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**Current Issues in Bilingual Education and  
English as a Second Language Instruction**

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## *PROLOGUE*

Bilingual Education and English as a Second Language instruction constantly present new challenges. For example, the relatively recent No Child Left Behind Act of 2001 (NCLB), as well as the 2010 Haitian earthquake, presented several such challenges to Miami-Dade County Public Schools (hereinafter "M-DCPS"). However, M-DCPS provides an excellent example for demonstrating how school districts with large and fluctuating populations of Limited English Proficient (LEP) students meet and exceed their educational obligations to these students.

M-DCPS is a unique school district. Aside from being the fourth largest district in the United States, M-DCPS has a large number of students who enter the school system not knowing English. Yet in order to satisfy applicable legal requirements and to receive federal funding pursuant to NCLB, M-DCPS, like other school districts across the country, must track the academic performance of its students who are English Language Learners (ELL). Additionally, M-DCPS must provide adequate educational resources and institute measures to ensure that all of its students make "adequate yearly progress," regardless of language barriers.

In some ways, M-DCPS was ahead of NCLB. For example, the 1990 League of United Latin American Citizens (LULAC) Consent Decree required that M-DCPS provide English for Speakers of Other Languages (ESOL) instruction to LEP students. Additionally, the Consent Decree required that M-DCPS and other Florida school districts provide LEP students appropriate instruction in basic areas of education, given each student's English proficiency. The Consent Decree further required specialized training for teachers of LEP students. Ultimately, the Consent Decree aimed to equalize the access to education for English-speaking and non-English-speaking students alike. Similar to this Consent Decree's goal, NCLB seeks to equalize access to education for *all* students regardless of English proficiency, though under the indiscriminate "adequate yearly progress" measure.

In light of the LULAC Consent Decree and NCLB, what are M-DCPS's obligations to the refugee students who rapidly pour into the district following natural disasters? M-DCPS grappled with this difficult issue recently in the wake of the 2010 Haitian earthquake, though this was not the first time that M-DCPS aided a mass of fleeing students. Resources, both financial and instructional support, are strained or simply not available when a massive influx of students attempts to enroll unexpectedly. To be sure, the District can expect that natural disasters will happen from time-to-time, resulting in large waves of LEP students into Miami-Dade County, but how much time and resources should M-DCPS expend in preparation for something so sporadic, unpredictable, and beyond its control? In other words, are NCLB and the LULAC Consent Decree rigid constructs, or do they allow for wiggle room in the case of refugee students fleeing other countries in large numbers? Hopefully, NCLB and the Consent Decree are what laws should generally strive to be: *practical*.

Sometimes, seamless compliance has negative side affects. For example, in order to provide ESOL instruction compliant with the LULAC Consent Decree, it may be practical for a school district to utilize "separate" schools or facilities for the purposes of intensive ESOL instruction, particularly when there is a sharp and unexpected influx of LEP refugee students. For example, if there were a significant number of refugee students following the January 2010 earthquake in Haiti, the most effective and efficient way to provide them with an appropriate education (in light of

existing resources) is to group them together in specific classes with Creole-speaking instructors. But what effect does this have on the students? On the one hand, grouping LEP students together provides them with the best possible academic education under the circumstances. On the other hand, some advocates may argue that separating them is akin to segregation and that it stigmatizes them in some manner as being limited in their English proficiency. Should parents have the unfettered option to decide where their child is placed: in the “separate” classrooms or in the general education classes?

## I.

### **REQUIREMENTS FOR NEW IMMIGRANT STUDENTS AND ESOL INSTRUCTION IN MIAMI-DADE COUNTY PUBLIC SCHOOLS**

M-DCPS has encountered a number of significant events which have caused it to address issues concerning immigration and ESOL requirements. Most recently, the events that unfolded in Haiti required M-DCPS staff to develop an emergency post-Haitian earthquake plan for students displaced by the earthquake. In the past, M-DCPS has similarly developed plans to provide educational services in the aftermath of other crises, including the Mariel Boatlift in 1980, wherein some 125,000 Cubans journeyed to Florida. Below is a discussion on the logistical and practical issues which M-DCPS addressed in response to the Haitian earthquake.

#### A. Registration and Education of Haitian Students

As of this week, approximately 1,000 students arriving from Haiti have enrolled or are in the process of enrolling in M-DCPS. Each enrolled child is being provided with “appropriate” educational and psychological support from the District.

Of Course, M-DCPS is prepared to accept any student who arrives at its schoolhouse doors, but moreover, it is required to by law. The U.S. Supreme Court’s mandate in *Plyler vs. Doe*, 457 U.S. 202 (1982), states that LEP refugees, along with racial and national origin minority students, must be provided free, equal, and unhindered access to appropriate schooling. Further, the Consent Decree from *League of United Latin American Citizens (LULAC) v. Florida Department of Education*, Case No. 90-1913 (S.D. Fla. 1990), states that Florida public school districts shall provide appropriate native language instruction or ESOL content instruction, or a combination of both, in basic subject areas. Additionally, this agreement requires districts to provide a minimum amount of basic ESOL instruction, which may include special or alternative language arts necessary to attain “parity of participation” with non-LEP students in language arts. Per this agreement, in no event may districts provide instruction which is *less* sufficient than what is provided to non-LEP students at the same grade level.

#### B. Cost Implications

Education experts anticipate a significant budgetary impact if a major influx of LEP refugees enroll in M-DCPS. As such, districts like M-DCPS must be proactive by initiating conversations upfront with federal, State, and local agencies, both public and private. In the event of such an influx, one may *seek* federal or state financial assistance and/or

reimbursement should extraordinary measures be required to deliver the educational services required by law. But such assistance is often not forthcoming.

One option for school districts encountering this influx issue is to turn to the State for a reassessment of the district's full-time enrollment (FTE) students. Normally, a re-calculation of FTE estimates for the school year is not permitted. However, State authorities can make exceptions to this general rule in certain circumstances, such as when a school district absorbs a large number of refugee students in a short period of time. In the Haitian earthquake example, a re-calculation will enable M-DCPS to increase enrollment estimates in light of unexpected events, which in-turn will help school districts allocate resources for these refugee students.

C. State Accountability Implications

Recognizing that recent immigrant students who are learning English and new to our classrooms likely could not (nor should they be expected to) perform well on the high stakes accountability tests, school districts must request a waiver for these students. Following the earthquake in Haiti, M-DCPS requested that the Florida Commissioner of Education exempt all newly arrived Haitian students from participating in the Florida Comprehensive Assessment Test (FCAT). On January 26, 2010, the Commissioner sent a memorandum notifying all State superintendents that he was exercising his authority to grant exemptions to the FCAT, and he released all Haitian refugee students from taking the FCAT Writing, Reading, Mathematics, and Science Assessments, as well as the Florida Alternate Assessment. The exemption also carries over to any field-test administrations, end-of-course tests, or other assessments, during the spring of 2010. By taking such steps, the Commissioner eased fears that districts taking on Haitian refugees would likely violate NCLB. Specifically, he stated that enrolling Haitian refugees will not affect NCLB's Adequate Yearly Progress (AYP) requirement, as the refugees were determined not to be "full-time enrolled" students.

The Florida Department of Education, however, would be required to request an emergency waiver from the U.S. Department of Education in the event that these exemptions to the 67 districts in Florida actually do impact the state's NCLB AYP requirement.

II.

**DEMOGRAPHIC CHARACTERISTICS**

Here is a breakdown of the relevant demographic characteristics in Miami-Dade Public Schools:

Student Membership by Grade Level, 2009-10 -----	345,458
Ethnic Composition of Students (Hispanic) -----	222,167
Enrollment in Bilingual Programs, 2009-10	
Spanish for Spanish Speakers (K-12) -----	89,961
World Language – Spanish (K-12) -----	58,802
Spanish Dual Language (K-5) -----	17,792

Basic Skills in the Home Language (K-5) -----	46,533
World Language other than Spanish (K-12) -----	27,154
English for Speakers of Other Languages (K-12) -----	56,598
Instructional Staff	
Percentage Instructional Staff that is Hispanic -----	45.2%
Total Full-Time Instructional Staff that is Hispanic -----	16,284

**Percentage of All Students Making Adequate Yearly Progress Across Florida Districts**

<u>District</u>	<u>2008-09</u>	<u>2007-08</u>	<u>2006-07</u>	<u>2005-06</u>	<u>2004-05</u>
Miami-Dade	74%	79%	74%	77%	80%
Broward	77%	77%	87%	92%	100%
Hillsborough	69%	77%	72%	77%	80%
Orange	69%	72%	72%	79%	77%
Palm Beach	72%	79%	85%	79%	80%

As the above table indicates, the Adequate Yearly Progress of all students in M-DCPS is commensurate with that of other Florida districts.

**III.**

**BILINGUAL EDUCATION ACT**

The Bilingual Education Act of 1968 was the first piece of major United States federal legislation that addressed issues concerning English language learners (ELLs) and public education. The purpose of the Act (also known as Title VII of the Elementary and Secondary Education Act (ESEA)) was to provide school districts with federal funds to establish educational programs for students with limited English speaking ability. The Act *encouraged* instruction in English and multicultural awareness in the wake of the Civil Rights movement, although it did not *require* bilingual programs. The Act also gave school districts the opportunity to provide bilingual education programs without violating segregation laws. In terms of financial support, the Act provided supplemental federal funding to school districts interested in establishing programs to meet the “special educational needs” of large numbers of children of limited English speaking ability. The funding was used for educational programs, teacher training, development of materials, and parent involvement. The Act was not specific, and a school district’s participation in and provision of bilingual programs was voluntary. However, the Department of Health, Education and Welfare (HEW) would later issue an interpretation of the Title VII regulations that prohibited the denial of access to educational programs because of a student’s limited English proficiency.

#### IV.

### **EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1974 – 20 U.S.C.A. §§ 1701 ET SEQ.**

Following the Bilingual Education Act described above, the Equal Educational Opportunities Act of 1974 (EEOA) ushered in more concrete rights for ELLs. Specifically, the EEOA provided definitions of what constituted denial of equal educational opportunity. Among them is “. . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students in an instructional program.” In a class action lawsuit brought by Chinese speaking students in San Francisco, *Lau vs. Nichols*, 414 U.S. 563 (1974), the U.S. Supreme Court found that a school district denied equal access and participation in an educational program where denied educational opportunities to students based on their inability to speak or understand English. In this landmark case, the Court stated, “There is no equality of treatment 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 Supreme Court went further to say, “Basic English skills are at the very core of what public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education.”

Following that decision, the federal government established some basic guidelines for schools with LEP students. The federal regulations essentially had four major components: identification, assessment, services, and exit. The services requirement established that bilingual instruction must be given by qualified teachers. This would influence later court decisions and State regulations, including those in Florida following the *LULAC* Consent Decree explained below.

*Castañeda vs. Pickard*, 648 F. 2d 989 (5<sup>th</sup> Cir. 1981); 781 F. 2d 456 (5<sup>th</sup> Cir. 1986), laid out the standards for examining programs for LEP students. Basically districts should have the following:

1. A pedagogically sound plan for LEP students;
2. Sufficient qualified staff to implement the plan (includes hiring of new staff and training of current staff); and
3. A system established to evaluate the program.

*Castañeda* did not require bilingual education programs to meet these standards. It only required that “appropriate action to overcome language barriers” be taken through well implemented programs. Then, the Ninth Circuit, in *Idaho vs. Migrant Council*, 647 F. 2d 69 (9<sup>th</sup> Cir. 1981), established the legal responsibility of the State Department of Education to monitor implementation of programs for LEP students. Following *Migrant Council*, the Seventh Circuit decided *Illinois vs. Gómez*, 811 F. 2d 1030 (7<sup>th</sup> Cir. 1987), which opined that it was the State of Illinois’s responsibility to establish and enforce minimums for implementation of language remediation programs; this included requirements for the re-designation of students from LEP to FEP (Fluent English Proficient) status.

V.

**SUPREME COURT DECISION**  
**HORNE V. FLORES, 129 S. Ct. 2579 (2009)**

**Background**

On June 25, 2009, the U.S. Supreme Court decided *Home v. Flores*, 129 S. Ct. 2579 (2009), a case involving the adequacy of education for English Language Learner (ELL) students in Arizona public schools. In *Home*, the Court interpreted the Equal Educational Opportunities Act (EEOA), which prohibits “specific discriminatory conduct, including segregating students on the basis of race, color or national origin, and discrimination against faculty and staff.” U.S. Dept. of Justice, Civil Rights Division, *Educational Opportunities Section* (July 25, 2008), available at [www.justice.gov/crt/edo/faq.php#4](http://www.justice.gov/crt/edo/faq.php#4). Relevant to this discussion, the Court held that mere compliance with NCLB does not necessarily equate to compliance with the EEOA. The Court reversed and remanded the case to determine a number of factual and legal issues in light of its opinion.

The original action was filed in 1992 by a class of ELL students in Nogales, Arizona. The class claimed that the State had failed to assist ELL students in overcoming their language barriers by under-funding language programs, in violation of the EEOA. Plaintiffs prevailed at the trial level in 2000. The district court ordered the State to provide adequate funding of programs for ELL students. However, the State never complied with this order. Following a series of subsequent court orders attempting to enforce the original 2000 funding order, the State filed a motion seeking dismissal of the case, arguing that a series of significant programmatic improvements and funding made State compliance with the funding order unnecessary. The lower court disagreed and denied the State’s motion. Arizona then sought review from the Supreme Court.

**Aspects of Opinion Favorable to ELL Students**

1. The Court did not question the importance of equal educational opportunities for ELL students: “There is no question that the goal of the EEOA-overcoming language barriers-is a vitally important one, and our decision will not in any way undermine efforts to achieve that goal.”
2. States have continuing obligations under the EEOA to develop effective programs which will enable ELL children to become proficient in English.
3. The Court rejected Arizona’s claim that the State’s mere compliance with NCLB constitutes compliance with the EEOA. Nonetheless, courts may now consider whether substantial state educational changes made pursuant to NCLB constitute “appropriate action” to help ELL students become proficient in English under the EEOA. Such substantial changes include funding increases, as well as programmatic and monitoring improvements to language programs for ELL students.

4. Focusing solely on *funding* of ELL programs is insufficient to prove a violation of the EEOA. Nonetheless, funding remains a relevant consideration.

#### **Other Points in the Court's Decision**

1. The opinion provides that the State may produce new evidence of changes that satisfy the State's obligation under the EEOA. The lower court must still determine whether these changes made by the State officials were significant enough to satisfy the State's obligation under the EEOA. These changes include the following in this case: a change from Bilingual Education programs to Structured English Immersion programs; a change in ELL programs/funding resulting from NCLB; and a change in Nogales's local administrative and management structures.
2. Although the district court must decide whether the State has provided sufficient funding for ELL programs, funding for general programs is also relevant, rather than looking exclusively at ELL. Theoretically, this would enable the State to argue that it provided sufficient funding for ELL programs even if the state has no dedicated funding stream or has not provided increases to an existing ELL program. Presumably, this argument would fail (unless there are no ELL students in the district), and districts would essentially have to reallocate funds from existing programs and services to support ELL programs.
3. The Court decided that it would not yet weigh data reflecting the "overall lack of success of ELL students, especially at the secondary level" at this procedural posture, as it held that the record was insufficient to make a final determination. Ultimately, the school district will need to act in the public's interest and will need to establish that it has satisfied its obligation of providing "appropriate action" under the EEOA.
4. The Court's majority opinion seemingly endorsed Structured English Immersion programs over Bilingual Education programs. Contrastingly, the dissenting opinion argues that there is substantial research proving that Bilingual Education is far more successful in helping students learn English than Structured English Immersion programs.

## VI.

### LULAC CONSENT DECREE

*League of United Latin American Citizens (LULAC), et al. v. Florida Board of Education, Case No. 90-1913 (S.D. Fla. 1990)*

#### **Background**

The League of United Latin American Citizens (LULAC) Consent Decree (hereinafter “the Consent Decree”) addresses the civil rights of ELL students, especially their right to *equal access* to all education programs. The Consent Decree provides a structure designed to ensure comprehensive instruction for ELL students. As referred to above, this Consent Decree preceded NCLB by more than ten years and applies to Florida school districts. Below is a discussion of the major tenets of the Consent Decree.

#### *Section I: Identification and Assessment*

All students with limited English proficiency must be properly identified and assessed to ensure the provision of appropriate services. The Consent Decree details the procedures for placement of students in the English for Speakers of Other Languages (ESOL) program, their exit from the program, and the monitoring of students who have exited.

#### *Section II: Equal Access to Appropriate Programming*

All ELL students enrolled in Florida public schools are entitled to programming which is appropriate to their level of English proficiency, level of academic achievement, and any special needs they may have. ELL students shall have equal access to appropriate English language instruction, as well as instruction in basic subject areas, which is understandable given the students’ level of English proficiency. Additionally, ELL students are entitled to instruction which is equal and comparable in amount, scope, sequence and quality to that provided to non-ELL students.

#### *Section III: Equal Access to Appropriate Categorical and Other Programs for ELL Students*

ELL students are entitled to *equal access* to all programs appropriate for their academic needs. These programs include compensatory, exceptional, adult, vocational, or early childhood education. This “equal access” also includes dropout prevention and other support services, regardless of a student’s level of English proficiency.

#### *Section IV: Personnel*

This section details the certification requirements and in-service training that teachers must have in order to be qualified to instruct ESOL students. Teachers may

obtain the necessary training through university course work and/or through district-provided in-service training. The Consent Decree details specific requirements for ESOL certification and in-service training, and sets standards for personnel delivering ESOL instruction.

*Section V: Monitoring Issues*

The Florida Department of Education is charged with monitoring local school districts for compliance with the provisions of the Consent Decree. This is pursuant to federal and state law. *See, e.g.*, Fla. Stat. § 229.565 (Educational Evaluation Procedures); Fla. Stat. § 228.2001 (Florida Educational Equity Act); Fla. Stat. § 1002.20(10); Fla. Stat. § 1003.56; (English Language Instruction). More specifically, monitoring is administered by the Office of Academic Achievement Through Language Acquisition (AALA), Division of Public Schools, Florida Department of Education. Hence, through these statutes and administrative bodies, the rights of ESOL K-12 Students and Parent are maintained.

*Section VI: Outcome Measures*

The Florida Department of Education is required to develop an evaluation system to assess equal access and program effectiveness. This evaluation system must collect and analyze data regarding ELL students' progress. Additionally, it must include comparisons between the LEP population and the non-ELL population regarding retention rates, graduation rates, dropout rates, grade point averages, and state assessment scores.

Following the Consent Decree, which provided that all limited English proficient students were entitled to received ESOL instruction (designed to develop a student's mastery of listening, speaking, reading and writing in English as rapidly as possible), the parents' right of parental involvement was codified in statute. *See* Fla. Stat. § 1002.20(10).

**Terms of the Agreement**

1. Settlement Agreement
  - A. Equal Educational Opportunity Act (20 U.S.C. 170)
  - B. Title IV, the Federal Civil Rights Act of 1944
  - C. Florida Educational Equality Act
2. Defendants shall submit a yearly status report concerning implementation
3. Enforcement remedies
  - a. Written notice and demand to cure specific alleged breaches officials shall attempt to cure violations within 21 days.

- b. If violations are not cured, then Plaintiffs shall provide 21 day notice to Defendant's attorneys and have the right to require a meeting or mediation in good faith to resolve this dispute.
- c. If dispute not resolved, Plaintiffs may apply to the Court.
- d. Substantial compliance with the Settlement Agreement and Court Order is a defense

### **Additional Highlights of the LULAC Consent Decree**

#### **A. English for Speakers of Other Languages (ESOL)**

##### **1. Identification and Assessment**

All students with limited English Proficiency (LEP) *must* be appropriately identified in order to ensure the provision of appropriate services.

The items, "limited English proficiency" and "limited English proficient" mean:

- a. individuals who were not born in the United States and whose native language is a language other than English; or
  - b. individuals who come from home environments where a language other than English is spoken in the home; or
  - c. individuals who are American Indian or Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of education; or
  - d. individuals who, by reason thereof, have sufficient difficulty speaking, reading, writing or listening to the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English.
- 2. Home or Native Language – Language normally used by such individuals, or in the case of a student, language used by parents of a student.
  - 3. School-Established LEP Committees – These LEP committees are comprised of ESOL teacher(s), home language teacher(s), school administrator, guidance counselors, social workers, school psychologist, and/or other appropriate educators.
  - 4. LEP Plan – Written document, identifying student, instruction by program, amount of instructional time or schedule; date of LEP identification; assessment data used to classify or reclassify as LEP; date of exit and assessment data used to exit student as English proficient. Each student will have an individual copy of the LEP plan maintained in the student file.

5. Basic subject areas mean instruction in computer literacy, mathematics, science, and social studies.
6. Basic ESOL means instruction in English.

B. Initial Identification

- Each student upon initial enrollment in a Florida school district shall be surveyed at the time of enrollment by being asked the following questions:
  1. Is language other than English used in the home?
  2. Did the student have a first language other than English?
  3. Does the student most frequently speak a language other than English?
- The survey questions may be included on a registration form or on a separate survey, and the survey shall be maintained.
- Home language and national origin of each student shall be collected and retained in the district's data system, and shall be reported to FDOE.
  1. Each student that answers "YES" to one of the survey questions shall be assessed to determine if he or she is limited in English Proficiency (LEP).
  2. Any student determined LEP shall receive appropriate instruction and findings as specified herein:
    - a. English language proficiency shall be determined by the use of state-approved appropriate English language aural/oral proficiency tests.
  - Each test shall be administered in accordance with State-approved publisher's instructions and any student scoring in the LEP range determined by the publisher's standards shall be determined to be LEP.
    - b. For any student in grade 4 or above, English language reading and writing proficiency shall be determined by a norm-referenced test. Any student who scores at or below the 32<sup>nd</sup> percentile on the reading and writing subparts of the test shall be determined to be LEP and shall receive appropriate services.
    - c. Students not determined to be LEP may be referred to an LEP committee by a parent or teacher. Parent's preference is considered final decision. LEP committee may consider the following to determine if a student *is* or *is not* LEP:
      - (1) Extent and nature of prior educational and social experiences; and student interview;
      - (2) Written recommendation and observation by current and previous instructional and supportive services staff;

- (3) Level of mastery of basic competencies or skills in English and/or home language;
    - (4) Grades; and
    - (5) Test results.
  - d. Determinations by the LEP committee shall be contained in a written evaluation.
  - e. District may use a district-developed or adapted test procedure to assess a student's limited English proficiency, and such procedure must be approved by FDOE.
3. Assessment of a student's aural/oral proficiency must be completed immediately, not to exceed 4 weeks for LEP students.

## VII.

### **REFUGEE EMERGENCY CONTINGENCY PLAN**

M-DCPS's historical emphasis of appropriately educating LEP students has carried over to its Refugee Emergency Contingency Plan.

Due to the diversity of the Miami-Dade County community and its location as a point of entry for many of our nation's immigrants, M-DCPS must often develop contingency plans to address emergency situations where there may be large and sudden increases in enrollment of ELL students. Miami-Dade has handled large waves of immigration in the 1960s, 1970s, and 1980s, and it continues to develop plans to address such emergencies and meet the needs of students. M-DCPS's current Refugee Emergency Contingency Plan was originally developed in 1987 to respond to potential large-scale influxes of foreign students. The plan has been updated regularly and is a reflection of the M-DCPS's readiness to respond to emergencies resulting in abrupt increases of refugee students.

The plan is organized around eighteen areas of operation which are significantly impacted by sudden, unanticipated student influxes. These areas range from instructional programs, materials, and services, to housing, food services, and transportation, as well as the networking required to address fiscal, governmental, and labor issues.

For each area of operation, overall responsibility is assigned to a member of the Superintendent's Executive Staff, who keeps the Superintendent informed on the current status of that area of operation. Those senior staff members with overall responsibility are supported by other staff members who have lead and/or immediate responsibility with respect to specific areas of concern.

The plan is structured in such a way that a sustained intake of foreign students can trigger quick responses at the district, regional center, feeder pattern, or even individual school level, depending on the intensity and location of the intake impact.

For example, in such emergencies, there is a need for the identification and training of additional foreign student counselors to be employed part-time hourly for the purpose of interviewing adult foreign students. Coordination with South Florida Workforce and the South Florida Training Consortium is provided at adult centers so as to coordinate enrollment of students and educational services.

After the September Budget/Personnel Conferences, the principals of all schools that experience growth in student population should submit a memorandum to the Office of Budget Management through the Regional Superintendent (or his/her designee), detailing the amount of growth and the number of students assigned to each basic teacher. *In particular, Title I schools should carefully review class size and request additional resources as required.* It is the principal's responsibility to monitor class size and to make appropriate recommendations to the Regional Superintendent (or his/her designee) if excess class size is experienced. In order to receive a Growth Unit (more resources/staff to accommodate student influx), the following criteria must be met:

### **Kindergarten, Grades 1–3**

- **Average class size of all kindergarten classes equals approximately 21 to 27:** allocate a Teacher, and paraprofessional in some circumstances, if space is available. In some instances, no space may be available, so a space must be *made* available

### **Grades 4–6**

- **Average class size of all classes in grades 4–6 is 27.81 or more:** Allocate a teacher if space is available. If no space is available, *a full-time paraprofessional* is allocated.

Secondary school requests shall be evaluated on a case-by-case basis. Additional MESA allocations will be granted if the school's capacity is under the system-wide average for the school's level (i.e. elementary, middle, senior) and there was a substantial increase in enrollment.

If overcrowding necessitates extra, temporary school centers, Financial Operations and Regional Centers must prepare a staffing model based upon individual needs. The staffing model will include support personnel approximate to that of class sizes for any other school at that level. Indeed, additional support staff may be required, but funding may not be available. In order to provide adequate services, resources are often stretched beyond capacity.

### **Curriculum/Instruction**

Primary considerations for organizing instruction for foreign students are that the program be (1) focused on rapid acquisition of English, and understandable instruction in the basic subject areas of science, social sciences, mathematics, and computer literacy, (2) delivered within fiscal resources generated under the FEFP Program, and (3) in compliance with the LULAC Consent Decree; the understanding between M-DCPS and the Office for Civil Rights, Region IV; and Florida Board of Education rules. Instruction in and through the home language while students are learning English is an integral part of the program and is supported by specially-allocated personnel at the elementary level. At the secondary level, bilingual curriculum content courses in social sciences, science, mathematics, and computer literacy are offered, whenever possible, by teachers who are bilingual

and certified, and through supplements authorized under state programs. When monolingual English-speaking teachers are assigned to teach basic subjects, instruction is delivered in such a way that it is (1) understandable to the LEP student given his/her level of English proficiency, and (2) equal and comparable in amount, scope, sequence, and quality to that provided to English proficient students.

The recommended instructional program is based on the Plan for Establishment of an Intensive ESOL Orientation Program as approved by the School Board on July 12, 1995, and will be adjusted to meet such requirements as may be established in Florida Statutes, Florida Board of Education rules, LULAC Consent Decree, and Miami-Dade County School Board rules at the time implementation of the plan is authorized. Organizing for instruction: as stipulated in Florida Board of Education Rules (6A-6.0900 – 6A-6.09091) and in the 1990 League of United Latin American Citizens (LULAC) et al. v. State Board of Education (SBE) Consent Decree, all LEP students entitled to equal access to instruction in English which is equal in amount, sequence, and scope as that provided to non-LEP students. The secondary courses for ESOL are grade level courses, not proficiency level courses. There are no mandated levels of English language proficiency at the State level.

In addition, M-DCPS must provide orientation for its instructional staff on the instructional component of the contingency plan. In so doing, M-DCPS must conduct in-service training sessions for teachers of self-contained classes of new foreign students. Secondary LEP students are to be provided instruction in English, using ESOL strategies at grade level, as set forth in the Individual Student LEP Plan or Progress Monitoring Plan. All ESOL courses, which count as English credits, are described and listed in the FDOE Course Code Directory by grade level. English I Through ESOL is a ninth grade course, English II Through ESOL is a tenth grade course, English III Through ESOL is an eleventh grade course, and English IV Through ESOL is a twelfth grade course. The same holds for middle school courses. There are no Sunshine State Standards for ESOL. The course description for English Through ESOL (middle school and senior high school courses) mirrors the course descriptions for English courses. Unless a school groups non-LEP students in grades 6-12 in the same course/class, LEP students may not be grouped in the same manner. The elective courses for ESOL listed in the FDOE Course Code Directory are intended to address the language proficiency needs of LEP students and, as such, students in various grades may be grouped in these courses. Any variations not consistent with this section will require a waiver of Florida Board of Education rules.

The only circumstance under which the FDOE has approved the grouping of LEP students is when a senior high school or middle school has very few LEP students whose needs would be better met by grouping two grades together. Examples of two-grade groupings are sixth and seventh graders; seventh and eighth graders; ninth and tenth graders; and eleventh and twelfth graders. Grades Pre-K, Kindergarten, and first will continue to be housed as an absorption model.

In scheduling the instructional program for the newly-arrived foreign students, Competency-Based Curriculum (CBC) requirements will be observed to the extent feasible, taking into account the special focus of the program on the rapid acquisition of English and understandable instruction in the basic subject areas of science, social science, mathematics, and computer literacy. Students participating in the program must receive a minimum of two hours of ESOL daily, which meets or exceeds the equal time requirement of the LULAC Consent Decree.

In middle schools, students in the self-contained Intensive ESOL Orientation Program will have the same number of periods as other students, though the specific courses may vary; for example, LEP students will have three periods of ESOL, one period of mathematics, and one or more of social science or science or physical education delivered on an alternating basis. In senior high schools, students in the self-contained Intensive ESOL Orientation Program will have the same schedule as in middle schools, except that students who will be in both social sciences and science on a daily basis may have two rather than three ESOL periods, or may not be scheduled for physical education. New foreign students who are assigned to middle or senior high school classes with English speaking students will be eligible to participate in physical education on the same basis as other students. New foreign students housed in special centers or facilities may have modified schedules, depending on hours established for such sites.

Elementary schools: The following are the recommended organizational models which reflect 100% of the time spent in the basic curriculum and the percentage of instructional time in which English or the native language will be used as the medium of instruction, excluding time spent in art, music, physical education, and lunch.

**Model A**

Class with a bilingual teacher

September-June

ESOL/Language Arts and Content Area Instruction in English 60% ..... Instruction in and through the Home Language (including Home Language Arts) 40%	ESOL/Language Arts and Content Area Instruction in English 65% ..... Instruction in and through the Home Language (including Home Language Arts) 35%	ESOL/Language Arts and Content Area Instruction in English 70% ..... Instruction in and through the Home Language (including Home Language Arts) 30%
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**Model B**

Class with a monolingual English-speaking teacher

September-June

ESOL/Language Arts and Content Area Instruction in English 70% ..... Instruction in and through the Home Language (including Home Language Arts) 30%
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The difference between Model A and Model B lies in the distribution of the teacher's time in the home language throughout the year. In Model A, the bilingual classroom teacher gradually reduces the amount of time during which she/he uses the home language. In Model B, the specially-allocated teacher's time remains constant throughout the year, and transition for the students is determined by the length of time they participate in instruction in and through the home language. The need for maintaining a common time allocation for the special teacher in Model B stems from scheduling requirements.

General recommendations for assignment of secondary LEP students to the basic subjects of mathematics, science, and social science need to comply with the requirements of the Individual

Student LEP Plan or Progress Monitoring Plan. However, for students whose academic preparation is such that they will benefit more from alternative courses, individual exceptions should be made for absorbing these students into remedial courses, or into more advanced courses, as may be the case, to better meet their academic needs.

### **Project New Beginning**

Students with limited or no prior school experience present special needs that cannot be met through the regular transitional bilingual programs. “Project New Beginning” has been designed to address the needs of these students who possess little literacy and academic skills in their native language. The students in question have a dual issue: lack of English proficiency and lack of literacy and skills in their home language. Students selected to participate in Project New Beginning should meet the following criteria:

- Must be identified within first semester;
- The student’s chronological age corresponds to grade six and above (age 11 or older);
- The student is limited English proficient (LEP) – ESOL Level I; AND
- The student’s native language literacy skills are below grade level, in accordance with the following criteria:

Middle – below third grade level;

Senior – below fifth grade level.

Formal assessment in order to place students in Project New Beginning includes the following instruments:

- The State-Approved Miami-Dade County Oral Language Proficiency Scale-Revised (M-DCOLPS-R), Interview with Guidelines;
- Minimum Student Performance Standards/Sample Assessment Items in Reading and Mathematics, revised Spanish/Haitian Creole versions (3<sup>rd</sup> Grade for Middle, 5<sup>th</sup> Grade for Senior); and
- Writing sample.

Program participation is on a voluntary basis. Placement in Project New Beginning is recommended for one (1) school year with a maximum of two (2) years in very special cases and with prior District approval, and will require a waiver of Florida Board of Education rules.

The goals of the program are: (1) to develop social and academic skills; (2) to develop the necessary literacy and academic skills to enable students to fully profit from the regular English for Speakers of Other Languages (ESOL) and Bilingual Curriculum Content (BCC) type courses; (3) to impact the high failure and dropout rate among students with this type of problem and to facilitate their meeting grade promotion and graduation standards; (4) to limit the number of inappropriate

referrals for multidisciplinary evaluations and placement into exceptional student education (ESE) programs; (5) to develop a more positive self-image; and (6) to increase bi-literacy skills.

The students identified as meeting the criteria for placement into this special program are grouped in homogeneous self-contained classes. The content of the courses and the methodology used have a continuous progress orientation in order to provide students an individualized program to meet their needs. Staff selected to teach the program will receive special training in order to meet the specific needs of these students. In grades 9-12, every effort is made to use courses that generate credits needed for high school graduation.

## VIII.

### THE MCKINNEY-VENTO ACT - 42 U.S.C. §§ 11431 ET SEQ.

In cases where there are students who are refugees, schools must be sensitive to a number of legal issues, including federal laws that prohibit the disparate treatment of students based on their refugee status.

*It cannot be emphasized enough that determining whether a particular child or youth fits the definition of homeless is a case-specific inquiry. General answers based on incomplete information or hypothetical situations will often be legally incorrect.*

National Law Center On Homeless & Poverty  
Determining Homelessness by the Definition

Specifically, the "Definitions" portion of this Act are as follows: (42 U.S.C. § 11434a):

‘For purpose of this part...

(2) The term ‘homeless children and youths’—

‘(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

‘(B) includes—

‘(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

‘(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning 1 of section 1 03(a)(2)(C));

‘(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

‘(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).’”

## IX.

### NO CHILD LEFT BEHIND ACT OF 2001 – 20 U.S.C.A. §§ 6301 ET SEQ.

- ADEQUATE YEARLY PROGRESS – 20 U.S.C.A. §§ 6316, 6311(B)-(C)
- ENGLISH FOR SPEAKERS OF OTHER LANUAGES (ESOL) – 20 U.S.C.A. §§ 6801-7014 ET SEQ.
- EDUCATION OF MIGRATORY CHILDREN – 20 U.S.C.A. §§ 6391-6399 ET SEQ.

### **Background**

This section of NCLB focuses in part on the education of students migrating from different countries. Naturally, this includes the education of ELLs. The impact of NCLB on the manner in which school districts conduct their business cannot be under-estimated. NCLB has focused on data collection, tracking of progress of ELL students, and ELL student performance. As districts have collected this data, these districts have participated in studies and have used this data to inform their decisions to more effectively deliver services.

Several important studies have focused on urban school districts that contain the largest concentration of English learners across the country. Their success or failure in educating ELL students holds enormous implications for the country as it struggles to raise academic standards and remain globally competitive.

The data developed in large part from the NCLB and case decisions has led to studies that have uncovered a more complex interaction of organizational, structural, instructional, and staffing issues behind the achievement of English learners. The data suggest that programming for these students has to be collaborative and it has to span the curriculum. School Districts like M-DCPS realize that they must develop and communicate a clear vision and strategy for ELL instructional improvement. They must work to provide schools with the tools, support, and oversight necessary to drive these reforms into the classroom. The results scream for better integration of English learners into the general educational program—and scream it more loudly than any other studies we have encountered so far. In short, studies and data show that integration and collaboration are key. Explicit emphasis on literacy and language instruction is an integral part of effective teaching for ELLs, and the strategic use of native language is also important. The data shows that *mastery of academic language and vocabulary* is one of the most predictable indicators of success for both native English speakers and ELLs.

### **Contextual Features**

- Leadership and Advocacy on Behalf of ELLs
- Empowerment of the ELL Office
- External Forces as Catalyst for Reforms

### **Promising Practices**

- Comprehensive Planning and Adoption of Language Development Strategies for ELLs
- Extensive and Continuous Support for Implementation
- A Culture of Collaboration and Shared Accountability
- Hybrid Models of Instructional Management and Local Empowerment
- Strategic School Staffing
- High Quality, Relevant Professional Development
- The Use of Student Data
- Reallocation and Strategic use of ELL Funds

### **Limiting Factors**

- No Coherent Vision or Strategy for the Instruction of ELLs System-wide
- Site-Based Management Without Support, Oversight, or Explicit Accountability for Student Progress
- Lack of Access to the General Curriculum
- No Systematic Use of Disaggregated Student Data
- Inconsistent Leadership
- No Systemic Efforts to Build ELL Staff Capacity
- Compartmentalization of ELL Departments and Staff
- The ELL Office Lacked Capacity and Authority

### **NCLB, Specifically**

After the reauthorization of the Elementary and Secondary Education Act, NCLB, with its emphasis on assessment, transparency and accountability for subgroups, required schools and districts across the country to report the achievement levels of the ELL subgroup. This brought the academic needs of ELLs into the spotlight. In some districts, the low achievement of ELLs spurred intense scrutiny of ELL programs. Many districts cited NCLB as an important factor in understanding the context of what was going on in their districts. The process of communicating the NCLB vision and rallying support behind district goals often created the momentum districts needed to push for large-scale reform and restructuring efforts.

Another common practice among improving districts was the collection and strategic use of data. Even for those districts “ahead of the curve” in terms of student data collection, like M-DCPS and many Florida districts, NCLB brought with it new requirements, including the mandated disaggregation of student data by subgroup. This shed light on the work that still needed to be done

to increase ELL achievement. Improving districts made the use of data a cornerstone of their reform strategies, significantly expanding the accessibility, quantity, and types of student data available to educators. In particular, these districts took steps to give teachers and school leaders access to accurate, timely student measures that could help them diagnose and respond to individual student needs. Central office staff in New York reported that student *data* drove conversations about the need for reform and accountability. These conversations served to clarify expectations regarding improvement for ELLs and also helped schools, teachers, and the central office monitor their progress. In some cases, the effective and strategic use of ELL achievement data was also seen as instrumental in driving board or other policy decisions and discussions with district leadership. In many districts, ELL reform efforts benefited from both increased funding and the reallocation of existing resources. (The increase in resources was probably helped in many cities by the change in the federal Title III system of allocating resources to the local level made by NCLB.)

In essence, as a result of NCLB, there are more data-driven methods developed nationally to address the achievement gaps of subgroups throughout the country. In terms of ELL education, NCLB will continue to impact districts in terms of how they deliver basic educational instruction to ELL students.

X.

CREDITS

I would like to acknowledge the following sources for the materials and references herein:

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- Daniel C. Dresh, Law Clerk and Certified Legal Intern, and Pamela Y. Carter, Certified Paralegal, Miami-Dade County School Board Attorney's Office