program by focusing on the affective, linguistic and cognitive domains to ensure that LEP students become competent in the comprehension, speaking, reading and composition of the English language
- 12) Although all of the seven Study sites reported a teacher:pupil ratio above the state average in 1997-98, six of the Study sites were rated as “exemplary” and one was rated “recognized”
- 13) LEP students were classified as English proficient, e.g., Non-LEP when scoring at or above the 40th percentile on the English reading and English language arts sections of a norm-referenced assessment instrument, or at the end of the school year in which a student would demonstrate “mastery” (not “passing”) of the TAAS required subjects according to respective grade level
- 14) When responding to allowing LEP students to express themselves in Spanish versus English, the teacher responses indicated almost equal results with 95 percent responding “Yes” to Spanish, and 96 percent responding “Yes” to English. These results document that both languages were given equitable prestige
- 15) Principal and district leadership support for LEP students received almost equal responses, with principal support having 94 percent “Yes” responses, and district leadership support having 93 percent “Yes” responses
- 16) The type of training that teachers felt had the most impact on their professional development was the local district training when the district brought in “experts in the field” of bilingual education or other curriculum areas. Staff development provided by district staff was ranked second followed by university training
- 17) Teacher preparation, staff training and administrative support were ranked by teachers as the three top factors that contributed to LEP student success
- 18) Value-added characteristics that contributed to enhancement of programs for LEP students included appropriate assessment measures, effective instructional and implementation practices, and comprehensive parent involvement (TEA, 2000)

A critique of the Texas Successful Schools Study, commissioned by the Center for Equal Opportunity and published in the READ Institute's *READ PERSPECTIVES* in 2001 is titled: "Seven Successful Bilingual Schools in Texas." The critique (article) is extensive and provides numerous accolades on behalf of the Study. Specifically, the observations noted by the author of the article (Correiro) state: "This report is refreshing to say the least, as it takes a measured, dispassionate, and scholarly look at a topic that arouses great passion among its opponents as well as supporters..." The article goes on to say, "The report titled "*The Texas Successful Schools Study: Quality Education for Limited English Proficient Students* is an important contribution to the continuing debate over the efficacy of bilingual education in the United States." "There is a wealth of information in the Texas Successful Schools Study, enough to provide scholars and students of bilingual education with rich and informative reading." (READ *Perspectives*, 2001)

VII. EXAMPLES OF NONCOMPLIANCE

This section provides information regarding frequently cited areas of noncompliance during the conduct of district effectiveness and compliance monitoring and accreditation visits by the Texas Education Agency in school districts over the years. This information is provided to guide school districts in planning and implementing the bilingual education and ESL programs in a manner that will be consistent with the public policies of the state, and designed to provide quality education in both languages to the LEP population in Texas public and charter schools. Please note that these 20 examples do not constitute all types of citing of noncompliance.

- 1) The district has not administered the required Home Language Survey (HLS) in English and Spanish to all new students in the district in Grades PreK-12, and all students who are enrolled, but do not have a HLS on file.
- 2) The district does not provide evidence that all students who come from homes where the language spoken or heard is other than English have been assessed with the required oral language proficiency tests (English in Grades PreK-12 and Spanish in Grades PreK-12 in school districts required to offer bilingual education) within four weeks of enrollment of the students.
- 3) The district does not provide evidence that all students who come from homes where the language spoken or heard is other than English have been assessed with the required achievement (norm reference) test in English reading and language arts in Grades 2-12 within four weeks of enrollment of the students.
- 4) The district records indicate that a HLS was completed by the parent of the student originally and by the student when s/he entered high school. Only one HLS is acceptable.
- 5) There is no evidence that the district has established and operated a language proficiency assessment committee.
- 6) The district has enrolled 20 or more LEP of the same language classification other than English in the same grade level district wide and is not providing the required bilingual education program in PreK-5(6).
- 7) All LEP students served in the bilingual education or ESL program do not have parental approval on file
- 8) The district average of parental denials for LEP students exceeds the state average by more than five percent
- 9) The district average of LEP students in special education exceeds the national average by more than five percent
- 10) The district has failed to offer a minimum of one period of ESL instruction to every LEP student enrolled in the school district regardless of language classification.
- 11) The district has failed to offer the Texas Essential Knowledge and Skills in the primary language to LEP students enrolled in the elementary grades
- 12) The district has failed to provide an adequate method of instruction in their bilingual education or ESL program that focuses on the affective, linguistic and cognitive needs of the LEP students.
- 13) The district has failed to use Spanish state adopted textbooks and/or ESL supplementary materials in the bilingual education or ESL program.

- 14) All LEP students are receiving a minimum of one period of ESL instruction regardless of language categories, e.g., Beginner, Intermediate, Advanced and Advanced High.
- 15) The district is not assigning bilingual and ESL certified teachers to the required programs
- 16) There is evidence that the district is exiting LEP students in Grades PreK-5 based on scores of the oral language proficiency test exclusively
- 17) The results on the Spanish TAKS in Grades 3-4 may not be used to exit students from the bilingual education program.
- 18) There is no documentation to show that the LPACs are monitoring the academic progress of former LEP students for two years from the date of exiting the bilingual education or ESL program.
- 19) There is a high incidence of LEP students exempted from TAKS testing by the LPAC committee.
- 20) The district has failed to prepare the required annual evaluation report and report progress of their children to the parents of LEP students participating in the program

VIII. FREQUENTLY ASKED QUESTIONS AND ANSWERS

The following section contains some of the frequent questions that have surfaced regarding the education of LEP students, misconceptions, myths and political agendas regarding bilingual education and ESL programs/results. It should be noted that the list of questions, as well as responses provided, are not all inclusive. Hopefully, the responses provided will contribute to a greater and better understanding of the merits and purposes of bilingual education and second language learning.

1. **Why bilingual education?**—Bilingual education and ESL, either as the required component of a bilingual education program, or as a stand-alone program, are essential to the educational welfare of our ever increasing language minority and LEP population. As parents we have a moral obligation to allow our children to participate in specially designed programs to address identified needs. Bilingual education and ESL are these types of programs. These programs will not harm or thwart educational advances for students. Bilingual education has been proven by the *Texas Successful Schools Study: Quality Education for Limited English Proficient Students*, as well as a multitude of national and reliable research studies, to be effective and contributory to the linguistic and academic success of LEP students enrolled in quality and appropriate programs. One other reason as to why have bilingual education includes our federal and state policies that require appropriate programs for children with special needs to protect each LEP child's civil rights, provide him or her with genuine quality educational opportunities, and ensure that all educational efforts leave no child behind, including the LEP student population in Texas public and charter schools.
2. **The English language should not be viewed as second to any other language in the United States. Why does bilingual education treat English as the second ranked language?** The designation of English as the second language and Spanish (or other home language) was never intended to convey rankings of the languages in first place or second. In a bilingual education program, when reference is made to L1, it is identifying the language spoken or heard in the language minority students' homes. This is the first language that these students are exposed to in their childhood prior to enrolling in school. Upon enrollment, all students are exposed to the English language. Since English is not the first language that the language minority students have been exposed to, it is identified as L2. The L1 and L2 designation merely documents which languages the child has been exposed to and when that exposure came about. Unfortunately, this is one myth that has been perpetuated politically to create controversy against bilingual education.
3. **As a parent, why do I have to enroll my child in a bilingual program if I can teach him Spanish at home?** Parents will always have the right to provide their children the best educational opportunities, or to deny them such opportunities. The Texas policy requires that LEP students enrolled in the bilingual education or ESL must have parental approval in Grades PreK-12. The majority of language minority parents, who are proficient in the home

language, can only teach their children some communication skills, such as listening and speaking in their home language.

We must remember that language has two purposes; one being to communicate with and the other to learn, or acquire knowledge with. In order for a child to use his or her home language to learn with, they must develop literacy in such language. Literacy means that a person knows how to read and write. This is where parents teaching their children Spanish at home and teachers teaching Spanish and the use of the language in an educational setting differs. As responsible and noble the parents want to be regarding the education of their children, parents can only be “a teacher” in a certain way. Teachers are trained professionally to facilitate learning and to improve the listening, speaking, reading and writing of the home language.

When parents deny the opportunity for their child to benefit from participation in a bilingual education or ESL program, their child is destined to “sink or swim” in an all-English curriculum. The absence of such a program to prepare a student linguistically and academically can result in very traumatic experiences for such children, and may contribute to very poor performance in school, continued failure, and ultimately a school dropout.

4. **Can we use a bilingual teacher to teach Spanish to the LEP students in our bilingual education program and a regular teacher to teach them English?** Districts are at liberty to do what they wish with their students, but in the context of the state policy, the answer to this question is no. Since the English to be taught to the LEP students has to be done via the ESL component in a bilingual education program, the bilingual teacher and the ESL teacher must be bilingual and ESL certified, respectively [TEC §29.061(c)]. In the ESL sheltered curriculum, where all teachers in the content areas are using ESL methods, at least the language arts ESL teacher must be certified; the other teachers should be trained in ESL methodology.
5. **Will 45 minutes of Spanish instruction and 45 minutes, or one period a day of ESL instruction, be sufficient in a bilingual education program for the LEP students?** The state policy reads, “The amount of instruction in each language within the ...program shall be commensurate with the students’ level of proficiency in each language and their level of academic achievement.” [TAC §89.1210(b)] Since the LEP population is usually classified in one of four language categories, e.g., Beginner, Intermediate, Advanced and Advanced High, the time devoted to Spanish instruction must differ between the four categories of students. For ESL instruction, the policy reads, “...instruction in ESL may vary from the amount of time accorded to instruction in English language arts in the regular program for NonLEP students to a full-time instructional setting utilizing second language methods.” [TAC §89.1210(d)]. Additionally, in 2nd grade and above, the academic level of the LEP students must be taken into consideration.

The answer to the question above then can be either no or yes as follows. It must be no for students who are in the Beginner and Intermediate language categories, and for LEP students who are in the Advanced or Advanced High, but scoring below the 23rd percentile on either the reading or language arts

section of the norm-referenced test (NRT) administered to the students for initial identification. It may be yes for students who are in the Advanced and Advanced High language categories and scoring between the 23rd and the 40th percentile in both the reading and language arts sections of the NRT administered to these students for initial identification.

6. **Why does everything have to be taught in Spanish all day in a bilingual education program?** In order for the program to be bilingual, there must be instruction in two languages—Spanish and English. When a program is only teaching in the Spanish language to the exclusion of the English (ESL) language, it is not a bilingual education program. Native language teachers in a bilingual education program can teach the language arts and the content areas in Spanish, but the LEP students must see an ESL certified teacher during the day for instruction in English.
7. **Why can't we have an English immersion program in Texas like they have in California, Nevada, Colorado and other states?** The education of LEP students in Texas public and charter schools is governed by state law and a federal court order known as Civil Action 5281. The policies of this state do not permit for bilingual programs that do not meet the technical compliance requirements found in the policies of this state. Additionally, the results of other states' bilingual education efforts have documented negligible success in LEP students acquiring comprehensive and functional English proficiency. The mandates of the Texas state law and the court decree are what have kept the "English Only" advocates from politicizing bilingual education and bringing the English immersion agenda into Texas public and charter schools. School districts in Texas that are following the actions and program efforts of other states must be prepared to face possible citations of non-compliance from the Texas Education Agency, the State Audit Office, and/or the U. S. U. S. Office for Civil Rights in the Dallas Regional Office.
8. **Won't teaching my child in Spanish in a bilingual education program keep him/her from learning English?** No, the whole purpose and goal of bilingual education according to state policy is to become English proficient. The policy states, "A bilingual education program established by a school district shall be a full-time program of dual-language instruction that provides for learning basic skills in the primary language ... and for carefully structured and sequenced mastery of English language skills. [TEC §29.055(a)]. This has been one of the myths of bilingual education programs.
9. **How long does my child have to remain in the bilingual education or ESL program?** It is highly recommended that a LEP student remain in the appropriate bilingual education or ESL program until such time that s/he can meet all of the exit criteria at the end of a school year found in the state policy. When this happens, the child will be able to perform satisfactorily in the regular all-English curriculum. The criteria include scoring at Advanced or Advanced High in the OLPT in English, above the 40th percentile on both the reading and language arts sections of the NRT, or passing/mastering the TAKs tests for his/her respective grade level above the 2nd grade. [TAC 89.1225(h)].

10. **Once my child meets the exit criteria does s/he have to exit the program or may s/he continue to participate?** A student who meets the exit criteria must be reclassified as NonLEP but may continue to participate in the bilingual education or ESL program with approval from the parent
11. **As a parent, when and how will I know that my child is making progress in learning the English language? Are these progress reports supposed to be included in the report cards or grading system reported to the parents every nine weeks?** The state policy does not require, nor prohibit school districts from sharing periodic information with parents on LEP students' progress in learning English in the bilingual education or ESL program. The rules of the commissioner of education do require that school districts conduct an annual evaluation of the bilingual education and ESL program. The evaluation must document the progress that LEP students have made over the year and districts must report such progress and results to parents in either English or Spanish, or both as may be necessary. [TAC 89.12659(c)].
12. **If my child is in a bilingual education program, won't s/he be seen as being in a remedial program by the students who are not in the same program?** Bilingual education is not a remedial program. It is a developmentally appropriate program that allows students to learn the four essential language skills of listening, speaking, reading and writing in their home language and in English. The purpose of the bilingual education program according to the policies of the state is to help LEP students acquire English proficiency. A remedial program is provided to students who are not having academic success in reading or math, for example, and allows them to be taught in smaller groups of students, with the use of computer assistance, and/or a specialized teacher. Students of any language group, including English speakers, may participate in a remedial program, whereas students who come from homes where the language spoken is other than English are the priority population for a bilingual education program.
13. **What is the difference between bilingual education and the special education program?** Bilingual education and special education are two different programs. If a child has been identified as limited English proficient (LEP) s/he should not be placed in the special education program because of his/her difficulty with the English language. A LEP student may benefit from services provided in a special education program if the student has a handicapping condition or a learning disability. There has been a practice where school districts place LEP students in special education because the child has a language problem, but not a learning disability. This practice has resulted in an over-representation of LEP students in special education, not only in Texas public schools, but throughout the nation. The U. S. Office for Civil Rights has the jurisdiction to cite schools districts that implement this practice with a violation of the LEP students' civil rights, if the school districts exceed the national norm for LEP students in special education. This norm has been established at about six percent.

In Texas the state policy requires that the Admissions, Review and Dismissal (ARD) committee of a special education program coordinate with

the language proficiency assessment committee (LPAC) of the campus to deliberate on the best instructional placement for LEP students with handicapping conditions or learning disabilities. The placement may include bilingual education or ESL instruction. A member of the campus LPAC must serve on the ARD committee when deliberations on LEP students take place, regardless of their grade levels.

References

Bernal, Joe J (1994), *A Historical Perspective of Bilingual Education in Texas, Compendium of Reading in Bilingual Education; Issues and Practices*. Texas Association for Bilingual Education. San Antonio, TX

DHEW (1970). Office for Civil Rights, Washington, D. C.

Guzman, Maria E. Torres (2002), *Dual Language Programs: Key Features and Results, Directions in Language and Education*, National Clearinghouse for Bilingual Education, Washington, D. C.

Legal History of Bilingual Education. (See website www.sscnet.ucla.edu/aasc/unz/history.html).

OELA's National Clearinghouse for English Language Acquisition & Language Instruction Educational Programs, Washington, D. C.

Texas Administrative Code (1999, March) 19 TAC Chapter §89 (BB) *Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students*. Austin, TX: Texas Education Agency

Texas Education Agency (2000, August) *Texas Successful Schools Study: Quality Education for Limited English Proficient Students*. Austin, Texas.

Texas Education Agency (2001, January) *Educator User Guide for Administrators and Educational Personnel-A* supplement to the *Texas Successful Schools Study: Quality Education for Limited English Proficient Students*. Austin, Texas.

Texas Education Agency (2001, May) *Technical Manual for the Texas Successful Schools Study: Quality Education for Limited English Proficient Students*. Austin, Texas.

Texas Education Code (2002) SUBCHAPTER B. BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAMS. Austin, TX: Texas Education Agency.

Texas Education Agency (2005-2006) Public Education Information Management System (PEIMS) [Electronic Database]. Austin, TX: [Producer and Distributor].

Title III, *Part A- English Language Acquisition, Language Enhancement, and Academic Achievement Act*. (2001) No Child Left Behind Act of 2001. U. S. Congress. Washington, D. C.

Thomas, W. P. & Collier, V. P. (2004). *School Effectiveness for English Language Learners*. Center for Research on Education, Diversity and Excellence (CREDE). Washington, D. C.

Two-Way Language Development Programs. ERIC Digests. ERIC Clearinghouse on Languages and Linguistics (2000), Washington, D. C.

READ Institute, *READ PERSPECTIVES* (2001), Center for Equal Opportunity, - Vol VIII. Washington, D. C.