

STRUCTURING INEQUITY: HOW CALIFORNIA SELECTIVELY TESTS, CLASSIFIES, AND TRACKS LANGUAGE MINORITY STUDENTS

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“Today, education is...a principal instrument in awakening the child to cultural values, in preparing him (her) for later professional training, and in helping him (her) to adjust normally to his (her) environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he (she) is denied the opportunity of an education.”

U.S. Supreme Court, 1954,
Brown vs. the Board of Education

“These reforms express my deep belief in our public schools and their mission to build the mind and character of every child, from every background, in every part of America.”

President George W. Bush
on *No Child Left Behind*, January 2001¹

Since the U.S. Supreme Court’s decision on school desegregation more than half a century ago, the American public and its political leaders, educators, and other professionals have held high and firm the democratic ideal of equal opportunity, believing that the best way to ensure that opportunity is to enable all children, regardless of race, class, and national origin backgrounds, to succeed in school (Rothstein, 2004). Past and recent research has repeatedly shown that levels of education are strongly related to levels of earnings and that having a high school diploma is barely enough to secure a well-paying job. For example, the U.S. Bureau of Labor Statistics has recently reported that full-time adult workers with less than a high school diploma had median weekly earnings of \$401 in 2004, compared with \$574 for high school graduates without college education and \$916 for college graduates holding at least a bachelor’s degree.² However, after decades of educational reform, the school achievement gap between non-Hispanic white students and racial or immigrant minority students has been persistently large. A student’s race and family socioeconomic status (SES) have continued to serve as the most reliable predictors for his or her educational outcomes.

Race and class often interact with national origin to affect the access to educational opportunity and school achievement. Existing research has shown that the racial gap has become more severe in schools with disproportionately high numbers of low-income racial or immigrant minority students. Students who cannot read or write in English have a greater likelihood of dropping out of school and that they often face a lifetime of diminished opportunity. In the 19 states that have high school exit exams, the

percentage of English-Language Learners who passed the math exit exam was 30-40 points lower than the average initial passing rates of 70 percent to 90 percent and that the gap in the reading exit exam was even larger.³ And in California, despite significant improvement in academic performance among English-Language Learners in the past few years, the gap has still remained quite substantial. Is the persistent achievement gap a result of failing individuals, families, schools, or state policies?

We believe that factors associated with the individual, family, school, or public policy do not function in isolation. Rather these different factors often interact in ways that may either boost the positive effect or exacerbate the negative effect on achievement. Situating our analysis within the larger political contexts of the 2001 *No Child Left Behind* federal legislation, we examine the processes and consequences of state-mandated classification, selective testing, and tracking of language minority students. We explain how such policies operate to systematically deprive these students of equal access to quality education and the opportunity to learn and advance in California's public schools.

Historical Context: Educational Policies for Language Minority Students

When children arrive in school with little or no English-speaking ability, “sink or swim” instruction is a violation of their civil rights, based on the 1974 U.S. Supreme Court ruling on *Lau v. Nichols*.⁴ At issue was whether public schools could meet their obligation to provide equal educational opportunity merely by treating all students the same. Alternatively, must they offer special help for students unable to understand English? While the lower federal courts released a public school's responsibility for problems associated with minority children's “language deficiency,” the Supreme Court unanimously voted to overturn the ruling of the lower courts. Although it was grounded in statute (Title VI of the Civil Rights Act of 1964) rather than in the U.S. Constitution, the *Lau v. Nichols* ruling, also referred to as *Lau Remedies*, has remained the major precedent regarding the educational rights of linguistic minorities.⁵

In 1986, Californians voted three to one (74 percent) in support of Proposition 63 to amend the California Constitution, declaring English the state's official language. Even though the legislature was slow in implementing it, Prop 63 showed that the “English Only” movements since the early 1980s had gained tremendous force. Bilingual education, which was once thought of as a way to expand opportunities for limited English proficient children, was now viewed as a barrier for students' school achievement and full participation in American life. Twenty years later in 1998, Proposition 227, the so-called “English for the Children” initiative, was on the state ballot. This time Californians decisively rejected bilingual education (61 to 39 percent). Nationwide between 1986 and 1998, “English Only” advocates pushed for similar propositions in 39 states, passing in 16 and making 22 states then with “Official English” policy (Crawford, 1997). Most recently in 2003, Arizona voters voted 63 percent to 37 percent to pass the anti-bilingual initiative, known as Proposition 203.⁶

Since the late 1990s, the debate over educational policy for language minority students has boiled down to prevailing ideological viewpoints. One is that “English Only” and other similar initiatives violate the civil rights of linguistic minorities, on

which *Lau v. Nichols* was based, denying children equal educational opportunity. Advocates of bilingual education charge that “English Only” movements feed into voters’ anti-immigrant sentiment and fuel the fear that non-English-speaking immigrants, Mexicans in particular, would drain tax dollars. However, the lopsided victories in California and other states show that bilingual education advocates have yet to develop an effective response (Crawford, 1997). On the other hand, supporters of “English Only” believe that English is an essential tool of social mobility and economic advancement and that the movement would “send a message” to immigrants. It would push them to assimilate into American society rather than remain apart. And it would caution government policy makers against adopting programs that might retard English acquisition (Crawford, 1992 & 2000).

Without doubt, “English Only” has become one of the most polarizing and divisive issues in California politics. Demographic changes—immigration, race, and language—have preoccupied Californians, and public schools have become a special point of concern. The enrollment of English Learner (EL) students has more than doubled over the past decade. EL students now represent one-quarter of California’s K-12 students and one-third of those entering the first grade.⁷ Between 1990 and 1996, as the state’s population increased by 2.6 million, nine out of ten of the new-born Californians were Latinos or Asians. As of 2000, 26 percent of Californians were foreign born, as compared to 11 percent of all Americans, and 40 percent spoke a language other than English at home, as compared to 18 percent of all Americans.

Latinos have now comprised nearly a third of the state’s population, and Asians, 11 percent, while African Americans have remained at 7 percent and non-Hispanic whites have decreased to 47 percent.⁸ Approaching minority status for the first time since the Gold Rush, many white Californians feel threatened by the impending shift in political power and are resentful about paying taxes to benefit the children of “other” people (Schrag, 1998, in Crawford, 1997). In the June 1998 election that in which Proposition 227 was passed, non-Hispanic white voters accounted for 69 percent of all voters statewide; African Americans, 14 percent; Latinos, 1 percent; and Asians, 3 percent.⁹

We think that the debate on whether bilingual education helps children or whether English needs legal protection is unproductive if it ignores how children are actually affected. Rather than enter the debate, we provide a sociological analysis on one aspect of California state-mandated policy on language minority students—classification—to see whether students being classified into language skill categories fare better or worse in schools.

English Learner Students in California’s Public Schools

For more than three decades now, federal and state governments, especially of those states impacted disproportionately by contemporary immigration, have faced the challenge of living up to the ideal of equal educational opportunity for all children. In California, which has absorbed more than 30 percent of the total international migration flows into the United States since the late 1980s,¹⁰ the number of public school students

requiring English language assistance is growing at unprecedented rates. Mirroring the State’s diverse demographic composition, its 6.3 million K-12 student body in the public school system is 46 percent Latino, 11 percent Asian, and 33 percent white; nearly half of the students come from low-income families.¹¹

English Learner (EL) students are defined as those who are not proficient in English (formerly Limited English Proficient, LEP).¹² California Education Code §305-306 defines “English learner” as “a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child.”¹³ In 1981, more than 376,000 students, or 9 percent of all enrollees in California’s K-12 public schools, were classified as EL students. Ten years later, that number increased more than twofold to over 986,000, constituting 19 percent of the total public school enrollment.¹⁴

During the 2004-05 year, the number classified as EL increased further to 1.6 million, representing about a third of elementary school pupils and 21 percent of middle school or high school students in California. In comparison, less than 10 percent (or 4 million) of all K-12 public school students in the United States as a whole were classified as EL students; about 40 percent of the EL students in the United States attended school in California.¹⁵ Table 1 shows that of these 1.6 million EL students in California, about 60 percent were enrolled in K-5 grades, 20 percent in 6-8 grades, and 20 percent in 9-12 grades. Over 90 percent of EL students speak one of the top five non-English languages: Spanish (85.1 percent), Vietnamese (2.2 percent), Cantonese and Mandarin (2.1 percent), Hmong (1.5 percent), and Tagalog (1.3 percent).

Table 1: English Learner Students in California by Grades, Academic year 2004-05

Rank/Language Name	Percent Enrolled in K - 5th	Percent Enrolled in 6th to 8th	Percent Enrolled in 9th to 12th	Total EL**	Percent of Total
1 Spanish	60.3	20.0	18.3	1,357,778	85.3
2 Vietnamese	65.4	15.3	18.8	34,333	2.2
3 Hmong	51.5	23.8	24.7	22,776	1.4
4 Cantonese	64.2	14.4	21.0	22,475	1.4
5 Filipino (Pilipino or Tagalog)	60.2	17.6	21.4	20,939	1.3
6 Korean	58.2	18.9	22.2	16,463	1.0
7 Mandarin (Putonghua)	56.2	15.5	28.2	11,825	0.7
8 Armenian	56.6	19.1	22.4	9,698	0.6
9 Khmer (Cambodian)	48.2	22.5	29.1	9,563	0.6
10 Punjabi	58.6	17.6	23.6	9,259	0.6
11 All Other Languages*	59.9	17.9	21.6	76,416	4.8
Total	60.2	19.7	18.9	1,591,525	100.0

*Includes 48 other identified non-English languages and unidentified non-English languages.

**Includes a relatively few number of EL students reported as ungraded.

Source: California Department of Education, 2005.

Latino students, most of whom were of Mexican or Central American origins, have by far the largest group, comprising more than 85 percent of all EL students in California currently (and more than three-quarters ever since 1981 when the state began to use the term Limited English Proficient to classify language minority students). Students of Asian, Pacific Islander, and Filipino languages comprise about 171,000 (not shown), or 11 percent of the state's EL population. It is also important to note that Southeast Asian students of Vietnamese, Hmong, and Khmer languages have remained among the top 10 largest groups of EL students in California since the mid-1990s.

Because most Latino immigrants and Southeast Asian refugees come from underprivileged family backgrounds, state-mandated classification may inadvertently serve to compound their existing SES-based disadvantages. Much more than just a part of the total count, these figures represent individual students whose academic success and life chances depend on a number of factors within or beyond their control. Below, we focus on the Home Language Survey (HLS) and the California English Language Development Test (CELDT) and discuss their roles in the classification of language-minority students.¹⁶

State-Mandated Classification and Selective Testing of Language Minority Students

The federal *No Child Left Behind* Act of 2001 aims to ensure that all schools are held accountable for students' academic progress. In compliance with the Act, the California legislature modified the state education code (Education Code §313, 60810, and 60812), mandating the use of the state-approved HLS to identify language-minority students and development of the CELDT¹⁷ to assess the English proficiency level of students identified as language minority students. Accordingly, all public school districts must administer the Home Language Survey, and, based on responses to this survey, determine if they must also administer the CELDT.

The first procedure in identifying a student's home language is conducting the HLS. The HLS asks the student's parents or legal guardian to respond to each of the following questions: (1) Which language did your son or daughter learn when he or she first began to speak? (2) What language does your son or daughter most frequently use at home? (3) What language do you use most frequently to speak to your son or daughter? (4) Name the language most often spoken by adults at home. The distinction between "English only" students and language minority students depends on responses to these questions. If a language other than English is listed on any of these four statements, it is required that the student take the CELDT.

While its stated intent is to use the HLS to identify a student's home language, California's Education Code does not actually define what "home language" means, nor does the Code address the issue of multiple home languages (for example, English and a non-English language used concurrently). Because the Home Language Survey is limited to four questions, it is reasonable to assume that schools will sometimes use only the parent's primary language, or only the language that adults in the home most often speak as an indicator of the student's home language. This indicator may be used even if a child resides in a home where his/her siblings speak, read, and write proficiently in

English—which is often the case in many immigrant families. Moreover, some students, out of necessity, commonly – though not exclusively – speak a non-English language in the home (e.g., in order to communicate with parents who do not “fully” understand English). The HLS ignores these real possibilities.

The HLS questions make it likely that language minority students, despite being born in the United States or raised in the U.S. for most of their adolescence, will be selected for testing on the basis of the language they, their parents, or other adults speak at home. For example, Garcia’s report reveals that 80 to 90 percent of Fresno Unified School Districts’ students classified as English Learners were U.S.-born children.¹⁸ This result suggests that the practice of “initial identification” (within the first 30 days of enrollment) indiscriminately targets students whose parents speak a language other than English without any regard for the child’s actual potential as a *native-born* English speaker. Such practice ascribes the status of language minority to students and refers them to mandatory testing. It does so without providing them with sufficient time to acquire the skills needed to do well on these tests and makes it very likely that most of them will end up being classified as English Learners.

Under current federal and state law, however, once a student has been identified as a language-minority, parents cannot have that child exempted from taking the CELDT. On the other hand, if responses on the HLS indicate that a student or his/her parents speak only English as a primary language, the student is classified as “English only.” He/she is automatically exempted from CELDT testing.

The CELDT has three broad goals: (1) identifying new students who are English Learners in kindergarten through grade twelve; (2) monitoring EL students’ progress in learning English; and (3) helping to decide when EL students can be re-classified as fluent English proficient (FEP).¹⁹ As mandated by the state, all students whose home language is not English, must take CELDT within 30 calendar days after they are enrolled in a California public school for the first time to determine if they are EL students. Once classified as an English Learner, a student must be given the CELDT once a year until he/she can meet reclassification criteria or be re-classified as FEP. Students with disability who fall under the EL category must also take the CELDT.²⁰

There is no time limit for the CELDT. It tests students on different language skill areas, depending on their grade level. For students in kindergarten and first grade, the CELDT tests listening and speaking skills. Furthermore, state law requires that kindergarten students take CELDT for “initial identification [purposes] only.” However, the “initial identification” requirement warrants closer scrutiny. Current practices across school districts suggest that many kindergarten students, native born and non-native alike, by default become *pre-identified* as English Learners even before they are administered the CELDT, because of their ascribed linguistic minority status.

For students in grades two through twelve, the CELDT tests listening, speaking, reading, and writing skills. There are five levels of English proficiency which a student can achieve: beginning, early intermediate, intermediate, early advanced, and advanced. The State Board of Education establishes the cut-off points and criteria for determining

English proficiency based on CELDT results. To be classified or reclassified as FEP, a student must score at or above the “early advanced” level overall *and* [must] not score below intermediate proficiency level in any particular skill area.²¹

Table 2: Percent Distribution of EL Students, FEP Students, and Redesignated FEP Students in California, 1995 – 2005

Year	CA Total K-12 Enrollment	Number of EL Students (% of Enrollment)	Number of FEP Students (% of Enrollment)	Number of Students Redesignated as FEP (% of Previous Yr EL)
2004-05	6,322,167	1,591,525 (25.2%)	1,064,578 (16.8%)	143,136 (9.0%)
2003-04	6,298,774	1,598,535 (25.4%)	999,690 (15.9%)	133,214 (8.3%)
2002-03	6,244,642	1,599,542 (25.6%)	931,869 (14.9%)	120,122 (7.7%)
2001-02	6,147,375	1,559,248 (25.4%)	878,139 (14.3%)	117,450 (7.8%)
2000-01	6,050,895	1,511,299 (25.0%)	844,387 (14.0%)	133,964 (9.0%)
1999-00	5,951,612	1,480,527 (24.9%)	791,283 (13.3%)	112,214 (7.8%)
1998-99	5,844,111	1,442,692 (24.7%)	758,363 (13.0%)	106,288 (7.6%)
1997-98	5,727,303	1,406,166 (24.6%)	720,479 (12.6%)	96,545 (7.0%)
1996-97	5,612,965	1,381,393 (24.6%)	682,004 (12.2%)	89,144 (6.7%)
1995-96	5,467,224	1,323,767 (24.2%)	649,130 (11.9%)	81,733 (6.5%)

Source: California Department of Education, 2005.

Once classified as English Learners, students can be reclassified or redesignated only when they have met certain criteria. EL students become re-designated according to multiple criteria and procedures adopted by school districts to show that they attained an overall level of English “proficiency.” Proficiency means combined scores for all four skill areas covered on the CELDT – listening, speaking, reading, and writing – comparable to the average level of native English speakers.

Table 2 shows the total EL students as a percentage of California’s total enrollment, from 1995 to 2005 academic year. It also shows those students initially classified as FEP or reclassified into FEP status. Over the past 10 years, the number of students classified as EL steadily increased while the proportion remained at 25 percent. Each year, the number of FEP students and that of EL student who were “tested out” of EL status increased slightly, but the proportions remained either unchanged or increased very modestly by just one percent.

Among EL students, however, there were significant gains in the proficiency levels of EL students, as shown in Table 3. Results in Table 3 show that all English learners who participated in the annual CELDT assessments between the 2001 and 2005 academic years. The table suggests there are overall gains with a much smaller percent of students in the lower proficiency levels and a greater percent in the higher proficiency levels in subsequent years. Forty-eight percent of California EL students scored at early advanced or advanced in overall English proficiency, compared to 43 percent scoring at the same level in 2003, to 34 percent in 2002, and to 25 percent in 2001— an increase of 23 percentage points between 2001 and 2004.²²

Table 3: Annual CELDT Assessments: 2001 to 2005
Percent of K-12 English Learners by Overall CELDT Proficiency Level²³

Overall Proficiency Level	2001-02 Percent of English Learners	2002-03 Percent of English Learners	2003-04 Percent of English Learners	2004-05 Percent of English Learners
Beginning	11	10	7	7
Early Intermediate	23	19	14	13
Intermediate	40	37	36	33
Early Advanced	21	25	32	33
Advanced	4	9	11	15
Total Percent	100	100	100	100
Total Number	1,262,296	1,297,435	1,357,754	1,342,954

Source: California Department of Education, 2004.

These results seem to suggest that California’s state-mandated classification and selective testing for language minority students are working. However, behind the seemingly optimistic statistics, three points are worth noting. First, California has the greatest number of students whose primary language is not English; the number of EL students enrolled in the State’s public schools is disproportionately larger than any other states in the United States.

Second, the percentage of EL students who scored below early advanced level of English proficiency is still substantially high. For example, in 2004, the percent of EL students scoring below early advanced was 53 percent. Differences across grade levels and across language groups are significant. Examination of the CELDT annual assessment scores by grade levels (not shown) indicates that during year 2001-02, 82 percent of all first grade EL students scored *below* the early advanced level, compared to 86 percent of second graders, 90 percent of third graders, 81 percent of fourth graders and 72 percent of fifth graders. In that same year, 69 percent of middle school (grades 6 – 8) students and 55 percent of high school students scored below early advanced. Since the CELDT is the primary tool for classifying language-minority students into either EL or FEP status, what these scores mean is that a substantial number of students, particularly those in elementary grades, remain in EL status.

Table 4 shows in greater detail how CELDT scores vary across grade levels and languages. A much higher percentage of EL students in the elementary levels, irrespective of language background, scored below “early advanced,” compared to students in middle and high school levels. Across grade levels – with some exceptions in grades 9 to 12 – Spanish, Hmong, and Khmer speakers appear to have the lowest rates of English proficiency, as indicated by their comparatively higher concentrations in the below early advanced levels.

It is important to point out that Hmong and Khmer are relatively recent immigrant groups with much lower socioeconomic status than other ethnic groups in the U.S. Researchers have often found that test scores are highly correlated with individual and

school-level socioeconomic status.²⁴ Mandarin and Korean speakers in most grade levels have relatively higher scores on the CELDT. Nevertheless, these scores indicate that a substantial number and percentage of EL students – as high as 80 to 89 percent in some cohorts – did not meet the CELDT English proficiency level and a criterion for reclassification to FEP status.

Table 4: Percent of English Learners Scoring Below Early Advanced on CELDT during 2003-04 Annual Assessment by Top 9 Languages and Grade Levels

Grade Levels:	K	1	2	3	4	1 st to 5 th	6 th – 8 th	9 th to 12 th	Total Students Tested
Languages									
Spanish	77.9	66.7	75.3	80.7	59.6	66.0	51.7	45.7	1,142,282
Vietnamese	66.3	57.3	49.9	68.4	45.1	52.1	40.7	35.6	30,227
Hmong	87.0	78.3	80.6	88.5	71.8	74.0	55.0	42.6	21,608
Cantonese	66.7	54.3	43.1	54.4	37.1	44.3	38.6	43.7	20,039
Tagalog	60.0	50.7	47.1	67.5	46.6	49.8	38.4	35.1	16,416
Korean	63.4	47.0	32.1	45.4	34.9	37.5	38.1	41.0	13,759
Mandarin	55.2	34.9	23.6	39.6	28.3	30.5	41.8	40.9	8,799
Armenian	68.2	62.2	56.2	64.8	45.4	52.9	43.5	35.0	9,898
Khmer	66.7	62.5	61.8	82.5	62.3	62.8	51.5	44.4	9,875
All other languages	72.2	50.4	53.3	67.9	49.1	52.1	50.4	40.4	84,851
All languages combined	76.9	64.7	71.4	78.6	57.9	63.8	50.9	44.5	1,357,754

Source: California Department of Education, 2005.

Third, despite the apparent increase in the percent of EL students scoring at or above early advanced since 2001, only a small percentage of EL students has been reclassified to FEP status. As Table 2 shows, during each of the past 10 years, less than 10 percent of EL students were reclassified. Because the CELDT is the primary instrument used to determine student’s “proficiency” in English, one would expect that as EL students’ CELDT scores increase, the rate at which they become redesignated to FEP status should also increase.²⁵ However, the percent of EL students reclassified has increased by only one percent while, as mentioned above, the percentage of students meeting English proficiency status increased about 23 percent during 2001 to 2004. The evidence that over 90 percent of EL students consistently do not become reclassified raises serious questions about the concrete benefits, if any, that high CELDT scores actually have for students.

Are the English Language Development standards on which the CELDT is based fair? In our view, the ELD standards²⁶ established for the CELDT are such that it would likely be equally difficult for English Learners and English Only students at all grade levels to pass or show “English proficiency” on the CELDT. The ELD Standards state, “ELLs (English language learners) working at the Advanced proficiency level of the ELD standards are to demonstrate proficiency on the ELA (English- Language Arts) standards for their grade level and all prior grade levels.”²⁷ For example, to be at early advanced or advanced on listening and speaking skills entails that a student, among other things,

“demonstrate understanding of idiomatic expressions by responding to and using such expressions appropriately (e.g., Give me a hand)” *and* “negotiate and initiate social conversations by questioning, restating, soliciting and providing information, and paraphrasing the communication of others.”²⁸

Furthermore, to be considered advanced in reading comprehension, a student must be able to “read and orally respond to familiar stories and other texts by answering factual comprehension questions about cause and effect relationships,” and to “explain how understanding is affected by patterns of organization, repetition of key ideas, syntax, and word choice.”²⁹ Similarly, to be advanced in writing means that a student must be able to “develop a clear thesis and support it, using analogies, quotations, and facts appropriately; write a multi-paragraph essay, with consistent use of standard grammatical forms; and produce independent writing with consistent use of capitalization, punctuation, and correct spelling.”³⁰

Even if it can be assumed that the CELDT, a test normed on an English-speaking population, is reliable and valid, 30 days is not sufficient time for students to learn the material that the CELDT intends to measure. No student can be expected to do well on any kind of standardized test without having had some minimal preparation and training. Identifying a student’s English ability level is certainly important. However, just as a misdiagnosis of a medical condition can lead to adverse outcomes, misidentification can lead to unexpected immediate and long-term consequences.

As we discussed above, a majority of English Learner students at all grade levels consistently do not achieve English proficiency on the annually-administered CELDT. Because classification and reclassification have serious ramifications for EL students, it is essential to look beyond the percentage increases. How does selective testing and tracking of EL students interact to affect their access to quality curriculums?

How Classification and Non-Reclassification Constitute Tracking

We argue below that the current system of classification and non-reclassification of EL students systematically keeps these students in slower academic tracks with less challenging curriculums. The term “tracking” has been questioned by some researchers. (Carbonaro, 2005, p. 45; also see Lucas, 1999). However, we use the term below with regard to language classification. Curricular tracking in California’s public school system is present across all grade levels and schools, as in public schools of other states in the United States. We base this view on our own observations and experiences as a former English as a Second Language Learner (ESL) student enrolled (from 1987 to 1998) in a northern California school district, and as the mother of a child who had once been a regular student enrolled (from 1995-2001) in a southern California school district but an ESL student in public schools of two other states (from 1990-1995). Both curricular tracking and within-subject tracking appear to be common practices in elementary through high schools in California and elsewhere in the country.

English Language Development (ELD) placement is a specific form of tracking, which places language minority students who were ESL students in middle schools in

ELD classrooms after they enter high schools. Such placement normally corresponds to their placement in other courses, such as a regular math course rather than an honors or advanced placement (AP) math course, or classes not designated by the school as “college-preparatory.” In contrast, students, including those formerly classified as ESL, who are placed in college preparatory or AP English courses normally enroll in college preparatory or advanced placement math, science, and social science courses. Research has found that schools commonly require students to demonstrate proficiency in English before they are given access to grade-level math and science courses or other regular courses. Those students considered not fluent are often tracked into remedial or compensatory classes (Berman et al., 1992, cited in Heubert and Hauser, 1999).

Within-subject tracking is another form of tracking that is commonly practiced in public schools. In each of the core subject areas (e.g., math, science, English, etc.), there are different track levels at which a student may be placed. Since the ELD student’s initial placement is rarely in the most advanced grade and subject-specific courses, this practice usually means that a student who cannot move out of his/her ELD classroom is at a double disadvantage. By the time a student moves out of ELD to mainstream English, he/she may already be far behind other students in core subject areas. For example, it is possible that an EL student may only have taken algebra 1 or 2 by the time he/she reaches twelfth grade, whereas other non-EL students may already have taken pre-calculus and are beginning calculus. Admittedly, we do not yet have data to demonstrate that this is happening on a state-wide scale. However, research has found that within-subject tracking persists in schools (Lucas, 1999).

Existing research has shown that high-stakes testing and academic tracking have far-reaching consequences for students (Oakes, 1982; Gamoran, 1986; Hoffer, 1992; Muller and Schiller, 2000; Lucas and Good, 2001). The arbitrary selection and placement of students into differentiated curriculums and the self-fulfilling prophecies that result from such placement can, independently, determine students’ immediate opportunities to learn. It affects their motivations (Braddock and Dawkins, 1993) and their long-term educational trajectories, such as access to higher education (Rosenbaum, 1980; Eder, 1981; Alexander et al., 1997).

Linguistic classification can cause unequal access to positive social circles and role models (Byrne 1988; Kubitschek and Hallinan, 1998); unequal access to fully credentialed teachers (Rumberger, 2000; Gandara and Rumberger, 2003); differential teacher expectations and instruction (Oakes, 1985; Welner and Oakes, 1996); differential educational and occupational outcomes (Oakes, 1982; Kerckhoff, 2001); and differences in social status associated with these outcomes (Vanfossen et al., 1987). Moreover, while these types of segmented outcomes exist across different societies, they remain closely linked to past and existing class and racial segregation (Gamoran and Mare, 1989; Ansalone, 2003). There is evidence that minority students in racially mixed schools are disproportionately placed in low-track classes (Oakes, Gamoran and Page, 1992). Below, we discuss EL students’ curricular placements and explain how prolonged or permanent non-reclassification systematically tracks a substantial number of EL students in non-mainstream, below-grade level curriculums. Such tracking inadvertently holds them back from achieving desirable academic outcomes.

“Separate and Unequal”: Consequences of Tracking on EL Students

Classroom Segregation

The underlying assumption behind the state-mandated classification and selective testing is that English learners who have attained higher levels of English proficiency are more likely than other EL students to reach higher levels of academic achievement. The positive correlation between English proficiency and academic outcomes is intuitively obvious. However, while the percent of EL students that tested out as proficient in English has increased each year since 2001 (see Table 3 above), we have less information about how well these EL students fare in school and how these EL students compare to non-EL students at the same grade levels.

Table 5 shows information on the types of instructional settings into which EL students are placed since 1998. The first four types of instructional settings listed in Table 5 are those that California Education Code explicitly authorizes.³¹ Across the board, 60 to 70 percent of EL students are *not* in mainstream classrooms where English language is the medium of instruction. About eight percent of EL students are currently placed in alternative courses of study, which means they are taught English and other subjects through bilingual education techniques or other recognized methods.³² Why have significant increases in EL students’ average CELDT scores not been accompanied by a comparable increase in the percent enrolled in English language mainstream classrooms?

Table 5: Number of English Learners Enrolled in Specific Instructional Settings

	1998-99 Statewide Totals (%)	2000-01 Statewide Totals (%)	2002-03 Statewide Totals (%)	2004-05 Statewide Totals (%)
(1) Mainstream Courses*	416,962 (28.9)	472,599 (31.3)	550,437 (34.4)	613,729 (38.6)
(2) Mainstream Courses* upon Parental Request	44,947 (3.1)	44,921 (3.0)	42,400 (2.7)	32,132 (2.0)
(3) Structured English Immersion	702,592 (48.7)	720,948 (47.7)	773,132 (48.3)	755,137 (47.4)
(4) Alternative Courses of Study	179,334 (12.4)	181,455 (12.0)	153,029 (9.6)	120,849 (7.6)
(5) Other Instructional Settings	98,857 (6.9)	91,376 (6.0)	80,544 (5.0)	69,678 (4.4)
Total Number of ELs	1,442,692 (100.0)	1,511,299 (100.0)	1,599,542 (100.0)	1,591,525 (100.0)

*Refers to regular courses where English is the medium of instruction.

Source: California Department of Education, 2005.

California law specifies that EL students “shall be transferred from a structured English immersion program to a mainstream English language program when they have

acquired a good working knowledge of English.”³³ The state’s Education Code, however, does not define what a “good working knowledge of English” means nor does it specify what constitutes “reasonable fluency in English.”³⁴ The Code of Regulations states only that these levels of English proficiency are to be measured by “any of the state-designated assessments approved by the California Department of Education, or any locally developed assessments.”³⁵

Even though the law provides a seemingly flexible alternative whereby a parent or guardian may “at any time, including the school year...have his or her child moved into an English language mainstream classroom,”³⁶ there is no guarantee that a parental request for this kind of transfer will always be granted.³⁷ If requests are denied, schools are required to inform parents and guardians in writing of the reasons for denial. In general, however, parental exception waivers “shall be granted unless the school principal and educational staff have determined that an alternative program offered at the school would not be better suited for the overall development of the pupil.”³⁸ However, the percent of regular course enrollment upon parental request among EL students has been very low (2 – 3 percent) as Table 5 shows. As a result, language minority students are disproportionately placed in slower academic tracks. Once classified, EL students are institutionally disadvantaged by their EL status. Even after they are tested out of their EL status, they are still likely to fall behind other students who have enrolled in English language mainstream courses without any interruption.

Trapped in Disadvantaged Status

A closer reading of the law and the practices mandated by the law reveals that an EL student’s chance to transfer from English immersion programs to English mainstream classrooms is not merely determined by improved English proficiency through tests. California law states that school districts shall “continue to provide additional and appropriate educational services to English learners in kindergarten through grade 12 for the purposes of overcoming language barriers until the English learners have: (a) demonstrated English-language proficiency comparable to that of the school district’s average native English-language speakers; and (b) recouped any academic deficits which may have been incurred in other areas of the core curriculum as a result of language barriers.”³⁹ Hidden beneath the benign language of providing a necessary service to EL students lies a serious dilemma. Once a student is classified as an English Learner, he/she must jump through multiple “hoops” *in addition to* demonstrating required levels of English proficiency, as measured by the number of questions he/she answers correctly on a test, in order to achieve, or be reclassified to, the status of FEP.

The State Board of Education establishes a set of formal criteria for the reclassification of former EL to FEP status.⁴⁰ Specifically, the Board establishes that school districts are to develop student reclassification policy and procedures based on four reclassification criteria approved by the State Board of Education.⁴¹ These four criteria involve (1) a review of an individual student’s results on [the] latest California English-Language Arts Standards Test (ELA CST); (2) review of the student’s CELDT results from [the] annual assessment; (3) teacher’s evaluation of the student’s academic performance; and (4) parent opinion and consultation.⁴² It should be noted that English

Only students (i.e., those who are not language minorities and those who are non-EL students) are exempt from all of these requirements. Unlike language minority and EL students, they are not required to demonstrate English proficiency prior to taking English language mainstream courses.

As we have discussed above, redesignation rates during the past 10 years have been extremely low – less than 10% – for all of California (see Table 2). California’s Legislative Analyst’s Office, using CELDT data from 2002, found similar results.

In addition, our projections highlight the fact that a significant number of EL students arrive in California beginning in first grade and that a high percentage of these students never establish English proficiency. Our simulation model projects that almost 40,000 students, or 60 percent of those who begin attending school in California after kindergarten, never become reclassified by twelfth grade (Warren, 2004).⁴³

That a majority of students starting in first grade is expected not to ever become redesignated to fluent English proficient status by the time such students reach twelfth grade is alarming. In California, an EL student must meet all reclassification criteria in order to be reclassified as FEP. Because FEP status, rather than proficiency in English *per se*, is essential for entry into English language mainstream courses and other core subjects, this means that EL students who do not become reclassified are at risk of being permanently tracked in low-level or remedial courses.

Unequal Access to College Preparatory Courses

What outcomes can we reasonably expect prolonged or permanent tracking to have for EL students? Placement of EL students into different tracks produces a significant unintended effect that deprives slower-tracked students of equal opportunities to learn and to succeed in school, a new form of “separate and unequal” education. One often-overlooked consequence of tracking is that it denies EL students’ access to college preparatory courses. In California, enrollment and good performance in the requisite set of college preparatory courses serve as *minimum* requirements for entry into the University of California campuses and the California’s State University campuses. Unequal access to the required college preparatory courses would have a disparate impact on a student’s chance to get into the state’s four-year, degree-conferring universities.

EL students who have been kept from taking mainstream courses have fewer opportunities than other students to take college preparatory courses. We provide evidence of disparity from one of California’s largest school districts, Fresno Unified School District (FUSD).⁴⁴ At FUSD, EL enrollment comprised of 29 percent of the total enrollment (with 23,597 EL students) during 2004-05.⁴⁵ Spanish speakers make up 65 percent of all EL students, while Hmong speakers make up 25 percent, followed by Khmer, 4 percent, and Lao, 3 percent. More than three-quarters (79 percent) of FUSD students received free or reduced lunch. Only one third of FUSD’s high school graduates meet the minimum course requirements for entry into the University of California and California State University campuses.⁴⁶

At FUSD, EL students have comparatively lower enrollment in the Gifted and Talented Education (GATE) program and AP or honors courses.⁴⁷ They also have lower enrollment in college preparatory courses that meet the minimum course requirements for enrollment in the University of California (UC) and California State University (CSU) campuses.⁴⁸ FUSD's Research Office reported that in 2003, English learners, English only, and redesignated FEP students comprised 28 percent, 61 percent, and 11 percent of the district's total enrollment, respectively.⁴⁹ The Research Office found that the percentage of EL students meeting UC minimum course requirements was about 10 percent in 2002 but increased to 14 percent in 2003. In comparison, during 2002, 23 percent of *English only* students met UC minimum course requirements. In 2003, about 32 percent of English only students met UC minimum course requirements.⁵⁰

Relative to EL and English only students, a higher percentage of redesignated-fluent English proficient students (R-FEP) – students formerly classified as English Learners – met the UC and CSU requirements: in 2002, 41 percent of R-FEP students met UC minimum course requirements; and, in 2003, 52 percent of FEP students met these requirements.⁵¹ This outcome seems to suggest that R-FEP students are doing better than EL students as well as English only students, at least with respect to access to a college preparatory track. However, we strongly doubt that R-FEP students' comparatively greater enrollment in college preparatory courses results directly from their prior training or preparation in English language development tracks. We think R-FEP students is a select group. R-FEP students represent a select minority that has, through one way or another, fulfilled complex and stringent reclassification criteria (which includes obtaining a high score on the CELDT), which a substantial number of EL students do not ever fulfill.

Furthermore, redesignated-FEP students do just as well as, and, in some cases, even better than non-EL students on every state standardized academic test, including the California Standards Test, the Stanford Assessment Test, and the California High School Exit Exam (Xiong, 2005). Although we recognize that more research needs to be done on this issue, we think that R-FEP students' placement or voluntary enrollment in college preparatory courses is probably the result of a combination of factors. These students' perceived or actual exceptional skills and circumstances are part of the story, but more essentially, their acquired and legitimized status as fluent English proficient.

Within-subject tracking seems common in Fresno Unified. FUSD's Office of Research, Evaluation and Assessment reports that, compared to non-EL students, English learners were "less likely to complete gatekeeper mathematics courses in grades nine and ten."⁵² For instance, among ninth grade students, 44 percent of English learners completed algebra or geometry courses compared to 51 percent of English only students, and 88 percent of redesignated fluent English proficient students that completed these courses. English only students were also twice as likely than English learners to complete geometry in the ninth grade.⁵³ Finally, English learners' access to college preparatory science courses in 9th through 12th grade also differed depending on their levels of English proficiency.⁵⁴ English learners at the higher levels of proficiency were more likely to enroll in college preparatory science classes.⁵⁵

Given that most school districts do not publish data on English Learners' enrollment in college preparatory courses to the extent that FUSD does, we do not currently know how wide-spread the disparity in EL students' access to these courses is. Nevertheless, the lesson to draw from FUSD is that students' enrollment in courses meeting UC and CSU requirements depends, in large parts, on their status as EL, English Only, or FEP. Lacking access to college preparatory courses, EL students' chance of being accepted by college and universities is severely diminished. Moreover, college preparatory courses are designed to provide knowledge and skills, as well as teach cultural attitudes and norms expected in the college setting. Thus, EL students who do not acquire these skills may be at a greater risk of not graduating even after they are admitted into colleges.

Discussion and Conclusion

Educational problems are complex and do not operate in isolation. The causes for school success or failure are not simply rooted in an individual's family SES, the individual's ability and effort, or even school characteristics alone. Instead, they are embedded in – and related to – historical and contemporary processes of class and racial stratification in society. American society's existing stratification systems distributes resources and rewards differentially to its population. Societal institutions, especially the educational institution, can enforce and reproduce class and racial inequality. These processes can have far-reaching impacts on racial/ethnic minority groups' opportunities to get ahead or fall behind.

Language minority students in California's K-12 public schools confront a multitude of socio-political, economic, and educational obstacles. While these obstacles are linked to larger societal processes, efforts by state policymakers and public schools administrators to "reform" education policies and help students overcome barriers may sometimes have unintended effects or outcomes. In this chapter, we have explained how state-mandated classification, selective testing, and tracking inadvertently create "new" forms of segregation that trap EL students. Linguistic tracking can limit educational choices, access to quality academic programs, and opportunity to advance beyond high school.

First, linguistic minority status is intertwined with low SES and racial minority status to exacerbate educational disadvantages. Lack of English proficiency *per se* is not an insurmountable obstacle to academic achievement. Although it does put EL students in an initial disadvantage, not all language minorities face the same obstacles or problems in school. Language minority students from high SES families benefit from quality schools and favorable local social environment in their middle class neighborhoods. They are also equipped with resources their families provide them outside of school, such as tutoring and private after-school activities conducive to educational achievement (Zhou and Kim, forthcoming).

Moreover, high SES are often helped by their parents who are highly educated and well-informed of the learning process even though many are first generation immigrants who speak English with heavy accents. These students are more likely than

others to pass their initial identification screening to be classified as FEP and are never placed in EL classrooms. Even if they are in EL status, they are more likely than others to move out of it within a short period of time. Language minority students from low SES families, by contrast, are not only concentrated in inadequate urban schools but also lack family resources and neighborhood resources to help them surmount language barriers. Once they are designated as EL, they are likely to be trapped in that status for a long time, which inhibits academic achievement. As the California Department of Education data show, among EL students so classified, an overwhelming majority of them were of Mexican and Southeast Asian origins and from low SES families.

Second, there is a discrepancy between state-mandated selective testing and practice in determining EL status. The Home Language Survey (HLS) is used to identify language-minority students and the California English Language Development Test (CELDT) is administered to determine a student's EL or FEP status. Derived from the *Lau Remedies*, the HLS aims to identify if a student is speaking a language other than English at home. In practice, however, schools often operate under the assumption that the "home language" is a sufficient indicator of a student's level of English proficiency as well as of his/her ability to function effectively in English language mainstream classrooms.

We believe, however, that this assumption is unfounded. For example, a student who is not an English monolingual may have a similar level of English proficiency in comparison to a student who is an English monolingual. Requiring all bilingual or multilingual students to demonstrate their English proficiency creates an undue burden on these students and an unfair entry barrier for them to surmount in order to enter mainstream curriculums. Similarly, just because a student lacks proficiency in English does not necessarily mean that he/she cannot function effectively in English language mainstream curriculums. Acknowledging that it may take more than several years for such persons to reach their highest level of English language ability, Rossell (2000) argues that "all students understand enough English sometime during the first year to be able to comprehend English instruction" (p. 149). Rossell based her conclusion on a review of studies on immersion programs in Canada and the United States as well as newcomer centers in the United States and Europe, and on her conversations with former LEP students in her university classrooms.

Third, while establishing academic standards is important, it is problematic to impose a particular set of standards only on a certain segment of the student population – language minorities – at a level that may not be achieved by some English Only students. Current policies ignore research findings that show that all English proficiency tests, whether oral or written, are known to be unreliable and invalid. Subsequent tests of the same child do not yield the same outcome and scores do not accurately determine who is proficient in English (Baker and Rossell, 1987; Rossell and Baker, 1988, cited in Rossell, 2000). Furthermore, past experiments have shown that when English proficiency tests are administered to English monolingual students, large percentages of these students were classified as limited English proficient.

For example, when the Chicago Board of Education administered a widely used test, the Language Assessment Scales,⁵⁶ to above-average students who spoke only English, almost half of these students were misclassified as non- or limited English proficient. Interestingly, 78 percent of the English monolingual 5-year-olds, but only 25 percent of the 14-year-olds, were classified as LEP (Perlman and Rice, 1979, cited in Rossell, 2000, p. 146). The CELDT scores presented in Table 4 appear to follow a similar developmental trend, with students in lower grades faring less well.

Fourth, the current structure of placing EL students into non-mainstream curriculums in California's public schools inherently disadvantages language minority students. Such structure subjects students to an initial test simply because of the language they, their parents, or other adults speak at home regardless of these students' actual levels of English proficiency. Once students fail to reach the required proficiency level, they are classified as EL and are placed in EL-specific curriculum.

Such tracking inadvertently leads to two major problems to the disadvantage of EL students. On the one hand, EL students may improve their English language proficiency in speaking and listening comprehension with time, but do not seem to make significant progress in reading and writing, which causes them to fail to be redesignated into FEP status. On the other hand, the non-mainstream curriculum in which they are enrolled slows down their academic progress, leading to a significant gap in academic outcomes. Even when they are able to get redesignated, many such students are ill-prepared for the more rigorous mainstream courses and thus remain behind others.

In sum, although federal and state laws have strict sanctions against discrimination on the basis of race, color, sex, and national origin, the same set of laws may not protect individuals from discrimination based on linguistic minority status. The practice of mandatory classification and selective testing on the basis of the student's linguistic minority status is *inherently unfair*. Because it is federal and state policies that mandate and enforce the discriminatory practices that we have just discussed, remedies must be sought at these levels. The current state policies need to be challenged directly and radically reformed. There are no easy or cost-effective remedies to these problems, however. Informed by the analysis above, we offer several policy recommendations below.

Policy Recommendations

(1) State policies on language minority students must consider the language issue in conjunction with problems associated with poverty and racial or immigrant minority status. Mandatory classification and selective testing on the basis of a student's linguistic minority status disproportionately disadvantages Mexican, Central American, Hmong, Vietnamese, Cambodians, and Laotian (including Mien) students regardless of their place of birth – foreign born or U.S. born. These students also disproportionately come from low SES families and have parents who are recent immigrants or refugees with poor English proficiency, low levels of educational attainment, and even poor literacy in their native languages.

In addition to facing high rates of poverty, many Latino immigrant parents and Southeast Asian refugee parents may not be well informed about the socially recognized methods of intervening in their children's education, for example, requesting that their children be appropriately placed in curriculums and ensuring their timely advancement. Existing research has found that English proficiency, as measured by test scores, varies by socioeconomic status, with students from high-poverty schools being less 'proficient' (Hakuta, Butler, and Witt, 2000). Thus, the state should pay attention to how linguistic minority status interacts with class and race to affect the acquisition of English fluency.

(2) State policies must develop mechanisms of checking to make sure that language minority students are appropriately classified and placed to their best benefit. An inappropriate placement is as detrimental to a student as no placement at all. Language minority students' scores on the CELDT may be influenced more by their low socioeconomic status, their lack of exposure to the materials being measured, and/or their poor test-taking skills, than by their actual English skills and knowledge.

It is reasonable to assume that English learners are less proficient in English than English monolinguals. However, given the fact that the CELDT is normed on an English-speaking population and that "proficiency" is based on the number of questions answered correctly, we concur with other observers (Rossell, 2000 & 2002) that *any* cut-score (other than zero) specified by the test maker will result in students, including English proficient students, being classified as English Learners. It is thus not surprising that a substantial number of English learners, most of whom are from low socioeconomic backgrounds and attend low-income schools, have been unable to meet the early advanced or higher levels on the CELDT. In any case, cut-scores on the CELDT are inherently judgmental, and attention to the test's purpose should not neglect consideration of its consequences.

When considering the appropriate instructional setting in which to place a student, schools should not base their decision only on that student's CELDT test score. Instead, multiple factors should be considered. For example, before placing a student in an English mainstream course, a teacher should consult with previous teachers regarding a student's level of engagement and performance on various activities in the classroom. That student's performance in the class and on other standardized tests should be compared with those of his/her English and non-English speaking peers. Schools should give serious attention to the fact that no single test can accurately gauge English proficiency. No matter how proficient some students are, they may still fail to meet test maker's criteria of proficiency.

(3) State policies must reform English Learner programs to impose a time limit to help EL students smoothly transition to English language mainstream classrooms within a reasonably short period of time. Proposition 227 states that EL students are to be in structured English immersion programs only temporarily – that is, not normally to exceed one year. This means that EL students are to be transferred to English language mainstream courses when they have achieved a "reasonable fluency in English." Schools must be strictly prohibited from keeping an English Learner at any grade level in a low-

level track for more than two years in a row, regardless of that student's CELDT scores or other English-proficiency related test scores.

(4) The state-mandated reclassification criteria are illogical and require substantial changes. Complicated reclassification criteria and multilayered tracking make the pathway out of the non-mainstream system extremely difficult, thus placing an undue burden on students given the biased method of entry into the system. Our review of the policies and procedures governing reclassification reveals that reclassification, which consists of a series of complex processes, is neither clear-cut nor inevitable. While a low score on the CELDT is used as the *primary* justification for classifying and tracking of language minorities, a decent performance on the annual CELDT serves but *one* of the several criteria for reclassification into fluent English proficient status. Current reclassification criteria are responsible for keeping a significant number of EL students in low-level tracks, with little or no opportunity to ever enter regular and high-level tracks.

In the current state law, there is yet another dilemma for EL students: an EL student may be “*re-enrolled* in a structured English immersion program” if he or she “has *not* achieved a reasonable level of English proficiency” (emphasis added).⁵⁷ What this means is that an EL student can be considered proficient in English at one point in time, and then be considered not proficient in English at a later period. It implies that proficiency in English is relatively, if not always arbitrarily, defined. Like professional practitioners who must maintain their licenses to practice, English learners are expected to meet a much stricter academic standard and must continually demonstrate English proficiency in order to maintain their status as FEP. By contrast, English Only students are not subject to the same stringent standard of testing regardless of their level(s) of English proficiency over time.

First, reclassification criteria should never be more stringent than classification criteria. This means that a student should not be required to have also “recouped any academic deficits which may have been incurred in other areas of the core curriculum as a result of language barriers”⁵⁸ before he/she is reclassified. Such a requirement unreasonably penalizes students for something that is probably a product of the student's initial placement in low-level tracks, rather than an accurate reflection of his English and academic ability.

Second, the practice of re-enrolling redesignated-FEP students in ELD curriculum should be entirely abolished. It is simply discriminatory and unfair to impose requirements of probation on one group—English Learners—while excepting the rest. The student who has been found to be proficient at one point should not at a later point be subject to “double jeopardy.”

(5) State policies on language minority students must ensure that all EL students have equal access to English language mainstream curriculums and quality instruction. This means that schools must ensure that an English Learner enrolls in mainstream English language courses as well as mainstream math, science, social science and other core courses. Unless it can be substantiated that low-level tracks provide an equally rigorous and effective curriculum, low-level tracks should be entirely eliminated at all

grade levels. All students should be enrolled, at a minimum, in mainstream courses, with bilingual assistance provided as necessary.

If the goal of public schools is to provide a quality education to all students, regardless of their home languages, then all students, including EL students, must be provided with equal opportunity to be placed in mainstream and/or English language development curriculums. If the state's interest is to determine students' initial English proficiency level in order to determine where to place them in the 'appropriate' curriculums, it should require that all able students, not just language minorities, be tested with the CELDT or some other valid, reliable test.

(6) Policies designed to help improve students' English proficiency should also be sensitive to non-school factors, such as home environment and community environment in which different languages other than English is commonly spoken. In these cases, after-school English language programs may be an effective means of facilitating the improvement of English while maintaining fluency in another language.

In summary, we believe that policies about state-mandated classification and selective testing of language minority students, its criteria for reclassification, and its arbitrary tracking of these students require substantial changes. Segregation on the basis of linguistic minority status is a "new" form of segregation depriving at least one in every four students of an equal education. The educational trajectory of language minority students, especially Mexican and Southeast Asian students classified as English Learners, is predestined to the lack of educational success. Once so-classified, EL students are currently placed in different tracks with unequal time or opportunity to learn, unequal access to core curriculums, to college-bound courses and programs, and to quality teachers. A few EL students have managed to beat the odds and become success stories. However, using the successful group as the "model" on which other EL students are judged and even stigmatized puts the blame on these students. State law and law makers, not just schools, must also be held responsible for providing equitable education.

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- ⁴ *Lau v. Nichols*, 1974 (414 U.S. 563).
- ⁵ Online access about *Lau Remedies*: <http://www.ksde.org/sfp/esol/lauremedies.htm>, viewed on August 30, 2005.
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- ⁸ U.S. Census of Population. Online access: <http://quickfacts.census.gov/qfd/states/06000.html>, viewed on September 4, 2005.
- ⁹ CNN Poll, “Exit Poll: Profile of the Electorate,” *Los Angeles Times*, June 4, 1998.
- ¹⁰ 2003 Statistical Year book of the US Citizenship and Immigration Services, table 11. Online access: <http://uscis.gov/graphics/shared/aboutus/statistics/IMM03yrbk/IMM2003list.htm>, viewed on September 4, 2005.
- ¹¹ The percentage of those who received free/reduced priced meals at school is used as a proxy for the percentage of low-income families. California State Department of Education, online access: <http://www.cde.ca.gov/sp/el/t3/data.asp>, viewed on September 1, 2005.
- ¹² California State Department of Education. Online access: http://www.ed-data.k12.ca.us/Navigation/Definitions_frame.asp?tabname=Students&hash=english, viewed on September 1, 2005.
- ¹³ California Education Code §300-340 resulted from Proposition 227 of 1999. For research on the implementation and initial impacts of Prop. 227, see Gándara, 2000; Garcia and Curry-Rodriguez, 2000.
- ¹⁴ California Department of Education Language Census Data Files (R30-LC). Online access: <http://www.cde.ca.gov/ds/sd/lc/files.asp>, viewed on June 30, 2004.
- ¹⁵ U.S. Department of Education. 2005. “Biennial Evaluation Report to Congress on the Implementation of the State Formula Grant Program, 2002-2004.” Online access: http://www.nclb.gov/oela/biennial05/full_report.pdf, viewed on August 30, 2005; California State Department of Education (2005), online access: <http://www.cde.ca.gov/sp/el/t3/data.asp>, viewed on September 1, 2005.
- ¹⁶ Throughout this chapter we use the phrase “language-minority students” to refer to all students whose primary home language is other than English. Though we recognize the arbitrariness of the method used to identify a student’s “primary home language,” we maintain this definition as it is consistent with state and federal usage.
- ¹⁷ The CELDT is based on the *English Language Development (ELD) Standards*, developed by the San Diego County Office of Education. For an executive summary of the ELD standards see CA Department of Education, 1999.
- ¹⁸ Paul A. Garcia, “Annual English Learner Evaluation Report 2002-2003.” FUSD. Office of Research, Evaluation and Assessment (2003). Accessed June 2004: <http://rea.fresno.k12.ca.us/District/el0203eval.pdf>, viewed June 4, 2004.
- ¹⁹ California Department of Education, “Media Assistance Packet for School Districts/Schools.” California English Language Development Test (CELDT), (2004), p. 1-10. Online access: <http://www.cde.ca.gov/ta/tg/el/documents/mediapkt304.pdf>, viewed on June 1, 2004.
- ²⁰ *Ibid.*, p. 3.
- ²¹ *Ibid.*, pp. 3-4.

²² Caution needs to be taken when interpreting these increases. Even if longitudinal data of student retention and individual scores were available – they are not publicly available at the time of this writing – it is unclear what factors or set of factors actually contribute to the increase in CELDT scores over time.

²³ All CELDT test score data used in this chapter are from the California Department of Education's CELDT Reports. Online Access: <http://celdt.cde.ca.gov/reports.asp>, viewed August 15, 2005.

²⁴ For a relatively recent study on testing in school, see Stephen P. Klein, Laura S. Hamilton, Daniel F. McCaffrey, and Brian M. Stecher, "What Do Test Scores in Texas Tell Us?" Issue Paper-202. (RAND Education, 2000). Online access: <http://www.rand.org/publications/IP/IP202/>, viewed September 1, 2005.

²⁵ It is important to note that redesignation rates are not entirely comparable across years, because reclassification criteria have not been completely consistent. Variations may be also due to differences in school districts' reclassification criteria. Linquanti (2001) cautions that methods used to calculate reclassification rates from English Learners to FEP, which are often used as a measure of how quickly students are becoming proficient in English, vary according to a number of factors such as administrative processes and timing of test assessments, and therefore such rate can "greatly distort the reality of student progress and program effectiveness."

²⁶ The CELDT is based on the *English Language Development (ELD) Standards*, developed by the San Diego County Office of Education. For an executive summary of the ELD standards see CA Dept. of Edu., 1999.

²⁷ California Department of Education, *English Language Development Standards for California Public Schools*. (1999), p. 3. Online access: <http://www.cde.ca.gov/re/pn/fd/documents/englangdev-stnd.pdf>, viewed on June 30, 2004.

²⁸ *Ibid.*, p. 8.

²⁹ *Ibid.*, p. 14.

³⁰ *Ibid.*, pp. 17-18.

³¹ California Department of Education. 2005. "Glossary." Online access: http://data1.cde.ca.gov/dataquest/gls_ElPart2.asp, viewed on September 1, 2005.

³² *Ibid.*

³³ California Code of Regs., Title 5, §11301

³⁴ California Educ. Code, §306c

³⁵ California Code of Regs., Title 5, §11301

³⁶ *Ibid.*

³⁷ *Ibid.*, §11303

³⁸ *Ibid.*

³⁹ *Ibid.*, §11302

⁴⁰ California Education Code, §313d

⁴¹ California Department of Education. 2004. "Communications Assistance Packet for School Districts/Schools: Section IV—Reclassification to Fluent English Proficient." California English Language Development Test (CELDT), p. iv-1. Online access: <http://www.cde.ca.gov/ta/tg/el/documents/section4.pdf>, viewed on June 30, 2004.

⁴² *Ibid.*, pp. iv1-iv3.

⁴³ Paul Warren, "A Look at the Progress of English Learner Students." California Legislative Analyst's Office, (2004). Online access: http://www.lao.ca.gov/2004/english_learners/021204_english_learners.pdf, viewed June 1, 2004.

⁴⁴ FUSD trails Los Angeles, San Diego and Long Beach Unified School Districts as the fourth largest in the state.

⁴⁵ California Department of Education. 2005. Data retrieved from DataQuest. Online access: <http://data1.cde.ca.gov/dataquest/>, viewed September 5, 2005.

⁴⁶ Figures obtained from the Education Data Partnership website, under Fresno Unified School District. Online access: <http://www.ed-data.k12.ca.us/welcome.asp>, viewed September 5, 2005. "Minimum course requirement" refers to the courses required for University of California (UC) and/or California State University (CSU) entrance with a grade of "C" or better. This represents only a portion of the entrance requirements for UC or CSU.

⁴⁷ See Garcia (2003), above.

⁴⁸ “Minimum course requirement” refers to the courses required for University of California (UC) and/or California State University (CSU) entrance with a grade of “C” or better. This represents only a portion of the entrance requirements for UC or CSU. In general, students who meet UC’s minimum course requirements also fulfill CSU’s minimum course requirements. To entirely meet UC minimum entrance requirements, a student must meet UC’s A-G subject course requirements (i.e., complete a set of college preparatory courses in math, science, English, foreign language, etc.), have at least a 2.8 GPA, take the SAT I or ACT, and take the SAT II (Writing, Math, and one other area). UC also has an “eligibility by examination alone” criterion and a separate set of criteria for “eligibility in the local context” (being at the top 4 percent of one’s high school class is one of the requirements).

⁴⁹ See Garcia (2003), p. 16.

⁵⁰ *Ibid.*, pp. 16-17.

⁵¹ *Ibid.*

⁵² Fresno Unified School District, “2001-02 English Learner Evaluation Report.” Office of Research, Evaluation and Assessment (OREA) (2002), p. 20. Online access: <http://rea.fresno.k12.ca.us/District/el0102eval.pdf>, viewed June 15, 2004.

⁵³ *Ibid.*

⁵⁴ Fresno Unified sorts English learners by English language development (ELD) levels. The ELD levels range from level one through level five.

⁵⁵ FUSD, “2001-02 English Learner Evaluation Report,” OERA (2002), p. 21.

⁵⁶ CTB/McGraw Hill is the test contractor for the CELDT, which is, according to Rossell (2002), “purported to be an adaptation of the LAS to the new California ELD (English Language Development) standards” (p. 25).

⁵⁷ California Code of Regs., Title 5, §11301

⁵⁸ *Ibid.*, §11302