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ESL Program Models and Court Cases: An Overview for Administrators

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The demographic of our country’s public school students is very diverse and continues to change. By 2020, African American, Hispanic, Asian American and Native American groups will account for more than 40 percent of the U.S. population and this percentage is expected to increase to 50 percent by the year 2040 (U.S. Census Bureau, 2003). Currently, 46 percent of all schools in the United States have English Language Learners (ELL) or English as Second Language (ESL) students (National Center for Educational Statistics). Furthermore, Hispanics now make up the largest minority group in the United States and it’s estimated that by 2021, 25 percent of all students will be Hispanic (Gándara, 2010). These numbers suggest that current and future public school administrators will need to understand effective ESL/bilingual instruction in order to provide their students and teachers with adequate support and supervision. Likewise, they will also need to have a basic understanding of educational law as it pertains to ESL and bilingual programming. Therefore, the purpose of this paper is to offer an administrative overview of some of the more salient issues related to the effective instruction of ESL students as well to present a summary of prominent course cases-and subsequent rulings-that affect ESL instruction.

**Stages of Second Language Acquisition**

To better understand the tenets of effective ESL programming and instruction, educators must first have a basic knowledge of the stages of second language acquisition (SLA). In their 1983 book, *The Natural Approach*, Krashen and Terrell advanced the notion of various stages of SLA through which all individuals progress, regardless of their native (L1) or second/learned (L2) language. The five stages are as follows: preproduction, early production, speech emergence, intermediate fluency and advanced fluency.

*Preproduction Stage*

The preproduction stage usually lasts up to six months and is often referred to as the “silent period” because the student has minimal comprehension and therefore, is unable to speak in the target language (Krashen & Terrell, 1983). In addition, students in this stage will also present high levels of anxiety and even depression as they are struggling to adjust to both a new language and culture. While the student’s level of comprehension is low, he/she can still respond and, most importantly, learn new information in the new/target language. This can be accomplished through providing a lot of visual (i.e. pictures and charts) assistance. In addition, students in this stage can be encouraged to communicate by using gestures such as nods (yes or no), hand signals (thumbs up/down) and drawing and pointing (Hill & Flynn, 2006).

*Early Production Stage*

In the early production stage, students move beyond basic modes of communication and begin to produce short (one or two words) and memorized responses. In addition, students in this stage begin
to use more complete verbs (in the present tense) and can participate more in class. Furthermore, this stage is also characterized by the student beginning to recognize connections between his/her native language (L1) and that of the new language (L2). The early production stage tends to last between six months and one year (Krashen & Terrell, 1983).

Speech Emergence Stage

Students in the speech emergence stage begin to show higher levels of overall comprehension—especially related to grade-level concepts—and are proficient in decoding and comprehending English text. As a result, the student feels more comfortable with the new language and will begin to take risks and speak in short (albeit incorrect) sentences. At this stage of language development—which lasts one to three years—teachers can have students provide explanations along with asking them questions about content such as “why” and “how” (Krashen & Terrell, 1983; Hill & Flynn, 2006).

Intermediate Fluency Stage

The intermediate fluency stage is marked by an increased understanding and proficiency in all aspects related to language (reading, writing, speaking and listening). Students in this stage make fewer written and spoken errors and will even express a desire to help other students with their own language learning. The intermediate student is capable of using and understanding higher-level questions which include hypothetical analysis and conjecture. The duration of this stage can be three to five years or more (Krashen & Terrell, 1983; Hill & Flynn, 2006). Because students in this stage are highly functional in the target language, it’s possible to remain in this stage for an indefinite period of time.

Advanced Fluency Stage

Students who reach this stage of second language acquisition have obtained a native-like command of the target language. In this stage, students are capable of expressing and understanding abstract, higher-level thoughts and questions and their language production—both spoken and written—is highly accurate and resembles that of a native speaker.

BICS and CALP Distinction

In addition to understanding the stages of second language acquisition, another important concept related to effective ESL instruction is the distinction between students’ basic interpersonal communication skills (BICS) and cognitive academic language proficiency (CALP) (Cummins, 1994).

Basic interpersonal communication skills (BICS), or conversational language, refer to one’s ability to effectively interact in a conversation consisting of known words and contexts. Often referred to as “playground language”, students can become very conversational within two to four years, thus giving the impression that they are completely fluent and, from an academic standpoint, fully capable in the new language.

Cognitive academic language proficiency (CALP), or classroom language, refers to students’ abilities to effectively manage higher-level language in academic settings in which the vocabulary and context is unknown. The recognition and distinction between BICS and CALP is crucial for administrators and teachers when trying to meet the needs of ESL students. For example, it is common for students to appear very fluent in English because they can communicate with teachers and peers. However, when
these students are in class and required to use higher-level academic language, they may struggle, giving the impression that they are not trying or being lazy.

**Program Models**

Currently there are many instructional program models for teaching ESL which range from traditional programs to dual-language bilingual programs. Within this country’s schools, three prominent program models are traditional, sheltered, and bilingual.

*Traditional Program Model*

Traditional ESL program models are typically implemented in separate, self-contained classrooms (designed only for ESL students) and are taught by ESL (non-content based) teachers. Students can spend the entire instructional day in these classrooms or can be pulled out (“pull-out model”) at various times during the day based upon their academic needs. The curriculum of the traditional ESL model tends to focus more on the development of language skills (such as grammar instruction) and is less content-based. In other words, the traditional ESL model may *support* students’ content-based courses but it’s not the primary focus of the class. In addition, the language of instruction in the traditional ESL program model is English. Despite being the least effective model in terms of raising students overall levels of academic achievement (Thomas & Collier, 2002), traditional ESL programs remain prominent in today’s schools because they’re the easiest and most cost-effective way to educate ESL students.

*Sheltered Instruction Program Model*

Whereas the traditional ESL program model tends to focus more on language-specific skills (and less on content), sheltered instruction integrates both language and content (i.e. math, science, biology, etc.) into the same class so that students simultaneously receive grade-level language support and development. Furthermore, the content objectives are consistent with instructional objectives at the local, state and national levels, thus preparing students for standardized tests. Sheltered instruction requires a skilled educator who, in addition to possessing content knowledge, must also understand how to scaffold (modify) instruction for language learners so that they can improve their language skills and comprehend the grade-level material.

The Sheltered Instruction Observation Protocol (SIOP) Model (Echevarria, Vogt, & Short, 2004) is a popular model of sheltered instruction that was the result of empirical research conducted for the National Center for Research on Education, Diversity & Excellence at the Center for Applied Linguistics at California State University, Long Beach. The SIOP model consists of the following eight instructional components: Lesson Preparation, Building Background, Comprehensible Input, Strategies, Interaction, Practice/Application, Lesson Delivery and Review/Assessment. This is an effective model of professional development because it can be implemented by any classroom (non-ESL) teacher. In addition, this model provides teachers and administrators a protocol for in-class evaluations and other forms of peer support, thus ensuring the quality of instruction received by ESL students.

*Bilingual Program Model*

The most effective of all ESL program models (Thomas & Collier, 2002), bilingual instruction includes
the use of the students’ native language along with some level of English support. A common misconception related to language instruction and acquisition is that skills learned in one’s first language (L1) are not related to nor should they be encouraged while acquiring the second/foreign language (L2). However, the Transfer Hypothesis (Cummins, 1981) provides evidence to the contrary showing that students who develop academic skills-especially in reading and writing-in their first language can transfer that knowledge when learning their second language. Therefore, it is imperative that teachers and administrators provide ESL students L1 support, ideally through the implementation of bilingual instruction. There are many types of bilingual models ranging from transitional, where students are taught the content courses in their native language for a short period of time (2-3 years) and are then mainstreamed into the English-speaking classrooms, to dual language immersion programs where all students, (ESL and non-ESL) receive instruction in both languages (i.e. Spanish and English) throughout all of their courses.

Despite their effectiveness, bilingual programs are less common than other program models due to a lack of resources. It can be very difficult for schools to hire teachers who are not only certified in a content area-such as history-but who are also proficient enough in another language to conduct bilingual classes. In addition, true dual immersion programs can often times require up to twice the number of teachers which can prove to be financially difficult for many school districts already struggling to maintain their current staffing needs.

**Instructional Implications for Administrators**

The three program models of ESL instruction presented (traditional, sheltered and bilingual) represent a range of what is both common in our schools and ideal. Bilingual instruction is the most effective and enables students to achieve grade-level norms in the shortest amount of time (Thomas & Collier, 2002) but this type of program can be difficult to implement due to personnel and budgetary issues. However, regardless of the type of ESL program that exists in a school district, teachers and administrators can maximize the potential of student achievement through the following: (1) Provide a language-rich environment throughout the school that supports literacy development. (2) Combine both content and language objectives so that ESL students are able to advance toward grade-level norms while acquiring the language. (3) Acknowledge students’ first language and allow them to use this knowledge to further develop their skills as they acquire the second language.

**Bilingual Educational Court Cases**

Effective administration and support of ESL and bilingual programs not only consists of having a sound understanding of instructional models but also knowledge of legal issues that govern ESL instruction. The following presents an overview of some of the most important U.S. Supreme Court cases and rulings regarding ESL or bilingual education in American schools and should serve as an administrative guide to understanding bilingual educational policies.

*1923 Meyer v Nebraska*

This was one of the first cases that the U.S. Supreme Court heard that dealt with the teaching of a content area in a language other than English within the public schools and laid the foundation for subsequent court decisions.
This case was appealed to the U.S. Supreme Court after the District Court for Hamilton County (Nebraska) and the Nebraska State Supreme Court found Robert Meyer, a teacher at Zion Parochial School, guilty of teaching reading to Raymond Parpart, a ten-year-old German student, in his native language on May 25, 1920. The District Court ruling was based upon a Nebraska state act relating to the teaching of foreign languages which stated that “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” (Laws 1919, c. 249, as cited in Cornell University Law School, www.law.cornell.edu). This act also stated that, within the state of Nebraska, foreign languages were only to be taught once a student had passed the eighth grade and that violation of this act would result in a misdemeanor charge, punishable by a monetary fine or up to thirty days in jail.

At the U.S. Supreme Court level the issue was whether or not the 1919 Nebraska Act violated the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. Issuing the opinion of the court, Justice McReynolds found that such an act was a clear violation of the teacher’s ability to teach and the student’s ability to learn. Therefore, the ruling was in favor of Mr. Meyer and the lower courts’ rulings were overturned. This ruling was significant within the scope of bilingual education as it set a precedence by allowing teachers and schools to instruct students in languages other than English (in non-foreign language classes).

1974 Lau v Nichols

The Lau case is one of the more well-known and highly regarded court rulings related to bilingual education within the United States. This case came about as a result of a class action lawsuit filed by parents of non-English speaking Chinese students against the San Francisco Unified School District in California, claiming violation of educational rights. After forced integration in 1971, the San Francisco District was inundated with approximately 2800 Chinese (or of Chinese decent) students who did not speak English. Of these students, approximately 1800 did not receive additional or supplemental English instruction.

The U.S. Supreme Court ruled in favor of the plaintiffs finding that the San Francisco Unified School District’s failure to provide the Chinese students with adequate English instruction denied them a meaningful and equitable public education and was in violation of section 601 of the Civil Rights Act of 1964, which bans discrimination based “on the ground of race, color, or national origin,” in “any program or activity receiving Federal financial assistance (Lau v. Nichols, 1974). Additionally, the court stated:

There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

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 education program, he must have already acquired those 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. (Lau v. Nichols, 1974)

This case also resulted in a national compliance to the 1968 Bilingual Education Act, whose adoption
and adherence had been voluntary up until this point. The 1968 Bilingual Education Act was designed to provide schools with federal funds in order to establish effective programs for students with limited English proficiency and was later supported by the 1974 Equal Educational Opportunity Act which, among other things, stated that:

No state shall deny equal educational opportunities to an individual on account of his or her race, color, sex, or national origin...by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. (Equal Educational Opportunity Act, 20 USC Sec. 1703).

1981 Castañeda v Pickard

While the Lau case made it clear that school districts were to take steps to ensure that all students-regardless of their native language-were to receive an equitable education, the case of Castañeda v. Pickard further expanded upon the Lau decision by offering guidelines for quality bilingual education programs.

Under the Equal Educational Opportunity Act (EEOA), Roy Castañeda, a father of two Mexican-American students enrolled in the Raymondville, Texas school district, filed suit against the district claiming that his children were being discriminated against based upon their ethnicity. According to Castañeda, the school was unfairly placing students into instructional groups based on racial and/or ethnic characteristics and as a result, the school had failed to establish quality bilingual education programs. Subsequently, this practice did not provide all of the students with equal educational opportunities.

In response to an appeal filed by Castañeda-the Federal Court ruled in favor of the school district-the U.S. Supreme Court heard the case in August of 1981 and found for Castañeda. In issuing their opinion the Court established criteria for determining how schools-and their bilingual education programs-would be held accountable for adhering to the Equal Educational Opportunity Act of 1974. What has now become known as the “Castañeda Test”, dictates that bilingual (or ESL) education programs must comply with the following three areas: (1) Theory (the program should be based on educational theory), (2) Practice (the program should be carried out with adequate resources), and (3) Results (the program must be evaluated and should ensure adequate access to all areas of the curriculum) (Alexander & Alexander, 2005).

It is important to note that neither the Lau case nor the Castañeda case required bilingual education programs, but rather stated that schools must take adequate measures to ensure that all students have an equitable educational experience; bilingual program are one way of accomplishing this for limited English proficient students. Therefore, the three areas outlined by the “Castañeda test” are guidelines for assessing schools or districts that have chosen to implement bilingual education programs.

1982 Plyler v Doe

It is estimated that seven million unauthorized immigrants lived in the United States in 2000 with two-thirds of this population being comprised of people from Mexico (U.S. Census Bureau, 2003). Due to the high number of unauthorized or undocumented immigrants in this country, the Plyler case is important within the scope of bilingual education because it focuses on the rights of undocumented
students and their families.

The *Plyler* case was in response to a 1975 Texas state law that withheld funds from school districts for the education of illegal or undocumented children. In addition, this law also allowed schools to deny enrollment to illegal or undocumented children. When this case was heard by the U.S. Supreme Court, the question was whether or not the 1975 Texas state law violated the Equal Protection Clause of the Fourteenth Amendment which states that “No State shall…deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (Alexander & Alexander, p. 250). The Court ruled that this protection was afforded to “any person” within the state of Texas, or any other state, regardless of that person’s citizenship status. In finding against the state of Texas, the court concluded that undocumented children have the right to seek a public education and can’t be denied services based upon their immigration status. Furthermore, states cannot withhold funding from schools or programs that serve undocumented children. In addition, this ruling also made it clear that school officials can’t require students or their parents to disclose or prove their citizenship and/or immigration status in order to enroll in the school and receive related services. In essence, the *Plyler* case dictates that all students, regardless of their citizenship status, are entitled to equal educational rights and opportunities.

**Legal Implications for Administrators**

While there are certainly more cases that affect bilingual education in this country, the four cases presented here (*Meyer, Lau, Castañeda, and Plyler*) offer a great deal of information and guidance for public school administrators. Upon analyzing these cases, the following guidelines emerge: (1) While schools aren’t required to implement bilingual or ESL program for limited English proficiency students, schools must account for and make adequate provisions for language-related issues in order to ensure an equal educational opportunity. (2) When adopting bilingual or ESL programs, it is advisable to follow the “Castañeda Test” which evaluates the extent to which the program (a) is based on sound theory, (b) has adequate resources and personnel and (c) produces results and provides students with equal access to the school’s full curriculum. (3) School personnel cannot deny students services based upon their immigration status nor are they allowed to require family members (or students) to provide proof of legal citizenship.

**Conclusion**

The ever-changing student demographic in this country suggests that virtually every current and aspiring administrator will be faced with decisions regarding the effective design and implementation of ESL programming. In addition, they will also need to be aware of decisions handed down from the courts that affect ESL programming, assessment and students’ rights. Bilingual education is a very fluid, multifaceted and complicated process and while it’s not a requirement that a principal in a building with an ESL program be an expert in the field, those who possess a general knowledge and appreciation of ESL instruction will be able to work more effectively with their ESL teachers and parents and, most importantly, will be able to provide leadership that ensures student success. Regardless of the type of bilingual/ESL program model a school or district implements, knowledge of the aforementioned guidelines should enable administrators to provide their English language learners with an effective and equitable educational experience.

**References**


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