



# English Language Learners

## What's at Stake for Arizona?

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## Introduction

### *Flores v. Arizona (1992-2012)*

Last year marked the 20<sup>th</sup> anniversary of *Flores v. Arizona*, the original lawsuit regarding English learners in Arizona, but the task of providing efficient and effective English Language Learner (ELL) programs in Arizona remains unresolved. There are many complexities and challenges facing Arizona's ELL programs, which historically have been plagued by inadequate funding, uneven oversight and political wrangling – all of which have led to continual court battles. Local school districts that could benefit from increased flexibility to differentiate instruction in order to meet the diverse needs of their ELL students are frustrated by bureaucratic restraint. And at a time when it's becoming increasingly difficult and crucial for the state to compete regionally and internationally in the new global economy, Arizona is missing its opportunity to generate a highly educated workforce through proper funding and administration of ELL programs. In fact, there is a growing achievement gap between ELL students in Arizona and the national average.

There are, however, some ELL-related discussions taking place in the Legislature this 2013 session, not the least of which is House Bill 2425, which would remove ELL from the scope of political ideologies at the Legislature and return oversight to the State Board of Education. Such action is one of the key possible recommendations for solutions listed at the end of this report as ways to improve Arizona's ELL program.

At stake overall, educators, business leaders and economic experts agree, is no less than the state's future economic, health, social and education standing. Policies that affect ELL students impact all Arizonans. Currently, Arizona serves approximately 166,000 ELLs, in 2007-08<sup>1</sup>

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<sup>1</sup> Batalova, J., & McHugh, M., *Number and Growth of Students in U.S. Schools in Need of English Instruction.*, (Washington, DC: Migration Policy Institute, 2010).

accounting for approximately 15 percent of all K-12 students in Arizona<sup>2</sup>. It is imperative that Arizona meet the educational needs of ELLs, 90 percent of whom speak Spanish as their primary language, in order to raise overall educational attainment levels and support long-term economic growth and prosperity.<sup>3</sup>

Historically, the overall investment in education has been low in Arizona. Over the past decade Arizona has placed near the bottom compared to other states for dollars per student. For example, in 2010, Arizona ranked last among the 50 states and District of Columbia with an average appropriation per student of \$6,708, compared to the median of \$11,089<sup>4</sup>. The issue of funding adequacy is linked directly with students' ability to reach academic performance benchmarks. The empirical evidence supports the argument that funding and instructional practices implemented post *Flores v. Arizona* continue to be inadequate as they do not appear to be improving the academic attainment for Arizona's ELLs. For instance, math and reading scores for ELLs are well below other peer groups, and high school graduation rates for ELLs show a sharp decline in recent years.

Ultimately, it is not only the responsibility of the educational system to adequately educate all students including ELLs, it could be considered a wise policy investment and in the state's best interest. Eighty percent of ELLs are born in the United States<sup>5</sup> and represent a growing population in Arizona. The number of ELLs in K-12 schools is unlikely to diminish in the long term. While Arizona is but one state, the resolution of this case could catalyze important and needed change in ELL education nationwide.

The issue of educational inadequacy with respect to English Language Learners (ELLs) is not new for the State of Arizona. In fact, finance adequacy was challenged in 1992 when parents in the Nogales Unified School District sued the state for failure to provide enough funding to educate the district's students, the majority of whom were learning English as a second language. The lawsuit claimed that the State of Arizona violated the Equal Education Opportunities Act

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<sup>2</sup> Arizona Department of Education estimated 90,000 ELL students in Arizona in 2011-12. ELL population figures for Arizona have been inconsistent in recent years, primarily because a change in the Home Language Survey (HLS) resulted in a serious undercount of English language learners currently residing in the state (Goldenberg & Rutherford-Quach, 2010). The HLS is used by schools to identify students for English proficiency. In 2010, the Federal Office for Civil Rights (OCR) found Arizona's HLS change unlawful, and that the state had violated Title VI of the Civil Rights Act and the Equal Educational Opportunities Act.

<sup>3</sup> Morrison Institute for Public Policy. *Dropped? Latino Education and Arizona's Economic Future*. Retrieved from <http://morrisoninstitute.asu.edu/publications-reports/2012-dropped-latino-education-and-arizonas-economic-future/view> (November, 2010).

<sup>4</sup> National Education Association., *Rankings and Estimates: Rankings of the States 2011 and Estimates of School Statistics 2012*. <http://www.nea.org/home/44479.htm> (December 8, 2012).

<sup>5</sup> Gandara, P., Hopkins, M., *Forbidden Language: English Learners and Restrictive Language Policies* (2010).

(EEOA) because it refused to take “appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs” (Title 20 U.S.C. § 1703(f)).

In 2012, 20 years after the original lawsuit, the challenge of providing adequate funding for ELLs continues. Beyond the financial aspects, the fact that the issue of ELL education is intricately linked to immigration issues makes it politically contentious, as well. This policy brief will provide a retrospective on the lawsuit, presenting history and context up to present policy options through an objective, evidence-based lens.

### ***Flores v. Arizona* (2000), Consent Decree and Proposition 203**

*Flores v. Arizona* began with a lawsuit in 1992. However, it wasn't until seven years later, in 1999, that the case reached trial in U.S. District Court. The court ruled in favor of the plaintiffs in January 2000, noting that inadequate state funding resulted in program deficiencies for ELLs. The court found the amount of funds per ELL student was based on a faulty and dated cost study, and as a result, the state's ELL appropriation was “arbitrary and capricious.” In August 2000, then-Superintendent of Public Instruction Lisa Graham Keegan entered into an agreement with the plaintiffs that resolved the lawsuit's allegations regarding program appropriateness, which among other stipulations contained three mandates about the curriculum and instruction provided to ELLs:

- Daily instruction in English language development. The English language instruction shall be appropriate to the level of English proficiency and shall include listening and speaking skills, reading and writing skills, and cognitive and academic development in English.
- Daily instruction in basic subject areas that is understandable and appropriate to the level of academic achievement of the ELL student, and is in conformity with accepted strategies for teaching ELL students.
- The curriculum of all bilingual education and English as a Second Language (ESL) programs shall be comparable in amount, scope and quality to that provided to English proficient students.

In November 2000, Arizona passed a ballot initiative, Proposition 203, also known as “English for the Children.” Prop 203 provided more structure in the types of services afforded to ELL students by requiring an intensive one-year “Sheltered English Immersion” (SEI) program

intended to better help ELLs learn English at an expedited rate.<sup>6</sup> Prior to the passage of Proposition 203, Arizona school districts were allowed to select from a variety of program models, including English as a second language and transitional or dual language bilingual education, to develop English proficiency and academic achievement for their English learners.

With the passage of Prop 203, local flexibility that existed regarding the choice of program models for ELLs ended, and SEI was the required instruction method for ELLs in school districts and charter schools across the state. After the passage of Prop 203, the U.S. District Court issued an amendment to the original Flores consent decree acknowledging Structured English Immersion as a new model for ELLs in the state. However, the “stipulation” did not abrogate the state’s obligation to appropriately assess students’ proficiency, train teachers to work with ELLs, prepare and submit a cost study, and provide quality instruction.

### **Determining the Cost to Adequately Fund ELLs**

While the consent decree resolved the lack of cohesive programming, it did not stipulate the funding that would be appropriated to educate English Language Learners. This issue went unresolved until such time that a court-ordered cost study could determine an adequate funding level. Cost studies, in general, seek to determine what resources are needed to provide an adequate education to public school students, how much an adequate education should cost, and how revenue should be generated.

Currently, the four prominent cost-study methodologies are:

- Professional judgment panel<sup>7</sup>
- Successful school model<sup>8</sup>
- Evidenced-based approach<sup>9</sup>
- Cost function analysis<sup>10</sup>

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<sup>6</sup> For example, Proposition 203 mandated 60 hours of SEI training for continuing teachers and 90 hours for new teachers.

<sup>7</sup> A professional judgment panel selects panelists to assign costs to the services and programs needed to allow students to meet specified performance outcomes in various prototypical schools or districts.

<sup>8</sup> A successful school model first identifies districts with a high proportion of students passing the state standardized exam. Data on current expenditure levels are then used to estimate funding levels for all districts after controlling for student characteristics.

<sup>9</sup> An evidence-based approach uses the research literature on programs and practices that have shown evidence of positively influencing student academic outcomes. Then, the costs of the various programs are estimated and aggregated to produce state- and district-level costs.

<sup>10</sup> A cost function analysis first creates a measure (cost indices or per pupil weights) to capture the effect of external factors on spending to meet a specified performance outcome, and then determine how much funding is needed across districts to meet any given performance level.

Cost studies typically produce two types of funding recommendations: They establish a base cost determining a minimum amount of money needed to educate the general population of students to meet specified outcomes (i.e., performance on state standardized tests), and denote the additional costs needed to educate special populations of students, such as ELLs.

While costing-out studies determine the amount of appropriate funding, little attention has been paid to how ELL students are treated under the various costing out methodologies, or which approaches yield the most useful results for ELLs.<sup>11,12</sup> In addition, it is not always clear how additional costs are determined, whether they are rooted in empirical evidence, or functions of political and budgetary maneuvering<sup>13</sup>.

In May 2001, the Arizona Department of Education (ADE) produced the first cost study using a limited successful school model and professional judgment panel that failed to provide specific recommendations beyond broad estimates of ELL per pupil costs (\$0 to \$4,600) making this study irrelevant to lawmakers or the courts.

In December 2001 a second cost study was ordered, but was not completed by the National Conference of State Legislatures (NCSL) until August 2004. This cost study used a more comprehensive professional judgment panel. However, some state legislators questioned the methodology (professional judgment panel and school district survey) and the expertise of panel members. Ultimately, this second cost study was rejected by the Legislature, as well.

A third “unofficial” cost study not ordered by the courts was funded by Rodel Charitable Foundation and conducted by Picus and Associates (2004). This evidence based cost study found that approximately \$1,400 in additional funds were needed in Arizona per pupil. This funding amount was what Rodel saw as an additional appropriate amount of funding per Arizona student – not the amount intended to fund ELLs specifically. There has not been another cost study conducted in Arizona since 2004.

### **Legislative Attempts to Resolve *Flores v. Arizona***

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<sup>11</sup> Gándara, P., & Rumberger, R., Defining an adequate education for English learners. *Education Finance and Policy*, Volume 3, Issue 1, 2008, 130-148.

<sup>12</sup> Jimenez-Castellanos, O., & Topper, A., The Cost of Providing an Adequate Education to English Language Learners: A Review of the Literature. *Review of Educational Research*, Volume 82, Issue 2, 2012, 179-232.

<sup>13</sup> Reschovsky, A., & J. Imazeki. Achieving educational adequacy through school finance reform. *Journal of Educational Finance*, Volume 26, Issue 4, 2001, 373–96.

Since the Arizona Legislature did not approve any of these cost studies it attempted to address what it saw as appropriate funding levels for English Language Learners in the political sphere without empirical evidence from the cost studies. In December 2001, the Legislature passed House Bill 2010, which provided approximately \$144 million over a four-year period. HB 2010 increased the ELL student funding weight to 11.5 percent, up from 6 percent (\$340, up from \$179). The plaintiffs (Flores) challenged the per-pupil funding amount again in April 2002. The plaintiffs argued that this bill remained “arbitrary and capricious” since it was not based on any model of how much it actually costs to adequately fund ELL programs.

May 2005 marked the passage of HB 2718, which included revisions to the assessment, classification, reassessment and monitoring of ELL pupils. This bill also proposed an ELL taskforce, codified the consent decree and provided funding for an ELL group B weight increase.<sup>14</sup> Then-Governor Janet Napolitano vetoed the bill, stating that it was grossly inadequate to meet the state’s ELL needs over the long run.

In March 2006, the Arizona Legislature passed HB 2064 (*see next section*) and the Governor allowed this bill to go into law without her signature, predicting that the court would find it inadequate, thus forcing a quicker solution than continued fines due to a lack of resolution. The U.S. District Court assessed \$21 million in fines against Arizona for its failure to comply with its judgment within the allocated deadlines.<sup>14</sup> The U.S. District Court again ruled that the Legislature had not provided adequate funding for ELL students through HB 2064. Therefore, the ELL per-pupil funding add-on remained at 11.5 percent of the base level amount.<sup>15</sup>

In April 2008, the Legislature passed Senate Bill 1096, which appropriated \$40.7 million to fund Structured English Immersion (SEI) programs in Arizona. Governor Napolitano again allowed the bill to go into law without her signature. In May 2008, the ELL plaintiffs filed for court relief, asserting that Arizona funding levels in SB 1096 failed to comply with the U.S. District Court order.<sup>14</sup>

### **HB 2064: Creating Arizona ELL Task Force and Four-Hour ELD Model**

Arguably, the most consequential legislation passed came in 2006. House Bill 2064 created an English Language Learner task force in order to monitor ELL students in Arizona, a charge previously held by the State Board of Education, a constitutional body responsible for K-12 education oversight in Arizona. HB 2064 authorized the ELL Task Force to develop “research-

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<sup>14</sup> Arizona State Senate. *Flores v. Arizona*. Issue Paper, Phoenix, AZ: Author. 2008.

<sup>15</sup> Division of School Audits., *Financing Arizona’s English Language Learner Programs: Fiscal Years 2002 through 2006*. State of Arizona Office of the Auditor General. 2007.

based models of structured English immersion” – including the requirement that English learners receive four hours of English language development daily for the first year.

The Task Force then adopted a model that focused on phonology, morphology, syntax, vocabulary and semantics. In effect, the legislation and the Task Force together redefined Structured English Immersion, which combines sheltered content and ESL instruction. In addition, the Task Force voted to extend the four-hour block beyond the one-year specified by the law. This new model – English Language Development (ELD) – however, effectively contradicted the consent order by not containing other academic content subjects. With the typical school day comprising 6 to 6½ hours per day, 4 hours of language-specific instruction meant ELLs were isolated from their non-ELL peers for a significant portion of their school day.

Table 1 indicates how the Task Force conceptualized the blocks for the elementary grades (K-5). ELLs’ English proficiency levels, as measured by the Arizona English Language Learner Assessment (AZELLA) instrument, determine the amount of time they receive oral English development and writing instruction. This model has come under criticism due to ELLs being isolated from their non-ELL peers for the majority of the school day, lack of access to academic content areas, and high school ELL students not being able to take the required courses to graduate.<sup>16, 17, 18</sup> These issues are at the forefront in the ongoing court case.

TABLE I  
Arizona ELLs Task Force Structured English Immersion Models  
For the Elementary Grades (K-5)

AZELLA Pre-Emergent & Emergent		AZELLA Basic Level		AZELLA Intermediate Level	
45 minutes	Oral English	30 minutes	Oral English	15 minutes	Oral English
60 minutes	Grammar	60 minutes	Grammar	60 minutes	Grammar
60 minutes	Reading	60 minutes	Reading	60 minutes	Reading
60 minutes	Vocabulary	60 minutes	Vocabulary	60 minutes	Vocabulary
15 minutes	Pre-Writing	30 minutes	Writing	45 minutes	Writing

<sup>16</sup> Gándara, P., & Orfield, G., Segregating Arizona’s English Learners: A Return to the "Mexican Room"? *Teachers College Record*, Volume 114, Issue 9, 2012, 2-3.

<sup>17</sup> Lillie, K., Markos, A., Arias, B., & Wiley, T., Separate and Not Equal: The Implementation of Structured English Immersion in Arizona’s Classrooms. *Teachers College Record*, Volume 114, Issue 9, 2012, 6-7.

<sup>18</sup> Rios-Aguilar, C., Gonzalez-Canche, M., & Moll, L., Implementing Structured English Immersion in Arizona: Benefits, Challenges, and Opportunities. *Teachers College Record*, Volume 114, Issue 9, 2012, 5-6.

## **Ninth Circuit Court of Appeals and U.S. Supreme Court Rulings**

Governor Napolitano maintained her concerns about the appropriateness of HB 2064 and asked the attorney general to petition the U.S. District Court for an expedited review. The attorney general argued the law did not fully comply with existing court orders. In April 2006, the District Court agreed with the governor and attorney general that HB 2064 did not comply with the original agreement.

Then-Superintendent Tom Horne of ADE appealed the decision to the 9<sup>th</sup> Circuit Court of Appeals, which “vacated” the decision. Upon remand, the U.S. District Court had to consider whether the state’s efforts to address funding inadequacies and ELL program development satisfied the Equal Educational Opportunities Act (EEOA) requirement that districts take “appropriate action” to remedy language barriers impeding ELL participation in instructional programs. The U.S. District Court’s decision this time echoed its earlier rulings that Arizona’s funding for ELL programs continued to be inadequate. Superintendent Horne again appealed to the 9<sup>th</sup> Circuit, which in 2008 upheld the U.S. District Court’s ruling that Arizona’s school funding for ELLs was inadequate.

Superintendent Horne then appealed to the U.S. Supreme Court, arguing that the State of Arizona, in fact, was fulfilling its EEOA obligations through the programmatic changes it had implemented to date. In July 2009, the U.S. Supreme Court in *Horne v. Flores* ruled in favor of the State of Arizona in a 5-4 vote, declaring that the “EEOA’s ‘appropriate action’ requirement [did] not necessarily require any particular level of funding” and that the EEOA did not require that funding “come from any particular source.”

The U.S. Supreme Court also raised a question about whether the *Horne v. Flores* case concerned all school districts in Arizona or merely the originating district in Nogales. Ultimately, the case was remanded back to the U.S. District Court for further consideration of the EEOA claims. The U.S. District Court conducted a 23-day trial beginning in fall 2010. The hearings focused principally on whether the State’s four-hour ELD block constituted appropriate action. The plaintiffs argued that it did not, and furthermore, that the segregation of ELLs from their English-speaking peers and the withholding of content violated the students’ civil rights.

No further court rulings or orders have been made since the U.S. Supreme Court ruling in 2009. The case is awaiting a ruling by the U.S. District Court – now 13 years after its initial 2000 ruling. Table 2 shows the timeline for ELL in Arizona.

**Table 2.** Timeline for English Language Learner (ELL) program in Arizona

1992	<i>Flores v. Arizona</i> was filed in federal district court by Miriam Flores, arguing that Arizona violated the civil rights of English Language Learner students because the state failed to provide adequate funding to implement an appropriate ELL program of instruction.
January 2000	The U.S. District Court ruled in favor of the plaintiffs and declared Arizona’s ELL programs in violation of the Equal Education Opportunities Act (EEOA) because the funding level as it related to ELL students was “arbitrary and capricious.”
August 2000	Arizona Superintendent Lisa Graham Keegan entered into a consent decree with plaintiffs
October 2000	U.S. District Court ordered the state to conduct a cost study to determine how much additional funding would be required to address the deficiencies in the ELL programs noted in the January 2000 ruling.
November 2000	Arizona passed Proposition 203 requiring that all classes be taught in English using a Structured English Immersion (SEI) program
May 2001	The Arizona Department of Education (ADE) released an English Acquisition Program Cost Study that identified per-pupil costs in the sampled immersion programs. However, the cost study was of limited usefulness because it did not contain any specific conclusions or recommendations, only an estimated price range of \$0 to \$4,600 per ELL student.
December 2001	The Legislature passed HB 2010, which provided approximately \$144 million, doubled the ELL group B weight (from \$179 to \$340) and appropriated money for each of the next three years for ELL instructional materials (\$1.5 million), teacher training (\$4.5 million), compensatory education (\$5.5 million) and reclassifying students (\$3 million).
April 2002	The plaintiffs again challenged the state’s per-pupil funding, arguing that it was still “arbitrary and capricious.” The court ordered Arizona to perform another cost study and set a compliance deadline of June 2003 for the state to create a funding plan commensurate with the findings of the cost study.

August 2004	The National Conference of State Legislatures (NCSL) consultants published an executive summary of the English learner cost study, and recommended from \$670 to \$2,571 per ELL pupil, depending on grade level and various at-risk factors. The Legislature deemed the NCSL cost study flawed in February 2005.
May 2005	The Legislature passed HB 2718, which included revisions to the assessment, classification, reassessment and monitoring of ELL pupils, created a taskforce, codified the Consent Decree, and provided funding for an ELL Group B weight increase for 2005-06. The bill was vetoed by the Governor.
December 2005	The U.S. District Court ordered financial penalties imposed against the state in the form of progressive daily fines until the state complied with the judgment. In addition, the U.S. District Court excluded ELL pupils from the Arizona's Instrument to Measure Standards (AIMS) graduation requirement until the state properly funds ELL programs and there is sufficient time to allow ELL students to compete equally on the test.
January 2006	The Legislature passed SB 1198 to address the <i>Flores</i> order. The Governor vetoed this bill primarily due to the "uncapped" nature of the tax credits and called the Legislature into special session. The next day, the Legislature passed HB 2002, which was identical to SB 1198, except for a \$50 million cap for the corporate income tax credits. The Governor again vetoed this bill, citing that the provisions in the bill did not satisfy the court order and that the tax credits were outside of the call of the special session.
March 2006	The Legislature passed HB 2064, which barely increased funding for ELL from \$355 to \$432 and was contingent of the court's acceptance that it fulfilled the <i>Flores</i> order. The Governor allowed this bill to go into law without her signature, predicting that the federal court would find it inadequate, thus forcing a quicker solution than continued fines. At this point, fines totaling \$21 million had been assessed.
March 2007	The U.S. District Court again ruled that the Legislature had not provided adequate funding for ELL students through HB 2064. The Legislature was ordered to comply with the January 2000 court order by the end of the 2007 legislative session.
August 2007	The ELL Task Force created by the Legislature in HB 2064 formally adopted Structured English Immersion (SEI) programs. Several educators testified that the model was flawed in numerous ways. The model required school districts to segregate ELL students in language acquisition classes for four hours per day; the model did not provide districts any flexibility as to how to run their ELL programs and did not discuss whether and how ELL students were to receive instruction in

	academic subjects such as math, science, social studies and history; and lastly, the model was expected to substantially increase school districts' ELL program costs.
February 2008	The Ninth Circuit Court of Appeals upheld the models prescribed in HB 2064, except for the two-year limitation on funding and the federal offsets applied to the ELL incremental cost funding.
April 2008	The Legislature passed SB 1096, which appropriated \$40.7 million in 2008-09 to fund the Task Force adopted SEI models. The Governor allowed SB 1096 to go into law without her signature.
May 2008	The plaintiffs filed for relief in May 2008, asserting that funding levels in SB 1096 failed to comply with the U.S. District Court's order, and further requested a deadline for the state to fund the SEI models. The plaintiffs' motion also requested that school districts not be required to implement the Task Force models until the state fully funds the SEI models.
July 2008	The U.S. District Court left intact the requirement that public schools implement the Task Force SEI models during the 2008-09 school year.
June 2009	The U.S. Supreme Court in <i>Horne v. Flores</i> ruled in a 5-4 vote that the State of Arizona remained in violation of the Equal Education Opportunity Act (EEOA), but stated that education and the funding of education is a state issue and should be resolved at the state level and remanded the case back to the district court.
2009-Present	The Federal District Court is reviewing this case. It has not issued a ruling on whether the four-hour model violates the EEOA.

### **Are ELL students meeting academic standards?**

The issue of ELL funding adequacy is linked directly with students' ability to reach academic performance benchmarks. In considering the results of *Flores v. Arizona* over the years on the academic achievement of ELL students in Arizona, there is some available research as it relates to Arizona's Instrument to Measure Standards, or AIMS. The state's model was created to measure student progress in learning the Arizona Academic Standards and other achievement measures.

AIMS standardized test results for the 2002-03 school year from 3<sup>rd</sup> grade through high school indicate that only 3<sup>rd</sup> grade math exceeded the annual measurable objective goals set for English Language Learners.<sup>19</sup> Comparatively, in 2009-10, none of the ELLs from 3<sup>rd</sup> grade through high school met the passing annual objective goals. In fact, the higher the grade, the lower the percentage of ELLs who passed the assessment.

Using a national achievement instrument, the National Assessment of Educational Progress (NAEP) shows there is a growing gap<sup>20</sup> between ELLs in Arizona and the national average. For instance, only 42 percent of Arizona ELLs were proficient in 4<sup>th</sup> grade basic math compared to 70 percent mainstreamed Latino peers and 89 percent Caucasian peers in 2010-11. The trend is the same for reading, with just 1 percent of Arizona ELLs meeting expectations on NAEP's 4<sup>th</sup> grade reading test. Clearly the gap is not being closed. In fact, research suggests that "recent [Arizona] policies have generated no substantive decrease in achievement gaps and, in comparison to other states without such restrictive policies, Arizona's achievement gaps are clearly significantly greater."<sup>20</sup>

The Arizona English Language Learner Assessment (AZELLA)<sup>21</sup> has been used to assess ELLs' proficiency in English acquisition. The test essentially determines whether a student is fluent in English before being placed in a mainstream classroom. A WestEd report (2010) found that only 55.8 percent of Arizona students passed the AZELLA. An analysis of AZELLA pass rates throughout the grade levels indicates that pass rates increase from 3<sup>rd</sup> grade to 4<sup>th</sup> grade, 47.8 percent to 61.2 percent respectively, and from 4<sup>th</sup> grade to 5<sup>th</sup> grade, 61.2 percent to 65.3 percent respectively. However, an interesting phenomenon occurs in the grades leading up to high school (high school being the most important step to entering traditional higher education). At this time students' AZELLA test scores begin to decrease.

From 5<sup>th</sup> grade to 8<sup>th</sup> grade the AZELLA proficiency rate is at 65.3 percent. But then there is a dramatic decrease in 6<sup>th</sup> grade to 54.3 percent, followed by another decrease in 8<sup>th</sup> grade to 52.1 percent. This levels out in high school at 53.1 percent, severely hampering the college prospects for nearly half of ELLs after high school.

Many Arizona English Language Learners fail to graduate from high school at all, evidenced by a sharp decline in high school diplomas awarded to ELLs in recent years. In 2005-06, the ELL

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<sup>19</sup> AIMS test score data reported by the Arizona Department of Education in 2011, <http://www.azed.gov/research-evaluation/aims-assessment-results/>

<sup>20</sup> Garcia, E., Lawton, K., & Diniz de Figueiredo, E., The Education of English Language Learners in Arizona: A History of Underachievement. *Teachers College Record, Volume 114, Issue 9, 2012*, 3-4.

<sup>21</sup> The AZELLA was criticized for mainstreaming students to early and emphasizing oral English skills (Florez 2010) and found the cut scores of the AZELLA to be of questionable validity. In 2010, the Federal Office for Civil Rights (OCR) found Arizona's AZELLA unlawful, and that the state again had violated Title VI of the Civil Rights Act and the Equal Educational Opportunities Act.

graduation rate was 44 percent. In 2010-11, it had decreased to 25 percent – compared to 85 percent for Caucasian students and 72 percent for Latino students, placing Arizona at the bottom of all 50 states.<sup>22</sup> The upcoming implementation of Arizona Common Core Standards and increased graduation requirements most will likely exacerbate this problem if Arizona fails to improve the education provided to ELLs.

There have been a few recent studies that examine the effectiveness of the four-hour English Language Development (ELD) model. The first study found the four-hour block did not contribute to increases in English acquisition for ELLs.<sup>23</sup> This research also found mainstreamed students and other types of instruction lead to better outcomes.

A subsequent research study conducted a four-year longitudinal analysis finding that it cannot be assumed the Arizona SEI model generates English literacy skills development or grade-level reading and language achievement for Spanish-speaking children.<sup>24</sup> In fact, the model appears to be effective for less than half of Spanish-speaking children placed in it. Moreover, there is evidence suggesting this type of immersion is harmful to students both cognitively and emotionally, not just by worsening the segregation of ELL students in general by school, but also by classroom.<sup>16</sup> Not only are students stunted in their overall growth academically, but students are stunted emotionally within this segregated environment as well. This type of overall instructional policy for ELLs exposes these students to a higher risk of school failure and drop out.<sup>16</sup>

Ultimately, there is currently no scholarly evidence to support the claim that ELL students are performing better academically as a result of the *Flores v. Arizona* policy responses including English only laws and the four-hour ELD model.

## Conclusion and Possible Solutions

Twenty years have passed since the Arizona parents filed a lawsuit, *Flores v. Arizona* (1992), pursuing equal educational opportunities to English Language Learners in adequately funding instructional programs. Since then the State of Arizona has been through multiple court rulings

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<sup>22</sup> U.S. Department of Education., SY2010-11 Four-year regulatory adjusted cohort graduation rates. *States report new high school graduation rates using more accurate, common measure*, 2012.

<sup>23</sup> Rios-Aguilar, C., Gonzalez-Canche, M.S., & Sabetghadam, S., Evaluating the impact of restrictive language policies: The Arizona 4-hour English language development block. *Language Policy, Volume 11, 2012, 47-80*.

<sup>24</sup> Blanchard, J., Atwill, K., Jimenez-Silva, M., & Jimenez-Castellanos, O., Beginning English Literacy Development Among Spanish-Speaking Children in Arizona's English-only Classrooms: A Four-year Successive Cohort Longitudinal Study. *International Multilingual Research Journal*, In Press.

and appeals, including a U.S. Supreme Court ruling and several legislative attempts to rectify the inadequate funding of programs for ELLs without resolving the issue.

Empirical evidence supports the argument that funding and instructional practices implemented post *Flores v. Arizona* continue to be inadequate because they do not appear to be improving the academic attainment for Arizona's ELLs.

If Arizona is to begin to close the achievement gap, current research suggests a few possible solutions to improve adequacy for ELLs in Arizona:

- *Continue to pursue adequate funding for ELLs* — The *Flores* case has slowly shifted focus away from funding to instructional programs for ELLs. However, both of these issues are important to ensure ELL students meet academic benchmarks. To this end, it has been eight years since the U.S. District Court ordered the last ELL cost study. A new ELL cost study should determine the appropriate level of funding for ELL programs. This cost study should be rigorously designed and include a clear definition of how ELLs should best be served adequately, and implemented using multiple cost study methods.
- *Reauthorize the State Board of Education to oversee ELL educational policies* — The issue of adequately educating ELLs needs to be removed from the scope of political ideologies at the Legislature. For instance, policymakers' political beliefs need to be moderated to allow rigorous empirical evidence to support the funding and implementation of appropriate K-12 ELL instructional programs. Therefore, the State Board of Education should be re-authorized to oversee K-12 educational policies for *all* students, not just non-ELLs as constitutionally intended. The ELL Task Force should fall within the oversight of the State Board of Education instead of as a separate entity.
- *Increase local instructional flexibility with transparency and accountability* — Local school districts could benefit from increased flexibility to differentiate instruction to meet the diverse needs of their ELL students. Arizona's current ELL instructional approach, derived from Proposition 203 and HB 2064 (the four-hour ELD block), is too rigid and not based on fundamental research. In fact, preliminary studies on the English Language Development (ELD) model, as well as recent U.S. Department of Education ELL achievement figures, indicate that the program appears to be hindering academic progress for ELLs, not increasing it. It is time to seriously rethink state policy with regard to these students. Ultimately, state policy should be grounded in research-based instructional principles, along with transparency and accountability in order to monitor and support ELLs to meet high academic standards.

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## **About the chief authors**

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