

**To: The Lisa Graham Keegan
Superintendent of Public Instruction**

January 16, 2001

**Re: Implementation Time
Line for Proposition 203**

I01-003 (R00-076)

Question Presented

At the general election in November 2000, Arizona voters approved Proposition 203, which made major changes to the requirements for educating children who are learning to speak English. The Department of Education ("Department") has proposed a time line for implementing Proposition 203 which would have curriculum for English language acquisition that complies with the Proposition in place in schools by the beginning of the 2001-2002 school year. You have asked whether this proposed time line complies with the Proposition and federal law.

Summary Answer

Because of the many tasks necessary to complete the state-wide transition from current methods of English language instruction to the methods and procedures required by Proposition 203, the proposal to have programs that comply with Proposition 203 in place in schools by the beginning of the 2001-2002 school year satisfies Proposition 203 and federal law.

Background

In November 2000, Arizona voters passed Proposition 203 which dictates that public schools use certain methods of instruction for limited English proficient ("LEP") students. A stated purpose of Proposition 203 is to help LEP students "acquire a good knowledge of English, thereby allowing them to fully participate in the American Dream." Proposition 203, § 1(2). The initiative repeals existing statutes that allow various methods of teaching English to LEP students-including transitional bilingual programs, structured bilingual programs, bilingual-bicultural programs, and English as a second language programs-and replaces them with a law that generally requires an English immersion program. *Compare* (Former) Arizona Revised Statutes ("A.R.S.") § 15-754(A)(1)-(4) *with* (New) A.R.S. § 15-752. Subject to certain exceptions, the new law requires that "all children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms." A.R.S. §§ 15-752; -753 (allowing parental waivers from English immersion for children who "already know English" and older or special needs children whose educational needs would be better met by alternate methods).

Proposition 203 provides for private enforcement of its provisions. Parents of Arizona school children have legal standing to sue for enforcement and for actual and compensatory damages. A.R.S. § 15-754. In addition, "[a]ny school board member or other elected official or administrator who willfully and repeatedly refuses to implement the terms of this statute may be held personally liable. . . ." *Id.* Individuals found liable under this provision cannot be indemnified by any public

or private third party, and in addition, will be removed from office and barred from holding "any position of authority anywhere within the Arizona public school system" for five years. *Id.*

The Department has proposed an implementation schedule in which schools would begin using the English immersion curriculum required by Proposition 203 by the beginning of the 2001-2002 school year. You advised schools and various officials of your plan to implement Proposition 203 for the 2001-2002 school year in memoranda dated November 13, 2000 and January 10, 2001. According to your opinion request, during the intervening time, the Department intends to assist school districts in identifying successful English immersion programs and their costs and, if appropriate, develop rules to implement Proposition 203. The Department also anticipates that school districts will work on identifying, selecting, and developing curricula that satisfies Proposition 203 during the remainder of the 2000-2001 school year.

Analysis

Proposition 203 became effective when it was signed by the Governor on December 7, 2000. See Ariz. Const. art. IV, Part 1, § 1(5). However, the *effective* date of a statute is not necessarily identical to the date by which the *implementation* of its substantive provisions must be completed. See, e.g., *State ex rel. Jones v. Lockhart*, 76 Ariz. 390, 398, 265 P.2d 447, 452 (1953) ("the date a provision becomes *law* and the date it becomes *operative* may be different").

Proposition 203 leaves open the issue of when it must become operative. Cf. Cal. Educ. Code § 330 (stating that similar law "shall become operative for all school terms which begin more than sixty days following the date on which it becomes effective"). Therefore, the time line for implementing Proposition 203 must be assessed based on reasonableness and the intent of the law. See, e.g., *Watahomigie v. Arizona Bd. of Water Quality Appeals*, 181 Ariz. 20, 30, 887 P.2d 550, 560 (App. 1994) (statute must be read so as to give it a "fair and reasonable meaning"); *Grove v. Arizona Criminal Intelligence Sys. Agency*, 143 Ariz. 166, 169, 692 P.2d 1015, 1018 (App. 1984) (agency action must be reasonable and related to the purpose of the statute).

A state-wide switch from current teaching methods for LEP students to a new method cannot occur overnight. The successful implementation of a new method of instruction requires careful consideration by the Department and by the school district governing boards that are charged with adopting curricula for the schools within a district. See A.R.S. § 15-341(A)(6). In addition, individual schools presumably need time to prepare and plan for implementing the new teaching method. Because of their expertise and experience, the Department and school districts are in the best position to determine an appropriate implementation time line for Proposition 203. See, e.g., *Watahomigie*, 181 Ariz. at 31, 887 P.2d at 561 (agency interpretation of its statutes is given great weight).

The Department's proposed schedule appears to serve the stated purpose of Proposition 203 -- to help LEP students effectively learn English. In addition, the

proposed schedule avoids changing current English acquisition classes mid-year, and therefore should be less disruptive to LEP students than an immediate transition. Because the proposed time line appears to be reasonable and consistent with the stated goals of Proposition 203, the Department's proposal to implement the Proposition in schools by the beginning of the 2001-2002 school year complies with Proposition 203.⁽¹⁾

Furthermore, Proposition 203 must be implemented in a manner that complies with federal law. The federal Equal Educational Opportunities Act ("EEOA") requires any public school to take "appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f); see also *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (Civil Rights Act requires that LEP students be given a meaningful opportunity to participate in educational programs). To comply with the EEOA, the programs and practices used by a school must be "reasonably calculated to implement effectively the educational theory adopted." *Castaneda v. Pickard*, 648 F.2d 989, 1010 (5th Cir. 1981) (emphasis added). Allowing the Department sufficient time to study successful English immersion programs and develop appropriate rules -- and giving schools sufficient time to prepare for the new programs -- will help implement Proposition 203 effectively and thus in a manner that complies with federal law.⁽²⁾

Educators attempting to implement Proposition 203 by the 2001-2002 school year should not be subject to liability under the statute. The Proposition establishes liability for "[a]ny school board member or other elected official or administrator who *willfully and repeatedly refuses* to implement the terms of this statute." (New A.R.S. § 15-754 (emphasis added)). Under the Department's proposed schedule, the process for implementing Proposition 203 is currently under way, and any new curricula based on Proposition 203 should generally be in place in the classroom by the beginning of the 2001-2002 school year. Such a systemic approach to implementing Proposition 203 is not a refusal to implement the Act, much less a willful and repeated refusal. Indeed, effectively implementing Proposition 203 furthers the purpose of the law. In addition, the state law must meet the federal requirement that LEP students be given a meaningful educational opportunity, including *effective* implementation of a school's chosen educational theory. Thus, school board members and other elected officials and administrators should not be subject to personal liability if they are working in good faith toward an appropriate and effective transition to the English immersion teaching method described in Proposition 203. See also A.R.S. § 38-446 (providing that no public officer or employee shall be personally liable for acts taken in good faith reliance on Attorney General opinions).

Conclusion

The Department's proposed time line of completing the transition to programs that comply with Proposition 203 by the beginning of the 2001-2002 school year comports with the requirements of both Proposition 203 and federal law.

Attorney General

1. School district governing boards' implementation plans must also be reasonable and further the objectives of Proposition 203. Certain schools may have individual needs that require a different implementation schedule, and to the extent those different schedules are reasonable and allow for an effective implementation of the teaching method required by Proposition 203, they are most likely appropriate under the new statutory scheme.
2. This Opinion does not address the application of Proposition 203 to Native American language programs in public schools on tribal lands. This Office is currently reviewing that issue at the request of Senator Jack Jackson and will issue a separate Opinion on the subject.

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