Rights versus Reality: The Gap between Civil Rights and English Learners' High School Educational Opportunities

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Nearly forty years after a landmark Supreme Court decision (Lau v. Nichols) and thirty years after a Fifth Circuit Court of Appeals case (Castañeda v. Pickard) concerning the educational rights of English learners (ELs), the authors argue that the essence of these rulings have yet to be systematically realized. Drawing on evidence from their research, the authors highlight the gaps between ideals and realities that secondary language minority youth face in securing educational opportunities. The authors also raise questions about theory, implementation, and evaluation in EL programs and students' rights to a full academic curriculum.

In his recent *Brown* Lecture published in the *Educational Researcher*, Hakuta (2011) discussed two landmark cases that defined English learners' (ELs)[1] educational rights: *Lau v. Nichols* (1974) and *Castañeda v. Pickard* (1981). With *Lau*, no longer did the same instruction in mainstream courses comprise equal educational access; *Lau* meant that schools had an obligation to address ELs' language barriers. *Castañeda* established three standards that gave greater definition to *Lau* in Office of Civil Rights reviews*,* directing EL programs to be: based on sound educational theory, appropriately implemented, and evaluated as effective for English language instruction *and* access to academic subjects (Ovando & Collier, 1998). Although some (e.g., Gándara, Moran, & García, 2004) have noted the erosion and instability of rights, one key aspect remains: instructional modifications are necessary for ELs if they are to have meaningful access to a full curriculum.

In this essay we examine the gap between the ideals represented in these cases and the realities confronting secondary EL students. Building on Hakuta's (2011) observations and our prior independent research, we raise questions about the theory, implementation, and evaluation of EL programs. We argue that all too often, the promise of equitable educational access under *Lau* and *Castañeda* remains unfulfilled, in spite of the existence of programs intended to serve EL students.

Despite Rights, ELs Diminished Opportunities to Learn

Whether analyzing detailed classroom fieldnotes or course-taking patterns from nationally representative databases, we find ample evidence of disparities in both opportunity and achievement between EL students and their non-EL peers. Differences exist in mathematics and reading performance in elementary school by EL status, increase by middle school (Goldenberg, 2008), and prove untenable by high school, with only 18% of ELs completing a comprehensive measure of basic high school graduation requirements, compared to 44% of language minorities

not enrolled in ESL, and 46% of native English speakers (Callahan & Shifrer, in press). Certainly, these statistics also reflect the predominance of long-term ELs (LTELs) in high school—those who, after 6-plus years in U.S. schools, have not met the linguistic and/or academic criteria required to exit the EL category. In examining school structures and programs intended to provide content area access for secondary EL students, we have both documented diminished opportunities to learn (Callahan, 2005; Callahan, Wilkinson, & Muller, 2010; Dabach, 2011b; Dabach, 2009). However, our experiences working with educators and schools lead us not to argue that this is deliberate, but rather that there are unintended consequences to the programs intended to serve EL students.

The most common linguistic support service, especially at the secondary level, is English as a second language (ESL) coursework , although many secondary ELs also receive "sheltered" content area instruction: subject-area classes delivered primarily in English but designed for those still acquiring the language (Echevarría, Vogt, & Short, 2004). Callahan's work with colleagues underscores the Catch-22 of these placements by analyzing the course-taking patterns of two groups of language minority students matched on English proficiency and other characteristics—those in EL placements, and those not. Although linguistic support services were intended to expand educational opportunity, placement in ESL during high school resulted in decreased access to higher-level math and science course-taking for all but the most recent arrivals with the lowest levels of English proficiency (Callahan et al., 2010). Moreover, Callahan (2005) found ELs' academic placement to be more predictive of grades and test scores than students' English proficiency. These analyses suggest the need to understand how programs designed to support EL students may actually impede access to educational opportunities.

Dabach (2009, 2011a, 2011b) further examined these processes in seven California comprehensive high schools by following 20 subject-area teachers who taught matching pairs of EL and general education courses in social studies, mathematics, and science. Dabach found interlocking elements compromising EL students' educational opportunities. First, new teachers were more likely to be assigned EL placements than their senior colleagues. This jeopardized students' access to rigorous instruction because novice teachers are typically not as effective as their more experienced counterparts (Clotfleter, Ladd, & Vigdor, 2005; Darling-Hammond, 1995, 2000). Second, a gap existed between teachers' qualifications on paper and their ability to teach ELs academic content. Third, teacher accounts of students' experience revealed EL-content courses to be spaces where youth had to negotiate the "sheltered" stigma. EL students, especially LTELs, associated these classes with "stupidity" and a lack of cognitive ability, when in theory they were supposed to enhance EL students' opportunities to learn. Most striking were the connections across levels of analysis; students are likely to feel "stupid" in spaces where they are vulnerable to less effective instruction.

Clotfelter et al. (2005) argue that creating separate courses is not necessarily the problem; resources may be targeted to groups of students who must make rapid progress. Goldenberg's (2008) review reports small effects in favor of separate EL programs in kindergarten; however, our work investigates separation within the high school context, where tracking and stratification persist. While quality secondary educational programs and instruction exist (e.g., Jaffe-Walker & Lee, 2011), evidence suggests they are far too rare.

Together our findings complicate the notion that EL secondary content programs, as currently implemented, are necessarily beneficial for the increasingly heterogeneous EL student population—many of whom are US-born and may have little in common with their recent immigrant peers. While some may read our findings as evidence for eliminating those EL supports called for under civil rights law, we advocate for effective instructional access through pedagogy, meaningful evaluation, and content area development. Our work and that of Olsen (2010), exploring the magnitude and prevalence of LTELs, provides evidence that something is clearly not working for many students trapped in a label with insufficient supports for re-classification out of EL status.

A tension exists in realizing the important civil rights victories embedded in *Lau* and *Castañeda* between the recognition of students' genuine need for supports to overcome language barriers on the one hand and evidence that these supports may inadvertently reflect larger patterns of social inequality on the other. Our research, as well as prior studies, illustrates how EL programs may be marginalized (Olsen, 1997), consistently subtractive (Menken & Kleyn, 2010), and may block access to advanced study (Callahan et al., 2008, 2009, 2010). Some programs may comply on paper (i.e., by creating specialized courses), although arguably, not in practice. While measures exist to avoid such scenarios, the distance between district compliance procedures and the ability to rectify harm through the Office of Civil Rights (OCR) remains great (Gándara et al., 2004; Pollack, 2008). While repudiating any return to the pre-*Lau* era of sink-or-swim practices which ignored ELs' dual charge of learning English *and* academic content, we hope to draw attention to some of the challenges in transforming legally-driven policy to pedagogically-sound practice in local contexts.

Along with Hakuta (2011), we argue that if EL programs are not effective, their guiding assumptions and processes must be revisited. We take this opportunity to expand on *Castañeda's* three-pronged approach: theory, implementation, and evaluation:

1. *Theory.* Some programs (e.g., English submersion) are not based on language acquisition theory at all, but rather are politically motivated (Gándara & Orfield, 2010; Hakuta, 2011). In others, "theory" proves to be fossilized sound bites (e.g., BICS/CALP, $i + 1$)[2] from an earlier era, rather than current research. Regardless, every theory has different pedagogical implications. If we consider more recent approaches—particularly, language ecology (i.e., van Lier, 2004)—educators may be tasked with the creation of environments rich in learning affordances (e.g., Walqui & van Lier, 2010).[3] Additionally, there should be opportunities for theory building beyond second language acquisition; such theory would account for language and content learning, teacher learning and enactment, and organizational context.

2. *Program Implementation.* We identify four critical issues of implementation: teacher capacity, leadership and organizational dynamics, accountability pressures, and sociocultural positioning. First, although subject-area teachers are increasingly certified to teach EL students, disparities in teacher capacity remain (Dabach, 2009). Model teacher education programs exist, although remain relatively rare (Lucas, 2011), while Little and Bartlett (2010) also note that professional qualifications alone are not a proxy for effectiveness. Second, leadership may contribute to "systems of support" (Elfers et

al., 2009) on the one hand, or impediments for teachers. Dabach (2009) describes the clash between teachers who generated innovations in serving LTELs in mainstream classes, and district leaders who disbanded such efforts, perceived to run counter to the district's EL plan. Leadership's interaction with organizational contexts matters too, particularly in high schools where departmental cultures shape implementation efforts (Siskin, 1997). Third, accountability pressures may limit ELs' access to content with the narrowing of curriculum that occurs with a targeted focus on tested subjects (English and mathematics), rather than the full curriculum (Olsen, 2010; Pollack, 2008). Finally, the status of most ELs as immigrant-origin, language minority students of color, means that EL programs face political opposition to educating "other people's children" (Delpit, 1995), who may be perceived as a threat to the fabric of American society (Huntington, 2004). This point reminds us that, beyond language, status differences continue to shape educational opportunities.

3. *Evaluation.* To effectively educate EL students, schools, districts and states must have the internal capacity not only to carry out meaningful EL program evaluation—and arguably, many do not (Gándara, Rumberger, Maxwell-Jolly, & Callahan, 2003)—but also to implement program improvement consistent with evaluation findings. Without grounding in the theory, pedagogy, and practice required to bring EL students closer to academic parity, we cannot expect program evaluation to produce valid measures of accountability. Currently, EL program evaluation focuses primarily on reclassification of EL students to "English proficient" (Gándara & Merino, 1993; Grissom, 2004; Linquanti, 2001; Robinson, 2011), yet it is not entirely clear that reclassification rates measure equitable educational access. In addition, EL program evaluation is often politically motivated (e.g., bilingual v. English-only), rather than focused on the root sources of educational inequity. Another issue is the lack of student voice when students are supposed to be the beneficiaries of programs. Engaging school staff with EL student perspectives regarding these programs combined with formative and summative data may make evaluation more meaningful. Finally, evaluation research should parse out program effects, school effects, and teacher effects while also accounting for student heterogeneity within the EL label.

In closing, we reiterate the need to question both the theories we use to justify programs, as well as the nature of EL program implementation and evaluation. Unless programs are effectively implemented and meaningfully evaluated, their existence, *in and of itself*, will not provide the desired results. Programs may appear to follow the letter of the law, yet miss its spirit entirely.

Notes

1. The term English learner (EL) refers to language minority students formally identified by the school system for linguistic support services; federal and state agencies previously used the term limited English Proficient (LEP). Researchers have also used the terms "bilingual," "second language learners," and recently "dual language learners." For purposes of this article, we use the term EL.

2. BICS and CALP refer to Cummins' (1979, 1981) distinction between Basic Interpersonal Conversational Skills and Cognitive Academic Language Proficiency while $i + 1$ refers to Krashen's (1985) input hypotheses.

3. See Valdés (2011) for a recent critique of second language acquisition (SLA) theories and their implications.

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