

BASES FOR STATE LEP PROGRAM LEGAL REQUIREMENTS**I. FEDERAL LAW****A. U.S. Constitution: Fourteenth Amendment -- Due Process and Equal Protection Clauses**

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."

B. Lau v. Nichols

In Lau v. Nichols (1974), the United States Supreme Court held that San Francisco's failure to provide supplemental English language instruction to 1,800 students of Chinese ancestry violated Title VI of the Civil Rights Act, 42 U.S.C. section 2000d. The Court stated that those students were thus denied a meaningful opportunity to participate in the public educational program.

C. Equal Educational Opportunities Act: 20 U.S.C. § 1703(f)

This statute recognizes the state's role in assuring equal educational opportunity for national origin minority students. It declares:

"No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by --

"(f) 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." (Emphasis supplied.)

D. Major Federal Cases Interpreting Section 1703(f)

The Department relies on three major federal cases which have interpreted Section 1703(f): Castañeda v. Pickard (5th Cir. 1981) 648 F.2d 989, Gómez v. Illinois State Bd. of Educ. (7th Cir.) 1030, and Keyes v. School Dist. No. 1 (D.Colo. 1983) 576 F. Supp. 1503. The most important portions of each of these three cases are quoted below:

1) Castañeda v. Pickard:

"In a case... in which the appropriateness of a particular school system's language remediation program is challenged under § 1703(f). ... the responsibility of the federal court is threefold. First, the court must examine carefully the evidence the record contains concerning the soundness of the educational theory or principles upon which the challenged program is based.... The court's second inquiry would be whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school.... Finally, ...[if a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that time, no longer constitute appropriate action as far as that school is concerned." (Castañeda. at pp. 1009-1010.)

"In order to be able ultimately to participate equally with the students who entered school with an English language background, the limited English speaking students will have to acquire both English language proficiency comparable to that of the average native speakers and to recoup any deficits which they may incur in other areas of the curriculum as a result of this extra expenditure of time on English language development." (Id. at p. 1011.)

"As in any educational program, qualified teachers are a critical component of the success of a language remediation program. A bilingual education program, however sound in theory, is unlikely to have a significant impact on the language barriers confronting limited English speaking school children, if the teachers charged with day-to-day responsibility for educating these children are termed 'qualified' despite the fact that they operate in the classroom under their own unremedied language disability. The use of Spanish speaking aides may be an appropriate interim measure, but such aides cannot, [the district] acknowledges, take the place of qualified bilingual teachers." (Id. at p. 1013.)

2) Gómez v. Illinois State Bd. of Educ.:

Section 1703(f) "requires that state, as well as local, educational agencies ensure that the needs of LEP children are met." (Gómez at p. 1043.)

"Exactly what state educational agencies must do beyond establishing the minimums for the implementations of language remediation programs and enforcing those minimums is not at issue in the instant appeal, because the plaintiffs have done no more than allege that the defendants failed even to establish the minimums needed for identifying and placing LEP children." (Id. at p. 1043.)

3) Keyes v. School Dist. No. 1:

"The key to an effective elementary bilingual classroom is the ability of the teacher to communicate with the children. Thus, if it is expected that understandable instruction will take place, there must be assurance that the teacher has the necessary bilingual skills. That is not the fact in Denver." (Keyes at p. 1516.)

II. CALIFORNIA LAW

A. State Constitution: Due Process and Equal Protection Clauses

"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws...." (Article I, section 7(a).)

B. Former State Bilingual Education Act, A.B. 507

This Act established specific bilingual program requirements for identification, instruction, staffing assignments, classroom composition, reclassification and parent involvement.

C. California's "Sunset" Statutes

"Sunset" is defined in Education Code section 62000 as follows:

"Sunset" and "sunset date," as used in this part, mean the date on which specific categorical programs cease to be operative and Sections 62002, 62003, 62004, 62005, and 62005.5 govern program funding.

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The educational programs referred to in Sections 62000.1 to 62000.5, inclusive, shall cease to be operative on the date specified, unless the Legislature enacts legislation to continue the program after the review prescribed in Section 62006. (Emphasis supplied.)

Accordingly, there are five "sunset" statutes which govern the bilingual education program, which "sunset" on June 30, 1987: Sections 62002, 62003, 62004, 62005, and 62005.5. Of these, the most important is Section 62002. It states:

If the Legislature does not enact legislation to continue a program listed in Sections 62000.1 to 62000.5, inclusive, the funding of that program shall continue for the general purposes of that program as specified in the provisions relating to the establishment and operation of the program. The funds shall be disbursed according to the identification criteria and allocation formulas for the program in effect on the date the program shall cease to be operative pursuant to Section 62000.1 to 62000.5, inclusive, both with regard to state-to-district and district-to-school disbursements. The funds shall be used for the intended purposes of the program, but all relevant statutes and regulations adopted thereto regarding the use of the funds shall not be operative, except as specified in Section 62002.5. (Emphasis supplied.)

When Section 62002 is applied to the intent section of A.B. 507, former Section 52161, eight "general" or "intended" purposes are located. They are:

- 1) "[The primary goal of all [bilingual] programs is, as effectively and efficiently as possible, to develop in each child fluency in English."
- 2) The program must "provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language."
- 3) The program must "provide positive reinforcement of the self-image of participating pupils."
- 4) The program must "promote cross-cultural understanding."
- 5) California school districts are required "to offer bilingual learning opportunities to each pupil of limited English-proficiency enrolled in the public schools."
- 6) California school districts are required "to provide adequate supplemental financial support" in order to offer such bilingual learning opportunities.
- 7) "Insofar as the individual pupil is concerned participation in bilingual programs is voluntary on the part of the parent or guardian."
- 8) School districts must "provide for in-service programs to qualify existing and future personnel in the bilingual and cross-cultural skills necessary to serve the pupils of limited English-proficiency of this state."

The other major "sunset" statute is Section 62002.5. It provides for parent advisory committees and school site councils in the following manner:

Parent advisory committees and school site councils which are in existence pursuant to statutes or regulations as of January 1, 1979, shall continue subsequent to the termination of funding for the programs sunsetted by this chapter. Any school receiving funds from Economic Impact Aid or Bilingual Education Aid subsequent to the sunseting of these programs as provided in this chapter, shall establish a school site council in conformance with there requirements in Section 52012. The functions and responsibilities of such advisory committees and school site councils shall continue as prescribed by the appropriate law or regulation in effect as of January 1, 1979. (Emphasis supplied.)

III. OFFICE OF ADMINISTRATIVE LAW DETERMINATION of December 22, 1994, pursuant to Government Code Section 11347.5; Title 1, California Code of Regulations, Chapter 1, Article 3, Sections 121-128.

At the request of the Little Hoover Commission, the Office of Administrative Law (OAL) provided a regulatory determination concerning certain Program Advisories issued by the California Department of Education. One of the Advisories was the Categorical Funding Sunset Advisory, dated August 2, 1987, which the Department issued to guide districts in carrying out responsibilities after the sunset of five categorical programs. One of the programs addressed in this Advisory was the *State Program for Students of Limited English Proficiency (LEP)*.

In its evaluation of the CDE Advisory, the OAL concluded that: "The Department is expressing the only legally tenable interpretation of the law or laws about which it is advising."

IV. STATE BOARD OF EDUCATION POLICY

On July 14, 1995, the State Board of Education (SBE) adopted a policy statement on educational programs and services for Limited-English Proficient (LEP) students. The policy statement is not binding on school districts. It is intended to guide school districts and motivate them to implement high quality language and academic programs for LEP pupils. For a complete copy of the policy, see Appendix I.

The policy acknowledges that the legal bases for the *State Program for Students of Limited English Proficiency (LEP)* are federal and state law, as well as applicable court decisions cited above. The policy also expresses the intent of the SBE to approve waiver requests relating to the general purpose requirements of former A.B. 507 where results are being or will be achieved by the applying agency.

The policy establishes two goals which the SBE urges all school districts to achieve through educational programs and services for LEP students:

- ◆ Rapid development of English language proficiency (literacy), including speaking, reading and writing.
- ◆ Opportunity to learn, including access to a challenging core curriculum and access to primary language development.

California Department of Education
Complaints Management & Bilingual Compliance

LEP Program Guide
(Rev. 8/97)

STATE PROGRAM FOR STUDENTS OF LIMITED-ENGLISH PROFICIENCY

1997-98

List of Legal Requirements

<i>New Item</i>	<i>Description</i>	<i>Former LEP Item</i>
Standards, Assessment and Accountability		
I-CON3	LEP Student Redesignation to FEP	(LEP e)
Teaching and Learning		
II-CON12	English Language Development	(LEP 2)
II-CON13	Academic Instruction Through the Primary Language	(LEP 3)
II-CON14	Specially Designed Academic Instruction in English (SDAIE)	(LEP 4)
II-CON15	Self-Image and Cross-Cultural Understanding	(LEP 5)
Opportunity (Equal Educational Access)		
III-CON20a	Home Language Survey	(LEP 1a)
III-CON20b	English Language Proficiency test (30 Days)	(LEP 1b)
III-CON20c	Primary Language Proficiency test (90 Days)	(LEP 1c)
Staffing and Professional Growth		
IV-CON22	Adequate Qualified Teachers: English Language Development	(LEP 6)
IV-CON23a	Adequate Qualified Teachers: Primary Language Instruction	(LEP 7)
IV-CON23b	Adequate Qualified Teachers: SDAIE	(new)
IV-CON24	Adequate In-service Training for Existing and Future Staff	(LEP 8)
Parent and Community Involvement		
V-CON30	LEP/FEP Parent Notification (test results)	(LEP 10)
V-CON31	Parent Notification of Voluntary Program Participation	(LEP 11)
V-CON32a	School Bilingual Advisory Committee (BAC)	(LEP 12a)
V-CON32b	District Bilingual Advisory Committee (DBAC)	(LEP 12b)
Governance and Administration		
VI-CON35	Annual Language Census Survey Report (R30-LC)	(LEP 1d)
Funding		
VII-CON39a	Adequate Basic General Fund Resources	(LEP 9a)
VII-CON39b	Appropriate Use of EIA-LEP Funds	(LEP 9b)

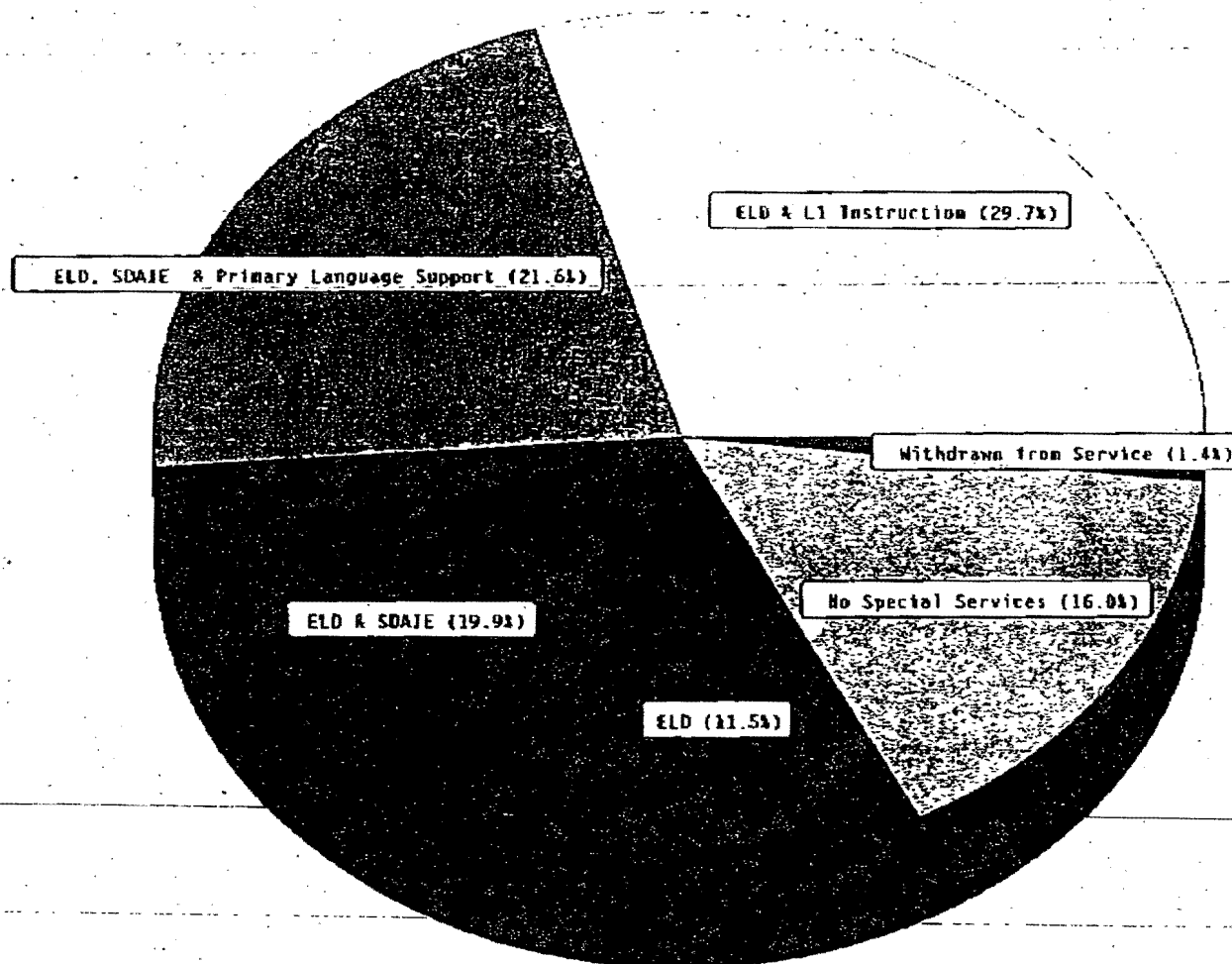
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LEP Administrative Options

Option/Resource	Description
1 - Results Based Assessment of District Services to LEP Students <u>Option 1 Alternatives: Technical Standards and Recommended Practices for Development of Outcome Based Assessment of District Services to Limited-English-Proficient (LEP) Students, 1991</u>	A district provides evidence that its program for LEP students is effective in developing their English proficiency, and in providing them equal opportunity for academic achievement. Data show that the district's program does not result in substantive academic deficits for LEP (or former LEP) students.
2 - CTC Authorized Teachers Commission on Teacher Credentialing	Districts assign CTC authorized teachers to meet all or part of the need for bilingual, ELD and SDAIE teachers.
3 - Local Designation of Teachers <u>Technical Assistance Manual: Local Designation of Qualified Teachers - LEP Staffing Option 3 (September 1989)</u> <u>Guidelines for Proficiency Tests (1982)</u>	Districts may develop procedures and criteria as alternatives to CTC authorizations, and, upon approval by CDE, issue local certifications to teachers who meet established standards of competence as ELD, SDAIE or bilingual teachers.
4 - LEP Staffing Plan and Annual Report <u>Sample Plan to Remedy the Shortage of Qualified Teachers for LEP Students (1989)</u> <u>A Resource Guide: Plan to Remedy the Shortage of Qualified Teachers (1989)</u> <u>Overcoming Teacher Shortages for LEP Students: A Promising Practices Guide (1991)</u>	Districts with a shortage of bilingual or ELD teachers develop a plan to remedy that shortage, and annually report to CDE on progress in the implementation of that plan.
5 - Waiver of Primary Language Instruction <u>Sample General Waiver Request (1989)</u>	Districts that are unable to provide the academic instruction through the primary language that some LEP students are diagnosed to require, may develop an alternative program of instruction, and apply to CDE for a one to two-year general waiver. During the time of the waiver the district continues to implement its <u>LEP Staffing Plan</u>, as well as the alternative instructional program described in the waiver.
6 - Small or Scattered Distributions <u>Memorandum: Six Staffing and Instructional Options and CCR Implications (September 18, 1989)</u>	Districts that enroll one or more language groups of LEP students who number no more than 50 districtwide, and no more than 20 at any one school, may participate in this option for such language group(s). The specific CCR requirements for the instructional program (II-CON12, 13, & 14) and staffing (IV-CON22, 23) are not reviewed.

ENROLLMENT OF LEP STUDENTS IN RECEIVING INSTRUCTIONAL SERVICES

(Refer to Table 13)



1997 TOTAL LEP = 1,381,393

**Number of Limited-English-Proficient (LEP) Students Receiving
Bilingual Instructional Services in California Public Schools, by Service Received, 1997**

County	English Language Development (ELD)	ELD and Specially Designed Academic Instruction in English (SDAIE)	ELD and SDAIE with Primary Language Support	ELD and Academic Subjects through the Primary Language (L1)	Withdrawn from all Services	Not receiving instructional services as described in the other categories	Total LEP
Alameda	3,856	10,445	7,814	7,091	1,051	7,809	38,066
Amador	30	6	4	0	0	6	46
Butte	542	577	1,368	467	9	730	3,693
Calaveras	14	0	3	0	0	35	52
Colusa	410	719	34	20	1	151	1,335
Contra Costa	2,849	3,491	2,372	2,989	537	2,319	14,557
Del Norte	209	0	108	0	18	13	348
El Dorado	166	146	242	422	1	375	1,362
Fresno	6,894	15,867	10,100	8,040	357	6,076	47,334
Glenn	128	180	269	350	15	151	1,093
Humboldt	475	22	47	50	0	42	636
Imperial	1,666	3,613	2,959	5,835	332	978	15,383
Inyo	62	0	56	61	2	26	209
Kern	2,797	5,531	5,862	8,730	837	1,709	25,466
Kings	645	789	985	1,214	6	311	3,950
Lake	70	3	77	222	3	21	396
Lassen	37	4	13	0	0	42	96
Los Angeles	43,889	95,382	119,097	189,120	4,670	105,482	557,640
Madera	158	1,208	833	2,550	142	1,242	6,133
Marin	743	488	534	499	33	396	2,693
Mariposa	0	0	3	0	0	8	11
Mendocino	24	147	397	610	2	628	1,808
Merced	1,153	2,648	5,449	5,493	246	865	15,854
Modoc	94	3	64	0	0	144	305
Mono	23	11	24	88	13	45	204
Monterey	3,585	3,267	2,788	10,537	162	2,190	22,529
Napa	275	1,076	165	859	25	1,057	3,457
Nevada	48	0	0	0	0	20	68
Orange	18,721	28,229	46,428	17,715	1,787	21,452	134,332
Placer	741	224	407	86	79	196	1,733
Plumas	0	0	0	0	0	58	58
Riverside	5,073	12,788	11,427	16,023	844	6,626	52,781
Sacramento	6,124	10,869	11,129	2,036	526	3,623	34,307
San Benito	52	431	195	1,024	2	36	1,740
San Bernardino	7,141	4,528	14,798	15,742	1,345	11,090	54,644
San Diego	12,529	18,941	12,832	39,363	2,114	11,711	97,490
San Francisco	5,820	2,480	0	7,699	697	2,977	19,673
San Joaquin	2,527	5,096	9,226	2,826	404	3,591	23,670
San Luis Obispo	361	315	475	1,199	86	416	2,852
San Mateo	2,964	5,533	4,404	4,514	214	1,440	19,069
Santa Barbara	1,231	3,126	1,462	7,471	244	2,821	16,355
Santa Clara	11,797	16,199	7,747	13,646	605	6,021	56,015
Santa Cruz	819	1,223	685	5,984	61	1,673	10,445
Shasta	190	60	510	0	17	131	908
Sierra	0	0	0	0	0	1	1
Siskiyou	43	52	33	0	0	14	142
Solano	817	1,523	662	1,133	50	1,828	6,013
Sonoma	2,236	1,026	2,030	1,947	229	724	8,191
Stanislaus	3,648	2,997	1,515	4,005	113	4,272	16,550
Sutter	940	660	137	96	49	1,116	2,998
Tehama	87	45	568	328	2	18	1,048
Trinity	1	0	2	0	0	0	3
Tulare	1,442	8,155	4,060	5,538	210	1,368	20,773
Tuolumne	0	6	0	7	0	35	48
Ventura	1,541	2,562	3,236	14,895	830	3,235	26,299
Yolo	483	1,532	1,098	1,469	23	756	5,361
Yuba	471	622	1,660	134	0	293	3,180
State totals	158,640	274,845	298,395	410,127	18,993	220,393	1,381,393
Percent	11.5%	19.9%	21.6%	29.7%	1.4%	16.0%	100.0%

December 9, 1997

MEMORANDUM TO MICHAEL COHEN
MICKEY IBARRA
KAREN SKELTON

From: Maria Echaveste 

Re: Bilingual Education

As per our discussion, we will organize a meeting with the California folks on this issue the week of **January 5, 1998**.

Thank you.



**OPPOSE THE UNZ INITIATIVE
SUPPORT "EDUCATION" FOR THE CHILDREN**

The Unz initiative is a measure also known as "English for the Children" that a group called One Nation/One California is attempting to place on the June 1998 ballot to eliminate bilingual education and all other English language development programs. The initiative would require that only English be used in the classrooms. All English learners would be placed in *separated, segregated* classrooms for one year to learn English. Children of different ages and grade levels could all be placed together in these separate classrooms. After *one year*, students would be placed back in regular classrooms, regardless of whether or not they have mastered English.

The initiative is supported by Ron Unz, a wealthy computer businessman who wrote the initiative. Ron Unz has contributed substantial amounts of his private funds to the campaign and has formed One Nation/One California to run the campaign. He has NO background whatsoever in bilingual education or the education of English learners. He ran for governor in the Republican primary in 1994 and lost to Governor Pete Wilson. He has taken positions on statewide ballot measures in the past, such as his support for Proposition 209, probably to increase his public profile as a politician. He has enlisted the support of individuals associated with the English Only movement, such as English immersion teacher and former U.S. English board member Gloria Matta Tuchman. These facts suggest that some supporters of the Unz initiative may have motives in mind other than the best interests of English learners.

THE UNZ INITIATIVE:

- **IMPOSES A ONE-SIZE FITS ALL SOLUTION**
The initiative eliminates the current language programs which allow for a wide range of approaches to teaching English for children. The one size fits all solution does not serve children, parents, or teachers.
- **SEVERELY RESTRICTS PARENTAL CHOICE**
The initiative strips parents of the right they now have to decide how their children are taught. It replaces the current, automatic parental right with a complicated, bureaucratic procedure that gives school districts unbounded discretion to honor or deny a parent's choice of educational instruction program for their child.

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- **PENALIZES TEACHERS AND EDUCATION OFFICIALS**
The initiative authorizes lawsuits against teachers and education officials and holds them personally liable for damages if they do not follow the mandated English-only curriculum.
- **EXPERIMENTS WITH OUR CHILDREN'S FUTURES AND PROVIDES NO ACCOUNTABILITY**
This initiative experiments with our children's future by allowing them only one year to learn English while they fall academically behind their English speaking peers before being plunged into a regular English only curriculum. At the same time, the initiative is silent about assessing English-learners' academic progress and further fails to provide any requirements for teacher training.
- **SAVES NO MONEY**
The initiative's promises are illusory; no money is saved because the initiative explicitly preserves funding for its 90's version of sink or swim.
- **RESTRICTS TEACHING OF FOREIGN LANGUAGES FOR COLLEGE ADMISSION REQUIREMENTS**
Foreign language courses necessary to fulfill college entrance requirements will only be offered to children whose parents follow onerous procedural requirements for a waiver from English-only instruction and to whom the school districts agrees to grant a waiver.



PRELIMINARY SECTION-BY-SECTION ANALYSIS OF UNZ INITIATIVE
(September 19, 1997)

Introduction

Ron Unz filed the English-only education initiative (the "Unz initiative") with the California Attorney General's Office on May 9, 1997. On June 26, 1997, the Attorney General's Office issued a proposed title and summary, permitting the proponents to begin collecting signatures to qualify the initiative for the June 1998 ballot. Mr. Unz, a multimillionaire software developer from the Silicon Valley, is personally underwriting much of the campaign to qualify the initiative. Mr. Unz is a former Republican gubernatorial candidate who lost to Pete Wilson in the 1994 GOP primary. Mr. Unz recruited as co-author of the initiative Gloria Matta Tuchman, a first grade teacher and former national board member of U.S. English, the leading supporter of English-only and official English policies in the United States. The initiative calls for the virtual abolition of language development programs in California that are currently serving 1.3 million public school students who are limited English proficient.

Article 1. Findings and Declarations

A. English as the National Public Language

The Unz initiative proclaims that English is important because it is the national public language of the United States. The initiative also states that English is the leading world language for science, technology and international business, and is therefore the language of economic opportunity.

Analysis

English is indisputably the national public language of the United States. Proficiency in English plainly brings with it significant benefits. No educator of any prominence disputes these truisms. However, learning English alone -- without more -- will not provide access to economic opportunities. Children's opportunities for excelling in science, technology, government, or domestic and international business depend not only on these keystone language skills but also on mastering such subjects as math, science, history, and civics. Bilingual education and the other English language development techniques eliminated by the initiative are designed to teach children English while ensuring that they are not deprived of the opportunity to learn other essential academic skills.

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Immigrant parents, like all parents regardless of background, want their children to participate in the American dream of economic opportunity and social advancement. Not surprisingly, all immigrant parents in the United States are eager to have their children master the English language. But immigrant parents, like all parents, want their children also to have meaningful access to and the opportunity to learn and to excel in the other core academic subjects taught in school.

B. Constitutional Duty to Educate all Children

The Unz initiative declares that public schools have a constitutional duty as well as a moral obligation to provide all children with the skills necessary to become productive members of society. The initiative states that literacy in the English language is among the most important of these skills.

Analysis

Literacy in English is without a doubt a necessary and important skill that all children in California should acquire. However, a child's right to an education means more than simply learning the English language. If language were the only important skill for children to acquire, our educational system would limit itself to teaching that skill alone. It does not because many other skills are important to future success. Limited English proficient (LEP) students should not be restricted from learning math, science, and other subjects that will prepare them to contribute to this society.

C. Experimental Language Programs

The Unz initiative claims that California schools are wasting money on "experimental" language programs that have failed, as demonstrated by "high drop out rates and low English literacy levels."

Analysis

Bilingual education is not an "experimental" language program. Bilingual education programs have two main goals: (1) the rapid development of English language proficiency; and (2) the simultaneous development of academic skills. The success of well funded and properly implemented bilingual education programs is documented by reputable research.¹ This research shows that primary language instruction does not impede acquisition of English. In fact, students with a strong academic background in their first language are more likely to develop high levels of English proficiency than those who do not have such advantage.²

¹ See National Research Council, *Improving Schooling for Language Minority Children: A Research Agenda* (Diane August & Kenji Hakutas eds., 1997).

² See Wayne P. Thomas & Virginia P. Collier, Summary of Research, *School Effectiveness for Language Minority Students* (Feb. 20, 1997).

Moreover, the initiative would not only bar bilingual education programs, but any other English-language development program that uses any amount of non-English language instruction. Currently, California's public schools use a wide range of approaches to English language development. Research is ongoing on the performance and proper implementation of these various approaches. Ironically, the Unz initiative -- premised on the benefits of destroying any so called experimental language development programs -- adopts and mandates the most unproven approach: sheltered English immersion. Sheltered English is far more "experimental" than bilingual education; it is the relative immaturity of the model that makes many researchers nervous.³ In addition, research shows that limited English proficient students who are placed in immersion classrooms are in fact reclassified as English proficient at a lower rate than students who receive some primary language instruction.⁴

Moreover, the Unz initiative's mandate to implement sheltered English demonstrates a basic misunderstanding of the method. The initiative's definition of "sheltered English" is completely different from that used by the Department of Education and researchers. Sheltered English is meant to be a step in English language development in which intermediate level English learners are brought up to the speed of a mainstream English classroom before transitioning from bilingual to mainstream classes. It is not meant to serve as the only source of English language development. Reputable research shows that it takes three or more years to become sufficiently fluent in English to participate fully in an English-taught school curriculum.⁵

The initiative's findings are premised on unfounded allegations. California compiles no drop-out or English literacy data for limited English proficient students. Drop-out rates are reported by ethnicity, not language. The only available indication of English ability for limited English proficient students is redesignation as fluent English proficient. Since fluent English proficient redesignation is not broken down by program type, redesignation is not an accurate indicator of bilingual education's or any other program's success or failure. Currently, only 30.2 percent of the limited English proficient students in California's schools are enrolled in language development programs that use native language instruction.⁶

³ See BW Associates, *Meeting the Challenge of Language Diversity: An Evaluation of Programs for Pupils with Limited Proficiency in English*, Volume I, Executive Summary.

⁴ See J. David Ramirez. *Final Report: Longitudinal Study of Structured English Immersion Strategy, Early-Exit and Late-Exit Transitional Bilingual Education Programs for Language-Minority Children* (Feb. 1991).

⁵ *Id.*

⁶ See California Department of Education, *Language Census Report for California Public Schools* (1996).

D. Acquisition of English

The Unz initiative also states that young children can easily acquire full fluency in the English language if they are heavily exposed to that language in the classroom at an early age.

Analysis

The initiative disregards the importance of developing other academic skills and focuses exclusively on acquisition of the English language. Non-English speakers and limited English proficient students cannot learn the content of subjects that are being taught in a language they have not yet mastered. If acquiring skills in math, science and other core subjects were not important, schools could simply eliminate all other subjects, leaving only language instruction for all young children. In fact, children are learning skills in all of the core subject areas at a young age because educators increasingly recognize the importance of an early foundation in all subject matters.

Article 2: English Language Education

The Unz initiative mandates that schools use only English to teach academic subjects to all students. The initiative only permits teaching English to children who are not proficient in the language through "sheltered English immersion" for a period "normally" not to exceed one year. The initiative also permits schools to place in the same classroom children of similar English proficiency level, regardless of age or grade level. In addition, the initiative encourages schools to mix in the same classroom English learners from different native-language groups. Finally, the initiative calls for retention of all current supplemental funding for English learners.

Analysis

a. Teach English through teaching in English

The initiative's "one size fits all" approach will restrict school districts' ability to implement effective programs. Current regulations provide school districts with several options among English language development programs, including "English as a second language," "maintenance bilingual education," "sheltered English," "submersion," and "transitional," among others. (See Cal. Educ. Code § 52163)⁷. The current programs, all of which have as their main goal effectively and efficiently developing English fluency in each child, recognize the necessity to structure programs to meet the needs of students who are at different levels in their acquisition of English proficiency.

⁷ On June 30, 1987, the bilingual education provisions previously codified in the Education Code "sunsetted." Cal. Educ. Code § 62000.2(d). While the former Bilingual Education Act has become inoperative, several regulations implementing that act remain operative. See 5 Cal. Code Regs. §§ 4301-4313. All references are to the former California Educational Code provisions.

Additionally, the initiative's affirmative encouragement of mixing non-English speaking children of different native-languages without requiring the teacher to have any special training, will restrict the children's ability to learn effectively. Such unrestricted mixing would make it difficult for a teacher to be able to communicate with children of various languages. Currently, English language development courses generally are structured to have either a teacher or teaching assistant in the classroom who understands and can communicate with children in their native language. The initiative's encouragement of mixing children of different native-languages may mean a child will not be able to communicate with anyone in the classroom. Moreover, even where a teacher or aide speaks a child's native language, the initiative prohibits communication with the child in that language. This approach of immersion is guaranteed to trigger feelings of isolation, and creates a true "sink-or-swim" environment for young children.

b. Place in same classroom children of different ages

The initiative's proposal to place non-English speaking children of *all* ages and grades together is not conducive to learning. Children pass through age-based developmental stages regardless of what language they speak; that is why grade specific classrooms were established once school populations permitted it. There is no pedagogically sound justification for placing children of vastly differing ages and maturity levels in one classroom. Older and younger children would both suffer from such placement. Because the appropriate learning material for all subjects differs by grade, mixing of too many grade levels also ensures that no instruction whatsoever in subjects other than English could ever occur under the initiative's immersion approach.

c. No standards for teacher -- no measurement of effectiveness

Equally problematic is the absence of any requirement for teacher training or assessment of student progress. The only mention of standards for teachers is that teaching personnel possess a good knowledge of the English language. This is in contrast to current law, requiring that the State Department of Education conduct appropriate training for bilingual education teachers and set minimum standards for teacher qualifications. (Cal. Educ. Code §§ 52182, 52183).⁸

In addition, the Unz initiative does not provide for any method of measuring the program's effectiveness. The initiative calls for educating English learners through "sheltered English immersion" during a temporary one-year period and then transferring students to mainstream English-only classrooms regardless of any particular student's progress or success in acquiring mastery of English. Currently, under 5 Cal. Code Regs. § 4311, school districts with English learners must assess those students' academic progress annually.

⁸ The performance standards provisions were inspired by the Little Hoover Commission Report recommending that legislation be enacted to "establish [] a state frame work for local control of educational methods for non-English fluent students." Little Hoover Commission Report, *A Chance to Succeed: Providing English Learners with Supportive Education* (July 1993).

The initiative is written with the notion that English language development programs have not been held accountable for immigrant students' progress. Yet, the initiative displaces current standards for "bilingual education" teachers and enacts no substitute standards. The initiative also fails to provide an assessment mechanism for students' mastery of English through the immersion program. The initiative provides no mechanism whatsoever by which to evaluate the success of this experimental sheltered English immersion approach.

d. One year limit on special instruction

The initiative's sheltered English immersion program for student's who are limited English proficient may violate federal law. In Lau v. Nichols, 414 U.S. 563, 566 (1974), the U.S. Supreme Court held, "[t]here 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." The initiative would only provide students who are English learners with one year "transitional" instruction. Even in the transitional course, the instruction would be exclusively through the medium of English. Such a program prohibits students who are English learners from participating meaningfully and equitably in the school curriculum, as required by federal law. The consequence of enforcing a state statute that violates federal law in this manner could include a total loss, currently in excess of \$2 billion, of federal funding for education in the state.

Article 3: Parental Exceptions

The Unz initiative permits parents to request "waiver" out of the requirement of English-only instruction. To secure a waiver, the parent must apply in writing, annually and in person, at the school. However, a parent cannot apply for a waiver unless the child meets any of three narrowly defined exceptions: (1) the child already knows English and scores above average for his/her grade level in standardized tests of English vocabulary, comprehension, reading and writing, or scores above the 5th grade average, whichever is lower; (2) the child is over 10 years old and the principal and school staff believe another program would be better for the child to acquire basic English language skills; (3) the child has (a) "special physical, emotional, psychological, or educational needs"; (b) the child has spent at least 30 days each year in the main English-only classroom; (c) a written description of the special needs is submitted; and (d) the school superintendent approves.

After a parent satisfies all of these requirements, the child "may" be transferred to classes using bilingual education or some other form of English language development or other instruction prohibited by the initiative. If there are 20 or more students in the same grade who are granted a waiver, the school must provide an alternative program; if not, the student must be allowed to transfer to a school that provides such a program.

Analysis

The Unz initiative gives school districts unlimited discretion to approve or deny waivers, without providing any standards for denial or providing any appeal procedure from a district's refusal to grant a waiver. The complicated requirements to qualify for one of the

three narrowly defined waivers assures that only a very limited number of parents would even apply for a waiver. Additionally, even if a parent satisfies these requirements, the initiative provides districts with such unbounded discretion that the waiver could still be denied for any reason.

The initiative would eliminate the automatic parental choice provided under current law, which provides for parental choice and involvement without complicated procedural requirements. Specifically, state law now gives parents the right to request English-only instruction for their children regardless of the student's age or grade level and without requiring that the superintendent, school principal, or school staff grant permission. (See 5 Cal. Code Regs. § 4308).

a. Complicated procedures

The initiative basically requires that a parent (1) understand the complicated procedural requirements for a waiver; (2) be sufficiently literate to submit a written request; (3) have the time to go personally to the school. This procedure is even more burdensome on families who may have children in different schools. Assuming a parent can meet these requirements, the school still does not have to grant the waiver. Even if the school grants a waiver, there is no guarantee that a non-English-only course will be set up. The individual school does not have to offer a bilingual education class if there are not 20 or more waivers granted in the same grade level. Therefore, a school district, with unbounded discretion under the initiative, could arbitrarily limit waivers to 19 per grade, thus never being required to provide an alternative course. In such a district, even those parents who do obtain a waiver would have only one option -- to transfer their child to a school that does offer the course. This may create a heavy burden on families with already limited resources. Given the initiative's rigid provisions, there is no guarantee that any school will offer bilingual education or other alternative English language development courses.

b. Increased cost

The initiative requires that the current supplemental funding for English learners be maintained and further adds \$50 million per year for English language tutoring. In addition, if there are 20 students who petition and are granted waivers, a school district will be required to run two programs, one for sheltered English immersion and the other for students who have waived out of the "mainstream" curriculum. The initiative's requirement of two separate programs coupled with the added \$50 million per year may in fact be more costly than the current English language development programs. Therefore, even though the initiative alleges that the school districts are wasting money on the current English development programs, the initiative fails to save any money. In fact, the increased cost of two programs may provide a further disincentive for individual schools to ever grant waivers, at least never to grant 20 waivers in the same grade level.

c. Elimination of parent involvement

The Unz initiative would eliminate required organizations and other measures that provide parents of children who are limited English proficient an opportunity for meaningful involvement in their children's education. Current educational law requires that school

districts with more than 50 limited English proficient students form districtwide advisory committees. In addition, any school with more than 20 limited English proficient students must form a school advisory committee. The law specifically provides that parents of limited English proficient students must constitute a majority of the advisory committee membership. (See Cal. Educ. Code §§ 52176, 62002.5). The responsibility of the school advisory committees is to advise staff on development of a detailed master plan for instruction of English learners, and to assist in the development of a school needs assessment. All of these opportunities for sustained parental involvement in school decision-making would be shelved in favor of an onerous and individualized parental waiver procedure.

d. Restriction of foreign language instruction

A likely unintended, but nonetheless unavoidable, consequence of the Unz initiative is its application to all foreign language instruction. The plain language of the statute provides that all children in public schools shall be taught in English, with no waivers except as provided in the initiative. Therefore, the initiative will severely restrict the availability of foreign language courses. Foreign language courses necessary to fulfill college entrance requirements will only be offered if a student qualifies for and is granted a waiver under one of the three exceptions. Thus, parents who want their child to fulfill the college entrance requirement of foreign language must go through the onerous procedural requirements for a waiver under the Unz initiative. Moreover, a district could deny a waiver for any reason, thus denying access to a college preparatory curriculum. Amending the statute to eliminate or correct this flaw is virtually impossible. (See discussion below on "Severability and Amendment").

e. Special education requirements

The initiative's exception applying to students with "special needs" is confusingly similar to the educational code's provisions for students with disabilities. The exception for students with special needs requires that even if a student has special physical, emotional, psychological or educational needs, the child must remain in the English-only class for no less than thirty days each year. If, in fact, the student has a disability, this severe restriction may conflict with the protections and rights afforded students with disabilities. (See Cal. Educ. Code § 56031). The education code requires that students with disabilities receive an individualized assessment of their needs. The school district is then responsible for providing special education services and accommodations to these children designed to meet their unique needs. The Unz initiative's waiver provisions conflict with these rights of students with disabilities.

Because school administrators know of the requirements and the added costs of complying with these special education provisions, they may be reluctant to grant waivers under the initiative's exception because doing so would label a student as deserving of all of the services afforded those with "special needs." Therefore, a parent whose child is not a disabled child but who may otherwise qualify for a waiver under the "special needs" exception will have to overcome this confusion. In addition, the language of the exception requires that parents place a potentially stigmatizing label on their child in order to qualify for a waiver.

Article 4: Community-Based English Tutoring

The Unz initiative provides for \$50,000,000 a year for teaching English to parents and other members of the community who pledge to tutor limited English proficient students.

Analysis

There is no dispute that there is an urgent need for English language tutoring and teaching for both children and parents. However, the amount proposed is not sufficient to alleviate this need. It amounts to \$1.20 each year for every Californian seeking to learn English. Furthermore, there is no indication of the source of the appropriated money. If the appropriation falls under the Proposition 98 education budget, the money would be shifted from other educational programs. Otherwise, the money will have to come from the budgets for other state services.

Article 5: Legal Standing and Parental Enforcement

The Unz initiative holds personally liable for attorney's fees and damages any teacher, administrator, school board member, or other elected official who "willfully and repeatedly" refuses to implement the terms of the initiative.

Analysis

The initiative calls for a unique intrusion of government into every classroom. Every parent of every child would be given legal standing to monitor and to sue a teacher personally if the teacher is not following an English-only curriculum.

In doing so, the initiative also singles out teachers and administrators for treatment different from other public employees. Currently, California law requires that a public entity pay judgments against employees for acts done during the course of their employment. (Cal. Gov't Code § 825). In fact, the current educational code requires that the governing board of any school obtain liability insurance for members of the school board and employees against personal liability. (See Cal. Educ. Code § 35208). The Unz initiative penalizes teachers and school officials by prohibiting this protection.

Holding teachers, administrators, and school board members personally liable will discourage individuals from pursuing careers in education. This would occur at a time when there is a high demand for teachers, particularly as class size reduction efforts expand. The Department of Education has announced that there is a current estimated need for 40,000 new teachers. Teachers would be particularly fearful of teaching non-English speaking children, because words in a language other than English could in fact violate the English-only requirement and lead to their being hauled into court. Discouraging teachers from teaching limited English proficient students through this perverse incentive hardly seems to comport with the aims of the initiative.

Article 6 and 8: Severability and Amendment

The Unz initiative provides that should any section of the statute be held invalid, it may be severed from the remaining statute. The initiative also provides that any provision of the statute can only be amended by a two-thirds vote of each house of the Legislature or by approval of the voters.

Analysis

Voters who favor some portions of the initiative but oppose others should recognize the extreme difficulty in eliminating offending portions of the initiative. The drafters have crafted an as-is, take-it-or-leave-it initiative that severely restricts the possibility of legislative change.

Article 7: Operative Date

The initiative delays the operative date for sixty days from the time it becomes effective.

Analysis

The California Constitution provides that an initiative takes effect the day after it is enacted. Although the initiative calls for a sixty-day delay before completely eliminating bilingual education and other methods of English language development, this is still insufficient time to prevent disruption of limited English proficient students' educational progress.



**MALDEF QUESTIONS & ANSWERS ON
THE UNZ INITIATIVE
November 6, 1997**

1. What is the Unz initiative?

The Unz initiative is a proposed measure, also known as "English for the Children" that a group called One Nation/One California is attempting to place on the June 1998 ballot to eliminate bilingual education and all other English language development programs that use primary language to ensure access to academic courses such as math, science, and civics. The initiative instead imposes a one-size-fits-all approach that separates students by English fluency for a year of English immersion. During the year, schools are encouraged to combine children of different ages and grade levels together. After one year, students would be placed in regular classrooms regardless of whether or not they have mastered English.

2. Who is supporting this initiative?

Ron Unz, a wealthy computer businessman who wrote the initiative, has contributed substantial amounts of his private funds to the campaign and has formed One Nation/One California to run the campaign. He has no background whatsoever in education generally or in the education of English learners. He ran for governor in the Republican primary in 1994 and lost to Governor Pete Wilson. He has enlisted the support of individuals associated with the English Only movement, such as English immersion teacher and former U.S. English board member Gloria Matta Tuchman. The group's initial financial disclosure statement reveals significant initial out-of-state support for this California initiative: about 1/3 of the total funding has come from 2 donors in Florida, and another 1/3 from Unz himself.

3. What is bilingual education?

Bilingual education teaches students English while at the same time ensuring that they learn core academic subjects, like science, math, and social studies, through supplemental instruction in their primary language until they have mastered enough English to learn in English alone. Only 30 percent of California's 1.3 million English learners are in bilingual education programs. Research demonstrates, however, that bilingual education programs are more successful than all other forms of English language development instruction in producing high long-term academic achievement. Bilingual education, like many other English language development approaches, also successfully teaches students how to speak, read, and write English.

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4. What is Sheltered English immersion?

The initiative defines the term Sheltered English immersion in a way far different from education researchers and from the California Department of Education. Normally, Sheltered English immersion is used for *intermediate* level English learners to help them get up to speed as they make the transition to classes taught completely in English. It is not a technique designed to be the *only* means of teaching English to students.

Yet, the initiative proposes a one-year Sheltered English immersion program as its sole approach to teaching English before students are placed in regular classrooms taught only in English. No research supports such a draconian one-year English immersion approach to English language development. Indeed, reputable research shows that it takes 3 or more years to become sufficiently fluent to be able to learn difficult academic subjects taught only in English. This initiative eliminates the current flexibility of determining how fast or slow to transfer an individual child to classes taught solely in English.

5. If you want someone to learn English, shouldn't you teach them in English?

If learning English were the only goal of public schools, English immersion would make sense. However, students need both to learn English and to excel and advance in other academic subject areas like math, reading, science, and social studies. The one-year approach to Sheltered English immersion will not allow students to *master* English nor to learn other core academic subjects. Under the initiative's plan, English language learners will fall behind academically and potentially be stigmatized as "slow learners."

6. Why does this initiative seek to eliminate bilingual education?

In some cases, bilingual education has not worked as intended. However, this is true of many programs in our public schools, due largely to inadequate resources, untrained teachers, inadequate parent involvement, or poor management by the principal or district. However, in cases where school districts use their resources properly and educate English learners with trained, credentialed, and committed teachers, bilingual education is the most successful approach both to teaching students English and to giving them the tools to succeed academically. When bilingual education is done right, it has a proven track record of success.

7. If there are problems with bilingual education, why isn't this initiative the answer?

Where problems exist with bilingual education, the answer is to fix the program, not to eliminate it. It is a myth that bilingual education has failed. The truth is that only 30 percent of English learners are taught in bilingual programs. The remaining 70 percent are in the type of English-only programs the initiative proposes to use for all English learners.

Since immersion does not work for many children and can lead to poor academic performance in later years, the initiative's approach puts California's fastest growing segment of students (English learners) at risk of academic failure and eliminates the role of local school administrators, teachers, and parents to decide what is best at their particular school.

8. What effect could this initiative have on foreign language instruction?

The initiative could prevent many students from receiving foreign language instruction because of its rigid mandate that *all* children in public schools shall be taught in English in *all* classes. Foreign language courses (in French, German, Latin, or Japanese, for example) necessary to fulfill college entrance requirements will only be offered if a student qualifies for and is granted a waiver under one of the three narrow exceptions in the initiative. Thus, parents who want their child to fulfill the college entrance requirement of foreign language coursework must go through the onerous waiver process. And, school districts could deny a waiver for any reason. This could prevent many students from fulfilling college entrance requirements.

9. Do some Latinos support this initiative?

Some Latino parents are concerned that their children are not learning English fast enough. Others, however, are outraged at recent local and statewide attempts to eliminate bilingual education for their children. The initiative plays into the fears of some parents by offering an "easy answer." Unfortunately, that easy answer fails to deal with the *real* problems facing our schools and places English language learners at great risk academically. Learning English should not have to come at the expense of academic success.

10. Can parents request English-only instruction now?

Yes. Current law requires that parents be informed of their undeniable right to place their children in classes taught only in English simply by sending a written note to the principal. While there have been some instances where parents' requests have not been immediately honored, the education code is clear.

11. How does this initiative affect parental choice and local control?

The initiative strips parents, local school boards and teachers of the power to choose an appropriate English language development (ELD) program and dictates one rigid instructional approach. The initiative adds a new complicated procedure that requires parents to apply in person to choose a different ELD program and requires their child to satisfy one of three narrowly defined exceptions: (1) above average test performance in English at the fifth grade level, (2) the child is over 10 years old and the educational staff believe another program would be better, or (3) the child has "special physical, emotional,

psychological or educational needs." Schools can deny a waiver for any reason, even if one of these grounds is met. If parents of at least 20 students from the same grade level *receive* a waiver, only then *must* a school district offer another educational program to English learners, but not necessarily at the same school.

12. What will this initiative do to parent advisory committees?

The initiative will eliminate school district and school site advisory committees that allow parents of English learners to participate in designing, implementing, and monitoring the educational services offered to their children. The initiative thus takes power away from the parents and gives it to principals and school districts, many of whom already have demonstrated a failure or refusal to provide adequate services to English learners.

13. How will this initiative affect teachers?

The initiative targets teachers and education officials for personal liability if they do not follow an English-only curriculum. That means that a teacher can be sued and forced to pay out of their own funds if he or she tries to help a student by speaking to them in a language other than English. Currently, teachers are not personally liable for acts done during the course of their employment. Penalizing teachers in this way may discourage people from pursuing teaching careers precisely at a time when California schools face a severe teacher shortage. It also undermines parental involvement by creating an adversarial relationship between teachers and parents. This is a unique intrusion of government into every classroom.

14. Will this initiative save the state money?

No. The initiative does not eliminate funding for instructional services for English learners, and it allocates an additional \$50 million per year to train adult tutors. The initiative may cost the state more than current programs for several reasons. Remedial programs will likely be necessary for students falling behind their grade level in core academic subjects as a result of the inadequate one-year English-only immersion program. In addition, where waivers require it, schools will have to run two instructional programs for English learners. Administering the onerous waiver procedure will also cost schools more. The personal liability disincentive will require schools to spend more money to recruit teachers. Finally, the state will spend more funding to defend the English-only program, which is likely to be challenged in court on several grounds. Such litigation ultimately could result in the loss of federal funds to the state of California.

15. Will students still have the opportunity to become bilingual?

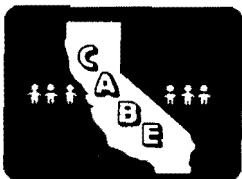
The initiative severely limits any opportunity to become bilingual. The elimination of bilingual education and the restrictions on teaching foreign languages in schools mean that learning a second language will be reserved for only the privileged few. In our global economy, more economic opportunities are available to those employees that can speak, read, and write in a second language as well as in English

Revised 11/6/97

¿Qué es la Iniciativa propuesta por Unz?

- Elimina la educación bilingüe
- Los estudiantes que están aprendiendo inglés de edades diferentes pero del mismo nivel en inglés recibirían instrucción todos juntos en el mismo salón
- Se incentivaría a las escuelas a mezclar estudiantes de diferentes idiomas y del mismo nivel de inglés en un mismo salón
- Después de un año de instrucción en estos salones con lo que la propuesta llama "sheltered English immersion", los estudiantes pasarían a salones regulares de clase, totalmente en inglés
- Los maestros/as enseñando en estos salones sólo necesitarían tener conocimiento del idioma inglés como único requisito para enseñar a los estudiantes aprendiendo inglés
- Los padres tendrían que solicitar una petición si quisieran instrucción bilingüe para sus hijos, siempre y cuando los niños tengan por lo menos 10 años, y sólo se consideraría bajo circunstancias específicas
- Las escuelas sólo estarían obligadas a tener instrucción bilingüe si los padres solicitan una petición y la escuela tiene más de 20 estudiantes en cada grado cuyos padres han hecho el pedido especial
- Si los padres hacen un pedido y la escuela no está obligada a ofrecer el programa, la escuela podría transferir al estudiante a una escuela pública donde se ofrezca instrucción bilingüe
- Hay restricciones específicas para los padres que interesados en peticionar instrucción bilingüe, especialmente para niños menores de 10 años
- Se usarían 50 millones de dólares por año del Fondo General, durante un período de 9 años para subsidiar programas de instrucción en inglés para adultos
- Los adultos participando en esas clases de inglés deberían prometer que servirían como tutores en las escuelas para los niños que están aprendiendo inglés
- Miembros de las Mesas Directivas de Educación, oficiales electos, maestros y administradores podrían ser responsables por daños y perjuicios si no implementaran los términos del estatuto propuesto

(Esta información ha sido preparado por CABA para duplicarse con fines educativos)



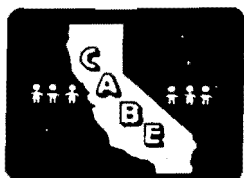
California Association for Bilingual Education

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What is the Unz Proposed Initiative ...

- Eliminates bilingual education programs
- English learners from different ages and grade levels, but similar degrees of English proficiency will be taught together in English for up to 1 year
- Schools will be encouraged to mix together in the same classroom different language groups with the same degree of English proficiency
- After 1 year of instruction in a so called "sheltered English immersion" students would be mainstreamed in English only classrooms
- Teachers need to have no other qualification than a good knowledge of the English language
- Parents would have to request a waiver if they want bilingual instruction for their children (only applies to children 10 years or older, unless parents can prove that there is a special need)
- Schools will only be required to offer bilingual instruction when parents request a waiver and the school has 20 or more students of a given grade level
- If the parents request a waiver and the school is not mandated to offer the program, the school will transfer the student to a public school where the program is offered
- There are specific restrictions for parents requesting a waiver for the child to receive bilingual instruction, and waivers for children under 10 years are restricted to special circumstances only
- \$50 million per year for a 9 year period would be appropriated from the General Fund to subsidize programs for adult English instruction
- Adults participating in these English classes must pledge to provide English tutoring to English learners
- School Board members, elected officials, teachers and administrators may be held personally liable for fees and actual damages for not implementing the terms of the proposed statute.

(This piece was developed by CAFE to be duplicated for educational purposes)

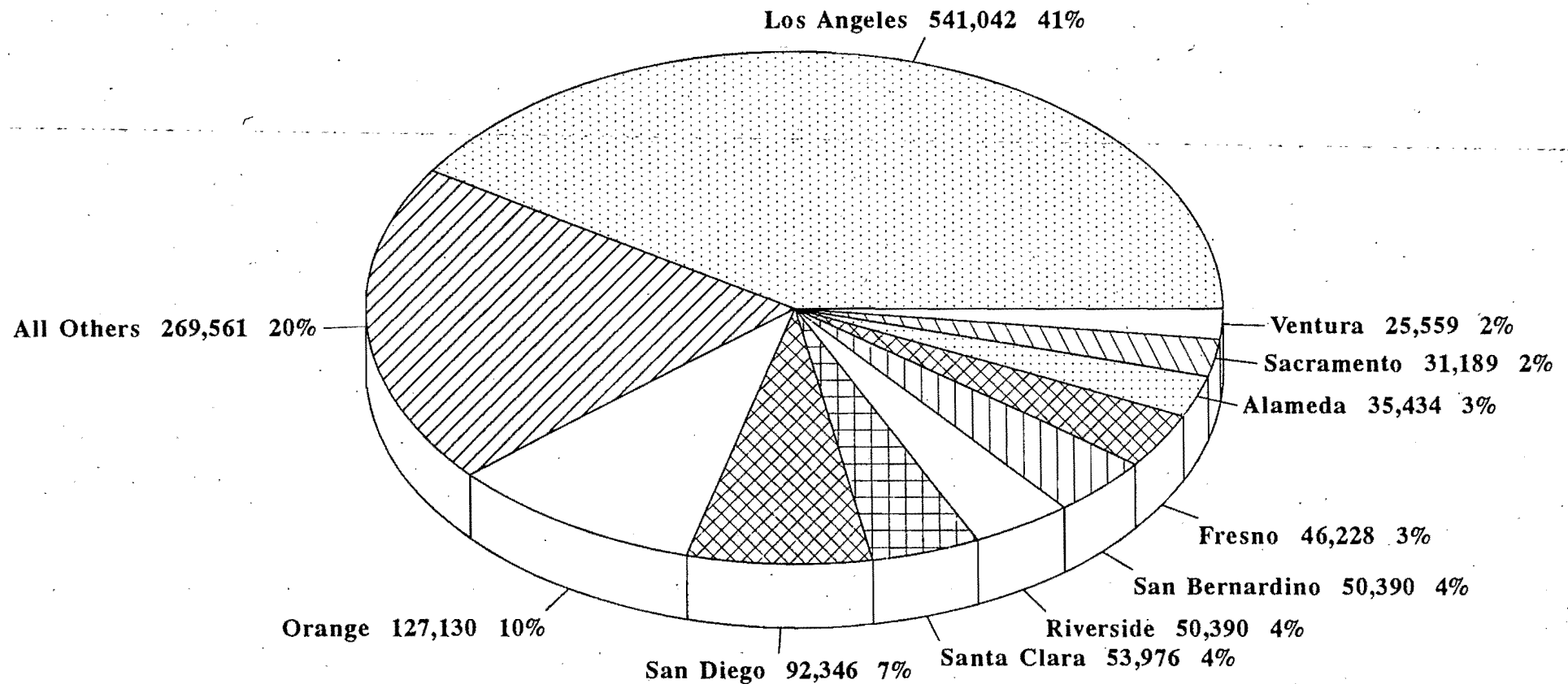


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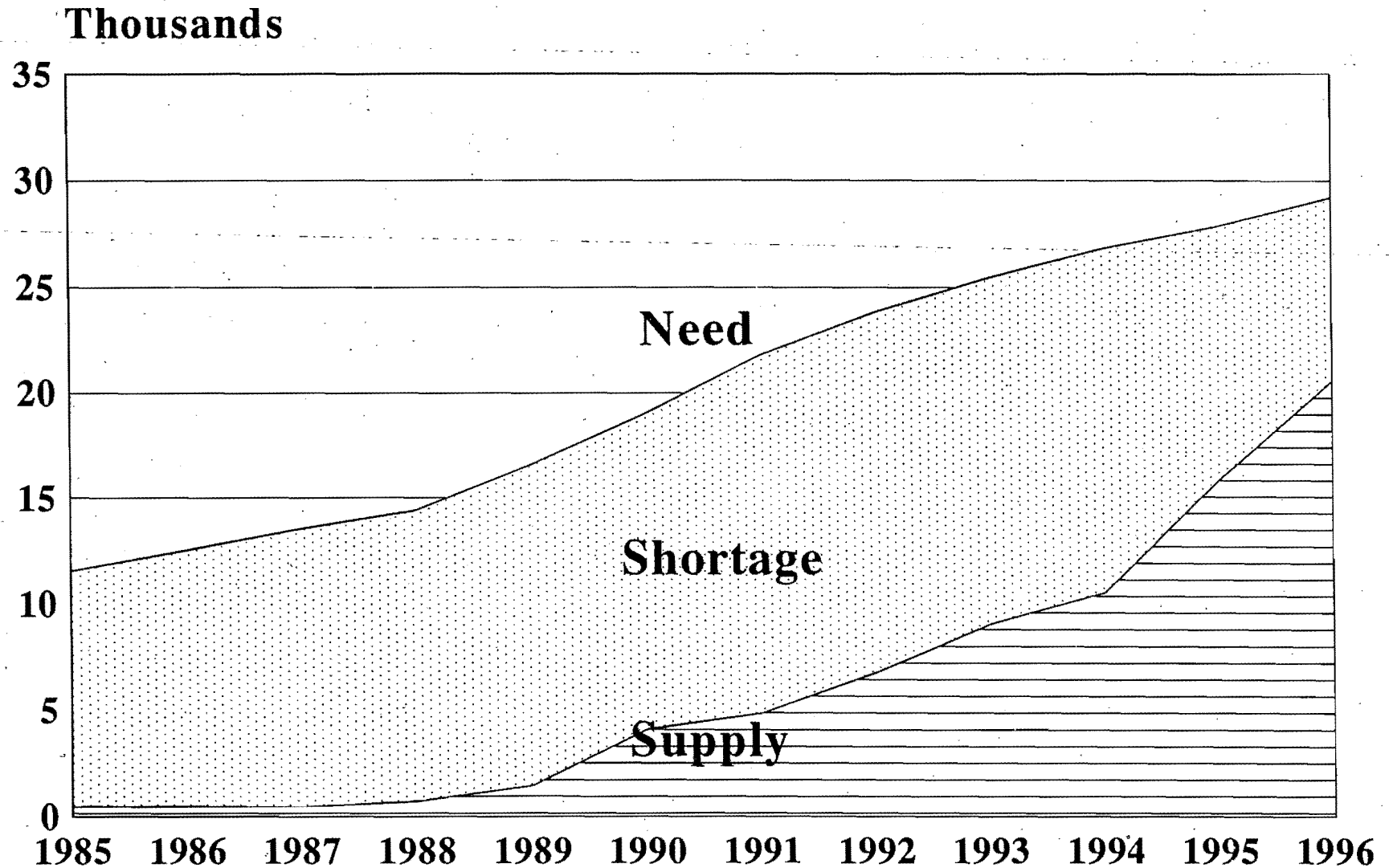
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1996 LEP Counts for Top Ten Counties

(N = 1,323,767)

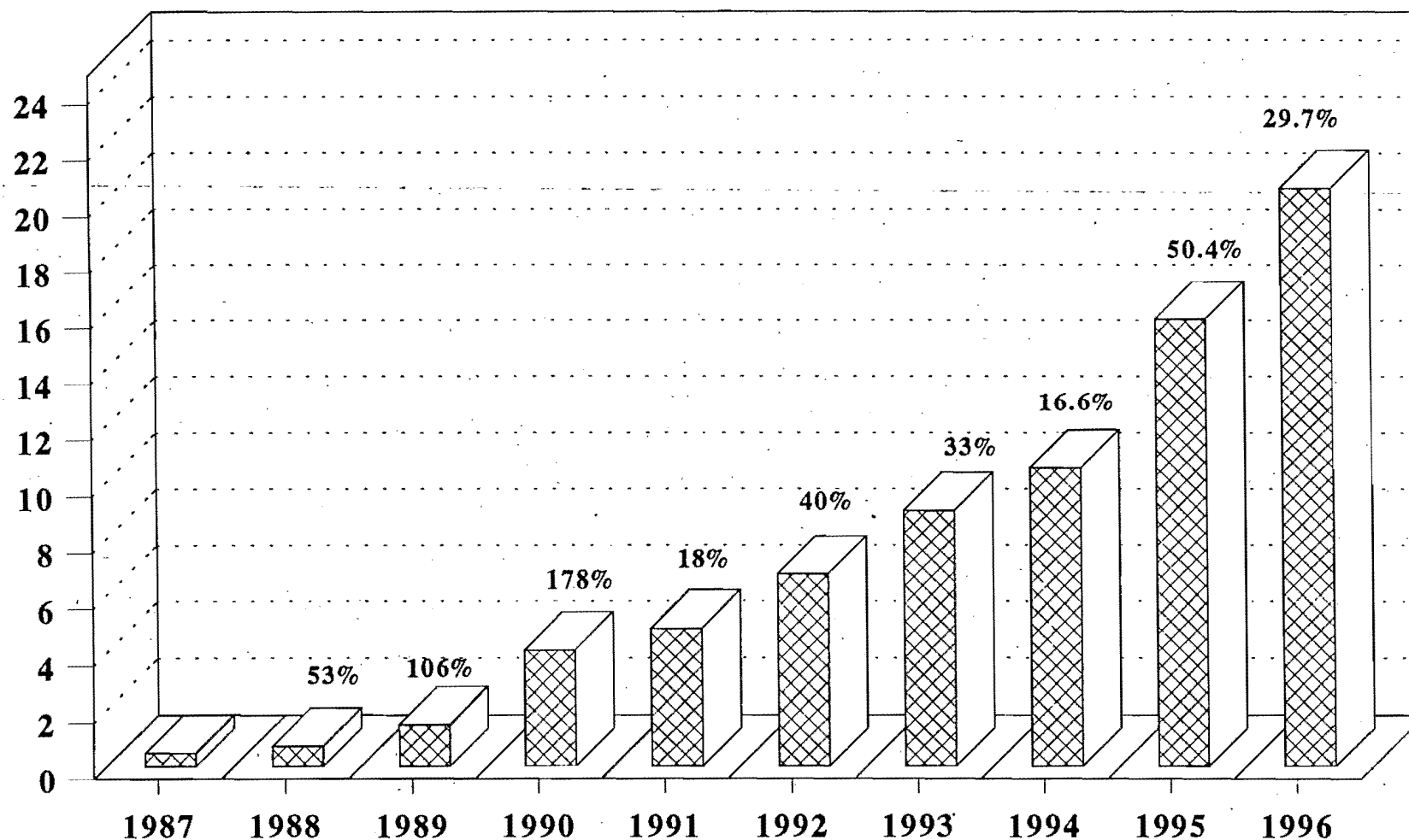


Need-Supply-Shortage for English Language Development Teachers 1985-1996



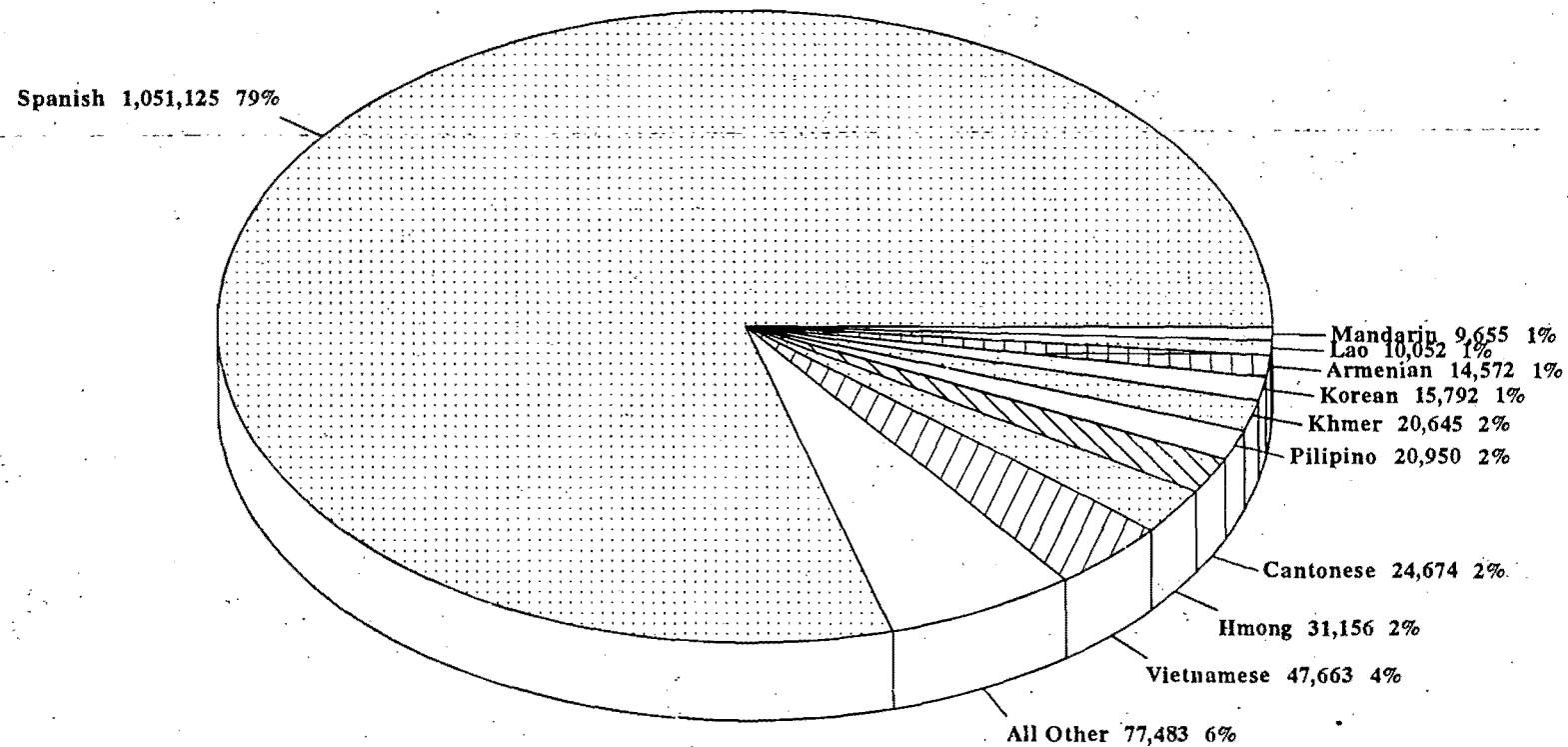
English Language Development Teachers 1987-1996

Thousands

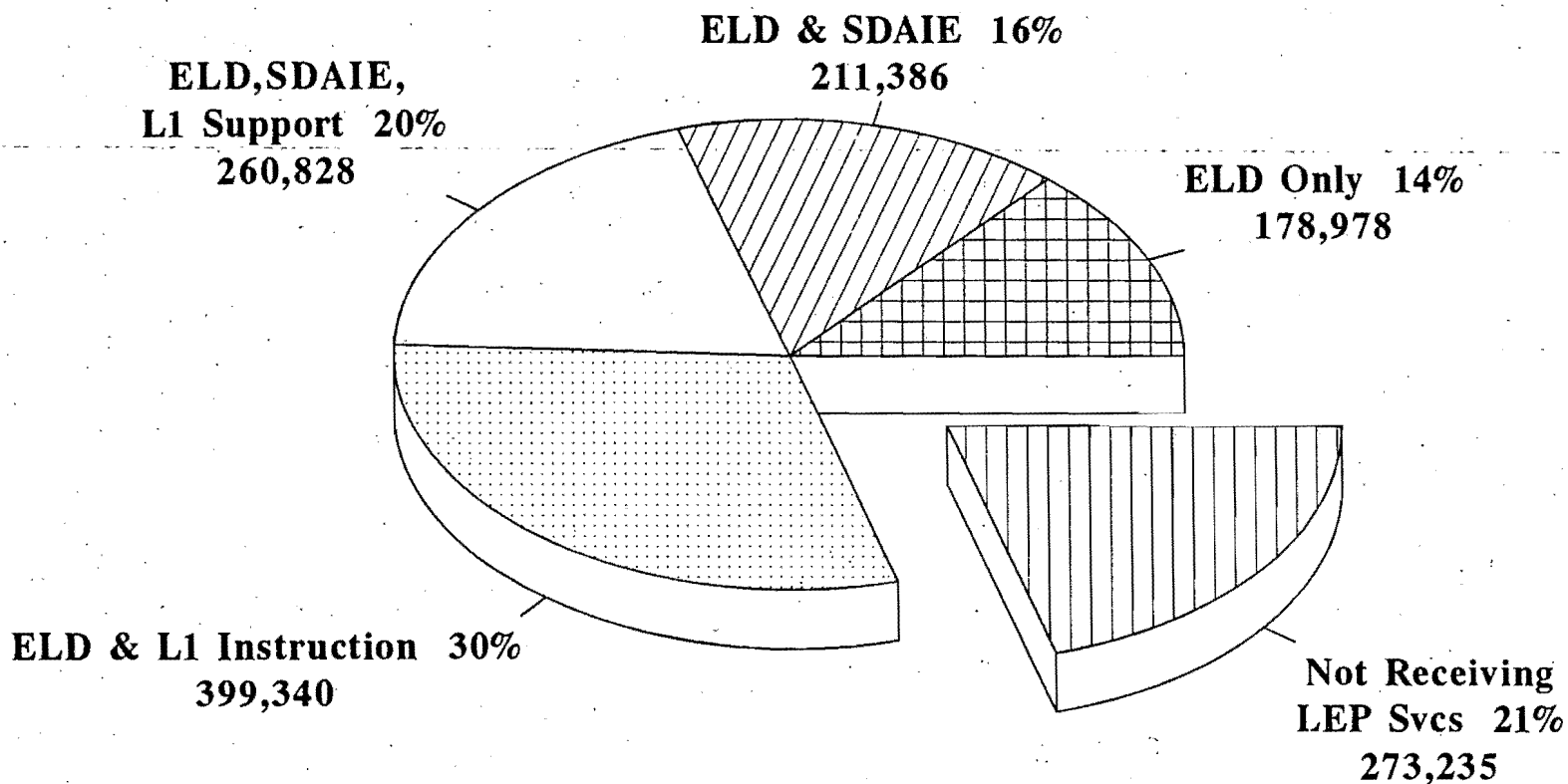


Top Ten Language Groups Represented in California

(N = 1,323,767)



Enrollment of LEP Students in Instructional Programs (N = 1,323,767)



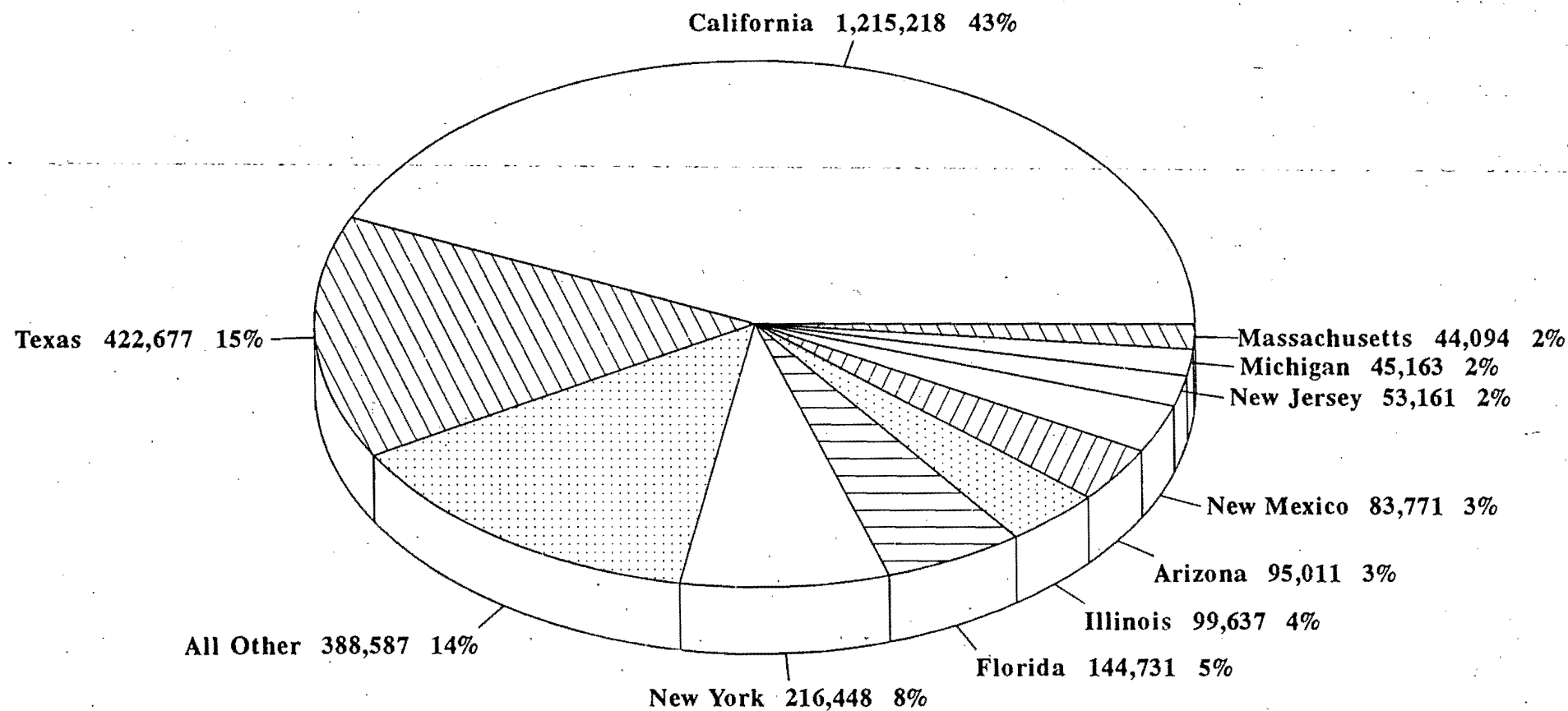
Source: 1996 R30-Language Census

California Department of Education, Complaints Management & Bilingual Compliance Unit

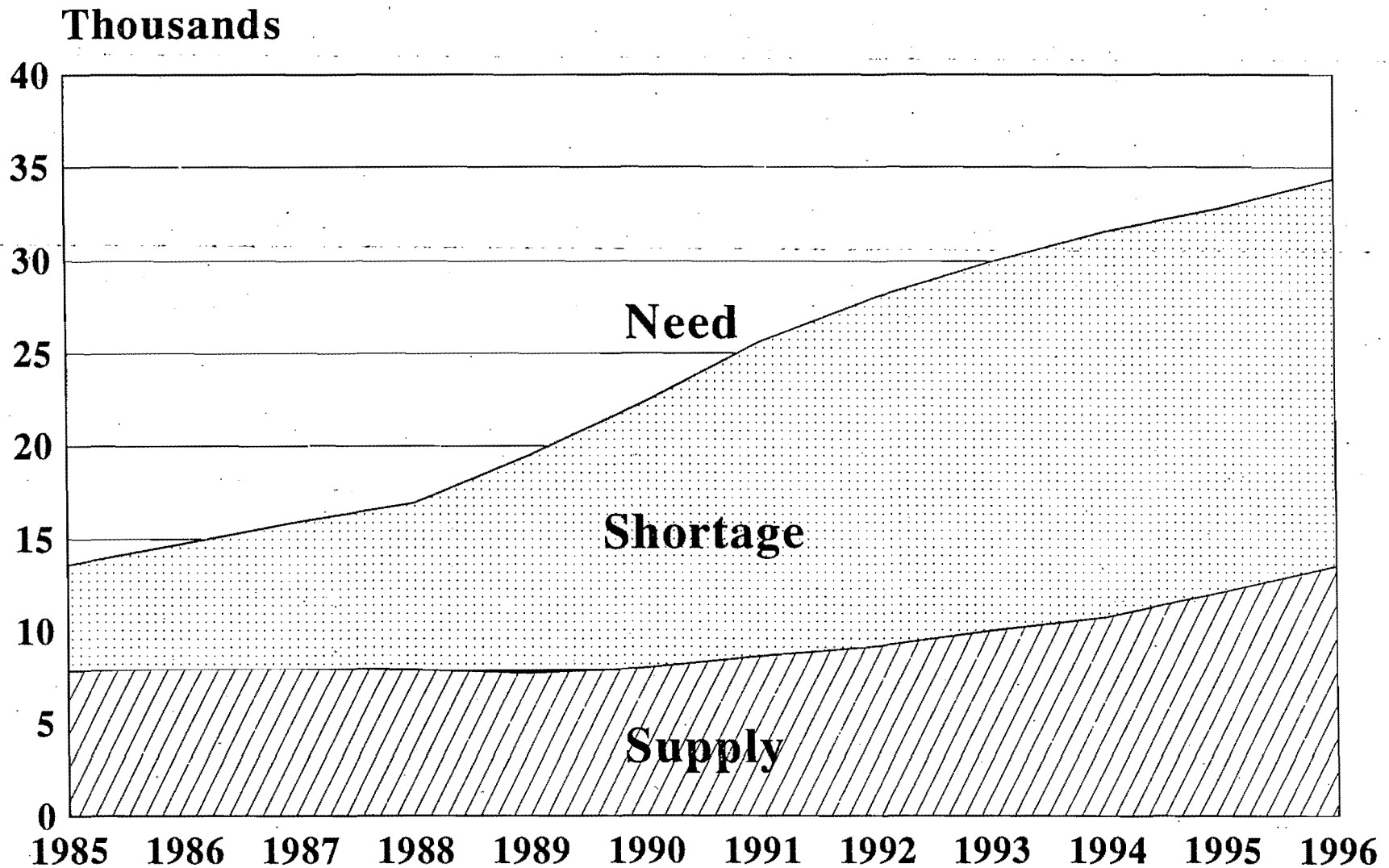
L1 - Primary Lang. Instr., ELD = Eng. Lang. Dev., SDAIE = Specially Designed Academic Instr. in Eng.

1993-94 National LEP Counts for the Ten Largest States by LEP Population

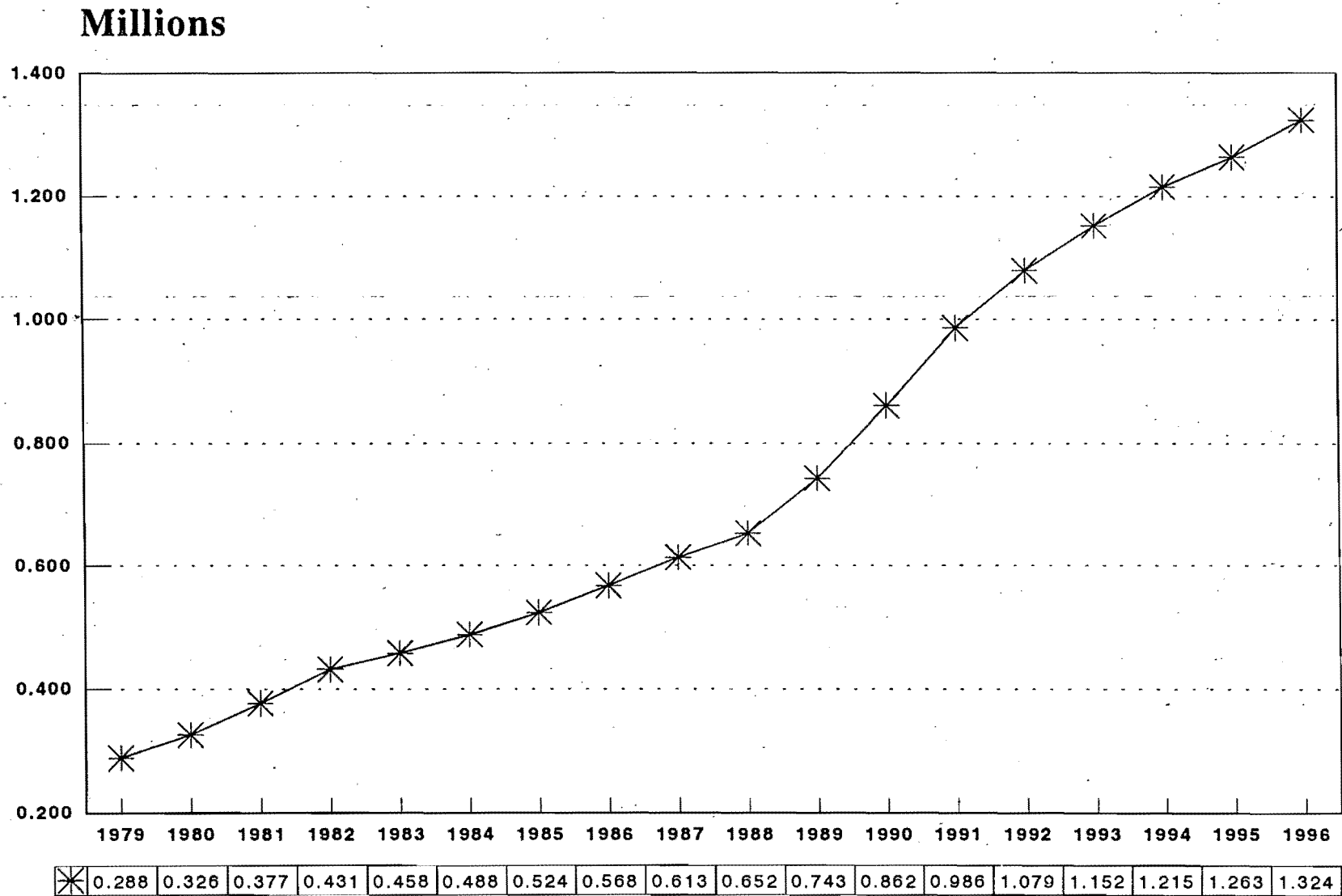
(N = 2,804,556) *



Need-Supply-Shortage for Bilingual Teachers 1985-1996



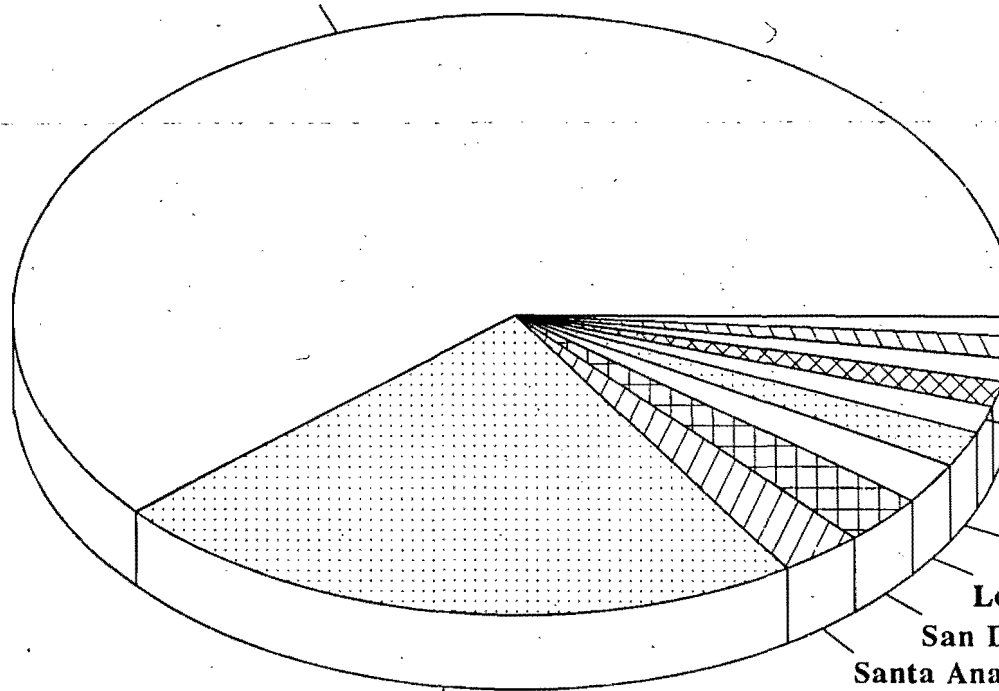
LEP Students in California



1996 LEP Counts for Top Ten Districts

(N = 1,323,767)

All Others 811,372 61%



Los Angeles USD 300,980 23%

Glendale USD 14,299 1%
Oakland USD 15,670 1%
Montebello USD 16,287 1%
San Francisco USD 18,539 1%
Garden Grove USD 20,015 2%

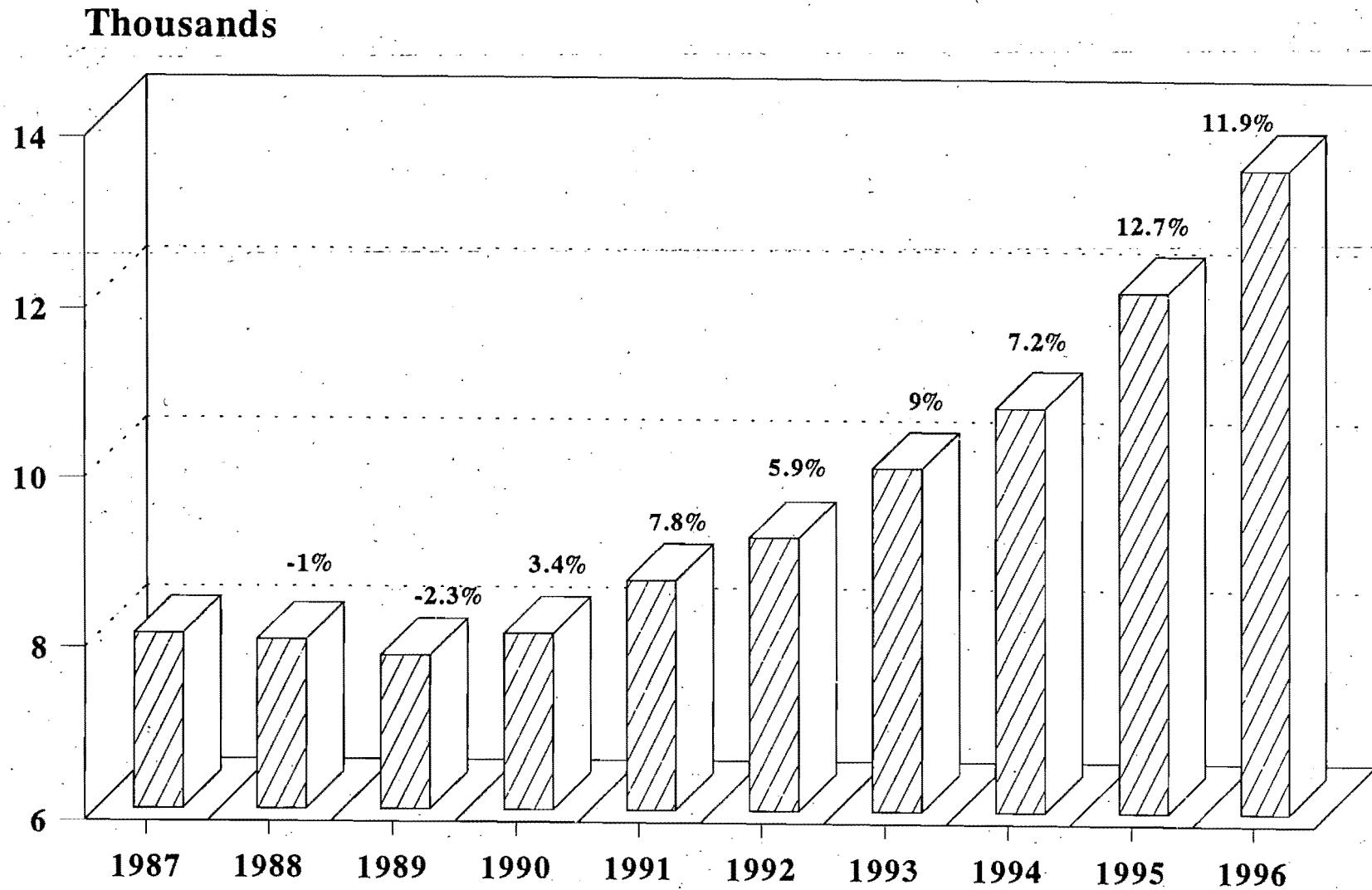
Fresno USD 25,566 2%

Long Beach USD 29,130 2%

San Diego City USD 36,054 3%

Santa Ana USD 35,855 3%

Bilingual Teachers 1987-1996



Let Parents Choose

**“The English for Children”
(The Unz Initiative)
will take away your rights!!!**

- **Eliminates parent's right to choose**

Every parent should have the right to decide the best way to educate their children

- **Undermines Local School Boards**

Every community should have the right to determine education policy at a local level

- **Anti-business**

More and more businesses require employees to speak several languages to compete in California's diverse & global market

- **Ron Unz has no background in education policy**

Initiative adopts and mandates the most unproved method of effectively learning English

- **Criminalizes Teachers**

Educators and administrators can be sued if they assist their students in their home language

- **Hurts Children**

Segregates and warehouses English learners regardless of language, age or grade level.

03/27/98 FRI 15:33 FAX 202 225 2202

Congress of the United States
House of Representatives
Washington, DC 20515

**** FAX COVER SHEET ****

CONGRESSIONAL HISPANIC CAUCUS

Office of Congressman Xavier Becerra
1119 LONGWORTH HOB
Washington, DC 20515-0530
(202) 225-2410 FAX (202) 225-2202

DATE:

03/27/98

TO:

Maria Echaveste
Mike Cohen

Number:

FROM:

X

CONGRESSMAN XAVIER BECERRA, CHAIRMAN
ESTHER AGUILERA, EXECUTIVE DIRECTOR
DEBRA DIXON, COUNSEL
MARY GONZALES, LEGISLATIVE ASSISTANT

PAGE(S)

3

(including fax cover sheet)

NOTE:

03/27/98 FRI 15:33 FAX 202 225 2202

Congress of the United States
House of Representatives
Washington, DC 20515

March 26, 1998

Maria Echaveste
Assistant to the President and
Director for Public Liaison
The White House
Washington, D.C. 20500

Dear Maria:

We appreciated the opportunity to provide input on California's "UNZ Initiative" at our March 24 meeting. The debate over our Nation's language policies is very divisive and has become highly politically charged. We must strive to separate fact from fiction and not yield to purely political pressures that threaten the best interests of our children. We have counted on President Clinton's support in the past to work with us to counter efforts that divide our nation, such as anti-immigrant and anti-affirmative action initiatives.

As we indicated at the meeting, we urge you to consult with us on your specific recommendation to respond to the UNZ Initiative prior to delivering a decision memo to the President. We feel very strongly that substantial changes to the Bilingual Education program must have strong policy justifications that are based on sound educational theory. In addition, any changes must also lead to strengthening the program, a position which you articulated at our meeting.

Because of its highly political nature, we are in accord with the national advocacy groups that issues surrounding Bilingual Education should be separated from the "UNZ" discussion. We strongly urge that the White House lead in opposing the UNZ Initiative on its merits. At the same time, Bilingual Education should not be blamed for broader educational problems in our low-income and urban school districts. It is particularly dangerous to set arbitrary time limits on the access children have to bilingual instruction if this is contrary to accepted research findings. The Department of Education's own research demonstrates that arbitrary time limits set the program up for failure if children's needs are not front and center in this decision.

As we begin the process of reauthorizing Title VII, we look forward to the Administration's leadership in working with us to change the terms of the debate from those that are purely political to those that focus on student needs. Let's be clear, the goal of bilingual education is to teach children English. Let's not stigmatize our Spanish speaking children as a liability but rather emphasize that bilingualism is a resource in an increasingly global economy.

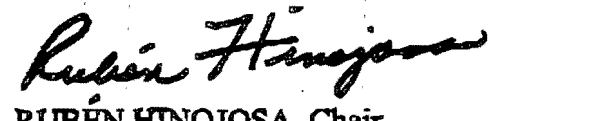
03/27/98 FRI 15:34 FAX 202 225 2202

Ms. Maria Echaveste
March 26, 1998
Page 2

We look forward to working with you on our mutual goals.

Sincerely,


XAVIER BECERRA, Chairman
Congressional Hispanic Caucus


RUBÉN HINOJOSA, Chair
CHC Task Force on Education and Training

CC: Janet Murguia, Deputy Assistant to the President for Legislative Affairs/Deputy
Director
Mike Cohen, Senior Policy Analyst, Domestic Policy Counsel
Karen Skelton, Deputy Assistant to the President for Political Affairs

3/18 Draft

2. Specific recommendations for changing federal bilingual education program

In accord with our recommendation for a “mend, don’t end” approach to bilingual education, we believe that opposition to Unz should be coupled with specific proposals to change the federal bilingual education program. This approach will lend credibility to our position, and give us a basis for framing the debate over bilingual education. Specifically, we recommend the following changes:

Strengthen local control by lifting the existing cap on English programs. The current federal bilingual program contains a ceiling that permits only 25% of all funds to be used to support English-only programs. In fact, the cap has not prevented local districts from using the approaches they want, but conservative critics perceive it as having that effect. Lifting the cap would add credibility to our call for local control (rather than the Unz one-size-fits-all approach), and would help address the concerns of these critics. This action, however, would be unpopular with the bilingual advocacy community.

Create expectations for students to learn English within 3 years. One of the most powerful criticisms of bilingual education programs is that they in fact prolong the time it takes for students to learn English. This criticism resonates with many opponents as well as supporters of Unz. We should propose amending the federal bilingual education program to require that students learn English within 3 years, with additional time and services provided to students facing unusual circumstances. (Practically, this would mean that individual students could only participate in the federally funded program for 3 years unless there were unusual circumstances.) Setting clear expectations for how quickly students will master English (*i.e.*, well enough to learn other subjects in English) will appropriately focus the efforts of schools and students and help more students become proficient in English. This action, however, would be criticized by Hispanic elected leaders nationally and in Congress, as well as bilingual advocates. Advocates and researchers will argue that there is no clear research base to establish a 3-year time frame--and, indeed that more time is necessary for students to master English and other subjects.

Because of these concerns Maria Echaveste feels that learning English within 3 years should be a goal, rather than a requirement, of federal programs.

Strengthen testing and accountability for students and programs. Programs should be required to test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress toward the 3-year deadline, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. There should also be additional accountability for school districts participating in the bilingual education program. Programs are already required to undergo evaluations; this requirement can be strengthened by establishing consequences, such as possible withholding of funds, from programs that fail to make adequate progress as measured by student achievement.

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3/31 Draft

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with a strong statement recognizing the importance of helping LEP students learn English and succeed, and a set of principles that should guide local efforts to strengthen rather than end these programs. The intent here is to underscore that while there is a place for bilingual education (and other ways to help LEP students become proficient in English), bilingual education programs in particular and the schools that serve LEP students must do a better job.

Specifically, we recommend the following principles:

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Federally funded bilingual education programs are required to ensure that students master English within 3-5 years. You could challenge every district to meet that standard, and urge them to do better. You could also direct Secretary Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly LEP students can be expected to become proficient in English, and identifying approaches, strategies and programs that can help shorten the time it takes.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Rather than state mandates

that either prescribe or proscribe particular approaches, local schools must have the flexibility to design programs that meet its particular needs, mix of students and resources. So long as the goal is clear--that students learn English as rapidly as possible--and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

3/31 Draft

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Federally funded bilingual education programs are required to ensure that students master English within 3-5 years. You could challenge every district to meet that standard, and urge them to do better. You could also direct Secretary Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly LEP students can be expected to become proficient in English, and identifying approaches, strategies and programs that can help shorten the time it takes.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Rather than state mandates

that either prescribe or proscribe particular approaches, local schools must have the flexibility to design programs that meet its particular needs, mix of students and resources. So long as the goal is clear--that students learn English as rapidly as possible--and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools