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SUPREME COURT, STATE OF COLORADO	<div>FILED IN THE SUPREME COURT</div> <div>MAY 30 2006</div> <div>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</div> <div>▲ COURT USE ONLY ▲</div>
2 East 14 th Avenue Denver, CO 80203	
ORIGINAL PROCEEDINGS PURSUANT TO § 1-40-107(2), 1 C.R.S. (2005) Appeal from Title Setting Board	Case No.: 06SA140
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005- 2006, #95 DENISE WALTERS AND JORGE L. GARCIA, OBJECTORS,	
Petitioners,	
v.	
WILLIAM GARCIA AND MARIA ROCHA- SECREST, PROPONENTS AND WILLIAM A. HOBBS, JASON R. DUNN, AND DANIEL L. CARTIN,	Case No.: 06SA140
Respondents.	
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5 th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	
BRIEF OF TITLE BOARD	

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William A. Hobbs, Jason R. Dunn and Daniel L. Cartin, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their brief.

STATEMENT OF THE ISSUES

1. Do the titles fairly and succinctly state the process by which parents may obtain waivers from the English language acquisition requirements?
2. Is the phrase "accelerated English acquisition process" an improper catch phrase?

STATEMENT OF THE CASE

On April 6, 2006, the proponents submitted proposed initiated measure 2005-2006 #95 to amend Colo. Const. art. IX to add a new section 18, entitled "English Language Education for English Learners in Public Schools." On April 19, 2006, the Board found that the measure contained a single subject and set titles. The Objectors filed a motion for rehearing on April 26, 2006. The Board granted the motion in part on May 3, 2006. The Objectors then filed this Petition with the Court on May 10, 2006.

STATEMENT OF THE FACTS

This measure purports to require all public school students in Colorado to be taught in English. Students whose first language is one other than English would

be taught through an accelerated English acquisition program, which generally would not exceed one year. Once English learners acquire an adequate working knowledge of English and are able to perform school work in English, they must be transferred to regular classrooms. Foreign language classes for children who are proficient in English and special education programs for physically- or mentally-impaired students are exempt from the requirements of the proposal. Parents may seek a waiver from the requirements of the proposal. The waiver can be granted if certain prerequisites are met. The proposal requires schools to administer standardized tests to monitor the progress of English learners. The proposal also contains certain enforcement provisions.

SUMMARY OF THE ARGUMENT

The Objectors contend that the titles do not accurately summarize the waiver provisions. The titles describe the waiver provisions as "exempting from such requirements those children whose parents or legal guardians obtain waivers allowing children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers." The titles fairly and accurately describe the waiver provisions of the measure.

The phrase “accelerated English language education process” is not a catch phrase or slogan. It is an objective description of the means by which students whose first language is not English will be taught English.

ARGUMENT

I. THE TITLES FAIRLY AND CLEARLY DESCRIBE THE WAIVER PROCESS DESCRIBED IN THE MEASURE.

In 2000, this Court reviewed a prior iteration of this measure. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-200 #258(A)*, 4 P.3d 1094 (2000)(“#258(A)”). The Court concluded that the measure did not violate the single subject requirement. However, it found that the measure’s titles were not accurate. The titles and summary did not state, paraphrase or summarize that schools were not required to offer bilingual education, thereby effectively depriving those students whose parents wanted them to participate in a bilingual program the opportunity to do so. *Id.* at 1099.

In 2002, proponents offered a different version of the measure. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213 (Colo. 2002)(#21). The Court again found that the measure contained a single subject. The objectors also raised concerns about the adequacy of the Board’s description of the process by which parents could seek a waiver in

order to participate in a bilingual education program. The titles described the process; however, the Court found that the Board's recitation of the features of the waiver process "tend[ed] to overwhelm and obscure the inevitable outcome of the waiver process when all of the provisions are properly taken into account." *Id.* at 221. The Court viewed the measure as authorizing waivers only under very limited circumstances, thereby virtually eliminating bilingual education as a viable parental and school district option. The Court described the waiver provisions in #21 as follows:

Except for students granted waivers under subsection (4), there will be no bilingual education courses. Initiatives #21 and #22, subsec. (3). Subsection (4) details the requirements for such a waiver: (1) schools may only grant waivers in three situations to children who already possess good English-language skills, to children who are least ten years old, or to children with special physical or psychological needs, *over and above the child's lack of English proficiency*, subsec. 4(b)(I)-(III); (2) parents (or legal guardians) must personally visit the school to apply for the waiver, where they will be provided with a full description of the education options for their child, subsec. (4)(a); (3) the waiver process must be renewed every year, subsec. (4)(b)(III); (4) a waiver for special needs may only be applied for after the student has completed thirty instructional days; (5) any decision to grant a waiver is subject to the approval of the local school superintendent; and (6) the existence of special needs does not compel a waiver.

Id. at 220. The Court found that the titles did not adequately convey the narrow circumstances under which waivers could be granted.

The waiver provisions in the measure now before this Court are significantly less stringent. Among other things:

- Access to the bilingual education is not limited to only certain categories of students who are English learners. Instead, the subsection 5 of the measure states, “Students who may be eligible for a waiver *include*: Students who are ten years of age or older, and students with special needs.” (Emphasis added.)
- There is no requirement that the request for waiver must be renewed annually.
- Special needs students are not required to attend regular classes for thirty days prior to applying for a waiver.
- The granting of a waiver is not left to the unfettered discretion of the local school superintendent. Instead, the decision must be made in a manner consistent with rules established by the State Board of Education. These rules must consider the best interests of the child.

The measure does retain certain limitations from the prior measure. The parents must make a written request for a waiver. The waiver cannot be granted unless the parent or legal guardian personally visits the school to apply for the waiver. The parent or legal guardian must be given a full description, in a language they can understand, of the educational materials to be used in the different education programs and of all the educational opportunities available to the child. Schools are not required to offer bilingual programs unless that have twenty or more students of the same grade level who have received waivers. If a school does not offer a bilingual program, students with waivers may transfer to schools that have bilingual programs.

Contrary to the provisions in #21, the effect on the availability of bilingual programs cannot be gauged. The determination of the standards under which students may qualify is left to the State Board of Education. These standards will not be set until the State Board of Education promulgates its rules. Moreover, the range of students who may be eligible is not as limited. Thus, students who may be eligible for waiver "include" students ten years or older and students with special needs. *See, Common Cause v. Meyer*, 758 P.2d 153, 164 (Colo. 1988) (word "includes" is a term of extension or enlargement) Because the ultimate

impact of the measure cannot be determined until implementing rules are promulgated, the Board could not properly state that the waiver provisions virtually eliminate bilingual education as a viable option.

The titles in this case do not suffer the same flaws that the Court found in #21. They do not merely repeat the terms of the measure. Instead, the titles fairly and accurately summarize the measure. They provide:

...exempting from such requirements those children whose parents or legal guardians obtain waivers allowing the children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers; requiring schools that grant any waivers to offer bilingual education to offer bilingual education or other educational methodologies when they have at least twenty students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered...

The language of the titles is similar in structure and content to the language that the Court used in #21 to describe the waiver process. The Court stated:

Parents or legal guardians may seek to exempt their children from the effect of this amendment only by seeking a waiver from the child's school. The school can only grant the waiver in very restrictive circumstances identified in the amendment and the school can deny the waiver for any reason or no reason.

In the present case, the Board used the word “restrictive” rather than the phrase “very restrictive”. It eliminated mention of the unfettered discretion by the schools because the schools would not have unfettered discretion. It noted that bilingual classes may not be available in all schools and children who are granted waivers may transfer to other schools where such programs exist.

For these reasons, the Court must conclude that the titles fairly, accurately and succinctly advise the signers and voters about the waiver provisions.

II. THE MEASURE DOES NOT CONTAIN A CATCH PHRASE

The Objectors next contend that the phrase “accelerated English acquisition process” constitutes a “catch phrase.” For the following reasons, the Court must reject this claim. The Court in #258(A) summarized the analysis it uses to determine whether a title includes a catch phrase. *Id.* 4 P.3d at 1100. “‘Catch phrases’ are words that work in a proposal’s favor without contributing to voter understanding.” *Id.* Catch phrases may form the basis of slogan by those who campaign for or against an initiated measure. “Slogans are catch phrase tailored for political campaigns—brief striking phrases for use in advertising or promotion.” *Id.* Such phrases “encourage prejudice in favor of the issue, and, thereby distract voters

from consideration of the proposal's merits." *Id.* The existence of a catch phrase or slogan will be determined in the context of contemporary political debate. *Id.*

In #258(A), the Court found that the phrase "as rapidly and effectively as possible", wording in the measure itself, constituted a catch phrase. These words were a catch phrase because "[t]hey mask[ed] the policy question whether the most rapid and effective way to teach English to non-English speaking children is through English immersion." *Id.*

The Objectors likely will contend that the phrase "accelerated English acquisition process" is not substantively different from "as rapidly and effectively as possible." The Court must reject this argument. Based upon the fate of a prior version of this measure, there is no evidence the phrase "accelerated English acquisition process" likely will encourage prejudice, distract voters from the merits of the measure, or be used as in campaigns supporting or opposing the measure.

Subsequent to the Court's decision in #258, its proponents collected sufficient signatures to place a revised version of the measure on the ballot. 2002 *Ballot Information Booklet*, Research Publication No. 502-10 (2002) 71. (Attached hereto) The findings and declaration stated, "Therefore it is resolved that: All children in Colorado public schools shall be taught English as rapidly and

effectively as possible.” *Id.* at p. 72. The booklet was mailed to all voters. There is no evidence that the term was used as a catch phrase by proponents or opponents. The fact that the Colorado electorate defeated the measure signifies that the language did not trigger a favorable response.

Moreover, the phrase “accelerated English acquisition process”, particularly when read in context, is merely descriptive and is not a catch phrase. 258(4), 4 P.3d at 1100 (“task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal”). Section 4 of the measure states, “Children who are English learners shall be educated through accelerated English acquisition during a temporary transition period not normally intended to exceed one school year.” The titles state, “requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less.” Both the measure and the titles convey the measure’s goal is to help children whose first language is not English to quickly acquire English skills.

There does not appear to be any significant dispute that the process is accelerated. Again, history is a guide. Proponents of the measure presented to the voters in 2002 argued that “[u]nder the proposal, English learners will be taught in

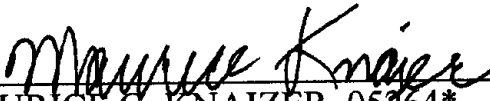
English and placed into a school's regular academic program after one year." *2002 Ballot Information Booklet*, p. 20. The opponents agreed. "The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year." *Id.* at p. 21. Thus, both proponents and opponents agreed that the process of learning was accelerated.

The measure presented to the Court here contains the same one year limit. The Board's use of the phrase "accelerated English acquisition process" is merely a description of the process. The Court must reject the Objectors' argument.

CONCLUSION

The Board's titles reflect the content of the measure. The Court should approve the titles.

JOHN W. SUTHERS
Attorney General


MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

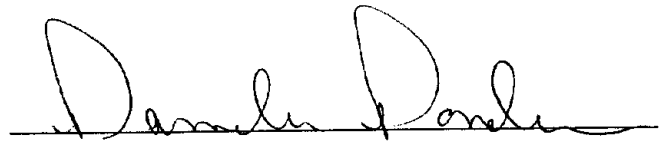
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within BRIEF OF TITLE BOARD
upon all parties herein by depositing copies of same in the United States mail, Express
Mail, postage prepaid, at Denver, Colorado, this 30th day of May
2006 addressed as follows:

Edward Ramey
633 17th Street, Suite 2200
Denver, CO 80202

William Garcia
912 8th Avenue
Greeley, CO 80631

Maria Rocha-Secrest
912 8th Avenue
Greeley, CO 80631

A handwritten signature in black ink, appearing to read "Daniel D. D. D.", written over a horizontal line.

2002 BALLOT INFORMATION BOOKLET

Analysis of Statewide Ballot Issues and Recommendations on Retention of Issues

Para recibir una copia del Folleto de Información de Balota de 2002 en español, llame al número de teléfono de contestación atendido las 24 horas de la línea 1-800-441-1438 en el área metropolitana de Denver o al 303-866-2247 en el área de Denver).

STATEWIDE ELECTION DAY IS
Tuesday, November 5, 2002

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 21, 2002)

**A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and
a NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.**

AMENDMENT 31
ENGLISH LANGUAGE EDUCATION

The proposed amendment to the Colorado Constitution:

- ◆ requires that all public school students be taught in English unless they are exempted under the proposal;
- ◆ requires students who do not speak English (English learners) to be taught English through sheltered English language immersion programs and to be transferred to a regular classroom, generally after one year, unless a waiver is granted;
- ◆ allows parents or legal guardians to request a waiver from English immersion requirements under limited conditions and gives schools the power to approve or deny the request;
- ◆ authorizes a parent or legal guardian to sue for enforcement of the proposal and provides detailed penalties for teachers, administrators, and school board members; and
- ◆ requires all English learners in grades two through twelve to be tested annually in English using a national test of various academic subjects.

Background

Current federal and state laws require school districts to identify English learners, to test their English proficiency annually, and to establish programs to teach these students the English skills necessary to participate in a school's regular education program. Over 70,000 public school students, or approximately 9 percent of Colorado's public school enrollment, qualify as English learners. Generally, these students receive English language assistance through one of the following types of programs.

- **English as a Second Language:** In English as a Second Language (ESL) programs, English learners are taught entirely in English or mainly in English with some native language assistance. Typically, ESL classes include students with different native languages. English learners may attend the ESL program for a part of the day to work strictly on English skills, or attend for a full day and focus both on English and other academic subjects.

- **Bilingual education programs:** In bilingual programs, English learners are taught academic subjects in their native language while learning English. Bilingual classes usually have students who share the same native language. The length and content of bilingual programs vary, with some programs emphasizing the development of native language skills more than others.
- **Dual language programs or dual immersion programs:** In dual language programs, subjects are taught in two languages in order to develop proficiency in both languages. Students in these programs may be fluent in English or be English learners.

Proposal for English immersion programs. The proposal requires school districts to teach English learners in English immersion programs. In these immersion programs, students will be taught English and other academic subjects in English at a level appropriate to their language skills. Generally, the length of time for students to participate in the program is one year, after which time students will begin attending regular classes. School districts may place English learners of different ages, but with similar English skills, in the same classroom. The proposal's requirements do not apply to foreign language programs or to special education programs.

Parents or legal guardians may request a waiver from the English immersion program for their child. Students who may be eligible for a waiver include: students who already possess adequate English skills, students who are ten years of age or older, and students with special needs. School officials decide whether to grant or deny the request for the waiver. Schools in which twenty or more students of the same grade level have received a waiver are required to offer a different type of program, such as a bilingual program. In all other cases, students with a waiver may transfer to a school that offers a different type of program of instruction.

Parents or legal guardians of any Colorado public school student may sue for enforcement of the proposal. Additionally, a school district employee or board member may be sued and may be held personally liable for "willfully and repeatedly" failing to implement English immersion programs. A final enforcement provision concerns parents of children with special needs. Parents who receive a waiver for their child with special needs have a ten-year window during which they may sue school officials for issuing the waiver, if the parents conclude that the waiver injured the education of their child.

Arguments For

1) Learning English as quickly as possible ensures that English learners are not left behind their peers. Current programs, including bilingual education, have not adequately addressed the needs of English learners, and this proposal provides a different approach. Under the proposal, English learners will be taught in English and placed into a school's regular academic program after one year. Learning English quickly will enable English learners to develop the necessary skills and knowledge to improve their future education and career choices.

2) Colorado needs a uniform statewide policy for teaching English learners. English learners who move between school districts may encounter different programs, which can delay their academic progress. Further, students should not be used as a part of educational experiments, as school districts try out different approaches to English instruction. The proposal focuses on students' acquisition of solid English skills, rather than the maintenance of native language skills, and provides a uniform philosophy for school districts. School districts retain enough flexibility to tailor programs to their students' needs.

3) Once English learners become reasonably fluent in English, they will be transferred into regular classrooms, increasing their opportunities to practice and use English. In addition, cultural awareness and interaction between children of different backgrounds will enhance the education of all children.

Arguments Against

1) The proposal restricts parental choice and local control of education. Many parents want their children to develop skills in more than one language so that they will be better prepared to live and work within a global economy. By requiring that all instruction be in English, the proposal limits the ability of school districts to offer innovative language programs, even if the programs are effective and respond to the needs and wishes of the school community. In addition, school districts may be cautious in granting waiver requests from parents seeking different programs because of the possibility of legal action against the school and its employees. Any teacher, administrator, or school board member who is found in violation of this amendment is subject to a lawsuit, and restricted from teaching or holding public office for five years. Parents retain the right to sue school district employees and school board members for up to ten years.

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2) The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year. However, the speed by which a child becomes fluent in English depends on the child's age, cultural circumstances, previous education, and socioeconomic background. Some children may take longer than one year to achieve a level of proficiency comparable to their English-speaking peers. If programs are too rigid, students' individual needs may not be met.

3) The proposal adds another layer of testing requirements for English learners. School districts will have to test English learners in English every year using a national test in addition to the Colorado Student Assessment Program (CSAP) tests. The additional testing for English learners means further administrative expense and time away from classroom teaching.

Estimate of Fiscal Impact

While the proposal will not increase or decrease state expenditures, local school districts' expenditures will be impacted. Under the proposal, some school districts will have to revamp their curricula, staff assignments, and testing procedures. However, the net impact to all school districts cannot be predicted because the impacts will vary depending on how each individual school district implements the proposal.

REFERENDUM A EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS

The proposed amendment to the Colorado Constitution:

- ◆ eliminates term limits for elected district attorneys.

Background

Term limits. Colorado has term limits for elected state and local officials. The Colorado Constitution limits the length of office for the governor, lieutenant governor, secretary of state, state treasurer, and attorney general to two consecutive four-year terms. Members of the Colorado legislature may serve up to four consecutive two-year terms in the House of Representatives and two consecutive four-year terms

Text of Proposal:

Be it Enacted by the People of the State of Colorado:

Article VII of the Constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 13. Colorado election day voter registration.

(1) Purpose. THE PEOPLE OF THE STATE OF COLORADO DECLARE THAT INCREASING THE NUMBER OF COLORADO CITIZENS WHO VOTE IS BENEFICIAL TO THE COMMUNITY, AND THAT ALLOWING ELIGIBLE CITIZENS TO REGISTER AND VOTE ON ELECTION DAY WILL INCREASE THE NUMBER OF CITIZENS VOTING.

(2) Election Day Registration. EFFECTIVE JANUARY 1, 2004, AN ELIGIBLE COLORADO CITIZEN MAY REGISTER TO VOTE ON ANY DAY THAT A VOTE MAY BE CAST AT ANY ELECTION. AN ELIGIBLE COLORADO CITIZEN MAY REGISTER AT THE POLLING PLACE FOR THE PRECINCT IN WHICH HE OR SHE RESIDES, AT THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH HE OR SHE RESIDES, OR AT ANY OTHER LOCATION WHICH MAY BE DESIGNATED BY SUCH COUNTY CLERK AND RECORDER, AND MAY CAST A BALLOT AT SUCH ELECTION ON THAT DAY. AN ELIGIBLE COLORADO CITIZEN REGISTERING TO VOTE UNDER THIS SECTION MUST APPEAR IN PERSON AT SUCH LOCATION AND MUST PRESENT A CURRENT VALID COLORADO DRIVER'S LICENSE OR STATE IDENTIFICATION CARD OR OTHER APPROPRIATE DOCUMENTATION THAT THE SECRETARY OF STATE SHALL APPROVE.

(3) Enforcement. IN IMPLEMENTING THIS MEASURE, THE GENERAL ASSEMBLY SHALL ADOPT ALL NECESSARY ADDITIONAL PROTECTIONS AGAINST ELECTION FRAUD.

**AMENDMENT 31
ENGLISH LANGUAGE EDUCATION**

Ballot Title: An amendment to the Colorado constitution concerning English-language education in Colorado public schools, and, in connection therewith, requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be placed in an English immersion program that is intended to last one year or less and, if successful, will result in placement of such children in ordinary classrooms; exempting from such requirements those children whose parents or legal guardians obtain annual waivers allowing the children to transfer to classes using bilingual education or other educational methodologies, but making such waivers very difficult to obtain because the school can grant them only in very restrictive

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circumstances and can deny them for any reason or no reason thereby reducing the likelihood that bilingual education will be used; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least 20 students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered, with the cost of such transfer, excluding transportation, to be provided by the state; allowing a parent or legal guardian to sue public employees granting a waiver if the parent or guardian later concludes that the waiver was granted in error and injured the child's education; creating severe legal consequences identified in the amendment for such public employees who willfully and repeatedly refuse to implement the amendment; and requiring schools to test children learning English, enrolled in second grade or higher, to monitor their progress, using a standardized nationally-normed test of academic subject matter given in English.

Text of Proposal:

Be it enacted by the People of the State of Colorado:

SECTION 1. Article IX of the Constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 18. English Language Education for Children in Public Schools.

(1) Findings and declarations. THE PEOPLE OF COLORADO FIND AND DECLARE THAT:

(a) THE ENGLISH LANGUAGE IS THE COMMON PUBLIC LANGUAGE OF THE UNITED STATES OF AMERICA AND OF THE STATE OF COLORADO. IT IS SPOKEN BY THE VAST MAJORITY OF COLORADO RESIDENTS, AND IS ALSO THE LEADING WORLD LANGUAGE FOR SCIENCE, TECHNOLOGY, AND INTERNATIONAL BUSINESS, THEREBY BEING THE LANGUAGE OF ECONOMIC OPPORTUNITY; AND

(b) IMMIGRANT PARENTS ARE EAGER TO HAVE THEIR CHILDREN ACQUIRE A GOOD KNOWLEDGE OF ENGLISH, THEREBY ALLOWING THEM TO FULLY PARTICIPATE IN THE AMERICAN DREAM OF ECONOMIC AND SOCIAL ADVANCEMENT; AND

(c) THE GOVERNMENT AND THE PUBLIC SCHOOLS OF COLORADO HAVE A MORAL OBLIGATION AND A CONSTITUTIONAL DUTY TO PROVIDE ALL OF COLORADO'S CHILDREN, REGARDLESS OF THEIR ETHNICITY OR NATIONAL ORIGINS, WITH AN AVAILABLE PUBLIC SCHOOL EDUCATION NECESSARY TO BECOME PRODUCTIVE MEMBERS OF OUR SOCIETY. FLUENCY AND LITERACY IN THE ENGLISH LANGUAGE ARE AMONG THE MOST IMPORTANT PARTS OF SUCH AN EDUCATION; AND

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TITLES AND TEXT

(d) THE PUBLIC SCHOOLS OF COLORADO OFTEN DO AN INADEQUATE JOB OF EDUCATING IMMIGRANT CHILDREN, WASTING FINANCIAL RESOURCES ON COSTLY EXPERIMENTAL NATIVE LANGUAGE PROGRAMS WHOSE FAILURE OVER PAST DECADES IS DEMONSTRATED BY THE CURRENT HIGH DROP-OUT RATES AND LOW ENGLISH LITERACY LEVELS OF MANY IMMIGRANT CHILDREN; AND

(e) YOUNG IMMIGRANT CHILDREN CAN EASILY ACQUIRE FULL FLUENCY IN A NEW LANGUAGE, SUCH AS ENGLISH, IF THEY ARE HEAVILY EXPOSED TO THAT LANGUAGE IN THE CLASSROOM AT AN EARLY AGE; AND

(f) THEREFORE IT IS RESOLVED THAT: ALL CHILDREN IN COLORADO PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH AS RAPIDLY AND EFFECTIVELY AS POSSIBLE.

(2) Definitions. IN THIS SECTION,

(a) "BILINGUAL EDUCATION," ALSO KNOWN AS NATIVE LANGUAGE INSTRUCTION, MEANS A LANGUAGE ACQUISITION PROCESS FOR STUDENTS IN WHICH ALL OR SUBSTANTIAL PORTIONS OF THE INSTRUCTION, TEXTBOOKS, OR TEACHING MATERIALS ARE IN THE CHILD'S NATIVE LANGUAGE OTHER THAN ENGLISH.

(b) "ENGLISH LANGUAGE CLASSROOM" MEANS A CLASSROOM IN WHICH THE LANGUAGE OF INSTRUCTION USED BY THE TEACHING PERSONNEL IS OVERWHELMINGLY THE ENGLISH LANGUAGE, AND IN WHICH ALL SUCH TEACHING PERSONNEL ARE FLUENT AND LITERATE IN THE ENGLISH LANGUAGE. ENGLISH LANGUAGE CLASSROOMS ENCOMPASS BOTH ENGLISH LANGUAGE MAINSTREAM CLASSROOMS AND SHELTERED ENGLISH IMMERSION CLASSROOMS.

(c) "ENGLISH LANGUAGE MAINSTREAM CLASSROOM" MEANS A STANDARD CLASSROOM, ONE IN WHICH THE STUDENTS EITHER ARE NATIVE ENGLISH LANGUAGE SPEAKERS OR ALREADY HAVE ACQUIREDED REASONABLE FLUENCY IN ENGLISH.

(d) "ENGLISH LEARNER" MEANS A CHILD WHO IS NOT FLUENT IN ENGLISH AND WHO IS NOT CURRENTLY ABLE TO PERFORM ORDINARY CLASSROOM WORK IN ENGLISH.

(e) "SHELTERED ENGLISH IMMERSION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR STUDENTS IN WHICH NEARLY ALL CLASSROOM INSTRUCTION IS IN ENGLISH BUT WITH THE CURRICULUM AND PRESENTATION DESIGNED FOR CHILDREN WHO ARE LEARNING THE LANGUAGE. BOOKS AND INSTRUCTIONAL MATERIALS ARE IN ENGLISH AND ALL READING, WRITING, AND SUBJECT MATTER ARE TAUGHT IN ENGLISH. ALTHOUGH TEACHING PERSONNEL MAY USE A MINIMAL AMOUNT OF THE CHILD'S NATIVE LANGUAGE WHEN NECESSARY, NO SUBJECT MATTER SHALL BE TAUGHT IN ANY LANGUAGE OTHER THAN ENGLISH, AND CHILDREN IN THIS PROGRAM LEARN TO READ AND WRITE SOLELY IN ENGLISH. OTHER ASPECTS OF THIS EDUCATIONAL METHODOLOGY SHALL FOLLOW THE STANDARD DEFINITION OF "SHELTERED ENGLISH" OR "STRUCTURED ENGLISH" FOUND IN STANDARD EDUCATIONAL LITERATURE.

(3) English language education. SUBJECT TO THE EXCEPTIONS PROVIDED IN SUBSECTION (4) OF THIS SECTION ALL CHILDREN IN COLORADO PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH BY BEING TAUGHT IN ENGLISH AND ALL CHILDREN SHALL BE PLACED IN ENGLISH LANGUAGE CLASSROOMS. CHILDREN

WHO ARE ENGLISH LEARNERS SHALL BE EDUCATED THROUGH SHELTERED ENGLISH IMMERSION DURING A TEMPORARY TRANSITION PERIOD NOT NORMALLY INTENDED TO EXCEED ONE YEAR. PUBLIC SCHOOLS SHALL BE PERMITTED BUT NOT REQUIRED TO PLACE IN THE SAME CLASSROOM ENGLISH LEARNERS OF DIFFERENT AGES BUT WHOSE DEGREE OF ENGLISH PROFICIENCY IS SIMILAR. PUBLIC SCHOOLS SHALL BE ENCOURAGED TO MIX TOGETHER IN THE SAME CLASSROOM ENGLISH LEARNERS FROM DIFFERENT NATIVE-LANGUAGE GROUPS BUT WITH THE SAME DEGREE OF ENGLISH FLUENCY. ONCE ENGLISH LEARNERS HAVE ACQUIRED REASONABLE FLUENCY IN ENGLISH AND ARE ABLE TO PERFORM ORDINARY SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE MAINSTREAM CLASSROOMS. AS MUCH AS POSSIBLE, PER PUPIL SUPPLEMENTAL FUNDING FOR ENGLISH LEARNERS SHALL AT LEAST BE MAINTAINED. FOREIGN LANGUAGE CLASSES FOR CHILDREN WHO ARE NOT ENGLISH LEARNERS SHALL NOT BE AFFECTED, NOR SHALL SPECIAL EDUCATIONAL PROGRAMS FOR PHYSICALLY- OR MENTALLY-IMPAIRED STUDENTS BE AFFECTED.

(4) Parental waivers. (a) THE REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION MAY BE WAIVED WITH THE PRIOR WRITTEN INFORMED CONSENT, TO BE PROVIDED ANNUALLY, OF THE CHILD'S PARENTS OR LEGAL GUARDIAN UNDER THE CIRCUMSTANCES SPECIFIED IN THIS SUBSECTION (4). SUCH INFORMED CONSENT SHALL REQUIRE THAT SAID PARENTS OR LEGAL GUARDIAN INITIATE THE WAIVER PROCESS AND PERSONALLY VISIT THE SCHOOL TO APPLY FOR THE WAIVER AND THAT THEY THERE BE PROVIDED A FULL DESCRIPTION IN A LANGUAGE THEY CAN UNDERSTAND OF THE EDUCATIONAL MATERIALS TO BE USED IN THE DIFFERENT EDUCATIONAL PROGRAM CHOICES AND ALL THE PUBLIC SCHOOL EDUCATIONAL OPPORTUNITIES AVAILABLE TO THE CHILD. IF A PARENTAL WAIVER HAS BEEN GRANTED, THE AFFECTED CHILD MAY BE TRANSFERRED TO CLASSES TEACHING ENGLISH AND OTHER SUBJECTS THROUGH BILINGUAL EDUCATION TECHNIQUES OR OTHER GENERALLY RECOGNIZED EDUCATIONAL METHODOLOGIES PERMITTED BY LAW. INDIVIDUAL SCHOOLS IN WHICH TWENTY STUDENTS OR MORE OF A GIVEN GRADE LEVEL RECEIVE A WAIVER SHALL BE REQUIRED TO OFFER SUCH A CLASS; IN ALL OTHER CASES, SUCH STUDENTS SHALL BE PERMITTED TO TRANSFER TO A PUBLIC SCHOOL IN WHICH SUCH A CLASS IS OFFERED, WITH THE COSTS OF SUCH TRANSFER, EXCLUDING TRANSPORTATION, TO BE PROVIDED BY THE STATE. SCHOOLS MAY REFUSE TO APPROVE ANY SUCH WAIVER APPLICATION AT THEIR SOLE DISCRETION, WITHOUT ANY NEED TO INDICATE CAUSE.

(b) THE CIRCUMSTANCES IN WHICH A PARENTAL EXCEPTION WAIVER MAY BE APPLIED FOR UNDER THIS SECTION ARE AS FOLLOWS:

(1) CHILDREN WHO ALREADY KNOW ENGLISH: THE CHILD ALREADY POSSESSES GOOD ENGLISH LANGUAGE SKILLS, AS MEASURED BY ORAL EVALUATION OR STANDARDIZED TESTS OF ENGLISH VOCABULARY COMPREHENSION, READING, AND WRITING, IN WHICH THE CHILD SCORES APPROXIMATELY AT OR ABOVE THE STATE AVERAGE FOR HIS OR HER GRADE LEVEL OR AT OR ABOVE THE FIFTH GRADE AVERAGE, WHICHEVER IS LOWER: OR

(II) OLDER CHILDREN: THE CHILD IS AGE TEN YEARS OR OLDER, AND IT IS THE INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND EDUCATIONAL STAFF THAT AN ALTERNATE COURSE OF EDUCATIONAL STUDY WOULD BE BETTER SUITED TO THE CHILD'S OVERALL EDUCATIONAL PROGRESS AND RAPID ACQUISITION OF BASIC ENGLISH LANGUAGE SKILLS; OR

(III) CHILDREN WITH SPECIAL INDIVIDUAL NEEDS: THE CHILD ALREADY HAS BEEN PLACED FOR A PERIOD OF NOT LESS THAN THIRTY CALENDAR DAYS DURING THAT PARTICULAR SCHOOL YEAR IN AN ENGLISH LANGUAGE CLASSROOM AND IT IS SUBSEQUENTLY THE INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND EDUCATIONAL STAFF THAT THE CHILD HAS SUCH SPECIAL AND INDIVIDUAL PHYSICAL OR PSYCHOLOGICAL NEEDS, ABOVE AND BEYOND THE CHILD'S LACK OF ENGLISH PROFICIENCY, THAT AN ALTERNATE COURSE OF EDUCATIONAL STUDY WOULD BE BETTER SUITED TO THE CHILD'S OVERALL EDUCATIONAL DEVELOPMENT AND RAPID ACQUISITION OF ENGLISH. A WRITTEN DESCRIPTION OF NO FEWER THAN TWO HUNDRED FIFTY WORDS DOCUMENTING THESE SPECIAL INDIVIDUAL NEEDS FOR THE SPECIFIC CHILD MUST BE PROVIDED AND PERMANENTLY ADDED TO THE CHILD'S OFFICIAL SCHOOL RECORDS, AND IN ORDER TO BE APPROVED THE WAIVER APPLICATION MUST CONTAIN THE ORIGINAL AUTHORIZING SIGNATURES OF BOTH THE SCHOOL PRINCIPAL AND THE LOCAL SCHOOL SUPERINTENDENT. WAIVERS GRANTED UNDER THIS SUBPARAGRAPH CANNOT BE APPLIED FOR UNTIL AFTER THIRTY INSTRUCTIONAL DAYS OF A GIVEN SCHOOL YEAR HAVE PASSED, AND THIS WAIVER PROCESS MUST BE RENEWED EACH AND EVERY SCHOOL YEAR. ANY SUCH DECISION TO ISSUE SUCH AN INDIVIDUAL WAIVER IS TO BE MADE SUBJECT TO THE EXAMINATION AND APPROVAL OF THE LOCAL SCHOOL SUPERINTENDENT, UNDER GUIDELINES ESTABLISHED BY AND SUBJECT TO THE REVIEW OF THE LOCAL BOARD OF EDUCATION. THE EXISTENCE OF SUCH SPECIAL INDIVIDUAL NEEDS SHALL NOT COMPEL ISSUANCE OF A WAIVER, AND THE PARENTS SHALL BE FULLY INFORMED OF THEIR OWN RIGHT TO REFUSE TO AGREE TO A WAIVER.

(5) Legal standing and parental enforcement. AS DETAILED IN SUBSECTIONS (3) AND (4) OF THIS SECTION, ALL COLORADO SCHOOL CHILDREN HAVE THE RIGHT TO BE PROVIDED AT THEIR PUBLIC SCHOOL OF CHOICE WITH AN ENGLISH LANGUAGE PUBLIC EDUCATION. THE PARENT OR LEGAL GUARDIAN OF ANY COLORADO SCHOOL CHILD SHALL HAVE LEGAL STANDING TO SUE FOR ENFORCEMENT OF THE PROVISIONS OF THIS SECTION, AND IF SUCCESSFUL SHALL BE AWARDED NORMAL AND CUSTOMARY ATTORNEY FEES AND ACTUAL AND COMPENSATORY DAMAGES, BUT NOT PUNITIVE OR CONSEQUENTIAL DAMAGES. ANY SCHOOL DISTRICT EMPLOYEE OR SCHOOL BOARD MEMBER WHO WILLFULLY AND REPEATEDLY REFUSES TO IMPLEMENT THE TERMS OF THIS SECTION MAY BE HELD PERSONALLY LIABLE FOR ATTORNEY FEES AND ACTUAL AND COMPENSATORY DAMAGES BY THE CHILD'S PARENTS OR LEGAL GUARDIAN, AND CANNOT BE SUBSEQUENTLY INDEMNIFIED FOR SUCH ASSESSED DAMAGES BY ANY PUBLIC OR PRIVATE THIRD PARTY. ANY INDIVIDUAL FOUND SO LIABLE IN A COURT OF LAW SHALL BE IMMEDIATELY REMOVED FROM OFFICE FOR MALFEASANCE, AND SHALL BE BARRED FROM HOLDING ANY POSITION OF AUTHORITY ANYWHERE WITHIN THE COLORADO GOVERNMENT OR THE PUBLIC SCHOOL SYSTEM FOR A

SUBSEQUENT PERIOD OF FIVE YEARS. PARENTS WHO APPLY FOR AND ARE GRANTED EXCEPTION WAIVERS UNDER SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION STILL RETAIN FOR TEN YEARS THEREAFTER THE FULL LEGAL RIGHT TO SUE THE INDIVIDUALS WHO GRANTED SUCH WAIVERS IF THEY SUBSEQUENTLY CONCLUDE DURING THAT PERIOD THAT THE WAIVERS WERE GRANTED IN ERROR AND ULTIMATELY INJURED THE EDUCATION OF THEIR CHILD.

(6) Standardized testing for monitoring education progress. IN ORDER TO ENSURE THAT THE EDUCATIONAL PROGRESS OF COLORADO STUDENTS IN LEARNING ENGLISH TOGETHER WITH OTHER ACADEMIC SUBJECTS IS PROPERLY MONITORED, A STANDARDIZED, NATIONALLY-NORMED WRITTEN TEST OF ACADEMIC SUBJECT MATTER GIVEN IN ENGLISH SHALL BE ADMINISTERED AT LEAST ONCE EACH YEAR TO ALL COLORADO PUBLIC SCHOOL CHILDREN IN GRADES 2 AND HIGHER WHO ARE ENGLISH LEARNERS. ONLY STUDENTS CLASSIFIED AS SEVERELY LEARNING DISABLED MAY BE EXEMPTED FROM THIS TEST. THE PARTICULAR TEST TO BE USED SHALL BE SELECTED BY THE COLORADO COMMISSIONER OF EDUCATION, AND IT IS INTENDED THAT THE TEST SHALL GENERALLY REMAIN THE SAME FROM YEAR TO YEAR. THE NATIONAL PERCENTILE SCORES OF STUDENTS SHALL BE CONFIDENTIALLY PROVIDED TO INDIVIDUAL PARENTS, AND THE AGGREGATED PERCENTILE SCORES AND DISTRIBUTIONAL DATA FOR INDIVIDUAL SCHOOLS AND SCHOOL DISTRICTS SHALL BE MADE PUBLICLY AVAILABLE ON AN INTERNET WEB SITE; THE SCORES FOR STUDENTS CLASSIFIED AS ENGLISH LEARNERS SHALL BE SEPARATELY SUB-AGGREGATED AND MADE PUBLICLY AVAILABLE THERE AS WELL, WITH FURTHER SUB-AGGREGATION BASED ON THE ENGLISH LEARNER PROGRAM TYPE IN WHICH STUDENTS ARE ENROLLED. SCORES OF STUDENTS WHO ARE NEITHER EXEMPTED NOR TAKE THE TEST SHALL BE REPORTED AS ZERO. ALTHOUGH ADMINISTRATION OF THIS TEST IS REQUIRED SOLELY FOR MONITORING EDUCATIONAL PROGRESS, COLORADO PUBLIC OFFICIALS AND ADMINISTRATORS MAY UTILIZE THESE TEST SCORES FOR OTHER PURPOSES AS WELL IF THEY SO CHOOSE.

(7) Severability. IF A PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

(8) Interpretation. UNDER CIRCUMSTANCES IN WHICH PORTIONS OF THIS STATUTE ARE SUBJECT TO CONFLICTING INTERPRETATIONS, THE FINDINGS AND DECLARATIONS OF SUBSECTION (1) OF THIS SECTION SHALL BE ASSUMED TO CONTAIN THE GOVERNING INTENT OF THIS SECTION.

SECTION 2. Effective date - applicability. This initiative shall take effect upon proclamation of the vote by the Governor, and shall apply to all school terms beginning more than sixty days after such date.

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