What Happened to the Linguistic Rights of Second Language Learners in California?

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Proposition 227, a ballot initiative called “English Language Education for Immigrant Children” was approved by Californians in June of 1998. This proposition amended the state constitution to outlaw bilingual education and requires that all children who are English learners shall be educated through sheltered English immersion programs during a temporary transition period not normally intended to exceed one year. Following that period, second language learners should be *immersed* in English-only classrooms. Ron Unz, the California billionaire creator of the anti-bilingual ballot established a national advocacy organization called "English for the Children" after his victory in California with the purpose of marketing his intentions to replace bilingual education with English submersion throughout the country. He effectively achieved the approval of similar anti-bilingual initiatives in the states of Arizona and Massachusetts in 2000 and 2002. However, Colorado voters were able to defeat an identical proposal after they obtained donations that could match the aggressive financial campaign endorsed by Unz. The successful approval of these ballot initiatives predicts the gradual elimination of educational programs that support linguistic minority communities in the United States with its consequent impact upon the linguistic rights of English learners in California and everywhere this legislation is implemented.

Because historically California has functioned as the bellwether for the rest of the nation, this analysis assesses the vitality of the basic linguistic rights of language minority students promulgated during a very distinct political epoch—the 1960s civil rights movement, and it appraises whether these civil liberties can survive the increasing anti-immigrant rhetoric that has permeated the educational reform debate in the last twenty years.

This paper describes how schools districts are implementing an anti-bilingual legislation in California (Proposition 227) after five year of existence and focuses on the waiver process granted in the legislation that allows parents of English language learners (ELLs) to request the placement of their child in a bilingual classroom. This paper examines whether the waiver process and its implementation respects the parental rights of ELLs and it is aligned with the basic linguistic rights recognized in key sources of federal law (e.g. Fourteenth Amendment-Equal Protection Clause, Title VI of the Civil Rights Act, Lau v. Nichols, the Lau Remedies, Castaneda v. Pickard) and the California Educational Code.

1. Applied critical linguistics

The traditional field of applied linguistic has focused on language development, and the scope of language policy analysis has been centered on the role of the state in the creation of language policies. A new field of study has emerged represented in research (Fairclough, 1989; Hodge & Kress, 1996; Phillipson, 1992, 2000; Skutnabb-Kangas, 2000) that has examined the role of language policies “in establishing and maintaining socioeconomic inequality” (Tollefson, 2002, p. ix) and the role of governments and new powerful institutions in shaping language use and language acquisition (Cooper, 1989; Corson, 1990, 1999; Lippi-Green, 1997; Ricento & Burnaby, 1998, Tollefson, 1991, 1995, Wiley, 2002). This new approach grounded on critical educational theory (Forester, 1985) and critical linguistics (Bernstein, 1975; Althusser, 1971) examines the role of language policies in the organization and formulation of the hegemonic processes that ensures the authority and control of the dominant groups (Gramsci, 1971). According to Tellefson, “critical linguistics and language policy come together in the study of language policies in education to question how language policies in schools create inequalities among learners; how policies marginalize some students while granting privilege to others; and how language policies in education serve the interest of dominant groups

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within societies" (pp. 3-4). These questions profoundly reflect the dialectical relationship between culture, power, and language raised by critical pedagogues, and further explain how the principles of critical pedagogy—hegemony, resistance, economics, dialectics, knowledge, dialogue, praxis (activism) and conscientization (Darder, 1991, 1995a, 1995b; Ovando & McLaren, 2000) are applied in the linguistic field.

There are some major implications of this new shift in the field of applied linguistics. First, language policies should be examined as they are—ideological tools that shape the lives of linguistic minority communities. Second, detrimental language policies are not natural, legal, unquestionable, or unchangeable. On the contrary, according to Tollefson, "linguists are seen as responsible not only for understanding how dominant social groups use language for establishing and maintaining social hierarchies, but also for investigating ways to alter those hierarchies" (p. 4); and third, linguistics is not just any theoretical, abstract field of knowledge, but an important terrain to engage in social change by investigating the impact of language policies over the lives of "individuals and groups who have little influence over the policymaking process" (Tollefson, p. 4).

Another important contribution of this paradigm is the reformulation of the policy-making process. The current globalized economic order has diminished and distorted the role of the nation-state and has created new political actors and new hierarchies of influence that correspond to the emergence of struggles over political power and economic resources (Tellefson, p.5). As such, McGroarty (2002) advocates a discursive ideological analysis to language policies that is not limited to examining the role of the state in the decision-making process, but it is aimed to examine the emergence of new and even more powerful political actors. McGroarty examines the emergence of the new ballot initiatives, like Proposition 227 in California, that are sponsored by wealthy private parties. Broder (2000) criticizes these actions "because wealthy individuals or groups can achieve their goals by purchasing the number of signatures necessary to get a measure on the ballot and then selectively publicizing the measures so that voters may not realize the implications of a simple "yes" or "no" vote" (cited in McGroarty, p. 30). Obviously, the latest approval of anti-bilingual initiatives in California, Arizona, and Massachusetts, as well as the defeat in Colorado clearly exposes the reformulation of language policies in the Unites States.

This paradigm is the one advocated in this research as gradually the general public, researchers and politicians have become overwhelmed with the development of English-only policies reacting with resignation over what appears to be an inevitable and unalterable reality.

2. The evolution of linguistic rights in the United States

According to Del Valle (2003) the developing field of linguistic rights emerged out of the civil rights movement "along with the traditional areas of education, housing and voting rights" (p. 4). She argues that one of the major challenges of linguistic rights is to be able to afford the kind of protection that the civil rights movement offered to racial abuses in the 1960s, considering that the 21st century represents a different reality where the globalized social order and the influx of new immigrants makes the protection more diffuse. Nevertheless, Del Valle asserts that the field of linguistic rights "represents the future into which civil rights law must evolve if it is to survive as an area of progressive advocacy " (p.4). Del Valle (2003) and McGroarty (2002) argue that the protection that linguistic rights may offer to linguistic minorities will depend on three major factors: (a) the political composition of the Supreme Court; (b) the ideological role of the lower courts and federal judges; and (c) the ability of the linguistic minority communities to organize themselves in a systematic fashion to engage in active litigation and greater political involvement.

An analysis of language rights law finds the origin of this developing field in three major pieces of legislation: (1) the Fourteenth Amendment and its two more important clauses: the Equal Protection Clause, and the Due Process Clause; (2) Title VI of the Civil Rights Act of 1964, (3) and the Equal Education Opportunity Act of 1974. The Supreme Court decisions and federal remediation procedures originated during the civil rights movement era further strengthened this legal development. Section 1 of the Fourteenth Amendment states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the Untied States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall

> any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (cited in Del Valle, p. 23)

In 1923 the Due Process Clause was invoked by the Supreme Court to decide Meyer v. Nebraska and strike down the legislation that penalized the use of the German language in schools. In its decision the Supreme Court concluded that

> The protection of the Constitution extends to all—to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced with methods which conflicts with the Constitution—a desirable end cannot be promoted by prohibited means (cited in Del Valle, p. 27)

The Supreme Court also used the Due Process clause to revoked legislation in Hawaii (Farrington v. Tokushige, 1925) that prevented the operation of foreign language schools. The Equal Protection Clause has traditionally been used by the Supreme Court to prevent racial discrimination as in Yick Wo v. Hopkins where the Court reversed legislation that prevented people from Chinese ancestry to operate laundries in California. However, later on, the court used the Equal Protection Clause in Serna v. Portales to defend the use of bilingual education. The Civil Rights Act of 1964 was tested in Lau v. Nichols (1974) where the Supreme Court expressly prohibited linguistic discrimination.

> It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondent's school system which deprives them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the legislation…The imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful (cited in Del Valle, p. 239).

The Civil Rights Act was also used in Serna v. Portales were the court found that the "IQ scores of the Spanish-surnamed children were below those of Anglo children [and therefore, they were] indicative of something amiss, and coupled that concern with the testimony of plaintiffs' experts on the negative effects […] of a school atmosphere which does not adequately reflect the educational needs of this minority" (cited in Del Valle, p.236) In Yniguez v. Mofford (1988) the Supreme Court decided against the State of Arizona under the First and Fourteenth Amendment and Title VI of the Civil Rights Act by declaring that forcing state officers to speak English only had the potential for "unconstitutional application" (Del Valle, p.65).

The Lau Remedies are another important document in the field of linguistic rights. They were created by the Office of Civil Rights (OCR) to "determine whether school districts were in compliance with Title VI" (Del Valle, p.241). This act was overlapped by the passage of the Equal Educational Opportunity Act of 1975 or Title VII that further developed the legal rights to equal education through bilingual instruction as proved in Rios v. Read. According to Del Valle, Castaneda v. Pickard represents one of the court cases where the "federal mandate for bilingual education" began to erode (p.245) because the nature of the bilingual instruction was measured by relaxed and anti-pedagogical standards. The Supreme Court came up with three criteria to define what appropriate actions mean under the Equal Education Opportunity Act.

> The program for language minority students must be (1) based on a sound educational theory; (2) must be implemented effectively with sufficient resources and personnel; (3) after a trial period, the program must be effective—students must be learning English (cited in Del Valle, p. 246).

According to Del Valle almost any program can meet that criteria because it would allow so many years to pass before determining if a violation is already happening.

3. Proposition 227 and parental rights

With the approval of proposition 227 the anti-bilingual initiative became part of the California Education Code (Sections 300-340) enforcing the immediate submersion of English language learners in temporary English sheltered classrooms. According to the legislation this submersion requirement could be "waived with the prior written informed consent, to be provided *annually in person*, of the child's parents or legal guardians under certain circumstances" (Section 310). The legislation establishes that parents must be informed of their right to sign a waiver to have their children receive

bilingual education but if parents do not apply for a waiver a child is immediately placed in an English-only classroom or an "Structured English Immersion" classroom for a year. In addition, schools are required to offer bilingual classes *only* if they have received 20 waivers for students who are at the same level of language development, and at the same grade level at school.

The granting of the waiver is not an automatic procedure, as it would be expected based on the parental rights afforded by the Constitution and the California Educational Code. On the contrary, according to the new legislations, there are certain specific conditions necessary to grant a waiver: (1) the child already knows English: the child score above grade level or the child score above the 5th grade average, (2) the child is 10 years old or older, or (3) the child has "special needs." In addition to these restrictions, the final decision does not rest on parents but on school personnel. The legislation states that the waiver will be granted only if the principal and teachers believe that an "alternate course of education" would help the student or the child's "special" needs—evaluated after a 30 days period in an English-only classroom—merit the waiver. Special needs are defined by the legislation as a child having "special physical, emotional, psychological, or educational needs" (Education Code 310-311).

> A written description of these special needs must be provided and any such decision is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local Board of Education and ultimately the State Board of Education. *The existence of such special needs shall not compel issuance of a waiver*, and the parents shall be fully informed of their right to refuse to agree to a waiver (California Education Code. Section 311c. Emphasis added).

In 2002, pressured by community activists and parent advocates the California State Board of Education clarified some of the regulations on Proposition 227 (Policy Update, 2002) regarding the waiver process not without being challenged by Ron Unz's attorneys. The Board of Education admitted that a teacher could recommend an alternative program to the parents (read bilingual education) and it ratified that "a school cannot deny a parental waiver request solely on the grounds that the district or school does not have an alternative method of instruction" (p. 2). Two of the most important clarifications from the Board were the ratification that "parents must receive a full, written description and, upon request from a parent or guardian, a spoken description of the structured-English immersion program and any alternative courses of study," and that schools do not "need to impose a mandatory 30-day special needs assessment in the second and third years of an alternate course of study" (p. 3)

4. Assessing the immediate impact of Proposition 227

A report on the initial impact of Proposition 227 found out that "statewide only 67 percent of districts formally notify parents" of their rights to seek waivers from the structured English immersion programs (Gandara, Maxwell-Jolly, Garcia, Asato, Gutierrez, Stritikus & Curry, 2000, p.3) and "some districts interpreted the [Proposition 227] initiative as barring any proactive dissemination of waiver information, while other considered it their duty under the law to provide parents with information about their program options" (p. 3). These findings were later corroborated by Garcia (2000) when she examined the characteristics of three school districts where parents embraced the waiver process that allowed their children to continue receiving bilingual education: "the best informed parents in an atmosphere of complete disclosure [unlike those who did not request waivers] were those who chose a waiver and bilingual education" (p. 57). Another initial research (Gutierrez, Baquedano-Lopez & Asato, 2000) on Proposition 227 reported, "that the previous existence of structured or bilingual education programs did not serve as a significant predictor of which linguistic model the school districts would offer, but rather their language ideology" (p. 93). These researchers stated, "that parents' placement choice appears to be influenced by the nature of the parent information sessions and districts' commitment to offering the full range of instructional models" (Gutierrez et al., p.108). Garcia and Curry-Rodriguez (2000) revealed that administrators and teachers continuing facing tremendous "ambiguity and program conflicts during the implementation of Proposition 227 due to the discretionary opportunity for vague interpretation of the legislation under a climate of urgency" (p. 22). What follows is a description of how the waiver process has been implemented in California five years after the approval of the legislation.

5. Methodology, context and participants

In the Spring of 2001 after several meetings with a group of teachers, para-professionals and parents to delineate the extension and depth of a planned longitudinal research aimed to document several aspects of Proposition 227 it became clear that the research agenda was viable and desirable, but an early evaluation of the themes found in the focus groups and interviews revealed a more urgent issue: parents did not seem to know what was the "waiver process" granted in Proposition 227 that gives them the right to request the placement of their child in bilingual programs. As a consequence, the study focused on this issue: Were parents informed of their right and the procedure to wave the placement of their child in Structured English Immersion programs and request bilingual programs? Because of the nature of these research questions—issues of compliance and civil rights of ELLs—and the need to gather a large data that could indicate whether there was a pattern of negligence or violation of parental and linguistic rights the research evolved from being eminently qualitative (ethnographic) to incorporate quantitative tools—survey as a form of analysis. During the summer of 2001, two different surveys were designed, one for parents in Spanish and English, and the other one for teachers in English. The surveys were administered in five different schools in Southern California, a total of 140 parents,1 7 teachers, and 4 administrators were surveyed and interviewed individually and in focus groups. The first part of this inquiry was conducted during the summer 2001 and the summer of 2002. The final administration of the surveys and additional focus study groups continued in the spring of 2003 with additional focus groups of parents, teachers and administrators.

6. What teachers and parents said about Proposition 227 and the waiver process

An analysis of the data reveals some clear concerns of parents and teachers of ELLs regarding the way Proposition 227 has been implemented, and confirms some of the claims already revealed in the early evaluation of the legislation (Gandara et al, 2000; Garcia, 2000; Gutierrez et al, 2000, Lee, 1999, Tse, 2001) regarding parents beliefs and the violation of parental and linguistic rights.

6. 1. Teachers and para-professionals working under Proposition 227:

Teachers and para-professionals working with English language learners expressed frustration and overwhelming feelings about the way Proposition 227 is impacting their teaching. They talk about the fear and constrains they experience because the law has been implemented arbitrarily and inconsistently throughout the state. Teachers feel fearful that they will be sued if they do not strictly adhere to the vague postulates of the legislation.

Bilingual aide: I worked as a bilingual education teacher for most of my career. I worked for 10 years at the district level helping parents and teachers in language programs. There used to be so much support for language development programs in my districts before Proposition 227 came into existence. I supported 227 as it promised to assist children with English language development. After Proposition 227 was passed, I realized that it was not intended to implement any of the promises it had spoken about in ads, in fact it was doing the opposite, fully eradicating bilingual education. What 227 was doing was placing students in structured immersion classes for one year when it is not possible for children to obtain grade level proficiency within one year. Proposition 227 offered to help children but the real objectives of the law were masked. […] For all students that were designated as "Limited English Proficient" they would now be defined as "English Language Learner" therefore, under 227, everything changes, even how students are labeled. Everything that used to be defined as "bilingual" has now been erased after the passage of 227. The term "bilingual" is not to be found under the new legislative mandates of 227. I said that the day they would remove the term "bilingual" from the language of the legislation or curriculum, that would be the day that I would resign from my post since I worked so hard in the name of bilingual education…therefore I finally resigned from my post.

6.1.1. Parental waivers

Teachers and parents alike reflected on how arbitrary is the procedure to obtain parental waivers and how difficult is for parents, teachers and students to obtain access to bilingual education. A focus group with teachers and paraprofessionals clearly uncovers the politics surrounding the waver process:

Teacher Aide: However, parents can use waivers if they wish, or even pull their children out of immersion classes after 30 days if the program is having psychological, physical, emotional effects on the student. The parent also has the option of placing that child in mainstream English classes. There was always a group of parents that did not wish to have their children placed in a "Bilingual Education" classroom; however, their children still needed specialized assistance with English language skills development. Before 227, parents were able to select the bilingual program for their children without signing any paperwork. Now, with Proposition 227 well under way, parents have to go through more bureaucratic red tape in order to place their children in a bilingual classroom setting rather than in a Structured English immersion class. It makes if more difficult for parents to actually place their children in a bilingual education classroom.

Researcher: What is the distinction between Model A and Model B?

Teacher 1: Well, you can use support of the native language in Model B.

Teacher 1: You offer support in their native language on an "as-needed" basis, but the majority of the instruction is still in English.

Researcher: So how does the school explain this to the parents?

Teacher 1: They don't! Not now. In a school this big, there isn't enough accountability to make a ton of difference if the teachers do not take it to the heart unless they are buying texts. Some students have to take the SABE in order to be assessed, others use the Stanford 9. Looking at English test scores is how teachers are evaluated to see how much English they are teaching their students. And it does have a reflection on you, as to whether you're considered a good teacher or not.

Researcher: What has been the reaction of the parents?

Teacher 2: It has been mixed, but for the most part, they want their children to learn English so they enroll them in English immersion classes. Parents may often ask the teacher if they're teaching in English. Never do they ask if they're teaching in Spanish. One teacher sent a Math worksheet, originally in Spanish translated into English by the teacher and she ended up having a parent go to the principal of the school to complain. There is a "clause" in the law that does not allow teachers to suggest or tell them (the parents) about the options they have. In situations where the parents became better informed, only then were they willing to sign waivers. When teachers spoke to parents regarding waivers, only then did parents become informed about their rights for waivers and only then did they sign them. In cases which teachers did not care to talk about waivers to parents that would only increase the likelihood of waiver not being signed. Also, if a high number of parents signed the waiver for an alternative program, you (the teacher) would be under investigation by the district or state. The same thing goes for the Stanford 9; teachers are advised by administration/district not to advise parents that they have the right to request that their children not take the exam.

Teacher 2: However if they do, they also would be under investigation. There is also a waiver for the Stanford 9. In terms of administration/school district telling teaching staff of what they should and should not tell parents, there is a formal written letter regarding all this. Teachers were also given a copy of the law (227), but a copy of the law is only pulled out of the books and utilized when too many parents request waivers. There is a lot stigma against the word "waiver" and it puts the child in a difficult position. As a parent, I would not want my child in a waiver program because it marks them as "different" from other students. Years ago while in middle school, ESL students are deemed as the low achieving students…the term "waiver" might have the same impact on today's students. I firmly believe that they had a sufficient amount of support to make the waiver program a successful one.

Teacher 3: The waiver program is not being treated as a valid choice for parents to consider, it is being swept aside.

Teacher 4: The stigma of the waiver program is so strong that many students are choosing no to speak Spanish anymore, one student even wished to have his name changed from the Spanish version to the English one.

6.2. Prohibiting the use of the native language in the classroom

Parents in three different focus groups (different schools) complained about the "illegal and anti-pedagogical" practice of prohibiting students to use their native language in their classroom, and parents who recently enrolled young children in schools said they were not notified about proposition 227 and their rights to wave English immersion.

Teacher: Yo entendí que la ley esta utilizada para controlar el tipo de instrucción que implementa el maestro, no el estudiante. Entonces en las escuelas, la ley quiere controlar el idioma que el estudiante usa en las escuelas. Eso nunca se pudo aclarar, porque como maestro, yo entendi que no se podia dar clase en español. Pero como maestro, yo entendí que el estudiante si puede usar su lengua nativa dentro del salón. Pero es más bien para el maestro, que no puede usar el español para dar instrucción.

I understood that the legislation is used to control the language of instruction used by the teacher, but know the legislation is trying to control the language the student speak in the classroom. That's something that never was clarified. I understood that as a teacher I cannot speak Spanish but the students could speak their native language in the classroom.

Mother: Cuando leí la carta de la escuela, fui al salón de mi hija de primer año. La maestra me dijo que no se podría hablar con ella (la hija) en español, y que durante los primeros 30 días de la clase, la regla de la maestra fue que los estudiantes tienen que hablar inglés y solo inglés. Entonces el problema es como ellos administran las cosas. Como vamos a saber la estructura de enseñanza que van a tener nuestros hijos si después de 30 días, cambian las cosas de inglés a español o español a inglés.

When I read the letter I went to my daughter's first grade classroom. The teacher told me that I couldn't speak with my daughter in Spanish and during the first 30 days of the academic year the students must speak English only. How are we going to know what is the structure of this legislation if after 30 days they change from English to Spanish or from Spanish to English.

Teacher: El no poder hablar el español dentro de la clase puede ser una violación contra los derechos civiles de los padres e hijos. Es una mala interpretación al nivel distrital. La ley es sobre la instrucción que dan en la escuela, no tiene nada que ver el idioma que el padre o el estudiante usa para comunicar con la maestra, el maestro tal vez comprendió eso por la información que le dieron, y eso no es lo que dice la ley. Hay otra parte de la ley que dice que si el maestro no sigue las reglas de la ley, le pueden dar una demanda legal. Los maestros tienen que ser neutrales, no pueden dar recomendaciones a los padres pero es muy difícil. Como maestros, si tenemos el estudio y la practica, como no podemos dar recomendaciones?

It may be a violation of the civil rights of parents and students to prohibit the use of Spanish in the classroom. This is a wrong interpretation of the legislation by the district. The legislation should focus on the instruction in the school and not on the language that the parents speak to communicate with the teacher. Perhaps the teacher understood that from the information she gathered, but that's not what the legislation said. There is another section of the law where it says that if the teachers do not follow the letter of the legislation they can be sued. The teachers have to be neutral. They cannot recommend anything to the parents, but that's very difficult. As teachers, we have the experience and expertise, so how come we cannot offer recommendations?

Mother: Cada distrito escolar interpretó e implementó la ley de 227 a su gusto, lo que más que le conviene, sin tomar las necesidades de la comunidad en cuenta. En una carta mandada por el distrito a los padres de estudiantes que explica la Proposición 227, el último párrafo explica lo que es la renuncia de clase estructurada en inmersión de inglés y si quieren un programa alternativo, el distrito les dará un permiso para que el estudiante pueda irse a otro distrito escolar, algo que es ilegal. Las cartas estan enviadas con el nombre de la escuela pero nadie las firma. Les proponen irse a otro distrito escolar pero no ofrecen una forma de

transportación. Entonces como se van a ir a distritos escolares que estan más de acuerdos con las necesidades de nuestros hijos si no hay transportación? Esto toma lugar en comunidades latinas porque hace falta mucha informacion para que los padres puedan hacer decisiones adecuadas para sus hijos.

Each school district interpreted and implemented Proposition 227 arbitrarily in the way it is most convenient for them without any regard for the needs of the community. In a letter sent by the district to the parents explaining 227 they mentioned the waiver process but they said the students have to go another school. They do not offer transportation. They do this in Latino communities where we lack a lot of information, so we cannot make the right decisions for our children.

Teacher: Como maestros tenemos que tomar la iniciativa de leer el documento de la ley, porque la administración tiene una manera de decirle a los maestros lo que hace mal dentro la clase. Si 20 estudiantes entregan la renuncia, por ley la escuela tiene que abrir otra clase con un maestro bilingüe según como lo que pidieron los padres. Cuando yo comencé a hablar con los padres sobre programas alternativos la administración me amenazó con declaraciones de que yo no debia y tampoco tenia el derecho de hablar con los padres. Los que ocupan la ayuda son los estudiantes, y ellos salen perdiendo.

As teachers we need to take the lead by reading the legislation otherwise the administration manipulate the information. When I began talking to the parents about alternative programs the administration threatened me and told me I should not speak to the parents. The students need this help and they lost with this decision.

Parents and teachers from all the schools researched said that their districts have implemented proposition 227 in a very arbitrary manner and there is no accountability of this process.

6.3. Parent beliefs

a) Parents of English language learners (ELLs) expressed their desire to have their children learn English well to succeed academically in college, which confirms findings by Tse (2001).

Como digo, es un orgullo que hablen dos idiomas pero realmente van a necesitar un inglés y un inglés academico para salir adelante.

I feel proud that my children speak two languages but what they really will need is English, academic English in order to succeed."

b) Parents of ELLs view a delay in the acquisition of English as problematic because they perceive their children are discriminated if they do not demonstrate full competency in English. A mother in Los Angeles said:

Esto de lo que estamos hablando…de que los nino aprendan los dos idiomas. A mi no me gustaría que se queden atras. Que aprendan los dos idiomas y que los aprendan bien … Es mi interés de ir a la escuela, porque no me gusta que discriminen a nuestros hijos.

This is what we are talking about…children must learn two languages. I wouldn't like them to fall behind [academically]. They must learn two languages but very well. I am volunteering with the school because I don't want my children to experience discrimination

c) Parents want their children to become bilingual and retain their proficiency in their native language. A parent said

Eso es lo que le digo usted trate de que su niño aprenda el español bien, bien, no mal. Y el inglés le entra asi de fácil. Esto es lo que me interesa, esto de lo que estamos hablando…de que los ninos aprendan los dos idiomas.

You must encourage your child to learn Spanish very, very well. Thus, learning English becomes easier. This is what important to me…that children learn two languages.

6.4. Lack of compliance

Seventy percent (70%) of the parents did not know what was Proposition 227, had not seen the text of the legislation, and were not aware of the different classroom modalities for ELLs, as compared to what researchers found in 1998: "statewide only 67 percent of districts formally notify parents" of their rights to seek waivers. Ninety five percent (95%) of the people surveyed said that teachers were not allowed by the school administration to clarify questions regarding proposition 227 to the parents.

Seventy percent (70%) of the parents said the schools or district did not officially inform them about the waiver process.

7. Discussion

After two year of collecting data from parents, teachers, para-professionals, community activists, and administrators, it becomes evident that districts and schools continue implementing Proposition 227 arbitrarily even five years after the legislation was approved. Parents and teachers concur that there is no state accountability system in place to monitor the protection of the rights of ELLs and their parents. Nominally, the legislation contains provisions to respect the parental rights to choose their best education for their children. In reality, the provisions of the legislation are so stringent that school districts and administrators flagrantly violate the basic parental rights and strongly compromise the scope and reach of federal legislation (e.g. a local school district is under investigation by the Office of Civil Rights due to negligent treatment of English language learners). There are some clear areas in which these violations can be identified:

1. New and old parents are not being notified annually of their right to request a waiver. When the notification process happens it is sent in English and very often is contained in a short paragraph among a series of other topics covered in an annual newsletter.
2. New teachers are not being notified about the existence of the legislation but if they have knowledge of the legislation they are advised to refrain from suggesting "alternative courses of study" to the parents of their English language learners.
3. Teaches have been scolded for speaking the students' native language or allowing the students to use their mother tongue in the classroom.
4. Teaching materials and books in other languages have been thrown away. Teachers are forced to rely completely in pre-packaged reading curriculum with disregard for the stories, languages and experiences of their students.
5. Parents are being discouraged by the administration to request waiver, which has prevented the formation of bilingual classroom because of the shortage of students (20 students minimum). Teachers and parents expressed that is has become a stigma to be in a "waiver" classroom.
6. Parents are also discouraged from requesting waivers because their children have to be moved to different schools and they lack transportation.
7. In general, parents expressed a total lack of knowledge about the scope of the legislation, their civil, linguistic and parental rights, and about options for the education of their children. As one parent expressed, "research on second language acquisition is one of the best-kept secrets in education."
8. With very few exceptions, parents expressed sentiments of resignation and disempowerment. Nevertheless, they all expressed a strong commitment to have their children learn English.

As expressed by Del Valle (2003), Tellefson (2002) and McGroarty (2002), there are many factor interrelated in the "efficient" implementation of this assimilationist legislation. Powerful and wealthy political actors have taken the lead in the promotion, marketing, implementation and expansion of these language policies. Language minorities communities are paralyzed and unable to challenge the capricious and arbitrary imposition of policies that are not theoretically designed by the state but are carried out by state institutions.

As it happened at the beginning of the formation of the nation-state and last century, immigrant communities continue being assaulted by dominant groups who feel threaten by their growing presence. Some of the vignettes described in this research resemble the cases of other linguistic groups of past centuries. The Supreme Court of those times very often decided to side with those communities. In Meyer v. Nebraska, the Court said that "the protection of the Constitution extends to all—to those who speak other languages as well as to those born with English on the tongue." In Lau v. Nichols, the Court said that "Chinese-speaking minority receive fewer benefits than the English-speaking majority." In Serna v. Portales, the Court said that the "IQ scores of the Spanish-surnamed children were indicative of something amiss, coupled with a school atmosphere that did not recognize the needs of this minority." In Yniguez v. Mofford, the court declared unconstitutional a state law that forced state officials to speak English only because its implementation could be "potentially"

unconstitutional. The more recent investigation by the Office of Civil Rights into the educational programs for English language learners in at least three different school districts in Southern California is a remembrance of a strong advocacy era—an epoch that gave origin to the civil rights movement and conferred linguistic rights to immigrants. Unfortunately, the expansion of anti-bilingual initiatives is not an isolated incident but it is part of a growing conservative movement that has invaded the judicial branch, and more specifically the Supreme Court.

8. Conclusion

Del Valle (2003) believes that the struggle for the recognition of linguistic rights should not be limited to the struggle for bilingual education. That is only one small realm of the spectrum and vitality of language rights. She advocates a reformulation of community activism among linguistic minorities in order to organize immigrant groups for their own survival. Del Valle argues that the vitality of the linguistic rights of minority communities will depend on their ability to organize themselves, the ability to appropriate concrete spaces of power, and the ability to track and initiate systematic litigation that can further this legal field.

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