# Title III

## English Language Acquisition

# Everything You Wanted to Know About Federal Programs…

# But Were Afraid to Ask

July 30, 2014

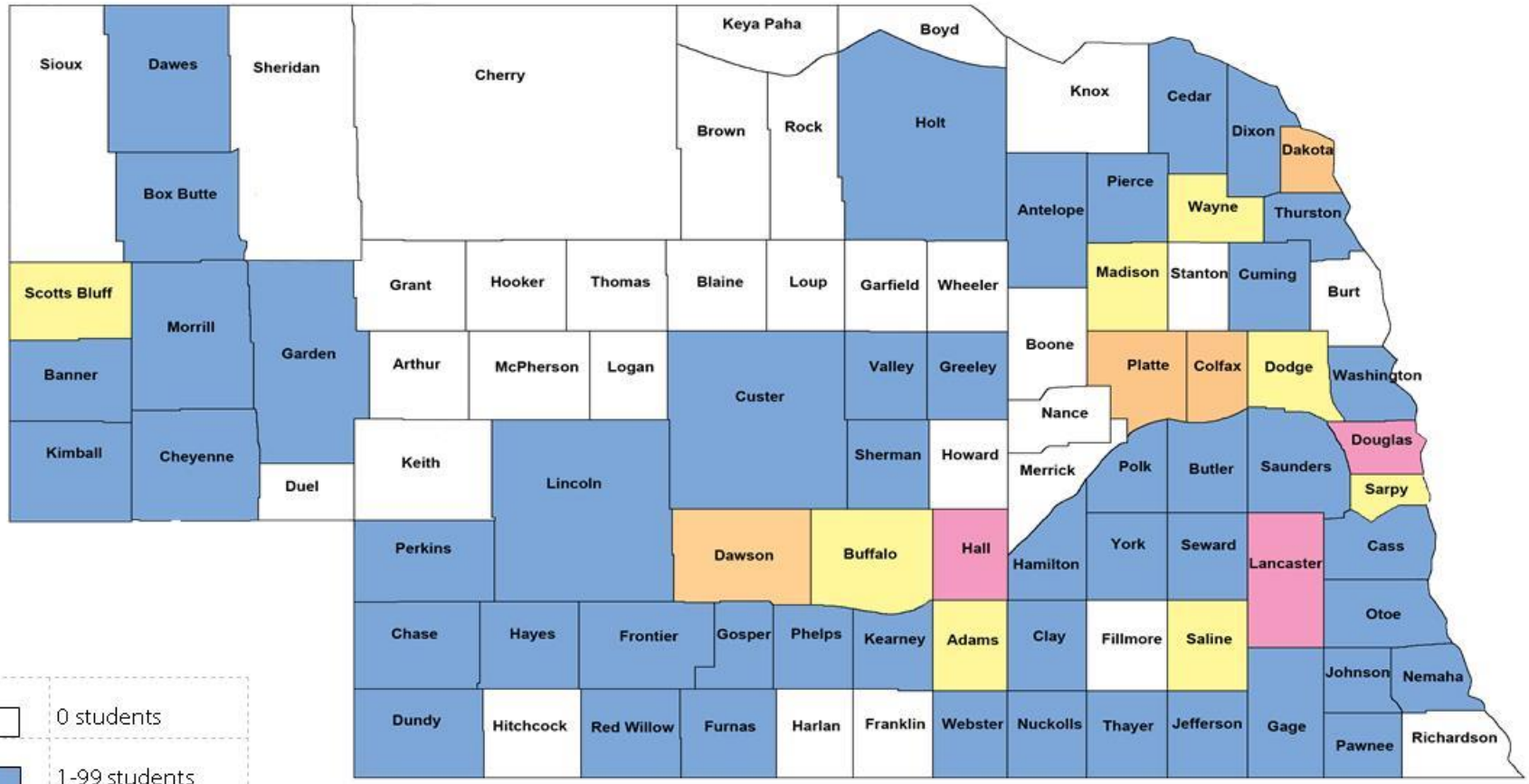
NEBRASKA DEPARTMENT OF EDUCATION

# Topics for Today's Session

- ELL Demographics in Nebraska
- Historic court decisions—how they provide guidance for ELL programs
- Understanding how the Office for Civil Rights (OCR), Title III, and State Rule requirements support ELLs
- Title III: Authorized Activities
  - Limited English Proficient (LEP)
  - Immigrant Education (IE)
- Title III: Supplement, Don't Supplant
  - Assessment
  - Translation Services
- Support for Nonpublics
- Resources

# NEBRASKA DEPARTMENT OF EDUCATION

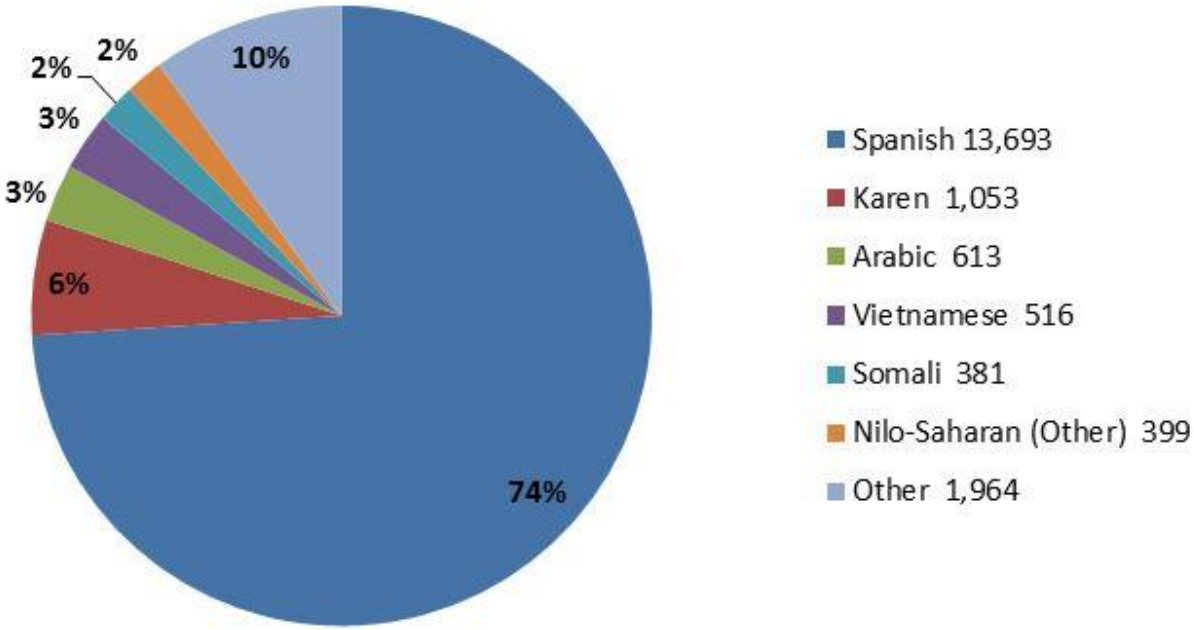
## English Language Learners 2013-2014



## 2013-2014 Languages Spoken

Nebraska schools reported 18,500 Limited English speaking students in Kindergarten through Grade 12 and 103 languages other than English.

### LANGUAGES



# ELL Students in Nebraska

April, 2014

- 121 Districts with one or more ELLs
- 19,922 students identified
- 16 Title III Districts
- 5 Title III Consortia
  - ESU 3
  - ESU 6
  - ESU 7
  - ESU 10
  - ESU 13

# LEP Federal Definition

## (NSSRS Field 95)

- Students who have a native language other than English, OR who come from an environment where a language other than English has had a significant impact on their level of English proficiency,
- AND whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual
- (i) the ability to meet the state's proficient level of achievement on state assessments,
- (ii) the ability to successfully achieve in classrooms where the language of instruction is English, or
- (iii) the opportunity to participate fully in society.

# Federal Definition of Immigrant

Individuals aged 3-21 who were not born in any state AND have not attended a U.S. school for more than 3 years. "State" means each of the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

- Funding is based on a formula which can vary greatly from year to year
- Students identified on NSSRS (Field 89)

# Legal Foundation for Provision of Services

Precedent Setting Court Cases:

- Lau v. Nichols, 1974 (Supreme Court)
  - Measures must be taken to ensure that English is taught in order to provide equal access to educational opportunities
- Canteneda v. Picard, 1981 (5th Circuit)
  - Districts must take appropriate actions to overcome language barriers
- Plyler v. Doe, 1982 (Supreme Court)
  - Public schools are prohibited from denying immigrant students access to a public education

# Lau v. Nichols

- Ruling: San Francisco Public Schools violated the Civil Rights Act of 1964 by denying Chinese students a meaningful opportunity to participate in public education program
  - Violation of the 14th Amendment's Equal Protection Clause for a protected class (National Origin)
- Supreme Court recognized the authority of the Office for Civil Rights (OCR) to establish regulations for compliance

# Lau Class

Figure 1

Source: Historical Photograph Collection of San Francisco Public Library's San Francisco History Center.

# Lau, Continued

William O. Douglas speaking for all the justices in the ruling said:

"There is no equality of treatment merely by providing Chinese-speaking students with the same facilities, textbooks, teachers, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education."

# OCR Memorandum, 1970

- Schools must take affirmative steps to teach the children English so they may effectively participate in the educational program
- Schools must not assign students to special education classes based on a language acquisition need
- Special classes must be designed to meet language skill needs as soon as possible and not lead to a “dead-end” or permanent track
- Schools have responsibility to notify parents of school activities which are called to the attention of other parents in a language they understand

# Equal Educational Opportunity Act (EEOP), 1974

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.

# Casteneda v Pickard, 1981

Parents of Mexican-American children brought suit against the Raymondville Independent School District in Texas alleging instructional practices had violated their children's rights.

The practices included:

- Ability tracking on the basis of discriminatory criteria that segregated their students
- Failing to develop successful bilingual programs

The Fifth Circuit Court agreed with the parents and went on to formulate a test to determine district compliance with the EEOP

# Three Prong Approach: Overcoming Language Barriers

1. Theory: the school must pursue a program based on educational theory recognized as sound by experts in the field
2. Practice: The school must actually implement the program with instructional practices, resources, and personnel necessary to transfer theory into reality
3. Results: The school must not persist in a program that fails to produce results

# Plyler v. Doe, 1982

The Supreme Court struck down a state statute denying funding for undocumented immigrant children based on the 14th Amendment's Equal Protection Clause.

Ruling:

- A state may not deny access to a basic public education to any child residing in the state, whether in the U.S. legally or illegally
  - Denying "innocent children" access to a public education imposes a lifetime hardship on a discrete class of children not accountable for their status
  - The legal status of a student or his or her parent or guardian is irrelevant to the student's entitlement to an elementary and secondary public education
  - Further, the court declared that school systems are not agents for enforcing immigration law

# What Districts May Ask

- Birth certificate or affidavit in lieu of certificate
  - to show age
  - In Nebraska, meant to locate missing children
- Proof of residency within the district
  - See Rule 19
- Data on race/ethnicity
  - Parent/guardian may refuse
- Ensure district personnel charged with enrolling students understand what may be asked to avoid any unintentional “chilling” effect

# What Districts Should Refrain From Asking

- Social security numbers
  - If necessary for some programs, should be clear if it is voluntary or mandatory
  - Explain how the number will be used
  - Uniformly applied to all students and not just to specific groups of students
- Documents showing a student's legal status
  - Review district documents/procedures to ensure they do not have a chilling effect on a student's enrollment

# What do these court cases mean for my ELL Program?

- Establishes that it is a state and local district responsibility to educate English language learners
  - Districts are responsible for implementing a program of services to teach the children English
  - Students must be identified and resources must be devoted to implementing a program based on sound theory that produces results that language barriers are being overcome

# How does the State help?

- In Nebraska, districts submit LEP Plans and are eligible for state aid
  - LB 79-1014 Nebraska Statute
  - LB 1003 Tax Equity Educational Opportunities Support Act
- Development of Rule 15
  - Ensure high quality ELL programs and services
  - Establish consistency among ELL programs
    - Title 92, Nebraska Administrative Code, Chapter 15
    - Rule 15, A Guide for Implementation

# Rule 15 Provisions

- Identification of Students
  - Home Language Survey
  - Initial Screening
- Language Instruction Educational Programs (LIEPs)
  - Systematic English instruction
  - Based on theory recognized by experts in the field
  - Designed to develop English proficiency and knowledge and skills to meet state academic standards
- Staffing Requirements
  - ESL endorsement or professional development
  - Role of paraprofessionals

# Rule 15 Provisions, continued

- Assessments and Accommodations for ELLs
  - Participation in state content testing, with appropriate accommodations
  - Participation in annual state English language proficiency (ELP) assessment
- Exit Requirements
  - K-2 based on ELDA and teacher recommendation
  - 3-12 based on ELP assessment (ELDA) or reading content test (NeSA-R)
- LEP Program Review
  - Examination of district data and practices
  - Report filed with superintendent
  - Condition for school accreditation

# Purpose of Title III

- Limited English Proficient (LEP)
  - Purpose: Develop high levels of academic attainment in English and meet state content standards

- Immigrant Education (IE)
  - Purpose: Provide enhanced instructional opportunities for immigrant children and youth

# Title III Grants
# Required Activities

- Provide high-quality language instruction educational programs (LIEPs) designed to increase:
  - English proficiency
  - Academic achievement in core subjects
- Provide high-quality professional development to classroom teachers designed to:
  - Improve instruction and assessment
  - Help teachers understand and use instructional strategies for LEP children
  - Be of sufficient intensity and duration to have positive and lasting impact on teacher performance

# LEP Authorized Activities

- Upgrading program objectives and effective instruction strategies
- Identifying, acquiring, and upgrading curricula, instruction materials, and educational software
- Providing tutorials and intensified instruction
- Coordinating the ELL program with other relevant programs/services
- Improving English proficiency and academic achievement
- Providing community participation programs, family literacy service and parent outreach activities to assist parents in becoming active participants in helping their children improve academically
- Improve instruction by acquisition/development of educational technology/instructional materials, electronic networks for materials, training, and communication

# Immigrant Education Authorized Activities

- Family literacy, parent outreach, and training activities designed to help parents become active participants in their children's education
- Support for personnel, including teacher aides, who have received training to provide services for immigrant children
- Tutorials, mentoring, academic, or career counseling
- Identification and acquisition of curricular materials, educational software, and technologies to be used in the program
- Basic instruction services (supplies, costs of transportation)
- Other services, including services designed to introduce students to the educational system and civics education
- Activities coordinated with community-based organizations, institutions of higher learning, private sector entities with expertise in working with immigrants to assist parents by offering community services

# LEP Grant

- Purpose is to “supplement not supplant” the core English language program
- 16 districts and 5 consortia qualify
- Students required to take the state’s annual English language proficiency assessment (ELDA) based on ELP Standards
  - New standards and assessment (ELPA21) for SY 2015-16
  - Field test in Feb.-Mar. of 2015 for selected districts

# Title III Accountability

- Annual Measureable Achievement Objectives
  - AMAO I: Measures progress toward proficiency based on improvement on ELDA
  - AMAO II: Measures attainment of proficiency based on ELDA
  - AMAO III: Measures achievement on the State's content standards (NeSA Reading and Math)
    - Based on AYP—ELL subgroup performance at the district level

# Title III Required Forms

Parental Notifications

- Annual notification of program placement
  - Beginning of school year—30 days
  - During the school year—2 weeks
- AMAO Notification
  - Within 30 days of being notified by NDE of not meeting AMAOs
  - Not meeting any one of three AMAOs = “not met”

# TransACT

- Statewide license
  - GenEd Parent Notifications in multiple languages
  - NCLB Parent Notifications in English and Spanish
    - Title III specific forms in multiple languages (access through GenEd folder)
  - Access to translated Home Language Survey questions as required by Rule 15
    - Spanish, Vietnamese, Arabic, Karen, and Somali
  - Support
    - www.transact.com
    - Live chat
    - Customer support 425.977.2100

# Supplement, Not Supplant

- Title III funds must be used to supplement the level of Federal, State, and local funds that, in the absence of Title III funds, would have been expended for programs for LEP children and immigrant children and youth. [Section 3115(g)]
- Intended to ensure that services provided with Title III funds are in addition to, and do not replace or supplant, services that students would otherwise receive.

# First Test of Supplanting: Required by Law

- Supplanting would exist if:
  - A district uses Title III funds to provide services that are required to be made under State or Local laws, or other Federal laws
    - This is why it is important to understand the OCR requirements of providing core services
    - Districts often refer to this as their “Lau Plan”

# Second Test of Supplanting: Prior Year

- Supplanting would exist if:
  - The district if the district uses funds to provide services that it provided in prior years with state, local, or other Federal funds
    - May be rebutted if the district can show that financial cuts have been made across programs and not just focused on ELL students
    - Districts would have to show how such cuts would prevent them from providing ELL program services

# Questions to Ask

- What is the instructional program/services provided to all students?
- What does the district do to meet Lau (OCR) requirements?
- What services is the district required by other Federal, State, and local laws or regulations to provide?
- Was the program/service previously provided with State, Local, and Federal funds?

# Based on the Answers…

- Would the proposed funds be used to provide an instructional program/service that is in addition to or supplemental to LEP students in the absence of a Title III grant?

# Assessment Costs

- Title III cannot be used for any costs associated with English language proficiency assessments.
  - Identification of students (screeners)
  - ELDA
    - Includes costs associated with administration including salaries
  - Cannot use Title III funds for translation and interpretation costs on State achievement assessments, such as for the provision of linguistic accommodations

# Translation Services

- Costs allowed under Title III:
  - Parent notifications for enrollment and AMAOs
    - Postage costs for mailing Title III required notices
    - Personnel costs for holding meetings with families in order to orally relay this information
    - Contract with a translation company that provides these notices
  - **Supplemental** translation and interpretation activities that are not provided by the district for all students and are **specific to Title III**

# Translation Services, continued

- Costs NOT allowed under Title III:
  - Staff administering the home language survey and enrolling students
  - Contracts with a translation company for notices for Federal Programs other than for Title III
  - Communication with the parents regarding child's educational progress as part of a district's regular communication with ALL parents
  - Communication with parents regarding school activities as part of the regular communication with ALL parents

# Nonpublic ELL Students

- Nonpublic consultation process
  - Maybe in conjunction with other Federal Programs
  - Count of eligible LEP students **AND** immigrant students
  - Meaningful conversation about **equitable** services should be both annual and ongoing
  - What services to offer (how, where, by whom)
    - Many nonpublics request assistance with identification of students and professional development
  - How services will be assessed/improved
- LEA maintains control of funds, materials, and equipment

# Language Proficiency Assessment in Nonpublic Schools

- Not required to administer the ELDA
- Use of any assessments should be determined through meaningful consultation with nonpublic school
- **Can use Title III funds to pay for assessment costs (ex. administration of screeners)**
- AMAOs and ELP Standards do not apply to nonpublic schools or their students

# Contact/Resources

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ELL Program Resources

http://www.education.ne.gov/NATLORIGIN/