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## Federal, State, and District Level English Language Learner Program Entry and Exit Requirements: Effects on the Education of Language Minority Learners

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### Abstract

Identification of a language minority learner for placement in a program for English Language Learners (ELLs), and the length of the support program, may have a significant effect on the student's academic achievement. Widespread anecdotal evidence suggests that criteria used to make placement decisions vary widely across the U.S. This study systematically examines related federal laws and guidance, as well as published entry and exit criteria for ELL programs for the 10 states and 10 districts in the U.S. with the largest enrollment of ELLs. For the majority of placement decisions, a measure of English language proficiency is used. Very few states and districts rely on multiple sources of information for these decisions. The ramifications of these findings are discussed in light of the language and content demands of the mainstream classroom.



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Keywords: language minority learners; English language learners; classification; educational programs.

### **Requisitos de entrada y de salida a nivel federal, estatal y distrital para estudiantes de inglés: Efectos sobre la educación de los estudiantes de minorías lingüísticas.**

#### **Resumen**

La identificación de estudiantes de minorías lingüísticas para ser incorporados a programas para ayudar a estudiantes que precisan aprender inglés (identificados aquí con la sigla ELL) y la duración de los programas de ayuda, podría tener un efecto significativo en el logro académico de esos estudiantes. La extensa evidencia anecdótica, sugiere que los criterios utilizados para asignar estudiantes en estas situaciones varíe extensamente a través de los EE.UU.. Este estudio examina sistemáticamente leyes y las orientaciones federales relacionados, así como los requisitos de entrada y de salida para estos programas en los 10 estados y 10 distritos escolares con mayor cantidad de ELL. La mayoría de las decisiones de asignación a estos programas utiliza algún tipo de medición de conocimiento de idioma inglés. Son pocos los estados y distritos que utilizan múltiples fuentes de información para tomar este tipo de decisiones. Las ramificaciones de estos resultados se discuten tomando en cuenta las demandas lingüísticas y de contenido que habitualmente se encuentran en este tipo de clases.

Appropriate educational policies for language minority learners are of significant importance for schools and society. Between 1991 and 2002, the enrollment of school-aged language minority learners in English Language Learner (ELL) programs increased by 95 percent (Padolsky, 2004) while enrollment of the overall population of students increased by only 12 percent (Padolsky, 2004). Further, performance on national assessments demonstrate that these language minority learners struggle to achieve academically at the same levels as their native English speaking peers (National Center for Education Statistics [NCES], 2004).<sup>1</sup> Research suggests that this is the case for language minority learners while participating in specialized language support programs (Albus, Thurlow, & Liu, 2003) and after reclassification as fluent English proficient (FEP; de Jong, 2004). The *No Child Left Behind Act of 2001* (NCLB, 2002) has increased the pressure on school districts and to increase language minority learners' academic achievement in subject area content and to reclassify as FEP.

The criteria used to determine which language minority learners are designated ELLs in order to receive services, and which students are placed directly into mainstream classrooms, require analysis. Lack of standardization and clarity of entry and exit criteria for ELL programs at the national, state, or district level has the potential to have pronounced effects on the education of language minority learners. Anecdotal evidence suggests that there is considerable variability in the identification and reclassification practices of language minority learners; however, few studies have examined such practices. Despite the consequences of variation in these policies (such as a student

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<sup>1</sup> In this paper, we use the term *language minority learners* to refer to the population of students who do not speak English as a native language and we use *English language learner* (ELL) to refer to those language minority learners who receive language support services.

qualifying for services in one state or district, but not in another), there appear to be no studies that have examined the relationship among laws and policy at the federal, state, and district level policies.

The purpose of the present study is to examine the entry and exit criteria for ELL programs. The study focuses on federal policies, and the policies of the ten states and ten districts in the U.S. with the largest enrollment of ELLs. The potential ramifications of these criteria on the academic achievement of language minority learners are discussed.

## **Background**

If a language minority learner cannot meaningfully participate in a mainstream classroom because of limited English proficiency, schools must provide intervention services in order to promote the student's English language proficiency (see, for example, *Lau v. Nichols*, 1974). Some language minority learners are therefore designated as ELLs and thus receive language skills support so that they may eventually participate in mainstream classrooms. The ELL population is heterogeneous regarding academic and language learning needs and the corresponding support each learner requires. For example, one student may need a limited period to gain the conversational English necessary to succeed in a mainstream classroom because of a high level of native language literacy, while another student may need extensive support because of limited former schooling.

When ELLs have gained sufficient English language proficiency to participate in grade level classes, they typically lose their ELL designation and are reclassified as FEP. They then are required to participate in the mainstream classroom without specific ELL support. Thus, by design, ELL status is temporary.

Although the exact terminology may vary, there are typically three different designations used to define language minority learners at various stages in their schooling. An initially fluent English proficient (I-FEP) student does not receive language learning support. A limited English proficient (LEP) or ELL student receives language learning support, whereas a student redesignated as fluent English proficient (R-FEP) no longer receives language support because he or she has attained proficiency in English. A student is never designated R-FEP upon initial assessment; this designation is only assigned to a student who has qualified for reclassification from a specific ELL program to a mainstream classroom.

Each of these designations can have a significant impact on the enrollment of language minority learners in ELL programs across the country. In fact, Anstrom (1996) reported wide variability in the estimates of the number of school-aged ELLs enrolled in U.S. schools. This variability can be seen clearly when the most recent census data (U.S. Census Bureau, 2003) was compared to the most closely matching nationally collected data from states for the 1999–2000 school year (Kindler, 2002). For example, almost 65% of language minority learners in New Mexico schools were reported to be ELLs, while only 13.5% of language minority learners in New Jersey schools were reported to be ELLs. On a national level, using the same data, 38.1% of language minority learners were designated ELLs (see Table A–1, in the appendix, for relevant data). Thus, it appears that the state in which a language minority learner resides is likely to have an effect on whether or not that student receives language learning services.

To explain this variability, various policy reports, papers, and literature reviews have consistently cited the lack of standard operational definitions for what it means to be an ELL (August & Hakuta, 1997; de Jong, 2004; U.S. Department of Education, 2005; U.S. General Accounting Office, 2001; Wright, 2005).

In 1997, the National Research Council report on language minority children (August & Hakuta, 1997) attributed the divergent estimates of ELLs to a lack of consistency in ELL

identification practices from district to district. At that time, the district variability was assumed to be a reflection of vague federal and state guidelines. More recently, Wright (2005) found that although a more precise definition of which language minority learners qualified for ELL status had been implemented after the passage of NCLB (2002), the definition has still not been operationalized at the federal level. Wright speculated that with the possibility of each state using a different English language proficiency assessment, a language minority learner may be deemed FEP in one state and still qualify for ELL status in another.

Despite an overall dearth of research in this area, descriptive information about identification practices related to language minority learners, at the state and district levels, is beginning to accumulate (e.g., Hopstock & Bucaro, 1993; Zehler et al., 2003). The choice of tests to use, specific cut-scores, and other criteria may reflect a district's localized definition of the needs of ELLs and the overall purpose of language support programs (De Avila, 1990; Nadeau & Miramontes, 1988). In addition, district choices may reflect federal level policy, state level policy passed down to the district, localized district policy, or a combination of all three.

### **The Relationship of ELL Identification and Academic Achievement**

The effects of ELL identification and reclassification, and the potential downsides to inaccurate or invalid criteria, are problematic. Coined by Linqunti (2001) as the "redesignation dilemma," ELLs may be misclassified—they may be overlooked for language support services or placed in language support classes that are not commensurate with their academic abilities.

A language minority learner may be misclassified as initially fluent English proficient (I-FEP) upon school entry, but he or she may lack the academic English they need to succeed in mainstream classrooms. For example, Gandara and Rumberger (2003) report that in California, "language minority students who enter school already proficient in English start out comparable to native English speakers, but by third grade fall behind and never catch up" (p. 5). An initial (mis)designation of I-FEP may result in a long-term academic struggle that educators do not attribute to language skills. This is likely to preclude subsequent language support services.

Misclassification may also result in the placement of a student in a language class that is not commensurate with his or her academic ability. The relationship between the identification and reclassification criteria for ELL programs and the academic content and language in mainstream classrooms is especially important to consider. Once language minority learners are reclassified fluent English proficient (R-FEP) and placed in mainstream classrooms, they are likely to encounter more difficult and abstract content, particularly with increasing grade levels (De George, 1988).

This situation is further complicated by the historically inaccurate assessment of language minority learners and the growing importance of standardized testing after the passage of NCLB (2002).

Historically, measures of literacy have ultimately excluded language minorities from fully participating in U.S. society (Wiley, 2005) since they were administered as proxies for measuring intelligence. Given the language-based nature of these measures, language minority learners were often characterized as unintelligent—and even mentally retarded—due to lack of English language proficiency alone (Wiley, 2005).

Similarly, language proficiency tests have the potential to act as gateways to academic success, excluding language minority learners with limited English proficiency from exposure to age-appropriate content. With the passage of NCLB (2002), there has been an increase in the use of English Language Proficiency tests and they are central to the education of language minority learners (Gottlieb, 2006). Current policies and practices hinge on the notion that English language

proficiency is commensurate with academic skills and development, and have, effectively, promoted the practice of mainstreaming of ELLs as soon as possible (Wiley, 2004; Wright, 2005). What is unclear is the extent to which states and districts are also using indicators of academic achievement in addition to make placement decisions about language minority learners, irrespective of meeting federal policy.

Each of these potential problems demonstrate that levels and amount of support provided to language minority learners-or whether support is provided at all-hinges directly on the language minority learner classification practices. The priority given to English language proficiency tests, and the chronic problems English language assessments pose for language minority learners, places extreme pressure on the methods federal, state, and district level policy-makers decide to use to classify and reclassify language minority learners from ELL programs. Any shortcomings in these methods may indeed have profound effects on these students' opportunities to learn as well as their academic achievement and development.

## **Present Study**

In this study we describe and analyze the identification and reclassification criteria for ELL programs at the federal, state, and district levels. In an effort to strike a balance between the feasibility of conducting the study and providing a relatively accurate snapshot of the criteria used at the federal, state, and district levels, we focus on federal law and policies and the ten states and ten districts in the U.S. with the largest enrollment of ELLs. The study is also designed to provide an understanding of the potential ramifications that the federal, state, and district level laws and policies may have on language minority learners' academic achievement.

This study expands on the literature in this area in several ways. First, previous literature has suggested that federal law is vague concerning the procedures states and districts should use to identify ELLs (e.g., August & Hakuta, 1997; Wright, 2005; Zehler, et al., 2003). However, to our knowledge, there is no research that has examined the specific nature of federal law and guidance and its relationship to state and district identification and reclassification of language minority learners by directly analyzing the written policies and law of the federal government and individual states and districts.

Second, by focusing on the ten states and districts with the highest ELL enrollment, we tried to obtain a clearer picture of how more than 80% of ELLs in the nation are identified, instructed, and classified (Hoffman, 2003). Previous research has typically been conducted using a survey of state and district level administrators; because of this, the proportion of ELLs represented by the survey respondents is unclear. This study analyzes individual state and district policy and law using public documents; by using original sources, the likelihood of any incorrect interpretations of laws or policies by survey respondents was eliminated.

Finally, by focusing our attention at the federal, state, *and* district levels, we sought to obtain a clearer picture of how the laws and policies filter down from the national level to the actual implementation of policies at state and district levels. The study is intended to build on the work of others who have focused on the federal level (e.g., Wright, 2005), state level (e.g., Mahoney & MacSwan, 2005), and the district level (e.g., Zehler, et al., 2003). It also incorporates reports addressing how best to promote the academic achievement of language minority learners as it relates to entry and exit criteria for ELL programs (e.g., Linquanti, 2001).

Three research questions guide this investigation: 1) Based on federal law and regulations, what type of guidance is provided for state level policy related to language minority learners in public education?, 2) In what ways do criteria for identifying and exiting language minority learners

from ELL program requirements vary by state and by district? and 3) How do the program requirements reflect the purpose of federal laws and regulations? Where is there convergence and divergence of criteria at the federal, state, and district levels?

## **Method**

Using data from the National Center for Education Statistics from the 2001–2002 academic year (Hoffman, 2003), we identified the individual states and districts to be studied based on ELL enrollment (see appendix for relevant data). Because the main purpose of this study was to identify individual states and districts in order to determine their ELL program entry and exit criteria, not the accuracy of their methods for counting ELLs, we felt the federal dataset was most appropriate since it is a national source and therefore data is derived from only one source.

### **State Identification**

Based on the reported enrollment of “students receiving ELL services” (Hoffman, 2003, p. 23), the ten states with the largest ELL enrollment (in the 2001–2002 school year) were identified. These states, from largest to smallest ELL enrollments, included California, Texas, Florida, New York, Arizona, Illinois, Colorado, New Mexico, Georgia, and New Jersey. In the 2001–2002 academic year, the enrollment of ELLs in these ten states made up more than 80% of total ELL enrollment in the 50 states and the District of Columbia (Hoffman, 2003).

In the ten states that were studied, data was gathered regarding how students were screened for potential ELL/LEP status, the number and type (e.g., teacher report, assessment, observation) of criteria used to make identification and placement decisions, and whether or not the criteria differed as a function of grade level. Data was similarly gathered regarding exit criteria. Other data studied included: requirements relating to time limits on receiving language support programs, how programs were funded, and post reclassification monitoring practices.

### **District Identification**

In the 2001–2002 academic year, ELL enrollment in the ten districts studied, from largest to smallest, included: Los Angeles Unified School District (LAUSD; CA), New York City Public Schools (NYCPS; NY), Dade County Public Schools (DCPS; FL), Chicago Public Schools (CPS; IL), Houston Independent School District (HISD; TX), Santa Ana Unified School District (SAUSD; CA), San Diego City Unified School District (SDCUSD; CA), Long Beach Unified School District (LBUSD; CA), Clark County Public Schools (CCPS; NV), Broward County Public Schools (BCPS; FL). In these 10 districts, the enrollment of ELLs made up more than 21% of total ELL enrollment in the 50 states and the District of Columbia (Hoffman, 2003). CCPS was the only district that was not located in a state that was considered one of the top 10 states by ELL enrollment. The same data as gathered for the states was gathered for each of the districts.

### **Procedure for Federal, State, and District Policy and Law Analysis**

In order to address the research questions accurately and effectively, federal law (court rulings, educational code), non-regulatory guidance, state law (statutes and constitutions, consent

decrees, administrative code, and technical assistance handbooks), and district policies and handbooks were collected and analyzed. The focus of this document analysis was to determine federal, state, and districts definitions of ELLs; entry and exit requirements; and accountability or funding measures that might influence how language minority learners are designated (i.e., I-FEP, ELL, and R-FEP). Relevant funding policies were examined with the understanding that funding policy may have a direct effect on student placement in language support programs (for a discussion see Clements, Lara, & Cheung, 1992).

The data collection and analysis was conducted in two phases: First, documents related to the courts of law (court rulings, education code, and statutes) were analyzed and used to address the research questions. Second, non-regulatory guidance (memos, handbooks, within-state or -district professional development materials) was then used to qualify, expand, and eliminate inconsistencies or gaps in information.

The search process was multi-step. First, any published material reflecting court rulings were collected through internet searches, with a focus on federal, state, and district sources. Next, the operational definition of ELLs, specific entry and exit criteria, and accountability measures influencing designation were collected and recorded systematically for each of the ten states and districts in the study. When relevant items were not identified in the first phase of data collection, a secondary search of sources was conducted. For example, if a specific item for a district was missing (e.g., redesignation policy document), an email and/or phone call was directed towards district ELL program administrators for assistance in locating written criteria. In some cases, information that was not available in a public domain was supplied by the ELL program administrator.

Once complete data for every state and district was obtained, and/or it was determined that missing information was unavailable, all information was converted into tables and checked for accuracy against original sources of information. All data for this study was collected during the 2004–2005 academic year.

## **Results**

### **ELL Program Requirements as Defined by Federal Law**

At the national level, requirements for ELL programs are stipulated through three main sources. The first source is Title VI of the Civil Rights Act of 1964, and two court cases, *Lau v. Nichols* (1974) and *Castaneda v. Pickard* (1981), which resulted in more specific regulations under both Title VI and the Equal Educational Opportunity Act of 1974. The second source is Titles III and I of NCLB (2002). The third source is non-regulatory guidance provided in a handbook called “Programs for English Language Learners: Resource Materials for Planning and Self-Assessments” (U.S. Department of Education, 1999). In addition to policy updates released by the Office of Civil Rights, Title I and Title III have been disseminated by the U.S. Department of Education through of non-regulatory guidance in the form of handbooks and presentations in school districts. Each of the three sources is discussed in turn.

*Title VI of the Civil Rights Act of 1964.* Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program that receives federal funding. Although other, earlier memorandums outlined policy for language minority learners under Title VI, *Lau v. Nichols* (1974) was the first Supreme Court case to interpret the law (Smith, 1990). *Lau v. Nichols* affirmed that language minority learners could not be denied “meaningful opportunity to participate in the public education program” (p. 1). Furthermore, the *Lau v. Nichols*



case deemed that “there is no equality of treatment merely by providing [language minority] students with the same facilities, textbooks, teachers, and curriculum” (p. 2). Even if a language minority learner is educated in similar facilities with similar resources, English language proficiency cannot be considered a prerequisite to public education: “Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic [English] skills is to make a mockery of public education” (p. 2).

Similarly, the *Castaneda v. Pickard* (1981) ruling served as a precedent for current federal policy on ELL programs. It provides the basis for what is the now famous “Castaneda test” for evaluating programs, requiring schools to implement a program based on sound educational theory, designate enough resources and teachers to serve ELLs, and discontinue a program if it is not producing results. The case further explained that “meaningful opportunity to participate” included not only the need for ELLs to be given the opportunity to learn English, but also the opportunity to learn grade level, subject area content:

In order to be able ultimately to participate equally with 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 speaker 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. (*Castaneda v. Pickard*, 1981)

As a result of this ruling, if a state or district chose to teach the English language first, without teaching grade level content, it had the responsibility to bring students up to grade level following this language instruction. The clause was designed to insure that language minority learners acquire English, but not at the expense of learning content area material.

Finally, a policy update in 1991 from the Office of Civil Rights extended and clarified *Castaneda v. Pickard* (1981), arguing that students designated R-FEP must be able to achieve academic parity with their native English speaking peers. They must have access to the same curriculum, and have similar rates of drop out and retention (Williams, 1991). According to *Castaneda v. Pickard* (1981), a school or district may decide to teach the English language at the same time as academic subjects or after English language proficiency is gained. However, if:

... no remedial action is taken to overcome the academic deficits that limited English students may incur during a period of intensive language training, then the language barrier, although itself remedied, might, nevertheless, pose a lingering and indirect impediment to these students’ equal participation in the regular instructional program. (*Castaneda v. Pickard*, 1981)

Furthermore, districts have the responsibility to ensure that learning and growth are evident *after* enrollment in language support programs, not just during these programs.

*Title III of the No Child Left Behind Act of 2001.* In 2001, the 107th Congress of the United States passed the NCLB Act. As part of NCLB, Title III, *Language Instruction for Limited English Proficient and Immigrant Students*, was created. Like the rest of the titles in the NCLB Act, Title III allows states and districts greater flexibility in how federal funds are spent on programs, in return for greater accountability for student progress (NCLB, 2002). Thus, the accountability measures in Title III require districts to submit the number and percentage of children who attain English proficiency over the course of the year as well as the number who are meeting state academic content requirements. In addition, districts are required to report on the progress made by children in meeting challenging state academic content and student academic achievement standards for two years after ELLs are reclassified as FEP. Finally, under Title III states are required to establish “annual measurable achievement objectives” (AMAOs) which set specific targets for acquisition of English language proficiency, redesignation rates, and academic achievement of ELLs

in the district. If a district does not meet AMAOs for four years consecutively, their funding may be withdrawn (NCLB, 2002).

*Title I of the No Child Left Behind Act of 2001.* In contrast to Title III, Title I, *Improving the Academic Achievement of the Disadvantaged*, focuses on the academic achievement of schools who qualify for funds because of the proportion of students from low-income backgrounds. However, since many ELLs come from homes of low socioeconomic status (U.S. General Accounting Office, 1999), the schools they attend often receive both Title I and Title III funds. Title I requires each state to implement an accountability system with sanctions and rewards incorporated to ensure every student makes “adequate yearly progress” (NCLB, 2002). At least once in grades 3 through 5, grades 6 through 9, and grades 10 through 12, all students must be assessed in mathematics and reading/language arts. Beginning in 2007–2008, students will also be assessed in science.

Title I also contains ELL-specific provisions for annual assessment and monitoring of the progress of language minority learners classified as ELLs. Once a language minority learner has been enrolled in U.S. schools for more than a year and classified as an ELL, he or she is assessed in the same manner and frequency as native speakers of English. To ensure the reliability and validity of standardized assessments in reading/language arts, mathematics, and science, NCLB (2002) allows for native language testing of ELLs (to the extent practical), but with a maximum time limit of five years and only on a case-by-case basis after three years. Since 2002–2003, each state has had to develop an assessment of English language proficiency to be administered annually to ELLs.

*Non-regulatory guidance.* A number of sources of non-regulatory guidance that have an impact on the way that states and districts serve this population. For example, *Programs for English Language Learners: Resource Materials for Planning and Self-Assessments*, was developed as a resource to assist districts in developing ELL programs (U.S. Department of Education, 1999). This document addresses issues related to ELL identification, transitioning ELLs from language support programs to mainstream classrooms, and monitoring those ELLs who have been redesignated. It provides questions prompting districts to consider their staffing patterns, documentation and assessment procedures, communication with parents, and structures in place related to identification and program delivery.

These federal laws, policies, and supporting documents demonstrate that it is up to individual states and districts to develop a system for identifying language minority learners who need language support programs, and it is also up to them to determine when these students no longer need the support that is provided as a function of ELL status. Federal law stipulates, however, that states and districts must ensure that these learners develop English language proficiency and progress academically, with the ultimate goal of their participation in mainstream classrooms. The exact details of these systems, including operational definitions of classifications, and the types of tests and data to be used for assessment and monitoring, are left to the discretion of individual states and districts. In the next section, we present the practices of each of the 10 states and districts studied.

## **State Entrance and Exit Requirements**

As noted earlier, for each of the 10 states studied, statutes, education code, and non-regulatory guidance (e.g., memos to district superintendents) were collected and analyzed regarding the definition of ELLs, entry and exit criteria, and relevant accountability and funding requirements for ELL programs. All information was retrieved from the websites from the Department of Education for each of the states studied.



Table 1  
Entrance and Exit Criteria for 10 States with Most ELL Students

State	Initial Referral	Entrance Criteria		Exit Criteria		Post-exit follow-up
		English Language Proficiency	K–1	English Language Proficiency	Other criteria, grades 2–12	
AZ	HLS	Below publisher's score for fluent English proficiency (oral only)	Below publisher's score for fluent English proficiency (oral only), parental notification	Other criteria, grades 2–12	Adds reading and writing measures.	2 yrs
CA	HLS	Overall score below early advanced OR one or more skill areas (only listening and speaking) below intermediate, parental notification	Overall score of early advanced or higher, listening and speaking OR overall score in the upper intermediate with additional data; comparison to native speakers of English, parent, teacher input	Adds reading and writing areas for overall-score criterion.		2 yrs
CO	HLS	Below publisher's score for fluent English proficiency (oral only)	Above publisher's score for fluent English proficiency (oral only); OR 2 years in program	Adds reading and writing measures.		
FL	HLS, parent/teacher referral	Below publisher's score for fluent English proficiency (speaking and listening only), parent or teacher referral to LEP committee	Above publisher's score for fluent English proficiency (speaking and listening only), parent or teacher request, LEP committee determination	For grades 4–10, also above 32 <sup>nd</sup> percentile on norm-referenced test.		1 yr

State	Initial Referral	Entrance Criteria		Exit Criteria		Post-exit follow-up
		K-1	Other criteria, grades 2-12	K-1	Other criteria, grades 2-12	
GA	Not specified	Below 25 <sup>th</sup> percentile on the Language Assessment Battery (LAB) or referred to conference if below 40 <sup>th</sup> percentile on norm-referenced test in reading		Above 25 <sup>th</sup> percentile on LAB AND at or above 40 <sup>th</sup> percentile on norm-referenced reading test; classroom performance and time in program may be considered.		
IL	HLS, parental request	Below 51st percentile on norm-referenced English language proficiency test (oral only), or if more than one year behind grade level (with parental request)	Adds reading and writing to oral measures; OR re-entry if “disabled by an inadequate command of English”	3 years in program or parental approval; AND above 50 <sup>th</sup> percentile on norm-referenced English language proficiency test (oral only)	Adds reading and writing measures.	
NJ	ESL/bilingual teacher pre-screening	Below state standard on approved English language proficiency test and one additional indicator (reading assessment, teacher input, previous academic performance, or other standardized test in English		Score above state standard on approved English language proficiency test and one additional indicator; also considers: reading assessment, teacher input, previous academic performance, other tests in English		
NM	HLS	Below publisher’s score for fluent English proficiency in every skill area		Above publisher’s score for fluent English proficiency in every skill area; includes review of general academic performance		

State	Initial Referral	Entrance Criteria	Exit Criteria		Post-exit follow-up
		English Language Proficiency K-1 Other criteria, grades 2-12	English Language Proficiency K-1	Other criteria, grades 2-12	
NY	HLS, informal interview	Below proficient on LAB-R	Above proficient level of proficiency on NYSELAT; OR 3 years in program (without permission of state commissioner)		
TX	HLS	Below publisher's score for fluent English proficiency (oral only) OR primary language proficiency higher than proficiency in English. Also requires student interview, teacher evaluation, and parent interview.	Adds more than oral measure and also requires below 40 <sup>th</sup> percentile on norm-referenced reading/ language arts test	Cannot be exited from ELL programs in pre-K through grade 1.  Above publisher's score for fluent English proficiency (oral and writing), meets standards on English language criterion-referenced assessment in reading and writing OR scores 39 <sup>th</sup> percentile on both English reading and language arts norm-referenced assessment; parental approval, teacher evaluations, other criterion-referenced tests	

HLS = Home Language Survey

Sources: Ariz. Admin. Code, 2004; *Consent Order in Miriam Flores, et al. v. Arizona, et al.*, 2006; Cal. Educ. Code, 1998; Cal. Code of Regs., 1998; California Department of Education, 2005; 1. Colo. Code of Regs., 2003; Colorado Department of Education, 1997; Col. Rev. Stat., 1981; *Consent Decree in LULAC, et al. v. State Board of Education, et. al*, 1990; Fla. Admin. Code, 1990; Ga. Comp. R. & Regs., 1990; Ill. Admin. Code, 2003; N.J. Admin. Code, 2003; New Mexico Public Education Department, 2003; New Mexico Public Education Department, 1998; New York State Department of Education, 2003; New York State Department of Education, 2004; Tex. Educ. Code, 1995; 19 Tex. Admin. Code, 1996

*Entrance criteria.* Table 1 shows the entrance and exit criteria used in the ten states with the largest numbers of ELLs in 2001–2002. Each of the ten states studied—except for Georgia and New Jersey—used a home language survey to identify those children for whom a language other than English is spoken at home. Georgia’s law does not specify if a home language survey should be used or not and New Jersey’s law specifies a prescreening by a certified ESL/bilingual teacher. There is no mention of a home language survey.

In six of the states studied (Arizona, California, Colorado, Georgia, New Mexico, New York), the identification process for ELL programs is two step: an initial prescreening tool (e.g., home language survey, prescreening by teacher), and one additional criterion, usually a test of English language proficiency. Four states (Florida, Illinois, New Jersey, and Texas) use additional criteria including parental request/approval, teacher input, student achievement, and the recommendations of an “LEP committee,” or similarly named group of educators who convene to monitor ELLs’ progress.

In some states, criteria differed as a function of the grade level of the language minority learner. In six of the states (Arizona, California, Colorado, Florida, Illinois, Texas), kindergarten and first grade children are administered only the listening and speaking portions of the English language proficiency test while children in grade 2 and beyond are also assessed for reading and writing skills. In the four other states (New Jersey, Georgia, New Mexico, and New York), the same criteria are used in kindergarten through grade 12.

*Exit criteria.* As shown in Table 1, the majority of states use English language proficiency tests as the primary means of redesignating ELLs to mainstream programs. However, eight states also use additional criteria such as parental notification or request, teacher request and/or evaluation, determination of an “LEP committee,” and standardized test results in reading and language arts. Of the 10 states studied, only 4 (California, New Jersey, New Mexico, Texas) require academic achievement performance in every subject area (either through grades or standardized test performance) to be reviewed before reclassification. Further, only California requires comparison to native English speakers using standardized tests in all subjects.

Where available, Table 2 also includes the specific time requirements for ELL services, by state.<sup>2</sup> Three states (Colorado, Illinois, and New York) stipulate the amount of time language minority learners should be served in ELL programs. In Colorado, after two years in an ELL program, students are no longer funded. In New York, after three years, a student’s individual progress is reviewed. In Illinois, ELLs cannot be considered for redesignation before spending three years in language support programs.

Four states (California, Texas, Arizona, and Florida) have specific information about monitoring practices following reclassification of ELLs as R-FEP. In California and Arizona, students must be monitored for two years after exiting ELL programs, whereas in Florida it is one year. In Texas, language proficiency assessment committees (LPACs) can re-enroll a student in language support programs if he or she struggles in mainstream classrooms because of limited English proficiency.

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<sup>2</sup> The passage of Proposition 227 (California) and Proposition 203 (Arizona) should have altered the laws and policies including entry and exit criteria for ELL programs; at this time, their effects are unclear. For example, in California, language from Proposition 227 was added to Sections 305 and 306 of the California Education Code; while Section 305 indicates that ELLs should not be enrolled in structured English immersion programs for a “period not to exceed one year” or once these students have “acquired a good working knowledge of English,” the specific exit criteria identified in this study do not reflect these statements.

Table 2  
ELL Program Entry and Exit Criteria, 10 Districts with Highest ELL Populations

District	Entry Criteria	Exit Criteria
Los Angeles (CA)	Same as state (CA)	State requirements plus subject-area achievement of C or better in English and math.
New York City (NY)	Same as state (NY)	Same as state (NY)
Miami-Dade (FL)	State criteria (FL) modified as follows: for students in grades K–5, scoring below a 4 on Miami-Dade County Oral Proficiency Scale (Revised). Grades 4–5: in addition, norm-referenced tests below 32 <sup>nd</sup> percentile, either math or reading, with judgment of placement committee, or on both Grades 6–12: No information provided.	Home language assessment plus the following: K–5: Level 5 on the Miami-Dade County Oral Proficiency Scale (Revised); and either norm-referenced tests above 32 <sup>nd</sup> percentile in both reading or math or above 32 <sup>nd</sup> percentile in one with judgment of placement committee. Grades 6–12: No information provided..
Chicago (IL)	No information provided.	No information provided.
Houston ISD (TX)	State criteria modified as follows: PK–12: scores of non-English or limited English speaker on the IDEAS Proficiency Test (IPT), teacher survey of home language included in review Grades 2–12: score below 40% in reading, language subtests of TerraNova or nonmastery on TAKS.	State criteria modified as follows: may also meet state performance standards for English language criterion-referenced assessment for reading and writing and has passing grades in English language arts.
Santa Ana (CA)	No information provided.	No information provided.
San Diego (CA)	No information provided.	State criteria plus California Standards Test results at grade level in English/language arts
Long Beach (CA)	State criteria plus the following K–1: oral fluency in L1 using Assessment of Primary Language (APL) Grades 2–12: oral and literacy proficiency in L1 using the Assessment of Primary Language (APL)	State criteria plus the following: Grades 3–12: Standardized test scores reaching basic proficiency in English language arts; plus benchmark judgments in reading and math in teacher evaluations Grades 6–12: ‘C’ or higher in 3 academic classes; standardized test scores reaching basic proficiency in math.



District	Entry Criteria	Exit Criteria
Clark County (Las Vegas) (NV) <sup>a</sup>	HLS Grade 1: between 62 and 81 on the Pre-LAS Oral. Grades 2–12: lower than 241 on the LAS (oral, reading, and writing)	Grade 1: 82 or higher on Pre-LAS Oral; Grades 2–12: 241 or higher on the LAS (oral, reading, and writing) Alternatives: 26th percentile on ITBS, passing on HSPE, 26th percentile on SBAP parental notification
Broward County (Ft. Lauderdale) (FL)	HLS IDEA scores of a non-English speaker or a limited English speaker in Grades 4–12, if IDEA score show FEP status, students must score at or above 51 <sup>st</sup> percentile in reading AND writing on the MAT–8 to be FEP; if either is at or below 50 <sup>th</sup> percentile, student is referred to the LEP committee	IDEA scores of a fluent English proficient speaker in Grades 4–12 if IDEA score show FEP status, students must score at or above 51 <sup>st</sup> percentile in reading AND writing on the MAT–8; if either is at or below 50 <sup>th</sup> percentile, student is referred to the LEP committee

<sup>a</sup> Clark County schools requires follow-up monitoring of exiting student for 2 years.

Sources: Los Angeles School District, n.d.; New York State Department of Education, 2003; New York State Department of Education, 2004; New York State Department of Education, 2003; School Board of Miami-Dade, 2004; Houston Independent School District, 2004; San Diego City Schools, n.d.; Long Beach Unified School District, n.d.; Clark County School District, 2003; Broward County Public Schools, 2004

## **District Entry and Exit Criteria**

For the ten states studied, state laws and regulations for entering and exiting ELL programs is available online, but only three of the districts (HISD, CCSD, and BCS) studied have this information available online.

The seven other districts provided various levels of information. One district (DDPS) provided entry and exit criteria in kindergarten through grade 5 but was not able to provide criteria for grades 6 through 12. One district (NYCPS) provided the same criteria as stipulated by state laws and regulations. Some districts could not provide written documentation of district policies, whether online or via hard copy. Other districts did not respond to requests.

*Entry criteria.* Table 2 illustrates entry and exit criteria in ten districts with the largest numbers of ELLs. Many districts had little or no information readily available, two districts (LAUSD and NYCPS) had the same criteria as the state criteria, and four districts provided entry criteria for ELL programs that was distinctly different from state criteria.

One district (i.e., LBUSD) assesses native language literacy of every language minority learner from kindergarten through grade 12. In addition to the entrance criteria set out by the state of Texas, Houston Independent School District also considers results from a standardized academic achievement (Terra Nova CAT 6) when determining if a language minority learner should be enrolled in ELL programs.

*Exit criteria.* Table 2 also shows the exit criteria for each of these 10 districts. Of the eight districts with information available for this study, five (DCPS, LAUSD, LBUSD, SDCS, BCPS) considered scores on English language proficiency tests as well as additional criteria to determine if language minority students were to be redesignated

Two districts (LAUSD and LBUSD) considered the academic achievement of potential R-FEP students in two or more subject areas, and in these districts writing was considered an aspect of reading and language arts achievement. In five of the districts studied (DCPS, HISD, SDCS, CCSD, BCPS), achievement in language arts was the only subject area achievement that was considered in addition to performance on an English language proficiency test.

As shown in Table 2, LBUSD also recommends a teacher evaluation and specifies specific exit criteria at various grade levels (i.e., classroom work, standardized testing). No other districts in the study had exit criteria that varied as a function of grade level.

For four districts (NYCPS, DCPS, CCSD, and BCPS), the only difference between entry and exit criteria used was the use of a home language survey, or similar instrument, in the entry criteria.

Two districts (HISD, CCSD) include the requirement of monitoring R-FEP student for two years after redesignation.

## **Discussion**

The findings of the present study corroborate with previous research and literature in the study of ELL identification and classification criteria (Zehler et al., 2003; Mahoney & MacSwan, 2005; Wright, 2005). The results suggest that entry and exit criteria for ELL programs are overly broad, focusing primarily on the language proficiency of ELLs. Often the importance of the overall, long-term academic achievement of these learners is not considered. The findings raise several implications for policies designed to ensure that language minority learners are effectively served in schools across the U.S.

## Main Findings

Our first research question focuses on the nature of federal laws and regulations regarding state level policy on ELL identification and reclassification of language minority learners and the corresponding programming for this population. Federal law, court rulings, and non-regulatory guidance clearly state the importance of providing language minority learners with appropriate services and effective instruction; however specific and concrete guidance is lacking. For example, what are the defining characteristics of a student who has limited English proficiency? What does it mean to be redesignated fluent English proficient (R-FEP), and what steps, if any, should a state or district take to measure ELLs' academic achievement more than two years after redesignation?

According to federal law, and with the intent of lawmakers to give local districts more flexibility in meeting accountability measures, answers to these and other questions are left to individual states and districts. Yet by giving states and districts this flexibility, is federal policy, in effect, sabotaging some students' academic achievement? Would greater uniformity in federal identification and reclassification law and policy more accurately operationalize the goal of NCLB (i.e., for *all* students to attain high levels of achievement)?

Further, all of the written documents we reviewed focus almost exclusively on the English language proficiency of ELLs. Although these measures typically include a reading and writing component, we encountered minimal emphasis on academic achievement, or concern about the relationship between performance on a measure of oral language proficiency and academic achievement, for those language minority learners receiving ELL services. Twenty years ago, *Castaneda v. Pickard* (1981) focused on the need for language minority learners to learn subject area content in addition to the English language. More recently, Titles III and I of NCLB (2002) requires states to set annual measurable achievement objectives, or benchmarks, for adequate yearly progress for the acquisition of English language proficiency *and* content-area knowledge in reading/language arts, mathematics, and science for ELLs. However, states and districts appear to be measuring English language proficiency (reading, writing, listening, and speaking) and not academic skills and language as they relate to subject areas.

A second finding is that court rulings, federal NCLB law, and non-regulatory guidance tend to focus on—and even overemphasize—English language skills at the expense of academic achievement. This finding is consistent with the speculations of others conducting research in this area (e.g., Wiley & Wright, 2004; Wright, 2005). Limited federal guidance, combined with sanctions for underperformance on AMAOs under Title III of NCLB (2002), creates a situation whereby states and districts may be trying to redesignate language minority students as quickly as possible, leaving academic achievement to the mainstream classroom. Thus, ELL programs may be designed around the goal of English language proficiency alone, without a concurrent focus on long-term academic achievement. Language minority learners may not be receiving the necessary language support to fully develop academic language and content knowledge. Once they are reclassified as R-FEP, specific language learning support may not be provided.

Without any federal level requirements to track R-FEP students for more than two years after redesignation, combined with AMAOs, states and districts are, in essence, rewarded for redesignating ELLs as quickly as possible. Thus, ELL classrooms tend to focus on teaching the English language first, before academic content, and this fact may have negative ramifications for entry into mainstream classrooms.

Only four of the states studied employed criteria other than English language proficiency tests when making entry and exit decisions. The other six states considered only English language proficiency tests. In the present study, only 20 percent of districts included criteria that related to

academic achievement math and science. According to Kuhlman (2005) and Saville-Troike (1991), measures of English language proficiency are often de-contextualized and even oversimplified, despite having reading and writing components. This fact is a matter of concern given the importance language plays in all content areas including math (Aiken, 1971; Abedi & Lord, 2001), science (Carrasquillo & Rodriguez, 1997), and social studies (Short, 1993).

By focusing on acquisition of English language proficiency as measured by standardized tests, ELL programs may not be preparing students for the content and language of mainstream classrooms (e.g., Mahoney & MacSwan, 2005; Zehler, Hopstock, Fleischman, & Greniuk, 1994).

Our second research question focuses on the variability of state and district ELL program entrance and exit requirements and the extent to which the requirements are aligned with federal laws and regulations. We found that many states and districts used similar criteria for identifying learners for placement in—and exit from—ELL programs. Consistent with federal documents, many of these criteria were overly broad (e.g., a student is either proficient in English or not) and not tied to long-term academic achievement (i.e., beyond two years of exiting ELL programs).

Increased guidance for states and districts is needed to ensure that specific identification and reclassification criteria reflect the complexity of educating language minority learners beyond the obvious need for language development. In the majority of states, only one piece of information was used for identification and reclassification, most often an English language proficiency test. Only four of the states studied specified a review of academic performance before ELLs could be reclassified as R-FEP. However, performance on an English language proficiency test is not necessarily tied to grade level content standards. Most states and districts did not test for academic achievement despite the two-fold intent of NCLB (2002)—to increase the English language proficiency *and* academic achievement of language minority learners.

Inherent in the use of an English language proficiency test alone is the assumption that the test is an effective proxy for the ability to meet the demands of mainstream classroom and curriculum (Mahoney & MacSwan, 2005).

In 60% of states studied, for students in kindergarten and first grade, the primary classification tool was an English language proficiency tests that measured only oral language ability as defined by achievement in listening and speaking skills. However, this focus may result in an under-emphasis of other important skills for reading acquisition. For example, research with language minority learners in the primary grades has demonstrated that measures of phonological processing ability are more strongly related to word reading development than are measures of oral language proficiency such as vocabulary and grammatical sensitivity (e.g., Lesaux & Siegel, 2003; Limbos & Geva, 2001). Equally important, when studied in the context of ELLs with reading disability, measures of oral language proficiency have been shown to have low sensitivity, as compared to measures of phonological processing and working memory skills, in identifying children at risk for difficulty with reading acquisition (Limbos & Geva, 2001). Research has also shown that many ELLs are overlooked for early remedial services for reading because of their limited English proficiency (e.g., Limbos & Geva, 2001). Many language minority learners in the primary grades may benefit more from intervention services for struggling readers than from ELL program with emphasis on oral language proficiency.

The entry and exit criteria typically used by states and districts do not take into account the developmental and cumulative nature of language and literacy development: the criteria don't vary as a function of actual grade level expectations and standards, nor as a function of individual characteristics such as years of prior schooling, age of arrival, and native language literacy ability. As Linquanti (2001) points out, "part of the difficulty in defining 'proficient' lies in specifying *for what purposes*, since, to a great extent, language performance must be considered in the context of the particular language tasks to be performed, the subject matter or topic, the audience" (p. 4). The

language and academic demands in elementary school differ significantly from those in high school. A language minority learner's designation as *proficient* in grade one, for example, does not guarantee that he or she will meet the expectations in a high school classroom.

Our third research question focused on the different criteria at the federal, state, and district levels and the potential ramifications any areas of divergence might have on the education of language minority learners. We found that the number and complexity of entry and exit requirements increased from the federal, to the state, to the district levels. More importantly, the intent of federal level law was not always accurately reflected in state law, and, state law was not always clearly reflected in district level policy. Thus the main purpose, and underlying intent of federal level ELL policy, seems to be inaccurately reflected and misconstrued at the state and district levels, leading to possible misdiagnoses and lack of adequate support of language minority learners. Consider two scenarios.

First, although NCLB (2002) requires all schools to report on students' yearly progress in reading/language arts, math, and science, only four of ten states (California, New Jersey, New Mexico, Texas) and two districts (LAUSD, LBUSD) included measures of ELLs' academic achievement before making redesignation decisions. Further, only California requires the academic achievement of ELLs be compared to that of native English speakers on standardized tests in every subject area. Thus, the accountability measures stipulated by NCLB (2002) have limited effect on the actual state and district criteria for exiting ELL programs. In states and districts that do not consider the academic achievement of ELLs before redesignation, R-FEP students may not be able to succeed in grade-level, content area classrooms.

Second, while NCLB (2002) requires monitoring of R-FEP students for two years after redesignation, only four states (California, Arizona, Texas, and Florida) and two districts (HISD and CCSD) explicitly address this requirement. It was not clear that ELLs are monitored after redesignation as R-FEP or that there are mechanisms in place to ensure that ELL programs develop students' language skills to a level that supports later learning in the mainstream classroom. Without a long-term system to monitor the academic achievement of these students, there is no effective way to determine the success of ELL programs.

These findings lend support to Linqianti's (2001) concerns about a "redesignation dilemma" on a national level. That is, if students are redesignated solely on the basis of English language proficiency, then the instructional focus in ELL support programs may be only on those skills needed to pass English language proficiency tests, and students may not be prepared for the academic language and content that characterizes mainstream classrooms. Without exit criteria that includes the assessment of academic achievement and, without post-reclassification monitoring, it is not possible to determine whether these learners are prepared to thrive in the mainstream classroom without language support. A recent study conducted with fourth and sixth graders suggests that children classified as R-FEP continue to struggle academically after being redesignated (de Jong, 2004).

These findings raise an additional concern about a particular subgroup of language minority learners—those designated I-FEP. This designation may be due to the oral language focus of entry criteria. Designation as an I-FEP student in the early grades does not take into account that the learner may need language support over time, with the increasing complexity of academic language needed to succeed in mainstream classrooms. ELL students deserve appropriate and effective services, and a baseline is necessary for quality and continuity.

## **Implications**

Therefore, three areas related to the education of language minority learners deserve significant attention. Also, these three areas suggest future research.

First, so that individual states and districts have a better framework for creating and monitoring their own programs, there is a need for more specificity with respect to operational definitions (e.g., ELL, R-FEP), particularly within the non-regulatory guidance released by the Office of Civil Rights. The variability of the entry and exit criteria used in various districts is a significant issue to be rectified in the field because: a) the inability to make comparisons of language minority learners' academic achievement across states and districts hampers the development of consistent and coherent expectations and instructional practices for this population and b) a language minority learner may receive services in one state and/or district, and not another.

Second, entrance and exit criteria for ELL programs should include multiple sources of information, including performance on English language proficiency and academic achievement tests and teacher ratings. Multiple measures of English language proficiency and academic achievement would prevent districts from oversimplifying expectations for entering and exiting ELL programs, helping to develop a focus on the long-term academic success of all language minority learners.

Also, research is necessary to establish which measures are most predictive of later success in the mainstream classes. Longitudinal studies that track the academic achievement of language minority learners, particularly learners who are redesignated as R-FEP, are needed. These studies would provide insight into classification criteria with predictive validity, contributing to a better understanding of the conditions and services needed to promote the long-term academic success of all language minority learners.

Finally, future studies need to examine the effect of the variability of entry and exit criteria on the academic achievement of language minority learners in different states and districts. The long-term academic trajectory of language minority learners needs to be examined when students are designated ELL, R-FEP, and I-FEP, and the predictive validity of classification measures must be established. Although a significant methodological challenge, few, if any, studies have examined the effect of policy on the academic achievement of these learners over time.

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## Appendix

Table A–1

*Relationship between Language Minority Learners and ELL enrollment, nationally and in ten states with largest number of ELLs*

State	Language Minority Learners <sup>a</sup>	1999–2000 ELL Enrollment based on Kindler, 2002 <sup>b</sup>	Proportion ELL
California	2,879,695	1,480,527	51.41%
Florida	637,410	235,181	36.90%
Texas	1,380,888	554,949	40.19%
New York	928,518	228,730	24.63%
Illinois	460,661	143,855	31.23%
Arizona	284,061	125,311	44.11%
Colorado	115,992	60,031	51.75%
New Mexico	118,218	76,661	64.85%
New Jersey	366,687	49,847	13.59%
Michigan	150,818	44,471	29.49%
Georgia	148,700	30,491	20.51%
U.S. Total	9,779,766	3,730,966	38.15%

<sup>a</sup> Number of students, five- to 17-years-old, who reported speaking a non-English language at home (U.S. Census Bureau, 2003).

<sup>b</sup> Number of students designated as ELLs (Kindler, 2002).

Table A–2

*States with the Highest Number of Students Receiving ELL Services, 2001–2002*

State	Number of students receiving ELL services
California	1,510,859
Texas	601,791
Florida	204,208
New York	193,711
Arizona	148,861
Illinois	136,295
Colorado	71,011
New Mexico	66,035
Georgia	63,272
New Jersey	56,712
U.S. Total	3,768,653

Source: Hoffman (2003).

Table A-3

*Districts with the Highest Number of Students Receiving ELL Services, 2001–2002*

District	State	Number of students receiving ELL services
Los Angeles Unified School District	CA	307,594
New York City Public Schools	NY	141,916
Dade County Public Schools (Miami)	FL	69,452
Chicago Public Schools	IL	61,037
Houston Independent School District	TX	59,904
Santa Ana Unified School District	CA	39,934
San Diego City Unified School District	CA	38,867
Long Beach Unified School District	CA	31,697
Clark County Public Schools (Las Vegas)	NV	30,629
Broward County Public Schools (Ft. Lauderdale)	FL	30,298

Source: Sable &amp; Hoffman (2005).

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