Dual Language Programs: Best Practice for Linguistic Instruction

Abigail Rocap

While English is the primary language in the United States, it is not and never has been the "official" language.[1] Neither the U.S. Constitution nor federal law has ever adopted an official language.[2] At the Constitutional Convention the Founders refrained from adopting an official language in the Constitution.[3] The Constitution did not even provide English with any special legal protection and early federal policy reflected a preference for allowing language to be a private and local decision.[4] As a result multi-lingualism flourished throughout the early nineteenth century and continued into the twentieth century due to immigration from eastern and southern Europe.[5] Today, more people from a wide variety of countries, including Latin America and Asia, flock to the United States.[6]

Immigration to the United States is not expected to decrease any time soon; by the 2030s, students whose native language is something other than English are expected to make up 40% of the school-age population.[7] Therefore, the programs used to educate these students are a crucial issue and it is essential that our education system and programs are responsive to their needs. America is a melting pot of cultures and languages. Schools, as the centers of education, have

[1] Cecilia Wong, Language is Speech: the Illegitimacy of Official English After Yniguez v. Arizonans for Official English, 30 U.C. DAVIS L. REV. 277, 280 (1996).
[2] *Id.*
[3] Rachel F. Moran, The Politics of Discretion: Federal Intervention in Bilingual Education, 76 CAL. L. REV. 1249, 1257 (1988).
[4] *Id.*.
[5] Wong, *supra* note 1 at 282.
[6] *Id.* at 283.
[7] Bethany Li, From Bilingual Education to OELALEAALEPS: How the No Child Left Behind Act has Undermined English Language Learners' Access to a Meaningful Education, 13 GEO. J. ON POVERTY L & POL'Y 539, 539 (2007).

the job of striking a delicate balance in the classroom to promote our own American culture while not stifling the student's native cultures.

This note considers what the best program is for a school to implement. Part I will discuss the regulations which the federal government has passed which might effect a school administrator's decision as to which program to implement. That historical development is also helpful to see how perceptions on the education of minority language speakers have developed over time. Part II will discuss the restraints placed on school districts when deciding what program to implement and also discuss some of the many program models which have been used to educate ELL students. Finally, part III will argue that it is best practice for schools to use dual language programs because those programs not only are more effective on English language learners (ELL) but is highly beneficial for the greater school community.

I. Federal Regulations on Language Instruction

The first action that the government took on language instruction occurred in the Supreme Court ruling in *Meyers v. Nebraska*.[8] Post World War I anti-German sentiment led to state statutes which required English instruction in schools. One such statute was challenged in *Meyers v. Nebraska*. In *Meyers*, a teacher taught reading in German to a ten-year-old student and was charged with violating the Nebraska's English-only statute.[9] The Supreme Court struck down the law declaring it unconstitutional finding that the prohibition was "arbitrary… without reasonable relation to any end within the competency of the State," and "unreasonably infring[ed] the liberty guaranteed… by the Fourteenth Amendment."[10]

[8] Meyers v. Nebraska, 262 U.S. 390 (1923).
[9] *Meyers*, 262 U.S. at 391.
[10] *Id.* at 399.

It then took a long time for any more direction from the federal government. Finally in 1968 Congress enacted the Bilingual Education Act (BEA). The Act itself created a program to support research and experimentation in the field of bilingual education.[11] The Act started a grant-in-aid system which provided local schools that conducted research or implemented experimental bilingual programs with federal funds to support those activities. Specifically, the Act provided school districts with money through the BEA for program resources, teacher training, material development and distribution, and parent involvement in projects.[12] Prior to 1968 no state had enacted a bilingual education act.[13] After the BEA was enacted state and local officials reconsidered their curricular choices and in the five years following, six states adopted such provisions and a number of states repealed statutes which required English instruction in the classroom.[14]

Furthermore, in 1974 the Supreme Court in *Lau v. Nicholas* expanded the rights of students nationwide with limited English proficiency.[15] *Lau* was a class action suit which was brought under title VI and the equal protection clause by non-English speaking Chinese students in the San Francisco school system.[16] Only one-third of 2,856 Chinese students attending the schools were receiving supplemental instruction in English.[17] The district court and court of appeals denied relief finding that the plaintiffs had no cause of action, but the Supreme Court reversed.[18] The Court noted that "there is no equality of treatment merely by providing students

[11] Moran, *supra* note 3 at 1258.
[12] Li, *supra* note 7 at 550.
[13]Moran, *supra* note 3 at 1266.
[14] *Id.*
[15] Lau v. Nichols, 414 U.S. 563 (1974).
[16] *Lau*, 414 U.S. at 563.
[17] *Id.*
[18] *Id.*

with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any *meaningful education*."[19] (emphasis added).

After this ruling, school districts were now obligated under title VI to provide special assistance to ELL students if the curriculum would otherwise exclude them from active participation. Meanwhile, Congress continued to reauthorization the BEA in 1974, 1978, 1984, 1988, and 1994. Each of these five reauthorizations expanded the eligible population and, finally in 1994, prioritized the achievement of English language competence while maintaining the students' native languages.[20]

In 2003 President Bush passed his sweeping educational reform bill, No Child Left Behind (NCLB). While NCLB does not explicitly mandate English-only instruction it emphasizes accountability and English acquisition as important goals for student.[21] NCLB most definitely focuses on English proficiency and encourages English only instruction, if not right away for a non-English speaking student, certainly as soon as possible. Native language instruction is allowed but only to "enable the child to develop and attain English proficiency…"[22]

Also, as part of NCLB, all students are subject to academic content assessments, which, for non-English speaking students, begin in the third grade.[23] These NCLB tests are administered in English, but provide an exception and allow a student who has been in the United States for less than three years the ability to take the exam in their native language.[24] This

[19] *Id.* at 566.
[20] Li *supra* note 7 at 550.
[21] Li, *supra* note 7 at 555.
[22] 20 U.S.C. §7011(8)(B).
[23] Li, *supra* note 7 at 556.
[24] *Id.* at 562

means that there is an assumption that a child who has been in the United States longer than three years will have enough English proficiency to take the test in English.[25]

II. WHAT IS A SCHOOL TO DO?

The above historical summary raises very important points. It shows that overall our government has supported the need for *meaningful* education for ELL students and taken steps to make sure that is afforded to them. However, no one program or any program guidelines have ever been endorsed. The question then arises: what is a local school board or administer to do when it comes to educating ELL students?

Local administers and school districts have wide discretion in deciding what programs to implement. This is evidenced by the limited ability of parents of ELL students to compel district administers. If parents feel the program their student is enrolled in is inadequate they have two options.[26] First, they can make a request to the Office of Civil Rights (OCR) for a compliance review.[27] However, so long as there is some sort of program implemented, it will likely be found sufficient so long as it is based on a sound educational theory and has the proper teachers and resources to back it up.[28]

Second, they can sue under the Equal Educational Opportunities Act (EEOA), but certain requirements must be met.[29] Specifically when a court is determining the appropriateness of the schools methods it must: (1) examine the soundness of the educational theory or principles upon which the challenge is based; (2) whether the programs and practices actually used by a school

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[25] *Id.*
[26] Eden Davis, *Unhappy Parents of Limited English Proficiency Students: What Can They Really Do?*, 35 J.L. & EDUC. 277, 282-84 (2006).
[27] *Id.* at 282.
[28] *Id.* at 283.
[29] *Id.* at 283.

are reasonably calculated for effective implementation, and; (3) if the program fails despite a showing of the first two tests after a legitimate time trial, then the action may be considered to have failed as an appropriate action.[30] These requirements are very similar to what must be shown for a school district to survive review by the OCR. Therefore, legally and federally, school districts have great deference to implement whatever method they see fit.

Still, as school board members and school administrators choose take on these professional positions, assumingly, to pursue a passion and interest in educating children, they also have a moral obligation. That moral obligation requires more than the low bar set by the above legal reviews of their actions. Local school officials have the moral obligation to ensure that the programs they are implementing reflect the educational practices which are best for the students.

There are a variety of different linguistic programs which can be implemented. First, there are two programs which traditional opponents of bilingual education support; English as a second language and English immersion. The former is a common program in the schools in which the ELL student is pulled out of his or her English speaking classroom to receive regularly scheduled instruction from their bilingual teacher for fifteen minutes to one hour a day.[31] The latter program is a self-contained classroom where ELL students are taught almost exclusively in English, using a second language only when necessary to increase the students' English proficiency.[32]

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[30] *Id.* at 281.
[31] Joseph A. Santosuosso, When in California… In Defense of the Abolishment of Bilingual Education, 33 NEW ENG. L. REV. 837, 843 (1999).
[32] *Id.*

Next, there are transitional programs which use both the learners' native language and English. These programs utilize the student's native language for instruction until the student is able to function exclusively in English.[33] This way the ELL student is able to cognitively develop in math and reading in his or her native language while continuing to develop his or her English skills and eventually transition into an English instruction classroom as his or her English is improved.[34]

Finally, there are two innovative approaches to linguistic education programs. First is maintenance bilingual education which encourages linguistic pluralism by developing dual-language proficiency in both the student's native and English language.[35] Another is dual language immersion, or also known as two-way immersion.[36] Dual language programs mix ELL students with English speakers in the same classroom by teaching in one language for half of the school day and the second half in the native language of the other group.[37]

III. Dual language programs as the best education practice

Without a doubt, more innovative approaches such as dual language instruction are needed for ELL students. An important goal of dual language immersion is not to limit secondary language acquisition only to ELL students, but expand it to English students as well.[38] This educational opportunity is a positive one not only for the ELL student but the native English speaking student as well.

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[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Kristi L. Bowman, *Pursuing Educational Opportunities for Latino/a Students*, 88 N.C. L. REV. 911, 980 (2010).
[37] *Id.*
[38] *Id.*

i. Best practice for the individual student

First, at the individual student level, multilingualism helps enhance all students' educational opportunities. Learning at least one additional language earlier in your childhood is beneficial to all students; native English speakers and ELL students.[39] Being bilingual or multilingual and the learning process that is involved in becoming multilingual creates flexibility and problem solving cognitive skills.[40] Specifically, bilingual children are better able than monolingual children to changes in rules and close out mental distractions. [41] Marty Abbott, the director of education for the American Council on the Teaching of Foreign Languages witnessed this effect while she supervised foreign-language programs for early-elementary students in Fairfax County, Virginia.[42] She observed that young students in the school district's partial-immersion program developed more intellectual flexibility and problem solving skills and stated that "A bilingualist is a mental juggler."[43]

For ELL students, the advantages are overwhelming. In schools which have implemented such dual language Spanish-English programs, it has deterred dropout rates among the Latinos/as students and encouraged their interest in college.[44] Furthermore, it is the most effective program to ensure that ELL students close the achievement gap between themselves and native English speaking students.[45]

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[39] Sarah D. Sparks, *Science Grows on Acquiring New Language*, EDUCATION WEEK (October 22, 2010).
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] Kristi L. Bowman, *supra* note 36 at 981.
[45] *See generally* Virginia P. Collier and Wayne P. Thomas, *The Astounding Effectiveness of Dual Language Education for All* Collier, V.P., & Thomas, W.P. (2004). The astounding effectiveness of dual language education for all. NABE Journal of Research and Practice, 2(1), 1-20. http://njrp.tamu.edu/2004.htm http://njrp.tamu.edu/2004/PDFs/Collier.pdf

ELL students, though, are not the only ones who excel in dual language programs. In fact, one study showed that native English speaking students who were in a dual language program for four years scored in reading, on average, between ten and twenty percent higher than those native English speakers who stayed in mainstream traditional English only classrooms.[46] Therefore, not only did they outscore their monolingual peers but they acquired a second language for their lifelong use.[47] As the study explains:

> This is truly astounding achievement when you consider that this is higher achievement than that of native-English speakers being schooled through their own language, and who have all the advantages of nonstop cognitive and academic development and sociocultural support. Native-English speakers' language and identity is not threatened, because English is the power and status language and they know it, so they have a huge advantage in confidence that they can make it in school, from a socioculturally perspective. Yet English learners can outpace native-English speakers year after year until they reach grade level in their second language, when they are schooled in a high quality enrichment program that teaches the curriculum through their primary language and through English.[48]

Indeed, dual language programs are not simply best practice for the ELL student, but best practice for any student involved with such an innovative learning program.

Finally, the environment within the classroom is further beneficial for both ELL students and English speaking students. While more traditional language programs are segregated, exclusive and divisive, dual language programs are integrated, inclusive and unifying educational experiences for the ELL students.[49] Meanwhile, the nonminority or native English speaking students are able to expand their worldviews to include knowledge of and respect for

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[46] Wayne P. Thomas and Virginia P. Collier, *The Multiple Benefits of Dual Language*, EDUCATIONAL LEADERSHIP (October 2003), http://www.ascd.org/ASCD/pdf/journals/ed_lead/el200310_thomas.pdf.
[47] *Id.*
[48] Virginia P. Collier and Wayne P. Thomas, *The Astounding Effectiveness of Dual Language Education for All*, NABE Journal of Research and Practice 2(1), 11 (2004) http://njrp.tamu.edu/2004/PDFs/Collier.pdf.
[49] Wayne P. Thomas et al., *supra* note 46.

the customs and experiences of others.[50] Later in life, having mastered and learned another language early in life motivates these students to actively seek opportunities for international travel and employment that uses their second language.[51]

Another positive effect that naturally emerges from the dual language classroom environment is collaborative teaching and learning aspect. As educators know, the best way to learn is to teach and through this approach allows the ELL students to help native English speakers learn the second language while the native English speakers help the ELL students learn the curriculum in English. Furthermore, this collaboration improves students' motivation to learn which in turn further accelerates the student progress.[52]

ii. Societal benefits to dual language programs

The benefits associated with dual language programs are not limited to its effect on the students in the classroom, but extend to the great society. Implementing dual language programs within school districts can help advance traditional goals of desegregation within the schools.[53] As discussed above, dual language programs have great advantages for the native English speaking student. Therefore, implementing dual language classrooms as part of a charter or magnate school in very diverse communities will attract white and nonminority students to come to those schools. The dual language program has been proven to counteract white flight from neighborhoods as well.[54] The symbolism of supporting bilingualism and multilingualism can help improve racial and ethnic tolerance as well.[55]

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[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Kristi L. Bowman, *supra* note 36 at 980.
[54] *Id.* at 98.
[55] *Id.*

Furthermore, teachers and school administrators personally benefit from dual language programs. Studies have shown that teachers and administrators who pioneer dual language programs are happier with their jobs and more motivated.[56] This sort of innovative learning approach is viewed as school reform, and, as such, it reflects positively on the whole school by the greater community.[57] Teachers in the programs express excitement, especially after making it through the first few years of planning and implementing the model.[58] They can see a clear difference in their students' responsiveness and engagement in lessons and behavior problems lessen.[59] Administrators likewise recognize the enormous amount to effort needed at the beginning, but find that in the end the positive results are worth the hard work.[60] Parents of both ELL and native English speaking students participate more actively as well.[61] Overall, the whole school community feels a sense of accomplishment and change which improves everyone's spirits.

a. What are the challenges to implementing dual language programs?

Despite all the benefits that come with dual language programs, there are admitted challenges to implementation. First, it is necessary to have teachers who are not only bilingual but who are also trained in both languages.[62] This challenge is not impossible to overcome. While the candidate pool of dual language programs may be slightly limited, it is not so limited that good dual language teachers cannot be found. Furthermore, district administrators are increasingly recognizing the benefits of these programs and their prominence. Therefore,

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[56] Virginia P. Collier, *supra* note 48 at 11-12.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.* at 12.
[61] *Id.* at 12.
[62] Kristi L. Bowman, *supra* note 36 at 981.

teachers have significant advantage in the already over populated teacher candidate pool by having a dual language endorsement. Jill Engel, assistant superintendent for personnel from Glenview School District 34 explains that her district makes it a priority to recruit and select teachers who are bilingual and encourage existing teachers to explore bilingual certification by reimbursing tuition for those who chose to do so.[63] Therefore, as administers and other school officials prefer dual language programs there is a great incentive for teachers to pursue dual language certification. The number of teachers with dual language certification will definitely increase as these programs continue to be adopted all over the country.

Another challenge to implementing dual language programs is having a population of ELL students large enough to justify it.[64] As already mentioned, by the 2030s, ELL students are expected to make up 40% of the school-age population.[65] It is important to note at this point that dual language programs predominantly use Spanish and English as the two languages as most ELL students' native language is Spanish. However, it has been and can be used in other language. As resources and availability of teachers in other less popular second language are limited, students who have a different and less common native language may not benefit from dual language programs in their native tongue. This is a limitation, but other programs could be used to help that small population of students. Since Spanish speaking students make up a majority of ELL students it is important to implement dual language programs for their benefit and then address how to educate less common ELL students separately.

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[63] Interview with Jill Engel, Assistant Superintendent for Personnel, Glenview School District 34, in Glenview, Illinois. (May 3, 2011).
[64] *Id.*
[65] Li, *supra* note 7 at 539.

Another challenge for dual language programs is posed by NCLB.[66] As already mentioned NCLB requires that non-English speaking students take educational assessment tests in English within three years of receiving special language instruction.[67] However, studies have consistently found that it takes six to eight years for ELLs to reach grade level in their second language (English) and only do so in that time period when in an enrichment dual language program.[68] When other linguistic programs are used, with less daily instruction in the student's native language, it takes longer.[69]

One of the overall goals of NCLB is to close achievement gap for students, including ELL and other disaggregated groups.[70] Yet its mandate that ELL students take assessment exams in English within three years means they will be tested when they have not reached linguist skills which are equivalent to a native English speaker in their same grade.[71] The results from such pre-mature testing will underestimate their true cognitive and academic achievement.[72] Enforcing this three year requirement will also force schools to adopt programs which focus less on dual language development and more on English acquisition, therefore, not adopting dual language programs.

All in all, NCLB's three year requirement hurts its overall goal to close achievement gaps. As such, NCLB should be revised. Another option would be to provide an exception for schools with dual language programs and permit modified student assessment.[73] NCLB has a

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[66] Kristi L. Bowman, *supra* note 36 at 981.
[67] 20 U.S.C. §7011(8)(B).
[68] Virginia P. Collier, *supra* note 48 at 5.
[69] *Id.*
[70] Wayne P. Thomas, *supra* note 46.
[71] *Id.*
[72] *Id.*
[73] Kristi L. Bowman, *supra* note 36 at 982.

similar exception for students with disabilities so it is possible.[74] Furthermore, creating similar exams in Spanish specifically is very feasible and, as 75% of language minority students in the U.S. speak Spanish, it is cost effective to do so.[75]

Finally, opponents of innovative linguistic programs who propose that academic instruction in the classroom should only be in English claim the research does not truly support that these innovative programs are more beneficial.[76] As discussed at length above there is a lot of support for dual language program. Furthermore, while some early assessments may show that ELL students who are mainstreamed into English-only classroom appear to be equivalent, these early test results are misleading.[77] This type of mainstreaming will speed their children's acquisition of basic English but it does not lead to long-term academic success in English.[78] With each succeeding grade as the curriculum gets more cognitively complicated and complex this mainstreamed group of ELL students do less and less well on achievement exams.[79]

Dual language programs are not perfect and there are some challenges to implementing them. But all those challenges can be overcome and looking at the benefits that dual language programs present, they must be overcome.

IV. CONCLUSION

Given our historical development, schools have to ensure that ELL students are provided with meaningful education. While school administrators can legally implement a wide variety of language programs, they have a moral duty to implement those which are the best programs for

[74] *Id.*
[75] Virginia P. Collier, *supra* note 48 at 5.
[76] *See generally*, Joseph A. Santosuosso, *supra* note 31.
[77] Virginia P. Collier, *supra* note 48 at 16.
[78] *Id.*
[79] *Id.*

the students. The best way to do so is through dual language programs. Not only will this help ELL students, but it will increase diversity within the school, advance educational opportunities for native English speaking students, improve the moral of the teachers and school administers themselves, and increase parent involvement. While arguments have been made against implementation of such programs, in light of the astounding benefits dual language program present those challenges are minimal and possible to resolve. At the end of the day, what matters is what is best for the student. School administers have a chance to implement a program which is not just beneficial for the ELL student, but beneficial for the English speaking students and the schools communities as a whole. There is no reason why dual language programs should not be implemented.