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BILINGUAL EDUCATION: A PRIVILEGE OR A RIGHT? AN ILLINOIS REPORT

In 1971, the United States Commission on Civil Rights published the first of six reports on the educational problems of Mexican American children in the Southwest.¹ The Latino population of Chicago, feeling that it was being ignored, demanded attention to its problems. The result was the appointment by the Illinois State Advisory Committee to the United States Commission on Civil Rights of a subcommittee to develop a project focusing on Latino problems in Chicago. After considering several alternatives, the subcommittee decided that the Advisory Committee should look into the educational problems of Latinos in Chicago. *Bilingual/Bicultural Education—A Privilege or a Right?*² is a report of the findings.

The report was written after gathering information from various sources including public hearings held in 1972, statements and exhibits submitted to the Illinois State Advisory Committee, and the Chicago Board of Education statistics for 1971 through 1974. Investigations also were conducted by the staff and Advisory Committee.

The Advisory Committee found that over 90% of the Latino students in Chicago Public Schools were being denied equal educational opportunity. The possible violation of Latino students' civil rights results from the denial of a meaningful education to students who cannot benefit from instruction in English.³ The denial of bilingual-bicultural instruction to children of limited English-speaking ability is also a direct violation of the May 25, 1970, Memorandum⁴ of the Director, Office of Civil Rights, Department of Health, Education and Welfare. This Memorandum requires school districts to take affirmative steps to rectify language deficiencies where the inability to speak English results in the exclusion of minority

1. See U.S. COMMISSION ON CIVIL RIGHTS, 1-6 THE MEXICAN AMERICAN EDUCATION STUDY (1971-74).

2. ILLINOIS STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, BILINGUAL/BICULTURAL EDUCATION—A PRIVILEGE OR A RIGHT? (May 1974).

3. See *Lau v. Nichols*, 414 U.S. 563 (1974). *Lau* holds that the failure to provide English language instruction, or other adequate instructional procedures, to Chinese speaking students of San Francisco public schools is violative of § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1970). In so holding the Supreme Court refused to consider whether such failure also violated the equal protection clause of the fourteenth amendment.

4. 35 Fed. Reg. 11595 (1970).

children from effective participation in education; forbids the assignment of children to classes for the mentally handicapped on the basis of criteria which measure English language abilities; requires that any ability grouping to deal with language deficiencies not operate as a dead end; and places responsibility on the school district to notify parents, in other languages if necessary, of school activities which are brought to the attention of most parents.⁵ The question of whether equal protection of the law is denied to students based on per capita expenditures for educational services which fail to meet their needs also arises.⁶

While the Advisory Committee was in the process of making its findings, the Illinois legislature passed the Transitional Bilingual Education Act⁷ which mandates, as of July 1, 1976, the establishment of a bilingual education program in any district having 20 or more children of limited English-speaking ability.⁸ Participation in the program is for a period of three years or until the child reaches a level of English language skills which would enable successful performance in classes in which instruction is given in English, whichever occurs first.

Following the passage of this act, the Advisory Committee's first finding amounts to a "pat on the back" to the Illinois General Assembly and Governor Walker, and includes a suggestion that the General Assembly and Governor's Office monitor the implementation and enforcement of the Act. The Advisory Committee, however, seems to have overlooked the professional opinions of advocates of cultural pluralism. Such professionals believe that the strengthening of cultural identity leads to an improved self-image and higher academic achievement for minority children. These educators reject, as psychologically damaging, the traditional melting pot theory of education, which requires the suppression of minority culture traits. While the Illinois Transitional Bilingual Education Act requires instruction in languages other than English, it basically accepts the "melting pot" theory: "The General Assembly believes that a program of transitional bilingual education can meet the needs of these children and facilitate their integration with the regular public school curriculum."⁹ The orientation of such a program is remedial and compensatory in nature, as is evident from the language of the Act. A truly pluralistic program

5. *Id.*

6. *But see* San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).

7. ILL. REV. STAT. ch. 122, §§ 14C-1-14C-12 (1973).

8. § 14C-2.1 also *permits* the establishment of bilingual programs prior to July 1, 1976, authorizing the use of state funds for this purpose. *See* ILL. REV. STAT. ch. 122, § 14C-2.1 (1973).

9. ILL. REV. STAT. ch. 122, § 14C-1 (1973).

would not be limited to children of minimal English fluency, but would be extended to all minority children in an effort to build cultural awareness and self-esteem. The optimal plan would be to extend cultural programs to all children so that they become aware of different cultures and learn to respect them.¹⁰

The Advisory Committee does not question the effect on Latino children of the termination of bilingual-bicultural instruction after three years.¹¹ Of course, school districts may continue bilingual-bicultural instruction past the three years required by statute and may extend the program to native English-speakers. However, the likelihood that they will do so is doubtful. Political reality is responsible for the assimilationist nature of the Act, but the Advisory Committee fails to critically evaluate the Act in terms of the total Latino education picture and the culture conflict which exists between the Chicago Public Schools and Latinos.

The admonition given to the General Assembly and the Governor to oversee the implementation of the Act is particularly important in view of the experience of the State of Massachusetts, where the first state mandatory bilingual education act became effective in 1972.¹² Despite the fact that a special bureau was created within the Massachusetts Department of Education to oversee the implementation and enforcement of the Act,¹³ many children of limited English speaking ability are still not enrolled in bilingual programs. This is partially due to lack of state supervision of the counting, evaluating, and classification of children by local school districts.¹⁴ The same situation could be avoided or minimized in Illinois through close state supervision as suggested by the Advisory committee.

The second finding involves changes which will be required in such areas as the recruitment and training of Latino teaching personnel, curriculum, instructional methods, and test instruments. The State Advisory Committee recommended that the State of Illinois Office of the Superin-

10. For discussion of various types of bilingual-bicultural programs see Gonzalez, *Coming of Age in Bilingual/Bicultural Education: An Historical Prospective*, 19 INEQUALITY IN ED. 5, 18 (1975); see also U.S. COMMISSION ON CIVIL RIGHTS, A BETTER CHANCE TO LEARN: BILINGUAL-BICULTURAL EDUCATION (1975).

11. The Act provides that the regulated school district must provide for a three year program for each covered non-English speaking child. ILL. REV. STAT. ch. 122, § 14C-3 (1973).

12. See Transitional Bilingual Education Act, MASS. GEN. LAWS ANN. ch. 71A, §§ 1 et seq. (Supp. 1975).

13. MASS. GEN. LAWS ANN. ch. 71A, § 9 (Supp. 1975), provides the authority to issue rules and regulations regarding the administration of the Act.

14. See Lewis, *The Massachusetts Transitional Bilingual Education Act: Two Years After*, 19 INEQUALITY IN ED. 31 (1975).

tendent of Public Instruction promulgate rigorous administrative regulations which would insure delivery of effective bilingual-bicultural education to all students whose first language is other than English. Pursuant to its recommendation, the Advisory Committee submitted proposed draft regulations to the Superintendent of Public Instruction on November 14, 1974.¹⁵ The Illinois Advisory Committee worked with Business and Professional People for the Public Interest and staff attorneys from the Legal Assistance Foundation of Chicago in developing the draft regulations, incorporating sections from regulations for transitional bilingual education established by the Massachusetts Department of Education and sections based on "A Model Act Providing for Transitional Bilingual Education Programs in Public Schools."¹⁶ The Superintendent of Public Instruction has not, thus far, issued regulations pursuant to the Transitional Bilingual Education Act. However, guidelines have been issued to facilitate the switch-over from optional to mandatory bilingual education programs.¹⁷

The Advisory Committee's third finding involves discrimination due to cultural differences between Latino students and teachers. This finding reflects an understanding by the Advisory Committee of cultural differences between the various Latino groups and the acceptance of opinions of several educators that teachers in bilingual-bicultural programs should come from the same cultural backgrounds as their students. The Committee points out that although present state bilingual programs require teachers and aides in such programs to be both bilingual and bicultural, the Transitional Bilingual Education Act does not require teachers in the program to be bicultural. The State Advisory Committee recommends that the Act be revised to require teachers in mandatory state bilingual education programs to be both bilingual and bicultural in the predominant language and culture of the target student population. The proposed draft regulations suggested by the Illinois Advisory Committee would require "affirmative efforts to recruit bilingual teachers who have the relevant foreign cultural background."¹⁸ The Act itself requires only that preference be given to those "who have the relevant foreign cultural

15. Letter from Illinois Advisory Committee to the U.S. Commission on Civil Rights to Illinois Board of Education, Superintendent of Public Instruction, Parents, Students and to the General Public, November 16, 1974 [hereinafter cited as Letter].

16. Kobrick, *A Model Act Providing for Transitional Bilingual Education Programs in Public Schools*, 9 HARV. J. LEGIS. 260 (1972).

17. See Illinois Office of Education, *Interim State Standards and Guidelines for Bilingual Bicultural Education*, Revised February 1975.

18. Letter, *supra* note 15, at xii(d).

background established through residency abroad or by being raised in a non-English speaking environment."¹⁹

The report found further that while section 14C-8 of the Act liberalizes teacher certification requirements in order to provide as many capable Latino teachers as possible, the language of the Act refers only to the State Teacher Certification Board which has no certification authority in Chicago. The Chicago Board of Education, therefore, is not expressly mandated to apply these certification requirements. Section 14C-8 requires that these special certificates, issued to individuals holding valid teaching certificates issued by a foreign nation, be issuable only during the two years immediately following the effective date of the Act and be valid for six years from date of issuance. The Advisory Committee recommends that these limitations be removed and that the Act be further amended to expressly include Chicago. The Advisory Committee also felt that a state-wide plan was needed to increase the number of bilingual-bicultural teachers.²⁰

Chicago Board of Education statistics for 1972 indicated that only 1.5% of its teachers were Spanish surnamed.²¹ During the same school year, Latinos made up 11.1% of the student population.²² The ratio of Latino students to Latino teachers was more than 150 to one as compared to 11 to one for Anglos.²³ Furthermore, a breakdown of the Latino teachers by national origin indicates disproportionate representation of the various subgroups when compared to the national origin of Latino students. The Advisory Committee, therefore, recommends that the Chicago Board of Education embark upon an intensive affirmative action program for the recruitment and certification of bilingual-bicultural Latino teachers, giving first priority to Latinos in the Chicago area, insuring proportionate representation to each Latino national origin group. Information from Chicago Public School student racial surveys indicate that Latino students

19. ILL. REV. STAT. ch. 122, § 14C-8 (1973).

20. Amendments were offered in the Illinois House of Representatives to effectuate these recommendations during the current General Assembly.

21. Chicago Board of Education, Report: Racial/Ethnic Survey—Administrative and Teaching Personnel ii (Sept. 29, 1972). 1974 statistics indicate that the figure had risen to 2.2%. Chicago Board of Education, Report: Racial/Ethnic Survey—Administrative and Teaching Personnel iii (Sept. 30, 1974).

22. Chicago Board of Education, Report: Racial/Ethnic Survey—Students ii (Sept. 29, 1972). The 1974 figure is 12.7%. Chicago Board of Education, Report: Racial/Ethnic Survey—Students 2 (Sept. 30, 1974).

23. Computed on the basis of statistics provided in the 1972 surveys. See 1972 sources cited in notes 21 and 22, *supra*. The 1974 Latino student-teacher ratio was less than 120:1; computed with 1974 survey figures. See 1974 sources cited in notes 21 and 22, *supra*.

are spread throughout the city and are composed of various linguistic and cultural groups with different enrollment patterns. This indicates, the report says, a need for overall, centralized planning and a staff sensitive to the needs of the different cultural groups. The Advisory Committee found that although there is a significant Latino enrollment in each of the three geographical administrative areas, there are no Latino area or district superintendents. Based on this finding, the Advisory Committee recommends that the Chicago Board of Education adopt an affirmative action program for the hiring of Latino principals, district and area superintendents and other administrators.

The Transitional Bilingual Education Act requires that local funds be used for bilingual education up to the per pupil amount available to all students in the district, with state reimbursement for expenses over that amount. By requiring local funding, the Act forces the local board of education to fulfill its own obligations rather than depend on state and federal funds for special programs. In order to insure proper use of per capita funds, the Advisory Committee recommends that each local school district having Latino students be required to report per capita expenditures for Latino students, indicating the extent of actual classroom use of bilingual-bicultural personnel and resources paid for with per capita monies.

Another major area of investigation concerns placement of Latino children in classes for the mentally handicapped. Public school data indicated that Latinos, Blacks, and native Americans are significantly over-represented in special education classes for the mentally handicapped (EMH).²⁴ Similar data in other states have been used by courts to shift the burden to the school board to show that these children's rights to equal protection of the law under the fourteenth amendment are not being violated through placement in special education classes.²⁵ The apparent discrimination involves discriminatory referral, the use of culturally biased testing procedures, the placement in special education classes of children who have not been tested in his/her native language in violation of state law requiring such testing, and failure to comply with state regulations requiring the annual re-evaluation of each student attending classes for the mentally retarded.

In reaching its conclusion that certain racial and ethnic minorities are overrepresented in classes for the mentally retarded, the Advisory Committee relied on two assumptions: that 3% of any given population can

24. See sources cited in notes 21 and 22, *supra*.

25. See, e.g., *Larry P. v. Riles*, 343 F. Supp. 1306 (N.D. Cal. 1972); *Hobson v. Hausen*, 269 F. Supp. 401 (D.D.C. 1967).

be expected to fall within the category of mentally handicapped, and that there is a random distribution of qualities, talents, and handicaps among ethnic groups. The Advisory Committee failed to note, however, that the first of its assumptions has been used by school boards as a defense to allegations of discriminatory placement of minority children in classes for the mentally handicapped.²⁶ School boards in such cases have used census data to indicate that the number of minority children in classes for the mentally handicapped is less than 3%. In defense of the disproportionately low number of majority children, the school officials state that it can be assumed that the majority children, unlike the minority children, have access to private institutions. This analysis speaks solely in terms of numbers, totally disregarding whether the children's abilities, both mental and physical, are being properly and accurately measured and whether children are being placed in programs which serve their particular needs. Furthermore, the Advisory Committee did not use its second assumption to question the failure of the Transitional Bilingual Education Act to provide for special classes for the physically and mentally handicapped.

The Advisory Committee, however, recommends the immediate retesting of all children presently enrolled in classes for the mentally retarded, beginning with Latinos and Blacks. In order to correct discriminatory testing procedures it is suggested that test instruments be used which reflect the cultural, linguistic, and socio-economic characteristics of the student and that the testing be conducted and evaluated by personnel of the same cultural-linguistic background as the student. Furthermore, the retesting should include adaptive behavior as well as intellectual functioning; this recommendation was made in view of criticisms by professionals who believe "intelligence tests" do not test intelligence at all, but merely reflect past learning.

The Advisory Committee found the Illinois School Code²⁷ and regulations to be lacking in the area of special education and recommended that the state law be amended to require pluralistic instruments, procedures, and personnel; retesting of all students previously placed in special education classes; and reassignment of any students found to have been misdiagnosed and misplaced. The General Assembly has taken no action on this recommendation. However, subsequent to the publication of this report, a suit was filed in the United States District Court for the Northern Dis-

26. Interview with Martin R. Glick, Associate Professor of Law, Stanford University, formerly with the California Rural Legal Assistance, in Palo Alto, March 26, 1975.

27. ILL. REV. STAT. ch. 122 (1973).

trict of Illinois, Eastern Division,²⁸ on behalf of Latino and Black Chicago Public School students who are, have been, or will be placed in classes for the educable mentally handicapped (EMH) against city and state school officials, claiming, *inter alia*, discriminatory placement. The plaintiffs in this suit challenge the present testing and placement of children in EMH classes, the consequent grossly inadequate and discriminatory education, and the resulting permanent stigmatization. Several of the named plaintiffs have been tested by private psychologists and have been found to be suffering from learning disabilities that are physical handicaps rather than mental handicaps.

Finally, the Illinois State Advisory Committee has found that the Office of Civil Rights of the United States Department of Health, Education and Welfare, has failed to exercise its jurisdiction in the area of federal civil rights enforcement and recommended a complete review of the Chicago Public Schools to determine whether Title VI of the Civil Rights Act of 1974,²⁹ the May 25, 1970 Memorandum,³⁰ and the Constitution are being complied with.

The Office of Civil Rights has since decided to review the Chicago Public Schools and is presently in the preliminary stage of that investigation. The second stage—on-site inspection—will begin in the fall of 1975.³¹ OCR reviews usually examine ability grouping patterns, EMH placement, language programs and faculty recruitment and assignment.³²

The question of whether bilingual-bicultural education is a privilege or a right has been answered by the Illinois legislature, at least as far as children who minimally speak English are concerned. The report of the Illinois Advisory Committee is important because it has focused attention on the problems of Latino children in the Chicago Public Schools. Although the report is purely advisory and follow-up limited, the Chicago office of the U.S. Commission of Civil Rights has continued to meet with interested parties concerning implementation of its recommendations.³³ The staff is also currently working on a pamphlet which will advise Latino parents of state statutes and regulations concerning their children's educa-

28. *Parents in Action on Special Education (PASE) v. Redmond*, Civil No. 74 C 3586 (N.D. Ill., filed Dec. 12, 1974).

29. 42 U.S.C. §§ 2000d *et seq.* (1970).

30. *See* 35 Fed. Reg. 11595 (1970).

31. Interview with A. Sumner, Office of Civil Rights, U.S. Department of Health, Education and Welfare, in Chicago, March 20, 1975.

32. *Id.*

33. *See* U.S. COMMISSION ON CIVIL RIGHTS, 3 THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—1975: TO INSURE EQUAL EDUCATIONAL OPPORTUNITY (1975).

tion. Hopefully this pamphlet will not take as long to publish as the Spanish translation³⁴ of the report took. Although the Advisory Committee stressed the need for communication between school officials and Latino parents, its own report was not made available in Spanish for almost a full year after its original English publication.

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34. See EL COMITÉ CORTÉ ESTATAL ASESOR DE ILLINOIS DE LA COMISIÓN DE DERECHOS CIVILES DE LOS ESTADOS UNIDOS, EDUCACIÓN BILINGUE/BICULTURAL—¿UN PRIVILEGIO O UN DERECHO? (Mayo de 1974). Although the translation bears the identical publication date as the original report, the translators indicate that the Spanish edition actually appeared in January 1975. *Id.* at vi.