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# Protecting the Civil Rights of English Language Learners Today: A Study of the Recent DOJ and OCR Investigations of Selected School Districts in the United States

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PROTECTING THE CIVIL RIGHTS OF ENGLISH LANGUAGE LEARNERS  
TODAY: A STUDY OF THE RECENT DOJ AND OCR INVESTIGATIONS OF  
SELECTED SCHOOL DISTRICTS IN THE UNITED STATES

by

Omobola Awosika Oyeleye

A DISSERTATION

Presented to the Faculty of  
The Graduate College at the University of Nebraska  
In Partial Fulfillment of Requirements  
For the Degree of Doctor of Education

Major: Educational Administration

Under the Supervision of Professor Donald F. Uerling

Lincoln, Nebraska

October, 2013

PROTECTING THE CIVIL RIGHTS OF ENGLISH LANGUAGE LEARNERS  
TODAY: A STUDY OF THE RECENT DOJ AND OCR INVESTIGATIONS OF  
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Omobola Awosika Oyeleye, Ed.D.

University of Nebraska, 2013

Adviser: Donald F. Uerling

The purpose of the study was to examine the circumstances and practices that led to OCR and DOJ investigations in seven selected school districts, and to determine the emerging themes from the details of the settlement agreements between the school districts and the United States. The themes developed through this study were aimed at providing a framework for school officials all across the nation, assisting them to examine their practices and align the practices with the results of the recent investigations and settlement agreements.

Representing the intermingling of the field of law and education, the study addressed the question: What are some school district practices that have been found to be in violation of U.S. government laws concerning the education of English Language Learners, and what are the details of the settlement agreements between the U.S. government and the education agencies?

The descriptive, non-experimental, and qualitative impact study examined the impact of the U.S. Department of Justice (DOJ) and the Office for Civil Rights (OCR)

investigations on the educational practice relating to the education of English Language Learners (ELLs).

Data were collected from the settlement agreements between the seven school districts respectively and the DOJ and the OCR regarding the districts' provision of language services to their ELL students. Data analysis consisted of a search for patterns and emerging themes gleaned from the specific details of settlement agreements.

The results of the study indicated that school districts were in violation of the civil rights of their ELLs in the areas of registration, identification, placement, waivers, staff qualification and development, special education and ELL student education, district-parental communication, and ELL student monitoring.

To remedy the non-compliance, the Settlement Agreements placed upon the school districts an obligation to take specific corrective actions within a specified time period.

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To my parents for their love of education and their ever-present motivation

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To my children, Nimi and Eni, for their patience

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To all those whose contribution to my life brought me to this moment

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## **Chapter 1**

### **Introduction**

#### **Statement of the Problem**

On March 7, 2010, in Selma, Alabama, Education Secretary Arne Duncan spoke to reporters, where he declared the Obama administration's intention to enforce more rigorously the civil rights statutes. He stated that the U.S. Department of Education had not been as vigilant as necessary in combating gender, racial, and disability discrimination. He then pledged the Department's determination to enforce those civil rights (Dillon, 2010).

Speaking in another interview, the Assistant Education Secretary, Russlyn H. Ali, expressed similar sentiments and expatiated on the same idea by stating that most of the previous reviews by the United States Department of Education had been concerned with procedural matters, but that from that moment on, the administration would not just confirm the existence of a program, it would also examine the effectiveness of the program. The reviews would be different, not because of the increased numbers of investigations, but by their depth and complexity (Dillon, 2010).

Since 2010, the United States has initiated more than 70 compliance reviews relating to civil rights violations against English language Learners (ELLs). Some of the districts have entered into a settlement agreement with the U.S. government; others are still under investigation (Maxwell, 2011). This study examined the practices and procedures of seven school districts that were investigated by either the U.S. Department of Justice and/or the U.S. Department of Education's Office for Civil Rights and were

deemed to be in violation of the rights of English Language Learners. The settlement agreements were all signed after January 2009 when President Barack Obama took office.

### **English Language Learners in American Public Schools**

The English Language Learner (ELL) is a student whose primary language is not English, and whose language proficiency prevents him or her from achieving or maintaining academic learning in a classroom where the language of instruction is English (Tung et al., 2009). These students are sometimes referred to as Limited English proficient (LEP) or English Language Learners (ELLs). Also common today is the term English Learners (ELs) (Ramsey & O'Day, 2010).

As the immigrant population has increased, so has the number of non-English speaking students in schools. During the 2007–08 school year, there were nearly 5 million K-12 English Language Learners in the 50 states. This represents 10% of the total number of public school students in the United States. This was a 150% increase from the 1989-1990 data (Ramsey & O'Day, 2010).

### **Federal Legal Protections for English Language Learners**

There are federal laws that protect the rights of English Language Learners. The federal legal protections afforded English Language Learners include case law, statutes, and regulations. Among the most important laws are the following: The Civil Rights Act of 1964; the Elementary and Secondary Education Act of 1968; the Equal Educational Opportunities Act of 1974; *Lau v. Nichols*, (1974); and *Castaneda v. Pickard*, (1981), and several memoranda by the United States Department of Education.

Title VI of the Civil Rights Act (1964) prohibited recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin, in any of their activities. It stated, in relevant parts:

No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The term “program or activity” is broadly defined and includes programs and services offered by public schools. (§2000d-4a)

The courts have interpreted these provisions as a requirement that school districts ensure that persons with limited-English proficiency are not excluded, because of a language barrier, from effective participation in the district’s program and services (*Lau v. Nichols*, 414 U.S. 563, 1974; *Castaneda v. Pickard*, 5th Cir. 1981).

Title VII of the Elementary and Secondary Education Act of 1968, also known as the Bilingual Education Act of (BEA) was enacted to require schools to provide bilingual education to students with limited English proficiency. Federal commitment to bilingual education was severely eroded with the enactment of the No Child Left Behind Act in which the Bilingual Education Act was replaced with the English Language Acquisition, Language Enhancement, and Academic Achievement Act (“English language acquisition”, 2002). The name change reflected the federal government's focus shift from the bilingual approach to education. However, the state and local education agencies retained the option of providing bilingual education. Acquisition of the English language was the new federal focus.

Two years after the Bilingual Education Act was enacted, in May 1970, the U.S. Department of Health, Education, and Welfare clarified the obligations of school districts

to their national-origin-minority students, stating in part: “where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open the instructional program to the students” (“DHEW memo regarding,” 1970) p. 1).

In *Lau v. Nichols* (1974), a landmark United States Supreme Court case, the Supreme Court ruled that merely providing the same facilities, textbooks, teachers, and curriculum is not an indication of equal educational opportunity when students who do not understand English are foreclosed from meaningful education.

The Equal Educational Opportunities Act of 1974, a civil rights statute, prohibited states from denying equal educational opportunity to an individual on account of his or her race, color, sex, or national origin. The statute specifically prohibited states from denying equal educational opportunity, and required them to take appropriate action to overcome language barriers that impede their students' equal participation in instructional programs.

In *Castañeda v. Pickard* (1981), the Fifth Circuit court established a three-pronged test to evaluate a district’s ELL program. First, the program was to be based on an educational theory recognized as sound by some experts in the field or considered by experts to be a legitimate experimental strategy. Second, the programs practices, resources, and personnel were to be reasonably calculated to implement the district's chosen educational theory effectively. Third, the school district was required to evaluate its programs and make adjustments as needed to ensure the program’s effectiveness.

## **The Role of Agency Regulations in Statutory Enforcement**

The federal government's executive arm consists of administrative agencies that are charged with the enforcement of federal laws, through rules, regulations, decisions, and opinions (Walsh, Kemerer, & Maniotis, 2005). The two major agencies that enforce the federal legal protections for English Language Learners are the United States Department of Justice and the United States Department of Education.

The United States Department of Justice (DOJ), headed by the Office of the Attorney General, is separated into divisions, which further operate in sections. The Educational Opportunities Section of the Civil Rights Division enforces the following statutes: Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974 (EEOA), the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act (DOJ, "*Educational opportunities section*", 2012b).

The United States Department of Education (ED), the other agency that enforces laws that govern the education of ELLs, is also charged with responsibilities relating to federal financial aid, research and data relating to education, addressing national educational issues, ensuring equal access to education and prohibiting discrimination in education. The Department of Education is subdivided into different offices, but the office that is relevant to this study is the Office for Civil Rights (OCR) ("About ed: Overview," 2011).

The responsibilities of OCR include administering policies and legislation that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or age.

It develops and recommends the adoption of policies and regulations that relate to civil rights, and it investigates and conducts enforcement of the policies and regulations (OCR, "*Regulations enforced by*," 2011).

OCR's jurisdiction covers five federal statutes: Title VI of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color and national origin; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability, whether or not the entity receives federal funds; and the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age (OCR, "*Regulations enforced by*," 2011).

When an entity that is a recipient of federal funds (in most cases) is deemed to have engaged in discriminatory acts violating a citizen's civil rights, a complaint may be filed with either the Department of Justice or the Department of Education. These two agencies are the United States entities that conducted the investigations that are the focus of this study (OCR, "*Regulations enforced by*," 2011).

### **The Purpose of the Study**

The purpose of this study was to examine the circumstances and practices leading to OCR and DOJ investigations in seven selected school districts and to develop themes from the details of the settlement agreements that the school districts signed. It was expected that the study would provide a framework for school officials who are charged with the education of English Language Learners all across the nation, assisting them to

examine their practices and align them with the results of the investigations and settlement agreements. The aim was that the results of the study would enable the districts to follow the requirements of federal law, to avoid a government investigation, and to ensure that the school officials engaged in practices that protect the civil rights of ELLs.

The study addressed this question: What are some school district practices that have been found to be in violation of U.S. government laws concerning the education of English Language Learners, and what are the details of the settlement agreements between the U.S. government and the education agencies? The study began with a historical and legal review of the education of language minorities in the United States, followed by an analysis of the settlement agreement that each entity signed with the investigating agencies.

### **Context of the Problem**

The problem explored in this study was related to the seeming misunderstanding in some school districts regarding what was necessary for compliance with the laws and regulations that govern the education of English Language Learners.

The increasing number of English Language Learners in the United States makes it imperative that a clear framework emerge, upon which school administrators will base their practices, ensuring the protecting of their ELL students' civil rights.

### **Delimitations**

1. This study was delimited to English language learner programs in public schools.

2. The study was delimited to investigations conducted by the United States Department of Justice (DOJ) and the Office of Civil Rights (OCR).
3. The study was delimited to seven specifically selected school districts whose English language learner programs have been investigated by the OCR and/or the DOJ.
4. The investigations had been initiated after January 2009 and concluded by June 2012.
5. This study did not include investigations in other areas such as disability and special education.

### **Limitations**

1. This study involved an analysis of judicial opinions, statutes, and regulations. These do change from time to time.
2. This study involved an analysis of some judicial opinions that are applicable to the school districts being studied and only in relation to their ELL programs.

### **Significance of the Study**

The demographics of the United States are constantly changing. One area in which the change is most obvious is the increasing numbers of students whose functional language is not English (DelliCarpini, 2009). School districts and schools are under a legal obligation to provide meaningful education to these students. The United States government and state governments have established laws that seek to ensure that these students and their parents are not subjected to any discrimination in the educational

environment, and that these students receive meaningful education (*Lau v. Nichols*, 1974).

This study was significant in that the findings revealed areas of non-compliance by the school districts, outlined the steps that are needed to achieve compliance, and provided school officials a framework upon which they could assess and modify their practices and programs for the education of their language minority students. Failure to protect their students' rights could lead to a United States government investigation, loss of funding, and could compromise the education of their English Language Learners (ELLs).

### **Definition of Terms**

The terms used to describe ELLs have frequently changed.

*ELL (English Language Learner)*—An active learner of the English language who may benefit from various types of language support programs. This term is used mainly in the U.S. to describe K–12 students.

*ESL (English as a Second Language)*—Formerly used to designate ELL students, this term increasingly refers to a program of instruction designed to support the ELL. It is still used to refer to multilingual students in higher education.

*LEP (Limited English Proficiency)*—Employed by the U.S. Department of Education to refer to ELLs that lack sufficient mastery of English to meet state standards and excel in an English-language classroom. Increasingly, English Language Learner (ELL) is used to describe this population, because it highlights learning, rather than suggesting that non-native- English-speaking students are deficient.

*EFL (English as a Foreign Language) students*—Non-native-English-speaking students who are learning English in a country where English is not the primary language.

*Sheltered English Instruction (SEI)*—Instruction designed specifically for limited English students to speak, read, and write English, by certified ESL teachers, using curricula and methodologies specifically designed to promote English language skills while teaching content area curricula.

*First Language*—The native language or mother tongue, often abbreviated as L1.

*Second Language*—A language learned in addition to the first language, often abbreviated as L2.

For the purposes of this study, ELL is the descriptor of choice because it is the most recently defined term. The term EL is used to maintain fidelity when it is the term of choice in a quotation.

## **Summary**

The events and trends in the United States at large are often reflected in the schools. In this case, the immigration trends and the increasing non-English speakers in the country have made it very important that the civil rights of English language learners (ELLs) be protected. The United States, through the Department of Justice and the Office for Civil Rights initiated efforts to protect these rights by ensuring that schools and school districts comply with the law. This study sought to examine the details of what was being required of the school districts regarding the education of English language learners.



## **Chapter 2**

### **Literature Review**

#### **Early History of the Education of Speakers of Other Languages**

There are two kinds of non-English minorities in the United States: those who settled in the territory before the birth of the United States in 1776, and those who moved into the territory after 1776. The settlers who predated 1776 in the territory included Germans in Pennsylvania, Maryland, Virginia, New York, and Ohio (Brown, 1992).

In 1880, the percentage of foreign-born people who spoke German was 60%, rising from 15% in 1850. French speakers accounted for 9% of the population during the same years, and 11 % of the population spoke a Scandinavian language. There are reports of the existence of German schools in Philadelphia as early as 1694 (Kloss, 1998), and that they existed until the early 20th century (Crawford, 1989). In the New World Territories, there were other languages like Spanish, French, Hawaiian, and Russian, all coexisting with the English language, in territories that became or were joined to the United States (Baron, 1992).

In the 1880s, there were as many as seven language groups. The Germans were settled in the areas now known as New York, to Georgia and the Midwest. Also in New York, Pennsylvania, and Delaware, were the Dutch and the Swedes. The English were on the East Coast, the French in New England to Canada, and the Spanish were along the coast of Mexico and the Pacific Ocean. The Russians settled in the Pacific coast in California and Alaska (Kloss, 1998).

In the early years of the settlement of the United States, settlers set up communities that were often homogeneous and exclusionary. Some of the early communities included the Germans in Pennsylvania, the Spanish in New Mexico and Colorado, and the French in Louisiana and Texas (Kloss, 1998). They maintained their customs, cultures, and languages (Brown, 1992).

Other than English, the German language received the most public use. The Continental Congress printed German translations of many of its proclamations during the period of the War of Independence (Kloss, 1998). The use of German among the populace was so prevalent that some leaders were concerned. Ben Franklin, concerned about the increase in the number of speakers of German in the Pennsylvania colony, warned that it might become necessary to hire interpreters in the Assembly to tell one half what the other half was saying (Brown, 1992).

Even though the norm of the day was to educate children in the language of their community (Zelasko, 1991), there were also many attempts to change the language of instruction in those schools, either by direct attack or by stealth. One of those attempts was in the 1750s when Benjamin Franklin embarked on a project in association with the Society for the Propagation of Christian Knowledge. The German parents had initially been interested in the program, until they realized that the purpose of the schools was not religious instruction, but linguistic assimilation. They withdrew their support (Crawford, 1989). Still concerned about the language issue in 1751, Ben Franklin queried,

Why should the Palatine Boors be suffered to swarm into our Settlements, and by herding together establish their Language and Manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a Colony of Aliens, who will shortly be so numerous as to

Germanize us instead of our Anglifying them, and will never adopt our Language or Customs, any more than they can acquire our Complexion. (Labaree, 1959)

Between 1790 and 1815, the influence and the expanse of the English language increased beyond that of the other languages. Transatlantic immigration had slowed down because of the War of 1812 and other European conflicts. Therefore, languages like Dutch, German, and French suffered a decline in the United States, because there were fewer new arrivals from Europe. Schools that previously offered instruction in languages other than English gradually began to switch over to English language instruction only (Crawford, 1987).

However, in the 1830s, because of a new wave of immigration, there was a resurgence of ethnic languages. These languages were again used in communities that had a high number of speakers in that particular area. By 1839, Ohio had a law that authorized instruction in German or English, or both, at the request of parents. The state of Louisiana, in 1847, enacted a similar law, authorizing French instead of German. New Mexico authorized Spanish in 1848, and by the middle of the century, the cities of Baltimore, Cincinnati, Cleveland, Indianapolis, Milwaukee, and St. Louis were operating public and parochial schools with instruction in German and English (Crawford, 1989).

This accommodating attitude did not last long. By the 19th century, the many efforts to oppose other languages in favor of English became more effective. Political parties took an anti-immigrant stance, and there were instances when newspapers editorialized against foreign language parochial schools (Crawford, 1989).

Before and during World War I, and especially after the United States entered the war in 1917, negative sentiments swelled against the German language. It was seen as an undemocratic language, and a threat to the national unity of the United States. A similar sentiment was extended to Polish, Czech, and the Scandinavian languages, but German was singled out to be completely rooted out. By 1918, school districts were banning the teaching of German because there were allegations that Germany was underwriting language instruction in the U.S., seeking to prevent the assimilation of German-Americans into the American culture (Baron, 1992).

Capturing some of the sentiments of that time was Thomas Bailey Aldrich, in his 1895 poem, *Unguarded Gates* (Aldrich, 1895). He described the new immigrants as follows:

These bringing with them unknown gods and rites  
 Those, tiger passions, here to stretch their claws  
 In street and alley what strange tongues are these?  
 Accents of menace alien to our air.  
 Voices that once the Tower of Babel knew! (pp. 16-17)

Also riding the wave of the Americanization trend was Henry Cabot Lodge, senator from Massachusetts. Senator Lodge described the immigrants from eastern and Southern Europe as, "people whom it is very difficult to assimilate and do not promise well for the standard of civilization in the United States" (Ewing, 2009, p. 1). He was also a member of the Immigration Resistance League, founded in 1894. The Immigration Resistance League advocated that any foreigner who could not speak English be barred from entering the United States. Even though the measure was defeated at the national

congress, by the end of 1889 however, Wisconsin and Illinois had enacted laws that declared English as the language of instruction in all schools (Crawford, 1998).

By 1906, the first federal law pertaining to language was passed, requiring those who applied for naturalization to be able to speak English (Crawford, 1989). As a result, the status of the English language rose. Some school officials, like one superintendent of the New York City Schools, stated that Americanization would create “an appreciation of the institutions of this country and absolute forgetfulness of all obligations or connections with other countries because of descent or birth” (Tyack, 1993, p. 13).

In 1918, President Theodore Roosevelt expressed the sentiment that America had room for only one language, the English language. He also stated that Americans ought not to be like residents of a boarding house, but as people of one nationality (Mautner, 1985).

As World War I approached, the rhetoric against other languages heightened, especially against German. Between 1917 and 1922, the negative sentiments against non-English speakers had resulted in legal restrictions that banned the use of German in the classroom, on the phone, in the church, and in public meetings. Several laws were promulgated to include punishment for those who did not speak English. Some states also discouraged the teaching of any language other than English (Williams, 1997).

Advocating for the use of English, Governor Harding of Iowa declared in 1918 that English should and must be the only medium of instruction in public, private, denominational, and other similar schools, that conversation in public places, on trains, and over the telephone be in the English language, and that those who were unable to

speak or understand the English language were to limit their religious worship to the confines of their homes (Frese, 2005).

Getting into the fray, the Secretary of the Interior, Franklin Knight Lane, stated that the need for all Americans to be able to read, write, and think in one language was a primary condition for the growth of America (Baron, 1992).

Secretary Lane's views were quoted by Senator William Kenyon of Iowa, in sponsoring a bill by the Bureau of Education of the Department of the Interior. This Americanization bill required that all non-Anglophone aliens under 45 years of age be required to become literate in English. The same requirements were to apply to non-aliens under 21 years of age. The same bill would require that students attend English classes every year, for 200 hours, until they pass an English test that had been prepared by the Secretary of the Interior (Baron, 1992).

Senator Lane recommended that in addition to being a state concern, education should also be a federal concern. The United States Senate passed the Interior Department's Americanization proposal, but the House rejected it, thereby putting on hold the role of the federal government in the education of non-Anglophones for another 50 years (Baron, 1992).

After World War I, the foreign language restrictions continued. Some states even outlawed all foreign language instruction at the elementary school level, seeking to prevent what they considered to be the harmful effects of non-American ideas that were being inculcated through the teaching of foreign languages (*State of Iowa v. Bartels*,

1923, *later reversed*). Those laws were overturned by the United States Supreme Court in *Meyer v. Nebraska* (1923).

*Meyer v. Nebraska* (1923) was a law suit that had its beginnings in a Nebraska law: An Act Relating to the Teaching of Foreign Languages in the State of Nebraska. This law banned the teaching of foreign languages before ninth grade, stating:

Section 1: No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

Section 2: Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

Section 3: Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100) or be confined in the county jail for any period not exceeding thirty days for each offense.

Section 4: Whereas, an emergency exists, this act shall be in force from and after its passage and approval (p. 398).

This law became the basis of the prosecution of Robert T. Meyer, a teacher at the Zion Parochial School, a Lutheran school. Mr. Meyer was accused of teaching German to an eighth grade student, for which the court assessed a fine of \$25 against Mr. Meyer. (*Nebraska v. Meyer*, 107 Neb. 657 (1922); *reversed by Meyer v. Nebraska* (1923).

Mr. Meyer's defense, which was supported by his superiors, was that he was reading the German Bible to a student outside of school hours, as part of religious instruction provided to students to assist the students in learning enough German to be able to worship with their parents. Mr. Meyer challenged the statute on the basis that it constituted a wrongful interference with his Fourteenth Amendment right to choose and pursue a profession. He also disputed the claim that his actions were immoral and

inimical to the welfare of the public. Furthermore, he disagreed with the notion that foreign language was a subject appropriate for legislative prohibition, and declared that the law was a denial of parental rights regarding what their children would be taught.

The trial courts and the Nebraska Supreme Court rejected Meyers' defense and ruled in favor of the state. The U.S. Supreme Court overturned the state decision in *Meyer v. Nebraska* (1923). In the majority opinion, Justice James Clark McReynolds opined that:

The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefore in time of peace and domestic tranquility has been shown. (p. 402)

After World War I, the pro-English movement continued. Many of the statutes were targeted toward German or the "newer" languages only. Hebrew and Latin were excluded. There were probably as many as 18,000 people who were charged with a violation of the English-only statutes (Baron, 1992).

Nebraska was not the only state to enact such laws. Illinois passed laws that were designed to facilitate the teaching and learning of English. Oregon's law prohibited the printing, publication, circulation, display, or sale of any material in any language other than English, without the provision of a literal, publicly displayed, English translation. South Dakota declared English education a fundamental civil right (Baron, 1992).

Between 1919 and 1921, Americanization laws had been passed in about 20 states. Businesses and employers started to offer English classes in adult education

programs. The Ford Motor Company provided English classes for employees after the work day was over, with mandatory attendance, two nights a week (Attwood, 1961). By the time *Meyer v. Nebraska* (1923) was decided, the study and public use of German had declined dramatically because most German Americans had assimilated into the American culture, a consequence of the animosity and backlash resulting from World War I (Crawford, 1998).

The decline in the status of German meant that during World War II there was a shortage in the number of Americans who could use German in the armed forces or intelligence gathering. It was necessary for America to communicate with non-English speaking countries, to encode messages to prevent Japanese interception, and to gather intelligence (Williams, 1997). The government made an attempt at this time, to provide special German instruction for the War efforts. However, none of the foreign languages ever achieved previous levels of use and popularity (Del Valle, 2003).

### **Non-Anglophone Students in the Early Years of the United States**

In *Meyer v. Nebraska* (1923), the U.S. Supreme Court established both the right of parents to control what their children are taught, and the right of teachers to teach it. However, it did not address the issue of how to educate language minority students in schools in the United States (Baron, 1992).

According to Thompson (2008), language minority students used to be placed in the lowest grades or in remedial classes, where short bursts of intensive English instruction were provided for new arrivals before they were placed in all-English classrooms. These programs existed as early as 1910, and were too few to provide

services to all the students that needed them. The teachers were ill-prepared, and ill-equipped.

In the wave of Americanization efforts of the early 1900s, English instruction was mixed with citizenship and civics. Therefore, school texts tended to portray the immigrants negatively, while failing to address the students' language needs. The students learned English, but it was not as a result of the schools' efforts (Higham, 2002).

The schools treated their non-English speaking students the same way as those who spoke English, not making any curricular or instructional accommodation for their language needs. Educational agencies that attempted to do something only tried to correct the students' pronunciations through facial, lip, tongue, and jaw exercises, vowel pronunciations, and other efforts to correct their accents (San Miguel, 2004).

Barrows (1922) expressed concern about the education of non-English speaking students. Asserting that English language deficiency was a handicapping condition for the students, she challenged the prevailing thought at that time, which was that the immersion method of instruction was sufficient in teaching non-English speaking students. Barrows observed that these students understood less of the instruction than their teachers thought, and that they lagged behind their English-speaking classmates. Because the students often lagged behind in content area too, she suggested that the students be given a thorough foundation in the English language, after which they may be required to perform at the same level as their English speaking counterparts.

The number of students who failed in school in those days far outnumbered those who succeeded, with many of the students dropping out of school. In 1904, as many as

39% of elementary school students in New York City lagged behind in school, by as many as two years (Greer, 1972). Further indicating the gross error in the education of immigrants in those days, the Dillingham Commission (1911) reported that 60 to 70% of children whose parents were foreign-born were labeled as “retarded” (Dillingham, 1911). In a review of the literature of the early 1920s, there was an abundance of booklets and pamphlets on pronunciation and correct English; but there was a dearth of literature on ESL instruction (Baron, 1992).

At this time, there was also some debate about the language requirement for teachers. Fairchild (1926) complained that a burden of foreignness had been laid upon the public schools, with a large number of teachers who were Partly Americanized. Others shared Fairchild’s opinion, a sentiment that led to the use of tests that focused only on applicants’ accents, thereby keeping immigrant and bilingual applicants out of the teaching profession (Baron, 1992). In California, Chinese Americans were discouraged from elementary education majors because speech courses were part of the requirement, and those who were unsuccessful in the speech tests were often not permitted to teach Caucasian children (Low, 1982).

The effect of these efforts was that the teaching workforce was mostly Caucasian and monolingual, without any training in how to teach English to non-English-speaking students, nor empathy towards the language difficulties faced by their students. For many years, teachers who were hired to teach non-English speaking students received hardly any extra preparation in second language education teaching methodology (Baron, 1992).

## **Federal Government Enters Public Education**

For most of the early years of the United States, the federal government abstained from any involvement in the school language issues, specifically those that concerned the education of language minority students (San Miguel, 2004). The first major federal legislative foray into the world of education was the Elementary and Secondary Education Act (ESEA) of 1965. There also developed, somewhat in parallel, a body of case law and federal regulations, relating to the education of language minorities. Both tracks are discussed in this study.

The Elementary and Secondary Education Act (ESEA) was signed into law by President Lyndon B. Johnson on April 11, 1965. The Act was aimed towards the strengthening and improvement of educational equality in elementary and secondary schools, and intended to provide equal access to education by closing the achievement gap among students (Section 6301 et seq).

Even though the Act was the federal government's largest source of funding for educationally disadvantaged students, it lacked the authority to establish a national curriculum, or to exercise "any direction, supervision, or control over the curriculum program of instruction, administration, or personnel of any educational institution, school, or school system" (Sec. 1232a). The Act was amended every few years, and one of the amendments included the Bilingual Education Act (BEA), the first federal law that addressed the needs of non-English speaking students (San Miguel, 2004).

Interest in bilingual education was not a result of spontaneous eruption. The climate was ripened by legal, social, political, and educational events that occurred

shortly before 1968. Educational factors that influenced the nation's attitude to bilingual education included the negation of previously held beliefs about bilingualism: that bilingualism negatively correlated with school achievement (San Miguel, 2004). In the 1960s, research findings began to show that bilingual students were capable of performing at the same level as, or better than their English-speaking counterparts. Anglo students who were taught in dual-language classrooms were also academically successful (Cohen, 1975).

One other event that paved the way for the Bilingual Education Act occurred in 1954, when the U.S. Supreme Court decided the landmark case of *Brown v. Board of Education* (347 U.S. 483). In that case, the court ruled that race-based school segregation was unconstitutional. Even though language minorities or students of Hispanic descent were not mentioned, the ruling expanded its provisions to "others similarly situated" (p. 495). Bilingual education advocates interpreted that to mean minority students' right to be taught in their language.

This ruling, coupled with the struggle for voting rights and equal employment, and the War on Poverty legislation in the 1960s, helped to focus attention on the plight of minorities and the discrimination they experienced. Ethnic minorities also began to extend the argument to cover language discrimination. They argued that it was discriminatory to go to school without understanding the language of instruction, and the needed language support. They also argued that it was the responsibility of the federal government to overcome discrimination, including language-based discrimination (San Miguel, 2004).

**Title VI of the Civil Rights Act of 1964.** Another significant event in this period was the enactment of the Civil Rights Act of 1964, especially Title VI, which prohibited discrimination on the basis of race, color, or national origin, in programs and activities that receive federal funding (42 U.S.C. Section 2000d *et seq.*).

This legislation laid the ground work for the federal view of equality. The Civil Rights Act was of benefit to language minority students and activists in that it prohibited recipients of federal assistance from discriminating against anyone on the basis of race or national origin. In addition, it gave the Attorney General authority to initiate law suits for school desegregation, if private citizens were unable to do so effectively. The law was strengthened by the sanctions that were imposed on violators: the loss of federal funding, which was a matter of serious import to education agencies that rely heavily of federal funds (Section 2006(a) *et seq.*).

The enactment of the federal Economic Opportunity Act of 1964 (repealed) and the Elementary and Secondary Education Act of 1965 also played pivotal roles in the eventual enactment of the Bilingual Education Act. Both laws placed a focus on the educational performance and achievement of minorities of low socioeconomic status (Garcia, 1997).

During the same period, social activists began to kick against what they perceived to be cultural repression by Anglo Americans, forced assimilation, and structural exclusion of persons of Spanish heritage. They argued that the academic and socioeconomic progress of minorities is closely related to cultural identity and political empowerment (García, 1997).

The activists viewed bilingual education as a way of rectifying the historical structural exclusion from the schools, of the Spanish language and the people of Mexican origin. They viewed it as a way to eliminate discriminatory school practices, and as a possible end to assimilationist curricular and inappropriate teaching methods (San Miguel, 2004).

Initially, the proponents for bilingual education saw it as an avenue to provide students with an easier transition into the American school culture. As time went on, bilingual education became a way to preserve the Mexican culture, and the Spanish language. It had become a quest for the survival of bilingualism (San Miguel, 2004).

By the early 1970s, the social activism, educational research, new awareness about poverty, in addition to the civil rights movement, had paved the way for a political open-mindedness that led to the proposal and enactment of the Bilingual Education Act (Ovando, 2003).

**The Bilingual Education Act of 1968.** In 1967, U.S. Senator Ralph Yarborough from Texas introduced a bill proposing to provide assistance to school districts to establish educational programs specifically for Spanish-speaking students. The bill included recommendations to teach Spanish to native speakers, to teach English as a second language, and to provide Spanish-speaking students with programs that would provide them with an appreciation of their ancestral language and culture. Soon thereafter, 37 other bills were proposed relating to the same issue. The combination of the proposals in these bills resulted in what later became known as Title VII of the

Elementary and Secondary Education Act (ESEA), or the Bilingual Education Act (BEA) of 1968 (Stewner-Manzanares, 1988).

Through the enactment of Title VII, the federal government gave recognition to the educational difficulties experienced by limited English speaking students, and sought to provide a means of addressing those problems (Ovando, 2003). The Act targeted limited English proficient students from low income families. It recognized the special educational needs of limited-English-speaking children and provided financial assistance to local education agencies for the development and implementation of new programs that would meet those needs (Stewner-Manzanares, 1988).

At its inception, BEA funds were awarded as competitive grants to school districts, for the development of innovative programs to teach English to non-English speaking students. The Act did not provide guidelines, but allowed the districts to interpret the Act and create the programs based on their interpretation and discretion. It also did not mandate bilingual instruction or native language instruction. In addition, participation was voluntary (Stewner-Manzanares, 1988).

**Lau v. Nichols (1974).** In *Lau v. Nichols* (1974), a landmark class action lawsuit was brought by 13 Chinese speaking students in San Francisco. They alleged that because they could not understand the language in which they were being taught, they were being denied an education and their constitutional right to an “equal protection under the law.” They also alleged that the school district's action violated the Civil Rights Act of 1964 (Grant, 1976).

During the trial in United States District Court in San Francisco, the evidence revealed that even though as many as 2,856 Chinese-speaking students needed language support, 1,790 of them were not receiving any help at all. Two-thirds of those who received help did so for only 50 minutes a day. Most of the students were taught by teachers who were neither bilingual nor Chinese speaking, leading to a situation where these students were in school without comprehending much of anything (Grant, 1976).

In the district court, the defendants argued that their action was not discriminatory because these students were receiving instruction in the same facilities, by the same teachers, and at the same time as everyone else (*Lau v. Nichols*, 1973). This, they argued, was not in violation of either the U.S. Constitution or the Civil Rights Act of 1964. The district court agreed, opining that the plaintiffs “received the same education made available on the same terms and conditions to the other tens of thousands of students in the San Francisco Unified School District,” (p. 793), concluding that equal access to the school services were sufficient. The opportunity to derive equal benefit from the services is not required.

Making the same arguments as they did in the district court, the plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit. Accepting all the arguments made by the appellees, the court observed that:

Every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and contributed completely apart from any contribution by the school system. That some of these may be impediments which can be overcome does not amount to a 'denial' by the (school district) of educational opportunities . . . should the (district) fail to give them special attention. (*Lau v. Nichols*, 1973, p. 798)

The Circuit Court affirmed the lower court's decision.

Following the decision by the Circuit Court of Appeals, the plaintiffs appealed to the United States Supreme Court (*Lau v. Nichols*, 1974). The Supreme Court disagreed with the Circuit Court's opinion that equal access to facilities is all that is required. In its own opinion, the Court stated that:

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that before a child can effectively participate in the educational program he must already have acquired these basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. (p. 566)

In its decision for the plaintiffs, the Supreme Court emphasized that it had not reached the Constitutional question. Its decision was based solely on the anti-discrimination provisions of the Civil Rights Act of 1964 (p. 566-567)

The court also did not mandate specific actions or prescribe specific remedies. Neither did it grant the plaintiff's request that all subjects be taught bilingually. The case was remanded to district court to consider "appropriate relief" (p. 569).

Justice Blackmun wrote a separate concurring opinion in which he limited the reach and application of the ruling. In his opinion, he stated that:

when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision or the separate concurrence as conclusive upon the issue whether the statute and the guideline require the funded school district to provide special instruction. For me, numbers are at the heart of this case and my concurrence is to be understood accordingly. ( p. 572)

Like the majority opinion, Justice Blackmun's opinion did not specify the exact number of students that are required for a district's program to fall under the ruling of *Lau v. Nichols* (1974).

Another federal statute that had an impact on the education of ELLs was passed in 1974: the Equal Educational Opportunity Act (EEOA). As Title II of the Educational Amendments Act of 1974, the EEOA had an impact on the education of language minority students by requiring that all schools should overcome language barriers with instructional programs (20 U.S.C. § 1701, *et seq.*). This Act effectively extended the ruling in to cover all students and all school districts, whether or not they received federal funds.

The EEOA prohibited the denial of any educational benefit on the basis of race, color, sex, or national origin by engaging in deliberate segregation, neglecting to remedy deliberate segregation, or assigning a student to a school other than the one closest to his or her home, which then results in segregation on the basis of race, color, sex, or national origin; or failing to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs (20 U.S.C. Sec. 1703).

Also in 1974, the Bilingual Education Act was amended. The amendment was aimed at correcting some of the deficiencies of the 1968 version. The non-specific nature of the 1968 guidelines, and the fact that compliance was voluntary, had created allegations that non-English speaking students were being denied equal educational opportunities.

While the 1968 version focused on the creation of innovative programs, the 1974 amendments focused more on capacity building efforts such as curriculum expansion, staff, and bilingual education research. In the amendments, bilingual education was described as instruction in English and in the student's native language, designed to prepare the students to participate in the regular education classroom as soon as possible, while maintaining the language and culture of the students. An earlier requirement of the BEA, that beneficiaries of BEA funds be from low income groups, was removed (Stewner-Manzanares, 1988).

The Bilingual Education Act was amended again in 1978. The new amendments extended the Bilingual Education Act and broadened the definition of eligible students to include not just those who were limited English *speaking*. It now covered all students who were limited English *proficient*; meaning that in addition to their oral abilities, the students' reading, writing, and comprehension difficulties were to be considered in determining their ability to perform successfully in a classroom where instruction was in English (Public Law 95-561, 1978).

The amendments also indicated that the goal of transitional bilingual education was to assist students' transition into English instruction as quickly as possible; and that in so far as the native language was used, it was to be used to assist the students towards English language proficiency. Any program that served only to maintain the native language would not qualify for funding (Stewner-Manzanares, 1988).

**Reduced Federal Role: 1981-1987**

In the 1980s, President Reagan's administration sought to reduce the role of the federal government in education. Consequently, federal funding for education programs was reduced greatly (McDonnell, 2005). In the Omnibus Budget Reconciliation Act, passed in 1981, Title I of the ESEA was renamed Chapter 1 of the Education Consolidation and Improvement Act. Even though the legislative purpose was not changed, the funding allocated to the programs was significantly reduced, leading to a reduction in the number of students served (Thomas & Brady, 2005).

At the same time that federal funding was declining, there was increased criticism of the academic performance of public school students in America. In 1983, The United States Department of Education's National Commission on Excellence in Education published a scathing report, *A Nation at Risk*. The report highlighted the need to raise academic standards, more rigorous course requirements, and the need to change teacher training and retention practices (Nation, 1983). The states responded; and by the mid-1980s, 41 states had instituted measures that required higher standards for high school graduation, and 29 states had mandated that teachers pass a standardized test in order to be certified (Malen & Fuhrman, 1990).

The next legislative act came through the amendment of the Bilingual Education Act (BEA) in 1984. This amendment seemed to take into account some of the sticky points of the Lau Remedies debate, and the federal government's reduced role in education funding. In the 1984 amendment of the BEA, states were allowed greater leeway and flexibility in the management and implementation of the programs for their

LEP students (Stewner-Manzanares, 1988). States were at liberty to spend up to 4% of their allocation for alternative programs if those programs did not use native language instruction (Fernandez, 1992).

The states were allowed to run programs such as developmental bilingual education where instruction in English and a native language was geared towards developing competence in both languages. Other permissible programs included transitional bilingual education where structured English was combined with instruction in a native language. There were also programs where native languages were not used. School districts could apply for grants for any of these programs, depending upon their needs (Stewner-Manzanares, 1988).

The 1984 amendments also gave parents or guardians a more visible role in their children's education. They were to be informed about why their children qualified for the Title VII program, the different alternative programs, and their right to deny permission to enroll their children in those programs (Fernandez, 1992).

In 1988, the Bilingual Education Act was reauthorized for the fourth time. Some of the relevant major changes included a 3-year limit on the number of years a student may participate in the transitional bilingual program, with the possibility of a 2-year extension under special circumstances. In addition, grant funds would no longer be used to develop instructional materials. The Amendment also clarified OCR's parental notification requirements by requiring that such notification be communicated in a language and form that parents could understand (Cubillos, 1988).

This amendment also began the practice of requiring the states to define and document levels of academic achievement for their disadvantaged students. Title I required that school districts assess their student's academic progress annually using standardized tests, the results of which will determine whether they will receive ESEA funds (Thomas & Brady, 2005).

**Redefining Federal Aid to Disadvantaged Students: 1988-2001.** In spite of the large amount of money that the federal government had been spending on education, there was no assurance that the results justified the expense. Seeking a way to raise student academic achievement and develop national educational goals, President George H.W. Bush, in conjunction with state governors, held an educational summit in 1989, where it was determined that there was a need to require greater accountability for higher educational standards for ESEA programs (Vinovskis, 1999).

Calling for national standards and national student testing, in 1991, President Bush initiated America 2000, a major legislative initiative. The initiative was passed by the House of Representatives, but not the Senate (McDonnell, 2005). However, the initiative became a catalyst for education reform, especially as it related to the ESEA and the development of common standards (Thomas & Brady, 2005).

**GOALS 2000: Standards-based Reform Continues.** President Bill Clinton's standards-based Goals 2000: Educate America Act of 1994 was the next major federal legislation to be enacted. Goals 2000 had four foci: student achievement levels, clearly defined challenging academic standards, universally applied standards, and utilizing test data to monitor instructional effectiveness (Goals 2000, n.d.).

**The No Child Left Behind Act.** Despite the huge amount of money spent by the federal government to reduce the achievement gap, it seemed the achievement gap was still as wide as ever. In 1998, a study by the National Assessment of Educational Progress (1999) revealed that 43% of African Americans, 36% of Hispanics, 35% of American Indians/Alaska Natives, and 25% of Asian Americans/Pacific Islanders were below the basic level of competency in reading, compared to 17% of Whites. The study also revealed that there was staff quality discrepancy in that schools that had a majority of minority students also had higher numbers of unqualified teachers (NAEP, 1999). It appeared that the large amounts of money being spent on education by the federal government did not advance the aims and focus of the ESEA.

In 2000, Congress reviewed the ESEA, focusing on the dearth of quality educational opportunities for racially and economically disadvantaged populations. Congress wanted to require more accountability from the districts that received Title I funds (Thomas & Brady, 2005).

Two years later on January 8, 2002, the Elementary and Secondary Education Act (ESEA) was reauthorized and renamed as the No Child Left Behind Act of 2001 (NCLBA). The NCLBA, signed into law by President George W. Bush, was the result of an unprecedented bipartisan effort to make quality education available to all students, without regard to race, ethnicity, or socio-economic status. NCLBA focused on using accountability standards and research-based instructional practices to strengthen basic and advanced skills, and to help disadvantaged students reach grade level proficiency.

The Act also sought to empower parents with choices and options (“Executive summary of”, 2001).

Tougher than the ESEA, the NCLBA raised the bar of academic standards to which state and local agencies were accountable. Funding was linked directly to student performance. Withdrawal of federal funds was one of the consequences of low student performance (Thomas & Brady, 2005). The NCLBA remains in effect.

### **Federal Regulation and Common Law Relating to English Language Learners**

In addition to investigating complaints, the Office for Civil Rights also had the authority to initiate compliance reviews, focusing on specific and acute compliance problems that may be national in scope or that may not have been raised by complaints. These compliance reviews enable OCR to take action that would benefit a large number of students, unlike specific complaints that might only benefit one student (OCR, “*Annual reports to*”, 2005).

#### **1970 OCR Memorandum.**

The first relevant memorandum issued by the then U.S. Department of Health, Education, and Welfare in 1970, as a corrective memorandum, following a series of compliance reviews. Addressed to districts with enrollments of more than 5% national origin minority group children, this 1970 memorandum was issued after a review of school districts that had a large enrollment of Spanish-surnamed student populations. OCR had found that many school districts engaged in some practices that resulted in denying Spanish-surnamed students equality of educational opportunity. Other national

origin minority students, such as Chinese and Portuguese students, experienced the same treatment ("DHEW memo regarding, 1970").

To address these inequities, OCR published the memo "Identification of Discrimination and Denial of Services on the Basis of National Origin" (1970). The memo's purpose was to clarify the Department's policy on school districts' duty to provide equal educational opportunity to students who were from a national origin minority group, and whose English language skills were deficient ("*Identification of discrimination,*" 1970).

It required that school districts make their instructional programs accessible to students by taking affirmative steps to rectify their language deficiency, if their inability to speak and understand English would exclude them from participating effectively in the district's educational program.

The 1970 memorandum also prohibited schools from assigning national origin minority students to special education classes because of their language skills. Neither were they to be denied access to college preparatory courses because of the district's failure to provide necessary English language skills. School districts that used ability grouping or tracking system must ensure that those groupings achieved their instructional purpose in the quickest time possible, without becoming a dead-end. The memo also established the districts' obligation to disseminate information to the parents of their language minority students, in the language that the parents can understand ("*Identification of discrimination,*" 1970).

Much like the 1968 version of the Bilingual Education Act that did not provide guidelines as to compliance, the Memorandum left the school districts to determine the specific actions that would qualify as affirmative steps in addressing the students' language needs (Crawford, 1989).

With the ongoing focus on educational reform and the attention given to the education of language minority students, the frequency of legal activity was heightened. The lawsuits challenged school districts' procedures and policies, citing the U.S. Constitution, the Civil Rights Act, and the Bilingual Education Act. These activities seemed to peak in 1974, when the Equal Opportunity Education Act of 1974 was enacted, Congress amended the Bilingual Education Act, and the U.S. Supreme Court handed down its decision in *Lau v. Nichols* (1974).

**The Lau Remedies of 1975.** In 1975, the Office for Civil Rights (OCR) published a set of guidelines to assist school districts in complying with the ruling in *Lau v. Nichols* (1974). The *Lau Remedies* were designed to help school districts determine whether they were in compliance with the law, and to provide them guidance in the development of adequate educational plans to correct civil rights violations. They described what OCR considered to be appropriate educational approaches for the instruction of limited English proficient students. They included specific compliance plans, and specific steps in the identification, placement, and exit of LEP students from the language programs. It also recommended the use of native language instruction (Cardenas, 1976).

Compliance with the *Lau Remedies* was problematic for the school districts. Their attempts to comply with the *Lau Remedies* meant that they needed to segregate their LEP students from the non-LEP students in order to provide language support services. Since the Lau guidelines prohibited such segregation, it was difficult for the districts to be cost-effective. This led to numerous complaints from the state and local education agencies (Crawford, 1989).

**The 1980 Proposed OCR Lau Regulations.** As stated above, the 1975 *Lau Remedies* were problematic. In addition to the compliance difficulties that the school districts were facing, the *Lau Remedies* lacked the force of law that usually attach to federal regulations, because they had not been recorded in the Federal Register. Over the years, several law suits were filed that challenged the legality of the *Lau Remedies*. One such suit was *Northwest Arctic V. Department of Health Education and Welfare* (1979). It was resolved by a consent decree that required OCR, and later the Department of Education, to publish all Title VI regulations for public comment. Therefore, in August 1980, the Department of Education proposed a set of rules and published them for public comment, with the plan to publish final regulations by the end of 1980 (Stewner-Manzanares, 1988).

The proposed OCR rules were designed to focus on the need for LEP students to learn English as quickly and possible and to receive content area instruction in a language they can understand while learning English. The public hearings generated a lot of debate regarding the presence of the federal government in education, whether schools should

give instruction in the students' native language, and whether the federal government or the states should pay for bilingual education (Schuck, 2006).

The debate was not the only problem. Many local education agencies were quite vocal about the problems they encountered in trying to provide transitional bilingual education to students, sometimes with as many as 21 different language groups in one school, and the high implementation costs of bilingual education. In addition, because there were many issues that needed to be resolved, Congress was threatening not to fund bilingual education that year (Castellanos & Leggio, 1983).

Finally, in 1981, Secretary of Education T. H. Bell made a decision that ended the debate. He withdrew the proposed guidelines. Four years later, the *Lau Remedies* had been rejected on the basis that they were burdensome and intrusive, usurping the judgment and discretion of local and state educational authorities (*OCR policy regarding*, 1985a).

**Castañeda v. Pickard, 1981: Another Landmark Case.** In 1981, the same year that the *Lau Remedies* were withdrawn, the Fifth Circuit Court of Appeals decided a case that became a mainstay in the bilingual education legal opinions and in OCR's provisions: *Castañeda v. Pickard* (5th Cir.1981). In a class action suit by Mexican-American children and their parents against the Raymondville Independent School District, in Texas, the plaintiffs alleged that the District's policies and practices were racially discriminative against Mexican-Americans, depriving them and their class of their rights under the Fourteenth Amendment, and the Equal Educational Opportunities Act of 1974 (*Castaneda v. Pickard*, 1981).

Among other allegations, the plaintiffs charged the district with “failing to implement adequate bilingual education to overcome the linguistic barriers that impede the plaintiffs' equal participation in the educational program of the district” (*Castaneda v. Pickard*, 1981, p. 992). In June of 1978, the district court ruled that the defendants did not violate the constitutional or statutory rights of the plaintiffs. The plaintiffs appealed to the Court of Appeals for the Fifth Circuit.

In its ruling, the Fifth Circuit Court of Appeals established a three-pronged test for the adequacy of a school district’s bilingual education program:

Is the program based on an educational theory that is recognized to be sound, by some experts in the field or, is it deemed by experts to be a legitimate experimental strategy?

Is the program reasonably calculated to implement effectively whatever the educational theory adopted by the school?

Is the school district monitoring the effectiveness of its program and adjusting as needed? (*Castaneda v. Pickard*, 1981, pp.1010, 1013)

The ruling in *Castaneda* and the three-pronged test has been used as the basis of many other legal decisions and provisions (Crawford, 1987).

**December 1985 OCR Update.** The next OCR update came ten years after the *Lau Remedies*. The Office for Civil Rights issued the Title VI Language Minority Compliance Procedures on December 3, 1985. Similar to the 1970 memorandum, this memorandum outlined the OCR policy regarding the education of ELLs, and compliance standards for Title VI. It also reaffirmed the 1970 memorandum upon which the Lau decision was based. The OCR emphasized that the Lau decision did not recommend any specific program or instructional method (OCR, “*Title VI language*”, 1985).

The 1985 memorandum decried the “Lau Remedies” of 1975, and the 1980 memorandum. It reiterated the OCR’s decision to deviate from the previous paths of dictating specific methods of compliance. The OCR would become non-prescriptive in its approach to compliance. The new approach would allow each school district to determine the educational approach it deemed effective for its language minority students. Each district’s situation would be assessed on a case by case basis, conducting investigations as a result of specific complaints or compliance reviews (OCR, “*Title VI language*”, 1985).

While school districts were free to use any method or program that had been proved to be successful, or promises to be successful, they still had an obligation to execute, evaluate, and monitor their programs, making sure to modify programs that failed to meet expectations (OCR, “*Title VI language*”, 1985).

In the same memorandum, new guidelines were issued. A school district’s compliance would be measured by whether there was a need in the district to provide an alternative education program for language minority students, and whether the alternative program provided was likely to effectively meet the educational needs of the students (OCR, “*Title VI language*”, 1985).

The district's need for an alternative education program was to be determined by whether its language minority students were able to participate effectively in the district’s regular program. If it was determined that the students were unable to participate effectively in the regular program, the district was required to provide an alternative program. The alternative program may be informal, if the number of students that needed the alternative program was small (OCR, “*Title VI language*”, 1985).

Districts were given the liberty to use different approaches, such as utilizing cut-off criteria, past academic records, assessment tests, information from parents, and structured interviews, to determine the placement of language minority students into the regular program or the alternative program. The districts could also prove compliance by showing that their language minority students were academically successful in the regular program or that a language minority student in the regular program could transfer easily to the alternative program, if needed (OCR, *“Title VI language”*, 1985).

While failure to provide a needed program would constitute a violation of Title VI, it would not be considered a violation per se, just because there was no formal identification and assessment plan. OCR would review each district’s reason for not having formal procedures, and evaluate what informal programs it does have (OCR, *“Title VI language”*, 1985).

The consideration of whether the district’s program is effective would not be determined by the OCR staff. Program decisions were to be left to the districts. OCR would only consider whether the district had developed and implemented a program that was designed to ensure the students’ effective participation (OCR, *“Title VI language”*, 1985).

While OCR refrained from second-guessing the districts’ program of choice, it would determine compliance based on whether the district could show proof that its program was based on a sound educational approach, whether the district can explain how the program met the students’ needs, and whether the program approved by the state, by OCR, or other entity (OCR, *“Title VI language”*, 1985).

The district was also required to show that the program was designed to achieve its purpose as soon as it was reasonably possible, and was being conducted effectively with adequate staff with adequate training, qualifications, experience, and adequate resources. The districts must evaluate their programs, and modify them whenever necessary. Otherwise, the district would be found to be in violation of Title VI provisions (OCR, “*Title VI language*”, 1985).

There was no requirement for districts to keep new, additional, or specialized records; neither were there any regulatory requirements for specific methods of instruction. Nonetheless, districts were expected to maintain data that was reasonably accurate and complete, showing the implementation of their program and their students’ progress in that program (OCR, “*Title VI language*”, 1985).

This memorandum was adopted in 1990 without any changes (OCR, “*Policy Regarding the,*” 1990).

**The 1991 OCR Update: Schools' Obligations to LEP Students.** Six years passed before OCR provided another update to the Title VI guidelines. It was issued on September 27, 1991, and titled: "Policy Update on Schools' Obligations toward National Origin Minority Students with Limited-English Proficiency (LEP students)" (Williams, 2005). Designed to be used to determine school districts’ compliance with Title VI of the Civil Rights Act of 1964, the update was a synthesis of the “most definitive court guidance with OCR's practical legal and policy experience in the field” (para. 5). It also clarified some confusion that arose since the last update. This memorandum relied more

explicitly on the 1981 ruling in *Castaneda v. Pickard*, 1981 (OCR, “Policy Update on”, 1991).

The 1991 memorandum began by reaffirming the 1970 and the 1985 updates. The two previous memoranda were not being invalidated or superseded by the 1991 update. All three memoranda were to be read in conjunction with one another (OCR, “Policy Update on”, 1991).

In line with the *Castaneda* ruling, OCR required that the districts’ educational program be aligned with an educational theory. The theory should be proven to be effective, or shown to be a legitimate experimental strategy. If the program is experimental, the district was required to show evidence of success after a reasonable trial period (OCR, “Policy Update on”, 1991).

The memorandum suggested that transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL) were some of the approaches that could be used by districts to provide language services to language minority students. A district could use any other approach, as long as it could show proof that some experts in the field considered the approach to be educationally sound or a legitimate experimental strategy (OCR, “*Policy update on*”, 1991)

Districts had an obligation to acquire formally qualified teachers within a reasonable period either by hiring new teachers or requiring current employees to acquire the qualifications. The district had to also ensure that their teachers fulfilled the formal requirements necessary to teach their limited English proficient (LEP) students. It would

be tantamount to relegating LEP students to second-class status, if districts allowed their LEP students to be taught indefinitely by teachers who were not formally qualified, while teachers of non-LEP students were required to meet formal qualifications (OCR, “*Policy update on*”, 1991).

The memorandum allowed concessions for teacher qualification requirements by making exceptions for extenuating circumstances, such as in the case of *Teresa P. v. Berkeley Unified School Dist.* (1989), where the court found that the district had fulfilled its obligation even when many of the teachers teaching the bilingual/ESL students were not formally qualified. In that case, the court was cognizant that the district’s funds and resources were limited, and that it was not possible for the district to find formally qualified teachers in all the language groups represented among its LEP population, that the district already required teachers to work towards certification, and that there was no difference in student achievement between those who were taught by teachers who had completed their formal requirements and those taught by teachers who had not completed their requirements (pp. 708-709).

Because the standards established for formal qualification differed from district to district, the fact that a teacher had acquired the formal qualifications established by the district would not conclusively prove that the teacher was qualified to teach LEP students. For example, if the school district chose to have bilingual programs, then proof of competency required that such a teacher be able to speak, read, and write both languages, be provided adequate preparation in bilingual education methods, and be qualified to teach the subject. The school district should be able to show that it had

ensured that its bilingual teachers had the required skills (OCR, "*Policy update on*", 1991).

Districts that used ESL, structured immersion, or methods other than bilingual education were also required to adequately train their staff in whatever methods they used and to ascertain that their teachers possessed the skills needed. Districts could use in-service training or formal college credit or a combination of both. The evaluation of the teachers' skills should include validated instruments, and should include an evaluation the teachers' classroom performance by someone who is familiar with the method instruction being used. If the ESL teachers are proven to be able to teach effectively without bilingual skills, then they were not required to be bilingual (OCR, "*Policy update on*", 1991).

If the districts rely on teacher aides to provide language support, the districts must be able to demonstrate that the aides were able to speak, read, and write both languages and did not provide direct instruction to students, but must work under the direct supervision of certified classroom teachers. Aides that work at kindergarten and first grade levels were not required to read and write the other language (OCR, "*Policy update on*", 1991).

Where a school district was successful in hiring qualified teachers, it was required to train current employees with the necessary skills, as soon as possible. Merely requiring that teachers work towards their certification was not sufficient to meet Title VI obligations. The district must also ensure that the teachers' interim training and assistance received from teacher aides was designed to ensure that LEP students have access to the language support programs designed for them (OCR, "*Policy update on*", 1991).

Before students were exited from the alternative language programs, districts were required to ensure that the students are proficient enough to participate in the district's regular education program. To confirm that the students are ready for the regular education program, they had to be able to participate in the regular education program at the same rate as their non-LEP students, without the need to simplify the English materials, and their retention and dropout rates must be similar to that of the non-LEP students. School districts were also prohibited from using alternative language programs as "dead end" tracks for language minority students, or as a means of segregating the students in those programs (OCR, "*Policy update on*", 1991).

When exiting students from the alternative language programs, the decision had to be based on objective criteria. The districts were at liberty to use standardized tests; but they also had to give the rationale behind why they believed the criteria to be predictive of success in the regular classroom. Students were not to be exited out of the program based only upon oral language tests. In a situation where a district's initial focus was only on English language acquisition for its language minority students, the district was required to provide content area assistance to the students once they exited out of the alternative language program ("*Policy Update on*", 1991).

Echoing the 1970 memorandum, the 1991 OCR memorandum prohibited the practice of assigning language minority students to special education classes based only on their language skills. Districts could not categorically exclude language minority students from the same process that was used to identify other students for gifted and

talented programs. Any exclusion of a language minority student had to be based on the educational needs of each student, and could not differ from those used to exclude non-LEP students. A student could not be excluded based on English language proficiency unless the gifted and talented program requires English language skills for meaningful participation (OCR, “*Policy Update on*”, 1991).

Unless a district’s alternative language program was proven to be successful, the district was required to evaluate its program and modify as necessary. Failure to do so would constitute a violation of Title VI. Success would be determined by the program’s ability to prepare the students to participate meaningfully in the district’s regular program (OCR, “*Policy Update on*”, 1991).

Districts were required to establish procedures for identifying and assessing their LEP students. If a district's LEP students were performing as well as their non-LEP counterparts, participating in essentially the same curriculum without need for simplified English, and maintaining a retention-in-grade and drop-out rates comparable to that of non-LEP students, such a district would not be deemed to be in violation of Title VI. For example, in *Teresa P. v. Berkeley Unified School Dist.* (1989), the district court ruled in favor of the school district because it found that the LEP students, without being enrolled in an alternative English language program, were successful in their academics, sometimes performing better than their non-LEP counterparts. The court also found that, in general, the district's LEP students scored higher than the county and state-wide average on academic achievement tests (OCR, “*Policy Update on*”, 1991).

While it was conceivable that the students may be segregated for part of the day, districts were still required to carry out their chosen programs in the least segregated manner. Whatever segregation was experienced by the students had to be necessary towards achieving the program's goals (OCR, "*Policy Update on*", 1991).

The memorandum was concluded by stating that school districts would be in violation of the anti-segregation provisions of the Civil Rights Act of 1964 if they segregated LEP students for both academic and nonacademic subjects, such as recess, physical education, art, and music, and if they maintained LEP students in an alternative language program for a longer time than necessary to achieve the program's goals ("OCR, "*Policy Update on*", 1991).

**A Portrait of the ESL Student.** It is nearly impossible to create a portrait that would apply to all English Language Learners (ELLs). No ELL situation is the same. Practices and capability differ by state, by school level, and by school. In many states, language services for secondary school students are less available than for elementary schools (Ruiz-de-Velasco, 2000).

The ELL population is different, not only by numbers, but also by the diversity of primary language and culture. There are over 400 languages reported among ELLs in the United States, Spanish being the language of 90% of them. The next most common languages are Vietnamese, Arabic, Chinese, Korean, Russian, and Hmong. In four states, the most commonly spoken language was a Native American language (Boyle, Taylor, Hurlburt, & Soga, 2010).

The diversity among ELLs is not limited to language. ELLs could be recently-arrived to the U.S., or may be U.S. citizens. According to the 2005-2007 U.S. Census, almost two-thirds of ELLs were born in the United States. Some have previous interrupted schooling, others have previous stable education. They may live in households where English is spoken, or in “linguistically isolated” households, where no one older than 14 in the household speaks English well. ELLs are not limited to young students just learning English. Some are academically advanced (Zehr, 2009).

Though varying in number, ELLs are represented in public schools in every state. Some states, such as California and Texas, historically have had higher numbers of ELLs. Other states, like West Virginia and Vermont have had fewer than 2,000 ELLs. Some regions of the country, such as the Southeast, Midwest, and some parts of the West have experienced a spike in their ELL demographics (Consentino de Cohen, Deterding, & Clewell, 2005).

Nearly 70% of the ELL K-12 population in the United States in 2007-2008 resided in seven states: California, Texas, Florida, New York, Illinois, Arizona, and North Carolina (Ramsey & O’Day, 2010). The other ELLs were dispersed all over the United States, with most being in the Southwestern states. Thirty-two states and the District of Columbia reported at least 5% ELLs, and West Virginia and Mississippi reported approximately 1%. Almost 70% of ELLs in grades 5 and below, and 60% in grades 6 and up, qualified as low-income (Capps, 2005).

Regardless of the size of their ELL populations, these states all faced some challenges in providing services to their ELL population. The challenges they faced may

have differed purely on the basis of the number of ELLs they had. The states with the larger number of ELLs may have had the challenge of managing the services to such a large number of students; they may also have had the advantage of achieving the critical mass that makes it more cost-effective to provide services to their ELLs (Ramsey & O'Day, 2010).

On the other hand, the states with the smaller ELL population have often been less prepared, in terms of expertise, infrastructure, and political priority, to provide the needed services to the students, coping instead with an ad hoc approach to the instruction of their ELL population (Ballantyne, Sanderman, & Levy, 2008; Boyle et al., 2010).

Accountability measures for ELLs are quite challenging because the group is constantly changing. New students come, old students leave or are exited from the program. Accountability measures seldom measure the same group of students twice (Ramsey & O'Day, 2010).

From the 1997-98 school year to the 2008-09 school year, the overall population of students increased to nearly 50 million, an increase of 7.2%. At the same time, the ELL population increased from 3.5 million to 5.3 million, an increase of 51% (National Clearinghouse for English Language Acquisition, 2011).

The need for language support is underscored by the achievement gap between ELLs and fluent English speakers. The data from the 2009 National Assessment of Educational Progress show that only 3% of ELLs scored at or above proficiency levels in reading in 8<sup>th</sup> grade, compared to 34% of non-ELLs. On the mathematics test, 12% of ELLs scored at or above proficiency level in the 4th grade, whereas 42% of non-English

Language Learners did. In 8<sup>th</sup> grade reading, 35% of non-ELLs scored at proficient or above, but only 5% of ELLs scored at the same level. As of 2011, the reading test was available only in English, but the mathematics test has been available in both English and Spanish (Slavin, Madden, Calderon, Chamberlain, & Hennessy, 2009).

As much as one can classify ELLs by where they fall on the achievement ladder, each child's situation is different. One cannot utilize a single profile for all of them, even those who have similar linguistic origins. The diversity of the ELL population makes it impossible to use a “cookie cutter” approach to their education and makes it necessary that schools and school districts are abiding by the legal protections afforded their English Language Learners.

**The No Child Left Behind Act of 2001 and the Education of ELLs.** The No Child Left Behind Act of 2001 (NCLBA), the reauthorized version of the Elementary and Secondary Education Act, was the main legislation that governed K-12 education in 2012. Divided into 10 Titles, it covered, among other things, the improvement of the academic achievements of the disadvantaged (Title I), teacher and principal development (Title II), and the education of English Language Learners (Title III) (Section 6302 *et seq.*).

Title I of the No Child Left Behind Act of 2001 was designed to ensure a fair, equal, and significant opportunity for all children to obtain a high-quality education and reach proficiency on challenging State academic achievement standards and assessments (Sec. 6301(1)). These goals were to be achieved through high-quality assessments and accountability measures, teacher preparation and teacher training, high-quality

curriculum, and instructional materials that were aligned with challenging state standards. It also sought to address the educational needs of students of low economic status, limited English proficient students, and other students who had been in need historically, or in actual need (Sec. 6301(2)).

Title I of the No Child Left Behind Act of 2001 also addressed the issue of ELLs. It mandated testing for ELLs in reading, mathematics, and science, requiring also that the students achieve adequate yearly progress (AYP) (Section 6311(b)(2)(B)).

Title III of the No Child Left Behind Act of 2001 focused exclusively on the English language acquisition of ELLs, requiring the states to create and utilize English language proficiency (ELP) standards, ELP assessments, and accountability measures for monitoring the progress of ELL students (Sec. 6801 et seq).

One of the aims of the NCLBA of 2001 was to close the achievement gap between students who were from economically disadvantaged backgrounds and those who were economically sufficient backgrounds, and between minority and non-minority students (Sec. 6801 et seq). One of the mainstays of this legislation was that it held schools, school districts, and states accountable for the academic improvement of all their students (Section 6311(b)(2)(C)).

***NCLBA Title II and Title III requirements.*** Title II of the NCLBA of 2001 was geared towards increasing student achievement by improving the quality of teachers and principals, by making sure that there are “highly qualified” teachers and administrators in the classroom, and by holding school districts and schools accountable for their students' academic achievement (Section 6311(b)(8)(C)).

Title III of the NCLBA of 2001 was also known as the English Language Acquisition, Language Enhancement, and Academic Achievement Act. It specifically aimed to assist limited English proficient students and other groups to achieve English language proficiency, high academic achievement while utilizing the English language, and to perform on the state assessments as all other student groups (Section 6801(1)). It required high quality language instruction for limited English proficient students to prepare them for all-English instruction. It also sought to assist schools and school districts to accomplish these goals. Title III also aimed at promoting the participation of parents and the community in the language instruction programs of limited English proficient students (Section 6801 et seq).

The NCLBA established accountability standards for schools and for local and state educational agencies, requiring that they demonstrate increases in their LEP students' English proficiency and knowledge of academic content. It also required that there be demonstrable improvements in each child every year, and measurable adequate yearly progress (Section 6801(8)(B)).

The NCLBA did not prescribe a specific curriculum, method, or educational program. It only required that language instruction be “based on scientifically based research.” And, it was the standard by which the activities of schools and school districts were to be judged (Section 6825(a)).

***The major provisions of Title III.*** The Elementary and Secondary Education Act was amended in 1968 to include Title VII, the Bilingual Education Act. Title VII recognized the challenges faced by non-English speaking students and also recognized

bilingual education as an academically sound instructional method of instruction. Several other amendments followed, each providing more funds and emphasizing teacher professional development. By 2001, when the ESEA was reauthorized as the No Child Left Behind Act, the focus had shifted from bilingual education to English language acquisition and to helping students tackle challenging content standards (Section 6801 et seq).

States were allowed to use the same assessment instruments to achieve Title I and Title III compliance, and to measure the students' English Language proficiency, as long as the instrument was aligned to the state's English language proficiency standards (Boyle et al., 2010).

***Identifying English language learners.*** According to Title IX of the No Child Left Behind Act of 2010,

The term 'limited English proficient', when used with respect to an individual, means an individual —

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C) (i) who was not born in the United States or whose native language is a language other than English;
- (ii) (I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
- (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —
  - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);

- (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
- (iii) the opportunity to participate fully in society (Section 7801 (25)).

The methods used in identifying ELLs have varied from state to state, even from district to district. However, by 2012, all the 50 states and the District of Columbia did use a language proficiency assessment, with almost all the states also utilizing a home language survey (HLS). In addition to Home Language Surveys, some states also used state and local assessments, teacher recommendations, parent and/or student interviews, and student grades to determine student placement (Ramsey & O’Day, 2010).

The difference in state standards was not limited to the identification of ELLs. The re-designation and exit of ELLs has also been handed differently from state to state. Some states have used the same assessments when identifying, re-designating, and exiting their ELL students. In other states, the assessments used to identify the students have been different from those used to re-designate or to exit the students (Wolf et al., 2008). These differences underscore the point that it may be quite misleading to compare one state or district’s ELL scores or population with another. They may also explain the reason why states’ interpretations of the statute would vary so much as to warrant an investigation by the U.S. government.

***Title III accountability requirements.*** The reauthorization of ESEA in 2001 happened at a time when the number of ELLs enrolled in American public schools was on an upward trend (Ignash, 1994). Also different under the NCLBA was the method of funding. Funding through the ESEA was by competitive grants. The NCLBA funded through formula grants, with greater emphasis on providing academic support to ELLs

towards English language mastery and academic performance that is comparable to their non-ELL counterparts (Ramsey & O’Day, 2010).

The funding for Title III was awarded to the districts as subgrants from the states. The states were given the liberty to develop their own programs, to administer their chosen assessments, and to hire and train their staff as they deemed fit (Section 6821 et seq). However, the NCLBA has held them accountable for their students’ performance.

The federal regulations indicated that the standards by which states and districts were measured were called annual measurable achievement objectives (AMAOs). AMAOs were to be established by states and districts each year. They were not applied on the school level. There were three AMAOs:

- AMAO 1: There must be an increase in the number or percentage of ELLs that show progress in English language acquisition;
- AMAO 2: There must be an increase in the number or percentage of ELLs that attain English language proficiency; and
- AMAO 3: As described in Title I Section 11111(b)(2)(B) of the ESEA, ELLs must make adequate yearly progress (AYP). (Section 6842(a)(3)).

The ESEA deferred to the states in determining their annual targets and defining what “making progress” and “attaining proficiency” mean, with regard to an ELL’s performance. However, the definitions and targets were required to comply with Title III, which stated that AMAOs at the state level must:

1. Indicate the amount of time an ELL has been enrolled in a language instruction educational program (LIEP).
2. Include targets that require annual increases both in the number or percentage of ELLs that are making progress in learning English, those that are attaining English language proficiency. The data must be collected through valid and reliable instrument, including data on the English language proficiency.
3. Include, as the third AMAO, Title I targets that require that districts make adequate yearly progress with respect to ELLs on assessments in the academic content areas. (Tanenbaum & Anderson, 2010)

States were required to establish their own English language proficiency (ELP) standards and administer their chosen ELP assessments and to report their ELLs' English acquisition progress, in relation to the district or states AMAOs. In other words, the states set the standards, tested the standards against the AMAOs, and reported their students' progress (Tung et al, 2009).

If a district failed to meet its AMAOs for two consecutive years, the state was required to assist the school district to develop an improvement plan. If the AMAOs were not met for four consecutive years, the consequences included a modification of the school's curriculum, program, and method of instruction, and a replacement of the personnel who were relevant to meeting the AMAOs. The state had to consider whether the district should continue to receive Title III funds. If a district failed to meet its AMAOs, the district was required to inform the parents of students that receive or are eligible for Title III services of this fact, and inform them of their options (Ramsey & O'Day, 2010).

***Title I requirements for ELLs in core academic content.*** Title I of the NCLBA required that at least 95% of the students from grades 3-8 be tested annually in reading and mathematics, and tested at least once in grades 10-12. Science had to be tested at least once in each grade span: 3-5, 6-9, and 10-12. Title I testing requirements applied to all public school students of all racial and ethnic groups, and all ELLs, who must be provided with testing accommodations or alternative assessments, if needed (Section 6311 et seq).

ELL students were granted an exemption from English reading/language arts testing only in their first 12 months in the United States. This exemption did not apply to the state's English language proficiency (ELP) assessment, or the mathematics and science assessments. Even though a newly arrived student was required to take the mathematics assessment, the state could choose to exclude the student's scores in determining AYP for one cycle only (Section 6311 et seq).

*NCLBA challenges.* The implementation of the NCLBA did not go without difficulties and criticism from educational practitioners and researchers. Some of the difficulties were related to the identification, placement, assessment, and accountability provisions of the NCLBA. With regard to the classification criteria of ELLs, there was a lack of uniformity among the states, and even among school districts within the same state. These differences made it difficult to compare AYP results from state to state or district to district (Abedi & Dietel, 2004).

According to Title IX of the No Child Left Behind Act of 2001, a LEP student is one:

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C) (i) who was not born in the United States or whose native language is a language other than English;
  - (ii) (I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
  - (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

- (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —
  - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);
  - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
  - (iii) the opportunity to participate fully in society (Section 9101[25])

The only subjective part of these requirements, therefore the one that led to the greatest disparity among the states and districts, was the criterion regarding the language spoken at home. The discrepancies arose based on the means with which schools collected this piece of information. Many districts used a Home Language Survey. Among those that did, the questions differed from district to district, and the interpretation of the answers differed also.

What this meant was that a student could be considered LEP in one district and non-LEP in another. Also, a student could indeed be LEP, but not be categorized as such, because the parents did not admit that another language was spoken in the home, for fear that a stigma would be attached to their child. The effect was that the accountability data from the schools were difficult to interpret or compare (Abedi & Dietel, 2004).

Also affecting comparison of results was the difference in the size of the ELL population, from district to district. Some districts had a large population of ELLs, and some had very few. Since federal decisions and policies were based on the accountability results of the states, the population size of the schools were believed to have skewed those decisions and policies (Abedi, 2004).

The fluid nature of the ELL students through the English program also created a difficulty in determining the accuracy of accountability records. The ELL accountability requirements change as the students advance through the language program. For example, students who achieve proficiency and exit the program are no longer considered to be ELLs, meaning that the evidence of program success is no longer part of the data as soon as that success is achieved. At the same time that the top is creamed off the rolls, new students are entering the program. Therefore, the top constantly gets skimmed off, and the program starts from scratch every year, making it nearly impossible to improve the AYP measurements (Abedi, 2004).

Another criticism that researchers have levied against the NCLBA is its requirement for state-defined standardized test. The critics claim that standardized tests that are created and normed for native English speakers tend to be less valid and reliable when used for ELL populations. Therefore, when these tests, such as Title I-required tests were interpreted, they had limitations when it concerned ELLs (Butler & Stevens, 2001).

The NCLBA required that students achieve “proficient” status in all Title I content areas required for the Adequate Yearly Progress. This was designed to ensure that schools did not focus excessively on English language acquisition, to the neglect of content area instruction. Schools with a large number of ELLs had a greater difficulty in meeting this Title I AYP requirement since a majority of their students were in the process of learning English, and were therefore less likely to be proficient in the content area tests. This tended to create extra pressure on schools that not only had to overcome their students’

language deficiency, but also provide content knowledge while seeking to meet the Adequate Yearly Progress (AYP) standards at the same time (Section 6311(b)(2)(B)).

### **Recent Investigations and Compliance Reviews**

Even though the DOJ and OCR's have periodically investigated school entities in times past, it appears that after 2009, the frequency of these investigations increased. Some of the districts that have been investigated include Los Angeles Unified School District (Cal.); Hazelton Area School District (Penn.); DeQueen Public Schools (Ark.); New London Public Schools (Conn.); Tigard-Tualatin Public Schools (Ore.); Lake Washington School District (Wash.); Illinois State Board of Education; and others in Boston (Mass); Buffalo, (N.Y.); Portland, (Ore.); and Seattle (Wash) (Maxwell, 2011, December 14; Zehr, 2010, October 7).

Of specific interest in this study are investigations conducted by the DOJ and/or OCR regarding noncompliance of school districts' with laws pertaining to the provision of educational services to ELLs. The study has been limited to seven investigations that began after January 2009 and concluded by September 2012: Boston Public Schools (Mass.); Dearborn Public Schools (Mich.); Los Angeles Public Schools (Cal.); Carson City Public Schools (Nev.); Mercer County School District (W.Va.); Henry County School District (Ga.); and Adams 12 Five Star School District (Colo.).

The U.S. Government reached agreements in 2010 with Boston school district, the Los Angeles Unified School District, and the Adams 12 Five Star Schools (Ash, 2011; Zehr, 2010a, 2010b). The Government reached agreements with Carson City Schools in 2011, with Mercer County, West Virginia, and Dearborn, Michigan in January 2012, and

with Henry County School District, Georgia in August 2012. These agreements were designed to correct the non-compliance issues identified by the United States relating to the education of English Language Learners and one or more of the following laws: Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, the No Child Left Behind Act of 2001, and the United States Constitution.

Some of these education agencies have some of the highest populations of ELL students in the nation. Therefore, the ramifications of these investigations and settlement agreements go farther than the actual agencies themselves (Zubrzycki, 2011). The purpose of this dissertation will be to examine and analyze these six settlement agreements, to determine the nature of the violations and the details of each of the agreements.

The results of the research will provide insight into the school district practices that were deemed to have violated the civil rights of English Language Learners, with the goal that other local and state education agencies might be better guided in assessing their own practices, and modifying them, if necessary.

### **The Process of Filing and Investigating a complaint**

The process of filing a complaint with the Department of Justice is similar to that of filing a complaint with the Department of Education. Anyone may file a complaint even if they are not a victim of the discrimination they allege. They may file a complaint if they believe that an educational institution that receives federal funds has engaged in discriminatory behavior on the basis of race, color, national origin, sex, disability, or age.

Such a person or entity must file the complaint within 180 calendar days of the date of the alleged discrimination.

The process of investigating a complaint includes many steps that range from evaluating the complaint to initiating enforcement actions. When a written or electronic complaint is received by the investigating agency, the first step is to determine whether the information rises to the level of a complaint, and is therefore worthy of being investigated (OCR, “*OCR case processing*”, 2012).

Compliance reviews are initiated by the U.S. government, without the need for a specific complaint against a recipient. If the issue is determined to be national in its scope, is newly emerging, or deemed to be acute, a compliance review may be launched to investigate an entity’s degree of compliance (OCR, “*OCR case processing*”, 2012).

### **Resolutions and Settlement Agreements**

If an investigation is actually launched, the investigating agency will make one of two determinations: that there is sufficient evidence or that there is insufficient evidence to support a conclusion of noncompliance. If a determination is made that there is insufficient evidence to support non-compliance, the agency will issue a letter of findings that includes a statement of the issues that the complaint had raised, a statement about the agency’s jurisdiction over the case, an explanation of the applicable legal standard, and an analysis of the facts. It will also include a statement that informs the complainant of the right to file a suit in federal court.

If non-compliance is found, the agency will issue a statement of the case and a proposed settlement agreement, which will discuss the issues of the complaint, the basis

upon which the agency proposed a settlement agreement, and an explanation of how the proposed actions correlate with the issues under investigation and applicable laws. If the settlement agreement is signed by the recipient, the investigating agency will send a letter of findings to the parties.

Some complaints to the Office for Civil Rights and the Department of Justice are resolved by resolution. A resolution agreement is reached if the entity that is the focus of the complaint agrees to, and signs an agreement, the performance of which will remedy the complaint. A resolution agreement, to be effective, must meet certain conditions. It requires the signature of someone with authority to legally bind the recipient and must be approved by investigating agency's Chief Attorney and Office Director, or their designees. The resolution agreement must also include specific acts or steps that will be taken to resolve compliance issues, the dates by which they will be performed, and the dates by which the recipient will submit documentation to prove compliance.

In an information sheet included with the resolution agreement, parties are informed about the appeal process. A party that seeks to file an appeal must do so within 60 days of the date of the letter of finding.

### **Monitoring Activities**

When the DOJ or OCR reaches an agreement with an entity that has been under investigation or audit, there is a period of monitoring that follows. During this period, the agencies monitor to ensure that the terms of the agreement are being met. To accomplish this, the recipients are required to provide progress reports and data to assist the United

States government staff when they are conducting onsite visits to confirm the recipients' compliance (OCR, "*Case Processing Manual*", 2012).

Monitoring is concluded when the investigating agency determines that the terms of the agreement and any subsequent modifications have been met, at which time, both the complainant and the recipient are notified in writing (OCR, "*Case Processing Manual*", 2012).

### **Summary**

The education of language minorities has undergone quite a few changes since the pilgrims landed on Plymouth. There was a period when the language of instruction was the language of the community. In more recent years, bilingual education was the law of the United States. While states are still at liberty to provide bilingual education, the United States government is focused on assisting language minority students to acquire English. Whenever there is reason to believe that schools or school districts are not complying with these laws, citizens of the United States are at liberty to file a complaint against the school or school district. The United States can also initiate an investigation.

## **Chapter 3**

### **Methodology**

#### **Purpose of the Study**

The purpose of this research was to examine the investigations of the DOJ and the OCR into the practices of selected school districts regarding the education of their ELLs, and analyze the agreements that resulted from the investigations. It was expected that the results of the study would provide a framework to school practitioners regarding the provision of education to their ELLs.

The study represented the intermingling of the field of law and education. The researcher's experience as an attorney and an ESL teacher created an interest that culminated in this study.

#### **Research Design**

The study was descriptive, non-experimental, qualitative research, a study that examined the impact of a phenomenon on educational practice. The study examined the investigations of seven school districts and the resulting settlement agreements with the DOJ and the OCR regarding the provision of language services to their ELL students.

#### **Sites of the Study**

The sites included seven school districts: (1). Adams 12 Five Star School District, Colorado; (2). Boston Public Schools, Massachusetts; (3). Carson City School District, Nevada; (4). Dearborn Public Schools, Michigan; (5). Henry County School District, Georgia; (6). Los Angeles School District, California; and (7). Mercer County School District, West Virginia. All of these education agencies had undergone United

States government investigations of their language minority programs and had reached agreements that were designed to correct the violations that were identified in those investigations.

### **Data Collection**

An examination of the reviews and settlement agreements showed that there were two investigations jointly conducted by the OCR and DOJ: Boston Public Schools and Arizona Department of Education. Arizona was not included in the study because it was an audit of the whole state, and not of a school district. In that time period, OCR initiated and concluded two compliance reviews of its own: Dearborn Public Schools in Michigan, and the Los Angeles School District in California, both of which are included in this study, bringing the total to three school districts.

Six investigations were conducted by the DOJ alone: (1). Adams 12 Five Star School District, Colorado; (2.) Carson City School District, Nevada; (3). Henry County School District, Georgia; (4). State Board of Education (Illinois); (5). Mercer County School District, West Virginia; and (6). Prince William County School District, Virginia. The Illinois State Board of Education investigation was not selected because it was in relation to the State, and not to a school district. The Prince William County, Virginia investigation was also not included because it related to only one middle school, and not the entire district. Therefore, only four Department of Justice compliance reviews met the criteria.

With regard to this study, only those audits that related to school districts and the civil rights of their English language learners were considered. The selected school settlement agreements related only to school districts, not the state or individual schools.

Therefore, the study was delimited to the following seven school districts, listed in alphabetical order: (1). Adams 12 Five Star School District, Colorado; (2). Boston Public Schools, Massachusetts; (3). Carson City School District, Nevada; (4). Dearborn Public Schools, Michigan; (5). Henry County School District, Georgia; (6). Los Angeles School District, California; and (7). Mercer County School District, West Virginia.

The data was collected from documents and data already in existence, consisting of relevant federal case law and statutes that pertain to the education of English Language Learners. Documents and memoranda that pertain to the DOJ and OCR investigations, which are available from the websites of The Department of Justice and the Office for Civil Rights, were reviewed and analyzed. The location of the settlement agreements are listed below in alphabetical order. Actual copies of the settlement agreements were acquired by this researcher.

The Adams 12 Five Star School District's settlement agreement (41 pages) can be found at the Department of Justice web site ("Settlement agreement between," 2010).

The Boston School District agreement (52 pages) can be found at the Department of Justice web site ("Settlement agreement between," 2010a)

A successor agreement was signed in 2012. It can be found at the Department of Justice web site ("Successor settlement agreement," 2012).

The Carson City, Nevada's agreement is referenced at the Department of Justice web site: ("Justice department reaches," 2010). However, a full copy is not available at the website. An electronic copy was obtained directly from the school district.

The Dearborn School District's settlement agreement (6 pages) can be found at the Department of Education website ("Resolution agreement Dearborn," 2012).

The Henry County School District's settlement agreement (9 pages) can be found at the Department of Justice web site ("Agreement between the," 2012e).

The Los Angeles Unified School District's agreement (8 pages) can be found at the Department of Education website ("Agreement to resolve," 2011).

Mercer County School District's settlement agreement (19 pages) can be found at the Department of Justice website ("Agreement between the," 2012f).

The settlement agreements generally followed a template with big themes with the details of the school district's agreement under each theme.

### **Data Analysis**

Data analysis consisted of a search for patterns and emerging themes gleaned from the specific details of the investigations and the settlement agreements between the federal agencies and the school districts.

### **Delimitations**

1. This study was delimited to English language learner programs in public schools.
2. The study was delimited to investigations conducted by the United States Department of Justice (DOJ) and the Office of Civil Rights (OCR).

3. The study was delimited to seven specifically selected school districts whose English language learner programs have been investigated by the OCR and/or the DOJ.
4. The investigations had been initiated after January 2009 and concluded by June 2012.
5. This study did not include investigations in other areas such as disability and special education.

### **Limitations**

1. This study involved an analysis of judicial opinions, statutes, and regulations. These do change from time to time.
2. This study involved an analysis of some judicial opinions that are applicable to the school districts being studied and only in relation to their ELL programs.

### **Summary**

It is evident that the history of the education of language minorities has lasted nearly as long as the history of the United States. The changes in immigration patterns have modified the practices and the law relating to the education of this segment of the population. There are many federal laws that were designed to protect the educational civil rights of language minority students. These laws have been the basis upon which the United States has conducted its activities with the schools and school districts as they educated language minority students. The United States has investigated several educational agencies upon allegations of non-compliance with these laws. The focus of

this study is the United States' investigation of seven school districts and the resulting settlement agreements.

## **Chapter 4**

### **Findings**

This chapter reports the findings of the settlement agreements between the United States and the seven school districts selected as the focus of this study. The chapter is divided into three main sections. The first section provides some background information about the school districts' characteristics and practices. The second and the third sections are related directly to the details of the settlement agreements. The second section is the longest, and it discusses the actual themes that emerged from the settlement agreements. The third section is a summary that contains highlights or an overview of the emerging themes. In the second and third sections, the themes are arranged beginning with registration, enrollment, and identification and go through a student's exit from the language support program, thereby chronicling every stage of an English language learner's experience.

#### **District Characteristics and Practices**

This section provides some information about the districts that were included in this study. It also includes some of the distinctive characteristics of each school district's settlement agreement.

**Adams 12 Five Star Schools.** The settlement agreement between the United States and the Adams 12 Five Star Schools was signed in April 2010. As of 2011, the Adams 12 Five Star Schools was Colorado's fifth largest school district. It was located in Thornton, Colorado, seven miles north of Denver. The term "Five Star" represents the

five communities served by the district: Broomfield, Federal Heights, Northglenn, Thornton, and Westminster. As of October 2011, the district had 57 schools and enrolled 43,000 students who represented 85 languages. Approximately 12% of these students were English Language Learners (Adams 12 Five Star Schools, 2011).

The United States investigated the Adams 12 School District under the Equal Educational Opportunities Act of 1974 (EEOA) to determine whether the district provided appropriate instruction and services to English Language Learners ("ELLs"). The infractions and the Settlement Agreement were related to the District's obligations to provide its ELL students with ELL services that were adequate, appropriate and timely; the obligations to recruit, hire and train qualified staff and administrators; to provide translation services for parents and guardians; to ensure the proper evaluation of ELLs for special education services; and to monitor ELLs from entry until their exit from the program; and to evaluate its ELL programs periodically (U. S. Department of Justice, 2011).

**Boston Public Schools.** The settlement agreement between the Boston Public Schools and the United States was signed in April 2012. Founded in 1647 and known as the birthplace of education in America, it was the first school district in the United States of America and the largest school district in Massachusetts. It was located in Boston and served the City of Boston and neighboring towns. As of April 2012, there were 125 schools in the District. It served a student population of approximately 57,000, of which nearly 30% were English Language Learners (ELLs).

The settlement agreement between the United States and Boston Public Schools (BPS) was among the first settlement agreements to be reached by the Obama administration. It was also one of the most comprehensive.

The Settlement Agreement was centered on the District's failure to properly identify ELLs by assessing them only in the areas of listening and speaking, and excluding reading and writing, thereby failing to identify a great number of students who would otherwise qualify for ELL services. The District allegedly also failed to provide effective language support for its ELLs who had been properly identified, also denying services to ELLs based on lack of space in the students' chosen school. School officials also reportedly routinely encouraged parents/guardians to refuse ELL services because of lack of space or because the educational options available to the parents were not explained. Many of the students were then recorded as having "opted out." All of these actions resulted in a denial of services for approximately 42% of Boston Public Schools' ELLs (Vaznis, 2010).

**Carson City Schools.** The settlement agreement between the United States and the Carson City School District was signed in February 2011. It was located in the capital city of the state of Nevada. As of 2013, it was the fifth largest school district in the state. Its 13 schools served a student population of approximately 8,000 students, of whom approximately 17% were English Language Learners (U.S. Department of Justice, 2012a).

The Settlement Agreement between the Carson City Schools and the United States centered on the District's practices whereby the District's English language

learners (ELLs) were either not receiving any ELL services or were receiving insufficient services. To ensure that the District's ELLs received appropriate services, the District was required to provide English as a Second Language and sheltered content instruction by adequately trained teachers and to dedicate funding, resources, and time to ensure that a sufficient number of teachers are trained to serve the District's ELL population. The District was also required to not only serve its current ELLs but also to monitor their performance and that of former ELLs. The District was also required to modify its policies to ensure proper assessment and adequate ELL services for its special education students, as determined by the students' specific needs. The District's ELL materials were also to be reviewed to ensure that they were adequate and will provide translation and interpreter services to the parents of ELL students (United States Department of Justice, 2011).

**Dearborn Public Schools.** The Settlement Agreement between the United States and the Dearborn School District was signed in May 2012. The district was located in Dearborn, Michigan. The city of Dearborn was the most heavily populated Arab community in the country. As of 2012, the District was the fourth largest school district in Michigan. Its 36 schools served a student population of approximately 19,000 students. Approximately 60% of the students were English Language Learners, 96% of whom spoke Arabic at home. There were 46 other languages, including Urdu, Spanish, Albanian, and Romanian (Ketrick, 2012).

In the investigation of the Dearborn School District the Office for Civil Rights (OCR) found that the District failed to provide limited English proficient (LEP) parents

with meaningful access to important information about their children's education in a language they could understand. It also failed to adequately notify LEP parents of important school-related information that was made available to non-LEP parents. The Office for Civil Rights also found that the district had denied English Language Learner (ELL) students access to nonacademic and extracurricular programs, services, and activities, on the basis of the students' national origin. The District was required to:

1. Revise its home language survey to ensure that it accurately identifies all of the LEP parents in the district needing language assistance;
2. Develop and implement a comprehensive, written plan to provide language assistance services to LEP parents that ensure that they had meaningful access to the district's programs and activities; the plan will include providing interpreting and translation services for LEP parents for all non-English languages (this could include the use of various services, such as onsite translators/interpreters, telephonic translators/interpreters, and effective translation programs);
3. Develop and implement a process for notifying EL students about the availability of nonacademic and extracurricular programs, services and activities, such as guidance and counseling services;
4. Conduct an annual evaluation of the effectiveness of its language assistance services for LEP parents; and,
5. Develop and implement procedures to ensure that EL students receive special education and related services as appropriate to their disabilities, if any, and not because of their English language proficiency. (United States Department of Education, 2012, p. 1)

**Henry County Schools.** The Settlement Agreement between the United States and the Henry County School District (HCSD) was signed in September 2012. The district was located in McDonough, Georgia, serving the communities of Blacksville, Flippen, Hampton, Kelleytown, Locust Grove, McDonough, Ola, and Stockbridge. As of 2012, HCSD was the seventh largest school district in Georgia. Its 51 schools served a student population of approximately 40,000, of which approximately 2% were English Language Learners (ELLs) (Henry County Schools, 2012).

The investigation of the Henry County School District centered on the District's practice of improperly notifying parents that their children would be withdrawn from school if the parents failed to provide a social security number. The District was also found to have failed to make its enrollment procedures accessible to parents with limited proficiency in English. Therefore, the Settlement Agreement required that the District ensure that all parents became aware that providing their child's social security number was mandatory, and that no child would be denied enrollment or attendance in school because the parent declined to provide a social security number.

The District would also provide Limited English Proficient (LEP) parents with enrollment and registration information in a language they could understand and to provide training for administrators and staff on registration and enrollment procedures, and how to communicate properly with Limited English Proficient parents (U. S. Department of Justice, 2012c, p. 1). The Settlement Agreement between the United States and the Henry County School District was signed in September 2012.

**The Los Angeles Unified School District.** The Settlement Agreement between the United States and the Los Angeles School District agreement was signed in October 2011. As of 2013, it was the second largest school district in America and the largest school district in California. It had an area of over 720 square miles and served the megacity of Los Angeles as well as all or parts of 31 smaller municipalities, in addition to several unincorporated sections of Southern California. As of 2012, there were over 900 schools in the District, serving a student population of approximately 640,000, of which over 28% were English Language Learners (ELLs) (Blume, 2011).

The investigation of the Los Angeles Unified School District (LAUSD) was centered on the allegations that the services provided to English language learners (ELLs) were insufficient and inadequate, and not designed to prepare the students for post-high school employment or education. The investigation was aimed at ensuring that ELLs were provided equal access to the resources they needed to graduate from high school and to close the achievement gap between non-ELLs and native English speakers.

Under the Agreement, the District was required to revamp its ELL program in its entirety, to increase its focus on curricula and programs that prepared the students for college and career, and to ensure access to needed supports that would accelerate the academic progress of its ELLs. The District also agreed to:

1. Develop and implement a new English Learner Master Plan, monitor program implementation carefully, and evaluate its success for EL students and their teachers.
2. The resolution has a special focus on secondary PRP students (those Preparing for Reclassification) who have completed the ELL program but who have not been deemed proficient and heretofore have not had their specific needs addressed.
3. Do meaningful professional development geared specifically at strengthening the delivery of instruction to EL students.
4. Communicate with EL parents in a way that enables them to understand the District's EL program and their children's academic progress.
5. Ensure EL students and their parents access the District's college and career ready curriculum and have the information they need to prepare for success in postsecondary education and careers. (U. S. Department of Education, 2011. p. 1)

**Mercer County Public Schools.** The Settlement Agreement between the United States and the Mercer County Public Schools was signed in February, 2012. Mercer County Schools was located in Mercer County, West Virginia, located in the Central Appalachian Mountains. As of 2013, the Mercer County Public School System had

29 schools and an enrollment of approximately 9,200 students, with approximately 30 English Language Learners altogether.

The United States investigated the practices of the Mercer County School District to determine whether the District, in spite of being rural, was providing its ELL students with adequate services in compliance with the Equal Educational Opportunities Act of 1974. The Settlement Agreement focused on practices that would assist the District in complying with the relevant federal laws, in spite of its peculiarities as a rural school district.

The District agreed to take appropriate action to serve its small and widely dispersed ELL population. It would dedicate funding, resources, and time, for two years, toward professional development for its teachers. It would also provide ELL-specific materials and translator and interpreter services. The district would also modify its practices by utilizing a Home Language Survey (HLS) and testing to properly identify incoming ELL students and to monitor their performance and that of former and opt-out ELLs. The District also agreed to identify and serve special education ELLs (U. S. Department of Justice, 2012d).

### **The Emerging Themes from Settlement Agreements**

This section contains a discussion of the themes that emerged from an analysis of the Settlement Agreements. The names in parenthesis at the end of each paragraph indicate the school districts in whose Settlement Agreements those themes occurred. Adams 12 Five Star School District (CO) will be referred to as ‘Adams 12’; Boston Public Schools (MA) will be referred to as “Boston”; Carson City Public Schools (NV)

will be referred to as Carson City; Dearborn Public Schools (MI) will be referred to as Dearborn; Henry County School District (GA) will be referred to as Henry County; the Los Angeles Unified School District (CA) will be referred to as Los Angeles; and the Mercer County School District (WV) will be referred to as Mercer County.

Within each sub heading, the themes are discussed in the order of frequency. In other words, the themes that occur in five settlement agreements are discussed before the themes that occur in four Agreements and that before the themes that occur fewer times than that.

**The Preamble.** This section contains the preliminary information discussed in the early part of the Agreements. It contains a compilation the definitions of terms as found in each Settlement Agreement followed by the purpose and the general requirements of the Agreements.

**Definitions.** These definitions are in this section because they are part of the findings in the study. They are the definitions of the terms used in the seven settlement agreements respectively. They are not related to the Definitions section in Chapter 1 of this study. The names in parenthesis are the specific school districts in whose settlement agreements the specific definition occurred.

*Alternative English Language Education Program—OELL-approved* turnaround/redesign plans in the District’s “turnaround” schools that are in addition to or in place of the Sheltered English Instruction (SEI) program, as well as to classes in which English is not necessarily used exclusively as the teaching language (Boston).

*Category Training*—The four categories of training (category 1, 2, 3, and 4) that were deemed to qualify a certified teacher to teach an SEI class of one or more ELLs (Boston). The four Category training are listed below.

*Category 1 (Second Language Learning and Teaching Curriculum)*—District’s 10-15 hour training wherein teachers learn skills and knowledge regarding factors affecting second language acquisition and how such factors affect classroom organization and instruction (Boston).

*Category 2 (Sheltering Content Instruction Curriculum)*—District’s 30- to 40-hour training wherein teachers learn to make necessary adaptations in curriculum, learning outcomes and assessments to shelter content instruction for ELLs (Boston).

*Category 3 (Assessment of Speaking and Listening Curriculum)*—Massachusetts English Language Assessment-Oral (MELA-O) 9-hour face-to-face training with more in-depth discussion and practice in providing opportunities for oral interaction in the classroom (Boston).

*Category 4 (Teaching Reading and Writing to Limited English Proficient Students Curriculum)*—District’s 15- to 20-hour training wherein teachers focus on the approaches and practices for ELLs to develop reading, reading comprehension, and writing skills using the writing process and formal elements in writing in content area classes (Boston).

*Compensatory Services*—Language support services provided during the summer, vacation academies, Saturdays, and after school to newly identified ELLs and

to those students deemed to have “opted-out” of programs or services for ELLs prior to December 23, 2009.

*Core Content*—English language arts, mathematics, science, and social studies (Adams 12, Boston, Mercer County).

*ELLs or ELs*—Students who had been determined to be English Language Learners, Limited English Proficient (LEP), or Non-English Proficient (NEP) and thus required assistance to overcome language barriers that impeded their equal and meaningful participation in the District’s instructional programs (Adams 12, Boston, Henry County). ELLs included “newly identified ELLs” and SIFE students (Boston). “ELLs” included, but were not limited to, Level 5 (Fluent) students who were being monitored by the District before exiting their ELL status (Mercer County).

*ELD*—English Language Development instruction. ELD instruction provided language support services to ELLs by a trained classroom teacher in a whole-group setting or was co-taught by a classroom teacher and an ESL teacher (Adams 12).

*ELL Administrator Designee*—The building-level principal or assistant principal who was responsible for overseeing implementation of the ELL Program at the building level (Adams 12).

*ELD Profile*—The District's repository for gathering and recording information on individual ELLs and monitored PEPs (Adams 12).

*ELL Program or Program*—The District’s methods, systems, or strategic plan for delivering ELL services, such as (i) assigning ELLs to or grouping them in particular classes designated for ELLs, or (ii) assigning ELLs who speak a particular foreign

language to a given school. Other “programs” included High Intensity Language Training for Students with Interrupted Formal Education (“HILT for SIFE” or “HILT”); transitional bilingual education; and two-way bilingual instruction (Boston).

*ELL services*—Assistance afforded to ELLs for the purpose of teaching the English language or to render substantive educational content accessible, whether in the context of an ELL program specifically designed for ELLs or in a classroom where ELLs and non-ELLs were educated. Services could include English as a Second Language (ESL), English Language Development (ELD), Sheltered English Immersion (SEI), transitional bilingual education, and/or two-way bilingual instruction (Boston).

*ELL services*—ESL instruction by a certified ESL teacher and language support in core content classes by teachers who had received training in content-based ESL and sheltering methodologies (Mercer County).

*English Language Service Level or ELS Level*—A student’s level of proficiency in English based on an assessment of the four language domains of speaking, listening, reading, and writing (Mercer County).

*Essential information*—Included, but was not limited to: (a) information about special education matters arising under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act (*e.g.*, IEP or 504 meetings); (b) report cards and other academic progress reports; (c) information about the disciplinary process; (d) requests for parent permission for student participation in District/school sponsored programs and activities; (e) promotional materials and announcements distributed to students that contain information about school and District activities for which notice is

needed to participate in such activities (*e.g.*, testing, co-curricular activities, activities requiring an application, parent-teacher conferences, open houses); (f) parent handbooks; (g) documents concerning enrollment or registration; (h) documents concerning academic options and planning; (i) documents concerning screening procedures requesting a student's language background, a parent's preferred language of communication, and the process for refusing all or only specific ELL services; (j) information related to public health and safety; and (k) any other written information describing the rights and responsibilities of parents or students and the benefits and services available to parents and students (Boston).

*ESL (English as a Second Language)*—A direct, explicit, systematic, and developmentally appropriate approach to English language instruction (Adams 12, Boston, Mercer County), provided by an ESL/Bilingual/Linguistically-Diverse-endorsed teacher to ELLs in a small-group setting (Adams 12).

*Exited ELL*—A student who was formerly an ELL but subsequently met the criteria for exiting their ELL status based on a valid and reliable assessment of the student's English proficiency in each of the four domains of speaking, listening, reading, and writing (Mercer County).

*FEP (Fluent English Proficient)*—A former ELL student who has acquired fluent English proficiency in listening, speaking, reading, and writing (Adams 12).

*FLEP (Formerly Limited English Proficient)*—A student who at one time was an ELL but subsequently met the District's criteria for exiting ELL services (Boston).

*High Incidence Program School*—A school with a high incidence of ELLs from any particular language group (Boston).

*Individualized Education Program (IEP)*—Refers to a plan designed to meet the individual educational needs of a student with a disability under the Individuals with Disabilities Education Act (IDEA).

*IEP Team*—A team constituted under the Individuals with Disabilities Education Act (IDEA). The purpose of the team was to identify the student’s individual needs; propose placements, programming or services; and/or develop an IEP or Section 504 plan for the student (Boston).

*Instructional Staff*—Teachers and teaching staff, including but not limited to, full-time and part-time classroom teachers, ESL and ELD teachers, special education and gifted/talented instructors, and literacy specialists (Adams 12).

*Language services or Language acquisition services*—ESL, ELD, and/or SI instruction for ELLs (Adams 12).

*LASS Department*—The District's Language Acquisition Support Services Department was the District office responsible for providing language services to ELLs, implementing the District’s ELL Program, and monitoring District compliance with the ELL Program and the Settlement Agreement (Adams 12).

*LAT (Language Assessment Team)*—Team consisting of designated employees at each school who were responsible for ensuring the identification and monitoring of ELLs and monitoring of ELLs (Boston).

*Low incidence non-program school*—A school with a low incidence of ELLs in any particular language group (Boston).

*Newly Identified ELLs*—Students who were previously assessed only for speaking and listening, and were reassessed in the Spring of 2010 in all four language domains (including reading and writing) and determined to meet the criteria to be English language Learners (Boston).

*Non-LEP or “Non-ELL*—A student who was not an English Language Learner, Limited English Proficient, or Non-English Proficient and who did not require assistance from the District to overcome language barriers in order to have equal and meaningful participation in the District’s instructional programs (Adams 12, Boston).

*OELL*—The Office of English Language Learners (Boston).

*Opt-Outs or Students previously deemed to have opted out of ELL programs or services*—ELLs who, prior to December 23, 2009, were treated as non-ELLs and not provided with ELL programs or services (Boston).

*Opt-Out ELLs*—Students with ELS Levels 1-4, whose parents or guardians made an informed written decision to refuse to have their children enrolled in the ELL Program or who withdrew their children from the ELL Program (Mercer County).

*Parent*—A parent, guardian, or any other person legally responsible for a student under state law (Henry County).

*“Pull-Out”*—A method of delivering ESL where an ESL teacher pulled an ELL out of a regular classroom to provide English acquisition instruction in a separate location (Carson City).

*“Push-In”*—A method of delivering ESL where an ESL teacher pushed into an ELL's regular classroom to provide English acquisition instruction (Carson City).

*Qualified SEI teacher*—(a) A teacher certified in the content area and ESL, or (b) a teacher certified in the content area who had completed training in Categories 1, 2, and 4 (Boston).

*Re-designation*—Changing an ELL's language proficiency category from LEP to PEP-M1 (Adams 12).

*Reclassification*—Changing an ELL's language proficiency category, except when changing it from LEP to PEP-M1 (Adams 12).

*Registration Forms*—The District's forms provided to enrolling parents at the time of registration (Henry County).

*Section 504 Team*—A team constituted under Section 504 of the Rehabilitation Act of 1973 (Section 504). The purpose of the team was to identify the student's individual needs; propose placements, programming or services; and/or develop a Section 504 plan for the student (Boston).

*SIFE* (Students with Interrupted Formal Education)—also ELLs (Boston).

*SI (Sheltered Instruction) or SEI (Sheltered English Immersion)*—An instructional model or technique where grade level content (mathematics, science, social studies) is made comprehensible to ELLs by integrating language and literacy development into content area instruction while promoting their English language development (Adams 12).

*SPED*—Special education and related aids and services, under the Individual with Disabilities Education Act (IDEA).

*SPED student*—A student with a disability under Section 504 or a student who was eligible for special education under the IDEA (Adams 12, Boston).

*SPED ELL*—An ELL with a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 (Section 504) and who was therefore entitled to receive both SPED and ELL services (Boston, Mercer County).

*Statement of Objection/Waiver*—The District’s form provided to parents who chose not to provide their child’s social security number to the District (Henry County).

*Student*—A child who was eligible to enroll in the school District under state law (Henry County).

***Purpose of the settlement agreements and assurances between the parties.*** All of the Settlement Agreements began by stating a purpose. The purpose was to address the education of English Language Learners (ELLs), based upon the requirements of specific federal statutes. Some of the investigations were initiated by the Civil Rights Division of the Justice Department (DOJ) (Adams 12, Henry County, Mercer County); some were initiated by the Office for Civil Rights of the Department of Education (OCR) (Dearborn, Los Angeles); and some investigations were initiated by both departments (Boston, Carson City).

The investigations were based on four different statutes and the United States Constitution. However, each District was investigated under a different combination of

statutes. Only one District was investigated under the United States Constitution. Two of the seven school districts were investigated under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (EEOA) (Adams 12, Mercer County), two districts were investigated under Title VI of the 1964 Civil Rights Act, 20 U.S.C. § 2000d *et seq.*, and its implementing regulations at 34 C.F.R. part 100 (Dearborn, Los Angeles), and some were investigated under both statutes (Boston, Carson City). The Henry School District (Georgia) investigation was based on both statutes and the United States Constitution.

The parties to the Settlement Agreement made certain assurances. In consideration for the commitments made by the school district, the United States agreed not to initiate judicial proceedings to enforce laws governing the investigations and to work collaboratively with the school district. The Districts, by signing the agreements, did not admit liability, nor did they agree that the terms of the Agreements were mandated by Federal law or state or federal constitutions. All the parties agreed that the Agreements were signed in the interest of judicial and governmental economy and as an alternative dispute resolution to avoid litigation. However, the assurances and commitments did not relieve the Districts from fulfilling other legal obligations that they had or might have (Adams 12, Boston, Carson City, Henry County, Mercer County).

The Agreements became effective on the days they were signed and remained in effect sometimes for three years, four years, or until the United States determined that the terms of the Agreement had been met, or until the Agreement was terminated (Boston, Henry County, Mercer County).

*General and specific requirements.* Only three of the Agreements included a section on general requirements. The general requirement sections were a reiteration of the laws that governed the education of language minorities and the obligations to which the Districts are held. The statutes they cited included the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (EEOA) and Title VI of the Civil Rights Act of 1964. Upon these the Districts based their promise to take appropriate action to overcome language barriers that impeded equal and meaningful participation by ELLs in their instructional programs (Carson City, Dearborn, Los Angeles).

In addition to the general requirements, the greater part of the Settlement Agreements consisted of specific requirements that were to be implemented promptly. In all the Districts except Carson City and Mercer County, full implementation was expected to begin immediately. The United States recognized that some of the districts were severely understaffed and did not have the trained teachers and staff to begin to fully implement the program immediately. Therefore, the districts were allowed to have two “bridge years” during which they would recruit, hire, and train staff, acquire the needed materials, and establish other measures and processes necessary for program implementation. The Settlement Agreements were not completely suspended during this period. Rather, a modified version was implemented. The “bridge years” provision did not absolve the Districts from the obligation to provide language support for ELLs (Carson City, Mercer County). The specific requirements, which constitute the longest part of the Agreements, are discussed in the next section.

**Themes relating to student enrollment.**

***Registration, identification, and placement.*** Most of the Districts committed to ensuring that LEP parents had meaningful access to the same information that was provided to non-LEP parents, including registration and enrollment information. All of the Districts' registration and enrollment forms were to be available at every school, in English in and in other predominant languages of each District (Adams 12, Boston, Carson City, Dearborn, Henry County, Los Angeles).

Most of the Agreements included provisions relating to the districts' registration, identification, and placement processes. As part of the general requirements, the Districts agreed to identify all students who required ELL services and to provide them with timely, appropriate, and adequate ELL services that were targeted at the students' specific language needs (Carson City, Dearborn, Los Angeles, Mercer County).

Henry County, which was the only the district that had required parents to present social security cards in order to enroll their children, committed to rectifying the situation by publicizing widely in the school community that it was not mandatory to provide a student's social security number for the purposes of enrolling a child in school. Parents/guardians who were unwilling or unable to provide their child's social security number were required to provide a document by which the parents could signify their unwillingness or objection to providing their child's social security number as a prerequisite to enrollment (Henry County).

***Home language survey (HLS).*** Five of the seven school districts ran afoul of the United States requirements with regard to the Home Language Survey (HLS). As part of

the Settlement Agreement, they agreed to distribute the Home Language Survey (HLS) to all students and to require that parents and guardians of all enrolling students complete and return the HLS to the school. To ensure maximum participation, school personnel would follow up with parents who failed to return the HLS to encourage them to respond (Boston, Dearborn, Henry County, Los Angeles, Mercer County).

If parents or guardians were limited English proficient, the Districts agreed to use best efforts in providing the HLS in a language the parents could understand, or to provide a qualified interpreter to assist the parents in completing the HLS (Boston, Henry County, Los Angeles, Mercer County).

The Home Language Survey was required to inquire about three specific things: the language spoken in the student's home (regardless of the language spoken by the student), the language that the student spoke most often, and the language that the student acquired first (Boston, Dearborn, Los Angeles, Mercer County).

***Identification, assessment, and placement.*** Once the Home Language Survey was submitted, the identification of a student as an ELL hinged on the responses to the questions on the HLS. If the answer to any of the three questions on the HLS indicated the use of a language other than English, or if there was any indication that the student was not proficient in English, then District officials were required to immediately assess the student, or refer the student for an English Language Proficiency (ELP) assessment (Boston, Dearborn, Los Angeles, Mercer County).

If a student's test results indicated that the student was less than fluent in English, the Districts would classify the student as an English Language Learner (ELL), provide

the student with ESL instruction for English language acquisition, and provide sheltered instruction for core content subjects. These services were to be provided by trained and credentialed teachers. If a student's test results indicated that the student was fluent in English, the student would not be classified as ELL (Boston, Los Angeles, Mercer County).

The language proficiency assessment would be comprehensive in that the Districts were required to assess the students' proficiency in all four language modalities of listening, speaking, reading, and writing. The assessment tools had to have been proven to be reliable and valid. The results of the test would be used to determine the student's English language proficiency level (Boston, Mercer County).

With regard to assessments, Districts were bound by a timeline. For identification and placement, students were to be assessed within 20 days from the date of enrollment. If the student enrolled in the summer, the Districts were required to conduct the assessment within 20 days or no later than the first day of the new school year, whichever came later. If a student enrolled during the "peak seasons" of January 1 through March 15, and August 1 through October 31, a 5-day extension was granted on the deadlines and timing for the identification assessments (Boston).

The Districts were prohibited from changing or revising the questions on the HLS without receiving confirmation from the United States that the revisions were in compliance with the EEOA and Title VI of the Civil Rights Act of 1964 (Boston).

***Parent waivers/opt-out students and ELL services.*** The fact that a student qualified to receive ELL services did not require mandatory acceptance of the services.

Parents had the right to refuse to enroll their children in an ELL program. Even after a student had begun to receive ELL services, parents would be able to opt out their students from receiving ELL services (Boston, Los Angeles, Mercer County).

The Districts also had to monitor the number of parental refusals in each school. If any school showed more than 5% parental refusal during one school year, the Districts were required to meet with the principal and to take steps that would remedy the situation. The decision to opt out a student was to be solely at the parent's initiative. Districts were prohibited from initiating the discussion or decision to opt out a student (Boston, Mercer County).

Even when a parent refused ELL services, the Districts were still required to provide core content instruction to the student, by teachers who were appropriately certified to teach the grade level or subject and had completed District-required training. The core content teachers were also required to have the necessary training to meet the students' English language and academic needs (Boston, Mercer County).

In addition to providing properly certified teachers, the Districts were also required to monitor the academic performance of the opted out student at least twice a semester and be given an English proficiency test at least once a year. If the student's academic progress was not satisfactory, the parent/guardian would be approached again to consider enrolling the student in the ELL program. The Districts' efforts would also be duly documented (Boston, Mercer County).

If a parent/guardian refused part of or the entire District's ELL program, the Districts were required to go to great lengths to convince the parent/guardian of the

benefits of the ELL program. To accomplish this, a member of the school's Language Assessment Team (LAT) and the head of the student's school were required to meet with the parent/guardian and explain to them the details, extent, methodology, and benefits of the ELL services that the student would receive if enrolled in the ELL program. They would assure the parent/guardian that the ELL student would not be assigned to programs that were designated only for ELLs, or be required to attend specific schools in order to receive access to ELL services. The Districts' personnel were required to encourage the parent/guardian to allow the student to receive ELL services for a trial period of at least 30 days before a final decision was made (Boston).

If the parent continued to refuse, then the school principal was required to document, on a form designed specifically for that purpose, that the meeting took place and that all of the requirements stated above were discussed. Also to be documented was the parent/guardian's reason(s) for refusing. The parent/guardian would sign the form, affirming that the form's content was accurate. A copy of the form would be given to the parent; one copy was to be placed in the student's permanent record, and another copy to be kept by the Districts. If the parent accepted some services and not others, then the Districts were required to provide the services that the parent/guardian had not refused (Boston).

***Training of district personnel for student identification and placement.*** District personnel would also be trained in how to refer students to the special education department if a student already had an Individualized Education Program (IEP) in place for the student, or if there was an indication that a student might have a disability or

require special education or related services. The staff would also be trained in how to notify parents/guardians of the assessment results and how to answer parents' questions about the process (Boston, Dearborn, Los Angeles, Mercer County). The Districts were also required to notify parents/guardians within two days of the results of the initial assessment and of the student's placement options. Parents/guardians would also receive a notice of the assessment scores in writing (Boston, Dearborn, Los Angeles).

In many of the Districts it was necessary to equip the staff with training necessary to enable them to perform their obligations in a manner that was consistent with the terms of the Agreement. Therefore, no later than September 1 of each school year, all district personnel who were involved in student registration and assessment were to be trained in how to complete all registration and enrollment forms and how to ensure that English Language Proficiency assessments tested the four language modalities of listening, speaking, reading and writing. The training would also include how to ensure that the language proficiency assessments were interpreted in a manner that resulted in the right placement for each student (Boston, Los Angeles).

**Themes relating to instructional requirements for ELLs.**

*LEP committee.* Similar to the Individualized Education Program (IEP) that is required for special education students, to be managed by an IEP team, Districts were required to establish a Limited English Proficient (LEP) Plan, to be managed by the LEP Committee. This committee would be in charge of the educational decisions regarding every ELL student. The LEP committee would consist of the student's ESL teacher,

homeroom elementary teacher or core content secondary teacher, a school administrator, and a parent/guardian (Adams 12, Mercer County).

The LEP Committee would be responsible for determining the ELL services and accommodations that were deemed appropriate for the student. The committee was required to meet at least once every year, and all their decisions were to be recorded in the student's LEP Plan (Adams 12, Mercer County).

To determine a student's progress, the District would use different assessment methods, including standardized tests, grades, and District data forms. If these assessments and monitoring reports indicated that an ELL was struggling in any subject area, the LEP Committee would convene to determine whether the student's problems were due to a language barrier. If the Committee determined that a language barrier was responsible for the student's academic problems, the Committee would adjust the level of ESL services provided to the student, as dictated by the student's needs, within 30 days. All changes to the student's ELL program were to be documented in the student's LEP Plan (Carson City, Mercer County).

The LEP Committee was required to meet annually with specific timelines. Regarding students who were enrolled in the school the previous year, the LEP Committee was required to meet and deliberate within the first 15 days of the new school year. If the student was new to the District, the LEP Committee meeting would take place within 20 days. The decisions of the LEP Committee concerning an ELL were to be documented and kept in a special folder assigned to each student (Carson City, Mercer County).

In addition to the mandatory meetings required of the LEP Committee, other people could initiate a LEP committee meeting. If a teacher or parent of an ELL reasonably believed that the student was not receiving appropriate services, that person could reconvene the LEP Committee at any time, but no more than once every grading period (Carson City, Mercer County).

*Provision of ESL services and sheltered English instruction.* Class size or teacher ratios for ESL and SEI classes, and other instructional decisions were to be determined in a way that did not favor any particular national origin(s) over others (Adams 12, Boston, Carson City).

There was a minimum amount of English as a Second Language or English Language Development (ESL/ELD) services that was to be provided to ELLs. The Districts were required to provide at least one class period of English as a Second Language/English Language Development ESL/ELD every full school day, for at least four days of every 5-day week. If the school week was shorter than five days, then the Districts were required to provide ESL/ELD services on all the school days except one. The ESL/ELD class period was to be no less than 45 minutes, or equivalent to the length of time used to teach core subjects such as English Language Arts (ELA) and mathematics in that grade level (Adams 12, Carson City).

Even though the Districts were under an obligation to provide a minimum amount of ESL instruction to ELLs, they were at liberty to provide more than the minimum. As much as was practicable or appropriate to students' needs, the Districts could provide ELLs with additional language acquisition services, making sure to

provide more services to less proficient students. ELL instruction could total as much as 2.5 hours a day for students at the lower proficiency levels (Adams 12, Carson City).

The grouping of ESL students could not be haphazard. Students were to be grouped vertically, each ESL group consisting of students in the same grade level. However, if the Districts grouped students horizontally across different grade levels, the grouping was to be based on the students' language proficiency levels. ELL students could be in the same ESL group even if they were not in the same grade, as long as their proficiency levels were consecutive (Boston, Carson City).

The District's obligations were not limited to academic services. The Districts were also required to notify ELL students, in a language that they could understand, of the availability of free language assistance for nonacademic and extracurricular programs and activities, including guidance counseling. The Districts were also required to provide meaningful access to the District's online student academic progress information system. At the secondary school level, the Districts were required to provide college and career preparation and readiness information to the parents/guardians of ELLs in a manner that they could understand (Dearborn, Los Angeles).

The two main parts of ELL services were ESL instruction for language acquisition, and sheltered English instruction (SEI) for core content classes. Therefore, in addition to ESL instruction, all ELLs who had not been opted out by their parents/guardians were to be enrolled in sheltered English Instruction (SEI) classes for all core content classes. Instruction was to be primarily in English, and was to be

designed to enable the students to perform at grade-level, remain on track to graduate from high school, and be prepared to enroll in college (Boston, Los Angeles).

Like ESL instruction, sheltered English instruction (SEI) for core content subjects was to be provided by teachers who were either ESL certified or had received SEI-specific District training. SEI classes were to be conducted in English, and designed to make content more comprehensible to ELLs. Unlike ESL classes, SEI classes were to be heterogeneous, consisting of both ELLs and native English speakers. The curriculum and standards of the SEI classes were to be no different from those provided to native English speakers, using strategies and assessments that were designed to make content more comprehensible (Adams 12, Los Angeles).

To assist teachers in providing meaningful instruction to their ELLs, it was important that the teachers be able to identify who they were. Therefore, as a way of identifying ELLs and former ELLs, all class rosters would identify all ELLs by their language proficiency levels, and also those who had exited the program. To track the ELL students' progress, the Districts were required to administer an English language proficiency test every year. They could combine that with the results of their three Annual Measurable Achievement Objectives required by the No Child Left Behind Act (Boston, Mercer County).

In Boston, the District was required to provide English as a Second Language and Sheltered English Instruction core content instruction at all schools that had ELL enrollment, regardless of whether the school had a high or a low ELL population. Therefore, all ELLs were to be provided with ESL and SEI content instruction in their

current or preferred school. The District could not require that an ELL change schools solely for the purpose of receiving language support services. The District also agreed to provide ELL students with access to all services that were available to non-ELL students, not discriminating on the basis of the students' national origin or lack of space in the students' school of choice. Parents/guardians were never to be placed in a position where they had to choose between a preferred school and access to ELL services (Boston).

In addition, ELLs in non-consecutive grade levels could be grouped together if they were all in the same classroom, or if there were not enough ELL students to constitute a class. In such a case, ELL students at three consecutive grades could be grouped together for their ESL instruction. For example, a student at level 3 proficiency could be placed in the same ESL group as students at proficiency levels 1 and 2 (Boston).

If students were grouped in this manner, the placement could be for no longer than one academic year, and the Districts had to redesign their curriculum to accommodate the ESL requirements of the different proficiency levels. In addition, the assigned teacher had to possess the expertise to differentiate instruction for all the three proficiency levels and to manage lesson planning and instructional time to meet the needs of all the students at all the levels (Boston).

In secondary schools, there would be an ESL class for students at each of the three lowest English Language Proficiency (ELP) levels. Students who were in the two highest levels were to be enrolled in a higher ESL class or grade-appropriate English Language Arts class that consisted of only ELLs, or a mix of ELLs and non-ELLs. The

class was to be taught by a teacher who was certified to teach ELLs with higher language proficiency (Boston).

*Students with interrupted formal education.* The education of students with interrupted formal education (SIFE) was a phenomenon that was addressed only in the Boston Public Schools. The students were to be provided with high intensity language training (HILT). All schools that offered a HILT program were required to have at least one full-time nurse on staff if the school enrolled at least 700 students. The District could place a full-time nurse in a school with less than 700 students, if it was warranted by the peculiarities of the particular HILT program or the extent of SIFE students' medical and mental needs (Boston).

The District was required to make a report to the United States consisting of a list of the schools that had High Intensity Language Training (HILT) programs, the number of students enrolled in each school, and a description of the specific nurse placement in each school with more than 125 HILT students. The District would also develop a plan that tracked the performance of Students with Interrupted Formal Education (SIFE) who enrolled in and exited the HILT program (Boston).

To maximize the benefits that the students received from the District's HILT program, the District would develop a professional development program for HILT teachers, focusing on the distinguishing features of the District's SIFE curricula. It would also train HILT teachers to collaborate with others who provided services for their SIFE students. Every teacher who taught a HILT ESL class was required to either undergo the District professional development training and to possess an ESL

certification. Teachers who taught HILT content areas were required to undergo the District training or possess ESL certification and the Professional Development Program for HILT teachers (Boston).

*Advanced programs.* A student's status as an ELL was never to be used to preclude them from the opportunity to test for or be admitted into an advanced program. Therefore, all information about any and all higher level learning opportunities was to be deemed "essential information." This information was to be provided to parents and guardians in writing and in a language they could understand. The Districts were also required to ensure that each ELL student had a meaningful opportunity to be admitted into the advanced programs (Boston).

Assessments and other decision-making factors for admission into the programs were to include indicators of success other than standardized tests. Other indicators could include, but would not be limited to, teacher recommendations, the student's performance in mathematics and science classes, and other criteria that did not depend on English language proficiency. Information about admission standardized tests to the advanced programs would be provided at the end of each academic year, so that all students could have extra time to prepare for the following year (Boston).

The Districts' obligations to the ELL student were not abrogated solely because the ELL student was enrolled in an advanced program. The ELL student enrolled in advanced programs would still continue to receive ESL and SEI services through qualified teachers. The District would continue to review the demographics of the student population in the advanced academic programs, and ensure that English

language learners had a meaningful opportunity to participate in the advanced programs while still being served as ELLs (Boston).

*Gifted and talented services (GT).* The District's department in charge of English Language Learner programs would collaborate with the Gifted and Talented (GT) Department to develop programming that would better identify GT students whose language background was not English and meet the needs of English Language Learners already in GT services. Towards that goal, the Districts were required to:

1. Develop a written plan of action towards improving GT services for ELLs. The plan would be shared with school administrators and GT educators at the school, reviewed annually and modified, as necessary;
2. Implement a formal process to ensure that schools were appropriately referring, identifying, and placing ELLs into GT services and advanced academic services;
3. Monitor referrals, identification, and placement decisions and recommend improvements and modifications, as necessary; and
4. Evaluate GT programming for ELLs to determine if ELL access to GT services was improving and meeting the needs of GT ELLs (Adams 12).

*Non-segregation clauses.* Districts were required to group ELLs together for language instruction. However, they were prohibited from unnecessarily segregating ELLs away from native speakers. Districts were required to provide ELLs as much opportunity as possible to interact with native speakers. Therefore, special classes such as art, music, gym, library activities, lunch, recess, P.E., and other co-curricular or extra-

curricular activities were to be heterogeneous in their composition. At the same time, Districts were prohibited from preventing students from speaking their native language (Adams 12, Boston, Carson City, Los Angeles).

*Compensatory services for previously unidentified ELLs.* In Boston, where some ELLs had previously been unidentified as ELLs or in cases where the students opted out and were therefore provided with no services relating to their ELL status, the District was required to compensate the students by providing enrichment services for as long as they remained ELLs. The District office in charge of ELLs' education would review all compensatory services offered by the District and by community-based organizations to ensure that the services addressed different modalities of language acquisition, or the core content area, using sheltered English instruction (SEI) strategies. The District would also ensure that the staff that provided these services was qualified in ESL and/or SEI (Boston).

The District was required to inform the students and their parents/guardians about the availability of the compensatory ELL services and ensure that the programs were easily accessible to the students by offering them at various times, within a reasonable distance to the students' homes, and in accessible locations. The District was at liberty to design programs for specific grades and levels, and to prioritize the compensatory services, as long as each student that qualified was given access to at least one program (Boston).

For summer and after school compensatory services, the District would request and consider parental preferences with regard to the content, location, manner and time

of the services and take the preferences into consideration when planning program design and delivery (Boston).

Twice a year, the District would provide a report to the United States of the details of the compensatory programs. SPED ELLs were also entitled to compensatory services, as determined by their individual needs (Boston).

***Materials and resource allocation.*** The Districts were required to monitor the instructional materials that were used for ELL instruction. They were to ensure that instructional materials were appropriate for the ELL students' ELP levels, ages, grades, and subject areas of instruction and in enough quantities for the number of enrolled ELLs in each school. They were also to ensure that the materials were available and used in all ESL classrooms. All ESL teachers were to be trained in how to use the materials (Adams 12, Boston, Carson City, Mercer County).

Districts were also required to devote adequate funds towards the education of ELLs. The budget for the purchase of ELL instructional materials was required to be in direct proportion to the percentage of ELL enrollment, unless the total ELL population of a school comprised less than 5% of the school population. In that case, the instructional materials budget was required to be no lower than 5% of the overall budget. The Districts were also required to develop and provide to the United States a schedule and proposed budget towards implementing their ELL programs (Adams 12, Carson City).

To ensure the compliance with this requirement, the Carson City School District agreed to conduct a one-time comprehensive inventory and review of the instructional materials, the library resources used at each school, and the District's policies and

practices related to the purchasing of books and other instructional materials (Carson City).

**Themes relating to monitoring student performance.**

*Students who were formerly LEP.* To determine the progress of a student towards fluency, districts used language proficiency assessments, literacy assessments, and daily classroom performance. As often as practicable, these decisions were to be made at the end of every grading period, but at the very least at the end of every school year to determine the students' ELL placement the following year (Adams 12).

Whenever a former LEP student (FLEP) acquired enough English to be designated as fluent, the student would be flagged on the teachers' rosters and his or her academic progress would be monitored every grading period for two years. If the student failed to make adequate progress and the cause was attributed to a language deficiency, the LEP Committee would meet and the student would return to receiving ELL services, as needed (Mercer County).

***Monitoring current and former ELLs and evaluating language services.***

The Districts agreed to monitor their ELL programs at the building and district-level, evaluate the program's effectiveness, and monitor the individual academic performance of current ELLs and recently re-designated FEPs (*i.e.*, exited within the past two years) (Adams 12, Boston, Carson City).

With the exception of ELLs who had been affirmatively opted out by the parents/guardians, ELL services would continue until the student demonstrated English language proficiency in all four domains of listening, speaking, reading, and writing as

determined by valid and reliable assessment of the student's English language proficiency, according to the Districts' policies. English language learners (ELLs) who achieved English language fluency (FEP or FLEP) were to be monitored through a formal two-year process during which the students would be without any language acquisition support services. However, the students' progress would frequently be evaluated to ensure continued success (Adams 12, Boston, Mercer County).

To evaluate whether the Districts' language services were being successful in overcoming language barriers, the Districts would monitor their non-English proficient (NEP), limited English proficient (LEP), and their fluent English proficient (FEP) students as they progressed through until exit from the District's ELL Program. The District would take appropriate action if FEPs failed to make progress, by reclassifying them as LEP and reentering them into the ELL program where appropriate (Adams 12, Boston, Carson City).

As part of the monitoring, all non-English proficient (NEP) and limited English proficient (LEP) students were to be identified by their proficiency level on all electronic class rosters. Recently exited students were also to be designated as such on all class rosters for the two years following their exit from ELL services (Adams 12, Boston).

The Districts agreed to evaluate their programs regularly to determine whether ELLs were being properly identified for reclassification from LEP to fluent status (FEP) and whether FEPs were being properly monitored. If the monitoring procedures revealed that a previously exited ELL student was struggling in any academic area, the LEP

Committee was required to convene for deliberations. If the LEP Committee determined that the student's difficulties were due to or related to a language barrier, and that direct ESL services or language support would be beneficial to the student in the core content areas in which the student had difficulty, the student was to be reentered into the program within 30 days, for direct services. All the new changes were to be documented in the student's LEP Plan (Adams 12, Mercer County).

The monitoring and evaluation process was to include assessment data.

Districts were required to disaggregate the data by school and ELL program, (non-ELLs, ELLs, and former ELLs) as follows: (a) English proficiency assessments; (b) standardized test scores; (c) class grades; (d) retention-in-grade rates; (e) graduation rates; and (f) enrollment in honors, Advanced Placement, gifted, and SPED (Adams 12).

**District level program monitoring.** Districts were required to monitor the effectiveness of their programs by evaluating the ELL program at each school as well as district-wide. To determine whether the District's ELL program was effective towards eliminating language barriers within a reasonable period, the Districts would disaggregate and monitor the students' performance on a number of standardized tests, their enrollment in honors, special education, and enrichment programs such as Advanced Placement and gifted classes as well as their retention-in-grade rates, the number of ELLs exiting from ELL services by school, and their graduation rates (Adams 12, Mercer County).

Each school was required to assign one administrator (principal or assistant principal) to act in the role of ELL Administrator Designee. To enable Designees to

understand their roles, they would attend an annual orientation at the beginning of the year, obtain further professional development related to their role as ELL Administrator Designee, obtain regular updates regarding the ELL program, and collaborate with colleagues (Adams 12).

Building administrators were required to monitor the implementation of the language acquisition services and strategies in the classrooms through frequent unannounced observations and walk-throughs (Adams 12).

**Themes relating to special education and documentation.** The obligations of the Districts also extended to special education students who were also ELLs. Districts were required to provide Special Education (SPED) and English Language Learner (ELL) services to all students who were eligible. They were also required to provide such students a free, appropriate public education in the least restrictive environment by appropriately qualified personnel, and in a manner that addressed the language needs of the students (Adams 12, Boston, Carson City, Dearborn, Mercer County).

The Districts agreed to adapt their disability pre-referral, referral, evaluation, and placement policies, procedures, and practices to ensure that ELL students were not misidentified as students with disabilities. Unless it was clearly not feasible to do so, special education assessments would be conducted in the student's native language or other mode of communication most likely to yield accurate information regarding what the child knew and could do academically, developmentally, and functionally (Adams 12, Carson City, Dearborn, Mercer County).

The Districts were prohibited from denying ELL services to any ELL student solely because of the nature and severity of the student's disabilities; neither could a student be denied special education services solely on the basis of language proficiency. However, a parent/guardian of a SPED ELL student had the right to refuse ESL services for the student. In the absence of a written refusal of services, and subject to the limitations of a student's special education (SPED) Individualized Education Program (IEP) or Section 504 plan, all SPED ELLs were to be provided with at least one class period of ELL instruction, during which they would be grouped according to their English language proficiency, within one grade vertically, spanning no more than two consecutive grades (Boston, Carson City, Los Angeles).

Consistent with applicable federal law and regulations, all the Individualized Education Program (IEP) plans of ELLs should consider the language needs of the ELL whenever such needs were related to the student's IEP (Adams 12, Boston).

When determining school staffing and organizational plans, principals/headmasters were required to consider the needs of SPED ELLs and to ensure that SPED ELL students received ELL services. The ELL services were always to be delivered by ESL-certified, SEI, and HILT- trained teachers, depending on the students' needs (Boston).

Any modifications or accommodations made to a SPED ELL's instructional plan or program had to be made by the student's IEP or Section 504 team, through a documented process (Boston, Carson City).

An ELL's IEP also would include: (a) the student's current state standardized tests results; (b) the languages in which SPED assessments were conducted; (c) modifications, if any, of standard assessment procedures; (d) the qualifications of the individuals completing the SPED assessments; and (e) a determination by the IEP team that the ELL's level of English proficiency was not determinative of the decision to administer SPED services (Adams 12, Carson City).

Only in rare cases was a school allowed to deny all ELL services to a special education student. In such rare cases, the IEP team would have determined and documented that the severity of the student's disability precluded him or her from ever being capable of using or understanding language (Boston, Carson City).

Parents of SPED ELLs were to be granted meaningful access to the IEP meeting. Therefore, the Districts would notify SPED ELLs' parents/guardians of the availability of interpreters for special education meetings, and the interpreters would be provided upon parental request after reasonable notice. The Districts would also require that parents/guardians sign a form at the end of the IEP meeting indicating whether or not they would like a written copy of any portion of their child's Individualized Education Program (IEP) in a language other than English. If parents/guardians indicated that they would like such a copy, then the District would translate the portions requested by the parents, including the entire IEP if requested, into the parents' native language, within 14 days after the IEP meeting. An interpreter would read the contents of the form to parents, if necessary (Adams 12, Carson City).

To facilitate the provision of services to SPED ELL students, each school would develop and maintain a list of school personnel who had either completed the District Category training or were ESL-certified, who had knowledge of ELL needs and services, who were conversant with issues relating to the language and cultural background of ELLs, who were trained in the intersecting issues between ELL and SPED, and who were available to participate in special education team meetings. The list would be shared with the ELL office, SPED office, and the United States (Boston).

The Districts had to ensure, through monitoring, and by declaration, that a principal, SPED staff, or a LAT facilitator had to be present in the IEP or Section 504 team meetings. If the staff member was not already familiar with the student, the District would make the students' files accessible to him or her for review prior to the meeting (Boston).

The Districts agreed to take measures that would increase the knowledge of the relevant staff about best practices in the provision of services to ELL students with disabilities. The staff would be trained to recognize the disabilities that affect language acquisition, language processing, and expression, on strategies for educating ELL students with disabilities, and also the intersection between SPED and ELL education. There would be at least one joint meeting every year between SPED and ELL staff in each school to plan and discuss services and processes (Boston).

The District's Comprehensive Special Education Resource Manual would include procedures to determine whether ELLs that were suspected of having a disability were expeditiously assessed to confirm whether or not they had a disability.

The Manual had to clearly indicate that a student's ELL status should not be used to deny access to SPED services. The Manual and any subsequent changes would be provided to the United States (Mercer County).

The Districts were prohibited from denying any ELL student ESL services solely due to the nature or severity of the student's disability. The parents/guardians would be notified in a timely manner whenever a student qualified for both SPED and ELL services (Mercer County).

The Districts could require that an ESL-endorsed teacher be included on all IEP Teams whenever the IEP of a SPED ELL was being discussed (Carson City). The teacher had to be included in decisions involving the student's SPED services. The role could also be filled by the SPED ELL's teacher. The Districts had to comply with all applicable laws relating to the language needs of the ELL, and those needs were to be considered during the IEP process (Carson City).

The Districts could not use an ELL's limited English proficiency as the sole determinant of the student's eligibility for SPED services. The model of delivery (pull-out/push in) of the ELL services (mathematics, science, social studies) and their duration every day were also to be documented in the student's IEP and LEP Plans (Mercer County).

Districts were at liberty to supplement ESL/ELD and Sheltered English Instruction services for all ELLs, including SPED ELLS. However, such services could not be used to supplant the required ESL/ELD and SI services and interventions (Boston).

*SPED ELLs documentation files.* There were special documentation requirements for the District regarding special education English language learners (SPED ELLs). The following had to be considered, documented, and maintained in each SPED ELL's files:

- a. a record of that student's language proficiency testing results;
- b. a record of that student's first language educational history, if any;
- c. documentation of the special education assessments used to determine the student's disability or special needs, the language in which special education assessments were conducted, and the reasons for testing in that language;
- d. documentation of the team's consideration of any effect language development issues might have on special education assessment results; and
- e. documentation that specifically tracked the length of time from (i) the initiation of any pre-referral interventions to (ii) the date of referral, (iii) the date of evaluation, and (iv) the date on which an IEP or Section 504 Plan was proposed (Boston).

If the student's IEP required that modifications be made to the language proficiency test in order to accommodate a student's disability or special needs, a record of the modifications would be maintained in the student's SPED ELL's files stating why the modifications were necessary, reporting the IEP Team's deliberations on the student's language needs, and how the student's disability affected those language needs (Boston).

The Districts were also required to document the instructional model that would be used in providing ELL services to the student, any modifications necessitated by the student's disability, and an explanation for such modifications. The IEP or Section 504 team had to also consider how the student's disability impacted the provision of ELL services, and also how the student's language proficiency impacted the delivery of special education services (Boston).

**Themes relating to staff qualifications and professional development.**

*ESL and core content instructional staff.* The Districts agreed to actively recruit qualified, properly endorsed ESL/ SEI and bilingual staff who also had experience working with ELLs. They would also strive to hire personnel who were fluent in one or more of the languages of the District's ELLs. The employee vacancy advertisement would clearly reflect the Districts' preferences for ESL-certified/endorsed and bilingual teachers (Adams 12, Boston, Carson City, Los Angeles, Mercer County).

The Districts would also ensure that all teachers who were undergoing the District's training or ESL endorsement training were making consistent progress towards completion. If it became necessary to hire a long-term substitute teacher to teach ELL students, that teacher had to be provided with training in ESL methods, within 45 days of beginning the assignment (Adams 12, Boston, Los Angeles, Mercer County).

It was required that all teachers that taught English as a Second language (ESL) be ESL-certified or endorsed. A teacher who was not ESL-certified could be allowed to provide ESL instruction if the teacher possessed a provisional certification/endorsement and continued to progress towards obtaining the ESL certification or endorsement with a

goal to complete it within one or two years. General education teachers and core content teachers of English Language Learners (ELLs) would also be trained in content-based ESL and sheltered instructional methods. The Districts would strive to place ELL students with ESL-endorsed teachers or with teachers who had completed the Districts' ESL training (Adams 12, Boston, Mercer County).

If a District was unable to hire enough provisional or ESL endorsed/certified teachers, then certified language arts teachers who had also completed ESL training could be used in grades 6-12, and certified classroom teachers who had ESL training could be used in grades K-5 to provide ESL instruction to the highest performing ELL students. The District must show proof of a good faith attempt in its search for properly qualified teachers (Boston, Carson City, Mercer County).

To ensure that District instructional staff was adequately trained to provide quality language support services, the Districts promised to provide appropriate training for District administrators and instructional staff, instructional support staff, and classroom aides within their first year of service and a refresher at least once per subsequent year (Adams 12, Boston). Whenever the school districts hired and trained new staff, they would ensure that there was at least one ESL/Bilingual/Linguistically-Diverse-endorsed teacher in each school. The Districts would also provide ESL and SI training to teachers who were new to ESL and SI instruction or who had not taught it for at least two years (Adams 12, Boston, Carson City).

Districts were required to take an active interest in the progress of the teachers towards certification and endorsement. Therefore, they were required to track the

progress of their teachers toward appropriate District certification and completion of state licensure/endorsement at least once per year. The details of the report would include:

1. the name of each teacher;
2. whether s/he had completed each of the Category trainings (Categories 1, 2, 3, and 4) and any supplemental SEI training;
3. whether s/he had an ESL license;
4. his/her primary program area;
5. the teacher's time and/or daily hours assigned to SEI core content instruction;  
and
6. the teacher's time or daily hours assigned to ESL instruction (Adams 12, Boston, Carson City).

The Districts were also required to provide a report to the investigating agency for review. These reports would include details of all mandatory and voluntary ELL-specific Professional Development Plans. The report would include information such as date(s), length, and a general description of the content, attendees, and provider(s) of the professional development activities (Boston, Mercer County).

New administrators and teachers who were hired after the beginning of the school year would also be required to complete the appropriate ELL training within 12 months of employment (Adams 12, Carson City).

A newly-hired teacher would be required to make a commitment to complete the District Category-provided training or the ESL certification requirements before the end

of the last month of the second year of employment. If a newly-hired teacher failed to complete the District Category training or failed to obtain ESL certification by the end of the second year of employment, that teacher would not be hired for a third year. The completion of the entire District training or ESL certification would be a condition of tenure for year one and year two content teachers of ELLs (Boston).

Any newly hired core content area teacher who failed to make substantial progress toward the completion of the District ELL training or toward obtaining an ESL certification could face disciplinary action, or would not be offered a “reasonable assurance” of employment, or would not be hired for a second year. Substantial progress was defined as completing at least two out of three District-required training programs or (ii) approximately half of the ESL certification requirements (Boston).

At least once a year, the Districts would provide professional development for regular education and special education teachers in collaboration with ESL teachers focusing on how to identify and rectify language barriers that could prevent ELLs and former ELL students from participating meaningfully in the regular education or special education classes (Mercer County).

In addition to acquiring appropriate training, it was important that the teachers utilized their training in the classroom. Therefore, to ensure that Sheltered Instruction (SI) teachers properly employed their SI training in the classrooms, a district-level staff member would observe SI teachers during instruction, and provide post observation feedback (Boston).

*Qualifications and evaluation of ELL teachers.* Each teacher that provided instruction to ELLs was required to be certified and or trained in the area in which they instructed. Specifically, ELLs were to receive direct ESL instruction from certified ESL teachers only, and content instruction from core content teachers who had completed the District-mandated ESL training. The District agreed to offer trainings during the summer and during the school year to all teachers who provided content instruction to ELLs, and ensure that all who wanted to attend were accommodated. To enhance the competence of the teachers, ESL teachers and core content teachers would meet regularly for consultation with one another (Adams 12, Boston, Mercer County).

To ensure that ELLs were served by qualified teachers, principals were required to prioritize ESL-certified and District-trained teachers, assigning them to teach ESL classes so that the number of ELLs receiving ESL instruction from qualified teachers was maximized. Therefore, when assigning students to ESL classes, ELLs were first to be assigned to ESL-certified teachers before assigning them to non-ESL certified teachers, bearing in mind class size and teacher ratio limitations (Boston).

In addition, a system was to be established in which all ESL and classroom teachers collaborated at least weekly to plan effectively and to coordinate the instruction of their ELL students (Boston).

The Districts agreed to provide training in instruction, sheltered techniques, cultural awareness, and best practices in second language instruction to all administrators who had the responsibility of evaluating ESL and SEI teachers. The evaluation instrument used by the administrators to evaluate teachers had to address the extent to

which the teachers used ESL and/or sheltering strategies appropriately and effectively in their classes in accordance with the terms of the Settlement Agreement. In addition, the District's classroom observation tools for ESL and SEI classrooms would be revised to reflect whether the teacher explicitly taught reading comprehension and writing strategies geared toward ELLs (Adams 12, Boston, Carson City).

The Districts would train the evaluators on how to properly use the District's assessment tools to ensure that appropriate ESL and SEI techniques were being used in the classrooms. The ELL Director would also ensure that the evaluators received at least one hour of annual in- person, in-building follow-up and coaching on how to conduct ESL and SEI classroom observations (Carson City).

In addition to training administrators in how to evaluate teachers of ELLs, every principal and any other employee who evaluated teachers of ESL and SEI core content classes was required to also complete training relating to the following:

1. The requirements of this Agreement;
2. How to properly schedule students and staff to ESL and SI classes while maximizing instructional time, including the use of mid-year reassignment of students when such actions are appropriate;
3. How to assign District -trained staff to SI classes to maximize instructional time;
4. Strategies for leveraging and incentivizing teachers to complete training and/or earn their TESOL certification during the 2010-11 school year;

5. Strategies to ensure SI teachers complete training on each District training level by July 1, 2012, and ESL teachers obtain their TESOL endorsement by July 1, 2012; and
6. How to communicate with parents/guardians of ELLs about the benefits and availability of ELL services.

Failure to complete the training could subject the district official to disciplinary action (Carson City).

*Collaboration between teachers of English language learners.* At least once every grading period, ESL teachers were required to consult with each of their ELL students' core content teachers regarding the student's needs and academic performance. The lower the student's proficiency level, the higher the frequency of the teacher consultations. The topic of the consultation would include the academic vocabulary required to be successful in the core content area, and identifying and modeling instructional strategies and supplemental materials that would assist the core content teacher in helping the ELL student participate meaningfully in the core content classroom (Boston, Mercer County).

During these meetings, core content teachers of ELLs would be required to provide a copy of their weekly lesson plans to their students' ESL teachers. This would provide the ESL teachers an advanced knowledge of the content area material that their ELLs would study (Boston, Mercer County).

If an employee of the District discovered that an ELL was being deprived of adequate or appropriate ELL services, the employee was required to notify the District, which should respond within 10 school days to rectify the situation (Mercer County).

*Administrative staff responsibility.* The Districts were required to delineate specific departments and specific administrative roles in those departments that would coordinate building and District-level collaboration, oversee the implementation of the District's ELL Plan, and develop and conduct training, follow-up, and monitoring (Adams 12, Boston). The department would also monitor and supervise the identification, instruction, exiting, and monitoring of ELLs and former ELLs in the District. If the District did not already have the staff to perform these duties, it would be necessary to acquire them (Adams 12, Mercer County).

At the building level, the Districts would designate a position that will be responsible for collecting and monitoring all LEP Plans, for ensuring that identified ELLs were provided with adequate and appropriate ELL services, for coordinating the administration of assessments, the monitoring of student progress, assisting with scheduling, and other activities related to the education of ELLs, and collaboration with other school departments. The persons who occupy this position would be required to attend LEP Committee meetings as often as practicable (Adams 12, Mercer County).

The District agreed to provide a mandatory foundational ELL training to all education-related central office administrators, and all building administrators. This training and others that would be provided at the building level would be designed

specifically to meet the needs of administrators, and to prepare administrators to support teachers and monitor the implementation of appropriate sheltering and language development strategies (Adams 12, Carson City).

**Themes relating to parental communication.**

*Districts' essential information.* There were some types of information that were deemed to be "essential." These types of information were to be treated in a special and specific manner. Documents that contained "essential information" were to be translated into other languages represented in the District; and administrators and teachers were to be trained every year regarding what was deemed "essential information" (Adams 12, Boston, Carson City, Mercer County).

Documents containing "essential information" included, but were not limited to: (a) documents regarding special education issues arising under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act (*e.g.*, IEP meetings); (b) report cards and other academic progress reports; (c) documents provided to parents/guardians during a disciplinary process; (d) requests for parent permission for student participation in District/school sponsored programs and activities; (e) announcements distributed to students that contain information about school and District activities for which notice is needed to participate in such activities (*e.g.*, testing, school performances, co-curricular activities, or activities requiring an application); and (f) any other written information describing the rights and responsibilities of parents or students and the benefits available (Adams 12, Boston, Carson City, Mercer County).

The following documents were also deemed “essential information”:

1. documents concerning enrollment or registration;
2. documents concerning academic options and planning;
3. documents concerning ELL identification procedures to request a student’s language background, to request a parent’s preferred language of communication, and how to opt out of ELL services;
4. information related to public health and safety; and
5. any other written information describing the rights and responsibilities of parents or students and the benefits and services available to parents and students (Mercer County).

***Essential information for SPED.*** Special education documents containing "essential information" included, but were not limited to: (a) documents regarding special education issues arising under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act (*e.g.*, IEP meetings); (b) report cards and other academic progress reports; (c) documents provided to parents/guardians during the disciplinary process; (d) requests for parent permission for student participation in District/school sponsored programs and activities; (e) announcements distributed to students that contained information about school and District activities for which notice was needed to participate in such activities (*e.g.*, testing, school performances, co-curricular activities, activities requiring an application); and (f) any other written information describing the rights and responsibilities of parents or students and the benefits (Adams 12, Boston, Dearborn).

For all SPED-related translation and interpretation needs, the Districts were to provide a translator or interpreter who was qualified in the language, and whenever practicable, also trained to provide SPED-related translation and interpretation services (Adams 12, Boston, Dearborn).

All general use documents that had been translated were to be made available to all personnel. Updates were to be provided throughout the year (Adams 12).

***Translation/interpreter services.*** The Districts were to request that parents indicate the language in which they preferred that the District maintain communication with them. The Districts would also provide information to the parents/guardians sufficient to assist them in making meaningful decisions about the ELL programs and services offered by the Districts, including compensatory services and non-academic program and services. The information would be provided to parents/guardians in a language they could understand. The Districts were required to provide to the United States a written proof of compliance with this requirement (Adams 12, Boston, Carson City, Dearborn, Mercer County).

The Districts were to widely disseminate the information that a parent/guardian did not have to have English language deficiency in all four language domains to be considered LEP. A limitation in listening, speaking, reading, or writing was sufficient to qualify a parent/guardian to receive language assistance as needed. A parent/guardian's statement to that effect would be accepted without need for corroboration. The Districts would also ensure that District staff is aware of the process by which parents/guardians

could access interpreter services (Adams 12, Boston, Dearborn, Henry County, Mercer County).

Barring an emergency, the Districts were prohibited from using a student as an interpreter to communicate between the District, the schools, and a LEP parent/guardian. Also, except in an emergency, instructional staff, including ESL teachers and bilingual paraprofessionals, were not to be used as interpreters or translators during periods when they were also assigned to classrooms for instructional purposes or while performing duties related to teaching ELLs (Adams 12, Boston, Carson City, Dearborn, Mercer County).

The Districts agreed to provide translation and interpretation whenever the information to be disseminated was deemed “essential information.” Such information would be translated into the major languages represented in the Districts. For parents who spoke a language other than the major languages represented in the District, a written or oral translation of the information would be provided in a language that the parents/guardians could understand whenever it was requested, or when the need to do so was made obvious. However, if a school district’s ELL population was low, and the schools were far flung, the decision to provide a written translation or an oral interpretation of a document would be at the District’s discretion (Adams 12, Boston, Carson City, Mercer County).

If the information was not considered to be “essential information,” the Districts were still required to provide written or oral translations if there was a reasonable and specific request made by a LEP or NEP parent/guardian. The Districts were prohibited

from using family or friends of LEP parents or children to write translations of District- or school-generated documents (Adams 12, Boston, Mercer County).

The Districts agreed to provide training to all administrators and teachers regarding the essential information that should be translated, communications that should be interpreted, and how to access and request the Districts' interpretation and translation services (Adams 12, Dearborn, Henry County).

All school and district personnel would also have access to a list of all the District-level and school-level general-use documents that had already been translated. The list would be updated every year with the addition of newly created district-level and school-specific notices that could be used by other schools in meeting their translation needs. These updates were to be made available district-wide, and provided to the United States every year on a specified day (Adams 12, Boston, Mercer County).

If a District employee needed to communicate orally with a parent/guardian who was limited English proficient, the District would provide an interpreter at the employee's initiative or if the parent provided reasonable notice (Boston, Carson City, Mercer County).

In each school, there would be a centralized list of LEP parents who had been identified as needing language assistance services, the type of language assistance services that they needed, and a log of the language assistance services provided to them by date of service, type of service (e.g., translation or interpreter services for special education, disciplinary proceedings), and service provider (including name, position, and qualifications), and if such services were contracted through a company, the name of the

company. The list was to be provided to Central Administration as well as to all staff in the building, if there was any chance that they would interact with LEP parents. The District's Central Office was also required to maintain the list identifying each school and what services would be needed there. When LEP students transferred from one school to another, the interpreter needs of their parents/guardians were to be communicated to the subsequent school (Boston, Dearborn).

The Districts and their schools agreed to use only interpreters that were bilingual, qualified, and competent to interpret. The interpreters would be trained in the subject matter in which they were asked to interpret; they would have knowledge of both languages and the required terminology. The interpreters were also required to have training in the ethics of the interpreters' industry, and to be mindful of the importance of accuracy and confidentiality (Boston, Dearborn).

If a LEP or NEP parent should request that an adult friend or family member act as an interpreter in communicating with the District, the Districts were still required to hire a qualified interpreter if the communication would include "essential information," or if any part of it could raise an issue of conflict of interest (Boston, Dearborn).

The District also committed to annually update its list of the names, phone numbers, addresses, building locations, and e-mail addresses of all available personnel in each school who were able to speak a language other than English and could serve as interpreters or translators. Employees would contact the principal or registrar whenever translation services were needed. Such personnel could be required to assist at a school

different from the one in which they were normally assigned (Carson City, Mercer County).

The Districts were required to compile information about how to obtain interpretation and translation services, to update the information each year by adding new resources and removing resources that were obsolete, to distribute the information to all district and school personnel, and to provide a copy to the United States no later than one month after the update was complete (Boston, Dearborn).

The Districts agreed to allocate a budget for translation and interpretation services. Schools that needed translation or interpreter services would contact the District Translation/Interpretation Services Department to request written translations and/or oral interpretations (Adams 12, Dearborn).

**Themes relating to monitoring and self-report requirements.**

*Periodic school reports and response to the reports.* As part of the Settlement Agreements, the Districts were to self-report to the United States, the details of their activities towards compliance with the Agreements. Three times in every school year, the Districts were required to forward to the United States information from each school, including the name, grade level, ELD level, SPED status, ESL instruction received weekly, type of ESL program for their ELLs, whether the student was serviced or on refusal status, appropriateness of ESL instruction as it related to the student's proficiency status, appropriateness of grouping, name of ESL teacher, whether the ESL instruction teacher was ESL certified, the number of SEI core content classes in which the student was enrolled, and which of the students was taught by a teacher that was not fully trained.

The number of students in these categories was to be tallied to show a total number in each group (Boston, Mercer).

Within specific time limits, none longer than 30 days after receiving the reports from the schools, the School Districts were required to notify each school of its particular deficiencies in ELL services as evidenced by the reports collected. Within 15 days, the affected schools were then required to submit a report to the District office in charge of English Language Learning to verify that the school had taken reasonable steps to rectify those deficiencies, and that all ELLs were receiving adequate ESL and SEI content instruction as mandated by the Settlement Agreement (Boston).

In response to the reports, the schools had various options by which they could rectify the deficiencies that were made obvious in the reports. The schools could reorganize their instructional groupings so that ELLs were placed with well-qualified ESL and SEI teachers, or reorganize the school populations so that the school's ELL teaching resources were maximized. Teachers who taught a primary program area other than ESL, Bilingual Education, or SEI, but who were ESL certified, could be asked to teach one or more ESL classes per day. The principal was required to document the request, the teachers' responses, and reassign any teacher who agreed. The District could also implement an inter-school voluntary transfer of teachers from schools with a surplus of ESL certified or District-trained teachers, to schools that needed more ESL certified and Category-trained teachers (Boston).

Some of the staff changes could also include accelerating and facilitating staff training, hiring more ESL-certified and SEI trained teachers, and taking any other

possible steps to ensure the delivery of ELL services to their ELL students, in accordance with the terms of the Settlement Agreement. In the absence of qualified teachers for the different ELL programs, the Districts were required to assign substitute teachers with the required qualifications (Boston).

Twice a year, the District was also required to report to the United States, the progress of ESL and SEI teachers toward the completion of their district Category training and ESL certification (Boston).

***Monitoring schools for compliance.*** The Districts agreed to monitor all schools that enrolled ELLs to make sure that the terms of the Settlement Agreement were implemented appropriately and adequately. If there were schools whose revised plans were not approved by the District, then they would be monitored through on-site visits at least once a year. The Districts would provide to the United States a report of the visits and actions taken by the school to remedy its deficiencies (Boston, Carson City).

If a District discovered that an ELL was being denied ELL services, the Districts were required to act promptly to ensure that the student began to receive ELL services within 30 days, in the same school in which the student was enrolled (Boston, Carson City).

The Districts had an obligation to monitor their programs and ensure that the programs were effective in overcoming language barriers within a reasonable time in a manner that allowed ELLs to participate fully and equally in the District's programs. To accomplish this, the Districts would:

1. disaggregate English proficiency assessments results, standardized test scores (including Title I content assessments), retention-in-grade rates, graduation rates, and enrollment in special education, enrichment, gifted and talented, and other advanced learning programs by school and specific language to:
  - a. evaluate the progress and achievement of ELLs overall and by specific language program over time for English Learners and other measuring tools, such as but not limited to ESL grades;
  - b. monitor the academic performance and participation of former ELLs in the District's educational programs relative to their native-English speaking/never-ELL peers over time from the point of exit from ELL services and at least three years thereafter.
  - c. monitor the academic performance and progress in language acquisition of mid- proficiency level students who had been grouped for ESL with students at the two lower proficiency levels; and
  - d. analyze longitudinally a cohort of students by school and Program to assess whether students enrolled in each Program model were overcoming language barriers within a reasonable period of time and participating meaningfully and equally in educational programs relative to their native- English-speaking/never-ELL peers.
2. The Districts were required to use the results of current and future longitudinal studies to inform ELL program decisions and improve the effectiveness of ELL programs. The Districts also had to notify the United

States in writing annually of all proposed substantive changes to their ELL programs, including those based on the results of the longitudinal study (Boston, Carson City).

***District instructional reports.*** At different times and intervals during the year, the Districts were required to provide the following reports to the United States:

1. a list of all District training sessions the District scheduled by category, date, time, location, the training capacity of the location and the number of actual participants (Boston).
2. copies of any forms submitted by principals documenting principals' discussions with parents who refused ELL services for their children (Boston, Carson City);
3. documentation of the student instruction, parent/teacher meetings, teacher training and monitoring provided, with regard to students whose parents refused ELL services in writing (Boston, Carson City, Dearborn).
4. a memorandum documenting discussions and strategies aimed at reducing service refusals, developed by the District and principals in schools where parents of more than 5% of the ELL population refused services (Boston).
5. a written report regarding the training conducted, the names of all District employees who received training, the location where the employees worked, the date, time period, and location of the training the employee attended, the name of the person who provided the training, a description of the training, copies of all documents that were handed, and all records that confirmed the

employee's attendance at the training, such as a sign-in sheet (Boston, Dearborn, Carson City).

By specific dates each year, the Districts were also required to provide the United States with a copy of the instructional models and all observation tools and the results of all monitoring reviews performed (Boston, Dearborn, Carson City).

Shortly after the beginning of every school year, a report was to be submitted to the United States containing all materials created for distribution to parents and students regarding advanced programs and other opportunities for higher learning. Included in the report would be a memorandum that described the steps taken by the District to ensure that ELLs had a meaningful opportunity to be admitted into the District's advanced programs, ELL support services provided for those in the programs, an enrollment list of the advanced classes, the ELLs enrolled in them, and their native language (Boston, Carson City).

If there were ELLs who were unable to participate in the advanced programs because of space limitations or any other reason, a report would be submitted to the United States including the names of the students, the name of the school the student wanted, the reason for the denial, the school in which the student enrolled, and whether the student was receiving appropriate ESL and SEI services (Boston, Carson City).

Twice a year, the Districts were required to prepare and provide to the United States, a list of newly-hired core content instructors, year one and year two content instructors who were non-tenured, those who were retained, those who received "reasonable assurance," and those who were terminated. The list would also include

each instructor's level of SEI category-training or ESL certification. The Districts were also to document their efforts towards recruiting ESL and SEI staff (Boston, Carson City).

The Districts were required to provide a timetable of their organizational meetings and enough information to enable the United States to attend the meetings as observers. The United States would provide reasonable notice of its intention to attend any of the meetings (Boston, Carson City, Los Angeles).

*Annual reporting to the United States.* The Settlement Agreements had extensive reporting requirements at different intervals and annually. The Districts were required to provide annual reports to the United States giving full details of their efforts to implement the ELL Plan. The annual reports were to include the following information about the school year preceding each annual report, in a format developed by the District, unless otherwise specified:

1. A list of District schools, by Program Model, and for those schools implementing a hybrid model, the Program Model by grade;
2. A summary of the District's reports done three times per year, including for each school, by grade and language, the total number of NEPs and LEPs; the number of ELLs receiving services consistent with this Agreement and the ELL Program, as set forth in Attachment A; the number of ELLs who did not receive the agreed upon amount of language services; the number of ELLs who did not receive any ESL/ELD services and how the District responded to

this information; and the number of ELLs who opted out of language services;

3. The number of students by school, grade, native language, and language service who were exited from the District's ELL program since the last report based upon: (i) meeting exit criteria or (ii) other reasons. If students were exited for other reasons, please explain;
4. The number of FEP students by school, grade, native language, and language service who were reentered into the District's ELL program since the last report;
5. The number of ELLs by school, grade, and native language who: (i) were referred for SPED services; (ii) were found eligible for such services; and (iii) received such services. If any students were found eligible but did not receive SPED services, please explain (*e.g.*, the parent declined services);
6. For each District school where SPED-ELLs received ESL services through a consultation model, copies of examples of completed SPED consultation forms;
7. The number of SPED ELLs, by school, grade, and native language, that the District, through highly qualified ESL/ELD and special education teachers, had determined were no longer in need of language services; include for each such student the reason(s) and all

- supporting evidence for the District's determination (*e.g.*, a SPED student had achieved English proficiency);
8. The number of ELLs by school, grade, and native language who:
    - a. were referred for gifted testing;
    - b. were found eligible for gifted programming; and
    - c. received such services. If any ELLs were found eligible but did not receive gifted services, please explain (*e.g.*, the parent declined services);
  9. A list of ESL Coordinators, by school, name, and position;
  10. A list of new instructional staff and administrators hired by the District, including for each new hire their name, school, position, language(s) they speak, certification(s) and endorsements, years of experience, and whether they had attended mandatory District ELL training (and if so, which training);
  11. A list of all ESL and ELD instructional staff, including for each staff member their name, school, position, language(s) they speak, ELL-related certification(s) and endorsements, and years of experience, highlighting any changes (including new certifications) since the last report;
  12. A list of all instructional staff that had not completed the Advanced SI training;

13. A list of all ELL-related training provided to District personnel, the date(s) of the training, and the number and type of District personnel who attended the training;
14. For each school, the number of SPED teachers and aides with ESL/ELD or bilingual training, certification(s), or endorsements, noting the type of training, certification(s), or endorsements, and the language(s) other than English that the teacher or aide speaks fluently;
15. A description of the District's system for monitoring FEP students over a two- year period, specifying the data that were reviewed and any changes to the system;
16. A copy of the ELD Profile and FEP monitoring forms for each FEP student who was exited since the last report. The District shall resubmit materials for students who were reclassified for ELL services or identified for SPED services;
17. A description of any changes that the District plans to make to their procedure for:
  - a. structure and implementation of ELL program models;
  - b. assessing ELLs and assigning ELLs to classes;
  - c. providing translator and interpreter services to ELL parents or guardians;
  - d. ESL, ELD, or SI language services;
  - e. ELL-related training of administrators and instructional staff;

- f. system for monitoring current ELLs and FEP students over a two-year period; and
  - g. ELL Program guidelines.
18. A list of native language materials, ESL/ELD materials, and supplementary SI materials for their ELLs by school, including curricular and library materials purchased by the District during the preceding year;
  19. Copies of examples of translated school notices, including co-curricular activities and notice of the availability of translator and interpreter services for LEP-related information;
  20. Copies of all complaints received by the District or school personnel from parents, instructional staff, and administrators regarding the provision of ELL services and documentation of the District's response;
  21. Certification of building administrator and LASS Department classroom observations;
  22. Copies of official Superintendent policies demonstrating the District's formal adoption of the ELL Program guidelines; and
  23. Any other information that the District believes would be helpful to evaluating whether the ELL Program is providing meaningful language acquisition services.

24. In addition to the above reporting requirements: (i) the District shall include a copy of the District's ELL Program proposed guidelines, if not previously provided to the United States; and (ii) in the District's July 1, 2012 and July 1, 2014 reports, the District shall include a copy of the District's longitudinal cohort analysis.

If any of the information required for the annual report in a particular school year was available in another document that the Districts had prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal law, state law, or regulation, the Districts could include the document in their annual report and indicate the section of the annual report to which the document applied (Adams 12, Boston, Carson City, Mercer County).

In addition to the reports to be made to the United States, the Districts were required to maintain electronic and hard copy records of information and data pertinent to compliance with the Agreement, and to provide the information and data as required by the terms of the Agreement (Adams 12, Boston, Carson City).

As part of the monitoring process, the United States or its agents reserved the right to visit the District, conduct interviews with staff and students, and request any additional reports, information, or data that were deemed necessary to ensure compliance with EEOA and the regulation implementing the governing laws. The reports were expected to be made available within 30 days (Adams 12, Boston, Carson City, Mercer County).

**Themes relating to enforcement, breach, and negotiations.**

*Enforcement, and breach.* If any part of the agreement was deemed unenforceable by a court of competent jurisdiction; that ruling would not automatically invalidate the rest of the Agreement. Within 15 days of such a decision, the District and the United States would meet to determine what changes needed to be made as a result of the court's decision (Boston, Carson City, Mercer County).

In case of a breach of the Agreement, the United States reserved the right to initiate judicial proceedings to seek enforcement of the EEOA, Title VI of the Civil Rights Act of 1964, and the specific commitments and obligations of the District under the Agreement (Adams 12, Boston, Carson City, Henry County, Mercer County).

Before initiating judicial proceedings, the United States agreed to provide the District with written notice that included the District's actions or omissions that constituted the alleged breach. It also agreed to provide the District with reasonable time, no more than sixty (60) days, to initiate a cure for the alleged breach to the satisfaction of the parties (Adams 12).

*Good faith negotiations.* If any objections arose from the Agreement, the United States and the District promised to engage each other in good faith negotiations in pursuit of a resolution for at least 30 days. However, the United States reserved the right to resort to judicial action if the parties were unable to resolve their differences within 60 days, or until there was an impasse, whichever occurred first (Boston, Carson City, Henry County, Mercer County).

***Amendment by the district.*** If a District wanted to amend its ELL Program, it was required to provide the United States sixty (60) days' notice of the proposed amendment, after which the United States would have sixty (60) days to notify the District of any objections. Any objections from the United States regarding the amendments would be addressed in good faith between the United States and the District to reach a resolution that ensured the ELL Program's compliance with the governing laws. In the absence of any objection from the United States, the District would have the freedom to proceed with the proposed changes (Adams 12, Boston).

The Districts agreed to update their ESL Handbook to be consistent with the terms of the Settlement Agreement, to include clearly established guidelines for each part of the ESL program, and ensure that the District's ESL program was being appropriately implemented from the point of registration to point of exit (Carson City, Mercer County).

The ESL Handbook was to address the identification of and testing procedures for ELLs, minimum service guidelines, training and professional development requirements for all teachers, and protocol for monitoring higher proficiency ELLs, Opt-Out ELLs, and former ELLs. Every employee who played a role in the ESL program had to be provided a copy of the Handbook (Carson City, Mercer County).

A copy of the Handbook and subsequent editions were to be provided to the United States, which reserved the right to express any concerns regarding the Plan within 30 days (Carson City, Mercer County).

***U.S. Obligation to Enforce.*** The Settlement Agreement did not release the United States from its obligation to enforce the laws that governed the education of ELLs.

Therefore, the United States was at liberty to investigate and initiate judicial proceedings regarding future alleged violations or previous violations not covered by the Agreement.

Therefore, the United States and its representatives would be at liberty to speak to District employees who were not administrators, but who had questions or concerns regarding the District's English language learner programs or the District's obligation under this Agreement (Boston, Henry County, Mercer County).

In such cases, the United States would give reasonable notice to the school, work with the District to determine the schedule so as not to disrupt the educational process at the school, and not object to being accompanied by school officials (Boston, Carson City, Mercer County).

### **Synopsis of the themes in the settlement agreements**

This section captures the highlights of the Settlement Agreement themes that were discussed in the previous section. The themes provide the framework on which school district officials may assess their programs and modify their practices, if needed. The framework discusses the themes beginning from when a student registers until the student exits the district's language support program and becomes a former limited English proficient (FLEP) student.

*Registration, identification, placement, and waivers.* One of the things that all the districts had in common was the immediacy with which the settlement agreements were to be implemented. The implementation of the Settlement Agreement began immediately except in cases where the shortage of staff would have impeded the full implementation. Even in those cases, the Agreement was still required to be partially

implemented pending the time that the District had acquired more staff. This was usually no longer than two years (Adams 12, Boston, Carson City, Dearborn, Henry County, Los Angeles).

The Districts were required to provide meaningful access to all students, regardless of their national origin (Adams 12, Boston, Carson City, Dearborn, Los Angeles).

The Home Language Survey (HLS) was central to the identification of English Language Learners (ELLs). The HLS had to have three questions relating to the languages spoken by the student in the home environment. It had to be administered to all enrollees, and was not subject to change without approval from the United States (Boston, Dearborn, Los Angeles, Mercer County).

To determine if a student was an English Language Learner (ELL), the assessments had to be administered in an expeditious manner, and they had to assess the students in all four language modalities of listening, speaking, reading, and writing (Boston, Carson City, Dearborn, Los Angeles, Mercer County).

As important as it was for ELLs to receive language support, parents/guardians still had the right to refuse to have their child enrolled in an ELL program (Opt-out). If a parent/guardian refused ELL services, the Districts were required to take specific steps to convince the parent/guardian to reconsider. A parent/guardian's refusal would not deprive the student of necessary sheltered instruction. Despite parental refusal, the Districts were still required to provide core content instruction to the opted-out student by core content

certified teachers who had received District training in how to teach ELLs (Boston, Carson City, Dearborn, Los Angeles, Mercer County).

Adequate training was to be provided for District employees regarding the registration and identification process (Boston, Mercer County).

The Districts were also required to regularly monitor the academic progress of opted-out students. If an opted-out student failed to be successful in the District's regular education program, the District was required to act immediately to persuade the parents/guardians of the student again to reconsider the decision to refuse ELL services (Boston, Carson City).

Districts were prohibited from requiring that parents/guardians provide social security cards before enrolling their children (Henry County).

***Instructional provisions.*** Upon enrollment, ELLs were to receive at least one class period of no less than 45 minutes of English as a Second Language (ESL) or English Language Development (ELD) instruction. In half-day kindergarten classes, ESL instruction was to be no less than 25 minutes a day. The remainder of the day would be focused on using sheltered English instruction strategies for core content areas. The Districts were at liberty to provide additional instruction or services (Adams 12, Boston, Carson City, Los Angeles).

For ESL instruction, ELLs were to be grouped according to their language proficiency. However, the Districts were required to provide as much opportunity as possible for interaction with non-ELLs. Specials classes such as art, music, gym, and library activities, lunch, recess, physical education, co-curricular and extra-curricular

activities were to be heterogeneously grouped. The Districts were prohibited from preventing students from speaking their native language (Adams 12, Boston, Carson City, Los Angeles).

The District could supplement ESL/ELD and Sheltered English Instruction services. Such services could not be used to supplant the required ESL/ELD and SI services and interventions. In situations where some ELLs had previously been unidentified as ELLs or in cases where the students opted out and were therefore provided with no services relating to their ELL status, the Districts were required to compensate the students by providing enrichment services for as long as they remained ELLs. Twice a year, the District would provide a report to the United States of the details of the compensatory programs (Boston)

In secondary schools, there was to be an ESL class each for students at the three lowest levels. Students who were in the two highest levels were to be enrolled in a higher ESL class or grade appropriate ELA class of all ELLs, or a mix of ELLs and non-ELLs. This class was to be taught by a teacher that was certified to teach ELLs with higher language proficiency (Los Angeles).

***Staff qualification and professional development.*** The Districts would work to increase the number of employees who were qualified to work with ELLs. Therefore, the Districts agreed to recruit qualified, properly endorsed ESL and SEI staff, bilingual staff with training in working with ELLs, and employees who were fluent in one or more of the languages of the District's ELLs. The employee vacancy advertisements were to also

clearly reflect these preferences (Adams 12, Boston, Carson City, Los Angeles, Mercer County).

ELLs were to receive direct ESL instruction only from certified ESL teachers, content instruction from core content teachers who had completed the District-mandated ESL training, with consultation between the ESL teachers and the ELL's core content teachers at least once every grading period. Sheltered English Instruction teachers were to be either ESL certified or have received District-specific training. Designed to make content more comprehensible, the curriculum and standards could be no different from those designed for non-ELLs (Adams 12, Boston, Carson City, Mercer County).

ESL teachers were required to be ESL certified/endorsed or be in training for certification or endorsement within two years. All general education teachers and core content teachers of English Language Learners (ELLs) had to be trained in content-based ESL and sheltered instructional methods. Core content area teachers who taught ELLs were required to make substantial progress towards either ESL certification or the District ELL training, or face the risk of termination (Adams 12, Boston, Mercer County).

To equip the District's non-instructional personnel to provide appropriate services to ELLs and their parents/guardians, mandatory foundational ELL training would be provided to all education-related central office administrators. For school administrators who had the responsibility of evaluating ESL and SEI teachers, and to assist them in supporting teachers and in monitoring the teachers' implementation of appropriate sheltering and language development strategies, the Districts would provide

the administrators with training in instruction, sheltered techniques, cultural awareness, and best practices in second language instruction (Adams 12, Boston, Carson City).

Instructional personnel would also receive professional development. Ongoing and frequent professional development training would be provided to sheltered instruction (SI) teachers. Each teacher's progress would be tracked in writing to ensure substantial progress towards completion. At least once a year, regular education and special education teachers would also receive training in collaboration with ESL teachers regarding how to identify and rectify language barriers that could prevent ELLs and former ELL students from participating meaningfully in the regular education or special education classes (Boston, Carson City, Mercer County).

Every teacher who taught a high intensity language training (HILT) ESL class was required to undergo the District professional development training and to possess an ESL certification. Teachers who taught HILT content areas were required to possess an ESL certification, or undergo the District-Category training or the Professional Development Program for HILT teachers. The District would also develop a plan that tracked the performance of Students with Interrupted Formal Education (SIFE) who enrolled in, and exited the HILT program (Boston).

***ELL program management.*** To manage each ELL's academic program at the school level, the Districts were required to establish a Limited English Proficient (LEP) Committee. The LEP committee was in charge of the educational decisions concerning the ELL students. Membership in the committee consisted of the student's ESL teacher, homeroom elementary teacher or core content secondary teacher, a school administrator,

and a parent/guardian. The LEP Committee was required to meet at least once every year, and all its decisions were to be recorded in the student's LEP Plan (Adams 12, Mercer County).

At the District level, specific departments and specific roles would be designated to coordinate district-level and building level collaboration, to oversee the implementation of the District's ELL Plan, and to develop and conducting training, in-building follow-up, and monitoring. They would also monitor and supervise the identification, instruction, exiting, and monitoring of ELLs and former ELLs in the District (Carson City, Mercer County).

*Special education and ELL services.* Special education services for ELLs were featured prominently in the Settlement Agreements. The Districts were prohibited from denying ELL services to any ELL students solely because of the nature and severity of their disabilities; neither could the students be denied special education services solely on the basis of their language proficiency, except in the rare cases when the IEP team had determined and documented that the severity of the student's disability precluded him or her from ever being capable of using or understanding language. This decision and any modifications or accommodations to be made to a SPED ELL's instructional plan or program were to be made by the student's IEP or Section 504 team, through a documented process (Boston, Carson City, Los Angeles).

The Districts were required to provide special education (SPED) and English Language Learner (ELL) services to all students who were eligible, making sure to

address the identified language needs of each student (Boston, Carson City, Los Angeles).

Special education assessments were to be conducted in the student's native language or other mode of communication most likely to yield accurate information regarding what the child knew and could do academically, developmentally, and functionally; unless it was clearly not feasible to do so (Boston, Carson City, Los Angeles).

For all ELLs including SPED ELLs, ELL services were to continue until the students demonstrated English language proficiency in all four domains of listening, speaking, reading, and writing as determined by a valid and reliable assessment of the student's English language proficiency. Students who achieved fluency would then be monitored through a formal two-year process during which the student would no longer receive any language acquisition service. During this time, the students' progress would be evaluated frequently to ensure that the student was successful (Adams 12, Boston, Mercer).

For special education meetings, the Districts were to notify parents/guardians of SPED ELLs of the availability of interpreters for the meetings. Interpreters would be provided upon parental request with reasonable notice. The District could also require that an ESL-endorsed teacher be included on all IEP Teams whenever the IEP of an ELL SPED was being discussed. The teacher had to be included in decisions involving the SPED services. The District would ensure that an ELL's limited English proficiency was

not to be the determinant of the student's eligibility for SPED services (Boston, Dearborn).

At the end of each LEP/IEP meeting, the Districts would also require that parents sign a form indicating whether or not they would like a written copy of any portion of their child's Individualized Education Program (IEP) in a language other than English. If requested, the District would provide it within 14 days (Boston, Dearborn).

In providing services to the SPED ELL, the IEP or Section 504 teams were required to consider the impact of the student's disability on the provision of ELL services, and the impact of the student's limited English language proficiency on the delivery of special education services (Boston).

When testing SPED ELLs, if any modifications were made to the standard language proficiency test in order to accommodate a student's disability or special needs, a record of the modifications would be maintained in the student's SPED ELL's files, stating why the modifications were necessary, the IEP Team's consideration of the student's language needs, and how the student's disability affected those language needs (Boston).

***District-parental communication.*** To provide meaningful access to parents/guardians of LEP students, some documents were deemed to be "essential information." Documents that contained "essential information" were to be translated into other languages represented in the District, and administrators and teachers were to be trained every year regarding what was deemed "essential information." This

information was to be provided to parents and guardians in writing and in a language they could understand (Adams 12, Boston, Mercer County).

The Districts were prohibited from using family or friends of LEP parents or children to write translations of District- or school-generated documents. Barring an emergency, the Districts were prohibited from using a student as an interpreter to communicate between the Districts, their schools, and a LEP or NEP parent/guardian. Also except in an emergency, instructional staff, including ESL teachers and bilingual paraprofessionals, were not to be used as interpreters or translators during periods when they were also assigned to classrooms for instructional purposes or while performing duties related to teaching ELLs (Adams 12, Boston, Mercer County).

The District would also request from parents, in writing, their language preferences in which the District should maintain communication with them. The Districts were required to provide to the United States a written proof of compliance with this requirement (Boston, Adams 12).

A parent/guardian did not have to have English language deficiency in all four language domains to be considered LEP. A limitation in listening, speaking, reading, or writing was sufficient to qualify a parent/guardian to receive language assistance as needed, and that a parent/guardian's statement to that effect would be accepted without need for corroboration.

For such parents, a written or oral translation of the information would be provided in a language that the parents/guardians could understand whenever it was requested, or when the need to do so was made obvious. However, if a school district's

specific circumstances were such that the population of ELLs was low, and the schools were far flung, the decision to provide a written translation or an oral interpretation of a document would be at the District's discretion (Adams 12, Boston).

If a District employee needed to communicate orally with a parent/guardian who was limited English proficient, an interpreter was to be provided in a timely manner if the parent provided reasonable notice. If the information was not considered to be "essential information," the Districts were still required to provide written or oral translations if there was a reasonable and specific request made by a LEP or NEP parent/guardian (Adams 12, Boston).

Each school building was also required to maintain a centralized list of LEP parents who had been identified as needing language assistance services, the type of language assistance services that they needed, and a log of the language assistance services provided to them by date of service, type of service (e.g., translation or interpreter services for special education, disciplinary proceedings), and service provider (including name, position, and qualifications), and if such services were contracted through a company, the name of the company. The list was to be provided to central administration as well as to all staff in the building, if they had the potential of interacting with LEP parents. The District's central office was also required to maintain the list, identifying each school and what services would be needed there. When LEP students transferred from one school to another, the interpreter needs of their parents/guardians were to be communicated to the subsequent school (Boston, Dearborn).

The District and their schools agreed to use only interpreters that were bilingual, qualified, and competent to interpret. They would be trained in the subject matter in which they were asked to interpret, with knowledge in both languages and the required terminology. The interpreters were required to have training in the ethics of the interpreters' industry, and to be mindful of the importance of accuracy and confidentiality (Boston, Dearborn).

If a LEP or NEP parent should request that an adult friend or family member act as an interpreter in communicating with the District, the Districts were still required to hire a qualified interpreter if the communication would include "essential information," or if any part of it could raise an issue of conflict of interest (Boston, Dearborn).

The District agreed to train all administrators and teachers on the essential information that should be translated, on the communications that should be interpreted, and how to access and request the District's interpretation and translation services (Adams 12, Boston).

The Districts also committed to annually update their list of the names, phone numbers, addresses, building location and e mail addresses of all available personnel in each building who spoke a language other than English and could serve as interpreters or translators (Carson City, Mercer County).

For all SPED-related translating and interpreting, the Districts were required to provide a translator or interpreter who was qualified in the language and whenever practicable, who was also trained to provide SPED-related translating and interpreting (Boston).

The Districts were required to establish a budget for the purchase of ELL instructional materials. The budget was to be in direct proportion to the percentage of ELL enrollment at the District, or be at least 5% of the budget whenever the ELL population of a school comprised less than 5% of the overall school population (Carson City).

***Monitoring student and district performance.*** If the monitoring procedures revealed that a previously exited ELL student was struggling in any academic area and the LEP Committee determined that the student's difficulties were due to or related to a language barrier and that direct ESL services or language support would be beneficial to the student in the core content areas in which the student had difficulty, the student was to be reentered into the program within 30 days, for direct services (Boston, Los Angeles, Mercer County).

Part of the monitoring process would include monitoring and disaggregating the ELLs' performance on standardized tests; monitoring the rates of ELLs exiting from ELL services by school; ELL enrollment in honors, special education, and enrichment programs such as Advanced Placement (AP) and gifted classes; their retention-in-grade rates, and graduation rates (Boston, Los Angeles).

In addition, the Districts were required to ensure that each ELL student had a meaningful opportunity to be admitted into the advanced programs. Assessments for admission into the programs were to include indicators of success other than standardized tests. Information about admission standardized tests to the advanced

programs would be provided at the end of each academic year, so that all students could have extra time to prepare (Boston).

Building administrators would monitor the implementation of the language acquisition services and strategies in the classrooms through frequent unannounced observations and walk-throughs (Adams 12).

The Districts agreed to monitor their ELL Program at the building and district-level, evaluate the program's effectiveness, and monitor the individual academic performance of current ELLs and recently re-designated FEPs (i.e., exited within the past two years) using ELD Profiles. All NEPs and LEPs were to be identified by their proficiency level on all electronic class rosters. Recently exited students were to be designated as such on all class rosters for the two years following their exit from ELL services (Adams 12, Boston, Mercer County).

The Districts also agreed to update their ESL Handbook to be consistent with the terms of the Settlement Agreement, to include clearly established guidelines for each part of the ESL program, and to ensure that the District's ESL program was being appropriately implemented from registration to exit. Every employee who played a role in the ESL program had to be provided a copy of the Handbook. A copy of the Handbook and subsequent editions were to be provided to the United States, which reserved the right to express any concerns regarding the Plan within 30 days (Carson City, Mercer County).

The requirements for self-reporting were quite high. At different times and intervals during the Settlement Agreement years, the Districts were required to provide

extensive frequent reports to the United States. They were required to provide annual reports giving full details of their efforts to implement the ELL Plan. If any of the information required for the annual report in a particular school year was available in a document that the District had prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal law, state law, or regulation, the District could include the document in their annual report and indicate the section of the annual report to which the document applied (Adams 12, Boston, Carson City).

The Districts were required to maintain electronic and hard copy records of information and data pertinent to compliance with the Agreement and to provide the information and data to the United States as required by the terms of the Agreement. The United States or its agents reserved the right to visit the District, to conduct interviews with staff and students, and to request any additional reports, information, or data that were deemed necessary to ensure compliance with EEOA and the regulation implementing the governing laws (Adams 12, Boston, Carson City).

***Legal considerations.*** In case of a breach of the Agreement, the United States reserved the right to initiate judicial proceedings to seek enforcement of the EEOA, Title VI of the Civil Rights Act of 1964, and the specific commitments and obligations of the District under the Agreement. Before initiating judicial proceedings, the United States agreed to provide the District with written notice that included the District's actions or omissions that constituted the alleged breach. It also agreed to provide the District with reasonable time, no more than sixty (60) days, to initiate a cure for the alleged breach to

the satisfaction of the parties (Adams 12, Boston, Carson City, Henry County, Mercer County).

If any objections arose from the Agreement, both parties would engage in good faith negotiations in pursuit of a resolution for at least 30 days. However, the United States could resort to judicial action if the parties were unable to resolve their differences within 60 days or until there was an impasse, whichever occurred first (Boston, Carson City, Henry County, Mercer County).

If the District wanted to amend its ELL Program, it was required to provide the United States sixty (60) days' notice of the proposed amendment, after which the United States would have sixty (60) days to notify the District of any objections. Any objections from the United States regarding the amendments would be addressed in good faith between the United States and the District to reach a resolution that ensured the ELL Program's compliance with the governing laws (Boston, Carson City, Henry County, Mercer County).

The United States reserved the right to investigate and initiate judicial proceedings for future alleged violations or previous violations not covered by the Agreement. Therefore, the United States and its representatives would be at liberty to speak to District employees who were not administrators but who had questions or concerns regarding the District's English language learner programs or the District's obligation under this Agreement. In such cases, the United States would give reasonable notice to the school, work with the District to determine the schedule so as not to disrupt

the educational process at the school, and be agreeable to being accompanied by school officials (Boston, Carson City, Mercer County).

Finally, the United States reserved the right to conduct visits to the Districts, after giving reasonable notice. However, it would monitor the Districts, through detailed, frequent reports covering all the aspects of the Agreements for the entire duration of the Settlement Agreement. (Boston, Carson City).

### **Summary**

The settlement agreements contained many themes. The themes, as discussed in this study, were arranged into the following broad categories:

1. Student enrollment
2. Instructional requirements for ELL
3. Monitoring student performance
4. Special education and documentation
5. Staff qualifications and professional development
6. Parental communication
7. Monitoring and self-report requirements

The breadth of these themes exemplifies the commitment of the United States to the protection of the civil rights of language minority students, from enrollment to exit.



## Chapter 5

### Summary, Conclusions, and Recommendations

#### Summary

The purpose of the study was to reveal areas of non-compliance by certain school districts in the education of English language learners (ELLs) and identify emerging themes from the settlement agreements that could provide a framework for school practitioners regarding the steps that are needed to achieve compliance with the laws that govern the education of ELLs.

This purpose was accomplished by reviewing the Settlement Agreements between the United States and seven selected school districts. The Agreements were analyzed and the emerging themes were identified and presented in this study.

The study became necessary because of the increasing number of investigations by the United States into the practices of the school districts in relation to their English language learner (ELL) programs. The increasing number of English Language Learners in the United States made it imperative that a clear framework emerge, upon which school administrators could base their practices, ensuring the protecting of their ELL students' civil rights.

School districts and schools are under a legal obligation to provide meaningful education to language minority students. The United States has laws and regulations that are designed to ensure that these students and their parents are not subjected to any discrimination in the educational environment, and that these students receive meaningful

education (*Lau v. Nichols*, 1974). The study investigated the Districts' compliance with these laws.

The study was designed to address this question: What are some school district practices that have been found to be in violation of U.S. government laws concerning the education of English Language Learners, and what are the details of the settlement agreements between the U.S. Government and the education agencies?

It was hoped that the results of the study will enable the districts to follow the requirements of federal law, to avoid a government investigation, and to ensure that they engage in practices that protect the civil rights of ELLs.

To accomplish that goal, seven school districts were selected based on the beginning and end dates of the investigation. To qualify to be included in the study, the investigation had to have begun after January 2009, after President Obama took office and after which the U.S. government increased its efforts to monitor compliance with the laws that governed the education of ELLs. The investigation also had to have been concluded by September 2012.

The investigated entity could not be a state, a county, or an individual school. The school districts that qualified were Adams 12 Five Star School District (Colo.), Boston Public Schools (Mass.); Carson City Public Schools (Nev.); Dearborn Public Schools (Mich.); Henry County School District (Ga.); Los Angeles Public Schools (Cal.); and Mercer County School District (W.Va.). The Districts ranged from urban to rural, from California to West Virginia. One had hundreds of thousands of ELLs, another had less

than 50. Each of them made a distinct contribution to the study. This chapter discusses the conclusions and recommendations that resulted from the study.

The Settlement Agreements were acquired from two main sources. Six of the seven Agreements were obtained from one of two United States government websites: the Department of Justice or the Department of Education. The Carson City Agreement was obtained directly from the school district.

The details of the Settlement Agreements in this study differed sometimes by the demographics, size, and location of each District. For example, the Settlement Agreement between the United States and the Adams 12 Five Star Schools related to the school district's obligations to ensure timely, adequate, and appropriate ELL and SPED ELL services, to provide qualified teachers and administrators, and to provide meaningful access to parents and guardians in all its schools, including charter schools (Settlement agreement between, 2010).

The Settlement Agreement between the United States and Boston Public Schools (BPS) was one of the first Agreements to be signed, and BPS was cited with the greatest number of infractions. The Agreement addressed the identification, placement, and instruction of ELLs. It addressed the District's provision of special education services to ELLs, the provision of compensatory services to students who had previously been denied ELL services, students with interrupted formal education, parent communications, access to gifted and talented and other advanced programs, and the District's obligation to monitor its language acquisition programs and its ELL students at all levels of proficiency (Settlement agreement between, 2010a).

The Settlement Agreement between the United States and the Carson City School District addressed the issue of appropriate funding of the District's ELL programs, the schedule and quantity of time allotted for instruction, ESL and SEI instruction and teacher qualification and recruitment, supplemental instruction for ELL students, administrator training, special education services for ELL students, translator and interpreter services, and the monitoring of ELL students at all the stages of language proficiency (Justice department reaches, 2010b).

The Settlement Agreement between the United States and the Dearborn Schools was focused on the allegation that the District had failed to provide meaningful access to parents/guardians regarding important information about their children's education in a language they could understand and that ELLs did not have full access to nonacademic and extracurricular activities, programs and services, including guidance and counseling (Ketrick, 2012).

The Settlement Agreement between the United States and the Henry County School District was based on allegations that the District failed to make its enrollment procedures accessible to parents with limited proficiency in English improperly by notifying parents that their children would be withdrawn from school for failing to provide a social security number (Agreement between the, 2012e).

The Settlement Agreement between the United States and the Los Angeles Unified School District was to determine whether ESL students, most of whom were Latino, were receiving adequate instruction and to investigate the allegation that students who were judged to have successfully learned English were found to later flounder

academically, many of whom reached high school without mastering the English skills necessary to enroll in a college-preparatory curriculum. It addressed the issue of accountability for the District's comprehensive ELL program design, implementation, evaluation, and monitoring. The other issues addressed included the identification and placement of English language learners, provision of appropriate ELD instruction until fluency for all ELLs including at the secondary level, supplemental and compensatory intervention services for students that were not making progress. Finally, college preparedness and career readiness for ELLs was included in the Agreement (Agreement to resolve, 2010).

The Agreement between the Mercer County Schools and the United States took into consideration the specific characteristics and needs of the District, namely: its rural location, the very small population of ELLs spread across several schools; the limited availability of ESL certified or endorsed teachers in the area; its size, and the geographic location of its schools (Agreement between the, 2012).

The specific details addressed the District's obligation to identify ELLs with the use of the Home Language Survey, to place ELLs by proficiency level following an assessment of four language domains, and the quality of language acquisition instruction, the establishment and function of a LEP Committee, and a LEP Plan (Agreement between the, 2012).

### **Conclusions**

In spite of the differences in the focus of the Settlement Agreements, there were enough commonalities in the Agreements to reach conclusions that represent the absolute

actions that schools and school districts must take to ensure compliance with the laws that are applicable to the education of English Language Learners.

The most fundamental conclusion of this study is that the United States takes seriously the civil rights of English Language Learners from the moment of enrollment through graduation. The United States seeks and ensures compliance with the applicable laws relating the provision of meaningful education.

There was no indication, in any of the Settlement Agreements, that the United States rated one infraction more egregious than the other. The differences in the Settlement Agreements, and the fact that when put together, they cover an ELL's entry into through exit from the program, indicate that the United States held District accountable for whatever infraction it committed, be it only one or several. Each infraction seemed to be equally important.

For example, the main allegation in Henry County related to the demand for social security cards from parents before student enrollment, and the allegations against the Boston Public Schools (BPS) were numerous. Yet, the United States proceeded with an investigation in each case, held the Districts accountable, and obtained a commitment to change.

**Enrollment and identification.** The study revealed that the United States took seriously the issue of access into the program and the non-discriminatory requirements of the laws governing the education of language minority students. With regard to the enrollment and identification of English language learners (ELLs), upon enrollment, school districts must do everything they can to ensure that they provide meaningful

access to parents/guardians who seek enrollment for their ELLs or parents of ELLs who are already receiving services. All barriers that would impede the enrollment and identification of an ELL must be prevented or removed. Therefore, a child may not be turned away for failure to provide a social security number.

In addition, enrollment and admission documents must be language accessible, which means that the documents must be provided in a language that the parent can understand or a qualified interpreter must be provided to assist the parent with the process.

To ensure that every English language learner gets a chance to be identified, every district must administer a Home Language Survey (HLS) to every student that seeks enrollment. The Home Language Survey must be in writing and must address 3 specific questions that help to determine the language background of the student:

What is the first language the student learned to speak?

What language does the student speak most often?

What language is most often spoken in the home?

If the answer to any of the questions is a language other than English, the student must be provided a language proficiency assessment for the purpose of determining the English language proficiency level of the student.

The language proficiency assessment used to identify ELLs must be valid and reliable, and must assess the students on all four language modalities of listening, speaking, reading, and writing. If the assessment indicates that the student is limited in English language proficiency, then the District must notify the parents/guardians

promptly and seek permission to enroll the student in the ESL program. Parents/guardians have the right to refuse ESL services. Parental refusal does not preclude the student from receiving sheltered instruction in the core content areas.

***Placement and provision of services.*** ELLs must be provided with English as a Second Language (ESL) services in their zoned or preferred schools. They may not be required to attend a different school because of lack of space or ESL services in the student's preferred school.

The language acquisition program must include ESL instruction and sheltered English instruction (SEI) for content areas. The ESL teacher must be ESL-certified or endorsed and the sheltered English instruction (SEI) teachers must have received the District's training program that certifies teachers in SEI strategies.

English Language Learners must be grouped for English as a Second Language (ESL) instruction with students who have comparable proficiency levels, and at most no more than one level above or beneath. If enrollment logistics make it necessary to place a student in a group with others who are two levels higher or lower, that arrangement must not last longer than one year, and the teacher must be equipped with, and utilize instructional strategies that differentiate instruction among the different levels.

ESL instruction must be designed to improve students' language proficiency in all four language modalities, and evaluated frequently, at least once a year. Sheltered English Instruction (SEI) must be designed to make the core content subjects more comprehensible to ELLs, assisting them to navigate the language requirements in their

core content areas. At the secondary level, ELL services must provide meaningful education towards college readiness.

**Non-segregation.** Even though ELLs must be grouped by proficiency levels for ESL instruction, ELLs must not be segregated for SEI instruction. ELLs must not be segregated from native speakers unless it is for instructional purposes, and is absolutely necessary. Therefore, all other gatherings: recess, P.E., lunch, and extra and co-curricular activities and all others must be heterogeneous. All activities, other than ESL instruction, must be designed to provide ELLs with optimum opportunities to observe proper language models and to practice English language skills. Students may not be prohibited from speaking their native language.

**Managing and monitoring the ELL's language progress.** Each school must have a Limited English Proficient (LEP) Committee. The LEP committee should be responsible for decisions regarding the placement, progress, and exit of an ELL. The LEP Committee should consist of the student's ESL and SEI teacher if different, a parent, and a school administrator. Each ELL will have an ELL Plan based on the decisions made by the LEP Committee. The LEP Committee should meet any time it is necessary to make a decision that would affect an ELL student's placement, but at least once at the end of the year to make determinations regarding the student's placement for the following school year.

If a student fails to make progress in the language acquisition program, and the cause is determined to be language related, the LEP Committee must convene to consider an alternative plan to the student's ELL program, within 30 days.

**Reclassification, exiting and re-enrolling in the language acquisition**

**program.** If an ELL continues to make progress until the student is deemed fluent in the English language, the student must be reclassified as fluent. Fluency must be attained in all four language modalities. The student will be monitored for two years thereafter. In the first year of monitoring (M-Y1), the student will receive instruction in a regular education classroom without any language support. The student's progress will be monitored periodically, to ensure that the student is being successful in the new placement. If there is any indication that the student is struggling or not being successful, and it is determined that the cause is related to the student's language proficiency, the LEP Committee must meet and consider alternative plans of action, including the option of reclassifying the student as LEP. Subject to parental permission, the student will begin to receive ELL services appropriate to his/her need.

A student who remains successful during the M-Y1 will maintain the fluent status into the second year of monitoring (M-Y2). The student's progress will be monitored in the same manner as in the first year of monitoring. If the student successfully completes M-Y2, he or she will exit from the ELL program. The assessments that are used to determine the students' progress must be valid and reliable. Tests that are designed for compliance with other federal law may be utilized in determining a student's progress and exit criteria.

***Parental Communication.*** Parental communication and school documents must be provided in a language parents can understand. Low incidence languages would require that the documents be translated by qualified interpreters. All information that is

deemed essential must be translated. Children may never be used as interpreters. If parents bring their own interpreters, the school district must also provide its own interpreter if the information to be communicated is deemed “essential.”

LEP Parents must have meaningful access to their children’s records, both hard copy and online. They must be provided with the same rights that accrue to Non-LEP parents, with regard to their students’ records.

Parents have a right to opt out their ELLs from any and all parts of the English language acquisition program. Even when opted out, the District must still monitor the academic performance of the student, and reoffer ELL services if the student is not successful in the academic program and the cause is determined to be language related. The District must never initiate the opt-out decision (Boston, Los Angeles, Mercer County).

***SPED ELL.*** Students who qualify for both special education services and ELL services must not be denied either one of the services based on the other classification. The student must receive the benefits of both programs in accordance with all the relevant laws.

***Teachers and staff.*** ESL teachers must be ESL-endorsed or have attained the designated District training that qualifies teachers to teach ELLs, or be making substantial progress towards such attainment. The training must be completed in about two years. Sheltered Instruction teachers must acquire the necessary SI training specified by the District, or be making substantial progress towards such attainment, to be completed within two years. Districts must make concerted efforts to recruit and hire

teachers who are qualified to teach ELLs. They should indicate such preferences in their advertising.

*Charter schools and immigrant education.* Charter schools fall under the purview of the same laws that apply to the school districts. None of the Settlement Agreements mentioned the education of migrant students.

### **Recommendations for Practitioners**

The original intent of this study was to determine emerging themes that would enable schools districts and practitioners to protect the civil rights of their English Language Learners. The recommendations are such that will help practitioners avoid an investigation of their practices, and if such does occur, will enable them to avoid violations and/or sanctions.

1. The first recommendation is that practitioners in the K-12 environment make deliberate efforts to become familiar with the laws that govern the education of ELLs. The degree to which practitioners are aware of the laws relating to their practice does have an impact on the degree to which they comply with the law. If practitioners are unaware of the educational rights of their English Language Learners (ELLs), they are apt to violate such laws, and consequently the rights of their ELL students. Therefore, it is of great importance that school leaders and other practitioners become familiar with the legal provisions that govern the education of English language learners.
2. To enable District employees to become familiar with, and comply with the laws governing the education of ELLs, the District should have a designated

office or minimally a designated role that oversees the implementation, monitoring, and evaluation of the District's ELL program.

3. The designated office/role should ensure that all district employees who might potentially interact with ELLs and their parents/guardians are provided the necessary training for their encounters with ELLs and their parents.
4. Districts must take seriously the professional training that is required to develop their employees to become knowledgeable and competent in dealing with the District's ELL population and their families. Building and District administrators who might potentially deal with ELLs and their parents must be trained in the relevant laws that relate to the education of ELLs.
5. The curriculum provided to English language learners must be equal in standard and quality to that provided to native English speakers.
6. Building administrators and supervisors must be trained in the strategies and curriculum standards that will enable them to effectively and meaningfully evaluate their ESL and SEI teachers and their compliance with the law.
7. Districts must take meaningful steps to ensure that eligible ELLs are not denied special education services and that special education students who require ELL services are not denied.
8. The qualification of teachers that provide instruction to ELLs must be of priority to ensure that they are certified and trained in the knowledge and skills necessary to provide instruction to their ELL students.

9. Districts must evaluate their practices frequently to ensure that they continue to protect the educational rights of their English Language Learners.

### **Recommendations for Future Research**

The following recommendations are offered for research related to the education of English Language Learners:

1. Further research could be conducted to document the future action of the federal government in relation to schools' compliance with the laws governing the education of ELLs. The last Settlement Agreement that was included in this study was signed in September 2012, just about a month before President Obama's reelection, another study may be commenced to determine the focus and frequency of the United States efforts regarding school districts' compliance with the laws that govern the education of ELLs.
2. At the time of the conclusion of this study, some of the Settlement Agreements would have been signed long enough to have reached compliance with all the terms of the Agreement. Therefore, another viable study would include a study of the status of ELL education in the school districts that were studied to determine the effects of the Settlement Agreements and the state of compliance subsequent to the conclusion of the investigation and United States monitoring.

### **Summary**

This study has revealed the practices of selected school districts in educating their English language learners and how those practices interfered with the civil rights of

English language learners (ELLs). It has also presented the actions that school districts must take in order to rectify the infractions.

If all the recommendations and details of the Settlement Agreements are to be summarized, they would be centered on two things: meaningful access to ELLs and their parents/guardians, and non-discrimination against both. This must be the plumb line with which school districts measure their practices. Failure to protect their students' rights could lead to a United States government investigation, loss of funding, and worst of all, a compromise of the education of their English Language learners (ELLs).

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