



Expert Report of Dr. Kathy Escamilla

Lobato and Ortega vs. Colorado, Cause No. 05 CV 4794

The purpose of this preliminary report is to respond to your request for research data and my expert opinion relating to the case referenced above. Related to my opinion it is relevant to note that I am a full professor in the School of Education at the University of Colorado, Boulder. My area of expertise is in the area of English Language Learners, and I have been involved in similar cases in the past. These include being an expert witness in *Judy Jaramillo v. Adams School District #14 - U. S. District Court Civil Action No. 09-cv-02243-RPM*, and in the case of the *Congress of Hispanic Educators v. School District, Civil Action No.95-M-2313 (D. Colo.)* More about the second case can be found on [www.clearinghouse.net/detail.php?id=9480](http://www.clearinghouse.net/detail.php?id=9480).

I have agreed to review and analyze existing educational information research and data in order to determine:

1. The basic elements and resources necessary to implement a quality educational program for English Language Learner (“ELL”) students in Colorado;
2. Whether quality preschool programs are necessary for ELL preschool-age children and if so, the basic elements and resources necessary to implement a quality preschool program for ELL students;
3. The relationship of the available funding for ELL programs compared to the resources necessary to implement successful ELL programs;
4. The extent of learning and achievement by ELL students in Colorado; and
5. The quality of ELL programs in districts across the State of Colorado, including the subject districts of the Ortega Intervenors which presently include Rocky Ford, Mapleton, Greeley and Sheridan.

Each of the above issues is discussed below.

**The Basic Elements and Resources Necessary to Implement a Quality Educational Program for English Language Learner (“ELL”) Students in Colorado**

Federal law is quite specific about the basic elements of quality educational programs for English Language Learners. These basic elements include: 1) Identification; 2) Placement in instructional programs that are high quality, theoretically sound and research based; 3) Redesignation criteria to monitor progress in the acquisition of English; and 4) Monitoring of student academic and linguistic progress beyond re-

designation. These standards were established in 1981 in the *Castaneda v Pickard* case and more recently in the No Child Left Behind Act.

In addition, and perhaps more importantly, the extant research in the field has established that while each of these components is important, perhaps the most critical is access to and placement in an instructional program that is of high quality and theoretically sound. Research has demonstrated beyond the point of theoretically supposition that such programs cannot be ‘short term’ or ‘quick fix’ in nature. In fact, the research is quite clear that even in the most effective instructional programs, it will take ELLs between 4-10 years to fully develop academic English (August & Hakuta, 1997; August & Shanahan, 2006; Colorado Department of Education, 2011; Goldenberg, 2008).

Moreover, there is growing body of research that has concluded that the most efficacious programs for ELLs are those that make use of children’s native languages in the instructional program. The evidence on the importance and benefits of native language instruction is strongest for students who are speakers of Spanish but extends to other language groups as well. A particularly promising program is dual language instruction. In fact, five recent meta-analyses of effective programs for bilingual learners have come to the same conclusion, that teaching children to read in their native language *enhances* subsequent acquisition of literacy in English (August & Shanahan, 2006; Genesee, Lindholm-Leary, Christain & Saunders, 2007; Goldenberg, 2008; Greene, 1998; Rolstad, Mahoney, & Glass, 2005; Slavin & Cheung, 2005)

Please note that current resources for ELLs provided by the Colorado Department of Education provide only two years worth of funding far short of the 4-10 years that research has established for acquisition of full proficiency. Further, over 80% of the ELLs are in English medium programs with little or no academic support in their native languages. There are very few dual language programs in Colorado and some school districts do not even offer ELD programs.

Title III (Sec. 3115(1), (2), (3), (4) of the *No Child Left Behind Act* requires that local educational agencies develop and implement language instructional programs for early childhood, elementary and secondary school programs based on methods and approaches that are scientifically-researched and proven to be the best in teaching the limited English proficient student (hereafter referred to as ELL). According to NCLB, basic elements and programs must: 1) Ensure that ELLs attain English proficiency, develop high levels of academic content knowledge and meet state achievement standards; 2) Focus on the development of skills in the core academic subjects; 3) Develop high quality, standards based language program; 4) Focus on professional development that builds capacity to provide high quality instructional programs for ELLs; 5) Promote parental and community participation in language instruction for the parents of ELLs; 6) Effectively chart the improvement in English proficiency and core academic content knowledge of ELLs; and 7) Create effective structures for charting adequate yearly progress for ELLs.

In the, *Guidebook on Designing, Delivering, and Evaluating Services for English Learners*, published by the Colorado Department of Education (2011), the CDE acknowledges that learning a second language is a long and complex process (see pgs. 14-18 of the hand-book for a review of the research on the amount of time it takes to become proficient in English). Effective programs must address the cognitive, linguistic, psychological, emotional and social needs of ELLs. Further, effective programs must include parent involvement components and have procedures for evaluating program effectiveness. Further, the CDE hand-book includes the criteria listed above as critical components for implementing and evaluating programs for English language learners (see pgs. 34-58 of the hand-book).

While it is apparent that the Colorado Department of Education knows the components of effective programs for ELLs, they do not seem to be willing to put adequate resources toward the development of comprehensive programs for ELLs. According to CDE data for 2009-2010, there were 94,758 NEP and LEP students in the state (beginners and intermediates), and the state English Language Proficiency Act (ELPA) funding was \$12,121,200. This comes to about \$127.92 per student and is insufficient to develop or implement the quality programs outlined above.

**Are Quality Preschool Programs Necessary for ELL Preschool-age Children?  
What are the Basic Elements and Resources Necessary to Implement a Quality  
Preschool Program for ELL Students?**

To begin to address the issue above it is important to note that the English Language Proficiency Act (ELPA) only includes grades K-12. Specifically, the ELPA law section 22-24-104 states, “English language proficiency programs for K-12.” Currently, there is no state funding for ELLs for preschool.

More specifically, with regard to the above question the answer is “YES” quality preschool programs are necessary for ELL preschool children. In their annual “State of the State” Report for 2010, the Colorado Department of Education Language, Culture and Equity Department reported that the largest number of English Language Learners in the state of Colorado was in preschool and that this number has grown from about 10,000 in 2007 to over 14,000 in 2010. This represents **15%** of all ELLs in the state. I am attaching to this report a power point presentation given by Dr. Barbara Medina from the Colorado Department of Education to educators at the annual Colorado Association for Bilingual Education conference in Oct. 2010. The power point provides information about the number and growth of preschool ELL students and is contained on Slide #13. Again please note that the number of ELLs in preschool is greater than the number of ELLs at any other grade level and is the only grade level where no state funding exists for support.

Given that the vast majority of these children will enter Colorado elementary schools where English will be the only medium of instruction, a quality preschool program with a comprehensive second language curriculum could benefit ELL preschool children and assist them in preparing for Kindergarten. Please note that 87% of the

ELLs in Colorado are in English medium programs with no opportunities for bilingual instruction thereby exacerbating the need for preschool for ELL.

Added to the above, it is significant to note the numbers of children in Colorado living in poverty. Colorado has experienced the largest growth in the number of children living in poverty of any state in the United States. These data are presented on Slide #22 of the attached power point presentation from the Colorado Department of Education. The population of ELLs in Colorado is disproportionately poor and therefore it is reasonable to assume that much of the increase in the number of poor children is also highly correlated to the increased number of ELLs, the largest number being in preschool.

Extant research has established the benefit of preschool for all children and I would submit that the benefits are enhanced for English Language Learners. For example, research by the National Institute for Early Education (NIEER) has established that children who attend high-quality preschool enter kindergarten with better pre-reading skills, richer vocabularies, and stronger basic math skills than those who do not. The research base is so strong that the early education research center has concluded that every child should have some sort of group experience before s/he starts kindergarten. Preschool exposes children to academic concepts in literacy and math and helps children learn how to socialize with other children. Preschool makes for an easier transition to kindergarten and, in fact, preschool has been determined to be so important that about 40 states now offer state-funded pre-K programs.

Quality preschool programs are designed to meet children's academic, social-emotional and cognitive needs and quality preschool programs for ELLs can also serve to develop children's linguistic skills in English and/or in both of their languages. This linguistic and cognitive development is particularly important for children who are learning two languages simultaneously.

One of the most rigorous evaluations of the impact of quality preschool programs on children, including children who are poor and ELL has been carried out in New Mexico since 2005 (Hustedt, Barnett, Jung & Friedman, 2010). The most recent evaluation included a sample of 1,359 children who attended various preschool programs in New Mexico during the 2008-2009 school year. Results concluded that the New Mexico PreK produced positive impacts for young children that are evident at Kindergarten entry. These include: 1) Children's vocabulary scores increased about 5 raw score points for children attending preschool as opposed to children who did not. This is important because vocabulary is predictive of children's later success in reading and general cognitive abilities; 2) Early math scores increased by about 2 raw score points for children who attended preschool. This reflects greater success in important skills such as addition, subtraction and telling time; and 3) Most importantly, children's greatest gains were in the area of early literacy. The early literacy scores of children in preschool increased by about 23 raw score points. This reflects greater knowledge of concepts about print and phonological awareness.

Each of these findings is both statistically significant and practically meaningful, because these are important content areas related to children's success in kindergarten and beyond and establish the efficacy of preschool programs. The New Mexico study is also important because of the diversity of children in the study. The sample included children whose home languages were: English only, or English plus another language, 85.2%; Spanish only, 14.0%; and other languages, 0.8%. The percentage of children in each ethnic category was: Hispanic, 63.8%; White, 20.9%; Native American, 10.7%; Black, 2.2%; Asian, 0.9%; and Other, 1.5%. These findings establish the potential benefits for preschool programs for ELLs and in particular Spanish speaking ELLs and Latinos.

Research has also clearly established that the benefits of preschool to children are only accrued if the preschool program is high quality in its structure and delivery of services and curriculum. Research by the National Institute for Early Education Research (NIEER) and Barnett & Epstein (2009) has recommended the following standards for quality preschool programs: 1) Learning and/or academic standards; 2) Lead teachers with at least a BA degree; 3) Assistant teachers with at least an AA degree; 4) Teacher professional development of at least 45 clock hours per year; 5) Class sizes capped at 20; 6) A staff-child ration of 1:10; 7) Health services to include vision, hearing, dental and developmental screenings; 8) Parent involvement to include home visits, social services, information on job training and referrals for parents, adult ESL classes etc.; 9) At least one daily meal (breakfast or lunch); and 10) Annual monitoring and evaluation for program effectiveness.

In addition to the above, research by the Denver's Great Kids Head Start (2005), Escamilla & Escamilla (2003), Commins & Miramontes (2005), Moll & Gonzalez, 1997) has added that preschool programs for ELLs should include: 1) A formal and structured English language development program to allow children opportunities to acquire English needed in school; 2) Where possible opportunities to develop bilingualism; and 3) Classroom environments that are culturally responsive and relevant to the children in the preschool.

Given the above, we can conclude that quality preschool programs have a positive impact on all children and hold particular potential for ELLs. We can also conclude that quality preschool programs need resources in the form of culturally relevant curricula, opportunities to formally learn English as a second language; high quality teachers, health and social services, nutrition and mechanisms for monitoring quality. All of these components are critical to quality preschool programs.

### **The Relationship of the Available Funding for ELL Programs Compared to the Resources Necessary to Implement Successful ELL Programs**

The Office of Language, Culture and Equity at the Colorado Department of Education in their State of the State Report for 2010 cited three sources of funding for ELLs aside from the regular per pupil expenditures available to all children in the state (Slide #80). Supplemental ELL funds include: 1) The State English Language

Proficiency Act (ELPA) of \$12,121,200; 2) The Federal NCLB Title III for ELLs of \$11,214,892; and 3) The Federal NCLB Title I-C that is ear-marked for migrant students and is \$5,753,018. In general terms this means that there is about \$29,089,110 of supplemental federal and state support for ELL programs and students. If one divides the total number of state ELPA dollars by the number of NEP and LEP students (94,758) the support level is about \$127 per student. Further, if the entire ELL population of 110,500 students (NEP+LEP+FEP) is included in the number of students receiving ELPA money, then the per pupil support level drops to about \$110 per student. Combining the state and federal dollars available to support ELL students does not dramatically improve the picture. Combining the ELPA, the Title III and the Migrant money together creates \$29,089,110 worth of support for ELLs. If one only counts the NEP/LEP population (94,758) then there is about \$307 per pupil of support. If one includes the NEP/LEP/FEP students in the count the total support falls to \$263 per child.

It is important to emphasize here that Title III and Migrant monies are meant to supplement basic programs for ELLs, the funding should not supplant services and programs that the state is providing. Collectively, however, it is apparent that there is little state support to establish comprehensive, long-term programs for ELLs in Colorado.

There are several important caveats that need to be considered when studying the relationship of available funding for ELLs to the resources necessary to implement successful ELL programs. First, state ELPA money is only available to a student for two years. Given that it takes between 4-10 years to become fully proficient in English, the funding is not adequate in terms of its accessibility to ELLs to help school districts develop long-term comprehensive programs. Next, it should be noted that the \$5,753,018 for migrant ELLs can only be used for migrant students and thus is only available to 6,323 ELLs in Colorado who are officially counted as migrant students (see Slide #30 on the CDE State of the State). In short, there is little state support for the type of effective instructional and support programs for ELLs mandated by No Child Left Behind, supported by extant research studies and recommended by the Colorado Department of Education in their own guidebook.

By way of demonstrating in a more concrete way the relationship of funding for ELL programs compared to the resources necessary to implement successful ELL programs, I submit one example of a type of expenditure needed to implement a quality program for ELL. As stated above, effective programs for ELLs provide access to core academic subjects while ELLs are learning English and also provide professional development to teachers so that they can provide high quality instruction. In Colorado, as in other states, the Sheltered English Instructional Protocol (SIOP) is a popular and often implemented professional development program for teachers. The SIOP protocol is a program to help content area teachers (e.g. math, science, social studies) teach ESL and content subjects simultaneously. It is meant to give students access to core academic content while they learn English.

The SIOP training program costs range from \$250-\$800 per teacher. If a school sends 20 teachers for SIOP training, the cost for training is \$5,000 + the cost of substitute teachers for the 2 day training which averages about \$125 per day/per teacher. This is an additional \$2,500. Finally, if books are purchased for each teacher so that they can implement the SIOP strategies in their classroom, each book is about \$40 for a total of \$800. Total training costs are about \$8,300. If these teachers teach in a school where there are 200 ELL students eligible for ELPA, these students generate \$25,400. If \$8,100 is spent on professional development that only leaves \$17,300 for all other expenses including the cost of administering the CELA, costs for parent involvement activities, the cost for administering and monitoring the program etc. etc. It should be noted that SIOP is one of the least expensive training programs of its type. Costs for professional development for elementary teachers doing GLAD training to teach ELLs start at \$1,025 per teacher.

In short, the amount of funding available from the state to supplement the cost of educating ELLs is woefully inadequate. While many school districts make valiant efforts at trying to implement effective programs, most readily admit that the state funds barely cover the costs of administering the CELA test. More on this issue will be discussed below.

### **The Extent of Learning and Achievement by ELL Students in Colorado**

In its “State of the State Report” (2010), the Colorado Department of Education reported that 80% of the ELL students in the state are classified as either NEP (36%) or LEP (44%) (Slide #16). Further, only 14% of these students are new to Colorado (Slide #20) meaning that the vast majority of students in grade 2 or higher have been in the school system longer than two-years meaning they are no longer eligible for state ELPA funding. This is significant as we examine achievement trends that show that achievement levels for ELL students decline as students move into higher grades.

Achievement and learning in Colorado will be reported in three ways. These include: 1) Graduation rates for ELLs vs. all Colorado students; 2) ACT scores for ELL students who are high school juniors vs. all Colorado students; and 3) CSAP outcomes for ELL students vs. all Colorado students in terms of percentages of students scoring at proficient levels in reading, writing and math.

The “State of the State Report” itself asserts that the largest discrepancy between ELL achievement and CSAP starts in 6<sup>th</sup> grade and goes through 12<sup>th</sup> (Slide #46). This is not surprising as it is in these grades where the content of the curriculum is more difficult, where intermediate children begin to fossilize in their acquisition of English, and where there is little ELPA money allocated.

To expand a bit on the paragraph above, the majority of programs for ELLs are targeted at beginning level ELLs (NEP) with some support for intermediate ELLs (LEP). However there is little support in the form of programs, highly qualified teachers and adequate assessment practices for ELLs at the mid-high intermediate levels and yet research has established that this is where the students need the **MOST**

support (Brown, 2007; Escamilla, 1999). Intermediate and advanced ELL students are students who know the basics of English, but have not yet mastered the more complex structures of English including the multiple meanings of words and phrases depending on context and subject area. As an example, an intermediate ELL student may know the meaning of the word left (as the opposite of right), but not know that the word left is used in math as a term in subtraction (take away 5 from 7 and what is left) or as the past tense of the verb leave.

Intermediate ELLs still struggling with acquiring the more complex aspects of English are additionally challenged by core academic content that is increasingly more difficult across grade levels. For this reason the research has concluded that intermediate ELL students (LEP) need the most support in their school programs and frequently get the least.

The data on academic achievement in Colorado by ELL/LEP students seems to support the above. Analysis of academic achievement are all taken from the 2010 State of the State Report that was summarized on the power point attached to this report.

We begin with the ELL graduation rate in 2009 that the state reported at 53% (Slide #27), a percentage well below the state average of 75%. In addition, the average ACT score of a LEP/ELL student in 2009 was 13.8 while the state average was 19.4. The ACT is required of all Colorado students in their junior year in high school (Slide #43).

With regard to trends in reading, writing and math, I will focus my comments on ELL students who are classified as LEPs and NEPs. My reasons for doing so are that NEP and LEP students constitute the majority of all Colorado ELL students and schools and teachers are held accountable for these students in the same way that they are held accountable for Native English speakers. Some may argue that it is not fair to look at NEP student outcomes, in particular, on the CSAP assessments since they know little or no English, however the state of Colorado has made it clear that they are holding these students accountable for academic achievement at grade level under Colorado's accountability system which is outcome based. Table 1 (below) presents outcome data in reading, writing and math for NEP students in 2009 compared to all Colorado students. The reader will note that the gap in achievement increases across grade levels between NEP and all Colorado students and that in at all grade levels and all content areas fewer than 10% are scoring at proficient on the CSAP. Data were taken from data reported in the "State of the State" report (Slides 47-74). It is not enough to simply mandate via accountability testing that students achieve, a mandate needs to be accompanied by concrete support to build best practice programs with qualified teachers.

**Table 1**  
 Percent of ELL/NEP Students Proficient on CSAP in Reading, Writing, and Math  
 Compared to all Colorado Students  
 2009

<b>Grade</b>	<b>Reading ELL/LEP</b>	<b>Reading All</b>	<b>Writing ELL/LEP</b>	<b>Writing All</b>	<b>Math ELL/LEP</b>	<b>Math All</b>
3	10	61	5	40	2	37
4	9	60	2	40	3	40
5	10	60	2	46	3	36
6	5	58	2	45	3	35
7	3	58	4	42	2	26
8	5	58	1	41	1	25
9	5	66	1	40	1	22
10	5	55	1	38	1	22

Table 2 (below) provides the same information for LEP students. These data are particularly relevant in this report as LEP students are likely those who have been in Colorado schools longer than 2 years and are therefore not eligible for ELPA money, but are also not yet proficient in English. Again, the table below compares the outcomes of ELL/LEP students to all Colorado students taking the Colorado Student Assessment Profile (CSAP) test in Reading, Writing, and Math in 2009. The table compares the percent of ELL/LEP students who are proficient on these tests to the percent of all Colorado students who are proficient on these tests. Data were taken from data reported in the “State of the State” report (Slides 47-74). CSAP is required in Colorado for grades 3-10 only.

As with the data on NEP students, the data on LEP students show that across grade levels there is an increase in the achievement gap between LEP students and all Colorado students. It is particularly worrisome that LEP student achievement is so low at the secondary level.

The research about how to accelerate the academic growth of ELLs does exist. For example, it is clear that dual language programs accelerate and enhance academic achievement for ELLs, however these programs are not widely implemented in Colorado. In addition, there is research that supports after school and summer programs to enhance opportunities to learn English for ELL. There are also computer assisted instruction programs, native language tutorial programs, parent training and educational programs etc. All of these programs are suggested in the CDE guidebook, but all require financial resources that the state is not currently providing. The state is not providing adequate funding for basic instructional programs and no funding for supplementary programs thereby making the closing of the achievement gap unlikely in the foreseeable future.

**Table 2**  
 Percent of ELL/LEP Students Proficient on CSAP in Reading, Writing, and Math  
 Compared to all Colorado Students  
 2009

<b>Grade</b>	<b>Reading ELL/LEP</b>	<b>Reading All</b>	<b>Writing ELL/LEP</b>	<b>Writing All</b>	<b>Math ELL/LEP</b>	<b>Math All</b>
3	41	61	24	40	42	37
4	35	60	17	40	39	40
5	29	60	18	46	29	36
6	21	58	11	45	20	35
7	14	58	8	42	9	26
8	12	58	5	41	8	25
9	10	66	6	40	6	22
10	11	55	5	38	5	22

From the data above, there are several trends with regard to achievement that can be noted. With regard to reading, it is clear that the percent of Colorado students scoring at the proficient range is fairly stable across grade levels, however with regard to the ELL/LEP students achievement in reading declines sharply across grade levels and in middle and high school fewer than 20% of the LEP/ELL students are proficient in reading at any grade level. Achievement in reading for LEP/ELLs is at a high in 3<sup>rd</sup> grade and steadily decreases in subsequent grades indicating very low levels of achievement.

The same trend continues when examining the writing scores on the CSAP across grade levels. For all Colorado students, the percent of children who are proficient in writing is fairly stable from grades 3-10 with percentages ranging from 38-45. However, for ELL/LEP students the percentage of students scoring proficient in writing decreases dramatically from grades 3-10 with only 5-8% of children scoring at proficient levels in writing from grades 7-10. As with reading, achievement in writing for ELL/LEP students is greatest at 3<sup>rd</sup> grade and decreases dramatically in subsequent grades again indicating very low level of achievement.

The very same trend is noted with regard to math achievement. Math achievement for all Colorado students is rather low however it is stable across grade levels with between 22-37% of all Colorado students scoring at the level of proficient. The profile for ELL/LEPs however steadily decreases from 3<sup>rd</sup> – 10<sup>th</sup> grades. Across grade levels the percent of ELL/LEP students scoring proficient again declines significantly with only 5% of the ELL/LEP students scoring at the proficient range in grade 10. From grades 7-10 fewer than 10% of the ELL/LEP students scored in the proficient range. As with reading and writing achievement, math achievement decreases across grade levels for ELL/LEP students indicating a very low level of achievement.

Data reported above support the research results that students at intermediate levels of English proficiency (such as ELL/LEP) need the most support in terms of quality programs and highly qualified teachers. This is especially true at higher grade levels. Sadly, ELL students at the intermediate stages of English acquisition and in upper elementary, middle and high school are likely to get the least support. As stated above, these children get little access to even a basic ELD program and even less access to promising programs such as after school tutoring, summer programs, computer assisted learning etc. that have been demonstrated to help improve achievement for ELLs.

**The Quality of ELL Programs in Districts across the State of Colorado, including the Subject Districts of the Ortega Intervenors which Presently include Rocky Ford, Mapleton, Greeley and Sheridan.**

I would like to send a supplement to this report within the next week. We have had numerous scheduling conflicts between the various schools, spring break and conference schedules and me.

To conclude, the interpretations and conclusions drawn in this report are based on my knowledge of the field compared to the actions of the state of Colorado and are based on a reasonable degree of professional certainty. Attached is a copy of my curricula vitae setting forth my further qualifications and my publications in the last ten years. During the last four years, I testified in trial or deposition in a teacher dismissal case against Adams County #14. I would like to reserve my right to modify this preliminary report if I am provided additional information related to this case. I am being compensated at a rate of \$150 per hour. Should you have questions or need further information, please do not hesitate to contact me. I can be reached at [Kathy.escamilla@colorado.edu](mailto:Kathy.escamilla@colorado.edu) or 303-492-0147.

Sincerely,

A handwritten signature in black ink that reads "Kathy Escamilla". The signature is written in a cursive, flowing style.

Kathy Escamilla, Ph.D.  
Professor

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