

# **Language Policy Processes and Consequences**

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# **Language Policy Processes and Consequences**

Arizona Case Studies

Edited by

**Sarah Catherine K. Moore**

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# 1 SEI in Arizona: Bastion for States' Rights

Karen E. Lillie and Sarah Catherine K. Moore

*Those involved in making and enforcing public school policy should ensure that their actions are lawful.*

La Morte, 2008: 1

Recent discussions on educational language policy, particularly in contexts involving restriction, compulsory or repression-oriented policies (e.g. Wiley, 2007, 2010, 2013), have discussed the power of state governments over school law and federal policy. Federal laws have played an important role in monitoring K–12 educational settings despite the fact that public education is not specifically mentioned in the US Constitution (La Morte, 2008). Federal regulation is due, in part, to funding and oversight under the Elementary and Secondary Education Act (ESEA). State governments, however, particularly through state statutes and school board rules, tend to have a heavier hand in educational policy matters, more so than at the local government level. As La Morte (2008) discusses, there is a ‘myth of local control’ in education policy – while many believe that local districts have control over schools, the power truly often lies within state governments, since they are responsible for dispersing funds to schools and districts. A problematic issue within the structure of school funding is that all three levels of government have a say in what happens in schools, and it is rare that all three agree. Situated within the complexity of contextual issues, such as the politics, economy and ideologies inherent around language and schooling, the effects of language policies on educational settings can be potentially devastating in their execution. Such is the case in Arizona.

## English-Only in the US: A Brief History

The United States is multilingual in its nature, a nation founded by immigrants. A largely held myth is that English is its official language.

English may be the *de facto* language, but by no means is English the sole language through which all persons conduct themselves. Throughout US history, language has been taken for granted and often contested during eras when politics, financial considerations and national defense issues emerged as contentious, and during which opposition to the perceived influx of immigrants ‘taking over’ increased. Widespread desires for declaring English as the national language of the United States, which would further weaken the status of minority languages, emerged early in this nation’s history (Cashman, 2006; Crawford, 2000a, 2000b, 2004; Wiley, 2004, 2013; Wiley & Wright, 2004; Wright, 2011).

The US Constitution does not identify one language *de jure*; in fact, when its authors debated the question of language, such codification was deemed unnecessary due to the dominance of English (Kloss, 1998 [1977]; Wiley, 2004, 2010). Benjamin Franklin was one of the earliest to publicly argue against any type of bilingualism and push for an official English status. This occurred with the Pennsylvania Germans (Cashman, 2006; Crawford, 2000a, 2000b; Wiley, 2004). Once Franklin realized that the votes he needed were from those for whom English was not their dominant language, Franklin changed his mind and began withholding his English-only sentiments in an effort to embrace his desired political allies.

Pockets of English-only ideologies swept through other areas of the US territories as time passed and land was conquered. Meanwhile, Louisiana maintained bilingualism rigorously, despite once struggling against an imposed English-only governor in the mid-1800s. Native Americans were aggressively stripped of land and their languages to the point where language loss is significant and troubling even today (Del Valle, 2003; McCarty, 2004; Weinberg, 1995). The ‘civilize the savage’ notion was born, in part, out of nationalist-oriented sentiment, and the language policies surrounding actions against the Native population were highly repressive in nature and ideologically driven (see, especially, McCarty, 2013, on language policies affecting Native Americans; also Wiley, 2007, 2010). The Spanish-speaking population in California was also denied land, as *greaser laws* came into effect (Crawford, 2000a, 2000b; see also Del Valle, 2003). Under the California Land Act of 1851, English was used as a means of dominance, requiring *Californios* to demonstrate land ownership via English-only courts. In Hawai’ian schools, children were routinely assigned to certain schools based on their English proficiency (Lippi-Green, 2012; Wiley, 2010; Wilson, 2014). Hawai’ians succeeded to some extent, however, in maintaining their language while also adding English as a language of wider communication. Beginning with the First World War of the 20th century, xenophobic sentiments spread the idea that to be a ‘Good American’ one must have ‘Good English’ (Crawford, 2000a, 2000b). Thus, those who were seen as non-English-speaking were persecuted (e.g. Germans, Japanese) and in some cases even placed in internment camps on American soil.



Sociohistorical trends over the past couple hundred years demonstrate tendencies toward repression- and restrictive-oriented language policies throughout US history, as evidenced by some language policy scholars who have attempted to make sure policy lessons are learned from history (Wiley, 2007, 2013; also Crawford, 2000a, 2000b; Gándara *et al.*, 2010), particularly in regard to discussions on the history of bilingual education in the States (e.g. Wright, 2011; also García, 2009). The adage of history repeating itself when unknown is exemplified by the most recent 30 years of language policy and bilingual education in the United States. This recent wave of English-only sentiment began in a traditionally liberal state (California), and has touched one of the country's first states which had previously championed bilingualism (Massachusetts). This more current surge of attempts at bolstering the position and use of English in the US has been primarily aimed at education, and is known as the *English-Only Movement* (Crawford, 2000a, 2004).

## The English-Only Movement

The English-Only Movement was largely initiated, funded and propagandized by the group known as US English in the early 1980s (Cashman, 2006; Crawford, 2000a, 2004; Del Valle, 2003). Spearheaded by the late Senator S.I. Hayakawa and Dr J. Tanton,<sup>1</sup> the main focus of this organization was to make English the official language of the United States. In 1981, Hayakawa proposed the English Language Amendment, which was intended to be added to the Constitution and thus meet that goal (Crawford, 2004). This did not succeed. Two years later, US English was established.

Many of the arguments made by this group and other English-only proponents stem from false ideological beliefs about immigration and revolve around politics, economics, power and fear of the 'other'. In fact, some major ideological falsehoods presented during the English-Only Movement were that: (a) English has always been the social glue holding Americans together; (b) immigrants refuse to learn English like those immigrants of 'yesteryear'; (c) immersion is the best way to learn a language; and (d) language diversity will lead to language conflict, ethnic hostility and political separatism (Cashman, 2006; Crawford, 2000a, 2000b; Crawford & Krashen, 2007; Tollefson, 1991; Wiley & Wright, 2004). Eventually, an English-only bill called the Bill Emerson English Language Empowerment Act was passed by the House of Representatives in 1996, but not by the Senate (Del Valle, 2003; H.R. 123, 1996). Although the passage of a constitutional amendment has not been successful, individual states have taken up where the English-Only Movement failed. At the time of this publication, 31 states<sup>2</sup> have passed some type of English-only bill aimed at general language restriction in the areas of courts, social services and other venues, but not necessarily in education.

## The Attack on Bilingual Education

The 1990s introduced another campaign initiative, similar in sentiment to US English (i.e. English-only), but focused neither on immigration policy or official English: *English for the Children*. This new attack on language was more directly focused on destroying any vestiges of bilingual education, which were so hard won in previous cases and federal legislation (Del Valle, 2003). While prior legal findings, such as *Meyer v. Nebraska* (1923), *Farrington v. Tokushige* (1927), *Lau v. Nichols* (1974), Title VII of the ESEA (otherwise known as the Bilingual Education Act, 1968), and *Castañeda v. Pickard* (1981), did not stipulate bilingual education as the program model for instruction of English learners (ELs), these all helped ensure linguistic minority rights were upheld and that children were able to receive an equal education.<sup>3</sup> The entire premise of *Lau*, for example, was that regardless of the degree of equality in the curriculum and materials provided to students, ELs' education was unequal by virtue of the fact that they could not comprehend the lesson being delivered if they were not taught in a language they could understand.

Courts have dealt with language minority rights (especially, for example, in terms of violations of the Equal Education Opportunity Act or the 14th Amendment<sup>4</sup> of the Constitution), but courts are reluctant to make decisions regarding the type of education program that should be in place for ELs (Wiley, 2013). This is also true at the federal level. The federal government has an influence over states via legislation and laws, especially through funding to local education agencies (e.g. school districts). However, the federal government defers to states in the matter of how best to educate ELs (Del Valle, 2003; Johnson, 2009; Wiley, 2013; Wright, 2011).

In 2002, after multiple reauthorizations of the BEA, Title VII was eliminated by the *No Child Left Behind* Act (NCLB, 2001), and the new Title III<sup>5</sup> replaced Title VII in addressing EL concerns. Title III not only shifted its focus from multilingualism to an emphasis on English acquisition, but it also reinforced states' capacity for selection of the language program to be used with ELs (Wright, 2011). The one stipulation that is required is that the program must be 'research based'.

Because states have this jurisdiction, certain groups have had a more solid footing on which to promote and perpetuate English-only sentiment by attacking bilingual education in schools. Three states have implemented restrictions on program models involving non-English media of instruction, each resulting from voter-based initiatives. English for the Children, a campaign spearheaded by a multi-millionaire software entrepreneur named Ron Unz, has worked toward the elimination of bilingual education through various state-based movements (Combs, 2012; Crawford, 2000a, 2000b, 2004; Wright, 2011). These 'Unz initiatives' have been possible because some states' laws allow for voter initiatives, or propositions, to be voted upon if a certain

number of registered voters petition for its inclusion on a ballot (Combs, 2012; Wiley, 2004).

Using media-friendly terms and catchphrases, Unz sought to foster voter support to shift a landscape which included bilingual education to one now largely occupied by monolingual English programs. Unz began his campaign in California in the 1990s, claiming that the initiative was to help children and immigrants in 'their right to learn English' (Wiley & Wright, 2004: 150). Five major assumptions were the foundation of the English for the Children initiative (e.g. Wiley, 2004; Wiley & Wright, 2004):

- (1) the English language is a 'language of opportunity';
- (2) that immigrant parents are 'eager to have their children learn English';
- (3) that schools have a 'moral obligation' to teach English;
- (4) high dropout rates in California signaled that this was because the state was doing a poor job in 'educating immigrant children'; and
- (5) that 'young, immigrant children acquire second languages easily'.

The message to the voters had common sense appeal since English needed to be taught to students and the message ideologically appealed to voters. The inherent assumptions were that with concentrated time-on-task, children would be able to learn English 'quickly and rapidly', which would help ensure that their futures would be brighter politically, economically and socially. Unfortunately, 'most people thought they were voting for English' (Crawford & Krashen, 2007: 51), as the wording of the ballots was misleading and seemed to offer the choice of either bilingual education or English (see also Crawford, 2007).

## California: Proposition 227

In 1998, 61% of California voters passed the English for the Children initiative as *Proposition 227*. This meant that children were to be involved in 'sheltered English instruction' (SEI) for one year of school (aka, 180 days, conflicting with research regarding the typical 5–8 years necessary to achieve full second language proficiency; see, for example, August & Hakuta, 1997). Bilingual education was now essentially outlawed, unless students obtained a state waiver. These waivers were notoriously difficult to obtain.<sup>6</sup> Parents were also able to sue teachers if they felt that the teacher was not complying with the law regarding no use of the native language (Gándara *et al.*, 2010). In short, Prop. 227 made promises that by eliminating bilingual education and focusing heavily on English-only instruction, students would learn English more quickly and therefore perform better in school and have stronger academic outcomes.

In the years since its passage, Prop. 227 has not successfully promoted consistency across its programs nor kept its promise that ELs' academic achievement would improve. A five-year longitudinal study conducted by

Parrish *et al.* (2006) found tremendous variation in the types of programs that were in place, even in Year 2 after the passage of Prop. 227. Wentworth *et al.* (2010) looked at data from the California Standards Test during 2003–2007 to investigate the achievement gap post Prop. 227. Wentworth *et al.* determined that:

it is clear that current and former English learners are not achieving the same levels of academic success as their peers who enter school already knowing English ... [and that there was] not a clear association between the implementation of Prop 227 and consistent achievement gains for English learners relative to English-only students. (Wentworth *et al.*, 2010: 48)

### Arizona: Proposition 203

Two years after California's Prop. 227, Arizona passed *Proposition 203*. Arizona's version of Unz's anti-bilingual initiative defined English as 'the language of economic opportunity' (Cashman, 2006: 50), and also allowed parents to sue any school personnel who used a language other than English. Waivers were allowed but rarely known about (Cashman, 2006; Wiley & Wright, 2004; Wright, 2005). As in California, this proposition effectively dismantled bilingual education but it took several years for Prop. 203 to be enacted. As a result, almost a decade of confusion regarding the program models allowable under Prop. 203 ensued (Davenport, 2008, 2011).

#### *Initial passage of Proposition 203*

Prop. 203 was approved in November of 2000 with 63% of the vote in its favor. Prop. 203 is legally a part of the Arizona Revised Statutes (A.R.S.) §15-751 through §15-757 (A.R.S., 2000). State statutes are highly significant: these usually further define education policy with regard to specifics, such as issues like student:teacher ratios and subjects that must be taught (La Morte, 2008). Prop. 203's text dictates that:

The People of Arizona find and declare ... the English language is the national public language of the United States of America and of the state of Arizona. ... Immigrant parents are eager to have their children acquire a good knowledge of English, thereby allowing them to fully participate in the American Dream of economic and social advancement. (Arizona Voter Initiative, 2000: Section 1)

It goes on to read much like Prop. 227, in that schools and the government are morally responsible for making sure children know English so that they may become 'productive members of society', that previously, schools had done an 'inadequate job of educating immigrant children', and that 'young immigrant children can easily acquire full fluency in a new language, such

as English, if they are heavily exposed to that language in the classroom at an early age' (Arizona Voter Initiative, 2000: Section 1). This continues Prop. 227's idea that languages can be learned quickly and in settings where English is the medium of instruction.

### *The waiver question*

Initially in Arizona, bilingual education was allowed if a waiver was obtained by a parent. To do so, parents were required to apply in person every year, and schools were to provide alternative choices for program types and materials that would then be available to the students (A.R.S. §15-753; see also Wright, 2005). If a waiver was successful, students were to be placed in an environment where bilingual education 'techniques' were used or 'other generally recognized educational methodologies permitted by law' (A.R.S. §15-753; Wright, 2005). If 20 or more parents of students *in the same grade level* apply for a waiver, then the school must provide these types of environments. The likelihood of this occurring, however, is slim.

For a student to have been granted a waiver, they had to prove one of three things: (1) that they are older than 10 years; (2) that they have special needs which must then be proved to be beyond the limited English skills possessed by the child (and thus approved by the principal); or (3) they already know English. Specifically, to clarify the latter, the law states:

the child already possesses good English language skills, as measured by oral evaluation or standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower. (A.R.S. §15-753: B.1)

These 'language skills' were determined by the language proficiency tests in place; now, however, there is only one test which determines the proficiency of a student and it is known as the Arizona English Language Learner Assessment (AZELLA). The criteria set in order to be approved for a waiver made it unlikely that parents would be successful in their endeavors even if they tried to obtain (or knew about) one for their child. As Wright (2005) rightly pointed out:

the irony is that ELLs under 10 cannot be in a bilingual program unless they are designated as fluent English proficient (FEP), meaning they are no longer ELL students. And if they are not ELL students, there is no need to obtain a waiver, as waivers are only for ELLs. (Wright, 2005: 14)

## Massachusetts: Question 2

While Arizona's leadership struggled with the implementation of Prop. 203, English for the Children moved to the East Coast: specifically,

Massachusetts. There, the initiative passed in November of 2002, with 68% of the voters determining that Question 2 was the way forward for educating ELs. Like the propositions before it, Question 2 almost completely eliminated bilingual education in a state which had been one of the first to initiate and sign a bilingual education law in 1971 (Smith *et al.*, 2008; Uriarte *et al.*, 2010). Massachusetts had a long history of offering transitional bilingual education (TBE), but Question 2 was successful largely because some policy-makers and educational leaders were concerned that ELs were taking too long to achieve academically in that model. Smith *et al.* (2008) also noted that EL parents were worried that their children were not integrating fully in school, and that their English was not up to par for their perceptions of desired future job prospects and higher education.

Question 2 was fully implemented in the fall of 2003,<sup>7</sup> shifting EL instruction to Massachusetts's version of SEI. This version of SEI is broken into two components: 'sheltered content instruction' and 'English as a second language (ESL) instruction'. The Massachusetts Department of Education requires that ELs get 1–2.5 hours of ESL instruction a day, depending on their proficiency level (Smith *et al.*, 2008). The wording found in Question 2 is very similar to Propositions 227 and 203, and follows the phrase wherein it is believed that the ELs should be in SEI for 'a temporary transition period not normally intended to exceed one school year' (Smith *et al.*, 2008: 295; see also Gándara *et al.*, 2010; Uriarte *et al.*, 2010). The law is also comparable regarding use of the native language. Question 2 does indicate that use of the native language is allowed for clarification purposes as long as the assessment and materials are in English. Uriarte *et al.*, however, noted that 'in order to minimize the use of native languages, the law encourages schools to place children of different languages but of similar English fluency together' (Uriarte *et al.*, 2010: 69). Also, like the other Unz initiatives, Question 2 did not delineate clearly the pedagogy or practice for what this SEI should look like in classrooms. Massachusetts was different from California and Arizona in one small way: they did not eliminate all bilingual education opportunities (Smith *et al.*, 2008). In addition to the possible waivers for bilingual education for 20 or more desirous students of the same native language group (whose parents must all get waiver requests), Question 2 'did not do away with two-way bilingual programs' (Smith *et al.*, 2008: 296). Further, students could transfer to a school which had a bilingual setting.

Waivers for Question 2's SEI are also similar to those in California and Arizona, including the stipulation that waiver requests must be made in person, by the parent (Uriarte *et al.*, 2010). Ironically, like Arizona, the waiver is also automatically allowed if the student *already knows English*. For those students under than 10 years of age and designated as ELs, they were to be enrolled in Massachusetts's version of SEI for 30 days minimum, preferably one year maximum.<sup>8</sup> This aligns with and carries forward Prop. 227's and Prop. 203's assumption that young ELs can learn English 'easily' and continues

the idea that language can be learned 'rapidly'. Ten years later, scant research has been done to document the implementation effects and the outcomes of ELs in Massachusetts (Uriarte *et al.*, 2010). In one of the few existing studies, Uriarte *et al.* found that in the four years after the passage of Question 2, ELs were more likely to be enrolled in special education, dropout rates had increased and the overall achievement gap was not being addressed.

Review of the English-only trajectory and its impact on laws that specifically identify SEI as the program model for instruction of all language minority students is not complete without understanding its origins. The next section discusses how SEI as a program model was defined by scholars and practitioners previous to its use as an alternative to bilingual education, including its initial emergence in the field.

## The Genesis of SEI

The abbreviation 'SEI' generally refers to either *Structured English Immersion* or *Sheltered English Immersion*. It first emerged in the literature as *Structured Immersion*, or SI, in a report written as a policy recommendation by Keith Baker, a sociologist, and Adriana de Kanter, a management intern, working for the Office of Planning, Budget and Evaluation (OPBE) during the Carter and Reagan administrations (Baker & de Kanter, 1981, 1983; see also Crawford, 2004). Baker and de Kanter were assigned the task of evaluating the efficacy of TBE programs versus alternatives to TBE. The main goal of TBE programs is the transition of ELs into mainstream English settings over a several-year period. Unlike *maintenance bilingual* programs, the goals of TBE typically do not involve native language maintenance. Baker and de Kanter initially reviewed 28 programs (Baker & de Kanter, 1981) and published a later, revised version based on a review of 39 programs (Baker & de Kanter, 1983). Their initial findings were published in a 1981 report commonly referred to as the Baker and de Kanter Report.

Research conducted and findings presented in Baker and de Kanter focused on the following two research questions:

- (1) Is there a sufficiently strong case for the effectiveness of TBE for learning English and non-language subjects to justify a legal mandate for TBE?; and
- (2) Are there any effective alternatives to TBE? That is, should one particular method be exclusively required if other methods also are effective? (Baker & de Kanter, 1983: 33; also Baker, 1987: 353)

According to Baker and de Kanter, the efficacy of SI as superior to TBE was demonstrated by four successful cases: three in Québec (Barik & Swain, 1975; Barik *et al.*, 1977; Lambert & Tucker, 1972) and a case in Texas