

# **English Language Learners Left Behind in Arizona: The Nullification of Accommodations in the Intersection of Federal and State Policies**

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## **Abstract**

Current educational reform efforts in Arizona involve three major federal and state language and assessment policies: (a) AZ LEARNS (2001), Arizona's high-stakes testing and school accountability program; (b) No Child Left Behind (2002); and (c) Proposition 203 (2000), which places restrictions on programs for English language learner (ELL) students. Each policy calls for the full inclusion of ELLs in statewide high-stakes testing. These policies are analyzed from frameworks of educational language policy. The findings reveal that these school reform efforts function as restricted-oriented language policies, particularly as the three policies intersect. Furthermore, it is found that most of the accommodations for ELLs called for within these policies are nullified in the intersection, especially at the level of interpretation and implementation. The remaining accommodation-oriented policies are less helpful to ELLs, and may in fact be more beneficial to state policy actors by masking the harmful effects their restricted-oriented policies are having on ELL students. Suggestions for improving this situation are considered in the Conclusion.

## **Introduction**

In the United States, the number of children classified as English language learner (ELL) students is increasing rapidly, especially in southwestern states such as Arizona (National Clearinghouse for English Language Acquisition, 2002). In past educational reform efforts, the needs of ELL students were seldom recognized (Deschenes, Cuban, & Tyack, 2001; Wiley & Wright, 2004). However, greater attention has been paid to ELL students in more recent

educational language and assessment policy initiatives. There is general agreement on the need for high standards and achievement expectations, and a consensus that ELL students need to learn English and have access to the core curriculum in order to succeed academically. Nevertheless, there is strong disagreement on how best to bring about high academic achievement for all students, especially ELL students, and how to help ELL students obtain high levels of proficiency and literacy in English (Crawford, 2000).

One common educational accommodation for ELLs is providing content-area instruction in their primary language(s), while also providing English as a Second Language (ESL). This accommodation is typically provided for just a few years, until the students attain enough proficiency in English to transition into a mainstream English-only classroom. This approach is used in a wide variety of bilingual education program designs, and research has shown that when properly implemented, these programs are effective in helping ELL students learn English and achieve academic success (August & Hakuta, 1997; Crawford, 2004; Krashen, 1996; Krashen & Biber, 1988; Slavin & Cheung, 2003). When bilingual education is not provided, schools typically try to accommodate their ELL students through a wide variety of ESL program designs (Peregoy & Boyle, 2000). In the current policy climate, however, these approaches and methods have come into conflict with newly imposed state restrictions on bilingual and ESL programs (e.g., Proposition 227 in California [1998], Proposition 203 in Arizona [2000], and Question 2 in Massachusetts [2002]).

In addition, these restrictions have occurred at a time when other state and federal policies have also been adopted, including high-stakes achievement testing as required by No Child Left Behind (NCLB) (2002) and individual state accountability programs. Current federal policy requires the full inclusion of ELL students in these high-stakes tests, and students, their teachers, and their schools are held accountable for the test results. In recognition that the students' lack of proficiency in English may affect their performance, these policies require accommodations for ELLs who take the tests.

Interpreting and implementing these intersecting language and assessment policies has created significant challenges for educators attempting to accommodate the linguistic and academic needs of ELL students (Wright, 2004). This difficulty is especially true in Arizona, which is the focus of this study. Along with the rapid growth of the ELL student population, there are three major educational assessment and language policies currently being interpreted and implemented in the state: (a) AZ LEARNS (2001), Arizona's statewide school accountability and assessment program; (b) NCLB (2002); and (c) Proposition 203 (2000). Each of these policies has specific mandates for ELL students, as well as allowances for certain types of accommodation for ELLs in meeting these requirements. New issues emerge as the requirements of each policy become intertwined and as each is interpreted and implemented by various policy actors at the state level. Within this

intersection, many of the accommodations become nullified, that is, an accommodation allowed by one policy is canceled out by the mandates (or interpretation of the mandates) of another. In addition, accommodations allowed or created by previous policy actors have been nullified by current policy actors based on their own interpretation and implementation of these intersecting policies. Furthermore, new accommodations have been created that may be more beneficial to the policy actors themselves than to the ELL students.

This study is a policy analysis of the nullification of accommodation-oriented policies for ELLs within the context of the intersection of Proposition 203, AZ LEARNS, and NCLB. This analysis is based on frameworks of educational language policies, which I briefly describe in the next section. I will then provide a brief description of the methodology used in this study, followed by an overview of the basic requirements of these three policies, particularly as they relate to ELL students. I will then analyze these policies, and their intersection, using the language policy frameworks. Finally, I will describe and analyze the nullification of many of the accommodations for ELLs within these policies as they have been interpreted and implemented by various policy actors at the state level.

### **Language Policy Frameworks**

Corson (2001), reflecting on the type of diversity found in multilingual countries such as the United States, argues that three policy principles are essential for meeting the linguistic and academic needs of language-minority students. The first principle states that children should have the right to “be educated whenever possible in the same variety of language that is learned at home or is valued most by them” (p. 32). When this is not possible, the second principle applies, which states that students should have the right to “attend a school that shows full respect for the language variety that is learned at home or valued most by them” (p. 32). The third principle states that students have the right “to learn, to the highest level of proficiency possible, the standard language variety of wider communication used by the society as a whole” (p. 32).

Corson (2001) acknowledges that there are settings where many languages exist, thus “the second principle becomes the second-best alternative for most schools” (p. 33). Nevertheless, he makes a strong case for the first principle:

Just valuing the minority language does not go far enough for many students, such as the signing Deaf, or users of native languages, or indeed children in general for whom loss of their minority first language would create academic difficulties. These children, and many others, will always need the support that the first policy principle offers. (p.33)

Corson (2001) also provides a framework (from Churchill, 1986) for classifying minority-language policies in education. There are six ascending levels or rankings that reflect a policy's recognition of minority languages, and its implementation of suitable educational policies. A modified version of this framework appears in Table 1.

Absent from this framework is a category in which the needs of language-minority students are simply ignored (i.e., sink-or-swim mainstream instruction), which Corson (2001) acknowledges is not uncommon. Corson deems Levels 4–6 as the “fairer language policies,” as they meet the three principles outlined previously. My analysis of Proposition 203, NCLB, and AZ LEARNS will determine the level in which these policies (and their intersection) fall.

Table 1

*Classification of Language Policies in Education*

<b>Recognition of students' needs</b>	<b>Policy response</b>
1. Students lack English.	Provide extra teaching in English as a Second Language.
2. Students' need for English also linked to family status.	Provide assistance in adjusting to the majority society (aids, tutors, psychologists, social workers, career advisers, etc.).
3. Students' need for English linked to disparities in esteem between their group's culture and the majority culture.	Provide multicultural education, sensitize teachers to minority needs.
4. Premature loss of native language inhibits transition to English.	Provide transitional bilingual education.
5. The minority groups' languages are threatened with extinction if they are not supported.	Provide developmental and maintenance bilingual education or native-language immersion programs.
6. The minority and majority languages have equal rights in society, with special support available for the less viable languages.	Give minority language official status, provide opportunities for all children to learn both languages voluntarily, provide support beyond educational systems.

*Note.* Adapted from Corson (2001), pp. 102–103.

Kloss (1998) developed a framework that is useful in identifying the overarching purposes of specific policies. Macías and Wiley (1998) and Wiley (2002) added two additional categories to the framework (Numbers 5 and 6) to address what they identified as limitations in Kloss's original framework. Kloss's framework, as expanded by Macías and Wiley, is as follows:

1. Promotion-oriented policies: Active government agenda in which state resources are committed to advancing the official use of minority languages.
2. Accommodation (expediency)-oriented policies: Accommodations to the use of a minority language without the intent of promoting it.
3. Tolerance-oriented policies: Laissez faire. The significant absence of state interference in the linguistic life of the language-minority community.
4. Restricted-oriented policies: Restrictions on the use of minority languages. May be accomplished by placing conditions on the attainment of social, political, and economic benefits, rights, and opportunities by tying them to the ability to use the dominant language.
5. Repression-oriented policies: The state actively seeks the eradication of non-dominant languages.
6. Null policies: The significant absence of policy recognizing minority languages or language varieties.

I will utilize this framework to analyze the overall purposes, or results, of Proposition 203, NCLB, and AZ LEARNS, and their intersection.

Wiley (2000, 2002) makes an important distinction between explicit language policies and implicit or covert policies, which “may not start out to be language policies, but have the effect of policy” (2002, p. 51). He argues that implicit or covert policies and informal practices “can have the same, or even greater force than official [explicit] policies” (2002, p. 51). This distinction is important for analyzing how educational assessment policies such as NCLB and AZ LEARNS, while not explicitly language policies per se, nonetheless can have the same impact as or greater impact than explicit language policies such as Proposition 203.

## **Method**

Data sources for this study include official policy texts and documents connected to the implementation of Proposition 203, AZ LEARNS, and NCLB, media coverage of the implementation of these policies, and firsthand observations of policy-relevant events. Policy texts and documents were obtained from the U.S. Department of Education, state and federal courts, and Arizona governmental offices, including the Department of Education, State School Board, State Legislature, and Office of the Attorney General. Newspaper articles were gathered through extensive searches of the national and Arizona

press using the LexisNexis and Newsbank databases. Policy documents and newspaper articles cover the years 1997–2004. Observations of policy events took place between 2000 and 2004 and include political debates, State Board of Education meetings, public hearings, official and informal presentations made by Arizona education officials, and training seminars offered by the Arizona Department of Education (ADE). Digital audio recordings and field notes of these observations were created. Electronic copies of all documents and news articles were obtained or created through scanning. These data were then imported into QSR NVivo, a qualitative analysis software program. Analysis procedures followed those outlined by Yanow (2000) and Miles and Huberman (1984).

### **Background and Implementation of AZ LEARNS, No Child Left Behind, and Proposition 203**

In this section I will briefly describe the requirements of each of the three policies and how these policies have been interpreted and implemented in the state.

#### **AZ LEARNS**

AZ LEARNS was authorized by Arizona Revised Statutes (A.R.S.) §15–241 in 2001. The individual components of AZ LEARNS predate the official authorization of the program by several years, including the Arizona’s Instrument to Measure Standards (AIMS) test, the Stanford Achievement Test (9th ed.) (SAT–9), and the Measure of Academic Progress (MAP). AZ LEARNS encompasses these and uses their results to label schools and to provide a system of rewards and sanctions (ADE, 2003a, 2003b).

The AIMS is a criterion-referenced test designed to measure the achievement in meeting state academic standards in math, reading, and writing. The AIMS was first administered in the 1998–1999 school year, and prior to 2004 it was only administered in Grades 3, 5, and 8, and once in high school.

The state began developing Spanish-language versions of the AIMS test for Grades 3, 5, and 8, with a policy stating that eligible ELL students could only take it one time; thus, they would have to take the AIMS in English in subsequent administrations. However, the Spanish AIMS was abandoned following the passage of Proposition 203 (Associated Press, 1998). No efforts were made to develop a Spanish version of the AIMS at the high school level.

The high school AIMS test also functions as a graduation test (Associated Press, 1998). However, the use of AIMS as a high school exit exam has been postponed several times due to substantially high failure rates (Kossan, 2000a, 2001b). In the first year, 88% of all sophomores and 97% of Hispanic, Black, and Native American sophomores failed at least one section of the AIMS (Barrett & Pearce, 1999). Testing experts found that the state

rushed the development and use of the AIMS, resulting in numerous problems, including overly difficult items; testing students on material they had not yet had the opportunity to learn; errors on the test; ambiguous questions; errors in scoring; and inappropriately set passing scores (Barrett & Pearce; Kossan, 2000b, 2004a; Pearce, 2000a, 2000b). As a result, the AIMS test has undergone numerous changes (Arizona State Board of Education, 2004; Kossan, 2004).

One superintendent of public instruction, Jaime Molera (who inherited the AIMS crisis from his predecessor), began efforts to explore the creation of an alternative means for students who did not pass the AIMS to demonstrate proficiency in the state standards, in order to obtain a high school diploma (Kossan, 2001a). This effort was dubbed the AIMS–Equivalency Demonstrated (ED). However, the AIMS–ED, though never fully developed or implemented, was highly criticized by Molera’s 2002 election opponent, Tom Horne, who ran on a platform of reinstating the AIMS as a high school exit exam as quickly as possible (Horne, 2001). Horne defeated Molera and immediately eliminated the AIMS–ED. Horne instituted other changes in an effort to make the AIMS test “more reasonable” (Horne, 2003b, 2004). As it currently stands, the class of 2006 will be the first that must pass the AIMS to receive a high school diploma.

The SAT–9 is a norm-referenced test and has been used in Arizona since the 1996–1997 school year. Arizona students take the math, language, and reading sections of the exam. Unlike the AIMS, no changes have been made to the SAT–9, though there has been variation in terms of which grades must take it and which students must be included. Up until 2004, it was given to students in Grades 2–9, and first graders only took the language section. In the past, for ELLs with less than 4 years of enrollment, school districts had the option of administering the Spanish-language version called the *Aprenda* (2nd ed.) or simply excluding ELLs altogether and providing some form of alternative assessment (Keegan, 1999, 2000). Few districts actually provided this accommodation, and the option was no longer viable following the passage of Proposition 203.

The MAP, first used in 2000, is calculated using SAT–9 scores and attempts to measure growth over time (García & Aportela, 2000). While viewed as a fairer measure of progress, particularly for schools in low–socioeconomic status neighborhoods, calculating MAP has been problematic for many inner-city schools as well as charter schools, which traditionally have had high rates of student mobility.

AZ LEARNS requires the ADE to use data from the AIMS and SAT–9 (via MAP) to compile an “annual academic achievement profile” and assign a label for each public school (ADE, 2003a; A.R.S. §15–241). The labels have changed over time but essentially consist of a hierarchy of five classifications ranging from “Underperforming” to “Excelling,” with schools obtaining a label of “Underperforming” for 2 consecutive years obtaining the label of

“Failing.” “Underperforming” schools must submit a school improvement plan to the ADE, must notify all residents in the school’s neighborhood of the label and plan, and must also work with a state-assigned “solutions team” (ADE, 2003a; A.R.S. §15–241). These solutions teams, according to the law, are comprised of master teachers, fiscal analysts, and curriculum assessment experts. If a school fails to improve after working with the solutions team, it is subject to state takeover (ADE, 2003a).

When the first labels were assigned in 2002, only 3 schools in the state received the highest classification of “Excelling,” while 276 schools were designated as “Underperforming.” State policy actors were uncomfortable with these results for a number of reasons, but particularly because of concern about the high costs involved in providing the assistance to schools as required by the law (Kossan, 2003b). The following year, the state made several changes to the formulas and procedures used to assign labels, which made it easier to obtain the “Excelling” label and more difficult to obtain the “Underperforming” label. As a result, in 2003, 132 schools received the “Excelling” designation, while the number of “Underperforming” schools was reduced to 135—a decrease of over 50% (Arizona State Board of Education, 2003a; Kossan, 2003b).

A key component of the new formula was a change in how ELL test scores affect a school’s designation. For schools’ aggregate AIMS test scores and MAP calculations, scores for ELLs enrolled for 3 years or less are excluded (ADE, 2004). This policy change eliminated the scores of the majority of ELL students—particularly, and most importantly, those at the lowest levels of English language proficiency. AZ LEARNS is continuing to undergo a number of changes to come into compliance with NCLB.

## No Child Left Behind Act

NCLB is President George W. Bush’s reauthorization of the Elementary and Secondary Education Act (ESEA). It was signed into law by the President in January 2002 as Public Law 107–110. The stated purpose of the act is “to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind” (preamble to Section 1). NCLB is a highly complex law, comprising nearly 700 pages of federal regulations for states that accept federal education funding (which all currently do). In this study, I focus only on the testing and accountability components of Title I and Title III of NCLB.

Title I mandates annual student testing of all students in Grades 3–8, and once in high school. Rather than creating a national test, Title I requires each state to create its own academic content and achievement standards, create assessments to measure those standards, and use the results to hold schools accountable. Assessments must cover math, reading or language arts, and science. The state must issue individual student reports, and also school and district “report cards” annually that include the results of these tests. NCLB



does not require a high school exit exam. However, a non-regulatory guidance document issued by the U.S. Department of Education (2003b) indicates that states may use their tests for this purpose if they so desire.

All students are expected to meet or exceed the state's academic standards by 2014. In other words, by 2014, it is expected that 100% of students will pass their state's test. Test score data must be disaggregated into different subgroups, including "gender, each major racial and ethnic group, migrant status, students with disabilities, students with limited English proficiency, and economically disadvantaged students" (U.S. Department of Education, 2003b, p. 11). For each of these subgroups, states and local education agencies must establish baseline data, and then set annual measurable achievement objectives (AMAOs) relative to ensuring that all subgroups will be 100% proficient in the standards by 2014. A subgroup is deemed as making adequate yearly progress (AYP) if it meets or exceeds that year's AMAO. In addition, to be deemed as making AYP, at least 95% of the students in the subgroup must be tested each year. Thus, if a subgroup does not reach the AMAO, or if fewer than 95% of the students in that group take the test, that subgroup is deemed as "Failing" to make AYP. Furthermore, schools and school districts are held accountable for ensuring that each subgroup reaches the AMAO. If any one of its subgroups does not, then the entire school or district is deemed as "Failing" to make AYP. If the school continues to be deemed as "Failing," the state may ultimately take it over.

Title I requires that students classified as limited English proficient (LEP) be included in state testing, regardless of their English-language proficiency or how long they have been in the United States. However, states are required to assess LEP students "in a valid and reliable manner" and must also provide "reasonable accommodations." The non-regulatory guidelines (U.S. Department of Education, 2003b) suggest that accommodations for LEP students may include extra time, small-group administration, flexible scheduling, simplified instructions, audiotaped instructions in the native language or English, or additional clarifying information.

"Reasonable accommodations" for LEP students also include, "to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency" (Title I, p. 115, Stat. 1451). After the first 3 years of LEP students' enrollment in a U.S. school, they must be assessed in English on reading or language arts. However, schools may extend testing in the native language for 2 additional years on an individual case-by-case basis, if they determine this would "yield more accurate and reliable information" (p. 115, Stat. 1451). The non-regulatory guidelines (U.S. Department of Education, 2003b) make clear that native-language assessments are only required "to the extent practicable," but

otherwise states must offer “other appropriate accommodations in order to yield accurate and reliable information on what those students know and can do in subjects other than English” (p. 20).

Title III, “Language Instruction for Limited English Proficient and Immigrant Students,” provides block grants to states, and each state in turn provides subgrants to all districts (and charters) that submit applications for the funds. Title III requires that LEP students be placed in a “language instruction educational program” defined as an instructional course

in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards, . . . and that may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language. (p. 115, Stat. 1730–1731)

Thus, without referring to these programs by name, Title III permits transitional bilingual education and dual immersion programs. It also allows for a wide variety of other approaches that do not necessarily make use of a student’s first language. This flexibility, along with compliance with state law, is stressed in the non-regulatory guidance document for Title III (U.S. Department of Education, 2003a):

[A local education agency] may select one or more methods of instruction—consistent with the requirements of State law—to be used in assisting LEP students to attain English proficiency and meet State content and student academic achievement standards. However, the language instruction curriculum used must be tied to scientifically based research on teaching LEP students and must have demonstrated effectiveness. (p. 4)

Title III requires states to develop English-language proficiency standards and English-language proficiency assessments designed to measure LEP students’ progress in attaining those standards. The English-language proficiency assessments must be given annually. As with the content assessments, states, districts, and schools must set annual measurable achievement objectives and are held accountable for students making adequate yearly progress in achieving those objectives.

To comply with NCLB, Arizona had to revamp its academic standards, develop science tests, create ELL standards, and develop a statewide English-language proficiency exam. As the AIMS test was only given in Grades 3, 5, and 8 and high school, the state had to create new tests for Grades 4, 6, and 7.

Rather than continuing to give both the AIMS and the SAT–9, the state decided to create a combined criterion-referenced and norm-referenced test, called the AIMS–Dual Purpose Assessment (DPA) (Arizona State Board of Education, 2003). The state rushed the development of the AIMS–DPA and administered it for the first time in 2004. As with the previous AIMS exams, the failure rates were extremely high: 70% of high school juniors (who must pass the test to graduate in 2006) failed one or more sections of the AIMS (Kossan, 2004d). This has led to renewed concerns about the use of the test as a graduation requirement, but to date, the state has resisted pressure from parents and educators to postpone this requirement.

While NCLB requires that LEP students be included in statewide tests, the ADE adopted a special rule on minimum group size, which impacts the calculation of AYP for LEP students and other subgroups. This special rule was approved by the State Board of Education and reads as follows:

A group or subgroup was not evaluated [for AYP] if it had less than 30 test scores that met the selection criteria. Thirty is the sample size conventionally considered large enough to provide statistically meaningful results. (ADE, 2003c, p. 19)

In other words, a school would not be required to track a subgroup’s progress on meeting AYP if the subgroup (at each grade and for each test section) had fewer than 30 students. Thus, for example, if a school had 29 or fewer LEP students in third grade, the school would not have to calculate AYP for the LEP subgroup, and thus the LEP subgroup would not be included in the determination of the school’s AYP. According to the *Arizona Republic*, this change alone prevented around 680 Arizona schools from being designated as “Failing” under NCLB (Kossan, 2004b). In addition, “the state doesn’t count the test scores of students who are in their first three years of learning English” (Kossan, 2004b, p. B1). This allowance does not appear in official documents but was negotiated “behind-the-scenes” by Arizona education officials with the U.S. Department of Education (Kossan, 2004b, p. B1). Thus, the state uses the same exclusion mechanism for ELL test scores for NCLB that it does for AZ LEARNS (upon appeal from the schools). In summary, ELL students with less than 4 years of enrollment still take the AIMS test, but their scores are excluded from both AZ LEARNS and NCLB accountability and labeling calculations.

### Proposition 203

Proposition 203, “English for the Children” (also known as the “Unz Initiative”), is a voter initiative passed on November 7, 2000, by 63% of the electorate. It replaced statutes authorizing bilingual and ESL programs. The law’s most basic requirement is as follows:

Children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year. (A.R.S. §15–752)

The law's definition states:

[Sheltered (or structured) English immersion (SEI) is] an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English and all reading, writing, and subject matter are taught in English. (A.R.S. §15–751)

This definition merely emphasizes the language of instruction. To date, the state has failed to provide a working definition of SEI other than just teaching ELLs in English.

One misconception is that Proposition 203 does not allow any use of a student's native language. However, accommodation in the form of primary language support is allowed. The law states that "teachers may use a minimal amount of the child's native language when necessary" with the qualification that "no subject matter shall be taught in any language other than English, and children in this program learn to read and write solely in English" (A.R.S. §15–751).

Bilingual education for ELLs is allowed through waiver provisions in which parents can request that their children be waived from the requirements outlined above. In order to obtain a waiver, the parent(s) must visit the school in person each year to apply. The school is required to provide parents with a full description of the different program choices and the materials used in those programs. If a waiver is granted, then the child is to be transferred to "classes teaching English and other subjects through bilingual education techniques" (A.R.S. §15–753). Schools are required to offer a bilingual class when 20 or more waivers have been granted to students at the same grade level. If the school does not have enough waivers to offer a bilingual class, the student may transfer to a school where bilingual classes are offered. There are three circumstances in which waivers may be granted:

1. Children already know English.
2. Children are 10 years or older.
3. Children have special individual needs.

Qualification for waiver Provision 1 is determined by English-language proficiency tests. A student is deemed as possessing "good English language skills" if the child "scores approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower" (A.R.S.

§15–753). For waiver Provision 3, the law clarifies that the special individual needs must be “above and beyond the child’s lack of English proficiency” (A.R.S. §15–753). Furthermore, “a written description of no less than 250 words documenting these special individual needs for the specific child must be provided” (A.R.S. §15–753). The waiver must be approved via signatures of both the school principal and local superintendent. Even if parents go through all this trouble, the law declares that “teachers and local school districts may reject waiver requests without explanation or legal consequence” (A.R.S. §15–753). Thus, while bilingual education is technically possible, these waiver provisions were designed to make it extremely difficult, if not impossible, for parents to receive this accommodation for their children (see below).

Proposition 203 also requires the administration of a national norm-referenced test each year—in English—to all students in Grades 2–9. ELLs must be included, and only students with severe learning disabilities may be excluded. The state is required to release the results to the public and to provide disaggregated scores for students classified as “limited-English.” The law does not specify how the results are to be used other than “monitoring educational progress,” but it authorizes state and local officials to use the results for other purposes “if they so choose” (A.R.S. §15–755). Arizona previously used the SAT–9 for this purpose, but the state now uses the AIMS–DPA, which includes a norm-referenced component. However, as the AIMS–DPA test is not given in Grades 2 or 9, the state adopted the TerraNova, just for these grades, to comply with this mandate. As of this writing, it is unclear how the results of the TerraNova are going to be used.

The implementation of Proposition 203 has varied greatly (Wright, in press). When it first passed, then–Superintendent of Public Instruction Lisa Graham Keegan showed little interest in it, issued little guidance to school districts in terms of how to comply with the law, and literally told school district leaders that they could interpret it any way they liked (“Bilingual legal muddle has schools under fire,” 2001). As a result, implementation varied widely across the state (Zehr, 2001). Keegan resigned in 2001 and was replaced by Jaime Molera, who was appointed by the governor. Molera recognized the ambiguous nature of the poorly written law, but nonetheless he answered the call from school districts for state guidance in implementing Proposition 203. Molera (2001) issued a substantive guidance document, and the ADE provided assistance to school districts in complying with the law. These guidelines made it clear, however, that bilingual programs were allowed through the waiver process outlined in the law, and thus several districts were able to continue their programs.

The situation in Arizona changed dramatically, however, following the election of Superintendent Tom Horne, who took office in January 2003. Horne received the endorsement of Ron Unz and local leaders of English for the Children (Davenport, 2002), and he ran an aggressive media campaign accusing

Molera of refusing to enforce Proposition 203 (Corella, 2002). Once in office, Horne appointed Margaret García Dugan—the local co-chair of Proposition 203—as an associate superintendent with responsibility over ELL programs (Horne, 2003c). Thus, Proposition 203’s chief proponent became its chief enforcer.

Horne and Dugan (2003) issued new guidelines regarding waivers for bilingual education, which essentially made it impossible for ELL students in Grades K–3 to qualify for a waiver. They made it clear that these new guidelines also applied to charter schools, which by definition are generally free from most state school regulations. Despite two opinions issued by the state Office of the Attorney General that questioned both the legality of Horne and Dugan’s interpretation (Goddard, 2003b) and the guidelines’ application to charter schools (Goddard, 2003a), Horne and Dugan managed to enforce strict compliance by threatening to withhold ELL funds from any district that did not comply with their new guidelines (Associated Press, 2003; Kossan, 2003a). Furthermore, Horne and Dugan announced the hiring of 45 monitors to “police bilingual” (Horne, 2003a). These monitors, and Dugan herself, personally visit schools and classrooms to ensure strict compliance (Ruelas, 2003).

Horne and Dugan have also attempted to skirt around a previous attorney general opinion (Napolitano, 2001) exempting public schools on Indian reservations from Proposition 203. This opinion recognized these schools’ efforts to revitalize endangered Native American languages that are protected by federal law. Nonetheless, Dugan has issued her own interpretation of the attorney general opinion, claiming that these schools are still subject to Proposition 203 (Donovan, 2004). As of this writing, tribal leaders are contesting Dugan’s efforts to shut down their programs.

As a result of Horne and Dugan’s strict interpretation and implementation of Proposition 203, only a handful of bilingual programs remain. Most of the surviving programs are dual immersion classes. The irony is that ELLs under 10 cannot be in a bilingual program unless they are designated as fluent English proficient (FEP), meaning they are no longer ELL students. And if they are not ELL students, there is no need to obtain a waiver, as waivers are only for ELLs. Thus, the waiver provisions create the illusion of an accommodation that simply does not exist, and the few remaining bilingual programs in Grades K–3 do not contain any ELL students. A few bilingual programs for students 10 years and older remain. However, it appears that Dugan may be undertaking efforts to go after these programs as well (see Judson & Dugan, 2004).

## **Analysis**

My analysis of the formality or explicitness, and the goals and effects of the various mandates and implementations of Proposition 203, NCLB, and AZ LEARNS, are summarized in Table 2.

Table 2

*Formality or Explicitness and Policy Goals and Effects of Proposition 203, AZ LEARNS, and No Child Left Behind (NCLB)*

<b>Policy</b>	<b>Formality</b>	<b>Goal/Effect</b>
<b>Proposition 203</b>		
Sheltered English immersion	Explicit	Restricted oriented
Waiver provisions	Explicit and implicit (covert)	Restricted oriented
Horne and Dugan's waiver regulations	Explicit	Restricted oriented
Norm-referenced testing in English (Stanford Achievement Test [9th ed.]/TerraNova)	Null and implicit	Restricted oriented
Monitors	Explicit	Restricted oriented
Allowances for bilingual programs for fluent English proficient students	Explicit and implicit (covert)	Tolerance oriented
Attorney general opinion—Native Americans	Explicit	Tolerance oriented
Attorney general opinion—charter schools	Explicit	Tolerance oriented
Enforcement on Indian reservations	Explicit and implicit	Restricted and repression oriented
<b>NCLB Title III</b>		
English language learner (ELL) standards	Explicit	Restricted oriented
English-language proficiency assessment	Explicit	Restricted oriented
High-quality language instruction program	Explicit	Accommodation oriented and restricted oriented

Table 2, cont.,

*Formality or Explicitness and Policy Goals and Effects of Proposition 203, AZ LEARNS, and No Child Left Behind (NCLB)*

<b>Policy</b>	<b>Formality</b>	<b>Goal/Effect</b>
<b>Academic testing requirement of AZ LEARNS and NCLB</b>		
High school graduation test in English (Arizona's Instrument to Measure Standards [AIMS])	Null and implicit (embedded)	Restricted oriented
Initial allowances for native-language testing, exclusions	Explicit	Accommodation oriented
High-stakes testing in English (AIMS)	Null and implicit (embedded)	Restricted oriented
Native-language testing to the extent practicable	Explicit	Accommodation oriented
Reasonable accommodations	Explicit	Accommodation oriented
AIMS–Equivalency Demonstrated	Null	Accommodation oriented
Solutions teams	Null	Restricted oriented?
Exclusion of ELL test scores in accountability formulas	Explicit and implicit (covert)	Accommodation oriented and restricted oriented

Proposition 203, as a whole, is clearly an explicit and restricted-oriented language policy. The requirement for SEI means that instruction in any language other than English for ELLs is prohibited. The waiver provisions appeared to be an accommodation-oriented policy; however, they were written in a manner that made them extremely difficult to obtain. In reality, the waiver provisions were implicitly and covertly a restricted-oriented policy. Horne and Dugan’s new guidelines, which attempt to close the loopholes in the waiver provisions, are explicitly restricted-oriented, as is their use of monitors to enforce strict compliance. The requirement to include ELLs in norm-



referenced tests is in part a null policy, as these tests were not developed for or normed on ELL students. However, I argue that this policy is implicitly and covertly a restricted-oriented policy. Previous research in California showed that the pressure to prepare ELL students for English-language high-stakes tests led many districts to reduce or eliminate their bilingual programs (García, 2000; Wright, 2003). Hence, mandating this in Arizona would further encourage school districts toward English-only programs.

The attorney general opinions excluding charter schools and Native American students from Proposition 203 represented attempts at more tolerance-oriented policies, even though these opinions have been ignored by current ADE leaders. Given the fact that Native American languages are endangered and school programs represent one of the few hopes in preventing the death of these languages, I classify Dugan's attempt to enforce Proposition 203 on the Indian reservations as a repression-oriented policy. Finally, the allowances for bilingual programs to serve fluent English proficient students represents an explicit tolerance-oriented policy. Nonetheless, I also classify it as an implicit (covert) policy, given the fact that bilingual programs were initially designed for ELL students. This new policy means that dual language programs now consist of English-only students and students who are already bilingual and proficient in English. As the original intent of dual language programs is to help both ELLs and English-only students become bilingual, it appears now that the benefit is mostly going to the English-only students, given the fact that the other students are already bilingual.

Title III of NCLB, in general, is an explicit restricted-oriented policy. I classify it as such because its focus is clearly on English, as evidenced by the requirements for ELL standards and English-language proficiency assessments, rather than developing or promoting bilingualism. This stands in contrast to its predecessor, Title VII (the Bilingual Education Act), in which funds were provided specifically for bilingual education programs. While Title III's definition of high-quality language instruction programs does not preclude transitional or dual immersion bilingual programs, it can be considered an accommodation-oriented policy. However, it is better classified as restricted oriented as it avoids the term "bilingual education" altogether and gives states leeway to restrict bilingual approaches.

The testing requirements of AZ LEARNS and Title I of NCLB are also, for the most part, restricted-oriented policies. Earlier assessment policy in Arizona contained explicit accommodation-oriented policies, including possibilities for native-language testing (which NCLB also allows) on both the AIMS test and the SAT-9, and the ability to exclude ELLs from the SAT-9 for up to the first 3 years of enrollment. However, the use of the English-only high school AIMS test as a graduation requirement in high school functions as null language policy because it fails to take into consideration the needs of ELL students. It also functions as an implicit restricted-oriented language

policy because ELLs will nonetheless have to pass it in order to obtain a high school diploma. Thus, this policy is creating a situation where students who are not yet fluent in English may not only be denied a high school diploma but also all of the social benefits that come with it, such as higher paying jobs and the ability to pursue higher education. Furthermore, given the high stakes associated with the AIMS (and now the AIMS–DPA), teachers may be more prone to spending classroom time teaching to the test rather than providing linguistically and culturally appropriate instruction for their ELL students (Wright, 2002). The use of “solutions teams” to assist “underperforming schools” is null policy at best. These teams are spending minimal amounts of time at the schools they are assigned to help, and many of these schools have large ELL student populations, yet the law does not require team members to have any relevant experience or expertise with ELL students (Wright, in press).

NCLB’s requirement to provide reasonable accommodations is obviously an explicit accommodation-oriented policy. However, the law does not specify what “reasonable” means or what accommodations are allowed. In addition, states are under no obligation to report what accommodations they provide for ELLs. Thus, with no enforcement mechanisms, there is no guarantee that ELLs will be accommodated on the tests. To date, Arizona has not articulated a statewide accommodation policy for ELLs, and instead the state has placed the onus on individual school districts. As a result, practice varies widely across the state, with many districts providing no accommodations whatsoever.

Regardless, the issue of providing accommodations is problematic in several ways. First, accommodations are very difficult to provide, and those viewed as the most beneficial are typically the most expensive (LaCelle-Peterson & Rivera, 1994). Second, providing accommodations can affect validity and reliability of the test scores, as the accommodation may provide an unfair advantage over those students who do not receive the accommodation (Gottlieb, 2003; Linn, 2002). Finally, research, to date, simply has not been able to show which accommodations are the most beneficial without affecting validity. Thus, the testing accommodation policy of NCLB requires schools to implement practices for which there is no research base (Adebi, 2003, 2004; Rivera, 2002; Rivera, Vincent, Hafner, & LaCelle-Peterson, 1997). In other words, NCLB’s mandate to assess ELLs in a “valid and reliable manner” is nearly impossible.

Ironically, the ADE currently provides the most extensive explicit, accommodation-oriented policy to date, in terms of the inclusion of ELLs on high-stakes tests, with its policy to exclude the test scores of ELL students with less than 4 years of enrollment. This policy ensures that ELL test scores have a minimal impact on the schools’ accountability calculations, which means the labels assigned to schools are not reflective of how effective these schools are with their ELL student populations. In addition, the exclusion of

LEP subgroups smaller than 30 in each grade level tested at each school means the school's AYP designation ("makes" or "fails") may likewise be completely unreflective of the school's progress with its ELLs.

With this policy, the ADE is acknowledging that test scores of ELL students on tests administered only in English are not valid and should not be used in judging the quality of a school. Thus, it may be a worthwhile accommodation. However, the question must be asked, whom does this policy actually accommodate and benefit? The ELL students are still subjected to hours of testing in a language in which they are not yet proficient, even when the state has little interest in and places little value on their scores. The students and their parents still receive individual student reports that claim to make some sort of statement about the children's achievement and ability, even though the state considers their scores invalid. My impression is that few classroom teachers realize most ELL scores are excluded. As a result, they are likely spending hours of classroom instruction to prepare their ELL students for the test, rather than providing instruction that is more attuned to their linguistic and academic needs.

If the scores of most ELLs do not count, then why make them take the tests? It appears this accommodation mostly benefits state-level policy actors. The dramatic changes in the AZ LEARNS accountability formula—in which the exclusion of ELL scores plays a key role—resulted in a much rosier picture of education in Arizona. Besides a less embarrassing number of "Underperforming" schools that the state has to pay money to assist, there is one other important benefit. The elimination of bilingual education (and ESL), the imposition of the ill-defined SEI model, and the efforts to legally legitimize the placing of ELL students in mainstream classrooms will have a negative impact on the academic achievement of ELL students. The exclusion of ELL scores from the accountability program will help mask this failure. In other words, the negative impact of the ADE's current policies will not (immediately) be reflected in a school's test scores or label. Thus, current ADE leaders can point to rising (aggregate) test scores and schools with impressive-sounding labels, and declare these proof that their restricted-oriented policies are improving the education of ELL students.

Under the current accountability system, it may take years before the harm that is being done to ELL students, especially in the primary grades of elementary school, will become evident. By then, current ADE leaders will no longer be in office, perhaps using the illusion of success to further their political careers (Wright, 2004).

## **Nullification of Accommodations**

In the intersection of Proposition 203, AZ LEARNS, and NCLB, most of the accommodation- and tolerance-oriented provisions in each of these policies became nullified. Table 3 provides a summary of the nullification of these accommodations, and additional accommodations that were introduced but nullified under the current interpretations and implementations of these policies.

Proposition 203 had few accommodation-oriented policies to begin with. As mentioned earlier, the waiver provisions are an illusion of an accommodation that does not exist. The attorney general opinions excluding charter schools and schools on Native American reservations were nullified by Horne and Dugan's interpretation and enforcement. Finally, the law's allowance for primary-language support is rarely mentioned by ADE officials, to the point that many teachers believe that Proposition 203 outlaws any use of the students' native language(s). Evidence of this emerged in the recent case of a Scottsdale middle school teacher who was fired for hitting students who were speaking Spanish (Ryman, 2004). In defense, the teacher claimed she was enforcing Proposition 203. In response to this incident, Superintendent Horne stated that if the teacher did indeed hit children, she deserved to be fired, but nonetheless declared that she was correct in insisting her ELL students speak English (Ryman & Madrid, 2004). This further perpetuated the view that languages other than English were not allowed in the classroom. Furthermore, Proposition 203 monitoring teams from the ADE observe classroom teachers to make sure that instruction is in English, and also to ensure that students in the class are speaking in English (even though Proposition 203 only addresses the language used by the teacher).

Proposition 203 has also nullified many of the accommodation-oriented policies of AZ LEARNS and NCLB. Previous policies allowing AIMS and SAT-9 exams in Spanish were discontinued after the passage of Proposition 203, and even though NCLB allows for native-language testing up to 5 years, this option is no longer viable in Arizona. Title III's allowance for transitional and dual immersion programs for ELLs is also nullified by Proposition 203. While testing accommodations for ELLs are left up to individual school districts, those accommodations that directly address the language issues of ELLs are no longer viable options. The remaining accommodations districts may choose to use are mainly nonlinguistic and, thus, less helpful. The other remaining accommodation of excluding ELL scores from school accountability formulas, as described previously, is of little benefit to the ELL students.

Table 3

*Reality and Nullifications of Accommodation- or Tolerance-Oriented Policy Provisions of Proposition 203, AZ LEARNS, and No Child Left Behind (NCLB)*

<b>Accommodation- or tolerance-oriented policy provisions</b>	<b>Reality</b>	<b>Nullification</b>	<b>Comments</b>
<b>Proposition 203</b>			
Waivers for bilingual education	Made intentionally difficult to get	Horne and Dugan's waiver regulations	Local Proposition 203 chairperson became chief enforcer
Does not apply to charter schools	Opinion of attorney general	Horne's threat to withhold funds	
Does not apply to Indian reservations	Opinion of attorney general	Dugan's letter, threat to withhold funds	Tribal leaders are challenging Dugan
Primary-language support	Not stressed by Arizona Department of Education (ADE)	Proposition 203 monitors discourage it	Many teachers unaware of option
<b>AZ LEARNS</b>			
Exclusions from Stanford Achievement Test (9th ed.) (SAT-9); up to 3 years	Most English language learners (ELLs) were still included	Proposition 203	
SAT-9 in Spanish (Aprenda)	Less than 15% of ELLs took it	Proposition 203	
Arizona's Instrument to Measure Standards in Spanish, Grades 3, 5, and 8	Quality issues, never fully developed, small percentage taking it	Proposition 203	

Table 3, cont.,

*Reality and Nullifications of Accommodation- or Tolerance-Oriented Policy Provisions of Proposition 203, AZ LEARNS, and No Child Left Behind (NCLB)*

<b>Accommodation- or tolerance-oriented policy provisions</b>	<b>Reality</b>	<b>Nullification</b>	<b>Comments</b>
<b>AZ LEARNS</b>			
Testing accommodations	Absence of clear state policy	Proposition 203 (nullifying native-language linguistic accommodations)	Required by NCLB but not specified
Exclusion of ELL scores under 4 years of enrollment	Benefits the state-level policy actors, not the ELLs	N/A	Masks the harmful effects of restricted-oriented policies
<b>NCLB</b>			
Transitional, dual immersion programs	High-stakes tests in English discourage it	Proposition 203	
Testing in native language	Allowed "to the extent practicable"	Proposition 203	Appropriate only if matches instruction
"Reasonable" testing accommodations	Not defined, left up to state; no research to support practice; validity problems	Proposition 203 (nullifying native-language linguistic accommodations)	Least beneficial, non-linguistic accommodations remain
Minimum subgroup size = 30 for adequate yearly progress	Benefits the state-level policy actors, not the ELLs	N/A	Agreement negotiated by ADE
Exclusion of ELL scores under 4 years of enrollment	Benefits the state-level policy actors, not the ELLs	N/A	Agreement negotiated by ADE

## Conclusion

The purpose of education reform is to improve schooling for all students. The language and assessment policies of NCLB, AZ LEARNS, and Proposition 203 are major components of educational reform efforts in Arizona, each of which has a direct impact on the education of ELL students. The analysis above reveals that from the perspective of language policy frameworks, most of the mandates associated with these policies fall under the category of restricted-oriented language policies. These policies do little to promote, or even tolerate, the native languages of ELL students, but rather serve to restrict their use in instructional settings. The restrictive nature of these policies is intensified as the policies have intersected at the level of interpretation and implementation.

These increased restrictions are due particularly to the fact that accommodations for ELL students allowed by one policy become nullified by restrictions in others. Further nullifications were created as new policy actors at the state level implemented their own strict interpretations of these policies. The result is that ELL students in Arizona classrooms are afforded far fewer accommodations than allowed in the past, at a time when the stakes have never been higher for both themselves and for their schools.

Although ELLs are still forced to take the tests, and schools and teachers are still required to prepare them for these tests, the state has created the means by which the majority of ELL test scores are removed from school accountability formulas under both AZ LEARNS and NCLB. This accommodation is of little benefit to the ELLs themselves. Rather, this accommodation benefits state-level policy actors who are able to mask the harm being done to ELL students through their restricted-oriented policies and nullification of meaningful accommodations. Thus, while an illusion has been created of a greater number of “Excelling” schools and a decrease in the number of “Underperforming” and “Failing” schools, a large number of ELL students are, in reality, being left behind. Accordingly, Arizona ranks at the bottom (Level 1) of Corson’s (2001) classifications of educational language policies (if ELLs lack English, provide ESL instruction). A strong case can be made, however, that in reality, SEI instruction is actually nothing more than sink-or-swim mainstream instruction, and thus Arizona fails to even qualify for Level 1 status.

The effects of these policy gimmicks may only be temporary, because the scores of ELL students will eventually count, and they will likely be affected by the inadequate education ELLs received during the years in which their scores were excluded. The situation for ELLs in Arizona could be improved easily if Proposition 203 were eliminated, or at least if state education leaders were to stop interpreting it so narrowly and allow schools greater flexibility in terms of offering quality ESL and bilingual education programs. The state’s

current policy of removing most ELL scores from school accountability formulas could be used in a manner more beneficial to ELLs. First, this policy could be clearly articulated to school leaders and classroom teachers so that they do not feel undue pressure to dedicate so much classroom instruction time to preparing ELLs for tests on which the students cannot reasonably perform well. Combined with the elimination of Proposition 203, this would allow schools to instead focus on the language, literacy, academic, and cultural needs of their ELL students, providing the types of accommodations proven effective in the past. This also gives ELL students the gift of time to learn English and academic content before their scores on high-stakes English-only tests really count.

Better yet would be the repeal of high-stakes testing policy as well, or at least the repeal of the high stakes associated with the tests. Researchers have pointed out fundamental flaws within NCLB that have the potential of eventually labeling most schools as “Failing,” particularly those schools with ELL students (Abedi, 2003; Wiley & Wright, 2004). With these flaws removed, and with the pressure to teach to an English-only test eliminated, schools and teachers could instead focus on providing the types of educational programs that meet the three policy principles outlined by Corson (2001), which would provide students the opportunity to become fully bilingual and biliterate in both their native language(s) and English. Such policy changes would move Arizona near the top of Corson’s classification system, and thus represent better quality and more equitable education programs for ELL students.

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[Note. Some of these Web sites are no longer available.]

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