

SÁNDOR CZEGLÉDI

University of Pannonia, Hungary
czegelegdi@almos.uni-pannon.hu

Sándor Czelegédi: Promotion, Tolerance or Repression? The Treatment of Minority, Immigrant and Foreign Languages in the Elementary and Secondary Education Acts
Alkalmazott Nyelvtudomány, XVII. évfolyam, 2017/1. szám
doi:<http://dx.doi.org/10.18460/ANY.2017.1.002>

Promotion, Tolerance or Repression? The Treatment of Minority, Immigrant and Foreign Languages in the Elementary and Secondary Education Acts

A tanulmány az Amerikai Egyesült Államok szövetségi kongresszusa által az elmúlt évtizedek során elfogadott általános- és középiskolai oktatási törvények közül a legutóbbi hármat veszi górcső alá, megvizsgálva, hogy a nevezett törvények nyelvi ideológiai hozzáállását tekintve milyen változások érhetők tetten az angolt mint többségi nyelvet, az őshonos és bevándorló kisebbségi nyelveket, továbbá az idegennyelv-oktatást érintő paragrafusok vonatkozásában. Az alkalmazott elemzési keret a Terrence G. Wiley releváns munkáiban (1999; 2014) felvázolt nyelvpolitikai célkategorizációs sémán, továbbá Richard Ruiz (1984) klasszikus nyelvpolitikai orientációs megközelítésén alapul. A vizsgálat eredménye számos tekintetben markáns nyelvi ideológiai kontinuitást mutat a 2001-es “No Child Left Behind Act” és a legfrissebb oktatási törvény, a 2015-ös “Every Student Succeeds Act” esetében, így kijelenthető, hogy mindkét változat szakít az alapvetően multikulturalista felfogást tükröző, 1994-es “Improving America’s Schools Act” szellemiségével.

1. Introduction

Prior to the onset of Cold War, federal-level involvement in the American education system had been sporadic although by no means unprecedented. Probably the earliest examples of this kind were the Land Ordinance of 1785 and the Northwest Ordinance of 1787, both passed by the Confederation Congress. The former piece of legislation created a standardized system of land sales in the West, also stipulating that one-thirty sixth of each “township” (equaling a 6 mile-by-6 mile square area) should be reserved “for the maintenance of public schools” (Indiana Historical Bureau). In a similar vein, the Northwest Ordinance of 1787, while clarifying the process of the admission of new states, also encouraged the establishment of “schools and the means of education” in the territories aspiring to join the Union (Ourdocuments.gov: “Transcript of Northwest Ordinance of 1787”). Territorial expansion and practical considerations lay behind the next major piece of legislation which was intended to enhance national productivity in the era of settling the Great Plains: the Morrill Act of 1862 enabled the new Western states through federal land grants to “provide Colleges for the Benefit of Agriculture and Mechanic Arts” (Ourdocuments.gov: “Transcript of Morrill Act (1862”).

Despite these examples, the federal government has a limited constitutional license to intervene in educational matters, which are technically reserved for the states and localities. Notwithstanding the lack of constitutional reference among the enumerated powers that define the scope of federal authority, those who favor a more forceful federal involvement in education sometimes argue that the power to do so is implied under the General Welfare Clause of the Constitution (Art. I, Sec. 8): “The Congress shall have Power To ... pay the Debts and provide for the common Defence and general Welfare of the United States” (Ourdocuments.gov: “Transcript of Constitution of the United States (1787)”). Consequently, any education-related legislative proposal at the federal level can automatically give rise to debates concerning the (shifting) boundaries of federal power as well.

Historically, the federal government has entered the field of education only when a vital national interest was (perceived as) not being met by states or localities, or when central leadership was required to address a critical problem. According to Jennings (1999: 6), there have been four major reasons for federal involvement:

- to promote democracy (e.g. the Northwest Ordinance of 1787);
- to promote equal educational opportunity (e.g. the *Brown v. Board of Education* decision, which ended school segregation; the Elementary and Secondary Education Act (ESEA) and its further reauthorizations);
- to enhance national productivity (e.g. by the Morrill Act of 1862); and
- to strengthen national defense (e.g. by the National Defense Education Act (NDEA) of 1958).

The first time that the United States Congress had ever passed an *expressis verbis* education act came in 1958, following the Sputnik shock of the previous year. Designed to catch up with the Soviets in the fields of science, mathematics, engineering and foreign languages, the National Defense Education Act (NDEA) was “first” in the sense of focusing on language education as well by promoting the learning and teaching of “critical” foreign languages (Czeplédi, 2005: 204-05). In addition, the NDEA set an important precedent by breaking political resistance to the passage of national education acts in the future.

Less than a decade after the Sputnik shock, concerns about “structural poverty”, the widening skills gap between children from high- and low-income families, and diminishing educational opportunities in general spurred Congress into action again, as a result of which the Elementary and Secondary Education (ESEA) of 1965 was born and has remained the most far-reaching educational legislation in the U.S. to this day, reauthorized the 8th time under the name “Every Student Succeeds Act” in December 2015. While the ESEA has routinely allocated some support to foreign language teaching and learning as

well (in addition, more recent reauthorizations contained policies designed to foster the preservation and transmission of Native American languages), the most salient—and controversial—language-related passages of the law were undoubtedly those that addressed “bilingual” education. However, “bilingual education” (BE) is an extremely vague term in American usage, since it may include the “strong” (additive or developmental) models as well as the “weak” (subtractive) versions, which are intended to mainstream language minority students as quickly as possible, frequently not exceeding one year in duration and offering little or no L1 support (e.g. in the case of Structured English Immersion programs). In short, BE encompasses the full range of possible linguistic accommodations offered to “limited English proficient” (LEP)¹ schoolchildren, who appeared to be flooding American schools especially in the Southwest after the immigration reform of 1965. Between 1968 and 2001, it was the seventh chapter of the ESEA (“Title VII”) that had been known as the “Bilingual Education Act” (BEA). This tradition was broken by the “No Child Left Behind” Act of 2001 (NCLB), which legislators completely restructured and refocused towards expedited assimilation.

However, the overall aim of Title VII was never entirely clear: while earlier versions had left considerable room for educators at the local level to experiment with various models of bilingual education (ranging from transition to maintenance), from the 1980s onwards the assimilationist interpretation of “bilingual” education has been gaining primacy, favoring “early-exit” and “English-only” language instruction educational programs (National Clearinghouse for English Language Acquisition). Despite a brief return to the multiculturalist, “Language-as-Resource”-type of interpretation of linguistic diversity in the 1994 ESEA reauthorization (known as the “Improving America’s Schools Act”), after 2001 the “No Child Left Behind” Act took an almost 180 degree turn, practically eliminating even the word “bilingual” from the law and placing heavy emphasis on the mainstreaming in the name of strict accountability (see e.g. Crawford, 2004: 336-359; Wright, 2005: 30-46; Menken, 2008: 63-139; García, 2009: 377-78; Czeglédi 2013; Gándara, 2015; García and Wiley, 2016: 53-55).

2. Aims, Corpus and Method

The overall aim of this examination is to map and compare how the most recent reauthorizations of the Elementary and Secondary Education Act of 1965 have dealt with the issue of linguistic diversity in the United States in the past two decades. The pieces of legislation in focus are the 6th, 7th and 8th reauthorizations of the ESEA, namely:

- the “Improving America’s Schools Act” (IASA) of 1994 (P.L. 103-382; Oct. 20, 1994; 108 Stat. 3518); available at

<https://federaleducationpolicy.wordpress.com/2011/02/20/the-improving-america-schools-act-of-1994/> (enrolled version);

- the “No Child Left Behind” Act (NCLB) of 2001 (P.L. 107-110; Jan 8, 2002; 115 Stat. 1425), downloaded from <https://www.congress.gov/107/plaws/publ110/PLAW-107publ110.pdf>; and
- the latest incarnation of the law, the “Every Student Succeeds Act” (ESSA) of 2015 (P.L. 114-95; Dec. 10, 2015; 129 Stat. 1802), accessible at <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.

The areas of focus include a) the English language (whose promotion each of the legislative pieces evidently supports); b) minority languages (indigenous as well as immigrant); and c) foreign languages. However, the overlaps between the latter categories are obviously present and the boundaries are highly contestable, especially in the case of the Spanish language, which had already been introduced in (North) America before the arrival of English. Therefore, Macías rightfully argues that “[i]ndigenous groups are those that occupied an area that is now the United States prior to the national expansion into that area” (1999: 63). However, for the sake of simplicity, the present analysis reserves the “indigenous” label for Native American (including Native Hawaiian and Alaskan) languages.

To complicate matters further, the most widely taught “foreign” language in the U.S. is also the Spanish language (American Council on the Teaching of Foreign Languages, 2011: 8). In 2008, 72% of all foreign language learners (who represented a mere 18% of the total K-12 student population) were learning Spanish (ibid.) In addition, the available data do not disaggregate “foreign” language learners from “heritage” language learners (García and Wiley, 2016: 52), consequently, it is safe to assume that perhaps the majority of these students were in fact heritage language learners.

The method of classifying the enacted language policies in the aforementioned laws is based on Terrence G. Wiley’s extended framework for formal LP analysis (Wiley, 1999: 21-22; Wiley and de Korne, 2014: 1-2), which takes into account both the intended purposes and also the consequences of the given policies. Wiley identifies the following main policy types:

1. Promotion-oriented policies: governmental/state resources are allocated to further the (official) use of a language or languages;
2. Expediency-oriented policies: short-term minority-language accommodations are sought, e.g. transitional bilingual education (TBE), bi- or multilingual ballots, court interpreters. These policies are designed to facilitate educational and political access and to guarantee legal rights (Wiley and de Korne, 2014: 1);

3. Tolerance-oriented policies: a predominantly laissez faire-type of behavior, characterized by the overall absence of governmental interference and intervention;
4. Restriction-oriented policies: they “make social, political, and economic benefits, rights, and opportunities conditional on knowing or using the dominant language.” (Wiley and de Korne, 2014: 2);
5. Repression-oriented policies: active governmental efforts to exterminate minority languages (resulting in deculturation and linguistic genocide).

While various phases of U.S. history may illustrate the entire gamut of these policies—furthermore, there were even attempts aimed at “erasing the visibility and even historical memory of various languages” (García and Wiley, 2016: 50)—today’s federal policies are not expected to move beyond “restriction”. As far as (bilingual) educational policies are concerned, only additive BE programs are considered to be truly “Promotion”-oriented from the minority language perspective; transitional bilingual education (TBE) is regarded as a form of “Expediency”; while “Restriction” is frequently associated with ESL (pullout) and sheltered/structured immersion (SEI) programs (see Johnson, 2013: 38-39 for a more detailed synthesis).

The classification of policies according to Wiley’s criteria may also reveal whether the presence of minority languages is still being treated by these education laws as a “Problem”—i.e. linking them with “poverty, handicap, low educational achievement, little or no social mobility” (Ruiz, 1984: 19); whether they mostly appear in the “Language-as-Right” context—i.e. associated with the option of granting linguistic access to government services (in an “Expediency-oriented” way); or whether they are regarded as assets, emphasizing their national security, diplomatic, economic, etc. value. The latter attitude is identified by Ruiz as the “Language-as-Resource” orientation (1984: 28) and by James Crawford (2003) as the “Multiculturalist Paradigm”. Crawford also labels the “Language-as-Right” orientation the “Equal Opportunity Paradigm” (ibid.), and at least implies that minority language accommodations designed to overcome language barriers preventing students from accessing the curriculum actually belong to this category. Similarly, Hult and Hornberger (2016: 33) argue that academic programs for linguistic minorities aiming to facilitate “equal access to education” are practically “Right-oriented” in nature, thus the present paper considers TBE as an example of that particular category, slightly disagreeing with Johnson (2013: 37), who tends to classify TBE as a “Problem” policy.

3. Findings and Discussion

3.1 General policy types in the IASA (1994), NCLB (2001) and ESSA (2015)

A quick comparison of the three laws reveals several similarities as far as the general language policy types are concerned. Practically all language-related policies in these pieces can be classified as either belonging to “Promotion-”, “Expediency-” or “Restriction-orientation” according to Wiley’s framework. The latter category is not discussed separately but as a generalization, testing and assessment policies that pursue the quick mainstreaming of LEP/ELL students; “English-only” language instruction educational programs; and literacy development in the majority language (only) are considered to embody “Restriction” from the minority languages’ perspective.

In general, “majority language promotion” is mainly realized through the obligation to design and implement (English language) content and achievement standards and (strict) accountability-oriented assessment policies. Another form of English language promotion is literacy development, which always means the development of English literacy in the three laws, disregarding the potentially beneficial effects of L1 literacy (particularly the probable transferability of “phonological awareness, word reading, word knowledge, and comprehension strategies” (August et al., 2002: 13). The final form of “majority language promotion” is associated with the implementation of language instruction educational programs that use only English, e.g. Sheltered English or Sheltered Instruction Observational Protocol (SIOP), Specially Designed Academic Instruction in English (SDAIE), Content-based English as a Second Language (ESL), Structured English Immersion (SEI), English Language Development (ELD) or ESL Pullout (National Clearinghouse for English Language Acquisition).

The promotion of indigenous languages can take the form of heritage language or indigenous language programs and/or bilingual/bicultural education. In fact, all the three ESEA reauthorizations examined here are unquestionably supportive of indigenous language/cultural preservation and intergenerational transmission.

Immigrant minority language promotion is mostly realized through language instruction educational programs that use English and L1—especially the “late-exit” models: developmental/maintenance bilingual education (DBE) and two-way immersion (TWI) or dual language education (DLE) programs, whose ultimate goal is to develop bilingualism and biliteracy).

Foreign language promotion is generally carried out either by “exploratory programs” (which only provide introductory exposure to the language) or by “language focus programs” (which, on the other hand, emphasize the development of the four skills and also have culture/civilization content). The

majority of elementary school language programs fall into the former category (Rhodes and Pufahl, 2009: 2).

Common “Expediency-oriented” policies in the ESEA reauthorizations are the options for the (temporary) assessment of LEP/ELL students in L1; the guarantees concerning parental access to educational information about their children in L1; and the implementation of transitional (“early-exit”) models of bilingual education (TBE).

3.2 The comparison of specific language policy types in IASA (1994), NCLB (2001) and ESSA (2015)

3.2.1 “Promotion-oriented” policies

On the basis of the LP priorities in the analyzed ESEA reauthorizations, “Promotion-oriented policies” include

- majority language promotion (through proficiency-oriented assessments; literacy development in the majority language; and language-in-education policies that use only English);
- indigenous language promotion;
- immigrant language promotion; and
- foreign language promotion.

3.2.1.1 Majority language promotion through proficiency-oriented assessments (IASA 1994)

For the first time in the history of the ESEA, it was the IASA of 1994 that proposed the development of “State content standards and student performance standards in at least mathematics and reading or language arts” (IASA 1994, Title I, Sec. 1111(b)(1)(C)). The Act also encouraged the states to set up adequate yearly progress (AYP) criteria “to achieve the goal of all children... meeting the State’s proficient and advanced levels of performance, particularly economically disadvantaged and limited English proficient children” (IASA 1994, Title I, Sec. 1111(b)(2)(B)(i)) and to design “high-quality, yearly student assessments, including assessments in at least mathematics and reading or language arts” (IASA 1994, Title I, Sec. 1111(b)(3)). No matter how similar these provisions actually were to the ones enacted seven years later under the aegis of NCLB, enforcement was slack both at state and federal level after the “Republican Revolution of 1994” (Hettleman, 2010: 92), due to the fact that the party that had always been averse to the centralization of education captured both Houses of Congress in November that year.

3.2.1.2 Majority language promotion through proficiency-oriented assessments (NCLB 2001)

According to Shepard et al. (2009: 2), NCLB intensified the commitment to test-based accountability in at least two ways: (1) by focusing on the disaggregation of student assessment data in order to be able to track the performance of certain subgroups (including that of LEP/ELL students); and (2) by the (unrealistic) requirement to close the “achievement gap” between LEP/ELL and mainstream (i.e. language majority) students by 2014. Otherwise, the adoption of state academic content standards and challenging student academic achievement standards in at least “mathematics, reading or language arts, and science” remained a requirement (NCLB 2001, Title I, Sec. 1001). NCLB also set “annual measurable achievement objectives” (AMAOs) “for the assessments of mathematics and reading or language arts” (NCLB 2001, Title I, Sec. 1111(b)(2)(G)(i))... “for... each group of students” to “meet the State’s proficient level of achievement... not later than 12 years after the end of the 2001–2002 school year” (NCLB 2001, Title I, Sec. 1116(b)(2)(A)(v)). The annual assessment of LEP/ELL students’ English proficiency was a mandatory requirement. Furthermore, state and local educational agencies and schools were held to be accountable “for increases in English proficiency and core academic content knowledge of limited English proficient children... each fiscal year” (NCLB 2001, Title III, Sec. 3102(8)(A)). Continuing failure to meet adequate yearly progress criteria resulted in “corrective action”, “restructuring” or the eventual closing down of the school. (For the detailed interventions scale, see e.g. Stecher et al., 2010). Eventually, due to the unrealistic requirements, heavy federal presence and penalties, states began to withdraw from specific NCLB mandates from 2011 onwards, resulting in the *de facto* death of the law before ultimately being superseded by ESSA.

3.2.1.3 Majority language promotion through proficiency-oriented assessments (ESSA 2015)

The latest ESEA version has kept the NCLB requirements that states are to adopt challenging content and achievement standards in mathematics, reading or language arts, and science (ESSA 2015, Title I, Sec. 1111(b)(A-C)). States also have to provide for “assessments (using tests in English) of reading or language arts of any student who has attended school in the United States (not including the Commonwealth of Puerto Rico) for three or more consecutive school years” (ESSA 2015, Title I, Sec. 1111(b)(2)(B)(ix)), and the English language proficiency standards must be “derived from the 4 recognized domains of speaking, listening, reading, and writing” (ESSA 2015, Title I, Sec. 1111(b)(1)(F)(i)). English learners’ language proficiency is to be tested annually (ESSA 2015, Title I, Sec. 1111(b)(2)(G)(i))—just as it was required during the

NCLB years. However, as a major departure from NCLB’s federally-enforced accountability expectations, ESSA restores much of state sovereignty with respect to LEP/ELL mainstreaming deadlines: though the percentage of ELLs in achieving English language proficiency is to be increased, it is to be achieved “within a State-determined timeline” (ESSA 2015, Title I, Sec. 1111(c)(4)(B)(iv)).

3.2.1.4 Majority language promotion through literacy development

Generally, “literacy development” initiatives in the examined pieces have focused on the development of the English language skills of both language minority and language majority students (including their family members). None of the discussed pieces have paid any attention to the promotion of L1 literacy, consequently, all the three ESEA reauthorizations discussed here can be considered as essentially “Problem”-oriented in this particular respect.

IASA set out to promote early childhood and adult literacy primarily by integrating existing programs into the “Even Start” family literacy program (IASA 1994, Title I, Part B). Additional sections from Title III of the IASA also contained relevant stipulations from the “literacy development” perspective. The “Technology for Education Act of 1994” encouraged the development of “curriculum-based learning resources using state-of-the-art technologies and techniques”, giving priorities to “products that can be adapted for use by adults in need of literacy services” (IASA 1994, Title III, Sec. 3101), while the “Star Schools Act” facilitated the improvement of instruction in mathematics, science, foreign languages and literacy skills by encouraging the use of distance learning strategies (e.g. satellite and broadcast television) with special attention to underserved populations, “including the disadvantaged, illiterate, limited-English proficient, and individuals with disabilities” (IASA 1994, Title III, Sec. 3201). By lumping together LEP/ELL children with other “disadvantaged” groups (including the illiterate), IASA showed aspects of clear “Problem”-orientation in this respect, despite the overall multiculturalist outlook of the law.

NCLB continued the policy of literacy development (in English only) with a distinctly reading-based approach. The “Reading First” and “Early Reading First” programs (NCLB 2001, Title I, Part B, Subpart 1, Sec. 1201; Subpart 2, Sec. 1221) provided assistance to state and local educational agencies in establishing “scientifically-based” reading programs for preschool and K-3 children to enhance their early language, literacy, and prereading development. Key indicators of program quality were defined as “achievement in the areas of reading, writing” and “English-language acquisition” (ibid.)—with no credit given for minority language literacy.

The “Every Student Succeeds Act” of 2015 is considerably less specific as to what models are to be used in developing early literacy. Title III, Subpart 2 of ESSA offers grants to States “to develop, revise, or update comprehensive

literacy instruction plans from early education through grade 12” and “develop a comprehensive literacy instruction plan that serves the needs of all children, including children with disabilities and English learners”.

3.2.1.5 Majority language promotion through language-in-education policies that use only English

Theoretically, all of the examined laws allow the implementation of “strong” bilingual education programs, although NCLB—due to its strict accountability focus and stringent mainstreaming requirements—clearly favored the quick transitional and structured/sheltered English models in practice.

The declared purpose of IASA—as stated in Title VII, the “Bilingual Education Act”—was to help LEP students “to master English and develop high levels of academic attainment in content areas” (IASA 1994, Title VII, Sec. 7102(a)(8))... “through the development and implementation of exemplary bilingual education programs and special alternative instruction programs” (IASA 1994, Title VII, Sec. 7102(c)(1)). The latter category (SAIPs) mostly meant monolingual SEI variants in practice, and up to 25% of the BEA funds were allowed to be used for their promotion (IASA 1994, Title VII, Part A, Subpart 1, Sec. 7116(i)(2)).

From “No Child Left Behind” even the word “bilingual” was deleted, and “Title VII”, the previous “Bilingual Education Act” was renamed “English Language Acquisition, Language Enhancement, and Academic Achievement Act” after 2001 (NCLB 2001, Title III), indicating the beginning of a clearly assimilationist turn in educational policy. (Perhaps as a symbolic message, “Title VII” became the “Indian, Native Hawaiian, and Alaska Native Education Act”.) While the law did not ban BE outright, the enforced (unrealistic) accountability requirements did not leave much room for experimenting with long-term developmental programs (see 3.2.2).

ESSA has continued the practice of including the majority of LEP/ELL student-related stipulations in Title III, even keeping the “English Language Acquisition, Language Enhancement, and Academic Achievement” designation, echoing the exact words of NCLB (ESSA 2015, Title III, Sec. 3003). The new law also emphasizes the obligation to ensure that ELs “attain English proficiency” and “to assist all English learners to meet the same challenging State academic standards that all children are expected to meet” (ESSA 2015, Title III, Sec. 3102(1-2)). References to bilingual education are entirely missing from ESSA’s Title III as well: the law merely and ambiguously prescribes the employment of “effective approaches and methodologies” for teaching ELs and immigrant children and youth (ESSA 2015, Title III, Sec. 3115(a)). However, with the disappearance of the strict, federally mandated mainstreaming requirements from the law this definition may be open for more flexible interpretations at state and local levels in the future.

3.2.1.6 Promotion of indigenous languages

Indigenous (Native American, Alaskan and Native Hawaiian) languages have been accorded special treatment and protections by all the analyzed laws. Additionally, the Spanish language in the Commonwealth of Puerto Rico came very close to being regarded as a quasi-indigenous tongue in this respect, considering the legislative guarantees devised to ensure its continued status as the co-official (and *de facto*: primary) language of the island nation.

Back in 1994, Title VII of IASA explicitly allowed the implementation of “programs of instruction, teacher training, curriculum development, evaluation, and testing designed for Native American children and youth... and children and youth of limited-Spanish proficiency” in the Native American and Puerto Rican context (Sec. 7122). Furthermore, Title IX, the “Indian, Native Hawaiian, and Alaska Native Education” Act promised to improve educational opportunities for Indian children through “bilingual and bicultural programs and projects” (Sec. 9121 (a-c)(1)). Sec. 9201 of the same Title, the “Native Hawaiian Education Act” provided for the establishment of a Native Hawaiian Education Council and Native Hawaiian Family-Based Education Centers throughout the Hawaiian Islands and specified that programs could be conducted “in the Hawaiian language, the English language, or a combination thereof”. In a similar vein, Sec. 9301, the “Alaska Native Educational Equity, Support and Assistance Act” authorized grants for programs of instruction conducted in Alaska Native languages.

NCLB’s Title III contained the same language concerning programs designed for Native Americans and Puerto Rico as IASA’s Title VII, Sec. 7122 did, with the specification that “an outcome [of these programs]... shall be increased English proficiency” (NCLB 2001, Title III, Sec. 3128). Uniquely in the entire NCLB, the word “bilingual” appeared only in the “Indian, Native Hawaiian, and Alaska Native Education” Act (in the redesigned Title VII), a purpose of which was “to improve educational opportunities for Indian children through bilingual and bicultural programs and projects” (Sec. 7127). Sections 7201 and 7301 of the same Title authorized grants for Native Hawaiian and Native Alaskan language programs.

Similarly, the recently passed ESSA contains practically the same provisions concerning indigenous languages. Title VI, the “Indian, Native Hawaiian, and Alaska Native Education” Act endorses the goal of enabling Indian students to “gain knowledge and understanding of Native communities, languages and tribal histories” (ESSA 2015, Title VI, Sec. 6002) and supports the implementation of “bilingual and bicultural programs and projects” to improve educational opportunities for Indian children (Sec. 6121, (c)(3)). Following the example set by NCLB, the word “bilingual” is not mentioned anywhere else in the entire law. Native Hawaiian and Native Alaskan language programs are also endorsed and supported, specifically facilitating the establishment of Native American

and Alaska Native language immersion schools, where the native languages function as the primary languages of instruction (Sec. 6133).

3.2.1.7 Promotion of immigrant minority languages

The genuine promotion of immigrant minority languages can be imagined realistically in two-way immersion (TWI) programs (also known as dual language immersion) and late-exit developmental BE programs, which develop skills and proficiency in both the native language and English. However, the implementation of both of these program types require long-term commitment on the part of students, teachers and administrators alike, which may be hard to achieve in an age imbued with ideas of quick mainstreaming in the name of subtractive Americanization.

Nevertheless, in 1994 the IASA still considered multilingual skills as “an important national resource which deserves protection and development” (IASA 1994, Title VII, Part A, Sec. 7102(a)(10)). The “Resource”-quality of the native language was recognized at the individual, psycholinguistic level as well: “the use of a child or youth’s native language and culture in classroom instruction can promote self-esteem and contribute to academic achievement and learning English” (IASA 1994, Title VII, Part A, Sec. 7102(a)(14)(A)), and it can even “benefit English-proficient children and youth who also participate in such programs” (IASA 1994, Title VII, Part A, Sec. 7102(a)(14)(B)). Consequently, a stated purpose of IASA was defined as the development of “bilingual skills and multicultural understanding” (IASA 1994, Title VII, Part A, Sec. 7102(c)(2)). According to Sec. 7116, the Secretary of Education was to “give priority to applications which provide for the development of bilingual proficiency both in English and another language” (IASA 1994, Title VII, Part A, Sec. 7116(i)(1)).

Despite the fact that NCLB assumed a clearly assimilationist stance with respect to linguistic diversity, there remained a few references to TWI in the law, i.e. the one stating that nothing in Title III should be construed “to prohibit a local educational agency from serving limited English proficient children simultaneously with children with similar educational needs, in the same educational settings where appropriate” (NCLB 2001, Title III, Sec. 3125(1)).

However, by 2015 references to TWI had absolutely disappeared from the ESEA, thus ESSA cannot easily be compared to the previous two reauthorizations in this particular respect. One may minimally assume, though, that the increased state-level discretion concerning ELL education policies will not act as a disincentive to the establishment of further TWI programs.

3.2.1.8 Promotion of foreign languages

Both IASA and NCLB paid considerable attention to the promotion of FLL/FLT, although the tendency seems to have been largely discontinued by ESSA.

IASA's "National Teacher Training Project" urged all 50 states to establish regional teacher training sites for FL teachers (IASA 1994, Title II, Sec. 2103); the "Star Schools Act" encouraged improved instruction in foreign languages as well with the help of distance learning strategies (IASA 1994, Title III, Sec. 3201); while the Elementary and Secondary School Library Media Resources Program was designed to help the acquisition of books and foreign language resources (IASA 1994, Title III, Part F, Sec. 3603). Yet the flagship program of this type in IASA was the "Foreign Language Assistance Act of 1994", which set the highly ambitious goal of promoting proficiency in two or more languages for all American students (IASA 1994, Title VII, Part B, Sec. 7201) e.g. by encouraging two-way language learning (Sec. 7202(b)(2)).

NCLB's Title V also directed the Secretary of Education to give special consideration to programs that "link nonnative English speakers in the community with the schools in order to promote two-way language learning" (NCLB 2001, Title V, Sec. 5493(b)(2)). Also, the "Star Schools Act" and the "Foreign Language Assistance Act" remained integral parts of NCLB. However, the "Foreign Language Assistance Act of 2001" backtracked from IASA's unrealistic foreign proficiency goals for American students: it simply urged the promotion of "innovative model programs providing for the improvement of foreign language study" (NCLB 2001, Title V, Subpart 9, Sec. 5491). Nevertheless, programs promoting two-way language learning kept their priority status (NCLB 2001, Title V, Subpart 9, Sec. 5493(b)(2)). In addition, NCLB launched the "Elementary School Foreign Language Incentive Program", which promised "incentive payment" to public elementary schools providing programs "designed to lead to communicative competency in a foreign language" (NCLB 2001, Title V, Sec. 5494).

As compared to its predecessors, ESSA contains very few FLT-related passages. Only Title IV, the "21st Century Schools Act" facilitates student access to and achievement in foreign language courses (ESSA 2015, Title IV, Sec. 4104(b)(3)(A)(i)(III)), acknowledging that "well-rounded educational opportunities" include foreign language instruction (Sec. 4107(a)(3)(F)). The Foreign Language Assistance Act, which was a mainstay of both IASA and NCLB, has been omitted from ESSA altogether.

3.2.2 “Expediency-oriented” policies

“Expediency-oriented” policies—i.e. short-term minority language accommodations—involve the (temporary) assessment of LEP/ELL students in L1; parental access guarantees to educational information in the minority language; and the support to transitional bilingual education (TBE).

3.2.2.1 The (temporary) assessment of LEP/ELL students in L1

All of the three ESEA reauthorizations examined here allow the assessment of LEP/ELL students “*to the extent practicable*, in the language and form most likely to yield accurate and reliable information... in subjects other than English” (IASA 1994, Title I, Part A, Sec. 101(3)) (italics added), although it’s not an obligation (as the text of the legislation clearly indicates). Both NCLB and ESSA include almost identical passages in this respect.

3.2.2.2 Parental access to educational information

There are strong guarantees embedded in each ESEA version to ensure that parents shall be informed of their children’s level of English proficiency, the assessment of students and their academic achievement, and the educational options that students and parents may take. This information is to be provided “to the extent feasible, in the native language” (IASA 1994, Title VII, Sec. 7502(b)(1-3). NCLB and ESSA also followed this policy, although both of them substituted “practicable” for “feasible” in the quoted phrase.

3.2.2.3 Transitional bilingual education (TBE)

Unlike the 1984 and 1988 reauthorizations of the Elementary and Secondary Education Act did, none of the later versions of ESEA defined what TBE actually meant for the legislators. Nevertheless, both IASA and NCLB contained definitions of “bilingual education” and “language instruction educational program”, respectively, from which the legislative attitudes towards TBE may be guessed even if not determined.

The 1994 version of ESEA defined a “bilingual education program” as an educational program which “makes instructional use of both English and a student’s native language” and “enables limited English proficient students to achieve English proficiency and academic mastery of subject matter content” (IASA 1994, Title VII, Part E, Sec. 7501(1)(A-B)). While the IASA definition added that BE programs “may also develop the native language skills”, the latter stipulation was dropped from NCLB, whose “language instruction educational program” definition only stated that it “may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency” (NCLB 2001, Title III, Part C, Sec. 3301(8)(B)). Despite

the not-so-minor differences between the two definitions, both can be interpreted as being supportive of TBE as well.

However, determining the position of ESSA along the transition-maintenance spectrum is a challenging task, given the somewhat vague nature of the language instruction educational program definition in Title III. While the purposes are stated clearly (English learners are to “attain English proficiency and develop high levels of academic achievement in English”), the role of L1 is left in the dark: the law merely says that “effective instructional programs” are to be provided “to prepare English learners... to enter all-English instructional settings” (ESSA 2015, Title III, Sec. 3102(4)). Compared to the predecessors, ESSA appears to be the most conservative ESEA version in this respect.

4. Summary and Conclusion

Overall, the latest reauthorization of the Elementary and Secondary Education Act mostly represents the continuation of language-related policies laid down by the “No Child Left Behind” Act of 2001. As compared to the Improving America’s Schools Act of 1994, however, the assimilationist shift of the past two decades immediately becomes evident. Table 1 summarizes the major differences and possible similarities in the three laws:

Table 1: Orientations in language-in-education policies (LiEPs) in the ESEA reauthorizations. (Shaded areas indicate the most significant differences in comparison to the *other two* laws.)

		IASA 1994	NCLB 2001	ESSA 2015	
Promotion of English	testing/assessment	YES (little enforcement)	YES (federal enforcement)	YES (state-level enforcement)	Language as Problem
	literacy dev.	YES	YES	YES	
Promotion of other Ls	SAIPs/ESL	YES/NO	YES	YES	Language as Resource
	indigenous	YES	YES	YES + (Nat. Am. immersion schools)	
	immigrant	YES (esp. TWI)	NO (although TWI is OK)	NO	
Expediency	foreign	YES+ (promoting multilingualism; TWI)	YES+ (TWI; com.-cative competency)	YES/NO (no FLAA)	Language as Right
	testing in L1 (temp.)	YES	YES	YES	
	info. to parents in L1	YES	YES	YES	
	transitional BE	TBE/DBE	SAIPs/(TBE)	SAIPs/(TBE)	

In 2015, potentially the greatest change happened not in the field of (educational) language policies but in the nature of setting and enforcing the policies designed for the states by the federal government. With the abandonment of much of the previously assumed federal responsibility regarding oversight—and the concomitant shortening and increasing vagueness of key ESSA passages—the actual interpretation and appropriation of the policies at state and local levels have become progressively more difficult to foresee. Nevertheless, as far as the ideological stance of ESSA is concerned, it follows (and, at times even outperforms) the “Language-as-Problem” orientation of NCLB while sharing very little of the occasional “Resource”-perspective of IASA concerning linguistic diversity.

More specifically, the shared features in each law are the “standards and assessment” focus, “literacy development”, and the unambiguous support concerning the preservation and intergenerational transmission of indigenous

languages. Literacy development is a key priority in each law, yet “literacy” means English literacy every single time, with no room for L1 literacy development (or even maintenance). Indigenous languages, which enjoy special protections, are the Native American (Alaskan, Hawaiian) tongues, yet the Spanish language spoken in Puerto Rico comes very close to being accorded a quasi-indigenous status in certain contexts. As far as bilingual education models and expected BE outcomes are concerned, the increasing dominance of quick transitional and subtractive immersion models can be predicted on the basis of the discussed federal-level laws.

State-level developments, however, do not necessarily reflect this tendency. Despite the fact that references to TWI have disappeared from ESSA, two-way bilingual immersion programs are slowly but steadily spreading in the United States (see CAL: Directory of Two-Way Bilingual Immersion Programs). Furthermore, the number of states that have adopted a statewide “Seal of Biliteracy” currently stands at 23 and rising (“Which states...”). (This award is given to students who have studied and attained proficiency in two or more languages by high school graduation.) Also, simultaneously with the 2016 presidential elections, California voters repealed Proposition 227, which had prescribed the application of Structured English Immersion (SEI) as the default ELL education model in the state since 1998 (California Proposition 58).

Finally, the very few remaining references to foreign language teaching and the total disappearance of the Foreign Language Assistance Act from ESSA may signal the dawn of a new era of quasi-isolationism, which, given the shifting political landscape of the country, is unlikely to remain a transient phenomenon.

Note

1 While the earliest versions of the ESEA contained the term LESA (“limited English-speaking ability”) to describe schoolchildren who were the potential beneficiaries of bilingual education programs, later it was replaced with LEP (“limited English proficient”) as the most widely accepted designation, which can occasionally be encountered in legislative proposals even today. However, for about the past two decades, the less deficiency-oriented “English language learner” (ELL) label and its shorter version, “English learner” (EL) have been gaining primacy. This paper mostly uses the LEP/ELL designation to indicate this terminological shift.

References

- American Council on the Teaching of Foreign Languages (2011) “Foreign Language Enrollments in K-12 Public Schools: Are Students Prepared for a Global Society?” Retrieved from <https://www.actfl.org/sites/default/files/pdfs/ReportSummary2011.pdf>.
- August, D., Calderón, M. & Carlo, M. (May 2002) *Transfer of Skills from Spanish to English: A Study of Young Learners. Report for Practitioners, Parents, and Policy Makers*. Washington, D.C.: Center for Applied Linguistics. Retrieved from <http://www.cal.org/acquiringliteracy/pdfs/skills-transfer.pdf>.
- CAL: Directory of Two-Way Bilingual Immersion Programs in the U.S. *Center for Applied Linguistics*. Retrieved from <http://www2.cal.org/jsp/TWI/SchoolListings.jsp>.

- “California Proposition 58, Non-English Languages Allowed in Public Education (2016)”. *Ballotpedia: The Encyclopedia of American Politics*. Retrieved from [https://ballotpedia.org/California_Proposition_58,_Non-English_Languages_Allowed_in_Public_Education_\(2016\)](https://ballotpedia.org/California_Proposition_58,_Non-English_Languages_Allowed_in_Public_Education_(2016)).
- Crawford, J.** (2004) *Educating English Learners: Language Diversity in the Classroom*. Los Angeles, CA: Bilingual Education Services.
- Crawford, J.** (2003) Hard sell: Why is bilingual education so unpopular with the American public? *Arizona State University. Education Policy Studies Laboratory: Language Policy Research Unit*. Retrieved from <http://www.asu.edu/educ/eps/LPRU/features/brief8.htm>.
- Czeglédi, S.** (2013) The Birth and Decline of Bilingual Education as a Federal-level Concern. In: Peterecz, Z., Szathmári, J., Tarnóc, A. (eds.) *Trends in American Culture in the Post-1960s Period. Proceedings of the 9th Biennial Conference of the Hungarian Association of American Studies*. Eger: Líceum Kiadó. 199-221.
- Czeglédi, S.** (2005) Down to Earth: The National Defense Education Act of 1958 as a Turning Point in Federal Involvement in Education. In: Bollobás, E. and Nagy, Sz. (eds.) *The 1950s. Proc. of the 2003 Biennial Conference of the Hungarian Association of American Studies (HAAS)*. Budapest: Department of American Studies, Eötvös Loránd University. 201-211.
- “Every Student Succeeds Act” (ESSA) of 2015 (P.L. 114-95; Dec. 10, 2015; 129 Stat. 1802). Retrieved from <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.
- Gándara, P.** (2015) Charting the Relationship of English Learners and the ESEA: One Step Forward, Two Steps Back. *The Russell Sage Foundation Journal of the Social Sciences* 1/3. pp. 112-128. Retrieved from <http://www.rsfjournal.org/doi/pdf/10.7758/RSF.2015.1.3.06>.
- García, O.** (2009) *Bilingual Education in the 21st Century. A Global Perspective*. Malden, MA: Wiley-Blackwell.
- García, O. & Wiley, T. G.** (2016) Language Policy and Planning in Language Education: Legacies, Consequences, and Possibilities. *The Modern Language Journal* 100. pp. 48-63.
- Hettleman, K. R.** (2010). *It's the classroom, stupid: A plan to save America's schoolchildren*. Lanham: Rowman & Littlefield Education.
- Hult, F. M. & Hornberger, N. H.** (2016). Revisiting Orientations in Language Planning: Problem, Right, and Resource as an Analytical Heuristic. *The Bilingual Review*. 33/3. pp. 30-49. Retrieved from <http://bilingualreview.utsa.edu/index.php/br/article/view/118/84>.
- “Improving America’s Schools Act” (IASA) of 1994 (P.L. 103-382; Oct. 20, 1994; 108 Stat. 3518). Retrieved from <https://federaleducationpolicy.wordpress.com/2011/02/20/the-improving-americas-schools-act-of-1994/>.
- Indiana Historical Bureau (2016) “Land Ordinance of 1785”. Retrieved from <http://www.in.gov/history/2478.htm>.
- Jennings, J. F.** (1999) *A Brief History of the Federal Role in Education.*: Washington, D.C.: Center on Education Policy. Retrieved from <http://files.eric.ed.gov/fulltext/ED438335.pdf>
- Johnson, D. C.** (2013) *Language Policy*. New York: Palgrave Macmillan.
- Macías, R. F.** (1999) Language policies and the sociolinguistics historiography of Spanish in the United States. In Peyton, J. K., Griffin, P. and Fasold, R. (eds.) *Language in Action*. Creskill, NJ: Hampton Press. 52–83.
- Menken, K.** (2008) *English Language Learners Left Behind: Standardized Testing as Language Policy*. Clevedon: Multilingual Matters.
- National Clearinghouse for English Language Acquisition (2011) *What language instruction educational programs do states use to serve English learners?* Washington, DC.: NCELA Fact Sheet. Retrieved from <https://ncela.ed.gov/files/uploads/5/LIEPs0406BR.pdf>.
- “No Child Left Behind” Act (NCLB) of 2001 (P.L. 107-110; Jan 8, 2002; 115 Stat. 1425). Retrieved from <https://www.congress.gov/107/plaws/publ110/PLAW-107publ110.pdf>.
- Ourdocuments.gov (2016) “Transcript of Constitution of the United States (1787)”. Retrieved from <https://www.ourdocuments.gov/doc.php?doc=9&page=transcript>.
- Ourdocuments.gov (2016) “Transcript of Morrill Act (1862)”. Retrieved from <https://www.ourdocuments.gov/doc.php?flash=true&doc=33&page=transcript>.

- Ourdocuments.gov (2016) "Transcript of Northwest Ordinance (1787)". Retrieved from <https://www.ourdocuments.gov/doc.php?flash=true&doc=8&page=transcript>.
- Rhodes, N. C. & Pufahl, I.** (November 2009) *Foreign Language Teaching in U.S. Schools: Results of a National Survey*. (Executive Summary). Washington, D. C.: Center for Applied Linguistics. Retrieved from <http://www.cal.org/content/download/2241/29054/version/2/file/ForeignLanguageExecutiveSummary.pdf>.
- Ruiz, R.** (1984) Orientations in Language Planning. *NABE Journal* 8. pp. 15-34.
- Shepard, L., Hannaway, J. & Baker, E.** (eds., 2009) *Standards, Assessments, and Accountability*. (Education Policy White Paper). Washington, D.C.: National Academy of Education Retrieved from http://www.naeducation.org/cs/groups/naedsite/documents/webpage/naed_080866.pdf.
- Stecher, B. M., Vernez, G. & Steinberg, P.** (Summer 2010) *Accountability for NCLB: A Report Card for the No Child Left Behind Act*. RAND Review. Retrieved from <http://www.rand.org/pubs/periodicals/rand-review/issues/summer2010/nclb.html>.
- "Which states have adopted the Seal of Biliteracy so far?" *SealofBiliteracy.org*. Retrieved from <http://sealofbiliteracy.org/faq/which-states-have-adopted-seal-biliteracy-so-far>.
- Wiley, Terrence G. & Haley de Korne.** (2014) Historical Orientations to Language Policy in the United States. *Language Policy Research Network Brief*. Retrieved from <http://www.cal.org/lpren/pdfs/historical-orientations-to-language-policy-in-the-united-states.pdf>.
- Wiley, Terrence G.** (1999) Comparative historical analysis of U.S. language policy and language planning: Extending the foundations. In: Huebner, T. and Davis, K. A. (eds.) *Sociopolitical Perspectives on Language Policy and Planning in the USA*. Amsterdam/Philadelphia: John Benjamins. 17-37.
- Wright, W. E.** (2005) *Evolution of Federal Policy and Implications of No Child Left Behind for Language Minority Students*. Tempe, AZ: Language Policy Research Unit, Education Policy Studies Laboratory, Arizona State University. Retrieved from <http://nepc.colorado.edu/files/EPSSL-0501-101-LPRU.pdf>.