

THE DECADE OF THE 1990s: THE LOST YEARS OF OPPORTUNITY FOR NORTH
CAROLINA'S ESL STUDENTS

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ABSTRACT

SHARON LABURT SHOFER: The Decade of the 1990s: The Lost Years of Opportunity
for North Carolina's ESL Students
(Under the direction of Lynda Stone)

Beginning in the 1980s, but gaining momentum in the 1990s, North Carolina's k-12 schools experienced a dramatic increase in the number of limited English proficient (LEP) students enrolling in schools across the state. Largely due to the unprecedented number of Latinos migrating to the state, the schools reflected the demographic patterns of this new population. Unaccustomed to linguistic diversity, the state's k-12 school systems struggled academically and economically with the new and novel demands placed on them by not only a desire to educate their LEP students, but by federal mandate. Looking to the North Carolina General Assembly for funding, k-12 school systems were denied any relief until 1999. In failing to acknowledge the looming educational crisis, politicians in the state effectively lost a decade of opportunity to fund effective English as a Second Language (ESL) programs for this new population. This lost decade of opportunity to fund ESL programs would result in negative consequences for the state's LEP k-12 students, local education agencies, and potentially North Carolina as a whole.

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TABLE OF CONTENTS

ABBREVIATIONS.....	vi
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Sections

I. INTRODUCTION.....	1
II. PRE-1990s.....	3
III. THE 1990s.....	9
Lost Opportunities.....	12
Politics as Usual.....	17
Mid-1990s.....	19
Late-1990s.....	26
IV. POST 1990s.....	28
V. CONCLUSION.....	31
APPENDIX.....	35
REFERENCES.....	38

ABBREVIATIONS

AYP	Adequate Yearly Progress
EEOA	Equal Education Opportunity Act
ESL	English as a Second Language
IRCA	Immigration Reform and Control Act
LEA	Local Education Agency
LEP	Limited English Proficient
NAFTA	North American Free Trade Agreement

“Against the possibility that the Court’s judgment may be interpreted too broadly, I stress the fact that the children with whom we are concerned here number about 1,800. This is a very substantial group that is being deprived of any meaningful schooling because the children cannot understand the language of the classroom. We may only guess as to why they have had no exposure to English in their preschool years. Earlier generations of American ethnic groups have overcome the language barrier by earnest parental endeavor or by the hard fact of being pushed out of the family or community nest and into the realities of broader experience. I merely wish to make plain that, when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today’s decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guidelines require the funded school district to provide special instruction. For me, numbers are at the heart of this case, and my concurrence is to be understood accordingly.” Supreme Court Justice Blackmun in concurring opinion, *Lau v. Nichols* [414 U.S. 563 (1974), p. 3]

Beginning in the 1980s, but gaining momentum in the 1990s, North Carolina’s k-12 schools experienced a dramatic increase in the number of limited English proficient (LEP) students enrolling in schools across the state. Largely due to the unprecedented number of Latinos migrating to the state, the schools reflected the demographic patterns of this new population¹. Unaccustomed to linguistic diversity, the state’s k-12 school systems struggled academically and economically with the new and novel demands placed on them by not only a desire to educate their LEP students, but by federal mandate. Looking to the North Carolina General Assembly for funding relief, k-12 school systems were denied any relief until 1999. In failing to acknowledge the looming educational crisis, politicians in the state effectively lost a decade of opportunity to fund effective English as a Second Language (ESL) programs for this new population, a segment which by 2000 would come to represent 4.7% of the total state population (U.S. Census, 2000), and 4.1% of the k-12 student population (Kindler, 2002). This lost decade of opportunity to fund ESL programs would

¹ Although the Asian population in North Carolina grew more rapidly than the Hispanic population, in terms of absolute numbers the number of Asian immigrants was still much smaller than the those of Latino immigrants (Johnson, Johnson-Webb, and Farrell, Jr. 1999). Indeed, by 2000 Spanish-speaking LEPs would account for 74% of the state’s LEP population as compared to the next two highest percentage of LEPs, French-speaking LEPs (4.9%), and Vietnamese-speaking LEPs (4.0%). (Batalova, Fix, and Murray, 2007).

result in the increased rates of dropouts and lower test scores for k-12 LEP/Latino students. Ultimately the schools would be unprepared by 2002 when the federal No Child Left Behind (NCLB) program was instituted and schools across the state would suddenly face federal sanctions for lack of test performance by their LEP students.

The objective of the present study is to examine the funding of ESL programs in North Carolina in the 1990s. I investigated this via public news sources, North Carolina state legislative documents, published research, governmental policy papers and documents, and personal communication. Using these sources I attempt first to demonstrate that the recent rise in the immigrant population, while occurring relatively rapidly, was identified in the early stage during the early 1990s. One of the concomitant effects of this new immigration pattern was a sudden and rapid increase in the number of limited English proficient (LEP) students in the state's k-12 schools. Secondly, while the necessity to provide adequate education for the children of the immigrants was identified early by educators, it was not given funding by the General Assembly until 1999. Through document analysis, this thesis explains that through a variety of political forces which became prominent during the 1990s, many politicians either did not recognize the need or were unwilling to take an unpopular political stand to provide funding for the state's ESL programs. As a result, North Carolina suffered significant negative consequences, both at a financial and societal level, because of the inability to address the problem when it first became apparent. The first section of this paper, *Pre-1990s*, will discuss the historical background of the state and relevant Supreme Court rulings as the setting for North Carolina's LEP issues in the 1990s. The second section, *The 1990s*, will examine holistically the demographic, sociological, educational, and political circumstances and actions occurring

during the decade which contributed to both the incredible and urgent need for LEP services, and the unwillingness of politicians in North Carolina to provide funding for it². The final section, *Post-1990s*, will document the crisis that the state's local education agencies (LEAs) found themselves in when a new federal mandate was introduced and suddenly the lack of established and well funded programs for LEPs became an even more pressing issue.

PRE 1990s

In order to situate the current sociopolitical and educational issues of North Carolina's linguistically diverse students, this section will first provide a brief history of the state's immigration patterns before moving on to relevant U.S. Supreme Court rulings and the state's contentious history regarding educating of its non-white students. Further rulings impacting the rights of linguistically diverse students will be discussed, as they would come to play a large role in North Carolina in the 1990s.

Settled by white Europeans of various ethnicities, by the 1980s North Carolina had not seen any significant in-migration to the state since the last African slave shipments came to the state in the 1800s (Torres, 2000). The immigration patterns of the late 1800s and early 1900s, which brought many foreign immigrants to the U.S. and left a lasting mark of cultural and linguistic diversity on many Northern cities, completely bypassed the South, which was still recovering economically from the Civil War (Berthoff, 1951). Similarly, 20th century migration patterns heavily influenced the West with large group migrations from Asia and Mexico, but once again, largely left the South untouched (Furusetth and Smith, 2006). For

² Given the broad nature of the issues addressed here, which exceeds the scope of this work, the author has elected to address the specific elements mentioned above only as they pertain to the funding of ESL in North Carolina in the 1990s.

the state of North Carolina, this resulted in a population that was, in essence, racially black and white, and legally monolingual English speaking.

Even given a relatively common language, North Carolina actually has had a contentious history with regards to the education of racial minorities. Subsequent to the U.S. Supreme Court ruling in *Brown v. Board of Education* (1954) that schools must desegregate “with all deliberate speed” (Chafe, 1980), North Carolina sought ways to avoid the ruling. In direct response to *Brown*, in 1955 North Carolina instituted the Pupil Assignment Act. There were two fundamental goals of the Pupil Assignment Act. The first was the removal of pupil assignment from the state to the local education agencies (LEAs). The purpose of this, as documented in a 1955 letter from then North Carolina Governor Luther Hodges to a constituent, was “to be sure that the state is not involved in any state-wide [desegregation] suit” by the NAACP or others (in Chafe, 1980, p. 50). The second goal of the Pupil Assignment Act was to maintain segregation within North Carolina schools. The Act established school attendance guidelines for LEAs based on criteria such as residence, school attended the previous year and other “unspecified local conditions” (Chafe, 1980, p. 50). Within this plan, LEAs were able to find loopholes in the Supreme Court’s requirements to desegregate for almost 10 years until further federal action, in the guise of the Civil Rights Act, effectively closed most of those loopholes.

In 1964 a divided U.S. Congress passed the federal Civil Rights Act, legislation extending voting rights and prohibiting segregation in schools, workplaces, and facilities that served the general public. Title VI of the Civil Rights Act specifically made it illegal for schools to exclude from participation, or be denied the benefits of a school, based on a

person's race, color, or national origin.³ Passage of this significant act led to North Carolina's Pupil Assignment Act being deemed unconstitutional, and LEAs once again ceded their authority over school desegregation to the state. Once the state was once again legally responsible for statewide school desegregation, the state Board of Education was again under federal mandate to desegregate with "all deliberate speed".

In the following decade, Charlotte, North Carolina, became the focus of the 1971 Supreme Court ruling in *Swann v. Charlotte-Mecklenburg School District* (Boger, 2002). This ruling, in short, affirmed that busing was an appropriate remedy to segregation in the city's schools. (Boger, 2002). One of the positive effects of *Brown v. Board of Education*, the Civil Rights Act, and *Swann v. Charlotte-Mecklenburg*, was that through policies such as desegregation through busing African-Americans in North Carolina were completing more educational years and attending post-secondary school at much higher rates (Torres, Popke, and Hapke, 2006). African-American educational attainment, and the associated desire for better jobs, will become a factor that will come into play in the late 1980s in regards to Latino immigration to the state, as employers seeking workers for low-skilled and low-paying jobs can no longer be assured a working population among the African-American population.

At almost the same time that Charlotte was dealing with busing to end its segregation issues, in California the San Francisco Unified School District was dealing with issues of its own stemming from the Civil Rights Act of 1964. The result was that in 1974 *Lau v.*

³ In 1970 the federal Health, Education, and Welfare bureau issued the following guideline to clarify the intent behind the use of "national origin-minority" in the Civil Rights Act to include LEPs: "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." (35 Fed. Reg. 11595)

Nichols was filed by Chinese-American schoolchildren whose contention was that they were being denied their civil rights to an equal education by receiving instruction in a language they did not understand (Sugarman and Widess, 1974). The Supreme Court ruled in the plaintiff's favor, with Justice Douglas writing the court's opinion. The opinion stated

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. [414 U.S. 563 (1974), p. 3]

Because of this ruling, school districts across the nation became obligated to be "Lau compliant" in providing services to English as a Second Language (ESL) to LEP students. States such as California, New York, and Texas, with large numbers of non-English proficient students were clearly affected. Unlike the effects of *Brown v. Board*, the state of North Carolina, with its limited number of identified linguistically diverse students, did not feel *Lau v. Nichols*' effects until two decades later.

Lau v. Nichols was superseded in 1974 when the Equal Educational Opportunity Act (EEOA) was passed by the U.S. Congress. Section 204 of the EEOA is considered the primary source of LEP rights today, primarily because of its mandate that

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. (Section 204, EEOA, 1974)

Significantly, as pointed out by legal commentator Marie Scott (2008), Section 204 “leaves open for interpretation key concepts like “appropriate action” and “equal participation.” (p. 132).

In another decision that would affect linguistically diverse students nationwide, the *Plyler v. Doe* (1982) ruling by the Supreme Court struck down a Texas state law denying public education to undocumented students, finding that this violated the 14th amendment of the U.S. Constitution (Leigh, 1983). These two lawsuits, *Lau v. Nichols* and *Plyler v. Doe*, as well as the EEOA, already in effect at the time of a large demographic shift by Latinos in the United States, would soon have an immense impact on North Carolina.

Aligned with changes occurring legally, significant demographic and other legal changes occurred in the 1980s as economic and political conditions combined to encourage both legal and illegal migration into the U.S., as well as Latino migration between U.S. states that had never previously had any significant number of Latinos. Historically the Latino diaspora residing in the United States has been concentrated in the traditional gateway states of California, Arizona, Texas, New York, New Jersey, and Florida (Hamann, Wortham, and Murillo, 2002). In 1980, Latinos accounted for only one percent of the population of North Carolina (U.S. Census, 1980). Typically, prior to this decade, during the harvesting season this population swelled due to the presence of migrant farm workers, most of whom were young and male, who left the state as soon as the harvest was over (Fink, 2003; Johnson-Webb, 2003). However, beginning in the 1980s a series of events occurred that ultimately had the effect of the U.S. South becoming a magnet for a new Latino diaspora (Winders, 2005).

The early 1980s saw Republicans regain control of the presidency, and with them neo-liberal attitudes that were manifested in policies that would affect migration patterns in both intended and unintended ways. During his mid-presidency, in 1986, President Reagan was repositioning illegal immigration, as a national security issue. The Immigration Reform and Control Act (IRCA), was Reagan and the Republican Party's attempt to control illegal immigration to the United States, primarily from Mexico. In an effort to limit job prospects for illegal immigrants, thereby making it less appealing to enter the U.S., provisions of the act called for the criminalization of knowingly hiring illegal workers, established financial and other penalties for those employing illegal aliens, and provided for new resources for and new emphasis on the U.S Border Patrol. In addition, in what turned out to be the important provision of the act as it pertains to the Latino diaspora, it granted amnesty to undocumented workers who had lived continuously in the U.S. since 1982.

The effects of IRCA were not been exactly what their supporters had hoped (Massey and Espinosa, 1997). The first unintended result was a change in the cyclical pattern of migration for Mexicans males who traditionally came to help with agricultural harvest and then went home. With the newly increased pressures at the border stemming from IRCA, many Mexicans needing the work in the United States believed that repeated crossings were too risky. Instead, they smuggled their families to the United States and established permanent homes there. The second unanticipated outcome of IRCA was the effect it had on the Latino diaspora community in the traditional gateway states (Durand, Massey, and Parrado, 1999). Out of the total number of undocumented workers taking advantage of the new amnesty law were over 2.3 million Mexican workers (Durand, Massey and Parrado,

1999). These newly legal workers suddenly found themselves in markets overly saturated with a low-skilled legal workforce.

THE 1990s

Due to IRCA the 1990s began with many states experiencing an increasing number of Latino immigrants. However, there were two policy events that transpired in 1994, which would have significant effect on migration by making the U.S. even more appealing to Latino immigrants, particularly those of Mexican nationality. The first was a Mexican economic policy widely known as “The Mexican Peso Devaluation” or the “Mexican Peso Crisis” (Hanson and Spilimbergo, 1999). In an attempt to stabilize a faltering economy, the Mexican government instituted a series of economic measures that had the net effect of a major devaluation of the Mexican peso. The result was the loss of many Mexican jobs, making illegal immigration to the U.S. even more enticing (Hanson and Spilimbergo, 1999).

The second policy action, which greatly affected Mexican immigration to the U.S., was the North American Free Trade Agreement (NAFTA). Entered into in 1994 by the United States, Mexico, and Canada, NAFTA’s goal was the eventual elimination of barriers to free trade and investment among the member nations (Andreas, 1998). While succeeding in lowering tariffs, this neo-liberal restructuring “caused joblessness and economic marginalization” (Durand, Massey, and Parrado, 1999) across Mexico, and devastated Mexico’s agricultural community (Frazier and Reisinger, 2006). As indicated, exacerbating an already existing cause for illegal immigration to the United States.

These two events had had roots in the 1970s. During the 1990s North Carolina was at the peak of an economic boom that had begun two decades prior. Beginning in the 1970s the state’s economy experienced rapid expansion. Between 1980 and 2000 North Carolina’s

Gross State Product increased 4.6 times from \$59,750 million in 1980 to \$272,934 million in 2000 (U.S. Department of Commerce, 2004). This economic expansion and its concurrent population growth lead to a jump in the construction industry and low-wage service sector as the state's population swelled (Torres, Popke, and Hapke, 2006). Additionally, North Carolina's role as one the nation's largest sources of big agri-business grew during that same time period (Drabenstott, Henry, and Mitchell, 1999). As opposed to the traditional family farm, these giant agribusiness industries relied on large numbers of unskilled and inexpensive labor (McClain et al., 2006) as they implemented technological innovations that de-skilled many of the jobs that had previously commanded higher wages (Schulter and Lee, 2002). In North Carolina most of these businesses were located in rural parts of the state that had actually experienced net population losses over the previous twenty years (Torres, Popke, and Hapke, 2006). These factors portended the unusual demographic shift that brought Latinos to rural areas in North Carolina, locations the least used to and least prepared for the in-migration.

At the same time the overall educational attainment of the state's traditional population was increasing, and they were moving away from rural areas. The racial group that had traditionally been looked to as a source for low-income labor, African-Americans, were graduating from college in increasing numbers, resulting in an increased desire for skilled labor or white collar jobs (Torres, Popke, and Hapke, 2006). Additionally, across the South as a whole there was an overall demographic shift occurring between early and mid-1990s, as African-American populations increased in urban areas from 13 to 29 percent, due in part by migration from rural areas (Selby, Dixon, and Hapke, 2001, Cravey, 2003, Torres, Popke, and Hapke, 2006). The combination of these factors led employers across the region,

and in rural areas in particular, to look for an alternative to the traditional populations that had supplied workers for low-skilled, low-wage jobs. The group they looked to was the Latinos.

The traditional Latino diaspora Gateway cities were large urban centers such as Los Angeles, New York, Chicago, and Miami (Furusetth and Smith, 2006), where many illegal immigrants in ethnographically isolated areas felt the shelter of a larger Latino community in the midst of a hostile geography. There had been a growing anti-immigrant sentiment in the traditional diaspora sites such as California, where the English-First movement was making strides, and there was an increasing call to limit social services to illegal immigrants. Pushed in large part by the Republican parties in the traditional Gateway states, anti-immigrant ballot proposals were tapping into what Sanchez (1997) and others were calling the New Nativism movement, a growing sense of unease of many white voters, a reaction to perceived economic and political power loss (Perea, 1998).

In the face of these issues, many newly legal (due to IRCA) Latinos had the freedom to “move about the country”. Many decided to relocate to areas less saturated and politically hostile to Latinos than areas like the traditional Gateway states (Durand, Massey, and Charvet, 2000). Because of its booming economy, and due in part to a state-run program to bring in Latino workers for its agricultural economy (Johnson-Webb, 2002), North Carolina became a magnet for the new Latino diaspora as Latinos came to take rural jobs. According to the U.S. Census Bureau, the Hispanic population of North Carolina increased from 76,726 in 1990 to 378,963 in 2000, a 394% increase (U.S. Census, 2000).

In North Carolina’s case it has been some of the state’s largest metro areas, such as Raleigh-Durham, Greensboro, and Charlotte which have experienced “Hispanic

Hypergrowth”, defined as a metro area experiencing more than 30 percent Hispanic population growth (Suro and Singer, 2002). However, what has been one of the greatest differences between the traditional Gateway states and states like North Carolina is that Latinos in the new areas were “increasingly settling in non-metropolitan and rural areas of the U.S.” (Torres, Popke, and Hapke, 2006, p. 37). There is evidence that many Latinos chose to move to North Carolina not only on the basis of available jobs, but also as a location offering “tranquilidad” (peacefulness) and the rural lifestyle that many had left in Mexico and other Central American locations (Torres, Popke, and Hapke, 2006). Furthermore, many Latinos in North Carolina cited the anti-immigration sentiment in traditional Latino diaspora locations as a reason to come to rural North Carolina, which they considered to have relatively less vigilant policing of immigrants (Torres, Popke, and Hopke, 2006). Signaling events to come, this combination of forces had a significant impact on small local, and mostly rural, schools and school districts in North Carolina⁴. These small LEAs were the least equipped in regards to experience, personnel, and funding, to deal with the tidal wave of predominantly Latino LEP k-12 students that would soon be enrolling in their schools.

1990s – Lost Opportunities

Evolving out of these changing societal and demographic conditions, by 1990 North Carolina’s population was experiencing a significant growth in its immigrant population.

⁴ The educational disadvantages encountered by in low-socioeconomic, rural county schools would be the subject of another lawsuit, *Leandro v. State of North Carolina* (1997). The plaintiffs in *Leandro* argued that despite higher than average tax rates, the rural counties named in the suit received lower than average tax revenues, and it was therefore the constitutional responsibility of the state to provide funding to low-wealth counties to equalize the educational opportunities for students of those counties. In a unanimous decision, the Court stated that neither school districts nor counties have any constitutional right to equal funding (Packard, 1997). This was a major defeat for rural county school districts who were experiencing large numbers of LEP students at the time of the ruling.

Due to the special linguistic needs of Latino k-12 students, schools became one of the first governmental institutions that were required to provide services to this new community. There would be four opportunities in the 1990s for the General Assembly to step up and provide funding for North Carolina LEAs straining to provide services to the flood of LEPs enrolling in their schools. Despite appeals from the State Board of Education and educators across the state, politicians in the General Assembly failed for four consecutive years to provide any monetary relief to LEAs. At each denial of funding, the General Assembly lost an opportunity to provide LEAs the money to set up quality English as a Second Language (ELS) programs that would not only provide for the LEP students who were already enrolled in the state's k-12 schools in large numbers, but would be able to grow naturally to accommodate increased numbers. This section will examine the demographic and political circumstances that were active during the four years of the early and mid 1990s when the General Assembly failed to fund LEP programs.

By the early 1990s the Latino population in North Carolina had increased to a point where their presence was being noted in courts, communities, and schools. While Latinos were officially still only slightly larger than one percent of North Carolina's total population, many, including the Census Bureau itself, recognized that the official count of Latinos was undercounted by at least 5 percent across the Southeast as a whole (Seese, 1991). In specific response to population growth, by early 1991 the Wake County court system was having a problem providing services for the Spanish-speaking defendants. The increase in Spanish speaking defendants, along with too few translators, led at least two Wake County judges to enroll in intensive Spanish lessons (Bailey, 1991). Commercially, the existence of large

open-air flea markets catering to Latinos (Seese, 1991) was a highly visible indicator of the new pattern of Latino settlement in the state.

As Latinos made up the vast majority of LEP students in North Carolina's k-12 school districts, by early 1991 LEAs struggling to provide LEP services to this new population were reeling from the effects of the new Latino diaspora in the state, as can be seen in a newspaper article from August of that year,

Four summers ago, school officials in Montgomery County got a surprise: 12 Mexican students enrolled. "We were in shock," said Marilyn Palmer, director of migrant education for the county Board of Education. "It was totally unexpected." (Diamond, 1991, para.1)

The shock has worn off. But the Mexican students kept coming. This year 200 Mexicans are enrolled in the county schools. (Diamond, 1991 para. 2)

A 1992 report by the North Carolina Professional Practices Commission, citing increasing numbers of Latino students in the state, and demographic studies showing that many of these families had young children or planned on starting families while in the state, found that "North Carolina's teachers are ill-prepared to meet the needs of an increasingly diverse student body and many are so out of touch with other cultures that they often don't recognize their own biases." (Simmons, 1992, para. 1).

By the 1993 – 1994 school year LEAs and the State Board of Education were feeling the pressure to remain EEOA compliant to an ever-increasing segment of its student population. The good news was that some of the state's larger and better-funded school districts, especially those with significant numbers of LEP students, were already implementing ESL programs with local funds. By 1994, for example, the largest and one of

the wealthier school districts in the state, Charlotte-Mecklenburg was expecting to spend at least \$2.3 million that year educating their ESL students. (Feeley, 1994a). However, most of the smaller, rural counties feeling the burden of educating their ESL students simply didn't have the funding that the larger schools districts did. The case of Burke County is informative as an example of the larger issue being faced across the state. In 1994 Burke County would have over 600 ESL students and only 2 ESL teachers, without enough money to hire any additional teachers (Feeley, 1994a).

Of particular importance in that same year, lawyers for North Carolina Legal Services filed a \$20 million lawsuit against the State Board of Education on behalf of a group of Latino students from Burke, Yadkin, and Chatham Counties, to increase financing for the state's ESL programs (Feeley, 1994a). The plaintiffs in the case argued that the State Board of Education had not adopted any ESL policy or allocated funds for LEAs to provide an appropriate education to LEP students, thereby violating their constitutional right to an equal education. While the state estimated that there were 10,000 students needing these services, attorneys for the lawsuit contended that there was actually 3 times that number (Feeley, 1994a), and that most of those were not being served in compliance with EEOA remedies. Ken Harris, chairman of the State Board of Education, stated in an interview that he had already been in discussions with state Legal Services earlier in the year about the lack of ESL services and funding in the state (Feeley, 1994a). In discussing the lawsuit with a reporter from the Charlotte Observer newspaper, Harris said, "I don't see the state fighting this. We need to acknowledge there is a problem with the lack of ESL programs and get the General Assembly to appropriate some money to address it." (Feeley, 1994a, para. 8).

Also in 1994, the State Board of Education attempted to assist local school systems by setting aside \$695,000 from already allocated funds, to be given in the form of grants to individual districts, to hire ESL teachers and develop ESL programs (Feeley, 1994a), but the figure was seen as woefully inadequate in a state struggling to educate an ever increasing ESL population. Again as example, Burke County received \$50,000 from the State Board of Education's ESL fund, which was enough for the district to hire one additional ESL teacher and one additional teaching assistant, bringing the district's total as of October 1997 to 4 ESL teachers and 10 assistants to handle 600 ESL students (Feeley, 1994b).

It was also in this same year that the North Carolina Department of Public Instruction and the State Board of Education realized that many, if not most, of the state's LEAs needed relief to help them with their ESL programs. During the 1994 legislative short session⁵ representatives for the State Board of Education requested specific ESL funding in the amount of \$20 million from the state General Assembly. General Assembly House Bill 1526, an Act to Appropriate Funds for a Reserve for Limited-English Proficient Students, was presented to the house on July 1, 1994. After being referred to Appropriations on May 25, it was incorporated into the general budget bill. At some point during budget deliberations however, house members declined to fund House Bill 1526, and on July 17 it was entered into the office General Assembly records as "Postponed Indefinitely". Because North Carolina did not keep audio or transcription of house or subcommittee proceedings in the 1990s, it is difficult to know for sure what the arguments were for declining to provide funds for LEP services.

⁵ North Carolina state budgets are decided upon in odd-number "long session" years and are considered biennial. However, budget "updates" can be made during even-numbered "short-session" years.

The 1990s - Politics as Usual

To better understand the possible reasoning behind the lack of political will to fund ESL programs, despite urging from representative from the State Board of Education, and growing evidence of the severity of the issue, the situation needs to be viewed in the larger context of what was happening in the state and in the country politically.

In an effort to cover crippling state losses due to the Savings and Loan Crisis of the late 1980s, politicians in North Carolina had raised the individual income tax rate. By 1994 this tax increase had not only covered state losses due to the crisis but had left the state with a \$1 billion budget surplus (Dew and Neff, 1994). Governor Jim Hunt, who prided himself on being “An Education Governor” (Hunt, 2001), had hoped that the General Assembly would approve funding for his \$478 million education-revitalization plan. Hunt’s plan would boost public school salaries, funnel money into the state’s Basic Education Program, and bolster the community college and university systems, but significantly it did not have any specific resources allocated for ESL programs or students (Portner, 1993). Indeed, the Governor’s budget recommendations to the House would not include an allocation for ESL funding until the final years of the 1990s (Scheve, 1998).

The larger context was definitely political. Republican politicians in North Carolina, led by a nationwide Republican campaign called the “Contract with America”, had their own “New Contract with the People of North Carolina” (The Charlotte Observer, 1994). In their “Contract” North Carolina’s Republican candidates were calling for tax breaks, an anti-crime package, and increased limits on welfare (Republican Contract with North Carolina, 1994). In 1994 Republicans candidates in the state began to campaign on a platform decrying the state’s Democratically controlled General Assembly plans to tax and spend tax-payer dollars

on issues they did not believe to be in the line with the “Contract for America” and in the best interest of North Carolinians (Eubank, 1994).

Republicans, far from favoring additional funding for education, proposed tax-cuts, direct rebates to taxpayers, cuts to current budget spending, and limits on future spending. It might be surmised that Democrats in the House, watching poll numbers favor Republican opponents, thought that it was too risky to pass legislation which would provide significant funding to a group that was not only unpopular with voters (Johnson, Johnson-Webb, and Farrell, 1999), but a group with no political power itself. In declining to earmark any funding to provide additional ESL services to the state’s growing LEP k-12 population, state politicians lost their earliest, and arguably, most critical opportunity to get a jump on heading off what many were already calling a crisis in the state’s k-12 education system.

Despite curbing their budget spending North Carolina Democrats were in for a rude awakening. On election day of 1994, Republicans in North Carolina, and across the country, achieved a staggering victory over incumbent Democrats in what is widely known as the “Republican Revolution of 1994”. In North Carolina, Republicans took control of the House of Representatives for the first time in over a century with a promise to the voters to cut taxes in the state by \$200 million and create new limits on state spending. Republicans made their emphasis on any new spending not to be education related but having instead to do with anti-crime legislation and funding for new prisons (Dew and Neff, 1994). Additionally, they promised legislation that would change the state’s constitution to allow for voter initiatives

and referendums, giving voters the power to place laws and constitutional amendments on the ballot⁶.

Mid 1990s

By late November 1994, Republicans in North Carolina were already talking about fulfilling their promise to the citizens of North Carolina by cutting taxes in the next session. However, state fiscal analysts were not expecting a similar \$1 billion surplus for the 1995 – 1997 budget as there was for the 1993 – 1995 budget. Budget analysts were painting a gloomy picture about the state being able to fulfill all of its current obligations and promises (Krueger, 1994), citing lower than anticipated growth in personal income tax, the additional monies needed for naturally-occurring increased Medicaid costs, the costs of staffing the new prisons that were part of the anti-crime platform of both Governor Hunt and the Republican party, the cost of educating 22,000 new public school students, and the Republicans promise to cut taxes by \$200 million. Echoing a sentiment that would come to affect ESL funding in the following long session, Republican Leo Daughtry stated, “If we’re in a crunch, obviously we’re not going to spend more money than we’ve got. But we’re going to give them tax relief as best we can.” (Krueger, 1994, para. 28) He went on further to say “I’m not saying we’re not going to cut some waste out but we’ve got to reduce how fast we’re spending money.” (Krueger, 1994, para. 30). This scenario would not bode well for LEAs hoping for funding relief for their ESL issues in the next legislative session.

⁶ Voters in California already had the ability to change state constitution through voter initiatives and referendums. The politics in California were exemplary of a larger anti-immigration feeling prevalent throughout the nation (Perea, 1997). In 1994 Proposition 187, the “Save our State” initiative, made it illegal for undocumented immigrants in the state to have access to social services, health care, and public education. California voters approved the proposition and it was signed into law by Republican governor Pete Wilson. Even though the law was ultimately overturned in federal court, it had a chilling effect on the state’s Latino population. (Wilson and Price 1995, Torres, Popke, and Hapke, 2006).

Issues regarding the state's LEP student population started to come to a head in 1995, when something happened in Burke and Yadkin Counties that put all school districts and the State Board of Education in North Carolina on notice. Lacking any state ESL policy, North Carolina's individual LEAs were implementing a wide variety of methods to try and accommodate their rapidly increasing LEP student enrollments. Back in 1977 a few North Carolina counties, such as Charlotte-Mecklenburg, Cumberland County, Guilford County, Winston-Salem/Forsyth, and Wake County, had been the subjects of a tour of the Southeast by federal civil rights officials who recognized that these school systems needed programs for their foreign-speaking students. According to a state official, it was these systems that had some of the best programs in the state in 1995 (Lange, 1996). On the other end of the spectrum, Burke and Yadkin Counties were two of those counties that, according to the U.S. Department of Education, were not EEOA compliant and therefore not meeting the constitutional rights of their LEP students.

Here the example of Burke County is informative. It had experienced a 77 percent increase in their LEP k-12 student enrollment in 1994. Lacking any state policy on ESL education, Superintendent of Burke County schools, Tony Stewart, commented to a reporter,

We had made what we considered to be a good effort to have something in place for these students. But the federal people found we weren't in compliance with the law. It is a matter of opinion as to how much we are out of compliance. (Feeley, 1995b, para. 14)

The pattern was similar in Yadkin County. The Civil Rights Act of 1964 had made it possible for the federal government to pull any federal monies if a public entity was found to be non-compliant with Title VI (Halpern, 1995). The Department of Education was

threatening Burke and Yadkin Counties with the loss of millions of dollars in federal aid if they did not improve their ESL programs by September 30, 1995. Lacking any state funding to assist with ESL programs, Superintendent Stewart stated,

We know that we aren't where we should be with the LEP (Limited English Proficiency) program, but it takes money to do that and there are a lot of other demands on the schools right now. It's absolutely going to cost the taxpayers more to expand this program. It's not like you can snap your fingers and make this happen. (Feeley, 1995b, para. 15)

The loss of federal funding at one school district could mean millions of dollars for an individual LEA. Officials at the North Carolina State Board of Education were aware that a large number of the state's LEP students were not being served by an ESL program in a sufficient manner, and the state had no comprehensive ESL policy. According to state statistics, at least 4,184 students statewide who needed help learning English were not receiving appropriate services in 1994 (Stocking, 1997). The state's LEAs would be in worse fiscal trouble than they currently were if they were forced to give up federal funding due to lack of EEOA compliance.

To compound matters, the state was still facing the \$20 million lawsuit being brought by the North Carolina Legal Services lawsuit. The assistant superintendent for instructional services at the Department of Public Instruction, Henry Johnson, denied the impact of the lawsuit on the decision to propose and implement statewide ESL policy by saying "We had been discussing this before it became the subject of litigation" (Feeley, 1995a, para.12). Despite his denial, it can be surmised that the combined pressure of struggling LEAs, a

federal investigation for non-EEOA compliance, the threat of loss of funds, and a multi-million dollar lawsuit spurred the State Board to create a state-wide ESL policy.

In 1995, the North Carolina Department of Public Instruction (NC DPI) recognized the need for some level of statewide ESL regulation and instigated state policy guidelines for ESL identification, testing, and record keeping⁷. These guidelines act as a gatekeeper to make sure that North Carolina's LEAs remain EEOA compliant, thereby not only meeting the needs of the state's LEP students, but also maintaining the state and schools' qualifications for continued federal funding. The state ESL policy contained requirements such as the LEA's requirement to efficiently identify LEP students, report on LEP student performance and the performance of its ESL program, the monitoring of re-classified LEP students, and provisions to make sure that LEP students are not assigned to or excluded from special education programs because of their LEP status. The state did not mandate what type of ESL program should be implemented by LEAs, instead falling back on previous precedent set by *Castaneda v. Pickard* (1981). *Castaneda v. Pickard* outlined a three pronged approach as a standard for determining the adequacy of an LEA's efforts to provide equal educational opportunities for LEP students based on soundness of educational approach, proper implementation, and program evaluation (memorandum from the Office of Civil Rights, September 27, 1991).⁸ Although pleased overall by the steps the state was taking in

⁷ North Carolina's ESL policy would be implemented in 1996.

⁸ What is considered the most important interpretation of EEOA came in the *Castaneda v. Pickard* case. In *Castaneda v. Pickard* the U.S. District Court for the Southern District of Texas (648 F.2d 989 1011-12, 5th Cir. 1981) ruled for the plaintiff, Roy Castaneda, the father of two Mexican-American children. In the suit, Mr. Castaneda claimed that the Raymondville Independent School District (Texas), was discriminating against his children because of their ethnicity due to the fact that the grouping system for the school's classrooms were based on criteria that were ethnically and racial discrimination. In ruling for the

creating ESL policies, an attorney involved in the North Carolina Legal Services case dismissed the notion that the suit would be dropped, based on the fact that there was still no money being allocated by the General Assembly (Feeley, 1995a).

Hoping to follow up the creation of ESL policy with funding, the North Carolina's Board of Education again asked the General Assembly during the long session to allocate money in the state budget for ESL programs. Perhaps feeling that the Republican's focus on cutting taxes and limiting spending would not predispose them to funding a program for what many in the state assumed to be illegal immigrants (Johnson, Johnson-Webb, and Farrell, 1999), the Board of Education cut their previous request in half to \$10 million (Feeley, 1995a). Their hope was to get at least some relief for struggling local school districts and students. One of the attorneys in the North Carolina Legal Services lawsuit, Greg Malhoit, thought that while the figure was half of what the lawsuit called for it might still be sufficient to settle the lawsuit. He said "If the \$10 million is appropriated and distributed appropriately, we think it would provide sufficient resources to do what needs to be done for LEP kids in this state" (Feeley, 1995a, para. 10).

When the request for LEP funding was made, the Republicans were trying to fulfill the promises made in their contract with North Carolina to cut spending. It was into this political atmosphere that House Bill 991 was entered into consideration by the General Assembly in April of 1995. Once again, it was assigned to an education subcommittee, and returned to appropriations for consideration in the budget. As it had been in the previous legislative cycle, the House Bill to appropriate funds to provide services to limited English proficiency students in the amount of \$10 million languished and was finally declined

plaintiff, the court decision established a three-part assessment for determining how bilingual and ESL programs would be held accountable under federal law. (Scott, 2008)

funding. During the following 1996 short session, the same request for \$10 million in funding for LEP services was made in the annual budget update, and again, it was declined. Thus by the end of 1996, despite increased pressure from the schools and the North Carolina Board of Education, politicians had now lost two more critical years, and two more opportunities to provide a federally mandated education to a growing segment of their k-12 population. It was the third time in as many years that politics would hinder the growth of North Carolina's desperately needed ESL programs.

Now characteristic, the state's k-12 LEP student population continued to grow. By the 1996 – 1997 school year, there would be over 36,000 k-12 LEP students in North Carolina schools (Reale, 1997a), with over 110 of the state's 118 LEAs having students needing LEP services (Reale, 1997a). Because of local funding inconsistencies and room for interpretation in providing services per the new North Carolina ESL policy, LEA's implementation of programs varied widely. In the Chapel Hill-Carrboro School District for instance, the LEA with the highest ESL population in the state at 11 percent, ESL teachers in the district had complained bitterly about being overburdened and were threatening a lawsuit if more teachers weren't hired to serve students (Reale, 1997a). Being also one of the wealthier school districts in the state, Chapel Hill-Carrboro was able to hire one more teacher, thereby bringing the ESL teacher to LEP student ratio to 1:44, which was still much lower than the federal mandated 1:20 ESL teacher student ratio for LEP students (Chapel Hill Herald, 1997).

Even in school districts geographically close to one another, there was a disparity in what the LEAs could provide for ESL services. For example, in the less wealthy LEA of Orange County, which abuts Chapel Hill-Carrboro, administrators were having problems

with similar issues. According to Doris Hayers, the coordinator of secondary education for Orange County, “We are woefully out of synch with federal guidelines. We need that money [from the General Assembly] to hire an additional certified teacher”. (Reale, 1997b, para. 13). In other more rural areas, such as Siler City, some schools in the LEA were experiencing up to 27 percent Latino enrollment, with the majority of those students being LEP. Continuing the trend, by the beginning of the 1997 – 1998 school year, the percentage of Latino students in the kindergarten class at one school, Siler City Elementary, was 40 percent (Stocking, 1997). At the school, the issue wasn’t just economic. The principal had funding for an additional ESL teacher, he just couldn’t find one. He stated in desperation “I’m going to find somebody, I’ve got to find someone.” (Stocking, 1997, para. 4).

With the recognition that so many schools were being pushed to the limit of their ability to be EEOA compliant, the state School Board again requested \$10 million from the Republican controlled House in the General Assembly, and once again, it was refused during the General Assembly’s 1997 long session (Stocking, 1997). This would be the fourth time in four years that there would an opportunity for politicians in the state to not only serve its existing LEP k-12 students, but to get a head start on the demographics were now beginning to foretell a massive shift in the future of North Carolina k-12 schools. As the state headed into the last years of the decade, and the LEP k-12 population was continuing its upward trend, LEAs found themselves under increasing state and federal pressure to provide ESL programs for their LEP students, programs that politicians at the state level had resisted to fund four times by 1997.

Late 1990s

1998 would mark a watershed year for North Carolina's ESL education community and its LEP k-12 population. For the first time, Governor Hunt included funding for ESL programs in his own budget proposal to the General Assembly for the 1998 short session annual budget update. Sponsors of the LEP Education Bill requested more than the governor, asking for \$15 million. One of the sponsors of the bill, Senator Howard Lee, thought that this money was desperately needed. He asserted "School systems, in my opinion, cannot afford this kind of pressure. If we don't do it this year, the problem will be worse next year." (Scheve, 1998, para. 13). On a 1998 tour of North Carolina schools, he commented on the drastic conditions for many LEP k-12 students in the state

I was amazed at the problem we found. I visited several schools where students were isolated in the classroom because they couldn't speak English, and no one in the school spoke their language. There was one girl whose language couldn't even be identified. (Manzo, 1999, para. 9).

Commenting that North Carolina schools are "not really interested in funding enhancement of their own language" (Scheve, 1998, para. 16), Senator Lee also noted that he had to educate some of his fellow legislators about the difference between ESL and bilingual education. (Scheve, 1998). Other legislators, such as Republican State Senator Austin Allran, the ranking member of the education committee, also fell in line to support funding for LEP k-12 education, but with sentiments not exactly in solidarity with LEP students and ESL educators. He said, "They are a burden on the school system for the obvious reason that these children can't speak English. It is a real handicap on the children who are already there." (Scheve, 1998, para. 19).

The 1998 session would turn out to be the longest short session in legislative history due to record levels of dissension among policymakers. By its close, the House finally funded a \$12.6 billion dollar budget in October, 1998, with \$5 million approved for LEP education.⁹ Although an improvement over a complete lack of state funding, the amount was seen by some, including Senator Lee, as coming late for many of the state's LEAs, and the amount "piddling" (Manzo, 1999, para. 14). This was especially so when compared to the \$30 million to \$60 million some educators and legislators were saying was needed to educate the state's now 50,000 LEP k-12 students (Manzo, 1999). Senator Lee went on to add that inevitably North Carolina would face a legal directive to provide funding for and services for its LEP k-12 students (Manzo, 1999). This prescient comment foreshadowed the effects of legislators' failure to respond to the state's k-12 LEP issues with money.

State politics continued its ups and downs, and a political reversal of control was about to occur. After having gained a majority in the House of the North Carolina General Assembly in 1994, and retaining it in 1996¹⁰, the Republicans lost it during the November 1998 elections that followed the close of the short session. The Democrats managed to win back seats and the majority of the House by running campaigns labeling themselves as the champions of education and sound government services (Cline, 1998). Following through with their campaign promises to help the state's overburdened k-12 schools systems, and with LEP k-12 student numbers still on an ever-increasing upward path, Democrats in the House passed the 1999 long session biennial budget with an earmark for LEP funding for \$10,296,889. This was double what it had been the previous year (correspondence from the

⁹ Also included in the 1998 North Carolina state budget was \$30 million for state aquariums, and a \$1.6 billion dollar surplus (Lamme, 1998), perhaps giving an indication where budgetary priorities lay.

¹⁰ The entire North Carolina General Assembly is up for re-election every two years.

North Carolina office of Budget Analysis, 2009). Although a vast improvement over not only the previous year's budget, but the lack of any previous LEP funding ever, this figure was still almost \$10 million dollars short of what the State Board of Education had thought necessary in 1993 when LEP k-12 numbers were half of what they were in 1999.

The effects of the delay in funding for the state's k-12 ESL programs indeed were evident by the end of the decade. In the first year of state ESL funding in North Carolina, 1999-2000, LEP students scored only 47% proficient on composite test scores (NC ABCs¹¹) in grades 3-8, and only 31.9% proficient on composite test scores in grades 9-12 (NC DPI Report Card for the ABCs, 2010). Low achievement figures such as these would come to haunt North Carolina schools in the coming years. While nearing the end of the "Lost Decade" of opportunities, both in the sense of the year and in the era of denying ESL k-12 funding, politicians in the General Assembly had not left the state's education system in a good position for the challenges it would experience in the early years of the next decade.

POST-1990s

In the first year of the new decade, the state's LEP k-12 student population increased by another 26.8% (Kindler, 2002) for a statewide total of over 52,000. While the General Assembly also had increased its funding to k-12 ESL programs for the 2000 – 2001 school year to \$17,301,521, and then increased it again the following school year to \$23,161,254, the schools were still playing a furious game of catch up with their ESL programs. Statistics were not looking positive for many of the state's Latino students, who still made up the vast majority of the LEP k-12 student population. By 2001 some researchers cited a 38% graduation rate for North Carolina's Latino k-12 population (Greene, 2001). Other

¹¹ ABCs is the name of North Carolina's standardized testing program.

researchers did not find the situation as dire, coming up with a figure for Latino dropouts as low as 8% (Glennie and Sterns, 2002). Either way, the North Carolina Department of Public Instruction reports still showed that Latino dropout rates in 2002 were the largest of any ethnic group in the state apart from North's Carolina's small Native American Population (NCDPI, 2002, in Wainer, 2006).

Standardized test scores in 2001 – 2002 also evidence what the lack of funding for ESL programs in the previous decade had affected. In 2001 – 2002, the composite test scores for LEP k-12 students in North Carolina showed that only 46% were proficient in reading and math, a figure similar to what it had been four years earlier for LEP students in grades 3-8 (NCDPI, 2010). Again, one example of the disparity in outcomes between LEAS can be seen between Robeson County and Charlotte-Mecklenburg. In poorly funded rural Robeson County, the Latino graduation rate for the same year was only 9.7%¹² (Orfield, Losen, Wald, and Swanson, 2004). In stark contrast, one of the examples of the benefits of early funding for ESL program due to access to considerable local funds and early intervention by the Office of Civil Rights, in the Charlotte-Mecklenburg School District in 2000 - 2001, Latino students had *higher* graduation rates than white students (Orfield, Losen, Wald, and Swanson, 2004). This evidenced that low graduation rates were not endemic to the group itself but were more likely related to a lack of ESL programs and resources in other districts.

Events on the national level soon drew scrutiny to these figures and made the improvement of the state's ESL program urgent. On January 28, 2002, President George W. Bush signed into law the No Child Left Behind (NCLB) act. NCLB was, and continues to be, very controversial not only because of its goal of 100% academic proficiency for the

¹² Robeson County had one of the worst graduation rates in the state for all students, only totaling 37% for all students in 2000 – 2001 (Orfield, Losen, Wald, and Swanson, 2004).

nation's k-12 school population, but because of the extremity of possible sanctions under the law. As well it also demonstrated a lack of federal funding for such an extreme mandate (Cochran-Smith, 2005).

Significantly, in contrast to those argue that NCLB is a negative factor (Novak and Fuller, 2003), there are many researchers, educators, and special interest groups (Lukan, 2009) that believe that NCLB had, and continues to have, the potential to improve the education of LEP students across the country. There are two key provisions in the act that specifically affect LEP k-12 students and the schools that educate them. Title I of NCLB requires schools to improve the performance of LEP students on standardized assessments of reading and math, beginning in Grade 3, and writing beginning in Grade 4 (U.S. Department of Education, 2002). In addition, Title I mandates that schools and LEAs report their assessment results for LEPs as a separate subgroup of the school population, and are responsible for the academic improvements of their LEPs. The failure to do so over an extended period of time subjects the school to interventions, and ultimately, with no improvement, with school restructuring and possible closure (U.S. Department of Education, 2002). The second provision of NCLB directly affecting LEP k-12 students is Title III. In Title III schools are given the responsibility of measuring and improving not only LEP academic performance, but of measuring and improving LEP English language proficiency on an annual basis (U.S. Department of Education, 2002).

While the institution of NCLB had the effect of shining a light on the underperformance of LEPs in many schools, as was the case in North Carolina in its early implementation, it also had some possibly unintended negative consequences for schools serving LEP k-12 students. As explained in a Harvard Policy Brief on NCLB, with its

passage states in 2002 had to define a baseline Adequate Yearly Progress (AYP) based on an average of scores from across the state. Even though there was a common statewide baseline, individual schools began the climb to 100% proficiency at very different points. In general, schools with large LEP populations started with much lower AYPs. Since all schools must meet the same yearly goals, the schools with higher numbers of LEPS had to make larger yearly improvements (Batt, Kim, and Sunderman, 2005). The irony was that the schools that needed to make the largest climbs to 100% proficiency were clearly already struggling with educating their students, and NCLB came with no additional funding.

After years of a lack of funding for the state's ESL k-12 programs, North Carolina schools with LEP populations of over 40 students (the number needed to constitute a "subgroup" and be counted in a school's AYP) were hit hard when NCLB was instituted. During the 2002 – 2003 school year a shocking 98% of North Carolina middle schools reporting an LEP subgroup failed to make AYP¹³. To further emphasize the point, 100% of the white subgroup made AYP that year as opposed to only 17% of LEPs (Batt, Kim, and Sunderman, 2005). North Carolina schools, only in their second decade of exposure to significant numbers of immigrants, and with only the third year of funding for ESL programs in the state, still needed to play a game of catch up, this time in order to forestall federal sanctions threatened by NCLB. The massive costs to bring an entire state system up to date with a population still experiencing a rapid increase caught many school districts by surprise.

CONCLUSION

The failure of politicians in North Carolina to fund ESL programs in the 1990s resulted in a lost decade of opportunities for the state's schools and ultimately its LEP

¹³ Many LEP students in middle school during the 2002 – 2003 school year would have started school in North Carolina during the 1990s when there was a lack of ESL funding.

students. Four times during the early and mid 1990s the General Assembly failed to act in funding ESL programs. This created a situation for LEAs at the time that put them at risk of losing federal money, left them open to Civil Rights lawsuits, and strapped them for much needed money. Even when state politicians agreed to allocate funds for these programs in the state budget, whether out of interest of doing the right thing for students in the state, or because of federal pressure, the amount allocated was still far less than what most educators in the state thought was needed. The long term effects of the lost decade would come to bear when NCLB was enacted and a generation of students affected by years of substandard ESL programs, or a lack of any ESL program, were scrutinized at the federal level and individual schools and LEAs faced sanctions for the underperformance of their LEP students.

Confronted with a the continuing rise of the k-12 LEP student population across the state into the 21st century, politicians in the General Assembly have increased ESL funding significantly, despite areas of local opposition¹⁴. From the initial \$5 million allocated for the 1999 – 2000 school year budget, the figure rose to over \$28 million in the first school year affected by NCLB (2002 – 2003), and has risen to the most recent figure of over \$76 million (Correspondence from the North Carolina office of Budget Analysis, October 2009). Despite this increase in funding however, LEP students continue to underperform on standardized tests. Only 34.6% of k-12 LEP students scored proficient on the 2008 – 2009 North Carolina End-of-Grade Tests (Grades 3-8) as compared to 77% of white students (NC DPI)¹⁵.

¹⁴ A one billion dollar school bond issue was attacked in Wake County because it was perceived to be supporting the education of the children of undocumented immigrants (Hui, 2006)

¹⁵ Percent proficient included testing on all official state testing (NC DPI, accessed 2/22/2010), including the North Carolina Checklist of Academic Standards (NCCLAS). NCCLAS is an alternative assessment that can be given to LEPs with very limited English language abilities (NC DPI 2009).

It is difficult to say for certain that state politicians unwillingness to fund ESL programs during most of the 1990s directly caused the continued lack of educational attainment for k-12 LEP students, especially in the face of subsequent increased funding. However, the fact that there was such a delay in funding to create a basic and adequate ESL structure at the beginning of the state's demographic phenomenon certainly contributed to the initial lack of resources for LEAs. For North Carolina's LEP k-12 community, the students, teachers, and administrators, the 1990s represent a time when there were opportunities to put programs and policies into place which would have fulfilled the mandates of the Civil Rights Act and provided an equal education for all students. Instead, these opportunities continued to be deferred until politicians in the state were forced to acknowledge that they could no longer ignore a group of students that they had the constitutional obligation to represent. This deferral cost the state and LEAs extra money when NCLB was instituted. However, for the k-12 LEP students enrolled in many North Carolina schools in the 1990s, this deferral cost them access to an equal education.

Ultimately, North Carolina politicians' failure in the 1990s to provide funding for ESL programs represented both an economic and moral failure to the state. As education becomes the essential component to successful economic development not only for the individual, but also at a community level, failure to provide the resources needed to educate a significant portion of the state's student population represents a shortsighted exchange of immediate monetary savings for long-term economic growth. North Carolina's politicians in the 1990s had the opportunity to invest in education for the state's new immigrant population. They failed to do so; subsequently they needed to provide costly remediation due to federal mandates to improve the status of their ESL programs. In addition, there was a

second, and more important cost to the state in terms of lost economic gain due to the presence of a poorly educated population, as lower achieving LEP students become employees who do not achieve the full potential of their intellectual skills.

Perhaps more important in the discussion of ESL funding in the 1990s is the moral issue. Latinos came to the state of North Carolina to work in the toughest jobs for the lowest pay. It is arguable whether the state of North Carolina could have achieved the level of economic expansion and success that it has in the past two decades without the labor provided by Latinos. Politicians in North Carolina on both sides of the ideological fence failed to fund ESL programs for political reasons. The lack of will to provide funding for such a large number of students, especially in the light of a federal mandate to do so, represents a moral failure to a group of people who have been integral in making North Carolina what it is today.

Appendix

Methodology

At its inception this project was envisioned as a straightforward historical document analysis. However, it was not too long into the research stage when I came to the realization that there was not only not a lot written about North Carolina's ESL policy and funding issues in the 1990s, there was also a dearth of documentation on these topics at the state legislative level. Where I had assumed there would be sufficient institutional memory to complete this project, there was none. The end result was that I was able to complete half of the research, mostly the demographic and historical pieces, through traditional literature searches. The other half was a combination of pouring over hundreds of newspaper articles, and finally, through sleuthing. The information I was looking for was out there, it was just not very easy to find.

Doing an online background search on the topic of ESL policy in North Carolina in the 1990s, I came upon a lawsuit that was referenced to on a website for a not-for-profit legal group. On its website, the legal group claimed that this lawsuit, which they had filed on behalf of ESL students, was instrumental in forcing the state to create and fund ESL policy in North Carolina in the early 1990s. However, when I tried to find out any information about the lawsuit through traditional research sources, I came up blank. I then contacted the law office. The first two people did know anything about the case. When I started searching for information about the lawsuit in North Carolina newspapers (using NewsBank as a data source), I finally got a hit. Through the newspaper articles, I was able to get a name of one

of the attorneys who worked on the case. After contacting him, he referred me to another attorney who had also worked on the case. Due to IRB restrictions, I was not able to use the information she gave me in an interview. However, the information she gave me did help me know what I was searching for. Because the lawsuit had been withdrawn, there was no official information to be gathered. In newspaper articles from the time when the lawsuit was active however, it became clear that it was influencing decisions by state representatives and state education leaders.

The next place I encountered a lack of institutional documentation was at the North Carolina State Assembly. With the assistance of the official Assembly librarians, I found out that during the 1990s there were no recordings or oral transcriptions of subcommittee meetings. At the time only brief summaries of the topics discussed during the subcommittee meetings were listed along with date, time, and participants. There was no record of the discussion, or which assemblyperson was in favor or against a proposal in front of the committee. Since each time ESL funding had been declined in the 1990s it had died in subcommittee meetings, it was difficult to definitively ascertain the politicians' reasons for doing so. Therefore, I decided to use newspaper articles from the time to recreate the political atmosphere that existed in the 1990s as it pertained to Latinos, ESL programs, elections, and funding.

Using NewsBank as a data source, I started my search for information on these topics with the year 1989 and continued through 2001. I extended my search to all newspapers in North Carolina represented in NewsBank in an effort to find out what was going on in the state in the rural areas as well as the metropolitan areas. I used search strings such as "Latino", "Hispanic", "Mexican", "English as a Second Language", "ESL", "ESL

Programs”, “English Language Learners”, “ELLs”, “Election 1994”, “Election 1996”, “Election 1998”, and “Election 2000”. Finally, after reviewing hundreds of newspaper articles, I was able to develop an understanding of what the educational environment was for immigrant students and what the political nature of the arguments for and against funding for these students was. Included in the main body of this piece are quotes from the most pertinent articles in an effort to allow the reader to better understand the scope of the problem and the political decisions made during this period.

Finally, again due to IRB restrictions, I was unable to directly use discussions I had with various sources such as a former state senator, attorneys involved in the lawsuit against the State Board of North Carolina, ESL teachers who were teaching in North Carolina during the 1990s, and state employees who work directly for the state Department of Public Instruction. Although not able to use quotes directly within the body of this work, conversations with these sources were instrumental in guiding my research as well as confirming impressions I gained from other already published sources.

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