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Fee, Jerry Ray

**BILINGUAL EDUCATION: LEGAL ASPECTS AND IMPERATIVES FOR
PUBLIC SCHOOLS**

The University of North Carolina at Greensboro

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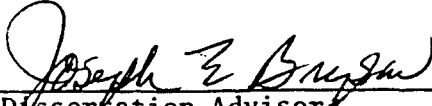
by

Jerry R. Fee

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Approved by


Dissertation Advisor

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

Dissertation Advisor Joseph E. Bryson

Committee Members J. G. Hoover

David W. Feilly

Terry W. Mull

April 5, 1982
Date of Acceptance by Committee

April 5, 1982
Date of Oral Comprehensive

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The controversy surrounding the operation of bilingual education programs in the public schools for language minority students has been a consistently recurring issue for many years. This study provides school officials with an expository treatment of the topic and its legal aspects from a judicial standpoint. The study provides a comprehensive examination of the status the states afford bilingual education through constitutional and statutory provisions. In addition, the study provides a set of data that should prove of value to education decision makers as they consider programs for language minority students.

While a number of educational questions are examined in the study, the study does not attempt to address the value of bilingual education; rather, the study merely examines the judicial decisions and legislation designed to effectuate bilingual education programs for language minority students. Further, the study examined the educational issues that might prove to be litigious in the future.

The study reviewed and analyzed numerous educational studies, state and Federal legislative enactments, and judicial decisions regarding the legal and educational aspects of bilingual education.

This historical and legal study of bilingual education yielded the following conclusions.

1. Social and political arguments will detract educators from meeting the needs of language minority students for many years.

2. Federal financial support, in all probability, will decrease during the next few years.

3. The judiciary will be called upon to settle disputes involving language minority students for many more years.

4. Controversy will continue over the appropriate test instruments to use to assess achievement and aptitude of language minorities.

5. As language minority populations continue to grow, the shortage of trained educational specialists needed to work with these populations will become more acute.

6. Debate will continue over the most appropriate methods to employ in educating language minorities.

7. Indian bilingual education will continue to have a distinct advantage over other language minority groups.

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J.R.F.

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Chapter I

INTRODUCTION

Diversity of language and culture has been a characteristic of the American society since its founding. Today, there are approximately thirty-five million people in the United States who speak a native language other than English. As many as five million of these people are children who experience difficulty in the public schools since they are unable to communicate in the language being used in the instructional programs. The predominant language of instruction is English. Consequently, educating children who speak a native language other than English has proven to be a formidable task for educators.¹

Presently, seventy percent of the children are Spanish-speaking with a majority of the remaining thirty percent made up of Korean, Vietnamese, Cambodian, or others of Asian origin.² The Federal Government sponsors bilingual education programs in twenty-seven American Indian languages, nine Eskimo languages and a host of others ranging from Arabic to Hebrew.³

¹Joseph Grant, Bilingual Education and the Law: An Overview (U.S. Educational Resources Information Center, ERIC Document ED 127 813 1976), p. 2.

²"A Battle in Any Language," Newsweek (15 December 1980): 93-94.

³"A Storm Brews Over Bilingual Teaching," U.S. News and World Report (6 March 1978): 59.

Apart from the complex educational issues surrounding bilingual educational programs in the public schools, there are political and cultural issues that have their origins in the history of the United States. At the heart of these issues is whether the United States should continue to serve as a "melting pot" for diverse traditions, customs, aspirations, and language. To many people, ethnic diversity and culture are seen as strengths of the American society. There are some anthropologists who have expressed concern that bilingual-bicultural educational programs tend to teach minority children only knowledge associated with their culture and, consequently, deny participants access to knowledge needed for acquisition of power in the larger dominant society.⁴ Gary Orfield, a political scientist at the University of Illinois, has indicated that federal money has financed ". . . expensive, highly segregated programs of no proven educational value to children."⁵ There are others who have expressed a concern that bilingual educational programs may ultimately lead to separatist movements such as in Quebec, Canada. A New York Times editorial states:

. . . the very different Canadian situation tragically demonstrates the awesome power of bilingualism to perpetuate differences within a country, deepen antagonism and make national politics an endless walk on an ethnic tightrope.⁶

In addition to the political and cultural issues are the educational ones centering on the appropriateness of bilingual programs of

⁴William Pulte, "Are Bilingual-Bicultural Programs Socially Divisive?" Integrated Education, 16 (1978): 31-33.

⁵"A Storm Brews," p. 58.

⁶New York Times, 28 October 1975, p. 32.

instruction. This is a controversial issue clouded with much uncertainty and highly touted by proponents or opponents, as the case may be. Linguists argue that it is important for attitude as well as cognitive reasons that no effort be made to eradicate a child's first language. Instead, a second language is to be added to extend the range of contexts in which children may communicate. Some psychologists disagree on the value of this approach and argue that presenting children with too many choices only confuses them.⁷

The issues are compounded further by the fact that until recently the courts have played only a minor role in clarifying the rights of students to a bilingual education. The courts have been one of the major forces of change in the American society as has been witnessed with integration. Litigation involving bilingual education has accelerated during the last ten years and in all probability will continue to do so in the future.

Efforts by public school officials and boards of education to comply with court orders, legislation, and parental demands often force implementation of programs designed to meet the needs of bilingual students. Of prime importance to this research study will be the compilation of information regarding the legal and educational aspects of bilingual education for policy and decision makers in public schools. The information should prove invaluable in helping them to make decisions that are both educationally and legally sound.

⁷Muriel Saville-Troike, "Language Instruction and Multicultural Education," in Multicultural Education: Commitments, Issues, and Application, Carl A. Grant, ed. (Washington, D.C.: ASCD, 1977), pp. 57-58.

Statement of the Problem

The controversy surrounding bilingual education continues unabated. Public school officials are often frustrated in their efforts to provide meaningful educational programs for all students. Pressure groups are vocal in their demands for or against bilingual education. The courts, in some instances, have ruled that bilingual programs might be appropriate or even necessary for some students.

At the federal level of government, confusion is also evident. Before leaving office, President Jimmy Carter's administration had formulated guidelines for bilingual education programs. Upon entering office, President Ronald Reagan's administration cancelled the regulations. President Reagan's Secretary of Education, Terrel Bell, is quoted as saying of bilingual education, "It might be the best option, I don't know."⁸ President Ronald Reagan is also quoted as saying, "But it is absolutely wrong and against American concept to have a bilingual education program that is now openly, admittedly dedicated to preserving their native language and never getting them adequate in English."⁹

It is apparent that the need exists to examine the educational and legal issues surrounding bilingual education in an attempt to provide decision makers with information that would enable them to deal more effectively with the problem. Guidelines that would enable

⁸"Bilingual Classes Still An Option," Winston-Salem Journal, 8 February 1981, sec. A, p. 8.

⁹"Reagan Blasts Plans Reducing English," Winston-Salem Journal, 3 February 1981, p. 2.

decision makers to determine what the legal rights of non-English-speaking students are with regard to educational opportunities need to be formulated. Further, the need exists to examine the educational issues surrounding bilingual education and whether these issues are related to the legal issues under study.

Questions to be Answered

It has been previously pointed out that a purpose of this study was the development of guidelines to assist educational decision makers in implementing bilingual educational programs. The research conducted as a part of this study has enabled the writer to outline the position of the law with regard to bilingual education and to identify directions it might take in the future.

Listed below are pertinent queries the writer addressed during the study.

1. What are the major educational issues surrounding bilingual education?
2. Of the major educational issues surrounding bilingual education, which are the ones most likely to be litigated?
3. What are the current states' statutes with regard to bilingual education?
4. Based on educational research and legal precedence, what criteria should be considered before establishing bilingual education programs?
5. Based on educational research, what are the most effective approaches to bilingual education?

Scope of the Study

The study entails an historical review of the legal ramifications of bilingual education in the United States. The study also describes the extent to which bilingual education has been litigated and the causes for the litigation, and has examined the judicial decisions and legislation designed to effectuate programs. The study did not, however, attempt to settle the many prevailing arguments, either political or cultural, surrounding bilingual education.

The study has provided an analysis and synthesis of all major court decisions and assesses the future implications bilingual education has for educational decision makers.

Methods, Procedures, and Sources of Information

The basic research technique was historical in that it examined, analyzed, and synthesized the available resources relevant to the topic of the courts and bilingual education.

In order to determine the relevance and need for such research, a search was made of the Dissertation Abstracts for related topics. Articles appearing in various journals were located through the use of the Education Index, Reader's Guide to Periodical Literature, and the Index to Legal Periodicals.

Topic-related research summaries were located in various texts on school law, the many bilingual education reports and regulations emanating from the federal level, and a review of literature obtained through a computer search of the Education Resources Information Center (ERIC).

Numerous federal and state court cases relative to bilingual education were isolated through the use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System. Other court cases were found by reviewing case summaries contained in various issues of NOLPE School Law Reporter. Cases were located, read, analyzed, and categorized into topics corresponding to the issue noted from the general review of the literature.

In addition, the state statutes of each state were secured and analyzed with regard to the status afforded language instruction in the schools.

Definition of Terms

Terms that frequently occur throughout the study are defined for the reader.

Bilingual Education--Bilingual education is instruction in two languages and the use of those languages as mediums of instruction for any part of or all of the school curriculum. Study of the history and culture associated with a student's mother tongue is considered an integral part of bilingual education.¹⁰

Due Process--Children's due process rights include confidentiality of information, identification, evaluation, and programming safeguards, and hearing procedures.¹¹

Free and Appropriate Public Education--This term means special education programs and related services.¹²

Linguistically Appropriate Curriculum--Synonymous term for bilingual-bicultural programs.¹³

¹⁰William P. Foster, "Bilingual Education: An Educational and Legal Survey," Journal of Law and Education 5 (April 1976): 150.

¹¹Part B (Public Law 94-142), sec. 121a.500-514, 530-534, 344.

¹²Part B (Public Law 94-142), sec. 121a.1.

¹³Pulte, pp. 31-33.

Language Dominance Standard--A method devised by the court in Aspira v. Board of Education whereby students with Hispanic surnames were given examinations in Spanish and English. If a student scored better on the Spanish exam, he was placed in Spanish language classes. If the student scored better on the English exam, he was placed in classes where English was used.¹⁴

Culturally Relevant Curriculum--This is an attempt to take into account the preschool and out-of-school experiences of the minority children as instructional programs are planned.¹⁵

Language Minority--This term is used by the writer in a general sense to refer to the various groups (Hispanics, Asians, Indians, Eskimos, etc.) only as a convenient summary category and not to any one group in particular.

Limited English Proficient (LEP), Limited English Speaking Ability (LESA), Ethno-linguistic Minority, Non-English Proficient (NEP), are terms used by various authors in the course of this research.

L1 and L2--The designation of the primary language (L1) and the second language (L2) are commonly used by authors of articles on the topic of bilingual education.

Significance of the Study

Bilingual education is not a recent phenomenon of American education. Non-English-speaking settlers of the 1700s established schools in which the native language was the language of instruction. The practice of bilingual instruction continued into the early twentieth century primarily because it was believed that the native language was

¹⁴Peter D. Roos, "Bilingual Education: The Hispanic Response to Unequal Educational Opportunity," Law and Contemporary Problems 42 (Fall, 1978): 120.

¹⁵Pulte, pp. 31-33.

the most appropriate means of conveying knowledge and preserving cultures.¹⁶ The state laws of this period were permissive as to the language of instruction. It is reported that New Mexico enacted a law in 1884 sanctioning bilingual education. The law reads in part, ". . . each county shall be and constitute a school district in which shall be taught . . . reading, writing . . . in either English or Spanish or both, as the director may determine."¹⁷

Permissiveness as to the language of instruction continued until the early part of this century. The massive influx of immigrants to the United States between 1890 and 1923 gave rise to a wave of anti-Catholicism and nationalism. As a result, numerous state legislatures began enacting "English-only" legislation. This period of time has been referred to as "the heyday of xenophobic legislation." As a consequence, as many as thirty-four states enacted legislation during this period that required public and private schools to use English as the language of instruction.¹⁸

The first twenty-five years of this century witnessed a peaking of American immigration and the nativistic reactions against it. Also witnessed was a move from the non-legalistic issues surrounding bilingual education to legalistic ones that found their way into the state and federal courts.

¹⁶Perry A. Zirkel, "The Legal Vicissitudes of Bilingual Education," Phi Delta Kappan, January 1977, p. 409.

¹⁷Roos, p. 113.

¹⁸Zirkel, p. 409.

Nebraska was among the first states to enact legislation restricting the use of languages other than English to instruct children.

In 1919, the state enacted a law that stated:

No person, individually, or as a teacher shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language. Languages other than English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.¹⁹

A challenge to this restrictive legislation resulted in the Supreme Court's Meyer v. Nebraska²⁰ decision in which it affirmed the Fourteenth Amendment rights of individuals. Among them are:

The right of individuals to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally engage those privileges long recognized as common law is essential to the ordinary pursuit of happiness by free men.²¹

Recognized was the right of teachers to contract to teach a foreign language and the right of parents to engage teachers to teach the language. The Court reasoned in Meyer that ". . . no emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibitions." However, the Court did, in effect, reserve the right of a state to require that all subject matter instruction be given in English.²²

¹⁹Meyer v. Nebraska, 262 U.S. 390 (1923).

²⁰Ibid., p. 626.

²¹Ibid.

²²Zirkel, p. 410.

The Supreme Court similarly ruled in the 1927 Farrington v. Tokushige²³ decision that Hawaii could not regulate private foreign language schools.

The period of time from World War I to World War II saw little in the way of bilingual education litigation. Gonzalez has pointed out:

The nation's xenophobia was no doubt exacerbated by developments in international affairs. Germany and Japan were clearly threatening to the United States. Domestically, German-Americans and Japanese-Americans bore the brunt as targets of retaliation. In both of these groups bilingual schooling has been practiced extensively. From the beginning of World War I and through World War II bilingual education was restrained almost to the point of extinction.²⁴

While state legislatures were enacting laws restricting bilingual education, the nation's courts had previously established legal precedence that protected the rights of certain cultural groups to continue educating children as was deemed appropriate. In this instance, religion played a significant role.

The Constitution of the United States protects citizens' rights to religious freedom. The First and Fourteenth Amendment of the Constitution state in part:

Congress shall make no law respecting an establishment of religion, or prohibiting the exercise of . . .

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny

²³Farrington v. Tokushige, 273 U.S. 284 (1927).

²⁴J. M. Gonzalez, "Coming of Age in Bilingual/Bicultural Education: A Historical Perspective," Inequality in Education 19 (February 1975): 5, 7.

to any person within its jurisdiction the equal protection of the laws.²⁵

Religious claims to a particular lifestyle or sectarian belief are among the strongest that can be argued before the courts. As has been pointed out in Meyer, parents have the right to contract for a child's instruction. The right to choose a lifestyle and religious belief was further upheld in Wisconsin v. Yoder.²⁶

In Yoder, the state of Wisconsin sought to require Amish children to attend school beyond the eighth grade. The Amish claimed that schooling beyond the eighth grade was contrary to their religious beliefs. The case resulted in the Supreme Court's decision that Wisconsin had satisfied the states compelling interest in education with the eight grades. Chief Justice Warren Burger, speaking for the Court's majority, pointed out that the Amish's claim:

Must prevail, largely because of religious freedom--the freedom to believe and practice strange, it may be, foreign creeds--has classically been one of the higher values of our society.²⁷

While Yoder did establish the right of groups to a particular way of life based on different religious subculture claims, the right to maintain separate schools for cultural or language reasons is not to be implied from the ruling.

In Guey Hung Lee v. Johnson,²⁸ Chinese-American parents objected to the reassignment of their children to schools where Chinese students

²⁵U.S. Constitution, amend. I, XIV.

²⁶Wisconsin v. Yoder, 406 U.S. 205 (1972).

²⁷Ibid.

²⁸Guey Hung Lee v. Johnson, 404 U.S. 1215 (1971).

were not in a majority. In this instance, the people of Chinese ancestry sought to stay implementation of a court-approved desegregation plan in the San Francisco schools. The parents argued that important cultural values and the Chinese language would not be preserved and passed on to future generations.²⁹

As was pointed out previously, bilingual education was a relatively quiet issue from World War I until World War II. It was not until the Cuban refugees entered the United States in 1962 that bilingual education issues surfaced again and became a center of focus. From Florida the issue soon spread to other states in the Midwest and West. The passage of the Bilingual Education Act (BEA) in 1967 gave impetus to the current movement and national concern.³⁰

The Bilingual Education Act is permissive legislation that encourages school systems through competitive grants to implement programs. The BEA is generally combined with the Civil Rights Act of 1964 (42 U.S.C., § 2000d.) and the equal protection clause of the Fourteenth Amendment in litigation involving bilingual education issues.³¹

Title VII of the BEA encourages the use of native languages in school studies to ease the trauma of the non-English-speaking student as he or she enters school where English is the language of instruction.³²

²⁹Ibid.

³⁰David G. Carter, Frank Brown, and J. John Harris III, "Bilingual-Bicultural Education: A Legal Analysis," Education and Urban Society 10 (May 1978): 297.

³¹Ibid.

³²Ibid.

The Supreme Court's decision in Lau v. Nichols³³ is viewed by many as the landmark case of bilingual education. Lau was a class action suit brought by Chinese-speaking students against the San Francisco Unified School District. It was claimed that the school district was violating the equal protection clause of the Fourteenth Amendment and section 601 of the Civil Rights Act of 1964 which prohibits school districts receiving federal funds from discriminating against students on the basis of race, color, or national origin. In Lau, the Court ruled that the school district must provide instruction for non-English-speaking students because their education was hampered by the language barrier and because substantial numbers were involved.³⁴

Two critical points evolved from the litigation of Lau with regard to rights of non-English-speaking students. First, Justice Harry Blackmun pointed out that the test of whether a school district is required to provide bilingual education programs is based on numbers.

Justice Blackmun stated:

I merely wish to make it plain that when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any other language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guidelines require the funded school district to provide special instruction. For me, numbers are at the heart of this case and my concurrence is to be understood accordingly.³⁵

³³Lau v. Nichols, 414 U.S. 563 (1974).

³⁴Ibid.

³⁵Ibid., p. 572.

A second critical point worth noting is that the Court's decision was not based on the equal protection clause of the Fourteenth Amendment. Instead, the decision left open the question of constitutional rights to a bilingual education.³⁶

Subsequent to the Lau decision, several other law suits have raised the legitimacy question of bilingual education programs. Serna v. Portales Municipal Schools³⁷ and Aspira of New York Inc. v. Board of Education of New York³⁸ are two such cases. Serna and Aspira are significant in the fact that the courts, for the first time, mandated bilingual education programs.³⁹ In Serna, the District Court took into account the educational programs provided the plaintiffs and their achievement levels. On appeal, the Tenth Circuit Court of Appeals affirmed the decision of the District Court. As a matter of relief, the Circuit Court stated.

The evidence shows unequivocally that appellants had failed to provide appellees with meaningful education . . . the trial court under its inherent equitable power, can properly fashion a bilingual program which will assure the Spanish surnamed children receive a meaningful education.⁴⁰

³⁶Zirkel, p. 410.

³⁷Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (1972).

³⁸Aspira v. New York City Board of Education, Civ. No. 4002 (S.D.N.Y. Consent Agreement, August 29, 1974).

³⁹Carter, p. 301.

⁴⁰Serna, p. 1154.

Aspira was settled through a consent decree with the New York City Board of Education agreeing to implement bilingual-bicultural programs for Hispanic students.⁴¹

Since 1974, numerous other cases involving a litigious question of students' rights and equal educational opportunity related to bilingual education have occurred. In nearly all instances, the Lau decision is the foundation upon which the cases rest even though the constitutional questions were not decided.⁴²

As legal questions continue, school administrators and boards of education must be prepared to justify the absence of programs for non-English-speaking students in their districts. The special needs of these students cannot be ignored because the traditional view of America as a "melting pot" now admits to some qualification.⁴³

This study is significant in that it provides school boards with a comprehensive analysis of litigation and research regarding bilingual education in public schools. The study also provides educational leaders with guidelines for establishing programs in school districts that will avoid the legal entanglements that are inevitable in the knotty and persistent issues of bilingual education.

⁴¹Aspira.

⁴²Carter, p. 302.

⁴³Ibid., p. 303.

Design of the Study

The remainder of this study is divided into four parts. Chapter two of the study is a review of the literature dealing specifically with the legal aspects of bilingual education and more generally with a review of research conducted on the topic of bilingual education. These topics are included in order to gain a perspective on the merits of bilingual education programs.

Chapter three provides an examination of the 50 states' statutes and constitutional provisions for the language or languages that can be used in the instructional programs of the public schools.

Chapter four contains a listing and discussion of litigated cases regarding bilingual education. Court cases are reviewed with particular attention devoted to the basic arguments presented in each case. Among the arguments to be examined are discrimination, due process, desegregation, equal protection, and other topics applicable to language minority students.

Chapter five concludes the research and includes a summary of information from the findings. The questions asked in chapter one are answered in this chapter. In addition, a listing of legally acceptable criteria and guidelines for bilingual education are to be found in this chapter.

Chapter II

REVIEW OF THE LITERATURE

Overview

Bilingual instructional programs have existed in the United States since its founding. Debate over the merits of bilingual education has created much controversy over the years and continues unabated even today. The passage of the Bilingual Education Act in 1968 brought the issues surrounding bilingual education into sharper focus.

At issue are the many social, political, and legal questions surrounding the implementation of bilingual education programs for language minority students. At issue also are the kinds of educational programs designed to meet the needs of language-handicapped students.

This chapter attempts to provide an historical perspective of bilingual education in the United States. The chapter then examines bilingual education as a legal requirement for certain language minority students. Examined further are the citations regarding the relative effectiveness of bilingual programs and the controversy of testing language-minority students.

Historical Perspectives of Bilingual Education in the United States

Bilingual education is not a new phenomenon in the American education scene. Since the nation was founded, bilingual education programs

have been implemented by numerous groups of people. The early settlers frequently established schools in order to educate their children in the different religious or ethnic cultures. The segregated turfs of the early settlers were afforded Constitutional protection which permitted them to practice and maintain the different language, culture, and religious beliefs of each particular group.¹

The fact that, with the exception of native Americans, the United States is composed of many ethnic and cultural groups seems to be overlooked by many individuals. They view present emphasis on cultural awareness and bilingual instruction as another "educational fad" that will go its way in due course.

Native Americans

It is an uncontested fact that historians regard the Indians as the original inhabitants of the present United States. It is also believed by many historians that the Indians probably migrated to North America during the Sangamon Interglacial period, placing the time of their arrival at almost 75,000 years ago.²

The role of the Indian in the development of the United States is often overlooked and few people realize the significance of their contribution. Gay Lawrence has pointed out that:

¹William M. Newman, "Is Multicultural Education a New Attempt at Acculturation?" in Multicultural Education: Commitments, Issues, and Application, ed. Carl A. Grant (Washington, D.C.: ASCD, 1977), p. 46.

²A. M. Josephy, The Indian Heritage of America (New York: Bantam Books Company, 1968), p. 37.

All aspects of Indian existence--agricultural, government, religion, trade, mythology, arts and crafts--influenced American culture at one time or another and helped to shape the destiny of each of the countries of the Western Hemisphere. For example, among the world's total food supply today, almost half the crops grown were domesticated by American Indians and became known to others only after 1492. In addition, let us not forget the help given the authors of the U. S. Constitution by the Iroquois Indian.³

Prior to the arrival of European settlers, approximately one million native Americans occupied North America. As many as one hundred different language groups were dispersed throughout the continent. For the most part, the native Americans had no written language. As a consequence, many Indian languages disappeared.⁴

Not all Indian tribes lacked a written language. The Cherokees and Navajos both developed a written form of their respective languages. The Cherokees had two widely circulated newspapers by the end of the 19th century and the Navajos' efforts helped to establish several community colleges in the Southwest.⁵

The Cherokees had twenty-one schools and two academies with nearly 1100 students. The Choctaws, Creeks, and Seminoles also operated schools for their children.⁶

³Gay Lawrence, "Indian Education: Why Bilingual-Bicultural?" Education and Urban Society (May 1978): 306.

⁴Maria Estola Allende Brisk, "Language Policies in American Education," Journal of Education 163 (Winter 1981): 4.

⁵Ibid.

⁶Arnold H. Leibowitz, The Bilingual Education Act: A Legislative Analysis (Rosslyn, Virginia: National Clearinghouse for Bilingual Education, 1980), p. 5.

Education for the native Americans had centered on a process of Americanization or assimilation. Congress made its first appropriation of \$15,000 in 1802 to promote "civilization among the aborigines."⁷ It was the view of many individuals at the time that as the Indians became more "civilized" there would be less need for the vast territories required for hunting purposes. Encroachment by white settlers on the lands held by Indians created many problems, some of which found their way into the courts. The matter of sovereignty of Indian tribes was established in the 1832 Supreme Court decision of Worcester v. Georgia.⁸ The Supreme Court's decision characterized the Indian tribes as dependent sovereign nations with English common law rights as prior occupants of the land.

In 1862 the Homestead Act was passed by Congress as a response to the need for more land. Further demands for Indian land were created by the transcontinental railroad system developing at that time. Coupled with other events of the period, many Indians were pressured to move onto reservations as their lands were increasingly occupied by the new settlers.⁹

The progress the Indians had made in establishing their own schools came to an end about 1871 as the treaty period between the government and Indian tribes ceased. The boarding schools established by the Bureau of Indian Affairs for the Indian children were designed

⁷Ibid.

⁸Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

⁹Leibowitz, p. 6.

specifically to sever the ties the children had with their parents and to instruct them in Western culture and the English language.¹⁰

Education for the Indian children was a frequent demand as a treaty condition. Lawrence has pointed out that Indian leaders desired education:

. . . to preserve the inalienable rights of Indian children to a full and meaningful education, preschool through college, to use their natural language as well as English, to know their culture as unique people as well as non-Indian culture. . .¹¹

Due to the sovereign nature of the Indian tribes, education for them can be unique when compared to other linguistic minorities. In Worcester v. Georgia the Supreme Court held that the Indian tribes were a nation within the United States. The same principle was further upheld as recently as 1957 when a dispute between the state of Arizona and the Navajos was settled in court.¹² The principles established by the courts permit Indian tribes to form their own schools, teach in their own language, and to maintain a segregated school system, should they so desire, without interference of the various states.¹³

The very nature of Indian tribal relations with the Federal government through treaties permits Indians to maintain distinct, independent,

¹⁰Brisk, p. 4.

¹¹Lawrence, p. 311.

¹²Williams v. Lee, 358 R.S. 217 (1957).

¹³Nicholas Appleton, Multiculturalism and the Courts (U.S. Educational Resources Information Center, ERIC Document ED 159 298, 1978), pp. 37-42.

and political entities not available to other minority groups in the United States. Contrary to the dictates of the Supreme Court's Brown¹⁴ decision, Indian tribes can establish and operate schools that are, for all practical purposes, segregated from the mainstream of society.¹⁵

European Settlers

Among the first white settlers in North America were the Spaniards. For nearly one hundred years after the conquistadores arrived in Mexico in 1519, the Spanish were the only white explorers and settlers. The Spanish intermarried with the native Indians forming the mestizo population that gradually moved northward into the area that is presently the United States. Other Spanish settlements eventually occupied vast territories from the Atlantic to the Pacific Ocean and from the Gulf of Mexico to the headwaters of the Mississippi River.¹⁶

The Mexican-American War of 1848 resulted in Mexico's ceding the territory that would eventually become California, Arizona, New Mexico, and Texas. The Mexican population was given the option of remaining in the country or returning to Mexico. Those choosing to remain would become American citizens after one year.¹⁷

The schools established in this new territory were predominately Spanish speaking and remained thus until a massive influx of Anglo-Americans arrived. As the "Anglo" population increased, it gradually

¹⁴Brown v. Board of Education, 347 U.S. 483 (1954).

¹⁵Appleton, p. 39.

¹⁶Brisk, pp. 4-5.

¹⁷Leibowitz, p. 4.

gained control of the government in the territory that had become states. California in 1870 and New Mexico in 1891 enacted laws that required instruction in the schools to be provided in English.¹⁸ Other states would soon follow in requiring English as the language of instruction.

The 1600s witnessed the first northern European settlers arriving in the New World. The English established their first settlement at Jamestown in 1607, eventually settling along the entire Atlantic Coast. In rapid succession other Europeans arrived in the New World--the Germans and French arrived in 1608 and the Dutch and Swedes a few years later.¹⁹

Still they came, millions of immigrants, mostly from the countries of northern Europe. Each immigrant group established its own segregated turf. According to Heath:

Separate settlements within the United States maintained their native tongues in religious, educational, and economic institutions; newspapers, schools, and societies provided instructional support for diverse languages. The use of these languages was encouraged by national leaders in recognition of their positive, practical, and symbolic purposes.²⁰

The various states receiving large groups of foreign settlers were very tolerant and even encouraging with regard to the language of instruction used in the schools. In 1837, a Pennsylvania law was enacted

¹⁸Ibid., pp. 4-5.

¹⁹Brisk, p. 5.

²⁰Quoted in Jane K. Phillips (ed.), The Language Connection: From the Classroom to the World (Skokie, Illinois: National Textbook Co., 1977), p. 23.

permitting German to be used as the language of instruction for the large group of German immigrants who had settled in that state. Ohio, a few years later, in 1840, enacted legislation permitting German to be used in the schools established in that state.²¹

Prior to the Civil War, the immigrants continued to be from northern Europe, but after the Civil War the complexion of the immigration pattern gradually changed. A distinguished historian of American education of the period was Elwood P. Cubberly, who, in his book Changing Conceptions of Education, wrote:

About 1882, the character of our immigration from the north of Europe dropped off rather abruptly and in its place immigration from the south and east of Europe, set in and soon developed into a great stream. After 1880, southern Italians and Sicilians: people from all parts of that medley of races known as the Austro-Hungarian Empire: Czechs, Moravians, Slovaks, Poles, Jews, Ruthenians, Croats, Servians, Dalmatians, Slovenians, Magyars, Roumanians, Austrians . . . began to come in great numbers.

The southern and eastern Europeans are a very different type from the north Europeans who preceded them. Illiterate, docile, lacking in self-reliance and initiative and possessing none of the Anglo-Teutonic conception of law, order, and government, their coming has served to dilute tremendously our national stock, and to corrupt our civic life . . .

Our task is to break up their groups or settlements, to assimilate and to amalgamate these people as part of our American race, and to implant in their children, so far as can be done, the Anglo-Saxon conceptions of righteousness, law and order, and popular government, and to awaken in them reverence for our democratic institutions and for those things in our

²¹Leibowitz, p. 7.

national life which we as people hold to be of abiding worth.²²

According to Leibowitz:

As the end of the nineteenth century approached, nineteen of America's largest cities consisted of over half immigrants and their children. While 18.37 percent of all Americans were children of immigrants in 1890, 86.36 percent of Milwaukee's residents were immigrants and the children of immigrants; 80.12 percent of New York's; 77.79 percent of Chicago's; 56.58 percent of Philadelphia's; 71.04 percent of Brooklyn's; 67.46 percent of St. Louis's; 74.98 percent of Cleveland's; and 77.11 percent of Buffalo's. The ethnic distinctiveness and religious differences--most were Catholic or Jewish--their concentration, their great visibility and their initial exercise of political power raised great fears among the American establishment.²³

Cubberley's goal of breaking up or amalgamating the immigrants was shared by many others of the period. Among those who advocated Americanization and opposed the ethnic factors on American politics was Theodore Roosevelt. It is reported that Roosevelt delivered a speech entitled "Americanism", saying:

There is no room in this country for hyphenated Americans. Our allegiance must be purely to the United States. For an American citizen to vote as a German-American, an Irish-American, or an Italian-American is to be a traitor to American institutions and those hyphenated Americans who terrorize politicians by threats of the foreign vote are engaged in treason to the American republic.²⁴

²²Quoted in Mark Krug, The Melting of the Ethnics (Bloomington, Indiana: Phi Delta Kappa Education Foundation, 1976), p. 7.

²³Leibowitz, p. 8.

²⁴Krug, p. 8.

Peter Roos cites these reasons for the decline in linguistic diversity in the United States:

First the immigrants at that time in United States history were different from their predominately Northern European, Protestant predecessors. The immigrants of the late nineteenth century were predominately Southern European, Balkan, and Asian, and predominately Catholic and Jewish. In addition to these ethnic and religious differences, these groups differed from earlier immigrants in that they happened to arrive during a period of economic difficulty. . .

Another reason for the demise of non-English language instruction at the turn of the century was a wish to create a "unitary Americanism both politically and socially."²⁵

The period from 1880-1925 witnessed an increase in English language requirements in American schools. World War I is viewed as the triggering force that led to the demise of bilingual education in the United States.²⁶

The 1960s marked a resurging interest in bilingual education. Cuban refugees arriving in the United States during 1962 created a substantial ethno-linguistic group in Florida. Primarily out of necessity, bilingual education programs were established in the schools to educate the Cuban children. Coral Way, a bilingual education school, was founded by Cuban immigrants in 1963. In rapid succession other bilingual education schools were established in Texas, New Mexico, California, New Jersey, and St. Croix. The Navajo Indians established

²⁵Peter D. Roos, "Bilingual Education: The Hispanic Response to Unequal Educational Opportunity," Law and Contemporary Problems 42 (Fall 1978): 113.

²⁶Perry A. Zirkel, "The Legal Vicissitudes of Bilingual Education," Phi Delta Kappan, January 1977, p. 409.

a Navajo/English School at Rough Rock, Arizona in 1966.²⁷ Bilingual instruction was again coming in vogue.

Bilingual Education as a Legal Right

As has been previously mentioned, there are approximately five million children in public schools in the United States whose native language is other than English. Many of these children experience problems attaining normal achievement due to a language barrier between the teacher and the student. The current concept of bilingual education is that bilingual instruction will be a transitional bridge to proficiency in the English language and normal achievement gains.

Education has been described as an enculturating process whereby culturally consistent sets of knowledge, values, and attitudes are passed from one generation to the next generation. As long as the same cultural groups are continually involved, this function of education remains constant. In a pluralistic society such as the United States, there are relatively few sets of knowledge, values, and attitudes to be conveyed from generation to generation. Therefore, the function of education assumed to be enculturating is, in reality, often one of acculturating. The process of enculturation is short-circuited for ethno-linguistic minority groups attending public schools mainly because the culture of only the dominant groups is being transmitted. It was the acculturating process, coupled with a prevailing earlier practice of enrolling ethno-linguistic minority children in EMR (educable mentally

²⁷Brisk, p. 7.

retarded) classes and precipitous racial assignments which brought the concern of this group to the attention of our national leaders.²⁸

A landmark piece of legislation was introduced in 1967 by Senator Ralph Yarborough of Texas. Evolving from this legislation was Title VII of the Elementary and Secondary Education Act (later to be known as the Bilingual Education Act) that was finally enacted into law in 1968. The major emphasis of this legislation was to improve the quality of education for "limited English-speaking ability" (LESA) students.²⁹ The Bilingual Education Act appropriations since 1968 have steadily increased through each of the amendments of 1974 and 1978.

Various arguments have been advanced by many individuals in attempts to secure commitment from boards of education for the implementation of bilingual education programs. Earlier arguments centered on entitlement to bilingual programs as a "fundamental right" guaranteed by the United States Constitution. The issue of "fundamental right" was virtually ruled out in the Fleming v. Adams³⁰ case. The Court stated:

The United States Constitution does not secure to the appellants the right to an education; rather the Constitution secures the appellant's right to equal treatment where the state has undertaken to provide public education to the persons within its borders.³¹

²⁸Jose Llanes, "The Sociology of Bilingual Education in the United States," Journal of Education 163 (Winter 1981): 72-73.

²⁹Bilingual Education Act 20 U.S.C.A. §8806 (P.L. 90-247, Title VII, §704).

³⁰Fleming v. Adams, 377F. 2d 975 (10th Cir. 1967).

³¹Ibid, pp. 977-978.

A similar view of the Supreme Court can be seen in its San Antonio Independent School District v. Rodriguez³² decision when it stated:

(e)ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.³³

While this case was not addressing the issue of a "fundamental right" to a bilingual education, it nevertheless does set forth the Court's position regarding education in general.

Thus, the question of a Constitutional guarantee to a bilingual education was laid to rest, since the Constitution delegates the responsibility for education to the various states. Any claim to bilingual education as a "right" must be secured from a source other than through Constitutional guarantees.

The Civil Rights Act of 1964 is one such source. Title VI, §601 reads as follows:

No person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.³⁴

To further clarify Title VI, the Department of Health, Education, and Welfare issued a memorandum in May 1970 that was significant for individuals and groups in the struggle against discriminating practices in public schools. This memorandum provided the following clarification:

³²San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

³³Ibid., p. 35.

³⁴42 U.S.C. §2000d. (1964).

Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational programs offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open instructional programs to these students.³⁵

Since most school districts in the United States receive federal financial assistance in one form or another, they must abide by the memorandum or run the risk of having funds denied the district.

An additional piece of legislation which bears heavily on the rights of students to programs geared to their language needs is the Equal Educational Opportunity Act of 1974.³⁶ The legislation states in part:

. . . no State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, . . . by . . . (f) the failure by an educational agency to take the appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.³⁷

The Civil Rights Act, Bilingual Education Act, Equal Education Opportunity Act, and the Department of Health, Education, and Welfare memorandum collectively provide a mandate for school systems to provide instructional programs that are geared to the language needs of students. Failure to comply with the requirements of these particular laws and regulations can result in the withholding of financial assistance to the school districts.

³⁵Fed. Reg. 11595 (1970).

³⁶Equal Educational Opportunity Act of 1974, 20 U.S.C.

³⁷20 U.S.C. §1703(f).

One of the most difficult decisions faced by school districts in designing programs to address language needs of students is how many students must be involved before special programs are required. Justice Blackmun in Lau stated that ". . . numbers are at the heart of the case." The Department of Health, Education and Welfare clarifying memorandum was directed to school districts with at least five percent enrollment of language minority students.

At this time, numerical requirements have not been established. It might be argued that the Civil Rights Act of 1964 uses the term "person." The Equal Educational Opportunity Act speaks of an "individual." For these reasons, schools must offer a program for only one student, if necessary, to ensure an equal educational opportunity for the child. This argument has not been tested in a court of law and is merely a point for speculation at this time.

Education for the Undocumented Aliens' Children

Closely allied to the point under discussion is an issue that has been recently litigated in the courts. The courts' decisions could possibly have an impact on school districts where undocumented aliens reside and send their children to school.

The issue before the courts is the prerogative of school districts to deny admission or to admit upon payment of a tuition the children of illegal aliens in the United States.

There is no real agreement among the rulings or decisions of the courts at this time. In three separate cases brought before the courts the decisions rendered have failed to clarify the issue. The first

decision in Doe v. Plyer³⁸ found that the children of illegal aliens were afforded a Constitutional protection against the state of Texas' attempt to limit the children's right to a free and appropriate education. Conversely, Boe v. Wright³⁹ found that the Dallas Independent School District could exclude children from school upon failure to prove legal residence in the United States. Similarly, Hernandez v. Houston Independent School District⁴⁰ arrived at more or less the same decision.

Doe, Boe, and Hernandez were litigated because Texas Education Code Section 21.031 enacted in 1975 required school districts to admit to their schools ". . . all persons who are either citizens of the United States or legally admitted aliens and are over five and not over 21 years of age . . ."41 In their separate attempts to enforce this code requirement, the three school districts excluded all children that were not legally admitted aliens or residents of the United States and upon failure to pay a tuition charge of one-thousand dollars.

The plaintiffs in Doe argued that the supremacy clause of the Constitution precludes states from enacting laws that are contrary to the federal government's purpose. This clause is stated as follows:

³⁸Doe v. Plyer, 458 F. Supp. 569 (E. D. Texas, 1978).

³⁹Boe v. Wright, Civil Action No. CA 3/79-0440-0 (N. D. Texas, 1979).

⁴⁰Hernandez v. Houston Independent School District, 558 S.W. 121 (Ct. of Civil Appeals Texas, 1976).

⁴¹Texas Education Code Section 21.031(c).

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary not with standing.⁴²

An additional point of argument by the plaintiffs in Doe was the equal protection clause of the United States Constitution which states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.⁴³

Consequently, the Doe decision invalidated Texas Education Code Section 20.031 because it violated the supremacy clause and the equal protection clause of the Constitution. In the court's view, the code conflicted with federal enactments ensuring education for disadvantaged children and federal treaties guaranteeing a free education whenever it is provided by a state.

The Doe decision has been appealed to the United States Supreme Court.

The Boe v. Wright court decision upheld the Dallas Independent School District's arguments and let stand the enforcement of the requirements of the Texas Education Code. The Boe decision found no violation of the supremacy clause of the Constitution; therefore, the Dallas

⁴²United States Constitution, art. VI, sec. 2.

⁴³United States Constitution, amend. 14, sec. 1 (1868).

Independent School District's restriction of illegal alien children preserved for legitimate citizens the limited resources for public education.⁴⁴

In Hernandez, the court's position was similar to that in the Boe case. The Houston Independent School District was challenged when the constitutionality of a monthly tuition fee charged undocumented alien children was deemed "suspect" by the court; however, the court refused to scrutinize the separate classification of undocumented aliens.⁴⁵ The court's decision was predicated upon the point of place of residence and not on alienage. Consequently, the decision upheld the State Education Code in that it was a means for ensuring the preservation of the state's resources for legitimate citizens.

Among the most intriguing arguments advanced for providing educational opportunities for alien children are centered around the treaties the United States has with other nations. For example, the 1970 treaty between the United States and Latin American nations entails an article referred to as the "Protocol of Buenos Aires," which implores subscribing nations to

. . . exert the greatest effort, in accordance with their constitutional process, to insure the effective exercise of the right of education on the following basis:

(a) Elementary education compulsory for children of school age shall also be afforded to all others who can benefit from it. When provided by the state, it shall be without charge.⁴⁶

⁴⁴Boe v. Wright, loc. cit.

⁴⁵Hernandez v. Houston, p. 124.

⁴⁶21 U.S.T. 601, T.I.A.A. No. 6847 (1970).

Additionally, Article 55 of the Charter of the United Nations,⁴⁷ Article 26 of the Universal Declaration of Human Rights,⁴⁸ and Article 13 of the International Covenant on Economic, Social, and Cultural Rights⁴⁹ address the right of everyone to a free education in all signature nations. Therefore, any state in the United States restricting individuals to a free education finds itself in conflict with the federal government's treaty-making powers and enforcement policies.

Whatever the outcome of litigation, unless the children are deported along with their parents, decisions must be made by boards of education whether it is best to provide an education for the children or to let them suffer the ultimate ills that illiteracy brings. Furthermore, it is evident that this matter must be addressed by the Supreme Court before definite answers are provided, in order to resolve the issue of undocumented aliens' right to a free public education.

Effectiveness of Bilingual Education Instructional Programs

Overview

At the present time, little in the way of definitive answers are available on the merits or relative effectiveness of the various bilingual education programs utilized in the schools of the United States.

⁴⁷Charter of the United Nations, 59 Stat. 1031, T.S. No. 993 (1945).

⁴⁸Universal Declaration of Human Rights, G.S. Res. 217A, UN Document A1810 (1948)..

⁴⁹International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 200A (XXI) (1966).

In the absence of an overall appropriate language policy to govern the schools, many different approaches to educating ethno-linguistic students are in practice. The central issue in each approach is to decide whether the native language (L1) or a second language (L2) is to be used to introduce the student to the teaching and learning process.

Examined in this section are various reports by researchers in the area of bilingual education with regard to the effectiveness of programs operated in the nation's schools.

Approaches for Bilingual Education

The Supreme Court's Lau v. Nichols decision ruled that school districts must take steps to help "Limited English-Speaking Ability" (LESA) students to overcome language deficiencies. Not mentioned, however, was the nature of the steps school districts were to take. Justice William O. Douglas stated at the outset of the Court's opinion:

No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioners ask only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.⁵⁰

Left to the school district were the decisions as to the most appropriate means to address the LESA students' problems. Evolving from the many choices available to the school district were the two most commonly used methods of instructing these students--the transitional approach and the maintenance approach. These two approaches are described by one author as follows:

⁵⁰Lau v. Nichols, pp. 464-465.

The objective of the maintenance approach is complete bilingualism, or full fluency and literacy in both Spanish and English. . . Initial instruction begins in the child's dominant language (English-Spanish) and as concepts in the dominant language are mastered, the second language is mastered and maintained in both languages, resulting in bilingual, biliteral, bicognitive, and bicultural students.

The transitional approach gives initial instruction in the student's dominant language (Spanish) while the second language (English) is introduced. The goal of the transitional approach is for the student to make a complete switch to functioning in English and receive all instruction in English.⁵¹

A third, and possibly more controversial approach, is total immersion or mainstreaming of LESA students in monolingual English-medium classrooms. While the Canadian experience with this approach has shown favorable results, critics argue that it is not the most effective means of educating every LESA student.⁵²

In 1977, the Commissioner of Education stated, ". . . there is little to guide educators in designing and implementing effective bilingual projects."⁵³ Various studies addressing the effectiveness of bilingual programs have been reported to date. The only study that was national in scope, encompassing 38 projects and over 11,500 children, was the American Institute for Research (AIR) study. The research

⁵¹Lydia Maria Vazquez, "Does Bilingual Education Work? Harlandale Answers Yes!" Intercultural Development Research Association Newsletter, August 1981. (Note: These approaches are applicable to other language groups although Spanish is mentioned in this citation.)

⁵²B. Richard Tucker, "Implications for U.S. Bilingual Education: Evidence for Canadian Research." Focus (National Clearinghouse for Bilingual Education) No. 2, February 1980, p. 1.

⁵³U.S. Congress, House, Condition of Bilingual Education, H. Rept. 95-1137, 95th Cong. 2d ses., 1978, p. 84.

findings were that Spanish/English bilingual programs performed at a lower level in English language arts than non-Title VII studies and at the same level in mathematics as non-Title VII students.⁵⁴

In a comprehensive study of the research findings on the effectiveness of bilingual education, Heidi Dulay and Marina Burt⁵⁵ reviewed 38 research projects and 175 project evaluations. All studies were scrutinized for research design flaws and other factors of weakness. Surviving the selection process were nine research studies and three bilingual demonstration projects. The research revealed that out of the totals examined 34 (58%) were positive; 24 (41%) were neutral and 1 (1%) were negative.⁵⁶ Dulay and Burt went on to say:

Pinpointing the reasons for the success of some programs and the ineffectiveness of others is unfortunately not possible, as none of the studies undertook designs sophisticated enough to allow such fine-grained analysis. Nevertheless, the research conducted to date gives us reason to be optimistic about the potential of bilingual education.⁵⁷

Cited as evidence of effective bilingual education programs are seven programs carried out in the United States, Canada, and Europe.

Cummins describes the programs:

⁵⁴American Institute of Research, Evidence of the Impact of the ESEA Title VII Spanish/English Bilingual Programs, vol. 3: Year Two Impact Data, Educational Process, and In-Depth Analysis (Washington, D.C.: DHEW, 1978).

⁵⁵Heidi Dulay and Marina Burt, "Bilingual Education: A Close Look at Its Effects." Focus (National Clearinghouse for Bilingual Education) No. 1.

⁵⁶Ibid., p. 3.

⁵⁷Ibid.

1. Rock Point Navajo Study. Before the bilingual program was started in 1971, children were two years behind United States norms in English reading by the end of grade 6 despite intensive teaching of English as a second language. The bilingual program used Navajo as the major initial medium of instruction and continued its use throughout elementary school. English reading instruction was delayed until Navajo reading skills were well established (Mid-grade 2). By the end of grade 6 children in the bilingual program were performing slightly above U. S. grade norms in English reading despite considerably less exposure to English than before (Rosier & Farella, 1976).

2. Legaretta Study: Direct ESL--Bilingual Comparison. A study carried out by Dorothy Legaretta (1979) in California compared the effectiveness of three types of bilingual treatments with two types of English-only treatments in facilitating the development of English communicative competence in Spanish background kindergarten children. The three bilingual treatments were found to be significantly superior to the two English-only treatments in developing English language skills. The most effective program was one with balanced bilingual usage (50% English, 50% Spanish).

3. Nestor School Bilingual Program Evaluation. The Nestor program in San Diego involved both Spanish and English background students and used a team teaching approach in which instruction in the early grades was primarily by means of the child's L1. Gradually the proportion of instruction in L2 was increased until by grade 4 approximately 50% of instruction was by means of each language. The evaluation of the program (Evaluation Associates, Note 1) showed that Spanish background students gained an additional .36 of a year's growth in English reading for each successive year they spent in the bilingual program. Spanish background students who had spent 5 years or more in the bilingual program at the elementary level tended to perform slightly better in English reading than the school average at the junior high school level, despite the fact that at least 37% of the comparison group were originally native English speakers. In mathematics, grade 6 Spanish background children in the Nestor program were over a year ahead of the Spanish speakers in the comparison district and only one month behind grade level. The English background participants in the Nestor bilingual program performed at a higher level than the comparison groups on a large majority of measures; however, this may be due to a selection bias.

4. Santa Fe Bilingual Program. In the schools involved in this program Spanish was used for between 30 and 50 percent of the school day throughout elementary school. It was found that children enrolled in the bilingual program consistently performed better than the control group (in an English-only program) in both reading and mathematics. Children enrolled continuously in the bilingual program from grade 2 caught up with U. S. norms in English reading by grade 5 and stayed close in grade 6. In math this group surpassed the national average in grade 4 and maintained an equal or superior status through grade 6 (Leyba, Note 2).

Ten other well-controlled evaluations in the U.S. context showing similar patterns of findings are reviewed by Troike (1978). The same pattern emerges from evaluations of bilingual programs in other contexts. Consider just three examples:

5. Sodertalje Program for Finnish Immigrant Children in Sweden. The findings of the evaluation are very similar to those of the Rock Point Navajo evaluation. Finnish children in Swedish-only programs were found to perform worse in Finnish than 90% of equivalent socio-economic status Finnish children in Finland and worse in Swedish than about 90% of Swedish children (Skufnabb-Kangas & Tou Komaa, 1976). The Sodertalje program, however, used Finnish as the major initial language of instruction and continued its use throughout elementary school. Swedish became the major language of instruction from grade 3. By grade 6, children's performance in this program in both Finnish and Swedish was almost at the same level as that of Swedish-speaking children in Finland, which was a considerable improvement in both languages compared to their performance in Swedish-only programs (Hanson, Note 3).

6. Manitoba Francophone Study. A large-scale study carried out by Hebert (Note 4) among grades 3, 6, and 9 minority francophone students in Manitoba who were receiving varying amounts of instruction through the medium of French found that the amount of French-medium instruction showed no relationship to children's achievement in English. In other words, francophone students receiving 80% instruction in French and 20% instruction in English did just as well in English as students receiving 80% instruction in English and 20% in French. However, amount of instruction in French was positively related to achievement in French. In other words, students'

French benefitted at no cost to their progress in English.

7. Edmonton Ukrainian-English Bilingual Program.

This program has existed in eight Edmonton elementary schools since 1972 and is financially supported by the Alberta Government. In 1978-79 there were 697 students enrolled in grades K through 5. Ukrainian is used as a medium of instruction for 50% of the regular school day throughout elementary school. Only about 15% of the students are fluent in Ukrainian on entry to the program. A study carried out with grade 1 and 3 students (Cummins & Mulgahy, 1978) found that students who were relatively fluent in Ukrainian as a result of parents' using it consistently in the home were significantly better able to detect ambiguities in English sentence structure than either equivalent monolingual English-speaking children not in the predominantly English-speaking homes. The evaluations of the program have shown no detrimental effects on the development of children's English or other academic skills. In fact, by the end of grade 5 children in the program had pulled ahead of the comparison group in English reading comprehension skills (Edmonton Public School Board, Note 5).⁵⁸

Conceptual and basic skills development are the ultimate outcomes of programs for LESA students. The primary language is needed in this instance to enhance skills achievement. The conclusions reached by one researcher examining the relationship between bilingual-bicultural education and regular education in student's verbal and nonverbal performance were these:

1. Chicano students in the early years of their educational development perform better on standardized tests of general ability if they are taught initially in their dominant language before they are introduced to regular English language instruction.

2. As students progress to the upper grades a noticeable improvement is detected in their subtest

⁵⁸Jim Cummins, "Empirical and Theoretical Underpinnings of Bilingual Education," Journal of Education 163 (Winter 1981): 17-20.

performance scores. This indicated that as students enrolled in bilingual bicultural education programs progress in their education, they will eventually perform at the same level as or better than their peers in the regular education program.

3. Chicano students for the most part perform better on the verbal sections of both the English and Spanish tests, but their overall performance is better on the Spanish test.⁵⁹

In an article distributed by the National Clearinghouse for Bilingual Education, successful bilingual-bicultural programs in Colorado are described. The authors of the article had analyzed 39 programs and reported that over ninety percent of them were successful in their approach to teaching students with limited English proficiency. The students' rate of progress was reported to be as good as expected for students. In addition, fifty percent of the programs revealed growth rates in English academic skills for language minority students well beyond growth normally expected for all students.⁶⁰ The authors concluded with:

The results in Colorado provide a clear and emphatic response to the persistent question about the effectiveness of bilingual education. For Colorado at least the answer is a resounding "yes".⁶¹

⁵⁹Frank Z. Alejandro, "The Relationship of Bilingual-Bicultural Education and Regular Education in Verbal and Non-Verbal Performance of Chicano Students," in Outstanding Dissertations in Bilingual Education, 1980 (Rosslyn, Virginia: National Clearinghouse for Bilingual Education, 1981), p. 67.

⁶⁰Lawrence A. Egan and Ross Goldsmith, "Bilingual-Bicultural Education: The Colorado Success Story." In Information Packet on Effectiveness of Bilingual Education (Rosslyn, Virginia: National Clearinghouse for Bilingual Education, 1981), pp. 10-20.

⁶¹Ibid., p. 20.

The position of UNESCO to the most effective approach to educating LESA students has been that it is better to begin the education process in L1 and to introduce L2 later as the child progresses. Positive results using this approach have been found in Peru, Mexico, and in the United States.⁶²

Other studies have shown positive effects from introducing schooling to children in L2 in which the children are taught to read. Later, the children transfer this skill to their native language. This approach has been successfully used in Canada with English-speaking children being introduced to school in French and, also, in the United States with English-speaking children introduced to school in Spanish. The success of this approach has been shown to be largely a measure of the social status of the native language, attitudes toward L1 and L2, degree of proficiency in the native language, and whether the program's goals are toward additive or subtractive bilingualism.⁶³

Recent interest in the appropriate instruments to be used with bilingual children has stimulated some researchers to investigate the impact these instruments have on achievement scores. Partly as a result of the "language dominant standard" put forth by the Aspira decision, one researcher undertook to determine if there were any differences in performance of children on the Illinois Test of Psycholinguistic Abilities, Spanish and English versions. Kindergarteners and second graders of bilingual Hispanic descent on both versions, with the exception

⁶²Brisk, p. 11; see also Llanes, p. 73.

⁶³Llanes, p. 74.

of two auditory-vocal tests, scored higher on the English version. The second-grade children scored significantly higher than on all auditory-vocal tests with only one exception. Neither of the groups scored significantly higher in Spanish on any of the tests.⁶⁴

A conclusion of the researcher was that a court's decision that requires bilingual Hispanic children to be tested in the language predominant in the home casts some doubt on the wisdom of the court.

Considerable controversy has surrounded the testing of linguistic minorities for many years. Earlier research (1923-1940) in this area centered on intellectual assessment. Research from 1940-1960 dealt primarily with the many environmental variables and assessed the degree of bilingualism in relation to performance on IQ tests. Recent research has examined the acculturation process for minorities. Discrepancies in group IQ scores among white, black, and Chicano children are explained in terms of sociocultural variables such as urban family structure and family size.⁶⁵

The actual instruments used to assess aptitude and achievement among linguistic minorities are numerous. The instruments include translations of conventional tests developed in parallel form in various

⁶⁴Fredrich McCall Perez, "The Performance of Bilingual Children on the Spanish Standardized Test of Psycholinguistic Abilities," in Outstanding Dissertations in Bilingual Education, 1980 (Rosslyn, Virginia: National Clearinghouse for Bilingual Education, 1981), pp. 116-118.

⁶⁵Estaban L. Olmedo, "Testing Linguistic Minorities," American Psychologist 36 (October 1981): 1081-82.

languages. The problems inherent in the use of these forms led one researcher to point out:

. . . it is not uncommon to find that many tests written in formal Spanish are used inappropriately with populations that speak substantially different Spanish dialects. A related issue is that of linguistic differences among and within the various subgroups such as Mexican-American, Puerto Ricans, and Cuban-Americans.⁶⁶

The researcher mentioned that:

The point to keep in mind, however, is that if it is to be meaningful, any consideration of testing of linguistic minorities must recognize (a) the social, political, and economic realities facing these groups today; (b) the relevance of educational opportunities to those realities; and (c) the significance of linguistic (and cultural) factors to both educational opportunities and socioeconomic realities.⁶⁷

The publication of Noel Epstein's book, Language, Ethnicity and the Schools,⁶⁸ raised the question of bilingual education effectiveness. The findings of the American Institute of Research, President Ronald Reagan's administration's attitude toward the transitional approach to bilingual education, a general prevailing attitude among many individuals that America is a "melting pot" for ethnic groups, and concern for the cost of bilingual education programs have caused much concern among the advocates of bilingual education in American schools. Additional concern centers on the fears of a separatist movement among ethno-linguistic groups. All these factors compound the problems of education decision makers as they seek to address the needs of every

⁶⁶Ibid., p. 1083.

⁶⁷Ibid., p. 1089.

⁶⁸Noel Epstein, Language, Ethnicity and the Schools (Washington, D.C.: George Washington University, 1977).

child attending school. The many issues to be addressed by educators in the future will inevitably wind their way through the nation's courts.

Chapter III

A SURVEY OF THE STATES' CONSTITUTIONAL AND STATUTORY PROVISIONS FOR BILINGUAL EDUCATION

The fifty states, District of Columbia, American Samoa, Guam, Puerto Rico and the Virgin Islands have constitutional or statutory provisions addressing the language requirements for use in the public schools. Of the fifty states, eleven mandate bilingual education, nineteen states have constitutional or statutory provisions permitting bilingual education, and seven states specifically prohibit any language other than English being used in the classrooms to instruct students. The remaining states' constitutions or statutes have no provisions toward the language used in the classrooms of the public schools. Puerto Rico mandates bilingual education. American Samoa, District of Columbia, Guam and the Virgin Islands have legislation permitting bilingual education. (See Appendix A for a complete discussion of the states' constitutional or statutory provisions.)

States With Mandatory Bilingual Education Legislation

Eleven states mandate bilingual education programs for language minority students. Table 1 shows those states that presently have legislation requiring school districts to operate bilingual education programs.

TABLE 1
STATES THAT MANDATE
BILINGUAL EDUCATION

STATE	STATE
Alaska	Michigan
California	New Jersey
Colorado	Rhode Island
Connecticut	Texas
Illinois	Wisconsin
Massachusetts	

ALASKA.--Alaska's requirements for bilingual education are applicable to any school district with eight or more students in need of a special bilingual-bicultural program.¹

CALIFORNIA.--California has enacted comprehensive legislation providing for bilingual cross-cultural education in both public and private schools. Entitled the Bilingual Education and Improvement Act of 1980, the legislation is comprehensive in that it governs teacher preparation, licensing, and curricular programs.²

COLORADO.--Colorado, like California, has enacted comprehensive legislation mandating bilingual-bicultural educational programs for language minority students. Provisions for the development of local educational agency plans, establishing steering committees, teacher training, and enforcement procedures are addressed through the legislation.³

¹Alaska, Statutes, Title 14, Section 14.30.400.

²California, Education Code.

³Colorado, Revised Statutes, Title 22, Chapter 24.

CONNECTICUT.--Connecticut's statutes require bilingual education programs only in school districts where 20 or more students who are not proficient in English are in attendance. The purpose of the bilingual education programs ". . . shall be to enable children to become proficient in English."⁴

ILLINOIS.--Illinois, too, has comprehensive legislation governing bilingual education programs in the state. Twenty or more students with limited English-speaking ability are required before school districts may implement bilingual education programs. The legislation permits only transitional programs in the schools. Continuing enrollment in the bilingual education programs is encouraged for all limited English-speaking ability students until such time as they are proficient in the English language as demonstrated by an examination.⁵

MASSACHUSETTS.--Massachusetts legislation is comparable in language and requirements to the Illinois legislation. As a matter of fact, the language is exactly the same in many instances and addresses student identification, parental rights, and teacher certification.⁶

MICHIGAN.--Michigan has legislation that requires 20 or more limited English-speaking students to attend a school district before bilingual education programs can be provided. The legislation is comprehensive in that it provides for a census count, enrollment

⁴Connecticut, General Statutes Annotated, Title 10, Section 10-17a.

⁵Illinois, Statutes Annotated, Chapter 122, Article 14c.

⁶Massachusetts, General Laws Annotated, Title XII, Chapter 69, Chapter 71A.

notices, parent and advisory councils, and other requirements similar to several other states where bilingual education is mandated.⁷

NEW JERSEY.--New Jersey's legislation requires bilingual instructional programs for any language group when 20 or more LESA students are in school attendance. Participation of the students in the bilingual educational program is permitted for three years. A State Advisory Committee is required by the legislation. The State Board of Education is responsible for developing resources, programs, curriculum and instructional materials for local school district use when operating programs.⁸

RHODE ISLAND.--Rhode Island requires bilingual education in school districts with 20 or more non-English-speaking students. Adequate provisions for identifying limited English-speaking ability students, establishing programs, notification of enrollment and parental rights are contained in the legislation.⁹

TEXAS.--Texas has a substantial population of language minority students who attend public schools. The legislation enacted to address the needs of language minority students is very similar to the other states that also have mandatory legislation. In any school district with 20 or more limited English-speaking ability students in any grade, the district is required to provide bilingual instruction. The costs of the bilingual education programs are borne by the state for grades

⁷Michigan, Statutes Annotated, Title 15.

⁸New Jersey, Statutes Annotated, Chapter 197.

⁹Rhode Island, General Laws, Title 16, Chapter 54.

one through three. After grade three, the local school districts must assume the cost of the programs. Mainstreaming of the students is encouraged. Special certification of the bilingual education teachers is required by the legislation.¹⁰

WISCONSIN.--Wisconsin's legislation provides for a census to be taken to determine the need for bilingual education programs. When 10 or more language minority students are found to be in need of special language instruction, programs must be provided. An enrollment period is provided and parents and guardians are to be notified. Advisory committees for the bilingual education programs are encouraged by the legislation. Progress reports by the state superintendent of schools is to be provided to the legislature each year.¹¹

States With Permissive Legislation Favoring
Bilingual Education

Nineteen states have constitutional or statutory provisions that favor or permit school systems to operate bilingual education programs. Table 2 shows these states.

¹⁰Texas, Education Code, Section 21.

¹¹Wisconsin, Statutes Annotated, Title 14.

TABLE 2
STATES WITH PERMISSIVE LEGISLATION
TOWARD BILINGUAL EDUCATION

STATE	STATE
Arizona	New Hampshire
Florida	New Mexico
Idaho	New York
Indiana	Ohio
Iowa	Oregon
Kansas	Pennsylvania
Louisiana	South Dakota
Maine	Utah
Maryland	Washington
Minnesota	

ARIZONA.--Arizona's statutes permit school districts to offer bilingual education in the first eight grades. The legislation states that ". . . the district may provide special programs of bilingual education."¹²

FLORIDA.--Florida has a large language minority population and permits bilingual education programs in its schools. Transitional bilingual education programs are permitted under this legislation.¹³

IDAHO.--Idaho permits schools to operate to meet the needs of language minority students. The permissive legislation states ". . . instruction may be given in a language other than English as necessary to allow for the transition of students to the English language."¹⁴

¹²Arizona, Revised Statutes Annotated, Title 15, Chap. 2, Art. 1, Sec. 15-202.

¹³Florida, Statutes Annotated, Title 15, Section 236.081.

¹⁴Idaho, Code, Title 33, Chapter 16, Section 33-1601.

INDIANA.--Indiana's permissive legislation is similar in language to those states that mandate bilingual education. The legislation provides that the ". . . Superintendent of public instruction shall carry out a bilingual-bicultural program for the improvement of educational opportunities for non-English-dominant children by . . ."15

IOWA.--Iowa's permissive legislation encourages school districts to implement programs to meet the needs of non-English-speaking students.

When the student is non-English speaking, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in the English language or a transitional bilingual program, until the student demonstrates a functional ability to speak, write, read and understand the English language.¹⁶

KANSAS.--Kansas, through Senate Bill No. 7, if enacted, would permit school districts to establish bilingual programs. Advisory, technical and financial assistance is available to local education agencies through the state board of education.¹⁷

LOUISIANA.--Louisiana requires a second language program in all grades in any school district where 25 percent of the heads of households have petitioned the local boards of education to provide such programs. The cost of the program in the first eight grades is borne by the state. In grades 9 - 12, the local school district must assume

¹⁵Indiana, Statutes Annotated, Title 20, Section 20-10.1-5.5-2.

¹⁶Iowa, Code Annotated, Title 12, Chapter 280, Section 280.4.

¹⁷Kansas, Senate, An Act Concerning Bilingual Education, Senate Bill No. 7, 1980.

the cost. Although not mentioned specifically, it may be assumed that local school districts may provide bilingual education programs.¹⁸

MAINE.--Maine's legislation permits local education agencies to establish transitional programs for the benefit of non-English-speaking students.¹⁹

MARYLAND.--Maryland's legislation mandates compensatory education programs. The legislation encourages local school districts to cooperate with other state and federal agencies to provide programs that address the needs of all students. Implied in the legislation is permission to establish bilingual education programs designed to meet the needs of language minority students.²⁰

MINNESOTA.--Minnesota has implemented pilot transitional programs for language minority students. The programs are open to all non-English-speaking students in the districts where the programs are operated.²¹

NEW HAMPSHIRE.--New Hampshire's legislation permits local school districts to operate bilingual education programs only with the approval of the state board of education.²²

NEW MEXICO.--New Mexico, although having a substantial language minority population, does not mandate bilingual education. However,

¹⁸Louisiana, Statutes Annotated, Revised, Title 17.

¹⁹Maine, Statutes, Revised, Title 20, Chapter 5.

²⁰Maryland, Annotated Code, Title 8.

²¹Minnesota, Statutes Annotated, Chapter 306.

²²New Hampshire, Revised Statutes Annotated, Title 15.

New Mexico's legislation does permit local school districts to operate a bilingual education program for students.²³

NEW YORK.--New York has a substantial language minority population. The legislation in force in New York is permissive toward local school districts desiring to implement bilingual education programs. State financial assistance is provided to school districts that operate bilingual education programs.²⁴

OHIO.--Ohio's legislation provides for special certification of bilingual education teachers. Implicit in the law is the right of teachers to practice their profession.²⁵

OREGON.--Oregon's special legislation permits school districts to operate bilingual education programs. The legislation addresses teacher certification, funding, advisory councils and cooperative efforts between education agencies.²⁶

PENNSYLVANIA.--Pennsylvania's legislation authorizes the state board of education to approve the establishment of bilingual education programs in local school districts.²⁷

SOUTH DAKOTA.--South Dakota's legislation is permissive toward bilingual education programs providing that they lead toward mastery of the English language.²⁸

²³New Mexico, Statutes, Chapter 77, Article 23.

²⁴New York, Consolidated Laws, Annotated, Article 65.

²⁵Ohio, Revised Code, Annotated, Title 33.

²⁶Oregon, Revised Statutes, Chapter 343.

²⁷Pennsylvania, Statutes Annotated, Title 24.

²⁸South Dakota, Compiled Laws Annotated, Title 13.

UTAH.--Utah's special legislation and funding encourages local school districts to implement programs.²⁹

WASHINGTON.--Even though English is the required language of instruction in Washington, bilingual education programs are encouraged in the various school districts.³⁰

States With Prohibitory Legislation
Toward Bilingual Education

At the present time, relatively few states specifically forbid any language other than English being used in the instructional program. Although the legislation is explicit in requiring English only, some efforts by the local education agencies are being made to address the needs of language minority students.

TABLE 3

STATES WITH PROHIBITORY LEGISLATION
TOWARD BILINGUAL EDUCATION

STATE
Alabama
Arkansas
Delaware
Nebraska
North Carolina
Oklahoma
West Virginia

²⁹Utah, Code Annotated, Title 53.

³⁰Washington, Revised Code Annotated, Title 28A.

States Without Constitutional or Statutory
Provision Toward Any Language

Several states can be classified as not having any provisions for a language in their legislative enactments.

TABLE 4

STATES WITHOUT CONSTITUTIONAL OR
STATUTORY PROVISIONS FOR ANY
LANGUAGE

STATE	STATE
Georgia	North Dakota
Hawaii	South Carolina
Kentucky	Tennessee
Mississippi	Vermont
Missouri	Virginia
Montana	Wyoming
Nevada	

An Analysis of the Legislative
Requirements of the States

An analysis of the legislation enacted by the various states has revealed specific criteria to be considered in implementing bilingual education programs at the local school district level. Tables 5 - 12 show some specific requirements of the states' statutes.

Table 5 shows those states that require a minimum number of language minority students that must attend the schools before a bilingual program can be provided.

TABLE 5
STATES REQUIRING MINIMUM NUMBERS OF
LANGUAGE MINORITY STUDENTS

STATE	MINIMUM NUMBER
Alaska	8 or more
California	10 or more
Colorado	50 or more (K-3)
Connecticut	20 or more
Illinois	20 or more
Massachusetts	20 or more
Michigan	20 or more
New Jersey	20 or more
Texas	20 or more
Wisconsin	10 or more (K-3)
	20 or more (4-12)

Table 6 shows those states that specify parent and/or advisory councils or committees to be formed. The main function of the councils or committees is to serve in an advisory capacity to the boards of education.

TABLE 6
STATES REQUIRING PARENT AND/OR ADVISORY
COUNCILS FOR BILINGUAL EDUCATION
PROGRAMS

STATE	STATE
California	Minnesota
Colorado	New Jersey
Illinois	Oregon
Indiana	Rhode Island
Michigan	Wisconsin

Several state statutes specify special training or certificates for bilingual education teachers. Table 7 shows those states with special legislative requirements for bilingual education teachers. Although not specifically mentioned by many state statutes, it may be assumed that certification and training are required of bilingual education teachers.

TABLE 7

STATES WITH TEACHER CERTIFICATION
AND/OR LICENSING REQUIREMENTS FOR
BILINGUAL EDUCATION TEACHERS

STATE	STATE
Arizona	Minnesota
California	Pennsylvania
Colorado	Rhode Island
Illinois	Texas
Massachusetts	

An integral component of a comprehensive program of bilingual education is an accurate assessment of need. In order to determine precise needs for personnel, facilities, and other necessary resources, several states require an accurate census of students eligible for bilingual education programs. Table 8 shows those states with special census requirements.

TABLE 8
STATES REQUIRING A CENSUS OF
LANGUAGE MINORITY STUDENTS

STATE	STATE
California	Massachusetts
Colorado	Rhode Island
Connecticut	Texas
Illinois	Wisconsin

In most states that mandate bilingual education programs, special funding is provided for program operations. Table 9 shows those states that fund partially or totally the bilingual education programs operated by the public schools.

TABLE 9
STATES PROVIDING SPECIAL FUNDING
FOR BILINGUAL EDUCATION

STATE	STATE
Alaska	Louisiana
California	New Mexico
Colorado	Rhode Island
Connecticut	Texas
Illinois	Wisconsin
Kansas	

Three states require a plan for bilingual education to be submitted to the state education agency for approval. Table 10 shows these states.

TABLE 10
STATES REQUIRING A PLAN FOR
BILINGUAL EDUCATION

STATE
California
Colorado
New Mexico

Relatively few states determine eligibility for entrance into the bilingual education program by an examination. However, some states do require students to be examined in order to enter and to remain in the bilingual education programs. Table 11 shows those states that specify an examination.

TABLE 11
STATES USING EXAMINATIONS

STATE
Arizona
California
Illinois
Rhode Island

Finally, several states specifically identify the kind of bilingual education programs that are permitted in the schools. Table 12 shows those states that have legislated transitional bilingual education programs.

TABLE 12

STATES THAT LEGISLATE TRANSITIONAL
BILINGUAL EDUCATIONAL PROGRAMS

STATE	STATE
California	New York
Connecticut	Rhode Island
Illinois	Texas
Massachusetts	Wisconsin
Minnesota	

Chapter IV

REVIEW OF COURT DECISIONS AS THEY RELATE TO THE TOPIC OF BILINGUAL EDUCATION

Introduction

Relatively few court decisions have been handed down that dealt directly with the topic of bilingual education. Consequently, the cases presented in this section deal with issues that have been argued before the courts in support of bilingual education. The related issues are racial (ethnic) discrimination, biased tests used with language minority children, due process rights, and equal educational opportunity.

A review of the court decisions pertaining to the topic of bilingual education has revealed a lack of agreement among judges as to how best to redress the concerns of the litigants in the cases. However, by examining the bases for the various decisions, some conclusions can be drawn with regard to the position of the courts when addressing the concerns of minorities.

School systems, increasingly, are finding themselves in positions where they are required to justify any system of classification they may use. Cases involving the classification of students have been challenged in court under the Equal Protection Clause of the Fourteenth Amendment and usually require school systems to provide a correlation between the desired goals of the system and the improved educational opportunity accruing to the student.

Organization of the Cases for Review

Seventeen court decisions are reviewed in this chapter. In each instance, the facts, the decisions, and a brief discussion are provided to highlight the salient legal points. The cases chosen for the review were chosen for one or more of the following reasons:

1. The case represents a landmark decision with regard to due process or equal educational opportunity.

2. The case established legal precedent or provided guidelines for future cases dealing with the same issues.

3. Areas of distinction were chosen to clarify the following legal issues:

- (a) classification of students based on language;
- (b) classification of students based on test results;
- (c) denial of due process rights when classifying students;
- (d) failure to address unique needs of language minorities.

The first series of court cases chosen for review are the Supreme Court decisions relating to bilingual education and usually dealing with racial discrimination and denial of equal educational opportunity. The Supreme Court decisions established precedent for lesser court decisions that might be addressing similar or related issues.

Included for review are the following Supreme Court decisions:

- (1) Brown v. Board of Education (1954);
- (2) Lau v. Nichols (1974);
- (3) Guey Hung Lee v. Johnson (1971);
- (4) Hernandez v. Texas (1954).

The second group of cases to be reviewed are the United States District Court and Circuit Court of Appeals cases addressing the issues of discrimination, due process, and equal educational opportunity. These decisions, collectively and individually, establish "case law" and legal precedent for other courts to follow:

- (1) Serna v. Portales (1972);
- (2) U.S. v. Texas (1981);
- (3) Aspira v. New York (1975);
- (4) Keyes v. School District No. 1, Denver, Colorado (1975);
- (5) Idaho Migrant Council v. Board of Education (1981);
- (6) Cisneros v. Corpus Cristi Independent School District (1970);
- (7) Mendez v. Westminster School District of Orange County (1946);
- (8) Cintron v. Brentwood Union Free School District (1978);
- (9) Morales v. Shannon (1975);
- (10) Otero v. Mesa County Valley School District No. 51 (1975);
- (11) Hobson v. Hanson (1967);
- (12) Diana v. State Board of Education (1970).

A final case for consideration is Doe v. Plyler (1978). The Doe case may have a tremendous impact on school districts that have undocumented alien children in school attendance should the Supreme Court rule affirmatively for the children. The Doe case is under appeal to the Supreme Court as Plyler v. Doe at this time.

United States Supreme Court Decisions

Brown v. Board of Education
347 U. S. 483 (1954)

Overview

Perhaps the most monumental decision ever handed down by the Supreme Court that changed the complexion of education in the United States, Brown has had far-reaching effects in the quest for equality of educational opportunity. Brown is frequently cited as precedent in numerous cases involving the issue of discrimination and equal educational opportunity. In the cases reviewed in this section, the legal tenets established in Brown are frequently used as a basis for the decisions handed down by other courts.

Four separate cases were consolidated and decided in this case. All four cases involved the issue of racial segregation and were grouped because of the common legal questions entailed in each case.

Basically, the questions involved the doctrine of "separate but equal" programs, facilities, etc., as established in Plessy v. Ferguson.¹ Do laws enacted by the various states permitting segregation in the schools violate the equal protection guaranteed by the Fourteenth Amendment? And, finally, is public education a right or a privilege that must be provided to everyone on an equal basis?

¹Plessy v. Ferguson, 163 U. S. 537 (1896).

Decision

The Supreme Court's decision was based on the premise that students cannot be discriminated against in their admittance to public schools on the basis of race. In the Court's view, the segregation of students was a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment.² On remand, the lower courts were directed to require the various school boards to disestablish the segregated schools and to admit students to school on a nondiscriminatory basis.³

Discussion

School systems that segregate students on the basis of race, color, or national origin are violating the rights of the students as guaranteed by the Fourteenth Amendment.

Lau v. Nichols
414 U. S. 563 (1974)

Facts

A class action suit was brought by the parents of Chinese children to compel the San Francisco School District to provide compensatory education programs for non-English-speaking students. At issue in the case was the fact that California statutes required all school districts to teach toward proficiency in the English language. The San Francisco school system failed to carry out this requirement by not providing remedial education to the Chinese students. The Chinese students

²Brown v. Board of Education, 347 U. S. 483 (1954).

³Ibid., p. 495.

claimed they were being denied equal protection of the law and that the school system was violating the Fourteenth Amendment and section 601 of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, or national origin in any program receiving Federal financial assistance.⁴

The plaintiff's claim was rejected by both the District Court and the Ninth Court of Appeals. The Appellate Court reasoned in the case:

. . . appellee's responsibility to appellants under the Equal Protection Clause extends no further than to provide them with the same facilities, textbooks, teachers, and curriculum as is provided to other children in the district.⁵

Subsequently, the case was appealed to the Supreme Court of the United States.

Decision

The Court of Appeals' decision was reversed by the Supreme Court which ruled that a school district must provide remedial instruction to non-English-speaking students. Failing to provide students with special instruction was a violation of the 1964 Civil Rights Act. Justice William O. Douglas wrote the majority opinion of the Court and stated:

Under these state-imposed standards, there is not equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum. . . ; basic English skills are at the very core of what the public schools teach, and students who do not understand English are effectively foreclosed from any meaningful education.⁶

⁴Lau v. Nichols, 414 U. S. 563 (1974).

⁵483 F. 2d. 799 (Ninth Cir. 1973).

⁶Lau v. Nichols, 414 U. S. 566 (1974).

Discussion

The Lau decision is considered a landmark case for bilingual education. In Lau, the Court established precedence in the fact that treating students equally might be discriminatory under the Civil Rights Act. Where inability to speak English, the language of instruction, interferes with normal achievement among students, then treating these students the same as English-speaking students is viewed as discriminatory under section 601 of the Civil Rights Act.

The implications of the case for school districts with language minority students is that programs designed to address the needs of the students will have to be conducted in the child's predominant language until such time as the child is proficient in the English language. If not, the student could plead a violation of Title VI of the Civil Rights Act of 1964.

Guey Hung Lee v. Johnson
404 U. S. 1215 (1971)

Facts

In this case, people of Chinese ancestry sought to avoid a court-approved desegregation plan that would integrate Chinese students in attendance in public schools. The Chinese argued that culture and values would be lost if integration were to occur.⁷

Decision

The Supreme Court held that when state law and state action permit, schools can remain segregated. However, this was not the case in San

⁷Guey Hung Lee v. Johnson, 404 U. S. 1215 (1971).

Francisco. Consequently, the San Francisco School District was to integrate without delay.

Discussion

While most desegregation cases originate because schools are not integrated, this case was the reverse in that the Chinese did not want to integrate for cultural and ethnic reasons.

Hernandez v. Texas
347 U. S. 475 (1954)

Overview

While this case does not directly relate to the issue of bilingual education, it touches on ethnic minorities and their distinction as an identifiable class.

Facts

The appellee, Pete Hernandez, had been indicted, tried, and convicted for murder. The Texas Court of Appeals subsequently affirmed the decision of the District Court. Prior to the trial and during the trial, the defendant argued that persons of Mexican descent were systematically excluded from the jury although many qualified jurors of Mexican descent were available in Jackson County. Hernandez asserted that the exclusion of this class deprived him of the equal protection of the Fourteenth Amendment. This assertion was denied by the trial court.

On appeal to the Supreme Court, Hernandez was successful in demonstrating that Mexican-Americans were, in fact, systematically excluded from serving on juries in Jackson County. Analysis of the names

of jurors who served in Jackson County revealed that no individual with a Spanish surname had served on a jury in the past 25 years. Further evidence was presented to illustrate that discriminating attitudes prevailed in Jackson County. For example, responsible officials of the community distinguished between "white" and "Mexican"; restrooms were marked "colored men" and "Hombres Agui"; and a restaurant displayed a sign which read "No Mexicans Served".⁸

Decision

The Supreme Court felt that the petitioner had met the burden of proof necessary to demonstrate discrimination against Mexican-Americans.

The Court reasoned:

When the existence of a distinct class is demonstrated, and it is further shown that laws, as written or applied, single out that class for different treatment not based on reasonable classification, the guarantees of the Constitution have been violated.⁹

The Court further elaborated on Hernandez's petition:

His only claim is the right to be indicted and tried by juries from which all members of his class are not systematically excluded--juries selected from among all qualified persons regardless of national origins or descent. To this much he is entitled by the Constitution.¹⁰

The decision of the lower court was reversed by the Supreme Court.

⁸Hernandez v. Texas, 347 U. S. 475 (1954).

⁹Ibid., p. 478.

¹⁰Ibid., p. 482.

Discussion

The Hernandez case goes far to demonstrate that where ethnic groups exists in a community, representatives of the ethnic group must not be systematically excluded from participating in the ordinary affairs of the government.

United States District and Appeals Court Decisions

Serna v. Portales Municipal Schools 351 F. Supp. 1279 (1972)

Facts

Spanish-surnamed students sought declaratory and injunctive relief against the Portales Municipal School District for alleged discriminating practices. The plaintiffs desired the school system to provide Spanish-surnamed students with special programs tailored to their particular instructional and social needs.

An analysis of the facts of the case revealed that 86 percent of the student population of Lindsey School were Spanish surnamed. The Spanish-surnamed population in the other elementary schools, James, Steiner, and Brown, ranged from 12 to 22 percent. Arguments by the plaintiffs were that the Portales school system was designed to educate middle-class English-speaking students without due regard and concern for Spanish-speaking students' educational needs.¹²

¹¹Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (D. C. New Mexico, 1972).

¹²Ibid., p. 1281.

Plaintiffs presented undisputed evidence that revealed that Spanish-surnamed students did not achieve at the same level as their English-speaking counterparts. Intelligence tests administered to the Spanish-surnamed students were in the English language. As these students progressed through school they fell behind in achievement and tended to drop out of school at substantially higher rates than English-speaking students.

Decision

The District Court of New Mexico found that the Portales schools did not provide equal educational opportunity for the Spanish-surnamed students. The Court stated that "It would be a deprivation of equal protection for a school district to effectuate a curriculum not tailored to the educational needs of the minority children."¹³ The Court directed the school system to devise a plan for remedial action within 90 days.

Discussion

This Court decision has implications for school districts in that different programs are required to meet the divergent needs of all students. Under Title VI of the Civil Rights Act of 1964, students are entitled to bilingual education programs if this approach best meets their instructional needs.

School districts that fail to address language minority students' needs may be compelled to provide bilingual education programs should the students seek relief in a court of law. In fact, the courts may go

¹³Ibid., p. 1283.

so far as to fashion the relief for the district. Arguments presented in Serna that the relief was "unwarranted and improper judicial interference into the internal affairs of the Portales school district" were countered by the Court with:

'(o)nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies'. Under Title VI of the Civil Rights Act of 1964 appellees have a right to bilingual education. . . . we believe the trial Court, under its inherent equitable power, can properly fashion a bilingual-bicultural program which will assure that Spanish surnamed children receive a meaningful education.¹⁴

U. S. v. Texas
506 F. Supp. 405 (1981)

Facts

Groups representing Mexican-American children intervened in action that was begun by the United States to effectuate desegregation of Texas schools and sought enforcement of the Court's prior order and supplemental relief.

Background

The original trial was held in September, 1970 and a judgment was entered on November 24, 1970 by Judge William Justice.¹⁵ The case was precipitated due to ". . . actions in connection with the creation and continued maintenance of nine all-black school districts."¹⁶ Parties to

¹⁴Ibid., p. 1154.

¹⁵U. S. v. Texas, 321 F. Supp. 1043 (1970).

¹⁶Ibid., p. 1045.

the suit were the Texas Education Agency, the independent school districts, county boards of education and superintendents of the respective districts. Judgment in the case consisted of requiring the Texas Education Agency to ". . . assume an affirmative role in the enforcement of Federal standards as required under Title VI and the Fourteenth Amendment. . ."¹⁷ Plans by the Texas Education Agency ". . . will include provisions for the use by the Agency of sanctions, such as denial or withdrawal of accreditation. . ."¹⁸

Cooperation among the Texas Education Agency, independent school districts, and the Office of Education of the Department of Health, Education and Welfare was required by the order to eliminate the dual school systems that perpetuated segregation of the black students in the school districts involved. The plans to effectuate the order were to be submitted to the court by December, 1970. The court retained jurisdiction in the case. The Court of Appeals subsequently affirmed the November 24, 1970 order.¹⁹

Facts presented in the case being reported showed evidence of three forms of discrimination against the Mexican-Americans. First, these children were restricted on the basis of ancestry to the so-called "Mexican schools". Second, they were provided with facilities, resources, and educational programs vastly inferior to those accorded to their non-Mexican-American counterparts. Third, the native language

¹⁷Ibid., p. 1058.

¹⁸Ibid.

¹⁹J. S. v. Texas, 447 F. 2d (1971).

and culture of these Mexican-American children were assailed and excluded in an effort to "Americanize" them.²⁰

The court found that "in the field of public education, discrimination against Mexican-Americans in Texas has been particularly acute."²¹ Further evidence revealed that no attempt was put forth to meet the special educational needs of the Mexican-Americans and that the children were expressly forbidden to speak Spanish on school grounds.²²

Decision

The decision of the court found that discriminating practices of the Texas Education Agency must be discontinued and ". . . that 'affirmative steps' must be taken to root out the last vestiges of past de jure discrimination."²³

Judge William Justice ordered the Texas Education Agency to develop a six-year bilingual education plan to be submitted to him by March, 1981. The plan was to include specific proposals for teacher recruitment, diagnostic work, testing and program monitoring.

Judge William Justice went on to say:

The tragic legacy of discrimination will not be swept away in the course of a day or week or a single year. But these children deserve, at the very least, an opportunity to achieve a productive and fulfilling place in American society. Unless they receive instruction in a language they can understand pending the time when they are able to make a transition to all-English classrooms, hundreds of thousands of Mexican-American children in Texas will remain educationally crippled for life, denied the equal opportunity which most Americans take for granted.²⁴

²⁰506 F. Supp. at 414.

²¹Ibid., p. 411.

²²Ibid., p. 412.

²³Ibid., p. 441.

²⁴Ibid.

Discussion

The court found in the case that Mexican-American children were indeed being discriminated against, just as it had found for blacks in the original suit nearly 10 years earlier. A proliferation of evidence was offered to substantiate the claims by the plaintiffs in the case.

Not established in the case, however, was the entitlement of bilingual education as a remedy for past discriminatory practices by the defendants.

Aspira of New York, Inc., v. Board of
Education of New York
394 F. Supp. 1161 (1975)

Facts

The plaintiffs representing Hispanic students sought to distinguish which students were entitled to receive bilingual instruction. The major concern centered on ascertaining precisely the numbers that would be involved because it related to the quality and substance of the programs to be offered.

The merits of the kinds of tests to be used were not addressed by the court. Instead, the court required all students to be given a test to measure proficiency in the use of the English language. The program of testing suggested by the defendant was to use the English version of the language assessment battery and the Spanish version of the same test.²⁵

²⁵Aspira of New York, Inc., v. Board of Education of New York, 394 F. Supp. 1161 (1975).

Decision

The consent decree of the court on August 29, 1974, stated that the plaintiff class of Hispanic children whose:

'English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish,' shall receive a program including intensive training in English language skills, instruction in substantive courses in Spanish, and reinforcement of Spanish language skills.²⁶

The decree went on to point out the need for a detailed testing program ". . . to (in effect) identify the members of the class, i.e., those whose language difficulties prevent them from effectively participating in the learning process. . ."27

Further pointed out by the court:

As has been noted, the assertedly "ideal" view of plaintiffs--to test all Hispanic students in Spanish and give the bilingual program to all who do better in Spanish than in English--is not accepted. In addition to the reasons noted earlier, we may observe that the decree is not meant to enroll for bilingual instruction all who are more fluent in Spanish than in English. The setting and the goal remain a course of English language instruction so those who can now participate "effectively" in English are outside the plaintiff class, whatever their relative fluency in Spanish may be.²⁸

The court was cognizant of the fallacy of this approach for determining those Hispanic children in need of special instruction but nevertheless summarized its position by stating:

²⁶Ibid., p. 1162.

²⁷Ibid.

²⁸Ibid., p. 1165.

Hispanic-surnamed students who score below the 20th percentile on the L.A.B.-English will take the L.A.B.-Spanish. Those whose scores on the latter exceed their scores on the former are to be in plaintiff class.²⁹

Thus, those children scoring in the plaintiff range are entitled to bilingual instructional programs.

Discussion

The Aspira decision established the so-called "language dominance standard" for determining language minority students who may receive bilingual instruction. The implications for school systems with substantial numbers of language minority students are such that standardized tests may be used to determine the language needs of the students. In this instance, where deficient language needs can be substantiated by testing programs, schools may be compelled to provide for the language needs of the students should their instructional program be challenged in a court of law.

Keyes v. School District No. 1, Denver, Colorado
521 F. 2d 465 (1975)

Facts

The plaintiff sought to desegregate the Denver School District No. 1. Sufficient evidence was presented to show that the schools were indeed segregated and a dual school system was the result. The trial court determined that the board of education followed a policy of

²⁹Ibid., p. 1166.

racial concentration in violation of the rights of minority students.³⁰

All parties to the suit appealed the original decision first to the United States Court of Appeals, Tenth Circuit, and then on to the United States Supreme Court (403 U. S. 789) (1973).

The Supreme Court remanded the case to the District Court for specific remedies.

Specific remedies were set forth by the District Court and among them, as they relate to bilingual education, was permission to continue to operate Chicano schools. The District Court³¹ stated:

Some representatives of the Mexican-American community . . . have expressed a desire not to desegregate . . . during the period that the (desegregation) program is developing. The court can see advantages in this and therefore holds that desegregation is not in its best interest.³²

The District Court went on to say:

In some of the schools which have a preponderant Chicano population it has seemed to the Court more desirable to pursue bilingual and bicultural programs than to change the numbers.³³

The Court of Appeals, Chief Judge Lewis, in accepting the case stated at the outset:

³⁰Keyes v. School District No. 1, Denver, Colorado 521 F. 2d 465 (1975).

³¹380 F. Supp. at 673.

³²Ibid., p. 692.

³³Ibid., p. 687.

All parties appeal with typical inflexibility of position. . . Public objectivity is not to be even hoped for and judicial objectivity is difficult indeed.³⁴

Decision

With regard to the topic of bilingual education under consideration, the Chief Judge, David T. Lewis, found that five schools were ". . . substantially disproportionate in their racial composition. . ."35

Judge Lewis went on to say:

Given our reversal, *infra*, of the district court's adoption of the Cardenas Plan, institution of the plan cannot justify continued segregation of any of the related schools. Bilingual education, moreover, is not a substitute for desegregation . . . such instruction must be subordinate to a plan of school desegregation.³⁶

With regard to the adoption of the Cardenas Plan, Judge Lewis stated:

Instead of merely removing obstacles to effective desegregation, the court's order would impose upon school authorities a pervasive and detailed system for education of minority children. We believe this goes too far.³⁷

Judge James E. Barrett, in concurring with Judge David T. Lewis, pointed out:

That children of all races, cultures, color, environmental and ethical backgrounds and origins are entitled in these

³⁴521 F. 2d at 468.

³⁵*Ibid.*, p. 480.

³⁶*Ibid.*

³⁷*Ibid.*, p. 482.

United States to equal public educational opportunities and benefits.³⁸

The bilingual education issue was remanded to the District Court for remedy.

Discussion

It is apparent from this court decision that desegregating schools is the primary concern. The maintenance and operation of schools with predominant minority enrollments will not be tolerated when the courts have determined that segregation of students will be perpetuated.

Idaho Migrant Council v. Board of Education
647 F. 2d 69 (1981)

Facts

Idaho Migrant Council, a non-profit corporation, representing Idaho public school students with limited English language proficiency sued the Idaho Department of Education, State Board of Education, and the Superintendent of Public Instruction seeking declaratory and injunctive relief. At issue were the equal educational opportunities of limited-English-speaking students.

The plaintiffs sought to compel the Idaho Department of Education to enforce various Federal requirements to ensure equal educational opportunities in the school districts within the state. The defendants

³⁸Ibid., p. 490.

claimed lack of jurisdiction over local school districts in enforcing compliance with laws and requirements.³⁹

Decision

The United States District Court for the district of Idaho rendered summary judgment for the defendants. On appeal, the United States Court of Appeals, Ninth Circuit:

. . . held that defendants were empowered under state law to ensure that needs of students with limited English language proficiency were addressed.⁴⁰

The decision of the Appeals Court reversed and remanded the case to the District Court of Idaho for relief.

Idaho's Constitution provides for the general supervision of the local districts by the state board of education. Specific authority was granted by Idaho Code 33-116 and required the state board to provide the necessary supervision. Further authority was granted the state board by Idaho's Code 33-118,119.

In addition, the court found that the state had a certain contractual obligation with Title VI of the Civil Rights Act of 1964. The Civil Rights Act provides that:

(n)o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program receiving Federal financial assistance.⁴¹

³⁹Idaho Migrant Council v. Board of Education, 647 F. 2d. 69 (1981).

⁴⁰Ibid., p. 70.

⁴¹Ibid., p. 71.

Discussion

The court directed the District Court on remand to:

. . . receive evidence regarding the educational needs of students with limited proficiency in English, and the nature of the programs currently in place that address the needs of those students in order to determine whether federal requirements are being met.⁴²

The Ninth Circuit Court of Appeals, in effect, ruled that state education agencies are liable for the civil abuses of school districts under their supervision. In states where the state school board is responsible for overseeing the proper operations of local school districts, the board could find itself a defendant in court where challenges to discriminating practices are brought.

Cisneros v. Corpus Cristi Independent School District
324 F. Supp. 599 (1970)

Facts

A civil rights, class action suit was brought against Corpus Cristi Independent School District because of its practice of segregating Mexican-American and Negro students in certain schools within the district.

Voluminous statistical data were presented by the plaintiffs and defendants in the case which revealed residential and school population on the basis of race and ethnic origin.⁴³

⁴²Ibid.

⁴³Cisneros v. Corpus Cristi Independent School District, 324 F. Supp. 599 (1970).

The issues before the court were:

First, can Brown v. Board of Education . . . apply to Mexican-Americans in Corpus Cristi Independent School District, or stated in another way, is Brown limited to Negroes only?

Second, if Brown can apply to Mexican-Americans, does it under the facts of the case?

Third . . . do we have a dual or unitary school system as it affects Negroes in Corpus Cristi?

. . . fourth, if we do have a dual school system here as defined by recent Fifth Circuit cases, and that Negroes and Mexican-Americans are denied their Constitutional rights under the Fourteenth Amendment, is there a de jure or de facto or segregated school system?

And finally, if we do have a dual system, how can the court, and under what plans and purpose, disestablish a dual system and establish and maintain a unitary school system. . . .⁴⁴

District Judge Seals interpreted Brown, as it applied to this case, to mean:

. . . when a state undertakes to provide public school education, this education must be made available to all students on equal terms . . . segregation of any group of children in such public schools on the basis of being of a particular race, color, national origin . . . deprives these children of the guarantees of the Fourteenth Amendment as set out in Brown. . . .⁴⁵

Evidence was also furnished the Court that revealed that the Corpus Cristi Independent School District has gerrymandered school district lines, renovated and enlarged facilities in Negro and Mexican-American schools to contain these population groups, and failed to erect new facilities in more central locations.

⁴⁴Ibid., p. 604.

⁴⁵Ibid., pp. 604-605.

Decision

Judge Seals, after hearing lengthy testimony and presentation of facts, found that sufficient evidence was presented to reveal that the Mexican-American students". . . were separated and segregated to a degree prohibited by the Fourteenth Amendment . . ."46 This was the case at all levels of education in the district.

An additional observation of the Court was that ". . . Mexican-Americans have been historically discriminated against as a class in the Southwest and in Texas . . ."47 Further, this discrimination not only applied to students but faculty as well. The Court noted:

It is obvious that the faculty and the administrative staff are even more segregated than the schools. . . . Furthermore, the school board must immediately take steps to employ more Negro and Mexican-American teachers.48

Based on the evidence presented to the Court, Judge Seals stated ". . . this case finds as a matter of fact and law that Corpus Cristi Independent School District is a de jure segregated school system."49

With regard to the amount of integration that had taken place in the school district, Judge Seals observed "it is not enough today to pay lip service to the Constitution by tokenism."50

The final decision found for the plaintiffs and granted the injunctive relief they sought. Both plaintiffs and defendants were

46Ibid., p. 608.

47Ibid., p. 612

48Ibid., p. 623.

49Ibid., p. 620.

50Ibid., p. 627.

directed to develop plans to integrate the school system. The court was to maintain jurisdiction in the case until it was satisfied that the dual system was disestablished and a unitary school system was provided.

Discussion

This case established precedent for other cases to follow in desegregating a dual school system being operated in such a fashion that Negroes and Mexican-Americans were in segregated schools. This decision relied heavily on the Supreme Court's Brown decision.

Mendez v. Westminster School
District of Orange County
64 F. Supp. 544 (1946)

Facts

A civil action suit brought by Gonzalo Mendez and others against the Westminster School District because of continuing discriminating practices resulting in the segregation of children of Mexican or Latin descent. The complaint alleged that common school authorities invaded the rights of pupils of Mexican descent to acquire knowledge by segregating them in separate schools.

Defendants to the suit conceded that segregation was practiced against children of Mexican or Latin descent but the schools were operated for the children's benefit and they would attend such schools until they were proficient in the English language.⁵¹

⁵¹Mendez v. Westminster School District of Orange County, 64 F. Supp. 544 (1946).

A challenge to the jurisdiction of the court was denied. District Judge McCormick, speaking for the Court, stated:

Obviously, then, a violation by a state of a personal right or privilege protected by the Fourteenth Amendment in the exercise of the state's duty to provide for the education of its citizens and inhabitants would justify the Federal Court to intervene.⁵²

Decision

Sufficient evidence was presented by the plaintiffs to lead the court to conclude:

We perceive in the laws relating to the public educational system in the State of California a clear purpose to avoid and forbid distinctions among pupils based upon race or ancestry.⁵³

The court further concluded:

The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that comingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals.⁵⁴

The District Court of California held that allegations of segregation were sufficient to justify the court to issue an injunction and restricting the school district from further discriminating practices against pupils of Mexican or Latin descent.

⁵²Ibid., p. 546.

⁵³Ibid., p. 548.

⁵⁴Ibid., p. 549.

Discussion

As early as 1946 the federal courts were declaring segregation of language minority students as violative of the Fourteenth Amendment rights. Clearly, California laws were a forerunner in protecting the rights of minority students.

Cintron v. Brentwood Union Free School District
455 F. Supp. 57 (1978)

Facts

Children of Hispanic and Puerto Rican descent brought action in court for injunctive and declaratory relief from the Brentwood school system. The school system planned to restructure the bilingual educational program. The restructuring of the bilingual education program was necessitated due to a reduction in force which terminated the employment of 15 regular and 2 part-time bilingual education teachers.

Prior to the termination of the bilingual education teachers, the school district operated a bilingual program called Project Avelino. Begun during the 1973-74 school year for kindergarten students, Project Avelino was expanded to the next higher grade for succeeding years until it was installed in grades K-5. Designed exclusively for students whose dominant language was Spanish, students would spend the majority of the school day in the program where they were taught all substantive subjects. A consequence of the program was a segregation of the students from the remaining student body.

The school district desired to replace Avelino with Plan V, which would require the Hispanic students to spend the majority of the day in

homeroom with English-speaking students where substantive courses would be taught.

Brentwood school district had a Hispanic enrollment of 3,700. Two thousand of these students attended elementary school.⁵⁵

Decision

The Court relied heavily on the decisions in Lau v. Nichols, Serna v. Portales, Morales v. Shannon, the Civil Rights Act of 1964, and the Equal Educational Opportunity Act of 1974 in rendering its decision in favor of the plaintiffs. Project Avelino was determined to be violative of 204f of the Equal Educational Opportunity Act of 1974, 20 U.S.C. § 1703 (f), and the "Lau Guidelines" of the Department of Health, Education, and Welfare. Plan V would have required immersion of the Hispanic students into English language and culture with a subordination of Spanish and the Hispanic culture.

Final disposition required Brentwood school district to submit a plan to the court that would be in compliance with the "Lau Guidelines."

Chief Judge Mishler, describing the characteristics of the new plan, stated:

The plan must contain more specific methods for identifying on admission those children who are deficient in the English language . . . have a training program for bilingual teachers and bilingual aides . . . be both bilingual and bicultural . . . must provide a method for transferring students out of the program when the necessary level of English proficiency is reached . . . should not isolate children into racially or ethnically identifiable classes . . . encourage contact

⁵⁵Cintron v. Brentwood Union Free School District, 455 F. Supp. 57 (1978).

between non-English and English speaking children. . . .⁵⁶

The court was to hold hearings on the provisions of the judgment.

Discussion

While this case may not be viewed as a landmark case, it does reveal the court's reliance on various laws, other court decisions, and promulgated regulations governing Federal programs to decide the issues.

Programs established to address the needs of language minority students must be operated in compliance with various governing regulations. In addition, these students must not be segregated in the programs from the mainstream of student activities or programs.

Morales v. Shannon 516 F. 2d 411 (1975)

Facts

This case involved Mexican-American parents seeking desegregation of the Uvalde, Texas elementary schools. The desegregation issue involved four elementary schools: Robb, Dalton, Benson, and Anthon. Enrollment data indicated these four schools had Mexican-American student enrollment in excess of 87 percent.⁵⁷ The issues of the case were:

. . . first, did the district court err in finding no segregatory intent, involved de facto rather than de jure segregation. Second, error is alleged in the failure to find that the grouping of students by ability, as was done in the high school and junior high schools, is constitutionally proscribed on the basis of discrimination. Third,

⁵⁶Ibid., p. 64.

⁵⁷Morales v. Shannon, 516 F. 2d 411 (1975).

error is alleged in the refusal to find discrimination in the failure to provide a bilingual-bicultural educational program, and fourth, in teacher and staff hiring and assignment.⁵⁸

Decision

The Court of Appeals found the district court in error in finding no segregatory intent. Judge Spurgeon E. Bell, speaking for the court stated:

The imposition of the neighborhood assignments system froze the Mexican-American students into Robb and Anthon schools.⁵⁹

The issue of segregation was remanded to the District Court with directions to apply the remedy as outlined in Cisneros v. Corpus Cristi.

With regard to the issue of bilingual-bicultural education, the appellants pointed out that the school district did not apply for funding for special programs and that not meeting the needs of the Mexican-American students was a form of discrimination. The court determined:

. . . this entire question goes to a matter reserved to educators . . . we pretermite decision here and remand to the district court for further consideration . . . It is now an unlawful educational practice to fail to take appropriate action to overcome language barriers.⁶⁰

Discussion

The Fifth Circuit Court of Appeals did not choose to involve itself with the merits of bilingual education. However, the court did

⁵⁸Ibid., p. 412.

⁵⁹Ibid., p. 412.

⁶⁰Ibid., p. 415.

point out that it was an unlawful educational practice not to address the needs of language minority children.

Otero v. Mesa County Valley School District No. 51
408 F. Supp. 162 (1975)

Facts

The plaintiffs brought action against the school district seeking to have bilingual-bicultural education programs implemented for the Chicano students who resided in and attended the district's school system. The plaintiffs also sought to have the employment practices of the district changed in order that more Spanish-surnamed individuals would be hired as teachers, secretaries, and janitors.⁶¹

No claims were made that the plaintiffs and class were being segregated or that programs, facilities or other resources were inferior to the Anglo schools.

Decision

Judge Winner, District Court Judge, found for the defendants.

Judge Winner stated:

Giving plaintiffs the benefit of every possible doubt, I find no justification for granting them any relief in this case. This being so, in accordance with rule 58, the clerk shall forthwith prepare, sign and enter a judgement in favor of defendants denying all relief to plaintiffs.⁶²

⁶¹Otero v. Mesa County Valley School District No. 51, 408 F. Supp. 162 (1975).

⁶²Ibid., p. 177.

Judge Winner further stated:

There exist no constitutional right to bilingual/bicultural education, and there has been no showing that inability to speak and understand the English language excludes more than a tiny handful (if that many) of national origin-minority group children from effective participation in the educational programs offered by District No. 51. However, there has been a showing that District 51 has taken affirmative steps to rectify any possible language deficiency to assure that its instructional programs will be available to all students. Plaintiffs have no case for a claimed constitutional violation because they do not assert segregation and there is no constitutional right to bilingual/bicultural education. Plaintiffs have proven no case under the Lau-Serna doctrine.⁶³

Discussion

The court, using achievement data furnished to it, accepted the fact that of 628 students administered the tests, 8, or .0127 percent, were found Spanish-dominant, 5, or .0080 percent, were found essentially bilingual, and 4, or .0064 percent, were found Spanish-proficient. In the opinion of Judge Winner, "The presence of Spanish is not interfering with the English scores."⁶⁴

In cases where class action suits against school districts are brought to implement bilingual-bicultural education programs, evidence must be provided to show that a violation of Title VI of the Civil Rights Act of 1964 has occurred. Merely attempting to require a bilingual-bicultural program for minority students will not stand the test of judicial scrutiny.

⁶³Ibid., p. 172.

⁶⁴Ibid., p. 165.

Hobson v. Hanson
269 F. Supp. 401 (D.D.C., 1967)

Facts

Parents of non-white students challenged a system of ability grouping as practiced in the District of Columbia School System on the basis that it was discriminatory. Argument was presented by the plaintiffs that there was a disproportionate number of non-white and poor children being assigned to lower tracks in the schools' programs thereby denying equal educational opportunity to these children.⁶⁵

Specifically, the following allegations were made by the plaintiffs:

1. No remedial instruction was provided to the children in the lower tracks.
2. The lower track curriculum offering was inferior, resulting in the students being stigmatized and not receiving an equal educational opportunity.
3. Biased tests to place students were utilized.
4. There was potential damage to the self-image of the children assigned to the lower tracks.
5. The children assigned to the lower tracks were not expected to do well in their academic work. Consequently, the teachers did not challenge the students in their courses.⁶⁶

⁶⁵Hobson v. Hanson, 269 F. Supp. 401 (D.D.C., 1967).

⁶⁶Ibid., p. 420.

Evidence presented in the case revealed that a disproportionate number of black students were assigned to the lower tracks. This was not the case in white schools where very few students were assigned to the lower tracks. In the schools that were racially balanced, the top tracks were composed mostly of white students with blacks in the lower tracks.⁶⁷

Decision

Judge J. Skelly Wright, in a decisive ruling, permanently enjoined the District of Columbia School System from further use of a track system. The basis for the decision concerned the following points:

1. Tracking of students was related to class and race.
2. There was no relationship between tracking assignments and ability to learn.
3. Tracking of students limited vocational choices.
4. Tracking had a tendency to lock students into programs preventing them from being able to move up to a higher track.
5. No remedial reading was provided to students in the lower tracks.
6. Test instruments were biased in that they were normed on white, middle-class students.⁶⁸

Judge Wright, in commenting on the case, stated:

The sum result when tested by the principles of equal protection and due process, is to deprive the

⁶⁷Ibid., p. 490.

⁶⁸Ibid., pp. 512-514.

poor and a majority of the Negro students in the District of Columbia of their Constitutional rights to equal educational opportunity.⁶⁹

Discussion

Judge Wright pointed out that his ruling applied to this case only and was not to be interpreted to mean that all academic classification was unconstitutional. Judge Wright stated:

. . . not all classifications resulting in disparity are unconstitutional. If the classification is reasonably related to the purposes of the governmental activity involved and is rationally carried out, the fact that persons are thereby treated differently does not necessarily offend.⁷⁰

The decision did not necessarily rule out providing different programs for different students. Any program to be provided for different students must meet the following constitutional tests:

1. Grouping by ability must be related to the purposes of public education.
2. The use of a grouping plan by school systems must include a compensatory educational component to raise the level of functioning of students in order that they can return to the mainstream of public education.
3. Any system of classification used must not be biased toward non-white or poor children. The system must not be based on socio-economic status.⁷¹

⁶⁹Ibid., p. 511.

⁷⁰Ibid.

⁷¹Ibid., pp. 512-514.

The decision by Judge Wright was affirmed by the Court of Appeals.

Diana v. State Board of Education
C-70 37 RFT (Feb. 1970)

Facts

The parents of Spanish-speaking children brought action and claimed that the children were being denied equal educational opportunity due to a mislabeling and misplacement resulting from the use of biased test results. The parents further contended this practice violated the Equal Protection Clause of the Fourteenth Amendment.⁷²

Plaintiffs, seeking declarative and injunctive relief, claimed that the children were being damaged and stigmatized as mentally retarded when in fact the intelligence tests utilized were biased.⁷³

Decision

The final disposition of the case resulted in an out-of-court settlement wherein the defendants agreed to the following points:

1. Testing of non-English-speaking students would be in the primary language as well as English.
2. Test instruments used would not be based on specific vocabulary, general information, or on unfair verbal questions.
3. All children of Mexican-American or Chinese descent already in classes for mentally retarded would be retested in their native

⁷²Diana v. State Board of Education, C-70 37 RFT (Feb. 1970).

⁷³Ibid.

language. Further, the children were to be reevaluated with regard to their achievement on nonverbal tests or sections of tests.

4. State psychologists were to design new or revised IQ tests to reflect Mexican-American culture. The tests were to be normed on California's Mexican-American children in order to compare them with their peers and not the population as a whole.

5. School districts with disproportionate numbers of Mexican-American students in classes for mentally retarded must submit an explanation outlining the reason for such disparity.⁷⁴

Discussion

The results of this case, even though settled out of court, led the state of California to reexamine and to adopt specific guidelines for the classification and placement of exceptional children.

Education of Alien Children

Doe v. Plyler
458 F. Supp. 569 (1978)

Facts

The parents or guardians of children sought injunctive and declaratory relief from the Tyler Independent School District. In this case, the parents or guardians from the Republic of Mexico were illegal aliens in the United States and resided in Smith County, Texas. Tyler Independent School District had restricted the children of these illegal aliens from attending school unless they paid a tuition fee of

⁷⁴Ibid.

\$1,000 per year, pursuant to Section 21.031 of the Texas Education Code which provided that only legal residents of Texas could receive free public education.⁷⁵

The complaint and motion for injunction alleged:

. . . that the Texas statute, as implemented by the Tyler Independent School District policy, denied plaintiffs equal protection of the laws and, further, that the statute was preempted by the federal Immigration and Naturalization Act. 8 U.S.C. § 1101 et seq.⁷⁶

Argument was presented by the plaintiffs that the children would suffer irreparable harm should they be excluded from school. The plaintiffs also argued that the Supremacy Clause of the Constitution precluded the state from enacting laws contrary to the federal government's purpose.

Decision

The Court of Appeals, Judge William Justice, granted the injunctive relief the plaintiffs sought, declaring:

By virtue of its lack of rationality, section 20.031 of the Texas Education Code violates the equal protection clause of the Fourteenth Amendment and hence is unconstitutional.⁷⁷

Judge Justice also pointed out:

While the undocumented minor plaintiffs are of course legally culpable and subject to deportation, they can hardly be held morally responsible for their presence

⁷⁵Doe v. Plyler, 458 F. Supp. 569 (1978).

⁷⁶Ibid., p. 572.

⁷⁷Ibid., p. 593.

here. Many of them were hardly more than infants when they arrived in the United States, nor did they participate in their parents' decision to emigrate; consequently they deserve no additional burdens or penalties.⁷⁸

Discussion

The Doe decision is on appeal to the Supreme Court at this time. The Court has agreed to hear the case and a final decision is expected this year.

⁷⁸Ibid., p. 584.

Chapter V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The quest continues for an ideal meaning for bilingual education. The search for a national model trudges on relentlessly, seeking to isolate programs capable of resolving the conflict, argument, and debate over the merits of bilingual education. Decisions by the nation's courts and government financing have transformed bilingual education into social issues with political overtones.

The research design of this study did not undertake to provide conclusions regarding the advantages or disadvantages of bilingual education. In other words, no definite conclusions were to be drawn by this study on the merits of bilingual education. However, by providing information and facts pertaining to the concept of bilingual education, the reader will be able to ascertain particular implications for educational purposes. Being provided with relevant information and salient points, educational decision makers may readily discern the educational and legal ramifications of bilingual education.

In chapter one of this study, several questions were formulated to guide the educational and legal research in the following chapters. Partial answers to these questions were provided in the review of the literature. For the most part, however, the answers were provided in chapters three and four. These answers to the questions raised comprise the major portion of a set of guidelines which school administrators

can use when rendering decisions related to bilingual education.

Summary

A definition of bilingual education was provided in chapter one. While this definition is more or less generally accepted, approaches for providing bilingual education vary widely. In school districts providing bilingual education, the instructional programs vary considerably. However, the resulting organizations are usually segregated from the mainstream of the student body for instructional purposes.

Selected research was included in the earlier chapters in an effort to summarize pertinent legal aspects of bilingual education. No attempt was made to provide a comprehensive or exhaustive review of the education aspects of bilingual education. The intentions of the research presented was to illustrate the various judicial considerations of bilingual education programs.

The first guide question in chapter one was to identify the major educational issues surrounding bilingual education. The review of the literature only furnished further questions with regard to bilingual education:

1. Do the bilingual education programs used in the nation's schools (e.g., compensatory and remedial) increase achievement levels among participating students?
2. Which instructional approach (e.g., maintenance, transitional, mainstream, or total immersion) better provides students with language instruction?

3. In schools where the language and culture of minority students are not encouraged, what impact does this have on the students' identities and self-images?

4. Is the "language dominant standard" an accurate means for determining achievement and the language instructional approach to be used with students?

5. Does segregation of language minority students for instructional purposes assure an equal educational opportunity for these students?

It is apparent that unanimity among educators regarding the best approach for educating language minority students is not possible. What is possible, however, is to discern trends toward addressing the needs of language-deficient students. Bilingual education, being the complex concept that it is, attempts to serve many different types of students through a variety of programs. The following points represent some of the concerns of educators with regard to bilingual education programs:

1. The empirical research is inconclusive on the effectiveness of bilingual educational programs although numerous success stories are available.

2. In the absence of a national language policy, little substantive impact can be expected in educating language-minority students over the next few years.

3. Standardized testing programs using tests that are normed on white, middle-class students are inappropriate for use with language minority students.

4. Language-minority students segregated into special language classes generally feel inferior to other students. In other words, they

tend to feel their language and culture are not important.

5. Public laws require schools to guarantee the students due process rights before placing students in special classes.

6. Many of the teachers assigned to teach language to minority students are ill prepared for the task. Teachers of the same culture and language are not readily available.

7. Although the numerical requirements for bilingual education programs have never been established by law, most state statutes which mandate bilingual programs and Department of Health, Education, and Welfare guidelines specify minimum numbers.

8. Bilingual education is not a panacea that will cure all the problems of non-English-speaking students. Obviously, other intervening factors are present.

9. The courts are reluctant to rule in a broad context and will rule only on certain principles as they relate to the concerns of the litigants.

10. There exists a danger in letting students remain devoid of the mastery of any language. In order to succeed in school, students must acquire language facility.

The second research question in chapter one centered around the educational issues that might form the basis of a legal challenge. An examination of those cases reviewed principally in chapter four has shown that litigation most frequently occurred when individuals and groups felt that an equal educational opportunity was not being provided to language-minority students. Complaints of litigants frequently cited a violation of the Civil Rights Act of 1964 and depended less on

the equal protection clause of the Fourteenth Amendment since there is no constitutional guarantee to an education. Suits brought to compel school systems to provide bilingual education were more successful where it was shown that substantial numbers of students were involved. In addition, achievement test data supporting the claims of the litigants were viewed favorably by the courts when it was shown that programs obviously were not meeting the educational needs of the language minorities. The particular kinds of achievement tests used with language-minority students could become a litigious issue in future court cases. Obviously, the requirements as set forth in P.L. 94-142, The Education of All Handicapped Act, will have some role in stimulating litigation in the area of testing for language minority as well as other handicapped students.

The third research question in chapter one dealt with the current status afforded bilingual education by the states' constitutions and governing statutes. A review and examination of the 50 states' statutes produced the following information:

1. Eleven states have statutes that mandate bilingual education in the schools.
2. Seven states have statutes that expressly forbid the use of any language other than English in classrooms, with the possible exception of foreign language classes.
3. Nineteen states have statutes that permit school districts to operate bilingual education programs.
4. Thirteen states have no provisions whatsoever regarding the language of instruction.

5. Eleven states specify minimum numbers of eligible students required before programs can be offered.

6. Ten states specify parent and/or advisory council involvement in the established programs.

7. Nine states set minimum licensing requirements for teachers of bilingual education.

8. Eight states require a census of language-minority students each year.

9. Four states require students to qualify for bilingual instruction by the use of tests.

The fourth research question posed in chapter one was concerned with whether or not bilingual education was required in school districts and the criteria to be considered in implementing these programs. Based on an analysis of court decisions and legal principles established by such decisions as Lau, Serna, and Cisneros, the following points should be considered:

1. Where a substantial number of language-minority students attend public schools, some kind of program is required to address the language needs of the students.

2. Language-minority students cannot be segregated for instructional purposes if it results in the students being isolated from the mainstream of the student body.

3. Education must be provided to all students on an equitable basis.

4. Provision of an education by a state is deemed a property right and is protected by the Due Process Clause of the Fourteenth Amendment.

5. In regard to equal educational opportunity, racial or ethnic separation of students is impermissible under law.

6. In order to determine achievement gains or the placement of language-minority students in special programs for instructional purposes, the testing must be done in the student's primary or dominant language.

The final questions were concerned with what criteria educators and school districts could determine from the educational research as they consider how to establish programs and the most appropriate instructional approaches. These questions, unfortunately, cannot be answered with any degree of certainty. Therefore, some general observations are in order:

1. Federal and state laws provide minimum standards with which local school districts must comply and which will have to be considered prior to the establishment of any bilingual programs.

2. There is a noticeable absence of any concrete empirical evidence on the impact of bilingual education on achievement gains, in the acquisition of the English language, or in improving attitudes toward school; therefore, there must be many intervening factors that are unaccounted for in the programs used in the schools.

3. Programs that encourage "affirmative ethnicity" must be looked at critically.

4. Decisions must be made at the national level establishing the long-range goals of bilingual education.

5. Further empirical evidence is needed to provide an objective base that will overcome the emotionalism attached to a particular philosophy of bilingual education.

6. Additional evidence is needed to determine the most effective approach to bilingual education (e.g., transitional, maintenance, total immersion, or mainstream).

Conclusions

Due to differing circumstances and issues involved in legal research, generalizing and drawing of conclusions are rather difficult. As was previously pointed out, the courts weigh the evidence in every case and render decisions accordingly. In some instances, the legal issues that appear similar in a case may be entirely different once the case is litigated. The apparent inconsistencies that might appear in the case will probably be due to the individual particulars of the case and interpretations of the law by court officials. This is quite evident in lesser court decisions that have been overturned by a higher court.

Based on an analysis of the research, the following general conclusions are made regarding the education of language-minority students.

1. Social and political argument will distract educators from determining how best to meet the needs of language-minority students for the immediate future.

2. Educators will continue to strive to prescribe the appropriate remedy for addressing the language problem among students.

3. The courts will continue to wrestle with the question: "Is desegregation more important for language minorities than bilingual education?"

4. Federal financial support, in all probability, will decrease during the next few years.

5. Even though courts are reluctant to intervene in the prerogatives of school officials, the judiciary will be called upon to settle disputes involving language instruction for several more years.

6. A general awareness and sensitivity to the language needs of many children will be required before the general public will be willing to accept bilingual education.

7. Controversy will continue over the appropriate test instruments to use to assess achievement and aptitude of language minorities.

8. As the population increases among language-minority groups over the next few years, adequate educational planning becomes all-important in coping with the diverse needs of the particular groups. An obvious need will be trained educational specialists to work with these students.

9. Debate will continue among educators and politicians alike over the most appropriate methods to employ to educate language minority students.

10. Indian bilingual education will continue to have a distinct advantage over other minority bilingual education programs due to the unique status of Indian tribes as sovereign entities.

Recommendations

This study has not attempted to identify appropriate instructional approaches to educating language-minority students. Instead, the study attempted to provide an overview of the legal and educational implications of bilingual education for public school officials and boards of education.

While it is evident that some form of bilingual education has been practiced in American schools for many years, educational policy toward bilingual education has vascillated between a supportive role and one of opposition. In some instances, bilingual education programs were introduced into public education on the coattails of legal and political action stemming from civil rights litigation on behalf of minorities. In other instances, school districts decided bilingual education was the most effective means for addressing the special needs of language-minority students.

No matter what a school district's present status is with regard to bilingual education programs for language-minority students, it is imperative that the following guidelines be considered by the school districts when contemplating the implementation of programs for students.

Guidelines for Establishing Bilingual Education Programs

1. School officials do not possess absolute authority over students and must be cautious in assigning students to certain programs. It is evident that the courts will be asked to intervene judiciously in instances where it is felt by litigants that school officials have violated students' procedural and substantive rights.

2. School officials will be required to demonstrate that there is a rational relationship between the school district's educational goals and the student's assignment to a program. The sink-or-swim attitude toward language-minority students will be scrutinized closely by the courts.

3. Public Law 94-142, The Education of All Handicapped Act, outlines specific, procedural safeguards which must be followed in placing students in programs or tracks.

4. Any assignment of language-minority students to special programs must be done on the basis of valid criteria (i.e., language-minority students cannot be assigned to special education programs on the basis of a test that has been administered to them in English, a language they may not understand).

5. Parental permission and support for the programs should be obtained before assigning students to special classes. This should be done in the language that parents will understand.

6. Prior to the implementation of bilingual education programs, consideration should be given to the goals of the program, teaching methodology, staffing, and probable effectiveness. In addition, social and political ramifications should be thoroughly considered.

7. Achievement data that reveal the educational plight of language minorities will strengthen a school system's position when the implementation of bilingual education programs are being considered.

Concluding Statement

It is imperative that bilingual education be understood and accepted by the general public before real progress is made toward addressing the needs of language-minority students. Even though the courts tend to agree generally that some form of special language instruction is necessary to remedy the educational problems of non-English-speaking students, many states have neglected legislation and school districts have failed to implement programs to address the needs of these special students.

The courts have not necessarily ruled that bilingual education is required for language minorities. What has been required is a "meaningful education" that ensures an equal educational opportunity. If bilingual education is the most appropriate method to ensure equal educational opportunity, school districts may be required to implement bilingual education programs for these students.

Even though the numbers question has not been established judicially, the Department of Health, Education, and Welfare guidelines, as well as some state statutes have specified minimum numbers for establishment of bilingual programs in a given school district. Once litigated, a program might be required if only one student is in need of a bilingual education program.

An additional salient point to be considered is that at no time during this study did the writer find guidelines or court decisions that

suggested that the goal of bilingual education programs was to produce bilingual students. Instead, all programs were to be conducted to produce students that were proficient in the English language.

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Appendix

A SURVEY OF THE STATES' CONSTITUTIONAL AND STATUTORY PROVISIONS FOR BILINGUAL EDUCATION

Overview

A survey of the various states' constitutional and statutory provisions revealed that bilingual education programs in the public schools have made only modest gains since the Bilingual Education Act was enacted at the Federal level in 1968. The BEA, being permissive and not mandatory legislation, has had little impact in influencing state legislatures in a majority of the states.

The research conducted in preparation for this study has shown that only eleven states mandate some form of bilingual education. An additional nineteen states have constitutions or statutes which permit school districts to operate bilingual education programs if they so desire. The remainder of the states either have no provisions for bilingual education or specifically prohibit the operation of programs in any language other than English.

Examined in this appendix are the various states' provisions for language or languages that can be used in the instructional programs of the schools. Presentation of the states' constitutional, educational codes, or statutory provisions for language are in alphabetical order

within the categories of (1) mandatory; (2) permissive; (3) prohibitory toward any language other than English; and (4) no provision for any language.

States That Mandate Bilingual Education

Several states have enacted legislation that requires school districts to provide instructional programs to address the needs of language-minority children. What follows are a listing of these states and the enabling legislation outlining the constitutional or legislative requirements.

ALASKA

Alaska's requirements for bilingual education is applicable to all school districts where eight or more students are in attendance.

Section 14.30.400 Bilingual-Bicultural Education.

City or borough district school boards and regional educational attendance area boards shall provide a bilingual-bicultural education program for each school in a city or borough school district or regional education attendance area which is attended by at least eight pupils of limited English-speaking ability and whose primary language is other than English. A bilingual-bicultural education program shall be provided under a plan of service which has been developed in accordance with regulations adopted by the department. Nothing in this section precludes a bilingual-bicultural education program from being provided for less than eight pupils in a school (Sec 26 ch 124 SLA 1975).¹

Special appropriations are made to school districts for the implementation of programs and materials development.

¹Alaska, Statutes, Title 14, Section 14.30.400.

Section 14.30.410 Bilingual-Bicultural Education Fund.

(a) There is in the Department of Education a bilingual-bicultural education fund which is an account in the general fund to receive money appropriated by the legislature for bilingual-bicultural education and to be used for bilingual-bicultural education program implementation and materials development.

(b) The department shall adopt regulations for determination of entitlement and the distribution of bilingual-bicultural funds to city and borough school districts and regional attendance areas and the state-wide center. (Sec 26 ch 124 SLA 1975)²

CALIFORNIA

California has enacted legislation that mandates bilingual cross-cultural education programs in both public and private schools. The specific legislation is referred to as the Bilingual Education and Improvement Act of 1980. The act is comprehensive in that it governs teacher preparation, licensing, and curricular programs in the schools.

A clearinghouse on teacher preparation and licensing is maintained.

Section 10106. The commission for Teacher Preparation and Licensing shall serve as a clearinghouse for bilingual-cross-cultural teaching personnel. The commission shall compile, continually update, and maintain a directory of bilingual-cross-cultural teachers available to teach in bilingual education programs. The directory shall be sent to all school districts on or before March 15 annually. The commission shall, upon request, assist school districts in the recruitment of such teachers.³

Specific qualifications of teachers are to be assessed by a Commission for Teacher Preparation and Licensing.

²Ibid., Section 14.30.4010.

³California, Education Code, Section 10106.

Section 44253.5. The commission for Teacher Preparation and Licensing shall grant certificates of bilingual-cross-cultural competence. The purpose of these certificates is to increase the number of persons qualified to provide appropriate bilingual-cross-cultural instruction to children whose native language is other than English and who are non- or limited-English speaking. The commission for Teacher Preparation and Licensing shall also develop an assessment program which will provide a method by which persons holding valid teaching credentials may demonstrate their competence as bilingual-cross-cultural teachers. These certificates shall certify, as a minimum, the following:

- (a) That the person is competent in both the oral and written skills of a language other than English;
- (b) That the person has both the knowledge and understanding of the cultural and historical heritage of the students whose native language is other than English;
- (c) That the person successfully can teach the basic teaching authorization in English and in language other than English, and that person has been formally trained and is competent in the fields of language acquisition and development, structure of modern English, and basic principles of linguistics. The holder of this certificate is authorized to teach students whose native language is other than English.

The commission for Teacher Preparation and Licensing shall require institutions of higher education to use the same rigorous assessment procedures as the assessor agencies prior to being eligible to recommend individuals for the certificate of bilingual-cross-cultural competence.

In order to ensure reliability, validity, and objectivity of assessment, the Commission for Teacher Preparation and Licensing shall develop by July 1, 1981, uniform standards and procedures for assessing bilingual-cross-cultural competence as described in subdivisions (a), (b), and (c), and, to the maximum extent feasible, shall adopt standardized assessment instruments for Spanish and Cantonese.⁴

A plan for bilingual-cross-cultural education is required.

Section 52015. Each plan shall include:

- (a) Curricula, instructional strategies, and materials responsive to the individual educational needs and learning styles of each pupil which enable all pupils to:

⁴Ibid., Section 44253.5.

(1) Make continuous progress and learn at a rate appropriate to their abilities.

(2) Master basic skills in language development and reading, writing, and mathematics pursuant to Sections 51215 and 51216.

(3) Develop knowledge and skills in other aspects of the curriculum, such as arts and humanities; physical, natural, and social sciences; multicultural education; physical, emotional, and mental health; consumer economics; and career education.

(4) Pursue educational interest and develop esteem for self and others, personal and social responsibility, critical thinking, and independent judgment.

Consideration shall be given to the use of community resources, such as museums, libraries, and communications media, to achieve instructional improvement objectives.

(b) Instructional and auxiliary services to meet the special needs of pupils of limited English proficiency consistent with Article 3 (commencing with Section 52160) of Chapter 7 of Part 28, including instruction in a language such pupils understand; educationally disadvantaged pupils; and pupils with exceptional abilities or needs.

(c) A staff development program for teachers, other school personnel, paraprofessionals, and volunteers as provided in Section 52019.

(d) Improvement of the classroom and school environment, including improvement of relationships between and among pupils, school personnel, parents, and the community, and reduction of the incidence among pupils of violence and vandalism.

(e) Other objectives as established by the council.

(f) The proposed expenditure of allowances provided pursuant to Article 4 (commencing with Section 52045) of this chapter and other state and local funds available to support the school improvement program.

(g) Ongoing evaluation and modification of the school improvement plan by the council based on information regarding:

(1) The degree to which the school is meeting its improvement objectives as assessed by parents, teachers, other school personnel, and pupils.

(2) Student achievement.

(3) Improved school environment as measured by indicators such as (A) the incidence among pupils of absenteeism, suspension, expulsion, and dropouts and the incidence and costs of school violence, vandalism, and theft of school or private property while participating in school activities, (B) pupil attitudes toward school, self, and others, (C) incidence of absenteeism, resignations, and requests for transfers among teachers and other school personnel, and (D) satisfaction of teachers, pupils, parents, administrators, and other school personnel with school services and decision-making processes.

(4) The degree to which fiscal expenditures meet the criteria of the school improvement plan.⁵

The legislation outlines the goal of the Act.

Section 52161. The Legislature finds that there are more than 288,000 school age children who are limited English proficient and who do not have the English language skills necessary to benefit from instruction only in English at a level substantially equivalent to pupils whose primary language is English. Their lack of English language communication skills presents an obstacle to such pupils' right to an equal educational opportunity which can be removed by instruction and training in the pupils' primary languages while such pupils are learning English. The legislature recognizes that the school dropout rate is excessive among pupils of limited English proficiency. This represents a tremendous loss in human resources and in potential personal income and tax revenues. Furthermore, high rates of joblessness among these dropouts contribute to the unemployment burden of the state.

The legislature recognizes that a critical need exists for teaching and administrative personnel qualified in the bilingual and cross-cultural skills necessary to the instruction of the limited-English-proficient population in the state's school districts. Therefore, the Legislature directs school districts to provide for in-service programs to qualify existing and future personnel in the bilingual and cross-cultural skills necessary to serve the pupils of limited English proficiency in this state. Furthermore, the Legislature intends that the public institutions of higher education establish programs to qualify teachers and administrators in the bilingual and cross-cultural skills necessary to serve these pupils.

The Legislature finds and declares that the primary goal of all programs under this article is, as effectively and efficiently as possible, to develop in each child fluency in English. The programs shall also provide positive reinforcement of the self-image of participating pupils, promote cross-cultural understanding, and provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language.

It is the purpose of this article to require California school districts to offer bilingual learning opportunities to each pupil of limited English proficiency enrolled in the public schools, and to provide adequate supplemental financial support to achieve such purpose. Insofar as the

⁵Ibid., Section 52015.

individual pupil is concerned, participation in bilingual programs is voluntary on the part of the parent or guardian.⁶

The legislation defines bilingual education and outlines specific requirements regarding the instructional programs.

Section 52163. Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this article.

(a) "Basic bilingual education" is a system of instruction which builds upon the language skills of the pupil and which consists of, but is not limited to, all of the following:

(1) A structured English language development component with daily instruction leading to the acquisition of English language proficiency, including English reading and writing skills.

(2) A structured primary language component with daily basic skills instruction in the primary language for the purpose of sustaining achievement in basic subject areas until the transfer to English is made.

As the pupil develops English language skills, the amount of instruction offered through English shall increase.

(b) "Bilingual-bicultural education" is a system of instruction which uses two languages, one of which is English, as a means of instruction. It is a means of instruction which builds upon and expands the existing language skills of each participating pupil, which will enable the pupil to achieve competency in both languages.

This instruction shall include all of the following:

(1) Daily instruction in English language development which shall include:

(A) Listening and speaking skills.

(B) Reading and writing skills; formal instruction in reading and writing of English shall be introduced when appropriate criteria are met.

(2) Language development in the pupil's primary language, including oral and literacy skills.

(3) Reading in the pupil's primary language.

(4) Selected subjects taught in the pupil's primary language.

(5) Development of an understanding of the history and culture of California and the United States, as well as an understanding of customs and values of the cultures associated with the languages being taught.

⁶Ibid., Section 52161.

(c) (1) "Experimental bilingual programs" are:

(A) Innovative programs which are consistent with the provisions of this article, including, but not limited to, the requirements for bilingual teaching personnel pursuant to Section 52165, and the requirements for English language and primary language development pursuant to this section. Such programs may include new management approaches, greater emphasis on team teaching, or other appropriate improvements which expand the learning opportunities of pupils of limited English proficiency. Unless waivers of code sections are required, the board need not approve such projects. A description of each such innovative program shall be included with the consolidated application for program funding and an annual evaluation of such programs shall be included in the multiple-funded program evaluation required pursuant to Section 33403.

(B) Planned variation programs for the purpose of comparing and improving language development programs for pupils of limited English proficiency. The primary focus shall be on appropriate instruction for pupils of limited English proficiency whose English skills are superior to their skills in their primary language. Such program shall be authorized by the board in up to 150 classrooms in districts which are representative of the state both geographically and by size. Not more than 15 such classrooms shall be approved in any one district. Such programs shall not result in segregation. For districts proposing a planned variation program, the staffing requirements of Section 52165 may be partially or totally waived by the board provided that the district has an inadequate number of certified bilingual teachers, that certified bilingual teachers are not replaced, that present level of effort is not reduced, and that the proposed language development program is appropriate. For each participating classroom there shall be another similar classroom in the district which has fully implemented and is in compliance with the other provisions of this article.

(2) Initial guidelines, criteria, and procedures for experimental programs shall be developed by the department not later than March 1, 1981. Proposals for planned variation programs shall include, but need not be limited to:

(A) A clear statement of the purposes, goals, and objectives for planned variation programs and projected outcomes.

(B) A delineated management, staffing, and instructional plan.

(C) Pupil identification, diagnosis, and assessment procedures.

(D) Evidence of qualified bilingual and other instructional staff with demonstrated competence in language development, bicultural or multicultural knowledge of participating pupils, and instructional methodologies.

(E) Documented parent and community participation and support.

(F) Use of state and federal funding, where applicable.

(G) Evaluation component which controls for instructional treatments, instructional engaged time, staffing, pupil language characteristics, achievement, attendance, and related data.

(3) The department shall include in its annual report to the Legislature submitted pursuant to Sections 33405 and 52171.6 the number and nature of experimental bilingual and planned variation programs and progress of participating pupils.

(4) Nothing contained in this subdivision shall be construed to permit the operation of experimental bilingual and planned variation programs contrary to the purposes or intent of this article and other state or federal statutes and regulations promulgated for and on behalf of pupils of limited English proficiency. The primary goal of all such programs shall be to teach the pupil English.

(d) "Secondary level language learning program" is a program which provides (1) a prescriptive English language program that systematically develops a pupil's listening and speaking skills, knowledge of linguistic and grammatical structure leading to proficiency in reading and writing English, (2) primary language instructional support to sustain academic achievement in content subject areas required for high school graduation. The prescriptive English language program shall be based on the diagnosis of a pupil's language skills pursuant to Sections 52164 and 52164.1 and shall be conducted as an integral instructional program of English curriculum for not less than one full period a day for the purpose of providing pupils with minimum English language competencies pursuant to subdivision (e). The primary goal of such programs shall be to teach pupils English.

(e) "Secondary level individual learning program: is an individualized systematic program of instruction which meets the needs of limited-English-proficient pupils and builds upon their language skills in order to develop proficiency in English. This program shall be offered in a manner consistent with the United States Supreme Court decision in *Lau v. Nichols* (414 U.S. 563), the Equal Education Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.) and federal regulations promulgated pursuant to such court decisions

and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(f) "Elementary level individual learning program" is any program of instruction for a pupil of limited English proficiency in which any one of the three program options described in subdivision (a), (b), or (c) is individualized to meet the needs of the pupil of limited English proficiency and is offered in a manner consistent with the requirements of this article. Such instruction shall be offered in a manner consistent with the United States Supreme Court decision in *Lau v. Nichols* (414 U.S. 563), the Equal Education Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.), and federal regulations promulgated pursuant to such court decisions and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(g) "Primary language" is a language other than English which is the language the pupil first learned or the language which is spoken in the pupil's home.

(h) "Bilingual-cross-cultural teacher" means a person who (1) holds a valid, regular California teaching credential and (2) holds either a bilingual-cross-cultural certificate of proficiency or other credential in bilingual education authorized by the Commission for Teacher Preparation and Licensing or a bilingual-cross-cultural specialist credential. Such a person shall be fluent in the primary language and familiar with the cultural heritage of limited-English-proficiency pupils in the bilingual classes he or she conducts. Such a person shall have a professional demonstrated working knowledge of the methodologies which are necessary to educate effectively those pupils.

(i) "Bilingual-cross-cultural teacher aide" means an aide fluent in both English and the primary language of the pupils of limited English proficiency in a bilingual-bicultural program. Such an aide shall be familiar with the cultural heritage of pupils of limited English proficiency in the bilingual classes to which he or she is assigned.

(j) "Board" means the State Board of Education.

(k) "Superintendent" means the Superintendent of Public Instruction.

(l) "Basic skills" means language arts, including, but not limited to, reading and writing, and mathematics.

(m) "Pupils of limited English proficiency" are pupils who do not have the clearly developed English language skills of comprehension, speaking, reading and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. The determination of which pupils are pupils of limited

English proficiency shall be made in accordance with the procedures specified in Sections 52164 and 52164.1. Pupils who have no proficiency in their primary language are not included within this definition.

(n) "Pupils of fluent English proficiency" are pupils whose English proficiency is comparable to that of the majority of pupils, of the same age or grade, whose primary language is English.

(o) "Department" means the Department of Education.⁷

Continuous student assessment is required along with appropriate program modification as deemed necessary.

Section 52163.5. Each of the program options defined in subdivision (a), (b), (c), (d), (e), or (f) of Section 52163 shall include structured activities which promote the pupil's positive self-image and cross-cultural understanding.

The Legislature recognizes that language development is a continuum and that pupils in the classroom may have varying levels of English and primary language skills. The individualized instruction for each pupil, pursuant to all of the program options, shall be based on a continuing evaluation of the pupil's progress by the classroom teacher, and by others, as appropriate. An English development component is required for all participating pupils. Pupils with greater strength in their primary language shall receive instruction in academic subjects through the primary language as long as such instruction is needed to sustain academic achievement. As pupils develop the skills which allow them to learn more effectively in English, more of their instruction shall be through the English language. A primary language component shall be provided as specified in subdivision (a), (b), (c), (d), or (f) of Section 52163, but shall be less extensive as the pupil progresses into English.⁸

Inadequate materials and textbooks are addressed by the legislation.

Section 52163.6. The legislature recognizes that for many languages there is a shortage of primary

⁷Ibid., Section 52163.

⁸Ibid., Section 52163.5.

language textbooks, curricula, teacher training programs, and bilingual personnel. The requirements for reading in the primary language may be waived by the board if the district documents the lack of available materials, personnel, and training programs. The department shall maintain a list of available curriculum materials and teacher training programs in all appropriate languages, to verify the waiver requests. The waiver is renewable yearly. Each waiver request shall be signed by the chairperson of the district bilingual committee. The waiver does not eliminate the requirement for primary oral language development.⁹

A census and language skills assessment is required.

Section 52164. Each school district shall ascertain not later than the first day of March of each year, under regulations prescribed by the State Board of Education, the total number of pupils of limited English proficiency within the district, and shall classify them according to their primary language, age, and grade level. This count shall be known as the "census of pupils of limited English proficiency" and shall consist of a determination of the primary language of each pupil enrolled in the school district and an assessment of the language skills of all pupils whose primary language is other than English.

The census shall be taken by individual, actual count, and not by estimates or samplings. All pupils of limited English proficiency, including migrant and special education pupils, shall be counted. Special language assessment instruments, designated by the superintendent and in compliance with the requirements of subdivision (j) of Section 56001, may be used for special education pupils. The results of this census shall be reported to the Department of Education not later than the 30th day of April of each year. The previous census shall be updated to include new enrollees and to eliminate pupils who are no longer pupils of limited English proficiency and pupils who no longer attend school in the district, and shall be reported pursuant to Section 52164.1. Census data gathered in one school year shall be used to plan the number of bilingual classrooms to be established in the following school year.

⁹Ibid., Section 52163.6.

Section 52164.1. The superintendent, with the approval of the State Board of Education, shall prescribe census-taking methods, applicable to all school districts in the state, which shall include, but need not be limited to, the following:

(a) A determination of the primary language of each pupil enrolled in the school district. The primary language of new pupils shall be determined as they enroll. Once determined, the primary language need not be re-determined unless the parent or guardian claims there is an error. Home language determinations are required only once, unless the results are disputed by a parent or guardian.

(b) An assessment of the language skills of all pupils whose primary language is other than English. All the skills listed in subdivision (m) of Section 52163 shall be assessed, except that reading and writing skills need not be assessed for pupils in kindergarten and grades 1 and 2. For those pupils who, on the basis of oral language proficiency alone, are clearly limited English proficient, assessment of reading and writing skills shall be necessary only to the extent required by subdivision (c). This assessment, which shall be made as pupils enroll in the district, shall determine whether such pupils are fluent in English or are of limited English proficiency.

(c) For those pupils identified as being of limited English proficiency, a further assessment shall be made to determine the pupil's primary language proficiency, including speaking, comprehension, reading, and writing, to the extent assessment instruments are available. Parallel forms of the instruments used to determine English proficiency shall be used, if available. The results of the parallel assessment shall determine the extent and sequence in which English and the primary language will be used in the instruction of basic skills.

A diagnostic assessment in the language designated for basic skills instruction measuring speaking, comprehension, reading, and writing, shall be administered for instructional use at the district level. Such diagnostic assessment shall be updated as necessary to provide a curriculum meeting the individual needs of each pupil of limited English proficiency.

If the assessment conducted pursuant to this subdivision indicates that the pupil has no proficiency in the primary language, further assessment of the pupil's primary language skills including consultation with the pupil's parents or guardians, the classroom teacher, the pupil, or others who are familiar with the pupil's language ability in various environments shall be conducted. If this detailed assessment indicates that the pupil has no proficiency in his or her primary language,

then the pupil is not entitled to the protection of this article.

The diagnostic assessment process shall be completed within 90 days after the date of the pupil's initial enrollment and shall be performed in accordance with rules and regulations adopted by the board.

The parent or guardian of the pupil shall be notified of the results of the assessment. The Department of Education shall conduct an equivalency study of all language proficiency tests designated for the identification of pupils of limited English proficiency to insure uniformity of language classifications and to insure the reliability and validity of such tests. Tests, materials, and procedures to determine proficiency shall be selected to meet psychometric standards and administered so as not to be racially, culturally, or sexually discriminatory.

The Department of Education shall annually evaluate the adequacy of and designate the instruments to be used by school districts, and such instruments shall be available by March 15 of each year.

The assessments shall be conducted by persons who speak and understand English and the primary language of the pupils assessed, who are adequately trained and prepared to evaluate cultural and ethnic factors, and who shall follow procedures formulated by the superintendent to determine which pupils are pupils of limited English proficiency, as defined in subdivision (m) of section 52163. A school district may require that the assessment be conducted by persons who hold a valid, regular California teaching credential and who meet the other qualifications specified in this paragraph. The superintendent may waive the requirement that the assessment be conducted by persons who can speak and understand the pupil's primary language where the primary language is spoken by a small number of pupils and the district certifies that it is unable to comply. This certification shall be accompanied by a statement from the district superintendent that the chairperson of the district advisory committee on bilingual education has been consulted and was unable to assist in the effort to locate appropriate individuals to administer the assessment.

Any district may elect to follow federal census requirements provided that the language skills described in subdivision (m) of Section 52163 are assessed, and provided that such procedures are consistent with Section 52164, the district shall be exempt from the state census procedures described in subdivisions (a) and (b).¹⁰

¹⁰Ibid., Sections 52164-52164.1.

Provisions for reclassification of students is provided to optimize placement and program options.

Section 52164.6. Reclassification criteria shall be established by each school district in which pupils of limited English proficiency are enrolled. The criteria shall determine when pupils of limited English proficiency have developed the English language skills necessary to succeed in an English-only classroom. The reclassification process shall, at a minimum, utilize multiple criteria, including, but not limited to, all of the following:

(a) Teacher evaluation, including a review of the pupil's curriculum mastery.

(b) Objective assessment of language proficiency and reading and writing skills.

(c) Parental opinion and consultation.

(d) An empirically established range of performance in basic skills, based on non-minority English-proficient pupils of the same grade and age, which demonstrates that the pupil is sufficiently proficient in English to succeed in an English-only classroom.

The board shall, no later than April 1, 1981, adopt regulations setting forth standards for language reclassification criteria to be adopted by school districts. The board's regulations shall, at a minimum, prescribe a reclassification process which shall utilize multiple criteria as required by this section.

The superintendent shall, by May 1, 1981, prepare and distribute to each school district in which pupils of limited English proficiency are enrolled, background material, and guidelines for language reclassification criteria to be adopted by school districts.

Each school district shall, in following the board's regulations, no later than September 1, 1981, establish criteria for determining when pupils of limited English proficiency enrolled in programs defined in Section 52163 have developed the English language skills of comprehension, speaking, reading and writing necessary to succeed in an English-only instruction setting.¹¹

California guarantees students will be educated in their primary language.

¹¹Ibid., Section 52164.6.

Section 52165. Each pupil of limited English proficiency enrolled in the California public school system in kindergarten through grade 12 shall receive instruction in a language understandable to the pupil which recognizes the pupil's primary language and teaches the pupil English.

(a) In kindergarten through grade 6:

(1) Whenever the language census indicates that any school of a school district has 10 or more pupils of limited English proficiency with the same primary language as the same grade level or 10 or more pupils of limited English proficiency with the same primary language, in the same age group, in a multigrade or ungraded instructional environment, the school district shall offer instruction pursuant to subdivision (a), (b) or (c) of Section 52163 for such pupils at the school. Whenever there are pupils of limited English proficiency with different primary language who do not otherwise trigger the program requirements of subdivision (a), (b), or (c) of Section 52163 or of this subdivision, a language development specialist defined a subdivision (b) may be used.

(2) Commencing September 1, 1981, and to the extent state or federal categorical funds are available, the following services are required for pupils of limited English proficiency in concentrations of fewer than 10 per grade level: When there are fewer than 10 pupils of limited English proficiency in the same grade, but at least 20 such pupils in the school with the same primary language, the school district shall provide at least one certified bilingual-cross-cultural teacher or teachers on waiver as defined in Section 52178 or 52178.5 and an individualized instruction program as defined in subdivision (f) of Section 52163 for such pupils at the school. If the number of pupils of limited English proficiency in the school exceeds 45, the district shall provide two such teachers. These teachers may be used as resource teachers, team teachers or to provide such other services to pupils of limited English proficiency as the district deems appropriate. These teachers shall be different teachers than those required pursuant to paragraph (1).

(b) The Legislature recognizes that in the past equal educational opportunities have not been fully available to secondary pupils of limited English proficiency. It is the intent of the Legislature to encourage school districts to offer a language learning program pursuant to subdivision (d) of Section 52163. Certified bilingual-cross-cultural teachers or, if no such teachers are available, language development specialists assisted by a bilingual aide shall be qualified to provide instruction for such programs. Language development specialists shall be formally trained and competent in the field of English language learning, including second language acquisition and develop-

ment, structure of modern English, and basic principles of linguistics, and shall meet the culture and methodology competencies established by subdivisions (b) and (c) of Sections 44253.5. The Commission for Teacher Preparation and Licensing shall provide for the assessment of language competencies specified herein and shall modify existing culture and methodology competency for language development specialist to insure that they meet the cross-cultural and instructional methodologies for pupils being served by such teachers. A teacher of (E)nglish to speakers of other languages certificate from a commission approved teacher training institute of higher education which meets the criteria established by the commission pursuant to Section 44253.5 shall be accepted in lieu of the methodology requirement.

(c) In kindergarten and grades 1 through 12 pupils of limited English proficiency who are not enrolled in a program described in subdivision (a), (b), (c), or (d) of Section 52163, shall be individually evaluated and shall receive educational services defined in subdivision (e) or (f), as appropriate, of Section 52163. Such services shall be provided in consultation with the pupil and the parent, parents, or guardian of the pupil.

(d) As a part of its consolidated application for categorical program funds, each district receiving such funds shall include a specific plan indicating the ways in which the individual learning plans will meet the needs of pupils of limited English proficiency. The plan shall describe all the following: (1) Procedures used in making the individual evaluation. (2) The pupils' levels of English and primary language proficiency and levels of educational performance. (3) Instructional objectives and scope of educational services to be provided. (4) Periodic evaluation procedures, using objective criteria, to determine whether the instructional objectives are being met.¹²

Teachers and teacher aides must be qualified to teach language minority students.

Section 52166. All teachers and aides providing instruction in programs established pursuant to subdivision (a), (b), or unless waived by the board, (c) of Section 52163, shall meet the criteria of subdivision (h) or (i) of Section 52163. In the event a school operates an individualized program described in subdivision (e) or (f) of Section 52163, such a district which receives categorical

¹²Ibid., Section 52165.

aid funds to meet the needs of pupils of limited English proficiency shall certify to the board that sufficient teachers and aides meeting the criteria of subdivision (h) or (i) of Section 52163, as appropriate, are available to the school to ensure that all pupils of limited English proficiency have instructional opportunities in both English and their primary language to meet the intent of this chapter. Other instructional personnel who are not bilingual-cross-cultural as defined in subdivisions (h) and (i) of Section 52163 may provide instructional and educational services to pupils enrolled in programs established pursuant to subdivision (a), (b), or (c), of Section 52163 if the principal teachers and aides providing instruction in such programs meet the criteria established in subdivisions (h), unless waived by the board pursuant to subparagraph (B) or paragraph (1) of subdivision (c) of Section 52163, and (i) of Section 52163.

In the development of teacher evaluation procedures pursuant to Article II (commencing with Section 44660) of Chapter I of Part 25, the governing board of each school district may ensure that a teacher meeting the criteria of subdivision (h) of Section 52163 is evaluated on the basis of his or her classroom performance by an onsite administrator upon the advice of another person meeting the criteria of subdivision (h) of Section 52163.¹³

Protection against segregating language-minority students is provided for in this legislation.

Section 52167. In classes established pursuant to subdivision (a), (b), or (c) of Section 52165, not more than two-thirds nor less than one-third of the pupils shall be pupils of limited English proficiency. The remaining proportion of pupils in such class shall be pupils of fluent English proficiency. However, where there is documented evidence that these proportions cannot be met, the classroom proportions shall, at a minimum, reflect the proportion of the language proficiency classification for the particular grade level in the school and shall not result in segregation. Fluent-English-proficient pupils shall receive basic skills instruction in English and, to the extent possible, the achieving at the district norm.

In no event shall the primary purpose of the program be to teach a foreign language to English-speaking pupils.

The board shall adopt any necessary regulations governing this section within 90 days after January 1, 1981.¹⁴

¹³Ibid., Section 52166.

¹⁴Ibid., Section 52167.

State level evaluation is addressed by the legislation.

Section 52171.6. (a) The superintendent shall report annually to the Legislature on bilingual education programs as part of the multiple-funded program evaluation required pursuant to Section 33404 of the Education Code. The superintendent of Public Instruction shall coordinate the design of school district and state evaluations to minimize the data collection and reporting requirements at the school and district levels. Pupil performance data for bilingual programs may be collected and analyzed on a sample basis with appropriate controls for pupil and instructional program characteristics.

The multiple-funded program evaluation shall include:

(1) Summary of district reports submitted pursuant to subdivision (a) of Section 52170 on the number of identified pupils of limited English proficiency, funds from all sources available for programs to meet the needs of those identified pupils, and the numbers of identified pupils who are not being provided with services pursuant to subdivision (a), (b), (c), (d), (e) or (f) of Section 52163.

(2) Information on bilingual programs conducted pursuant to Section 52165, on all of the following:

(A) Numbers of limited English proficiency and fluent-English-speaking pupils served in the program.

(B) Numbers of teachers holding bilingual credentials or certificates of competency, bilingual aides, and teachers who have waivers.

(C) Expenditures made from bilingual education funds by category of expenditure.

(D) Number of pupils reclassified and district level procedures for reclassification pursuant to Section 52164.6.

(E) A summary report of programs conducted pursuant to subparagraph (B) of paragraph (1) of subdivision (c) of Section 52163.

(3) An assessment of the educational needs of pupils of limited English proficiency and the extent to which such needs are being met from federal, state and local efforts, pursuant to paragraph (6) of subdivision (a) of Section 52177.

(4) For pupils learning a substantive amount of the curriculum through their primary language, basic skills assessment shall be conducted in the primary language only; assessment of language proficiency shall be conducted in English.

For pupils learning through both English and the primary language, basic skills assessment shall be in English; assessment of language proficiency shall be conducted in English. Pupils participating in the individual learning plan shall be assessed as appropriate pursuant to regulations, instruction, and guidelines to be issued by the superintendent. Assessment of pupils in the primary language shall be required only to the extent that appropriate instruments are available.

(5) It is the intent of the Legislature that evaluation of programs conducted pursuant to this article shall be designed to provide the Legislature, the board, the superintendent, and program administrators at district and school levels with information necessary to assist in all of the following:

(A) Refining and improving policies, regulations, guidelines, and procedures on a continuing basis.

(B) Assessing the overall merits of local programs.¹⁵

Notification of parents and guardian is required.

Section 52173: (A) Prior to the enrollment of any pupils in any program authorized pursuant to subdivision (a), (b), (c), or (d) of Section 52163, parents or guardians of pupils of all potential participants shall be provided the opportunity for consultation about the placement of their child or ward in such a program. To achieve this purpose, the governing board of the school district in which the pupil resides shall notify by mail or in person the parent, parents, or guardian of the pupil of the fact that their child or ward will be enrolled in a program of bilingual education. The notice shall: (1) contain a simple, nontechnical description of the purposes, method, and content of the program in which their child or ward will be enrolled; (2) inform the parent, parents, or guardian that the parent, parents, or guardian have the right and are encouraged to visit such classes in which their child or ward will be enrolled and to come to the school for a conference to explain the nature and objectives of such education; (3) further inform the parent, parents, or guardian that they have the right, if they so wish, not to have their child or ward enrolled in such an education program; (4) inform the parent, parents, or guardian that they have the opportunity to participate in the school or school district advisory committee, or both. The written notice shall be in English and in the primary language of the pupil.

(b) Any parent or guardian whose child or ward has been or will be enrolled in programs authorized pursuant to subdivision (a), (b), (c), or (d) of Section 52163 shall have the right, either at the time of the original notification of enrollment or at the close of any semester thereafter, to withdraw his or her child or ward from the program, by written notice to the principal of the school in which his or her child or ward is enrolled.

¹⁵Ibid., Section 52171.6.

(c) Each school advisory committee maintained pursuant to this section shall be responsible for advising the principal and staff in the development of a detailed master plan for bilingual education for the individual school and submitting the plan to the governing board for consideration for inclusion in the district master plan. It shall also be responsible for assisting in the development of the school needs assessment, language census, and ways to make parents aware of the importance of regular school attendance.

The Department of Education shall develop guidelines for the selection of advisory committees established or maintained pursuant to this section by May 1, 1981.¹⁶

District advisory councils must be established.

Section 52176. (a) Each school district with more than 50 pupils of limited English proficiency shall establish a district-wide advisory committee on bilingual education. Parents or guardians, or both, of pupils of limited English proficiency who are not employed by the district shall constitute a majority of the committee, unless the district designates for this purpose an existing district-wide advisory committee on which parents or guardians, or both, of pupils of limited English proficiency have membership in at least the same percentage as their children and wards represent of the total number of pupils in the district, provided that a subcommittee of bilingual-bicultural education on which parents or guardians, or both, of pupils of limited English proficiency constitute a majority is established. The district advisory committee and subcommittee, if applicable, shall be responsible for at least six specific tasks. These tasks shall be to advise the district governing board regarding all of the following:

- (1) Establishment of a timetable for development of a district master plan for bilingual education.
- (2) District-wide needs assessment on a school-by-school basis.
- (3) Establishment of district program goals and objectives in bilingual education.
- (4) A plan to ensure district compliance with the provisions of Section 52178.
- (5) Administration of the annual language census.

(b) Each school with more than 20 pupils of limited English proficiency shall establish a school level advisory committee on which parents or guardians, or both, of such pupils constitute membership in at least the same

¹⁶Ibid., Section 52173.

percentage as their children and wards represent of the total number of pupils in the school. The school may designate for this purpose an existing school level advisory committee, or subcommittee of such an advisory committee, if the advisory committee, or subcommittee, meets the criteria stated above.¹⁷

In the absence of qualified bilingual-cross-cultural teachers, waiver provisions are available from the board of education.

Section 52178. All principal teachers providing instruction in programs defined by subdivision (a), (b), or, unless waived by the board, (c), and insofar as teachers are available, (d) of Section 52163 shall be bilingual-cross-cultural teachers as defined pursuant to subdivision (h) of Section 52163, or shall be bilingual in English and the primary language of the pupils of limited English proficiency in the bilingual class and hold an internship credential or an emergency bilingual-cross-cultural credential.

In recognition of the shortage of qualified bilingual-cross-cultural teachers, a school district may request a renewable two-year waiver from the board for each teacher who is not bilingual-cross-cultural but who is enrolled and participating in a program leading to a bilingual specialist credential or a certificate of competence for bilingual-cross-cultural instruction pursuant to Section 44253.5. Such a teacher, with the assistance of a bilingual-cross-cultural aide, may teach in a program of bilingual instruction mandated by Section 52165 for not more than four school years commencing with the first year that the teacher was under waiver, so long as continuing progress toward the certificate of competence is indicated in accordance with this section.

Each school district which requests waivers shall file its application for such a waiver with the State Board of Education on or before October 1 of the appropriate year, and shall give assurance that all teachers receiving such waiver are, or will be, participating in an appropriate program leading to a bilingual specialist credential or a certificate of competence for bilingual-cross-cultural instruction pursuant to Section 44253.5 during each of the school years for which the waiver is granted, and shall state who is in charge of the program and which institution or district is conducting it. Existing state and federal staff development funds may be used for training and assessment leading to a bilingual specialist credential or a bilingual-cross-cultural

¹⁷Ibid., Section 52176.

certificate of competence. The district shall further assure that all teachers receiving such a waiver have been notified in writing by the school board as to their obligations while under waiver. The waiver application shall list the names of the teachers who are to receive the waiver, the school to which they are assigned, and the date by which the teacher is expected to obtain a bilingual specialist credential or the certificate of competence. Each district, whether or not it requests a waiver, shall report the number of classrooms for which a bilingual teacher is required pursuant to Section 52165, the total number of certificated bilingual-cross-cultural teachers employed by the district in classroom positions and, in the event the district requests a waiver, the total number of teachers for whom a waiver is being requested. If a district hires new teachers, no waiver shall be granted unless the board finds that the district made a good faith effort to recruit and hire bilingual-cross-cultural teachers including contacting the bilingual-cross-cultural teachers. As a part of such good faith effort, districts shall contact those bilingual-cross-cultural teachers who indicate they are seeking employment as stated in the annual list of bilingual-cross-cultural teachers prepared by the Commission for Teacher Preparation and Licensing. Districts needing bilingual-cross-cultural teachers shall also request assistance from the clearinghouse maintained by the commission pursuant to Section 10106.

All waivers granted pursuant to this section shall expire not later than the end of the fourth school year the teacher has been on waiver, or June 30, 1984, whichever shall occur first. However, all teachers teaching in a bilingual classroom with a waiver approved by the board shall have at least four years to complete their bilingual certification effective from the first year the waiver was approved.

It is not the intent of the Legislature, by amending this section in the 1979-80 Regular Legislative Session, to expand the requirements for the certificate of bilingual-cross-cultural competence.

Commencing September 1, 1981, all waiver applications shall include certification by an assessor agency approved by the Commission for Teacher Preparation and Licensing, that the applicant teacher is making the following progress toward meeting the requirements for the bilingual-cross-cultural certificate of competence:

(a) For the teacher who is just entering the bilingual program: no requirement.

(b) For the teacher beginning his or her second year on waiver: competence in language, culture, or methodology, as required by subdivision (a), (b), or (c) of Section 44253.5.

(c) For the teacher beginning his or her third year on waiver: no additional requirements.

(d) For the teacher beginning his or her fourth year on waiver: competence in two of the three areas required by Section 44253.5. These certifications shall be provided to the Department of Education on an annual basis.

In lieu of these certifications of competence in culture or methodology, as required by subdivision (b) or (c) of Section 44253.5, the district may submit a statement from a bilingual teacher training institution approved by the Commission for Teacher Preparation and Licensing that the coursework for that competence has been completed. To receive a bilingual-cross-cultural certificate of competence, an applicant shall pass the examinations for all three areas of competence required by Section 44253.5.

The Commission for Teacher Preparation and Licensing shall contract with approved assessor agencies to assess separately each of the three competencies required in Section 44253.5. The commission shall arrange for assessments if approved assessor agencies cannot provide them. However, the commission may directly assess these competence if the commission has been unable to arrange an assessment, and if a staff member is qualified to perform the assessment.¹⁸

COLORADO

Colorado has a very comprehensive mandatory statute on bilingual education. Entailed in the legislation, entitled Bilingual and Bicultural Education Act, are specific directions on developing LEA plans, establishing steering committees, identification of students, teacher training, and enforcement procedures.

Section 22-24-101. Short title. This article shall be known and may be cited as the "Bilingual" and Bicultural Education Act".

Source. Added, L.75, p. 666, § 1.

¹⁸Ibid., Section 52178.

Section 22-24-102. Legislative declaration.

(1) The general assembly hereby declares that there are substantial numbers of students in this state with linguistically different skills due to the influence of another language in their family, community, or peer group or due to their cultural environment, and that public school classes in which instruction is given only in English may be inadequate for the education of these students. The general assembly recognizes the need to provide for programs to perfect the English language skills and cultural development of these students and finds that this could best be accomplished through bilingual and bicultural programs in grades kindergarten through third grade which provide cognitive and affective development of these students by: Utilizing the linguistic skills of these students in the curriculum; providing these students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and developing cultural and ethnic pride and understanding among these and other students. The general assembly recognizes the need to provide for programs directed toward the achievement of the following objectives:

- (a) Improved performance in comprehension, reading, writing, and speaking the English language;
- (b) Improved school attendance and reduced dropout rate;
- (c) Development of a positive self-concept and attitude; and
- (d) Greater parental involvement in the school programs.

(2) Therefore, the policy of this state is to insure equal educational opportunity for every student and to recognize the educational needs of students with linguistically different skills. The general assembly further declares that it is the purpose of this article to provide the establishment of bilingual and bicultural programs in the public schools in grades kindergarten through third grade and to provide for the distribution of funds to districts for the costs resulting from such programs.

Source: Added, L. 75. p. 666, § 1.¹⁹

For clarification purposes, various terms are defined.

Section 22-24-103. Definitions.

As used in this article, unless the context otherwise requires:

¹⁹Colorado, Revised Statutes, (1973) Title 22, Chapter 24, Sections 22-24-101 - 22-24-102.

(1) "Bilingual and bicultural education teacher's aide" means a person employed to assist the teacher in a program.

(2) "Board of cooperative services" means a board of cooperative services created pursuant to article 5 of this title.

(3) "Community bilingual and bicultural committee" or "community committee" means the district level committee consisting of parents and other persons elected for each district providing a bilingual and bicultural education program pursuant to the provisions of this article.

(4) "Community coordinator" means a person employed by the district for the purpose of promoting communication, understanding, and cooperation between the public school and the community for the effective implementation of programs initiated pursuant to this article.

(5) "Department" means the department of education.

(6) "Direct attributable additional cost" means those costs which are incurred due to the provision by a school district or board of cooperative services of approved programs under this article. These costs include both direct support services and direct instructional services and are in addition to the program which all children in the district would be entitled to receive and do not include indirect costs.

(7) "Director" means the person selected pursuant to the provisions of this article to be the administrative head of the unit in the department.

(8) "District" means a school district organized and existing pursuant to law but does not include a junior college district.

(9) "District director of bilingual and bicultural education" means the person appointed to direct the operation of a district's bilingual and bicultural program in which there are more than one hundred students.

(10) "Program" means the bilingual and bicultural education program established by a district for the purpose of perfecting the English language skills and cultural development of its students which provides for effective development of its students and which provides for the cognitive and affective development of its students by: Utilizing the cultural and linguistic backgrounds of these students in the curriculum; providing these students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and developing cultural and ethnic pride and understanding among these and other students.

(11) "School board" means the board of education of a local school district.

(12) "State steering committee" means the state bilingual and bicultural steering committee appointed to assist the state board of education in fully and effectively implementing the provisions of this article.

(13) "Students with linguistically different skills" means students who are not able to take advantage of present educational programs taught in English because of their language skills and who come from an environment of different customs and traditions which may include the influence of another language in their family, community, or peer group.

(14) "Supervisor" means a person appointed to supervise a district's bilingual and bicultural program in which there are less than one hundred students enrolled.

(15) "Teacher" means any person certificated pursuant to article 60 of this title who is employed to administer, direct, or supervise the classroom instructional program in a school in this state.

(16) "Title I or Title VII school" means a school operating a program under Title I or Title VII of the "Federal Elementary and Secondary Education Act".

(17) "Unit" means the unit of bilingual and bicultural education within the department created pursuant to this article.

Source: Added, L. 75, p. 667 § 1.²⁰

A state-wide steering committee is required to assist the state board of education implementing the Act.

Section 22-24-105. State bilingual and bicultural steering committee - creation.

(1) Within fifteen days after the approval of this article by the governor, there shall be created a provisional state steering committee. Said committee shall be composed of nine members, three of whom shall be appointed by the governor and shall be legal residents of this state, three of whom shall be appointed by the speaker of the house of representatives and shall be members of the house of representatives, and three of whom shall be appointed by the senate and shall be members of the senate. Said steering committee shall serve for a period of two years.

(2) A regular state steering committee shall be appointed to succeed the provisional state steering committee pursuant to the provisions of this subsection (2) and subsections (3) to (7) of this section. The regular

²⁰Ibid., Section 22-24-103.

state steering committee shall be composed of the following nineteen members, all of whom shall be legal residents of this state:

(a) Fifteen members, three from each congressional districts in the state, appointed by the state board of education from among nominations submitted by the provisional or regular state steering committee pursuant to subsection (3) of this section. One of the three members from each congressional district shall be a teacher or teacher's aide involved in a bilingual and bicultural education program. In appointing the three members from each congressional district, the state board of education shall consider geographical dispersal of members' residence.

(b) Two members to represent higher education in the state, appointed by the state board of education from among nominations submitted by the provisional or regular state steering committee pursuant to subsection (4) of this section;

(c) One member, appointed by the speaker of the house of representatives from among the membership of the house of representatives;

(d) One member, appointed by the president of the senate from among the membership of the senate.

(3) (a) Prior to the expiration of the term of the provisional state steering committee, and annually thereafter prior to the expiration of the terms of any members of the regular state steering committee appointed pursuant to the provisions of paragraph (a) of subsection (2) of this section, recommendations for nominations to the regular state steering committee for such terms shall be submitted to the provisional or regular state steering committee. Recommendations for nominations submitted pursuant to this subsection (3) shall be submitted within each congressional district in the state.

(b) Within each congressional district, the following groups may make recommendations for nominations and may recommend as many individuals as are deemed necessary;

(I) Community bilingual and bicultural committees;

(II) Teachers, administrators, teacher's aides; and teacher organizations;

(III) School boards;

(IV) Parent-teacher organizations or other citizens.

(c) From among the recommendations for nominations received annually from each congressional district pursuant to paragraph (b) of this subsection (3), the provisional or regular state steering committee shall submit a total of six nominations to the state board of education, for a state-wide total of thirty nominations. In submitting nominations from each congressional district, the provisional or regular state steering committee shall consider

geographic dispersal of nominees' residences.

(d) From among the nominations submitted for each congressional district pursuant to paragraph (c) of this subsection (3), the state board of education shall make appointments for terms on the regular state steering committee as required by paragraph (a) of subsection (2) of this section and by subsection (5) of this section.

(4) Prior to the expiration of the term of the provisional state steering committee, and annually thereafter prior to the expiration of the terms of any members of the regular state steering committee appointed pursuant to the provisions of paragraph (b) of subsection (2) of this section, nominations for such terms shall be submitted to the state board of education by the provisional or regular state steering committee. At least twice the number of nominations shall be submitted as there are terms to be filled. From among the nominations submitted pursuant to this subsection (4), the state board of education shall make appointments for terms on the regular state steering committee as required by paragraph (b) of subsection (2) of this section and by subsection (5) of this section.

(5) The members of the regular state steering committee shall serve for basic terms of three years; except that initial one-year and two-year appointments shall be made by the state board of education so that approximately one-third of the terms on the committee will expire in any one calendar year, taking into consideration the appointments made by the speaker of the house of representatives and the president of the senate.

(6) Members of the regular state steering committee shall hold their offices for the terms for which they have been appointed and until their successors are appointed and qualified.

(7) Appointments to fill vacancies on the regular state steering committee, other than vacancies caused by the expiration of terms of office, shall be made by the state board of education; except that appointments for full terms and to fill vacancies in offices on the committee appointed by the speaker of the house of representatives and the president of the senate shall be made in the manner provided for original appointments.

(8) The state steering committee established pursuant to subsection (1) of this section or pursuant to subsections (2) to (7) of this section shall assist the state board of education in implementing the provisions of this article. The state steering committee shall adopt guidelines for the submission of plans for bilingual and bicultural education programs by districts. Members of the state steering committee shall be reimbursed pursuant to rules and regulations of the department for their actual and necessary expenses

incurred in the performance of their powers and duties under this article.

Source: Added, L. 75, p. 668 § 1.²¹

The duties of the state board of education are outlined in the Act.

Section 22-24-106. Powers and duties of state board of education.

(1) The state board of education, in cooperation with the appropriate personnel within the department and in cooperation with the state steering committee, has the power to:

(a) Select the director of the unit of bilingual and bicultural education;

(b) Adopt all rules, regulations, and procedures which it deems necessary for the implementation of this article. The state board of education shall conduct public hearings with adequate notice to the general public prior to the adoption of any rules, regulations, or procedures pursuant to this article and shall present an annual report to the general assembly concerning the overall progress of the programs.

(c) Adopt appropriate timetables for the submission of bilingual and bicultural plans by districts for the effective implementation of this article, beginning with the school year 1975-76, and adopt standards, criteria, or other measures which the unit shall apply in evaluating plans submitted by such districts;

(d) Review any appeals by districts and review the bilingual and bicultural plans which are not approved by the unit;

(e) Report its evaluations or analyses of all bilingual and bicultural plans funded or rejected.

(2) The state board of education shall:

(a) Approve all tests, criteria, identification instruments, and procedures used by districts;

(b) Insure that said tests, criteria, identification instruments, and procedures are normed for relevant geographical areas; and

(c) Insure that said tests, criteria, identification instruments, and procedures are valid for the purpose of identifying students with linguistically different skills.

Source: Added, L. 75, p. 670 § 1.

²¹Ibid., Section 22-24-105.

Section 22-24-107. Duties of department - creation of unit.

(1) The department has the duty to:

(a) Establish a unit of bilingual and bicultural education, a unit director, and necessary unit employees;

(b) Study, review, evaluate, and disseminate all available resources and programs that, in whole or in part, are or could be directed toward meeting the language capability needs of students with linguistically different skills; gather and disseminate information on other successful programs existing in this state and other states; and encourage experimentation and innovation in bilingual and bicultural programs;

(c) Study, review, evaluate, and disseminate, to all districts on an annual basis, information on student dropout, retention, special education placement, achievement performance, and such other information as the unit deems relevant;

(d) Study, review, evaluate, and disseminate all successful and innovative pre-service and in-service programs for staffs of bilingual and bicultural programs and assist districts in selecting and contracting said services;

(e) Compile a data bank on bilingual and multilingual teachers and potential graduates who have an interest in working in bilingual and bicultural programs from colleges or universities in this state and other states whom the unit identifies for the purpose of assisting districts in their independent efforts to seek bilingual teachers;

(f) Disseminate all rules, regulations and procedures adopted by the state board of education.

Source: Added, L. 75, p. 671 § 1.²²

A census is required to ascertain language needs of students.

Section 22-24-108. Language identification - development of preliminary plan.

(1) Each district in this state shall annually conduct a census, on or before October 15 or within thirty days after registration, to ascertain and identify the number of school-age children in grades kindergarten through third grade with linguistically different skills residing within its boundaries in accordance with rules, regulations, and procedures adopted by the state board of education pursuant to section 22-24-106.

(2) The district shall enlist the cooperation of and assistance from the unit in conducting the census.

²²Ibid., Sections 22-24-106 - 22-24-107.

(3) (a) No later than thirty days after the district has conducted its census, the school district shall notify by mail the unit and the parents or legal guardian of students identified as having linguistically different skills in grades kindergarten through third grade.

(b) The notice shall contain a plain, non-technical description of the purposes, methodology, and content of the program and shall inform the parents or legal guardian that he has the right to enroll such student in the program, that the parents or legal guardian may visit the district's bilingual and bicultural classes as often as desired, and that the parents or legal guardian has the right to withdraw such student from the program. Said notice shall be written in English and in the language of the student's parents or legal guardian.

(c) In addition, the district shall notify by direct contact each student and his parents or legal guardian to explain more fully the purpose, methodology, and content of the program.

(4) The parents or legal guardian of a student (identified for the program or desirous of enrolling in the program) who wishes to enroll said student in the program shall do so in writing upon forms provided by the district.

(5) (a) A district shall develop a plan for a bilingual and bicultural education program in a school if there are fifty or more students in grades kindergarten through third grade with linguistically different skills or if ten percent of the students in a school in grades kindergarten through third grade have linguistically different skills.

(b) A district may develop a plan for a bilingual and bicultural program if there are less than fifty students in a school in grades kindergarten through third grade have linguistically different skills.

(6) In addition to the provisions of section 22-24-117, plans developed pursuant to the provision of subsection (5) of this section:

(a) Shall deal specifically with each school within the attendance boundaries of the district within which a number or percentage of students with linguistically different skills has been identified which exceeds the number or percentage specified in subsection (5) of this section;

(c) Shall allow students in schools which are not eligible under this article to have the opportunity, within district policies and regulations, to enroll in those schools providing programs approved pursuant to this article. Transportation need not be provided by the district.

(d) Shall provide bilingual and bicultural education programs of sufficient duration and scope in grades kindergarten through third grade to meet the educational needs of students with linguistically different skills attending schools within the attendance boundaries of the district.

(7) A plan for a bilingual and bicultural education program developed pursuant to the provisions of subsection (5) of this section shall be approved by the school board of each respective district affected by the provisions of subsection (5) of this section. Districts may cooperate with other districts or boards of cooperative services in developing plans pursuant to the provisions of subsection (5) of this section.

(8) All plans developed pursuant to subsection (5) of this section shall be submitted to the department according to the provisions of section 22-24-117.

(9) Within the limitations of state appropriations for the implementation of this article and after review of all plans submitted pursuant to subsection (8) of this section, the state board of education shall determine those plans which shall be funded from such appropriations. If the plan submitted by a district is funded pursuant to this subsection (9), said district shall implement the bilingual and bicultural education program for which the plan was developed. Nothing in this article shall be construed as prohibiting a district from implementing a bilingual and bicultural education program, the plan for which is not funded pursuant to this subsection (9).

(10) No district shall take any action which has the effect of decreasing the enrollment of students with linguistically different skills at a school to avoid the provisions of subsections (1) to (7) of this section unless said agency is desegregating an illegally segregated school system. All plans for the elimination of racial or ethnic isolation or segregation which affect the provisions of subsection (5) to (9) of this section shall be submitted to the department, together with the district's census report.

(11) If the unit determines that any district has not complied with this section, it shall immediately notify the department and said district in writing of its non-compliance. The department shall thereafter provide said district with a reasonable opportunity to comply and with the right to a hearing regarding said noncompliance in accordance with rules, regulations, or procedures established by the state board of education, in cooperation with the state steering committee.

Source: Added, L. 75, p. 671, § 1.23

²³Ibid., Section 22-24-108.

Enforcement procedures, notification, parental rights, and program requirements are addressed in the legislation.

Section 22-24-109. Enforcement of article.

A district is required to develop an acceptable plan for a bilingual and bicultural education program in order to meet the needs of children as determined in the school census, according to the provisions of section 22-24-108 (1) and (3), and to amend such plan if it is unacceptable to the department. It is the duty of the members of the school board to carry out the provisions of such plan or a portion of such plan, according to the provisions of this article, if sufficient funds are available for the implementation of this article.

Source: Added, L. 75, p. 673, § 1.

Section 22-24-110. Enrollment of students with linguistically different skills - enrollment of other students - notification - parental right of withdrawal.

(1) No later than thirty days after the district is notified of the approval of the district's plan and the availability of funding for such program, the district shall notify the parents or legal guardian of each student to be included in the program.

(2) A district's program shall give preference to students with linguistically different skills, but said program shall also be open to all other students.

(3) Each school shall provide that an orientation session be held with the student's parents or legal guardian at the beginning of classes for the purpose of fully explaining the program in a manner and language understood by said parents or legal guardian.

(4) If the parents or legal guardian of an identified student chooses to subsequently withdraw the child from the program, he shall register such decision in writing with the district. Prior to the withdrawal of any student, the parents or legal guardian of such student shall be fully advised, during a conference with district officials in a manner and language understood by said parents or legal guardian, of the nature of the program from which the student is being withdrawn and the program into which the student will subsequently be placed.

Source: Added, L. 75, p. 673, § 1.

Section 22-24-111. Enrollment of nonresident students.

A district may allow a nonresident student to enroll in or to attend its program, and the tuition, if any, shall be paid according to the provisions of section 22-32-115.

Source: Added L. 75, p. 674, § 1.

Section 22-24-112. Content of programs - extracurricular activities - location of courses - class composition and size.

(1) A bilingual and bicultural program shall be a full-time program of instruction in which appropriate subjects shall be given in the language of the students with linguistically different skills and in English; in which the necessary skills of comprehension, speaking, reading and writing are taught in both language; and in which the history, culture, and cultural contributions associated with the language of the students with linguistically different skills and the history and culture of the United States are presented to the students in the languages which reflect the cultures of the students in the classroom.

(2) The program shall be located in the regular program of the public schools and not in a separate program, and districts shall assign students to schools in such a way that will promote, encourage, or have the effect of integrating students regardless of national origin or linguistic ability. Every district shall insure that the students enrolled in programs described in subsection (1) of this section shall have an equal and meaningful opportunity to participate fully with other students in all extracurricular activities.

(3) Classes in which a bilingual and bicultural program is taught shall be composed of pupils of approximately the same age or grade level, as determined by the district's plan.

(4) The maximum student-teacher ratio shall be set by the department and shall accommodate the educational needs of students enrolled in a program.

(5) No district may transfer a student of linguistically different skills out of a bilingual and bicultural program unless the parents or legal guardian of the student approves the transfer in writing.

(6) The parents or legal guardians of students in grades kindergarten through third grade who do not have linguistically different skills shall be notified of such bilingual and bicultural programs, and such students shall be encouraged to enroll in the program.

Source: Added, L. 75, p. 674, § 1.24

The Act specifies that bilingual teachers' aides must be employed and provided training.

²⁴Ibid., Section 22-24-109 - 22-24-112.

Section 22-24-114. Teachers' aides - training - community coordinators.

(1) In addition to employing teachers, each district providing bilingual and bicultural programs pursuant to this article may employ teachers' aides. The school board shall make an affirmative effort to seek, recruit, and employ teachers' aides who are bilingual. The school board shall provide procedures for the involvement of the community committee in the screening of applicants. Teachers' aides shall not be employed for the purpose of supplanting bilingual teachers.

(2) The department shall allocate money to districts employing teachers' aides for the purpose of the upward mobility of said aides for on-the-job performance. This money shall be utilized for the purpose of in-service training sessions so that said teachers' aides can acquire credit hours from an accredited community or junior college or four-year institution of higher education toward the acquisition of a degree. In-service training of teachers' aides shall include, but is not limited to:

(a) Development of personal skills in reading, writing, and speaking;

(b) Opportunities to develop general teaching skills;

(c) Opportunities to develop the ability to identify, create, and apply instructional techniques that will enhance the cognitive and psychomotor development of children in bilingual and bicultural education programs; and

(d) Opportunities to demonstrate practice teaching skills relative to bilingual and bicultural education.

(3) Any district which conducts bilingual and bicultural programs pursuant to this article shall employ one or more full-time or part-time community coordinators if there are fifty or more students enrolled in the program. Community coordinators shall promote communication, understanding, and cooperation between the public schools and the community and shall visit the homes of children who are to be enrolled in a bilingual and bicultural program in order to convey information about the program. An affirmative effort shall be made by the school board to seek, recruit, and employ a coordinator who is bilingual.

Source: Added, L. 75, p. 675, § 1.²⁵

Parent and community participation are required by the legislation.

²⁵Ibid., Section 22-24-114.

Section 22-24-116. Parent and community participation.

(1) Districts should provide for the maximum involvement of parents of students enrolled in the programs. Accordingly a regular community bilingual and bicultural committee shall be established within each district offering a bilingual and bicultural program. The parents of students enrolled in each respective program of each school shall elect at least seventy-five percent of the regular community committee according to guidelines established by the initial community committee. The parents elected shall be parents of students enrolled in the program. Any community committee shall have the option of establishing community committees for each school offering a program. In addition to the parent members of each community committee, a representative of the bilingual teachers, a representative of the bilingual teachers' aides, the community coordinator, and the district director or supervisor of bilingual and bicultural education shall be members of each respective community committee as they become employees of the district. School principals and other administrators within the district shall be encouraged to participate and cooperate with the community committee.

(2) For purposes of establishing the initial community committee, which shall be established at least forty-five days before a district submits a plan pursuant to this article, the following shall apply:

(a) Consistent with guidelines developed by the state steering committee, the local school board shall establish procedures whereby parents whose children may be enrolled in bilingual and bicultural programs shall elect the initial community committee.

(b) The district, at least ten days before the community committee is established, shall have publicized in English and the language of the students who are likely to be identified as participants in the program reasonable and adequate notices which inform parents of their right to be candidates for election to the community committee, of the purposes of the committee, and of the program which the committee will be planning, developing, and evaluating. Districts shall give similar notices to students enrolled in Title I and Title VII schools or in the schools likely to have a program for the purpose of having these notices delivered to the parents at home.

(c) Community committees established after the initial committee shall be formed pursuant to subsection (1) of this section.

(3) The school board shall administer the provisions of this article in accordance with the rules, regulations, and procedures adopted by the state board of education.

(4) The school board shall provide technical assistance to the community committee or committees for:

- (a) Assistance in program development;
- (b) Full unit participation; and
- (c) Effective program implementation from funds appropriated for the implementation of this article.

(5) The district shall furnish each member of the community committee, free of charge, a copy of this article, the rules, regulations, or procedures adopted by the state board of education, the guidelines adopted by the state steering committee, the district's proposed application pursuant to this article, and such other information as is reasonably necessary for the effective involvement of the community committee. The district shall also furnish the community committee with the district's and department's plans, if any, for future bilingual and bi-cultural programs, together with a description of the process of planning and developing said programs and the projected times at which each stage of the process will start and be completed. The district shall also furnish, and the community committee shall also have adequate opportunity to consider, information concerning the educational needs of children with linguistically different skills residing within the district's attendance boundaries and the various programs available to meet those needs. The district shall identify those needs which should be addressed through the programs instituted pursuant to this article. The community committee shall also have an opportunity to review evaluations of prior programs, if any, and shall be informed of all performance criteria by which the programs are to be evaluated. The school board shall adopt adequate procedures to insure prompt response to complaints and suggestions from all parents whose children are enrolled in the program.

(6) The department shall not approve any plan unless it is accompanied by the written comments of the community committee, if any, properly constituted under this section and unless said plan has been voted upon by the community committee. The vote, if any, of the community committee shall be given serious consideration by the department before said plan is approved.

(7) Each plan by a district for financial assistance under this article shall contain an assurance that the appropriate district official will consult at least once a month during the regular school year with the community committee, in formal meetings of such committee, with respect to the administration and operation of a program and

that it will provide such committee with a reasonable opportunity to periodically observe and comment upon all program-related activities.

(8) No district shall amend its program until it has notified the state board of education and received approval.

Source: Added, L. 75, p. 676 § 1.²⁶

A plan for bilingual education is required by each school district with language-minority students in attendance. Cost incurred by the boards of education implementing bilingual education programs is to be borne by the state.

Section 22-24-117. Plan requirements.

(1) Every district seeking financial assistance under this article shall submit a comprehensive plan for bilingual and bicultural education to the department on forms provided by the unit at least one hundred twenty days before the beginning of each school year; except that the state board of education may adopt such other timetables as it deems appropriate for the effective and immediate implementation of this article for the school year 1975-76. In addition to materials and data which the department may determine to be needed in evaluating the adequacy of plans submitted and information and assurances required elsewhere in this article, each plan submitted shall have the following components at a minimum:

(a) The findings of the census study as conducted pursuant to the provisions of section 22-24-108 (1), a listing of the eligible schools, grades, and classes to be included, and the total number of students to be enrolled;

(b) District goals and objectives for the program as they relate to the students to be enrolled;

(c) A program description of how district program goals and objectives, as well as those objectives identified in section 22-24-102 (1), are to be achieved;

(d) A management plan as to how each school program will be organized, staffed, coordinated, and monitored;

(e) Program evaluation procedures;

(f) Methods of communicating program needs and progress to district patrons, district staff members, the district accountability committee, and the school board;

(g) In-service provisions to be made for district staff members; and

²⁶Ibid., Section 22-24-116.

(h) Projected expenditures for programs required or permitted under this article.

(2) Except for the school year 1975-76, each plan shall provide for the use of teachers who have competence in the areas of comprehension, speaking, reading, and writing in the two languages used and training or experience in teaching methods specifically related to these four basic skill areas in each language. Teacher selection shall be based upon a personal interview that identifies the candidate's relative level of competence in each of these basic skill areas. A candidate may be selected who shows strong competence in most of the basic skill areas but needs further development in the remaining skill areas; but the district is required to develop or arrange for a specific course of in-service training for that teacher in the identified basic skill areas, beginning in the first term of the teacher's employment. Teacher participation in this in-service program shall be a condition of the teacher's employment.

(3) No plan shall be approved by the state board of education unless the requirements adopted by the state board of education, in cooperation with the state steering committee, have been met.

(4) The department shall not approve nonconforming plans and shall return the same to the district within sixty days after receipt, together with written reasons for nonapproval, to allow the district a reasonable opportunity to resubmit an amended plan; except that the state board of education, in cooperation with the state steering committee, may adopt such other timetables as it deems appropriate for the full and effective implementation of this article for the school year 1975-76. Approval of a plan by the department shall be a prerequisite to state disbursement.

(5) No funds shall be disbursed to a district pursuant to this article unless said district certifies that its program will be implemented in accordance with the provisions of this article and the rules, regulations, and procedures adopted by the state board of education

(6) Each participating district shall maintain an accurate, detailed, and separate account of all expended moneys received under this article and any other records the unit deems necessary and shall annually report thereon to the unit and the general public to insure that the programs are implemented in conformity with this article and the rules, regulations, and procedures adopted by the state board of education.

(7) All disbursements under this article are supplementary to state moneys disbursed under the "Public School Finance Act of 1973", article 50 of this title, and shall not cause a reduction of any other or a combination of any other state or federal moneys which a district is otherwise eligible to receive.

(8) Districts or boards of cooperative services requesting financial assistance under this article shall provide assurance that funds available under this article will be used to supplement the level of other funds available for the education of children in these programs and that funds received under this article will not be used to provide instructional or support services to pupils which are ordinarily provided with other state or local funds to all pupils. In no instance shall reimbursement under this article exceed one hundred percent of the direct attributable additional cost of programs when combined with federal funds available for these programs.

(9) Districts or boards of cooperative services that operate a program approved by the department shall be entitled to reimbursement up to an amount not to exceed one hundred percent of the direct attributable additional cost incurred by the district or board of cooperative services for:

- (a) The actual position cost of:
 - (I) Teachers;
 - (II) Teachers' aides;
 - (III) District directors;
 - (IV) Supervisory personnel;
 - (V) Coordinators;
 - (VI) Curriculum specialists.
- (b) The cost of approved in-service programs for teachers and teachers' aides;
- (c) The cost of approved upward mobility programs for teachers' aides;
- (d) The cost of additional bilingual and bicultural materials.

Source: Added, L. 75, p. 678 § 1.

Section 22-24-118. Implementation.

(1) In order to effectively implement the provisions of this article initially, the following schedule shall apply:

(a) No later than November 1, 1975, the state board of education, in cooperation with the provisional state steering committee, shall adopt all rules, regulations, and procedures which it deems necessary for the full and effective implementation of this article including approval of all tests, criteria, identification instruments, and procedures used by districts to identify children of linguistically different skills pursuant to sections 22-24-106 and 22-24-108.

(b) No later than January 1, 1976, each district shall complete the census provided for in section 22-24-108.

(c) No later than April 1, 1976, each district meeting the criteria under section 22-24-108(5)(a) shall have developed and submitted to the department a comprehensive plan for bilingual and bicultural education pursuant to section 22-24-117.

Source: Added, L. 75, p. 680, § 1.27

Special incentive grants are made available by the Act. School districts are eligible to apply for these grants.

Section 22-24-119. Tutorial grant program for the instruction of pupils with limited English language skills.

(1) (a) In addition to the other provisions of this article, beginning July 1, 1975, districts are eligible to apply for grants, on an annual basis, from the state board of education to provide tutorial programs for children enrolled in the schools of the district who are identified under Title VI of the "United States Civil Rights Act of 1964" as those who speak only a language other than English.

(b) The state board of education shall promulgate rules and guidelines for the implementation of this section. The department shall review all applications for grants under paragraph (a) of this subsection (1). The department shall approve an application for such a grant only if it determines that:

(I) The school district has a comprehensive plan for a tutorial program designed to effectively remedy the English language deficiencies of children identified pursuant to paragraph (a) of this subsection (1);

(II) The tutorial program plan includes an accountability component which identifies the needs of the children with English language deficiencies, defines measurable objectives for such children, and evaluates the progress of such children toward the defined objectives;

(III) The tutorial program conforms with the rules and regulations of the state board of education.

(2) The state board of education shall report annually to the general assembly on all approved grants. Such report shall include the number of children served, the number of teachers or teachers' aides employed exclusively to remedy English language deficiencies (or that portion of the activities of teachers or teachers' aides which is exclusively attributable to the remedy of English language deficiencies), and the extent to which the special

²⁷Ibid., Sections 22-24-117 - 22-24-118.

language needs of children identified pursuant to paragraph (a) of subsection (1) of this section are being met.

(3) Funds received pursuant to this section may be expended by districts for the employment of teachers or teachers' aides for that portion of their activities which is exclusively attributable to the purposes of this section. Districts may also expend such funds for the reasonable costs of teacher's aide training and instructional materials which are directly related to the tutorial programs established by this section. No funds appropriated to implement the provisions of this section shall be used to teach children any language other than English.

(4) (a) Beginning July 1, 1975, each district for which a tutorial program is approved by the department shall be entitled to receive a special tutorial grant for each child identified pursuant to paragraph (a) of subsection (1) of this section enrolled in the tutorial program.

(b) In the event that funds appropriated for the implementation of this section for any fiscal year are not sufficient to meet the requirements of paragraph (a) of this subsection (4), the state board of education shall prorate the total of the funds appropriated among all eligible districts in the proportion which each district's entitlement bears to the total entitlement.

Source: Added, L. 75, p. 680, § 1.²⁸

CONNECTICUT

Connecticut requires local school districts to provide bilingual education programs where 20 or more students attend the schools and are not proficient in the English language.

Section 10-17. English language to be medium of instruction. Exception

The medium of instruction and administration in all public and private elementary schools shall be the English language, except that instruction as provided in sections 10-17a and 10-17f may be given in any language other than English to any pupil who, by reason of foreign birth, ancestry or otherwise, experience difficulty in reading and

²⁸Ibid., Section 22-24-119.

understanding English.
(1977, P.A. 77-588, §4, eff. July 1, 1978.)

Section 10-17a. Establishment of bilingual and bicultural program

Any local or regional board of education may establish at any level of instruction a bilingual and bicultural program of study involving a culture in which a language other than English is predominately spoken, provided the purpose of such program shall be to enable children to become proficient in English. A private school may, with the approval of the state board of education, establish such a program of bilingual education. (1978, P.A. 78-218, §14.)

Section 10-17b. Instruction bilingually and biculturally; procedures, materials and equipment; purpose

Each local or regional board of education shall determine when instruction shall be given bilingually and biculturally. Said board, with the aid of the state board of education, shall design the procedures and acquire the training materials and equipment that such local board of education deems necessary to meet the special educational needs of children of limited English speaking ability. Such programs may include, but shall not be limited to, components designed to accomplish the following:

- (a) To provide bilingual instruction so that the student will gain competence in both English and such student's language;
 - (b) to impart a knowledge of the history and culture associated with the student's language;
 - (c) to establish closer cooperation between the school and the home;
 - (d) to provide bilingual and bicultural early childhood educational programs designed to improve the potential for profitable learning activities by such children;
 - (e) to provide bilingual and bicultural adult education programs for parents of children participating in programs under sections 10-17 to 10-17d, inclusive;
 - (f) to provide such programs designed for dropouts or potential dropouts having need of them;
 - (g) to provide such programs in trade, vocational or technical schools; and
 - (h) to provide other activities deemed desirable to further the purposes of section 10-17 and sections 10-17a to 10-17d, inclusive.
- (1978, P.A. 78-218, §15.)

Section 10-17c. Advice and assistance of state board.
Evaluation of programs

(a) In areas with large concentrations of non-English-speaking persons the state board of education shall advise and assist the board of education of the school district to make said programs available to all students.

(b) The state board of education shall annually evaluate the programs conducted under sections 10-17 to 10-17d, inclusive, and shall on or before February fifteenth annually report such evaluations to the joint standing committee on education of the general assembly.
(1978, P.A. 78-218, §16.)

Section 10-17d. Application for and receipt of
federal funds

Subject to the regulations adopted by the state board of education pursuant to section 10-11 each local or regional board of education shall have the power to apply for and to receive federal funds made available directly to local communities for the programs provided in section 10-17, sections 10-17a to 10-17c, inclusive, and section 10-17f.

(1977, P.A. 77-588, §5, eff. July 1, 1978; 1978, P.A. 78-218, §17.)

Section 10-17e. Definitions

Whenever used in sections 10-17 and 10-17a to 10-17h, inclusive:

(1) "Eligible children" means children enrolled in public schools in grades kindergarten to twelve, inclusive, whose dominant language is other than English and whose proficiency in English is not sufficient to assure equal educational opportunity in the regular school program;

(2) "Program of bilingual education" means a program of instruction which eligible children are placed until such time as such children attain a level of proficiency in English which is sufficient to assure equal educational opportunity in the regular school program, including, but not limited to, educational experiences to enable eligible children to become proficient in English, subject matter instruction in the dominant language of eligible children, and provision of opportunities for eligible children to participate with and learn from children from other linguistic and cultural backgrounds.

(1977, P.A. 77-588, §1, eff. July 1, 1978.)

Section 10-17f. Required bilingual education.
Adoption of regulations. Submission of plan

(a) On or before November 1, 1978, and annually thereafter, the board of education for each local and regional school district shall ascertain, in accordance with regulations established by the state board of education, the eligible children in such school district and shall classify such children according to their dominant language.

(b) Whenever it is ascertained that there are in any public school within a local or regional school district twenty or more eligible children classified as dominant in any one language other than English, the board of education of such district shall provide a program of bilingual education for such eligible children for the school year next following.

(c) The board of education for each local and regional school district which is required to provide a program of bilingual education shall initially endeavor to implement the provisions of subsection (b) of this section through in-service training for existing certified professional employees, and thereafter, shall give preference in hiring to such certified professional employees as are required to maintain said program.

(d) The state board of education shall adopt and enforce regulations concerning requirements for such programs, which may be modeled after policy established by the Department of Health, Education and Welfare for bilingual education programs.

(e) Each board of education for a local and regional school district which is required to provide for the first time a program of bilingual education shall prepare and submit to the commissioner of education for review a plan to implement such program, in accordance with regulations adopted by the state board of education.

(1977, P.A. 77-588, §2, eff. July 1, 1978; 1977, P.A. 77-614, §302, eff. Jan. 1, 1979; 1977, P.A. 77-614, §587, eff. June 2, 1978; 1978, P.A. 78-303, §85, eff. June 6, 1978.)

Section 10-17g. Application for grant. Annual evaluation report

For the fiscal year ending June 30, 1979, and annually thereafter, the board of education for each local and regional school district which is required to provide a program of bilingual education, pursuant to section 10-17f may make application to the state board of education and shall thereafter receive a grant in an amount equal to the product obtained by multiplying the total appropriation available for such purpose by the ratio:

which the number of eligible children in the school district bears to the total number of such eligible children statewide. The board of education for each local and regional school district receiving funds pursuant to this section shall annually, on or before July first, submit to the state board of education a progress report which shall include (1) measures of increased education opportunities for eligible children (2) program evaluation and (3) certification by the board of education submitting the report that any funds received pursuant to this section, have been used for the purposes specified. The state board of education shall biennially evaluate programs conducted pursuant to section 10-17f.²⁹

ILLINOIS

Illinois is among the states with comprehensive bilingual education programs. Statutes require school districts within the state to provide programs geared to the needs of language minority students.

Section 14C-1 §14C-1. Legislative finding and declaration.

The General Assembly finds that there are large numbers of children in this State who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The General Assembly believes that a program of transitional bilingual education can meet the needs of these children and facilitate their integration into the regular public school curriculum. Therefore, pursuant to the policy of this State to insure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, and in recognition of the success of the limited existing bilingual programs conducted pursuant to Section 10-22.38a and 34-18.2 of the School Code, it is the purpose of this Act to provide for the establishment of transitional bilingual education programs in the public schools, and to provide supplemental financial assistance to help local school districts meet the extra

²⁹Connecticut, General Statutes Annotated, Title 10, Sections 10-17 - 10-17g.

costs of such programs.

Added by P.A. 78-727, §1, eff. Oct. 1, 1973.³⁰

Specific legislative terms are defined.

Section 14C-2. S 14c-2. Definitions.

Unless the context indicated otherwise, the terms used in this Article have the following meanings:

(a) "Superintendent's Office" means the Office of the Superintendent of Public Instruction;

(b) "Certification Board" means the State Teacher Certification Board;

(c) "School District" means any school district established under this Code;

(d) "Children of limited English-speaking ability" means (1) children who were not born in the United States whose native tongue is a language other than English and who are incapable of performing ordinary classwork in English; and (2) children who were born in the United States of parents possessing no or limited English-speaking ability and who are incapable of performing ordinary classwork in English;

(e) "Teacher of transitional bilingual education" means a teacher with a speaking and reading ability in a language other than English in which transitional bilingual education is offered and with communicative skills in English;

(f) "Program in transitional bilingual education" means a full-time program of instruction (1) in all those courses or subjects which a child is required by law to receive and which are required by the child's school district which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program and also in English, (2) in the reading and writing of the native language of the children of limited English-speaking ability who are enrolled in the program and in the oral comprehension, speaking, reading and writing of English, and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States; or a part-time program of instruction based on the educational needs of those children of limited English-speaking ability who

³⁰Illinois, Statutes Annotated, Chapter 122, Article 14C, Section 14C-1.

do not need a full-time program of instruction.
 Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³¹

Transitional bilingual education programs are required when 20 or more language minority attend the schools.

Section 14C-3. S 14C-3. Language classification of children--Establishment of program--Period of participation--Examination.

Each school district shall ascertain, not later than the first day of March, under regulations prescribed by the Superintendent's Office, the number of children of limited English-speaking ability within the school district, and shall classify them according to the language of which they possess a primary speaking ability, and their grade level, age or achievement level.

When, at the beginning of any school year, there is within an attendance center of a school district not including children who are enrolled in existing private school systems, 20 or more children of limited English-speaking ability in any such language classification, the school district shall establish, for each classification, a program in transitional bilingual education for the children therein; provided, however, that a school district may establish a program in transitional bilingual education with respect to any classification with less than 20 children therein.

Every school-age child of limited English-speaking ability not enrolled in existing private school systems shall be enrolled and participate in the program in transitional bilingual education established for the classification to which he belongs by the school district in which he resides for a period of 3 years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur.

A child of limited English-speaking ability enrolled in a program in transitional bilingual education may, in the discretion of the school district and subject to the approval of the child's parent or legal guardian, continue in that program for a period longer than 3 years.

An examination in the oral comprehension, speaking, reading and writing of English, as prescribed by the Superintendent's Office, shall be administered annually

³¹Ibid., Section 14C-2.

to all children of limited English-speaking ability enrolled and participating in a program in transitional bilingual education. No school district shall transfer a child of limited English-speaking ability out of a program in transitional bilingual education prior to this third year of enrollment therein unless the parents of the child approve the transfer in writing, and unless the child has received a score on said examination which, in the determination of the Superintendent's Office, reflects a level of English language skills appropriate to his or her grade level.

If later evidence suggests that a child so transferred is still handicapped by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³²

Enrollment notification and the rights of the parents are outlined in the legislation.

Section 14C-4. S 14C-4. Notice of enrollment - Rights of parents.

No later than 10 days after the enrollment of any child in a program in transitional bilingual education the school district in which the child resides shall notify by mail the parents or legal guardian of the child of the fact that their child has been enrolled in a program in transitional bilingual education. The notice shall contain a simple, nontechnical description of the purposes, method and content of the program in which the child is enrolled and shall inform the parents that they have the right to visit transitional bilingual education classes in which their child is enrolled and to come to the school for a conference to explain the nature of transitional bilingual education. Said notice shall further inform the parents that they have the absolute right, if they so wish, to withdraw their child from a program in transitional bilingual education in the manner as hereinafter provided.

The notice shall be in writing in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

³²Ibid., Section 14C-3.

Any parent whose child has been enrolled in a program in transitional bilingual education shall have the absolute right, either at the time of the original notification of enrollment or at the close of any semester thereafter, to withdraw his child from said program by providing written notice of such desire to the school authorities of the school in which his child is enrolled or to the school district in which his child resides; provided that no withdrawal shall be permitted unless such parent is informed in a conference with school district officials of the nature of the program.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³³

Classification and placement of language-minority children are specified in the legislation.

Section 14C-6. § 14C-6. Placement of children

Children enrolled in a program of transitional bilingual education whenever possible shall be placed in classes with children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school district so combining shall ensure that the instruction given each child is appropriate to his or her level of educational attainment and the school districts shall keep adequate records of the educational level and progress of each child enrolled in a program. The maximum student-teacher ratio shall be set by the Superintendent's Office and shall reflect the special educational needs of children enrolled in programs in transitional bilingual education. Programs in transitional bilingual education shall, whenever feasible, be located in the regular public school of the district rather than separate facilities.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³⁴

Teacher certification and minimum qualification are assured by the legislation.

Section 14C-8. § 14C-8. Teacher certification - Qualifications-Issuance of certificates.

No person shall be eligible for employment by a school district as a teacher of transitional bilingual

³³Ibid., Section 14C-4.

³⁴Ibid., Section 14C-6.

education unless he meets the requirements set forth in this Section. School districts shall give preference in employing transitional bilingual education teachers to those individuals who have the relevant foreign cultural background established through residency abroad or by being raised in a non-English speaking environment. The Certification Board shall issue certificates valid for teaching in all grades of the common school in transitional bilingual education programs to any person who presents it with satisfactory evidence that he (a) possesses an adequate speaking and reading ability in a language other than English in which transitional bilingual education is offered and communicative skills in English, and either (b) possesses a current and valid teaching certificate issued pursuant to Article 21 of this Code or (c) possessed within five years previous to his applying for a certificate under this Section a valid teaching certificate issued by a foreign country, or by a State or possession or territory of the United States, or other evidence of teaching preparation as may be determined to be sufficient by the Certification Board; provided that any person seeking a certificate under subsection (c) of this Section must meet the following additional requirements:

- (1) Such persons must be in good health;
- (2) Such persons must be of sound moral character;
- (3) Such persons must be legally present in the United States and possess legal authorization for employment;
- (4) Such persons must not be employed to replace any presently employed teacher who otherwise would not be replaced for any reason.

Certificates issuable pursuant to subsection (c) of this Section shall be issuable only during the 5 years immediately following the effective date of this Act and thereafter for additional periods of one year only upon a determination by the State Board of Education that a school district lacks the number of teachers necessary to comply with the mandatory requirements of Sections 14C-2.1 and 14C-3 of this Article for the establishment and maintenance of programs of transitional bilingual education and said certificates issued by the Certification Board shall be valid for a period of 6 years following their date of issuance and shall not be renewed. Such certificates and the persons to whom they are issued shall be exempt from the provisions of Article 21 of this code except that Sections 21-12, 21-13, 21-16, 21-17, 21-19, 21-21, 21-22, 21-23, and 21-24 shall continue to be applicable to all such

certificates.

Amended by P.A. 70-1079, § 1, eff. Oct. 1, 1975.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³⁵

Parent advisory committees are to be established in school districts with bilingual education programs.

Section 14C-10 § 14C-10. Parent and community participation

School districts shall provide for the maximum practical involvement of parents of children in transitional bilingual education programs. Each school district shall, accordingly, establish a parent advisory committee which affords parents the opportunity effectively to express their views and which ensures that such programs are planned, operated, and evaluated with the involvement of, and in consultation with, parents of children served by the programs. Such committee shall be composed of parents of children enrolled in transitional bilingual education programs, transitional bilingual education teachers, counselors, and representatives from community groups; provided, however, that a majority of each committee shall be parents of children enrolled in the transitional bilingual education program.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³⁶

Adequate funding for bilingual education in Illinois is assured by the legislation.

Section 14C-12. S 14C-12. Account of expenditures - Cost report - Reimbursement

Each school district shall keep an accurate, detailed and separate account of all monies paid out by it for the programs in transitional bilingual education required or permitted by this Article including transportation costs, and shall annually report thereon for the school year ending June 30 indicating the average per pupil expenditure. Each school district shall be reimbursed for the amount by which such costs exceed the average per pupil expenditure by such school district for the education of children of comparable age who are not in any special education program.

³⁵Ibid., Section 14C-8.

³⁶Ibid., Section 14C-10.

Applications for preapproval for reimbursement for costs of transitional bilingual education programs must be submitted to the State Superintendent's Office at least 60 days before a transitional bilingual education program is started, unless a justifiable exception is granted by the State Superintendent. Applications shall set forth a plan for transitional bilingual education established and maintained in accordance with this Article. Reimbursement claims for transitional bilingual education programs shall be made as follows:

Each school district shall claim reimbursement on a current basis for the first three quarters of the fiscal year and file a final adjusted claim for the school year ended June 30 preceding computed in accordance with rules prescribed by the State Superintendent's Office with the regional superintendent of schools, in triplicate, for approval on forms prescribed by the State Superintendent's Office. Data used as a basis of reimbursement claims shall be for the school year ended on June 30 preceding. School districts shall file estimated claims with the regional superintendent by October 10, January 10 and April 10 respectively, and file final adjusted claims by August 10. Upon receipt of such quarterly claims the regional superintendent shall transmit them to the State Superintendent by October 20, January 20, April 20, and August 20. The State Superintendent's Office before approving any such claims shall determine their accuracy and whether they are based upon services and facilities provided under approved programs. Upon approval he shall transmit by November 15, February 15, May 15 and September 20 the State report of claims to the Comptroller and prepare the vouchers showing the amounts due the respective regions for their school district's reimbursement claims. Upon receipt of the August final adjusted claims the State Superintendent shall make a final determination of the accuracy of such claims. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claim approved.

Failure on the part of the school district to prepare and certify the final adjusted claims due under this Section on or before August 10 of any year, and its failure thereafter to prepare and certify such report to the regional superintendent of schools within 10 days after receipt of notice of such delinquency sent to it by the Superintendent's Office by registered mail, shall constitute

a forfeiture by the school district of its right to be reimbursed by the State under this Section.

Amended by P.A. 79-1417, § 1, eff. Oct. 1, 1976.

Added by P.A. 78-727, § 1, eff. Oct. 1, 1973.³⁷

MASSACHUSETTS

Massachusetts' legislation governing bilingual education programs is very similar to the Illinois law. In several instances the language in both pieces of legislation is identical. Nonetheless, Massachusetts has a comprehensive plan for providing for the needs of language-minority children.

To lend direction and provide overall guidance to the bilingual program statewide, a bureau of transitional bilingual education has been established.

Chapter 69, Section 35

There shall be established within the department, subject to appropriation, a bureau of transitional bilingual education which shall be headed by a project director. The project director shall be appointed by the board of education upon the recommendation of the commissioner, and said project director shall have the minimum qualifications of a bachelor's degree in either business administration, liberal arts, or science, and shall have at least two years of documented administrative or teaching experience. The project director shall file a quarterly report with the board of education, the clerk of the house of representatives and the clerk of the senate.

The bureau for transitional bilingual education shall be charged with the following duties: (1) to assist the department in the administration and enforcement of the provisions of chapter seventy-one A and in the formulation of the regulations provided for in said chapter; (2) to study, review, and evaluate all available resources and programs that, in whole or in part, are or could be directed toward meeting the language capability needs of

³⁷Ibid., Section 14C-12.

children and adults of limited English-speaking ability residents in the commonwealth; (3) to compile information about the theory and practice of transitional bilingual education in the commonwealth and elsewhere, to encourage experimentation and innovation in the field of transitional bilingual education, and to make an annual report to the general court and the governor; (4) to provide for the maximum practicable involvement of parents of children of limited English-speaking ability in the planning, development, and evaluation of transitional bilingual education programs in the districts serving their children, and to provide for the maximum practicable involvement of parents of children of limited English-speaking ability, teachers and teachers' aides of transitional bilingual education, community coordinators, representative of community groups, educators and laymen knowledgeable in the field of transitional bilingual education in the formulation of policy and procedures relating to the administration of chapter seventy-one A by the commonwealth; (5) to consult with other public departments and agencies, including but not limited to, the department of community affairs, the department of public welfare, the division of employment security, and the Massachusetts commission against discrimination, in connection with the administration of said chapter; (6) to make recommendations to the department in the areas of pre-service and in-service training for teachers of transitional bilingual education programs, curriculum development, testing and testing mechanisms, and the development of materials for transitional bilingual education courses; and (7) to undertake any further activities which may assist the department in the full implementation of said chapter.³⁸

As was pointed out above, the language of Massachusetts' legislation is comparable to the Illinois legislation and provides for many of the same requirements with regard to program options, identification of students, parental rights, and teacher certification. The entire legislation is quoted below.

³⁸ Massachusetts, General Laws Annotated, Title XII, Chapter 69, Section 35.

Chapter 71A

§ 1. Definitions

The following words, as used in this chapter shall, unless the context requires otherwise, have the following meanings:

"Department", the department of education.

"School committee:", the school committee of a city, town or regional school district.

"Children of limited English-speaking ability",
 (1) children who were not born in the United States whose native tongue is a language other than English and who are incapable of performing ordinary classwork in English; and (2) children who were born in the United States of non-English-speaking parents and who are incapable of performing ordinary classwork in English.

"Teacher of transitional bilingual education", a teacher with a speaking and reading ability in a language other than English in which bilingual education is offered and with communicative skills in English.

"Program in transitional bilingual education", a full-time program of instruction (1) in all those courses or subjects which a child is required by law to receive and which are required by the child's school committee which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program and also in English, (2) in the reading and writing of the native language of the children of limited English-speaking ability who are enrolled in the program and in the oral comprehension, speaking, reading and writing of English, and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States. Added by St. 1971, c. 1005 § 2.

§ 2. Language classification of children; establishment of program; period of participation; examination

Each school committee shall ascertain, not later than the first day of March, under regulations prescribed by the department, the number of children of limited English-speaking ability within their school system, and shall classify them according to the language of which they possess a primary speaking ability.

When, at the beginning of any school year, there are within a city, town or school district not including children who are enrolled in existing private school systems, twenty or more children of limited English-

speaking ability in any such language classification, the school committee shall establish, for each classification, a program of transitional bilingual education for the children therein; provided, however, that a school committee may establish a program in transitional bilingual education with respect to any classification with less than twenty children therein.

Every school-age child of limited English-speaking ability not enrolled in existing private school systems shall be enrolled and participate in the program in transitional bilingual education established for the classification to which he belongs by the city, town or school district in which he resides for a period of three years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur.

A child of limited English-speaking ability enrolled in a program in transitional bilingual education may, in the discretion of the school committee and subject to the approval of the child's parent or legal guardian, continue in that program for a period longer than three years.

An examination in the oral comprehension, speaking, reading and writing of English, as prescribed by the department, shall be administered annually to all children of limited English-speaking ability enrolled and participating in a program in transitional bilingual education. No school committee shall transfer a child of limited English-speaking ability out of a program in transitional bilingual education prior to his third year of enrollment therein unless the parents of the child approve the transfer in writing, and unless the child has received a score on said examination which, in the determination of the department, reflects a level of English language skills appropriate to his or her grade level.

If later evidence suggests that a child so transferred is still handicapped by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred. Added by St. 1971, c. 1005, § 2.

§ 3. Notice of enrollment; content; rights of parents

No later than ten days after the enrollment of any child in a program in transitional bilingual education the school committee of the city, town or the school district in which the child resides shall notify by mail the parents or legal guardian of the child of the fact that their child has been enrolled in a program in transitional bilingual education.

The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the child is enrolled and shall inform the parents that they have the right to visit transitional bilingual education classes in which their child is enrolled and to come to the school for a conference to explain the nature of transitional bilingual education. Said notice shall further inform the parents that they have the absolute right, if they so wish, to withdraw their child from a program in transitional bilingual education in the manner as hereinafter provided.

The notice shall be in writing in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

Any parent whose child has been enrolled in a program in transitional bilingual education shall have the absolute right, either at the time of the original notification of enrollment or at the close of any semester thereafter, to withdraw his child from said program by written notice to the school authorities of the school in which his child is enrolled or to the school committee of the city, town or the school district in which his child resides. Added by St. 1971, c. 1005, § 2.

§ 4. Non-resident children; enrollment and tuition; joint programs

A school committee may allow a non-resident child of limited English-speaking ability to enroll in or attend its program in transitional bilingual education and the tuition for such a child shall be paid by the city, town or the district in which he resides.

Any city, town or school district may join with any other city, town, school district or districts to provide the programs in transitional bilingual education required or permitted by this chapter.

Added by St. 1971, c. 1005, § 2. Amended by St. 1978, c. 367, § 70F.

§ 5. Participation in extra-curricular activities of public schools; placement of children

Instruction in courses of subjects included in a program of transitional bilingual education which are not mandatory may be given in a language other than English. In those courses or subjects in which verbalization is not essential to an understanding of the subject matter, including but not necessarily limited to art, music and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in the

regular public school classes provided for said subjects. Each school committee of every city, town or school district shall ensure to children enrolled in a program in transitional bilingual education practical and meaningful opportunity to participate fully in the extra-curricular activities of the regular public schools in the city, town or district. Programs in transitional bilingual education shall, whenever feasible, be located in the regular public schools of the city, town or the district rather than separate facilities.

Children enrolled in a program of transitional bilingual education whenever possible shall be placed in classes with children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school committee so combining shall ensure that the instruction given each child is appropriate to his or her level of educational attainment and the city, town or the school districts shall keep adequate records of the educational level and progress of each child enrolled in a program. The maximum student-teacher ratio shall be set by the department and shall reflect the special educational needs of children enrolled in programs in transitional bilingual education.

Added by St. 1971, c. 1005, § 2.

§ 6. Teacher's certification and certificate; qualifications and requirements; compensation; exemptions

The board of education, hereinafter called the board, shall grant certificates to teachers of transitional bilingual education who possess such qualifications as are prescribed in this section. The requirements of section thirty-eight G of chapter seventy-one shall not apply to the certification of teachers of transitional bilingual education. Teachers of transitional bilingual education, including those serving under exemptions as provided in this section, shall be compensated by local school committees not less than a step on the regular salary schedule applicable to permanent teachers certified under said section thirty-eight G.

The board shall grant certificates to teachers of transitional bilingual education who present the board with satisfactory evidence that they (1) possess a speaking and reading ability in the language, other than English, in which bilingual education is offered and communicative skills in English; (2) are in good health, provided that no applicant shall be disqualified because of blindness or defective hearing; (3) are of sound moral character; (4) possess a bachelor's degree or an earned higher academic degree or are graduates of a normal school approved by the board;

(5) meet such requirements as to courses of study, semester hours therein, experience and training as may be required by the board; and (6) are legally present in the United States and possess legal authorization for employment.

For the purpose of certifying teachers of transitional bilingual education the board may approve programs at colleges or universities devoted to the preparation of such teachers. The institution shall furnish the board with a student's transcript and shall certify to the board that the student has completed the approved program and is recommended for a teaching certificate.

No person shall be eligible for employment by a school committee as a teacher of transitional bilingual education unless he has been granted a certificate by the board; provided, however, that a school committee may prescribe such additional qualifications, approved by the board. Any school committee may upon its request be exempted from the certification requirements of this section for any school year in which compliance therewith would in the opinion of the department constitute a hardship in the securing of teachers of transitional bilingual education in the city, town or regional school district. Exemptions granted under this section shall be subject to annual renewal by the department.

A teacher of transitional bilingual education serving under an exemption as provided in this section shall be granted a certificate if he achieves the requisite qualifications therefore. Two years of service by a teacher of transitional bilingual education under such an exemption shall be credited to the teacher in acquiring the status of serving at the discretion of the school committee as provided in section forty-one of chapter seventy-one, and said two years shall be deemed to immediately precede, and be consecutive with, the year in which a teacher becomes certified. In requesting an exemption under this section a school committee shall give preference to persons who have been certified as teachers in their country or place of natural origin.

All holders of certificates and legal exemptions under the provisions of section thirty-eight G of chapter seventy-one who provide the board with satisfactory evidence that they possess a speaking and reading ability in a language other than English may be certified under this section as a teacher of transitional bilingual education.

Nothing in this chapter shall be deemed to prohibit a school committee from employing to teach in a program in transitional bilingual education a teacher certified under section thirty-eight G of chapter seventy-one, so long as such employment is approved by the department.
Added by St. 1971, c. 1005, § 2.

§ 7. Pre-school or summer school programs

A school committee may establish on a full or part-time basis pre-school or summer school programs in transitional bilingual education for children of limited English-speaking ability or join with the other cities, towns or school districts in establishing such pre-school or summer programs. Pre-school or summer programs in transitional bilingual education shall not substitute for programs in transitional bilingual education required to be provided during the regular school year.

Added by St. 1971, c. 1005, § 2.

§ 8. Reimbursement of transportation costs

The state treasurer shall annually, on or before November twentieth, reimburse any city, town, regional school district or independent vocational school for expenditures incurred during the previous fiscal year in the transportation of any pupil enrolled in a transitional bilingual education program and who resides at least one and one-half miles from the school which the pupil attends as measured by a commonly traveled route, in the manner hereinafter defined. Such reimbursements shall include; first, an amount for each pupil which is equal to the average transportation services expenditure per pupil, enrolled in regular day program in said city, town, regional school district or independent vocational school during said fiscal year, provided that each such pupil enrolled in regular day program resides at least one and one-half miles from the school which said pupil attends; and second, the entire amount by which the average transportation services expenditure per pupil enrolled in such a bilingual program in said city, town, regional school district or independent vocational school during said fiscal year may exceed the aforesaid average transportation services expenditure per pupil enrolled in regular day program. In no instance, however, shall the amount or reimbursement for such excess cost per pupil exceed one hundred and ten percent of the average of such excess costs per pupil in all cities, towns, regional school districts and independent vocational schools in the commonwealth during the fiscal year in which such expenditures were made.

In determining each said average transportation services expenditure per pupil enrolled in regular day program in each city, town, regional school district and independent vocational school, the department of education shall use the transportation services expenditure per pupil eligible for reimbursement under sections seven A, seven B, or sixteen C of chapter seventy-one, whichever is higher,

during the same fiscal year. The commissioner of education may, by regulation, under the direction of the state board of education, further define the expenditures per pupil to be used in aforesaid computations.

Added by St. 1971, c. 1005, § 2. Amended by St. 1978, c. 367, § 70G.

§ 9. Rules and regulations; promulgation

In addition to the powers and duties prescribed in previous sections of this chapter, the department shall exercise its authority and promulgate rules and regulations to achieve the full implementation of all provisions of this chapter. A copy of the rules and regulations issued by the department shall be sent to all cities, towns and school districts participating in transitional bilingual education.

Added by St. 1971, c. 1005, § 2.³⁹

MICHIGAN

Michigan provides for the bilingual instructional needs of language-minority children. The legislation enacted in Michigan requires school districts with 20 or more LESA students to provide bilingual education to meet their needs. The legislation provides for a census count, enrollment notice, advisory councils and other areas comparable to the legislation enacted in other states where bilingual education is mandatory.

§ 15.41151 English language instruction

(1) English shall be the basic language of instruction in the public and nonpublic schools of this state and in state institutions.

Religious instruction, foreign language instruction, bilingual instruction. (2) Subsection 10 shall not be construed as applying to:

(a) Religious instruction in a nonpublic school given in a foreign language in addition to the regular course of study.

³⁹Ibid., Chapter 71A, Sections 1-9.

(b) A course of instruction in a foreign language in which the pupil acquires sufficient proficiency to be conversant in the foreign language.

(c) Bilingual instruction, as defined in section 1152, which will assist children of limited English-speaking ability to achieve reasonable efficiency in the English language.

(MCL § 380.1151.)

§ 15.41152 Definitions

As used in sections 1152 to 1158:

Bilingual instruction. (a) "Bilingual instruction" means the use of 2 languages, 1 of which is English, as media of instruction for speaking, reading, writing, or comprehension. "Bilingual instruction" may include instruction in the history and culture of the country, territory, or geographic area associated with the language spoken by children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States.

Children of limited English-speaking ability.

(b) "Children of limited English-speaking ability" means children who have or reasonably may be expected to have difficulty performing ordinary classwork in English because their native tongue is a language other than English or because they come from a home or environment where the primary language used is a language other than English.

In-service training. (c) "In-service training" means short-term or part-time training for administrators, teachers, teacher aides, paraprofessionals, or other education personnel engaged in bilingual instruction programs for children of limited English-speaking ability.

(MCL § 380.1152.)

§ 15.41153 Bilingual instruction programs; 20 or more children.

(1) The board of a school district having an enrollment of 20 or more children of limited English-speaking ability in a language classification in grade K to 12 shall establish and operate a bilingual instruction program for those children.

Fewer than 20 children. (2) The board may establish and operate a bilingual instruction program with respect to a language classification if the school district has fewer than 20 children of limited English-speaking ability.

Placement of children; combining age or grade levels.

(3) Children enrolled in a bilingual instruction program operated under this section may be placed in classes with other children of approximately the same age and grade level.

If children of different age groups or grade levels are combined, the board shall insure that the instruction given each child is appropriate to the child's level of educational attainment.

Enrolling in another district's program; tuition; transportation. (4) A child of limited English-speaking ability residing in a district which does not have an appropriate bilingual instruction program or which is not required to have a bilingual instruction program may enroll in another school district. Tuition for the child shall be paid, and transportation shall be provided, by the school district in which the child resides.

Intermediate bilingual instruction-support program; establishment; membership, carrying children, calculation. (5) If fewer than 20 children of limited English-speaking ability in a language classification are enrolled in a school district, the intermediate school board shall determine whether the total number of these children residing in its constituent districts which do not operate bilingual instruction programs warrants the establishment of an intermediate bilingual instruction-support program. An intermediate school district operating or contracting for the operation of a bilingual program or service may carry children in membership in the same manner as a local school district and shall be entitled to its proportionate share of state funds available for the program. Membership shall be calculated under rules promulgated by the state board. The intermediate school board shall consider:

(a) Whether the cost of operating an intermediate bilingual instruction-support program is justified by the number of children at each grade level who would benefit from its establishment.

(b) Whether alternative methods of providing a bilingual instruction-support program, such as visiting teachers or part-time instruction, can be provided.

(MCL § 380.1153.)

§ 15.41154 Courses and subjects

The bilingual instruction program operated by a school district shall be a full-time program of bilingual instruction in:

(a) The courses and subjects required by this act.

(b) The courses and subjects required by the board for completion of the grade level in which the child is enrolled.

(MCL § 380.1154.)

§ 15.41155 Pre-enrollment notice; contents

(1) Prior to the placement of a child of limited English-speaking ability in a bilingual instruction program the board of the local school district in which the child resides shall notify, by registered mail, the child's

parents or legal guardian that the child is being enrolled in a bilingual instruction program. The notice shall contain a simple, nontechnical description of the purposes, method, and content of the program and shall inform the parents or guardian that they have the right to visit bilingual instruction classes in which their child is enrolled.

Language of notice. (2) The notice shall be written in English and in the native language of the child of limited English-speaking ability.

Refusal rights. (3) The notice shall inform the parents or guardian that they have the absolute right to refuse the placement or to withdraw their child from the program by giving written notice to the board of the local district in which the child resides.

Duration of enrollment; transfer, limitation.

(4) A child of limited English-speaking ability residing in a school district operating or participating in a bilingual instruction program pursuant to section 1153 shall be enrolled in the bilingual instruction program for 3 years or until the child achieves a level of proficiency in English language skills sufficient to receive an equal educational opportunity in the regular school program, whichever occurs first. A child of limited English-speaking ability shall not be transferred out of a bilingual instruction program prior to the child's third year of enrollment unless the parents or guardian of the child approves the transfer in writing or unless the child successfully completes an examination which in the determination of the state board, reflects a level of proficiency in English language skills appropriate to the child's grade level.

(MCL § 380.1155.)

§ 15.41156 Advisory committee; membership.

The board of a school district operating a bilingual instruction program pursuant to section 1153 shall establish an advisory committee to assist the board in evaluating and planning the bilingual instruction program. The advisory committee shall be comprised of representatives of parents of children enrolled in the program, bilingual instruction teachers and counselors, and members of the community. A majority of the members of the advisory committee shall be parents of children enrolled in the bilingual instruction program.

(MCL § 380.1156.)

§ 15.41157 In-service training programs; rules.

(1) The state board, in cooperation with intermediate school districts and local school districts, shall develop and administer a program of in-service training for

bilingual instruction programs. The state board shall promulgate rules governing the conduct of and participation in the in-service training programs.

Rules as to endorsement of teachers; proficiency requirements. (2) The state board shall promulgate rules governing the endorsement of teachers as qualified bilingual instructors in the public schools of this state. The teacher shall meet the requirements of part 22 and shall be proficient in both the oral and written skills of the language for which the teacher is endorsed.

Evaluating English skills of children. (3) The state board shall approve an examination or testing mechanism suitable for evaluating the proficiency in English language skills of a child of limited English-speaking ability.

(MCL § 380.1157.)

§ 15.41158 State board powers.

The state board shall:

(a) Advise and assist school districts in complying with and implementing sections 1152 to 1158.

(b) Study, review, and evaluate textbooks and instructional materials, resources, and media for use in bilingual instruction programs.

(c) Compile data relative to the theory and practice of bilingual instruction and pedagogy.

(d) Encourage experimentation and innovation in bilingual education.

(e) Recommend curriculum development and testing mechanisms.

(f) Make an annual report relative to bilingual instruction programs to the legislature and the governor.

(MCL § 380.1158.)⁴⁰

NEW JERSEY

To insure an equal educational opportunity for every child attending school in New Jersey the legislature enacted a law in 1974 which requires a bilingual instructional program for language minority students. In school districts with 20 or more students, bilingual education programs are required to meet their needs.

⁴⁰Michigan, Statutes Annotated, Title 15, Sections 15.41151-15.41158.

Chapter 197, Laws of 1974

1. The Legislature finds that there are large numbers of children in the State who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The Legislature believes that a program of bilingual education can meet the needs of those children and facilitate their integration into the regular public school curriculum. Therefore, pursuant to the policy of the State to insure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, it is the purpose of this act to provide for the establishment of bilingual programs in the public schools.

2. As used in this act, the following words and phrases shall have the following meaning:

"Children of limited English-speaking ability" means those children whose primary language is other than English and who have difficulty performing ordinary classwork in English.

"Programs in bilingual education" means a full time program of instruction (1) in all those courses or subjects which a child is required by law, rule or regulation to receive given in the native language of the children of limited English-speaking ability enrolled in the program and also in English, (2) in the aural comprehension, speaking, reading, and writing of English, and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability enrolled in the program and in the history and culture of the United States.

3. Each school district shall identify and ascertain, according to rules prescribed by the Commissioner of Education with the approval of the State board, the children attending the schools of the district who are of limited-English-speaking ability and, also, those not in attendance by resident within the district, and shall classify them according to the language of which such children possess a primary speaking ability.

4. When, at the beginning of any school year, there are within the schools of the district 20 or more pupils of limited English-speaking ability in any one language classification, the board of education shall establish, for each such classification, a program in bilingual education

for all the pupils therein; provided, however, that a board of education may establish a program in bilingual education for any language classification with less than 20 children therein.

5. Every pupil participating in a program pursuant to this act shall be entitled to continue such participation for a period of 3 years.

6. In those courses or subjects in which verbalization is not essential to an understanding of the subject matter, including but not limited to art, music, and physical education, pupils of limited English-speaking ability shall participate fully with English-speaking pupils in the regular classes provided for such subjects. Each board shall insure to each pupil enrolled in bilingual education a practical and meaningful opportunity to participate fully in all programs and activities available in the school district. Programs in bilingual education shall be located in the regular public schools of the district rather than in separate facilities. Bilingual education programs may include children of English speaking ability.

7. A school district may join with any other school district or districts, according to rules prescribed by Commissioner of Education with the approval of the State board, to provide programs pursuant to this act.

8. Each school district shall notify by mail the parents of the pupils of limited English-speaking ability of the fact that their child has been enrolled in a program of bilingual education. Such notice shall be in writing and in the language of which the child of the parents so notified possesses a primary speaking ability, and in English.

The board shall provide for the maximum practicable involvement of parents of children of limited English-speaking ability in the development and review of program objectives and dissemination of information to and from the local school districts and communities served by the bilingual education program within existing State law.

9. The Commissioner of Education and the Chancellor of Higher Education shall, with the approval of their respective boards promulgate rules and regulations, establish procedures, employ personnel, and take all other necessary steps to insure the implementation of the provisions of this act.

10. The State Board of Education and the State Board of Higher Education shall jointly establish a State Advisory Committee on Bilingual Education to assist the Department of Education and the Department of Higher Education in the formulation of policies and procedures relating to this act. The State Advisory Committee on Bilingual Education shall include representatives of the language communities served, institutions of higher education, local school board, school administrators, teachers and laymen knowledgeable in the field of bilingual education.

11. The Board of Higher Education with the advice of the State Advisory Committee on Bilingual Education shall provide financial support to institutions of higher education for career development programs and the training of professionals serving bilingual populations with emphasis on effective utilization of existing facilities.

12. The State board and the State Board of Higher Education shall develop resources, programs, curriculum and instructional materials and undertake such other activities as will enable board of education to provide programs pursuant to this act; the boards shall, where appropriate, jointly or cooperatively undertake such activities.

13. This act shall take effect immediately except that section 4 shall not take effect until July 1, 1975.⁴¹

RHODE ISLAND

Rhode Island requires bilingual education programs in school districts with 20 or more non-English-speaking students. Different non-English-speaking students cannot be combined into the same class.

Chapter 54.

16-54-1. Short Title.

This chapter shall be known and may be cited as the State Transitional Bilingual Education Act.

⁴¹New Jersey, Statutes Annotated, Chapter 197, Sections 1-13.

16-54-2. Declaration of Policy.

The Legislature finds that there are large numbers of children in the State who come from environments where the primary language is other than English, and that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The Legislature believes that transitional bilingual education programs can meet the needs of these children and facilitate their integration into the regular public school curriculum. Therefore, pursuant to the policy of the State to ensure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, it is the purpose of this chapter to provide for the establishment of transitional bilingual education programs in the public schools and to provide for reimbursement to school districts of the extra costs of such programs.

16-54-3. Definitions as Used in this Chapter.

- (1) "department" means the State Department of Education;
- (2) "district" means school district;
- (3) "school board" means the board of education of a local school district;
- (4) "Children of limited English speaking ability" means children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English; provided, that where a school district has made a judgment that a child is not of limited English-speaking ability, but his parent (or legal guardian) reasonably disagrees, the parent's judgment shall be conclusive.⁴²

Adequate provisions for identifying LESA students, establishing programs, notification of enrollment and parental rights are contained in the legislation.

16-54-4. Census; Classification; Mandatory Establishment of Programs; Discretionary Establishment of Programs.

- (a) The school board of every school district shall ascertain annually in a census, under regulations prescribed by the department, the number of school age children of limited English-speaking ability resident within the district. In making such census the school board shall

⁴²Rhode Island, General Laws, Title 16, Chapter 54, Sections 16-54-1 - 16-54-3.

seek the assistance and cooperation of any agencies, organizations or community groups, public or private, which might have information about children of limited English-speaking ability residing in the school district. The department shall cooperate with and assist school districts in taking the census.

(b) The school board of each district shall classify the children of limited English-speaking ability within the district according to the language in which they possess a primary speaking ability. Whenever there are within a school district 20 or more children of limited English-speaking ability in any such classification, the school board of said district shall establish, for each such classification, a transitional bilingual education program (hereinafter, bilingual program) for all the children therein. A school board may establish a bilingual program with the respect to any classification containing less than 20 children. In mandatory programs, children speaking different non-English languages shall not be combined in the same program.

16-54-5. Enrollment of Children of Limited English-Speaking Ability; Enrollment of Other Children; Notification; Parent's Right of Withdrawal.

(a) Every school age child of limited English-speaking ability residing within a school district required to provide a bilingual program for his classification shall be enrolled in such a program. An examination in listening comprehension, speaking, reading, and writing of English, as prescribed by the department, shall be administered annually to all children of limited English-speaking ability enrolled in a bilingual program. No school district shall transfer a child of limited English-speaking ability out of a mandatory bilingual program prior to his sixth year of enrollment therein unless the child has received a score on said examination which, in the opinion of the department, reflects a level of English language skills which will enable him to perform successfully in regular classes appropriate for his age. If later evidence suggests that a child so transferred is still handicapped by an inadequate command of English, the child shall have the right to be reenrolled in the bilingual program for a length of time equal to that portion of the six-year period which remained at the time he was transferred. A school district may allow any child to continue in a bilingual program for a period longer than that required in this paragraph.

(b) The school district shall, to the fullest extent possible, enroll a substantial number of English-speaking children in bilingual programs, provided that priority shall be given to children of limited English-speaking ability.

(c) No later than 10 days after the enrollment of any child in a bilingual program the school board of the district in which the child resides shall notify by registered mail the parents or legal guardian of the child of such enrollment. The notice shall contain a simple, non-technical description of the purposes, method, and content of the bilingual program; it shall inform the parents that they have the right to visit the classes in which their child is enrolled and to come to the school for a conference to explain the nature of the bilingual program; and it shall inform the parents of their right to withdraw their child from the program as hereinafter provided.

(d) The notice shall be in writing both in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

(e) Any parent whose child has been enrolled in a bilingual program shall have the right to withdraw his child from said program at any time by written notice to the principal of the school in which his child is enrolled or to the school board of the school district in which his child resides; provided, that school districts shall make affirmative efforts to encourage the continued participation of both English- and non-English-speaking children enrolled in bilingual programs.⁴³

Description of what constitutes an adequate bilingual program is specified.

16-54-7. Content of Programs and Methods of Instruction; Non-Verbal Courses and Extra-Curricular Activities; Location of Courses; Class Composition and Size.

(a) A bilingual program shall be a full-time program of instruction (1) in all subjects required by law or by the school district, which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program, and the English language; (2) in the comprehension, speaking, reading, and writing of the native language of the children of limited English-speaking ability who are enrolled in the program, and in the comprehension, speaking, reading and writing of the English language; and (3) in the history and culture associated with the native languages of the children of limited English-speaking ability who are enrolled in the program, and in the history and culture of the United States.

(b) Bilingual programs shall be located in the regular public schools rather than in separate facilities; and no school district shall, in providing programs under this

⁴³Ibid., Sections 16-54-4 - 16-54-5.

chapter, assign students to schools in a way which will have the effect of promoting segregation of students by race, color, or national origin. In predominantly non-verbal subjects, such as art, music, and physical education, children of limited English-speaking ability shall participate fully with their English speaking contemporaries in the public school classes provided for said subjects. Every school district shall ensure to children enrolled in a bilingual program a meaningful opportunity to participate fully with other children in all extra-curricular activities.

(c) Children enrolled in a bilingual program shall be placed in classes with children of approximately the same age and level of educational attainment. Children of widely disparate ages or educational levels shall not be combined in the same classroom except as approved by the department; and no such combination shall be approved unless it is necessary to avoid hardship to the district or to the children and is found to be educationally sound. If, in accordance with the above, children of different ages or educational levels are combined, the district so combining shall ensure that the instruction given each child is appropriate to his level of educational attainment, and school districts shall keep adequate records of the educational level and progress of each child enrolled in a program. The maximum student-teacher ratio shall be set by the department and shall reflect the special educational needs of children enrolled in bilingual programs.⁴⁴

The personnel requirements and qualifications are defined in the legislation.

16-54-8. Bilingual Education Teachers; Certificates; Exemption.

(a) The state board of regents for education (hereinafter, the board) shall grant permanent teaching certificates in bilingual education to persons who present the board with satisfactory evidence that they:

(1) possess a speaking and reading ability in a language other than English, and communicative skills in English;

(2) possess a bachelor's degree or other academic degree approved by the state board;

⁴⁴ Ibid., Section 16-54-7.

(3) meet such requirements as the course of study and training as the board may prescribe, or possess such relevant experience as may be satisfactory to the board.

(b) The requirements of the general teacher certification law shall not apply to the board.

(c) For the purpose of certifying bilingual education teachers the board may approve programs at colleges or universities devoted to the preparation of such teachers.

(d) A person holding a general teaching certificate who presents the board with satisfactory evidence of speaking and reading ability in a language other than English may be certified under this section.

(e) Any person certified under this section shall be eligible for employment by a school board as a teacher in a bilingual program in which the language for which he is certified is used as a medium of instruction. A school board may prescribe only such additional qualifications for teachers certified under this section as are approved by the board. Any local school board upon request may be exempted from the certification requirements of this section in the hiring of one or more bilingual education teachers for any school year in which compliance therewith would, in the opinion of the department create a hardship in the district in the securing of such teachers.

(f) A bilingual education teacher serving under an exemption as provided in the preceding paragraph shall be granted a certificate as soon as he achieves the requisite qualifications therefore. Not more than two years of service by a bilingual education teacher under such an exemption shall be credited to the teacher for the purpose of the state tenure law, and said two years shall be deemed to precede immediately, and to be consecutive with, the year in which a teacher becomes certified.

(g) A teacher holding a certificate or exemption under this chapter shall be compensated according to a schedule which is at least equivalent to that applicable to teachers holding general certificates. No person shall be denied a certificate or exemption under this chapter or denied employment or tenure as a bilingual education teacher because he is not a United States citizen.

(h) A school district may, in circumstances to be prescribed by the department, employ in a bilingual program teachers holding certificates or exemptions under the general teacher certification law.

(i) In hiring teachers for a bilingual program who speak a language other than English, including certified teachers and teachers serving under exemptions, school districts shall give preference to, and make affirmative efforts to recruit, persons who are native-speakers of the language and share the culture of the children of limited

English-speaking ability who are enrolled in the program.

(j) No rules or regulations for certification of bilingual education teachers shall be issued except after notice to the public and hearings at which any person may testify; further hearings shall be held, not less than once every two years, to review and, if appropriate, revise such rules or regulations.

16-54-9. Teachers' Aides - Community Coordinators.

(a) A bilingual education teacher's aide shall be a person employed to assist a teacher in a bilingual program. Each school board providing bilingual programs under this chapter shall employ such teachers' aides to assist in teaching the programs; provided, however, that at least half the teachers' aides assigned to each program shall be native-speakers of the language and share the culture of the children of limited English-speaking ability enrolled in the program.

(b) Any school board which conducts bilingual programs pursuant to this chapter shall employ, on a full- or part-time basis, one or more community coordinators for each program in which 100 or more children are enrolled. Community coordinators shall seek to promote communication, understanding, and cooperation between the public schools and the community, and shall visit the homes of children who are or could be enrolled in a bilingual program in order to convey information about the program. A coordinator shall be a native-speaker of the language and share the culture of the children of limited English-speaking ability enrolled in the program to which he is assigned.

(c) No person shall be denied employment as a bilingual education teacher's aide or community coordinator because he is not a United States citizen; nor shall the provisions of the state civil service law affect the hiring and employment of such aides or coordinators.

16-54-10. District-Directors

The school board of any school district in which 200 or more children are enrolled in bilingual programs shall appoint a director of bilingual education for the district. The director shall be qualified as a bilingual education teacher and shall, under regulations prescribed by the department, supervise the operation of the district's programs. Districts shall make affirmative efforts to recruit directors who are native-speakers of a language other than English.⁴⁵

⁴⁵Ibid., Sections 16-54-8 - 16-54-10.

Parent participation is required.

16-54-11. Parent and Community Participation.

(a) School boards shall provide for the maximum practical involvement of parents of children enrolled in bilingual programs. Each school district shall, accordingly, establish a parent advisory committee for each program which affords parents the opportunity effectively to express their views and which ensures that a bilingual program is planned, operated, and evaluated with the involvement of, and in consultation with, parents of children served by the program. Such committees shall be composed solely of parents of children enrolled in bilingual programs, bilingual education teachers and teachers' aides, community coordinators, and representatives from poor peoples' community groups; provided, however, that a majority of each committee shall be parents of children enrolled in the corresponding bilingual program, and that the number of English-speaking and non-English-speaking parents shall reflect approximately the proportions of English-speaking and non-English-speaking students enrolled in the bilingual program.

(b) The department shall promulgate rules and regulations to implement the requirements of this section.⁴⁶

Reimbursement of program implementation cost to LEAs is assured.

16-54-14. Reimbursement by the State.

(a) The expenditures by local school districts for the bilingual programs required or permitted under this chapter, including amounts expended for pre-service or in-service teacher training programs which are approved by the department, shall, for the amount by which they exceed the average per pupil expenditure of the school district for the education of children of comparable age, be reimbursed by the state.

(b) Every school district seeking reimbursement under this section shall submit a plan for bilingual education to the department before the beginning of each school year. The plan shall propose a bilingual education program or programs for the district and shall be in such form and shall set forth sufficient facts as the department finds necessary to determine whether the proposed program(s) conforms to the provisions of this chapter and the department's regulations hereunder. Nonconforming plans shall not be approved and shall be returned to the school district, with

⁴⁶Ibid., Section 15-54-11.

specification of the reasons for nonapproval, in such time as will allow the school district a reasonable opportunity to resubmit an amended plan. Approval of a plan shall be prerequisite to state reimbursement.

(c) Reimbursement shall be made upon certification by the department that bilingual programs have been carried out in accordance with the provisions of this chapter, the department's regulations hereunder, and approved plans submitted earlier by school districts. In the event that amounts certified by the department as eligible for reimbursement under this section exceed the available state funds therefore, reimbursement of approved programs shall be ratably reduced.

(d) Participating school districts shall keep such records and afford such access thereto as the department finds necessary to ensure that bilingual programs are implemented in conformity with approved plans, this chapter and regulations hereunder.

(e) All expenditures for bilingual programs, other than those actually reimbursed under this chapter, shall be included in computing the total expenditures of the school district for purposes of the general state aid to education laws.⁴⁷

Duties of a special bilingual education division are outlined as part of the legislation.

16-54-16. Division for Bilingual Education.

(a) There shall be established within the Department of Education a division for bilingual education which shall be headed by an assistant commissioner. The assistant commissioner shall be appointed by the board of education upon the recommendations of the commissioner of education, and shall report directly to the board and to the commissioner. In selecting an assistant commissioner preference shall be given to persons who are native-speakers of a language other than English in which bilingual programs are offered.

(b) The division for bilingual education shall be charged with the following duties:

(1) to assist the department in the administration and enforcement of the provisions of this chapter and in the formulation of the regulations provided for herein;

(2) to study, review, and evaluate all available resources and programs that, in whole or in part, are or could be directed towards meeting the language capability needs of children and adults of limited English-speaking ability resident in the State;

⁴⁷Ibid., Section 16-54-14.

(3) to gather information about the theory and practice of bilingual education in the State and elsewhere, to encourage experimentation and innovation in the field of bilingual education, and to make a regular report to the Legislature, the Governor, and the public;

(4) to provide for the maximum practical involvement of parents of children of limited English-speaking ability, bilingual education teachers, teachers' aides, community coordinators, representatives of community groups, educators and laymen knowledgeable in the field of bilingual education in the formulation of policy and procedures relating to the administration of this chapter;

(5) to consult with other public departments and agencies, including, but not limited to, the department of community affairs, the department of social and rehabilitative services, the department of employment security, the commission against discrimination, and the United States Department of Health, Education and Welfare in connection with the administration of this chapter;

(6) to make recommendations to the department in the areas of pre-service and in-service training for bilingual education teachers, curriculum development, testing and testing mechanisms, and the development of materials for bilingual education programs; and

(7) to undertake any further activities which may assist the department in the full implementation of this chapter.⁴⁸

A unit within the department of education is to be established with the duties specified below.

16-54-18. Unit for Bilingual-Bicultural Education - State Advisory Council.

(a) There shall be established within the department of education a unit for bilingual-bicultural education which shall be headed by a coordinator who shall be appointed by the commissioner of education and said coordinator shall have the qualifications of a master's degree in bilingual-bicultural education, and shall have at least two (2) years of documented administrative experience in a bilingual-bicultural program. The commissioner of education shall file an annual report with the board of regents and the legislature.

(b) The unit for bilingual-bicultural education shall be charged with the following duties:

(1) to assist the department in the administration and enforcement of the provisions of this chapter and in

⁴⁸Ibid., Section 16-54-16.

the formulation of regulations provided for herein;

(2) to study, review and evaluate all available resources and programs that, in whole or in part, are or could be directed toward meeting the language capability needs of children and adults of non or limited English proficiency resident in the state;

(3) to gather information about the theory and practice of bilingual-bicultural education in the state or elsewhere, to encourage experimentation and innovation in the field of bilingual-bicultural education, and to make an annual report to the board of regents and the legislature;

(4) to provide for the maximum practical involvement of other public departments and agencies relative to the needs of non or limited English proficiency within the state;

(5) to coordinate efforts within the areas of pre-service and in-service training for bilingual-bicultural education, curriculum development, testing and testing mechanisms, and the development of materials for bilingual-bicultural education programs. . .⁴⁹

TEXAS

The state of Texas has a substantial population of language minority students. Also included among this population are numerous undocumented alien children who attend the schools.

Texas' legislation is similar to the legislation enacted in other states that mandate bilingual education.

Portions of the legislation are quoted below.

§ 21.451. State Policy.

The legislature finds that there are large numbers of children in the state who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The legislature believes that a compensatory

⁴⁹Ibid., Section 16-54-18.

program of bilingual education can meet the needs of these children and facilitate their integration into the regular school curriculum.

§ 21.452. Definitions

In this subchapter the following words have the indicated meanings:

- (1) "Agency" means the General Education Agency.
- (2) "Board" means the governing board of a school district.
- (3) "Children of limited English-speaking ability" means children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English.
(Acts 1973, 63rd Leg., p. 860, ch. 392, § 1 eff. Aug. 27, 1973.)

§ 21.453. Establishment of Bilingual Programs.

(a) The governing board of each school district shall determine not later than the first day of March, under regulations prescribed by the State Board of Education, the number of school-age children of limited English-speaking ability within the district and shall classify them according to the language in which they possess a primary speaking ability.

(b) Each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and which does not have a program of bilingual instruction which accomplishes the state policy of facilitating integration into the regular school curriculum as set out in Section 21-451 of this article, shall institute a program of bilingual instruction for the children in each language classification in kindergarten, first grade, and second grade by the 1975-76 school year and also in the third grade by the 1976-77 school year. Bilingual instruction may be offered in the fourth and fifth grades for students who have not progressed sufficiently to participate in the regular school curriculum. Any bilingual program beyond the fifth grade shall be at the expense of the respective local school district.

§ 21.454. Program Content; Method of Instruction

(a) The bilingual education program established by a school district shall be a full-time program of instruction (1) in all subjects required by law or by the school district, which shall be given in the native language of the children of limited English-speaking ability who are en-

rolled in the program, and in the English language; (2) in the comprehension, speaking, reading and writing of the native language of the children of limited English-speaking ability who are enrolled in the program, and in the comprehension, speaking, reading, and writing of the English language; and (3) in the history and culture associated with the native language of the children of limited English-speaking ability who are enrolled in the program, and in the history and culture of the United States.

(b) In predominantly nonverbal subjects, such as art, music, and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in regular classes provided in the subjects.

(c) Elective courses included in the curriculum may be taught in a language other than English.

(d) Each school district shall insure to children enrolled in the program a meaningful opportunity to participate fully with other children in all extracurricular activities. (Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.)

§ 21.455. Enrollment of Children in Program

(a) Every school-age child of limited English-speaking ability residing within a school district required to provide a bilingual program for his classification shall be enrolled in the program for a period of three years or until he achieves a level of English language proficiency which will enable him to perform successfully in classes in which instruction is given only in English, whichever first occurs.

§ 21.456. Facilities; Classes

(a) Programs in bilingual education, whenever possible, shall be located in the regular public schools of the district rather than in separate facilities.

(b) Children enrolled in the program, whenever possible, shall be placed in classes with other children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school district shall insure that the instruction given each child is appropriate to his or her level of educational attainment, and the district shall keep adequate records of the educational level and progress of each child enrolled in the program.

(c) The maximum student-teacher ratio shall be set by the agency and shall reflect the special educational needs of children enrolled in programs of bilingual education. (Acts 1973, 63rd Leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.)

§ 21-459. Bilingual Education Teachers

(a) The State Board of Education shall promulgate rules and regulations governing the issuance of teaching certificates with bilingual education endorsements to teachers who possess a speaking and reading ability in a language other than English in which bilingual education programs are offered and who meet the general requirements set out in Chapter 13 of this code. (Section 13.01 et seq.)

(b) The minimum monthly base pay and increments for teaching experience for a bilingual education teacher are the same as for a classroom teacher with an equivalent degree under the Texas State Public Education Compensation Plan. The minimum annual salary for a bilingual education teacher is the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable. (Acts 1973, 63rd Leg., p. 860, ch. 392, § 1 eff. Aug. 27, 1973)

§ 21.460. Allotments for Operational Expenses and Transportation

(a) To each school district operating an approved bilingual education program there shall be allotted a special allowance in an amount to be determined by the agency for pupil evaluation, books, instructional media, and other supplies required for quality instruction.

(b) The cost of transporting bilingual education students from one campus to another within a district or from a sending district to an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

(c) The Foundation School Fund Budget Committee shall consider all amounts required for the operation of bilingual education programs in establishing the funds needed for purposes of the Foundation School Program.

(d) The cost of funding this act shall, for fiscal years 1974 and 1975, be maintained at the level contained

in House Bill 139, 63rd Legislature, Regular Session, 1973. (Acts 1973, 63rd leg., p. 860, ch. 392, § 1, eff. Aug. 27, 1973.)⁵⁰

WISCONSIN

The final state in the category of mandating legislation on bilingual education is the state of Wisconsin. The legislation outlines minimal program requirements to assure equal educational opportunities for limited-English-speaking students.

Wisconsin's legislative findings and declaration of policy are listed below.

115.95 Legislative findings and declaration of policy

(1) The legislature finds that;

(a) There are pupils in this state who enter elementary and secondary school with limited or nonexistent English speaking ability due to the use of another language in their family or in their daily, nonschool environment.

(b) Classes conducted in English do not always provide adequate instruction for children whose English language abilities are limited or nonexistent.

(c) It is beneficial to pupils from bicultural and monocultural backgrounds to participate in bilingual-bicultural programs where such programs are available in order to instill respect for non-English languages and cultures in all pupils.

(2) It is the policy of this state to provide equal educational opportunities by ensuring that necessary programs are available for limited-English-speaking pupils while allowing each school district maximum flexibility in establishing programs suited to its particular needs. To this end, this subchapter creates a required minimal program and an optional expanded program for pupils in school districts with specified concentrations of limited-English-speaking pupils while allowing each school district maximum flexibility in establishing programs suited to its particular needs. To this end, this subchapter creates a

⁵⁰Texas, Education Code, Section 21, Subsections 21.451 - 21.460.

required minimal program and an optional expanded program for pupils in school districts with specified concentrations of limited-English speaking pupils while allowing each school district maximum flexibility in establishing programs suited to its particular needs. To this end, this subchapter creates a required minimal program and an optional expanded program for pupils in school districts with specified concentrations of limited-English speaking pupils in the attendance areas of particular schools.

(3) It is the policy of this state to reimburse school districts, in substantial part, for the added costs of providing the basic or optional expanded programs established under this subchapter.

(4) It is the policy of this state that a limited-English speaking pupil participate in a bilingual-bicultural education program only until such time as the pupil is able to perform ordinary classwork in English.

(5) It is the policy of this state that fundamental courses may be taught in the pupil's non-English language to support the understanding of concepts, while the ultimate objective shall be to provide a proficiency in those courses in the English language in order that the pupil will be able to participate fully in a society whose language is English.

(6) Furthermore, it is the policy of this state to encourage reform, innovation and improvement in graduate education, in the structure of the academic profession and in the recruitment and retention of higher education and graduate school facilities, as related to bilingual-bicultural education, and to give special recognition to persons who possess a reading ability and speaking fluency in a non-English language and an understanding of another culture.⁵¹

In order to assure clarity of meaning within the legislation, the following definitions are provided.

115.955 Definitions

In this subchapter;

(1) "Limited-English speaking pupil" means a pupil whose ability to use the English language is limited because of the use of a non-English language in his or her family or in his or her daily, nonschool surroundings, and who has difficulty, as defined by rule by the state superintendent, in performing ordinary classwork in English as a result of such limited English language ability.

⁵¹Wisconsin, Statutes Annotated, Title XIV, Section 115.95.

- (2) "Bilingual teacher" means a certified teacher approved by the state superintendent under s. 115.28 (a).
- (3) "Bilingual counselor" means a certified teacher approved by the state superintendent under s. 115.38 (15) (a).
- (4) "Bilingual teacher's aide" means a person who is employed to assist a teacher and who is approved by the state superintendent under s. 115.28 (15) (a).
- (5) "Bilingual counselor's aide" means a person who is employed to assist a counselor and who is approved by the state superintendent under s. 115.28 (15) (a).
- (6) "Bilingual-bicultural education program" means a basic program or an optional expanded program as defined by the state superintendent by rule under s. 115.28 (15) (b), designed to improve the comprehension and the speaking, reading and writing ability of a limited-English speaking pupil in the English language, so that the pupil will be able to perform ordinary classwork in English.
- (7) "Basic program" means a program which provides the following:
- (a) Instruction in reading, writing and speaking the English language; and
 - (b) In grades K-8 through the use of the native language of the limited-English speaking pupil, instruction in the subjects necessary to permit the pupil to progress effectively through the educational system.
- (8) "Optional expanded program" means a program which provides the following:
- (a) Instruction in reading, writing, and speaking the English language; and
 - (b) Instruction at all grade levels, through the use of the native language of the limited-English speaking pupil, in the subjects necessary to permit the pupil to progress effectively through the educational system.⁵²

A census is to be conducted, enrollment period provided, and parents or guardians are to be notified. A specific time-frame is required.

115.96 Establishment of programs

(1) Count of limited-English speaking pupils. Annually, on or before March 1, each school board shall conduct a count of the limited-English speaking pupils in the public schools of the district, assess the language proficiency of such pupils and classify such pupils by language group, grade level, age and English language proficiency.

⁵²Ibid., Section 115.955.

(2) Notification. Annually, on or before April 1, a school board which may be required to offer a bilingual-bicultural education program shall send to the parent or legal custodian of every limited-English speaking pupil identified under sub. (1) who is eligible for participation in such a program, a notice which states that a bilingual-bicultural education program may be instituted, contains information on the procedures for registering a pupil in such a program, and provides notice of the consent required under sub. (3). The notice shall be in English and in the non-English language of each bilingual-bicultural education program.

(3) Parental consent. On or before May 1, any parent or legal custodian desiring that their child be placed in a bilingual-bicultural education program shall give written consent to such child's placement.⁵³

A bilingual-bicultural program is required if 10 or more language-minority students attend a school.

115.97 Bilingual-bicultural education programs required

(1) If a school board is required to establish a bilingual-bicultural education program under sub. (2), (3) or (4), the school board may adopt either a basic or expanded program. A school board may combine pupils in attendance at separate schools in its bilingual-bicultural education program. The school board shall be eligible for state aids under s. 115.995 if the number of limited-English speaking pupils served from the combined schools meets the requirements under sub. (2), (3) or (4). A pupil shall be eligible for bilingual-bicultural education program only until he or she is able to perform ordinary classwork in English. The bilingual-bicultural education program shall be designed to provide intensive instruction to meet this objective. Nothing in this subchapter shall be construed to authorize isdation of children of limited-English speaking ability or ethnic background for a substantial portion of the school day. Pupils who are not limited-English speaking pupils may participate in a bilingual-bicultural education program, except that a school board shall give preference to limited-English speaking pupils in admitting pupils to such a program.⁵⁴

⁵³Ibid., Section 115.96.

⁵⁴Ibid., Section 115.97.

An advisory committee must be established to assist the school board in implementing bilingual-bicultural program.

115.98 Bilingual-bicultural advisory committee

In each school district which establishes a bilingual-bicultural education program under this subchapter, the school board may appoint a bilingual-bicultural advisory committee to afford parents and educators of limited-English speaking pupils the opportunity to advise the school board of their views and to ensure that a program is planned, operated and evaluated with their involvement and consultation.⁵⁵

Proper funding is assured by the legislation.

115.995 State aids

(1) Any school district operating a bilingual-bicultural education program during the school year under this subchapter is eligible to receive state aid equal to 70%, of the amount expended on limited-English speaking pupils by the district during the preceding year for salaries of personnel participating in an attributable to bilingual-bicultural education programs under this subchapter, special books and equipment used in the bilingual-bicultural education programs and other expenses approved by the state superintendent.

(2) If, upon receipt of the report under s. 115.993, the state superintendent is satisfied that the bilingual-bicultural education program for the previous school year was maintained in accordance with this subchapter, the state superintendent shall certify to the department of administration in favor of the school district a sum equal to the state aids for which the school district is eligible under sub. (1).

Finally, a progress report is to be provided to the legislature on the status of bilingual-bicultural education by the state superintendent.

115.996 Report to the legislation

Annually, on or before December 31, the state superintendent shall report to the legislature on the status

⁵⁵Ibid., Section 115.98.

of bilingual-bicultural education programs established under this subchapter.⁵⁶

States With Permissive Legislation Favoring
Bilingual Education

Numerous states have legislation that is permissive with regard to the language used in meeting the educational needs of children. An examination of the states' legislation has revealed that nineteen states fall within this category.

ARIZONA

Arizona's statutes permit local school districts to offer bilingual education programs in the first eight grades should they deem it appropriate.

Chapter 2, Article 1

§ 15-202. Conducting of public schools in English language; bilingual instruction

A. All schools shall be conducted in English, except special classes as provided in subsection B of this section.

B. In the first eight grades of any common school district where there are pupils who have difficulty in writing, speaking or understanding the English language because they are from an environment wherein another language is spoken primarily or exclusively, the district may provide special programs of bilingual instruction. As amended Laws 1969, Ch. 95, §2; Laws 1973, Ch. 169, §1. AG: 56-50-D, 57-64-D, 68-02-21, 69-06-13, 72-27-L.⁵⁷

⁵⁶Ibid., Section 115.995.

⁵⁷Arizona, Revised Statutes Annotated, Title 15, Chapter 2, Article 1, Section 15-202.

FLORIDA

Florida, with a substantial Spanish-speaking population, made special provisions for permitting school districts to operate bilingual education programs several years ago. Coral Way, a bilingual education school in Dade County, Florida, began operation in 1963. Schools such as Coral Way are permitted to operate in the state due to the permissive legislation enacted by the Florida legislature.

Section 236.081

(5) Categorical Programs.-- The legislature hereby provides for the establishment of selected categorical programs to assist in the development and maintenance of activities giving indirect support to the programs previously funded. These categorical appropriations may be funded as general and transitional and categorical programs. It is the intent of the Legislature that no transitional categorical program shall be funded for more than 4 fiscal years from the date of original authorization or from July 1, 1973, which ever is later. Such programs are as follows:

- (a) General. 1. . . .
- (b) Transitional. 1. Bilingual program as provided by law.⁵⁸

IDAHO

Idaho's permissive legislation allows school districts to conduct bilingual education programs to meet the needs of children.

33-1601. Instruction in the English Language. Instruction in all subjects in the public schools, except that required for the teaching of foreign languages, shall be conducted in the English language. Provided, however, that for students where the language spoken in their home is not English, instruction may be given in a language other than

⁵⁸Florida, Statutes Annotated, Title 15, Section 236.081.

English as necessary to allow for the transition of the students to the English language. (1963, ch. 13, § 176, p. 27. am. 1980, ch. 150 § 1, p. 305.)⁵⁹

INDIANA

Indiana's legislation makes it possible for school districts to operate bilingual-bicultural education programs by making funds available to all districts choosing to establish a program. In those districts where programs are established, the legislative guidelines are comparable to those states with mandating legislation.

20-10.1-5.5-2. Program implementation. -- The Superintendent of public instruction shall carry out a bilingual-bicultural program for the improvement of educational opportunities for non-English dominant children by:

(1) Supporting and planning pilot and demonstration projects which are designed to test and demonstrate the effectiveness of programs for improving educational opportunities for non-English dominant children;

(2) Assisting in the establishment and operation of programs which are designed to stimulate:

(A) the provision of educational services not available to non-English dominant children in sufficient quantity or quality; and

(B) the development and establishment of exemplary programs to serve as models for regular school programs in which non-English dominant children are educated;

(3) Assisting in the establishment and operation of pre-service and in-service training programs for persons serving non-English dominant children as educational personnel; and

(4) Encouraging the dissemination of information and materials relating to, and the evaluation of the effectiveness of education programs which may offer educational opportunities to non-English dominant children. In the case of activities of the type described above, preference shall be given to the training of non-English dominant children,

⁵⁹Idaho, Code, Title 33, Chapter 16, Section 33-1601.

including innovative programs related to the educational needs of the non-English dominant children.

(b) The superintendent of public instruction is also authorized to assist and stimulate school corporations in developing and establishing bilingual-bicultural educational services and programs specifically designed to improve educational opportunities for non-English dominant children. These funds may be used:

(1) To provide education services not available to such children in sufficient quantity or quality, including:

(A) remedial and compensatory instruction, psychological, and other services designed to assist and encourage non-English dominant children to enter, remain in, or re-enter elementary or secondary school;

(B) comprehensive academic and vocational instruction;

(C) instructional materials (such as library books, textbooks, and other printed or published or audio-visual materials) and equipment;

(D) comprehensive guidance, counseling, and testing services;

(E) special education programs for the handicapped;

(F) preschool programs;

(G) other services which meet the purposes of this subsection; and

(2) For the establishment and operation of exemplary and innovative educational programs and resource centers, involving new educational approaches, methods and techniques designed to enrich programs of elementary and secondary education for non-English dominant children. (IC 20-10.1-5.5.2, as added by Acts 1976, P.L. 104, § 1, p. 460.)⁶⁰

IOWA

Special funding is available to school districts desiring to implement bilingual education programs in Iowa. School districts may establish bilingual programs if they so desire.

280.4 Medium of Instruction

The medium of instruction in all secular subjects taught in both public and nonpublic schools shall be the English language, except when the use of a foreign language is deemed appropriate in the teaching of any

⁶⁰Indiana, Statutes Annotated, Title 20, Section 20-10.1-5.5-2.

subject or when the student is non-English-speaking. When the student is non-English-speaking, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in the English language or a transitional bilingual program, until the student demonstrates a functional ability to speak, write, read and understand the English language. As used in this section, "non-English-speaking student" means a student whose native language is not English and whose inability or limited ability to speak, write or read English significantly impedes educational progress.⁶¹

KANSAS

The state of Kansas, through Senate Bill No. 7, would permit local school districts to establish and to seek funding for bilingual education programs. Advisory, technical and financial assistance are made available to local school districts through the state board of education.

Senate Bill No. 7

New Sec. 4. The state board may adopt rules and regulations for the administration of this act and shall;

(a) Prescribe and adopt criteria and procedures for assessment and identification of educationally deprived pupils including identification of the specific education deficiencies of such pupils;

(b) establish standards and criteria for procedures, activities and services to be provided in a program to develop the English language skills and to reduce the educational deficiencies of educationally deprived pupils including entry and exit procedures based on the English language proficiency of such pupils; and

(c) establish standards and criteria for reviewing, evaluating and approving school district programs and applications of boards for state aid.

New Sec. 5. The state board shall be responsible for the allocation and distribution of state aid for bilingual

⁶¹Iowa, Code Annotated, Title XII, Chapter 280, Section 280.4.

education in accordance with appropriation acts and the statutes of this state. Such moneys shall be expended only in accordance with and for the purposes specified in this act. Payments under this act may be made in installments and in advance or by way of reimbursement, with necessary adjustment on account of overpayments or underpayments.

New Sec. 6. Each board which has established and is maintaining a program and desires to secure state aid for part of the cost of establishing and maintaining the same shall certify and file an application with the department for the approval of such program. Said applications shall be on a form prescribed and furnished by the department and shall contain such information as the state board shall require and shall be filed annually at a time to be determined and specified by the state board. Approval by the state board of the program and the application shall be prerequisite to payment of state aid to any board.

New Sec. 10. The state board, in cooperation with the advisory committee on Mexican American affairs and with other appropriate agencies and organizations, may provide any board, upon its request therefore, with technical advice and assistance in the establishment and operation of a program of bilingual education, including assistance in conducting in-service training programs for personnel, and may make studies and gather and disseminate information relating to materials, resources, procedures, programs and personnel which are or may become available to school districts for utilization in such programs of bilingual education.⁶²

LOUISIANA

Louisiana's legislation is unique among the various states in that it requires a foreign language to be taught in grade K-12. The only stipulation with regard to the establishment of a foreign language program is that twenty-five percent of the parents of children attending a particular school must petition the board to offer such courses. Although not specifically mentioned, it may be implied that providing bilingual education to language-minority students is permissible.

⁶²Kansas, Senate, An Act Concerning Bilingual Education, Senate Bill No. 7, 1980, Sections 4,5,6,10, pp. 1-3.

Section 273

A. Commencing with the 1976-1977 school year, each parish school board and city school board in the state is hereby authorized to establish as a part of the general curriculum of instruction the teaching of a second language. The second language curriculum shall be so established as to include a program extending upward through all grades, commencing in the first grade and extending upwards to the twelfth grade, in a well articulated, sequential manner so as to afford all school children in the state the opportunity of attaining proficiency in a second language.

B. (1) If a parish or city school board does not establish a second language program by May 30, 1976, such a program shall be required upon presentation of a petition requesting the instruction of a particular second language. The petition shall be addressed and presented to the parish or city school board and shall request the instruction to be in a particular school. It shall contain the signatures of at least twenty-five percent of the heads of households of students attending a particular school within the jurisdiction of the parish or city school board. The superintendent of the parish or city schools shall determine the required number of signatures needed for each school and shall certify whether or not a petition contains the necessary number of signatures. Parents may petition to initiate second language programs in elementary schools, junior high schools, and senior high schools.

(2) Upon receiving a certified petition, the parish or city school board shall establish the teaching of the designated second language in said school as a part of the general curriculum of instruction. The instruction of the second language shall be developed to include the teaching of the language in each grade of said school in a well articulated and sequential manner so as to afford to the student the opportunity of attaining proficiency in the designated second language. Any student shall be exempted from the second language program upon request of the parent or guardian. The parent shall direct this request to the principal of the school or to the superintendent of the parish or city school system.

(3) Instructors in a second language would be regularly assigned certified teachers at the secondary level or certified second language specialist teachers in the elementary grades one through eight, itinerant in one or more schools, and/or foreign associate teachers selected and approved by the State Department of Education in cooperation with other appropriate state agencies. A second language specialist teacher with a full schedule of second language classes would not be counted in the pupil-teacher ratio in

the school of assignment, but would be counted as an additional teacher.

(4) The cost of implementing a second language program at the secondary level (junior and/or senior high schools) will be borne by the local school system. The cost of implementing second language programs in the elementary grades over and beyond the base salary of regularly assigned teachers will be paid from state funds appropriated as a part of the total education budget of the State Department of Education.

C. The State Board of Elementary and Secondary Education shall establish guidelines, regulations, and policies for the implementation of a comprehensive curriculum in a second language in a well articulated sequential manner in order to carry out the intent of this Section.⁶³

MAINE

Maine enacted legislation on bilingual education to cooperate with HEW efforts along that line. The specific legislation is as follows.

Chapter 5, §102

16. Bilingual education. The commissioner is empowered to cooperate with the United States Department of Health, Education and Welfare in carrying out the Bilingual Education Program Act and any other federal programs as may concern the improvement of educational programs designed to meet the educational needs of children in areas with non-English-speaking families.

Subject to the annual approval of the commissioner, the school committee or the school directors of any administrative unit having children from non-English-speaking families may provide programs involving bilingual education techniques designed to provide children with educational experiences to enhance their learning. Bilingual instructors shall be subject to section 59 requiring certification of teachers by the State Board of Education, in both course content and language of instruction. Certified bilingual instructors shall not be required for the provision of transitional instruction at any grade level. "Transitional

⁶³Louisiana, Statutes Annotated, Revised, Title 17, Section 273.

instruction" means instruction given to a non-English-speaking student for the purpose of enabling the student to be instructed in English within a reasonable length of time. Transitional instruction shall not be construed as including bilingual education programs, as defined in United States Code Annotated, Title 20, section 880b-1, which do not include students of limited English speaking ability.⁶⁴

MARYLAND

Maryland has legislated compensatory education for school districts in the state. Compensatory programs to address students' needs whether caused by community environments, language, cultural, or economic factors are to be established in school districts. The specific legislation is as follows.

§ 8-101. Definitions

(a) In general.--In this subtitle the following words have the meanings indicated.

(b) Disadvantaged child.--"Disadvantaged child" means a child who:

- (1) Because of environmental conditions, is not achieving at a level that is scholastically up to his potential abilities;
- (2) Has to compensate for his inability to profit from the normal educational program;
- (3) Is 3 years old or older and under 19 and has not graduated from high school;
- (4) Has the potential to complete successfully a regular educational program leading to graduation from high school; and
- (5) Because of home and community environment, is subject to language, cultural, and economic disadvantages that make his completion of the regular program leading to graduation unlikely without special efforts by school authorities to provide stimulation to his potential in addition to the efforts involved in providing the regular educational programs.

⁶⁴Maine, Statutes, Revised, Title 20, Chapter 5, Section 102, Subsection 16.

(c) Program of compensatory education. -- "Program of compensatory education" means a program adopted by a county board for any of the grades pre-kindergarten through 12 that:

- (1) Is in the form required by this subtitle;
 - (2) Supplements the regular educational programs of the county board;
 - (3) Includes a plan for the identification of disadvantaged children; and
 - (4) Has the purpose of providing stimulation of the intellectual abilities of disadvantaged children.
- (An. Code 1957, art. 77 § 106A; 1978, ch. 22 § 2.)

§ 8-102. Establishment of programs of compensatory education

To the extent that funds are provided in the State budget or are available from other sources, the State Board may establish programs of compensatory education of the following types:

- (1) New or modified teacher training curricula to incorporate instruction in methods and techniques:
 - (i) Developed by competent authorities; and
 - (ii) Designed to enable teachers to identify and teach disadvantaged children effectively;
- (2) Research and consultative projects undertaken to assist State agencies and the county boards in carrying out their responsibilities under this subtitle; and
- (3) Evaluation, demonstration and distribution of findings that are related to programs of compensatory education independently or in cooperation with any public or private agency or organization that engages in research and development designed to overcome disadvantaged. (An. Code 1957, art. 77, § 106B; 1978, ch. 22, § 3.)

§ 8-107. Child may participate in other programs

A child who participates in a program of compensatory education under this subtitle also may participate in any other potentially beneficial program that is offered in the public schools or otherwise. (An. Code 1957, art. 77, § 106A; 1978, ch. 22 § 2.)⁶⁵

⁶⁵Maryland, Annotated Code, Title 8, Sections 8-101-102, 8-107.

MINNESOTA

Minnesota's legislation, while permissive in nature, is quite comprehensive. At this time, the bilingual education programs established as a result of this legislation are experimental in nature. The state board of education is to evaluate all programs to locate exemplary models that could be implemented throughout the state.

Section 2

126.32 Declaration of policy. Pursuant to the policy and law of the state to provide equal and meaningful educational opportunity to every individual, it is the purpose of sections 126.31 to 126.42 to provide for the establishment of not fewer than three pilot transitional bilingual educational programs.⁶⁶

Outlined in the legislation are the specific requirements of the pilot programs permitted to be established in school districts.

Section 5

126.35 Bilingual education programs. Subdivision 1. Instruction described. Bilingual education programs are programs of instruction enrolling children of limited English speaking ability in elementary and secondary schools in which:

(a) There is instruction given in and study to both English and the primary language of the children of limited English speaking ability, in all courses or subjects of study, to the extent necessary to allow the children to progress effectively through the educational system and to attain the basic skills so that they will be able to perform ordinary classwork successfully in English.

Subd. 3. Notice of enrollment; content, rights of parents. When a pilot program is established pursuant to sections 126.31 to 126.42 of this act, every school age child of limited English speaking ability whose primary language is the non-English language which is the medium of instruction in the pilot program and who resides in a school district participating in a pilot program and not enrolled in an existing private school system shall be eligible to enroll and to participate in any program in transitional bilingual education, established under

⁶⁶Minnesota, Statutes Annotated, Chapter 306, Section 2.126.32.

Laws 1977, chapter 306 for the classification to which he belongs by the school district, for a period of three years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur. Consistent with the provisions of subdivision 2 nothing herein shall be construed to limit a school district's authority to enroll limited English speaking children, whose primary language is a non-English language other than the non-English language which is the medium of the instruction in the pilot program, in a program of bilingual education.⁶⁷

NEW HAMPSHIRE

New Hampshire permits local school boards to operate bilingual programs with the approval of the state board of education.

189:19 - English Required

In the instruction of children in all schools, including private schools, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music, and drawing, the English language shall be used exclusively, both for the purposes of instruction therein and for purposes of general administration. Educational programs in the field of bilingual education shall be permitted under the provisions of this section with the approval of the state board of education and the local school district.⁶⁸

NEW MEXICO

Surprisingly, New Mexico with its large population of Hispanics does not mandate bilingual education. Instead, the state legislature has enacted legislation that is permissive toward the language of instruction. The legislation is cited below.

⁶⁷Ibid., Section 5.126.35.

⁶⁸New Hampshire, Revised Statutes Annotated, Title XV, Section 189:19.

77-23-1. SHORT TITLE

This act may be cited as the "Bilingual Multi-Cultural Education Act".

77-23-2. DEFINITIONS

As used in the Bilingual Multi-Cultural Education Act:

- A. "program" means a program of education by which students learn through two languages to understand and participate in the cultures of their environment;
- B. "chief" means chief of public school finance;
- C. "culturally and linguistically different" are those persons who are of different cultural background than the majority culture of the state and whose native tongue is of a language other than the language of the majority culture within the state;
- D. "department" means the state department of education;
- E. "district" means a local school district; and
- F. "school board" means a local school board.

77-23-3. PURPOSE

- A. The purpose of the Bilingual Multi-Cultural Education Act is to insure equal education opportunities for students in New Mexico.
- B. Cognitive and affective development of the students in New Mexico is encouraged by:
 - (1) utilizing the cultural and linguistic backgrounds of the students in the curriculum;
 - (2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and
 - (3) teaching students to appreciate the value and beauty of different languages and cultures.

77-23-4. STATE BOARD AND DEPARTMENT -- POWERS -- DUTIES

- A. The state board shall issue guidelines for the development and implementation of programs.
- B. The department shall administer and enforce the provisions of the Bilingual Multi-Cultural Education Act.
- C. The department shall assist school boards in developing and evaluating programs.
- D. In the development, implementation and administration of this program, the state board and the department shall give preference to New Mexico residents when hiring personnel.

77-23-5. PROGRAM PLAN AND EVALUATION

A. The school board may prepare and submit to the department, the state superintendent of public instruction or his representative and the chief a program plan in accordance with guidelines issued by the state board.

B. At regular intervals, the school board, the department, and a parent advisory committee from the district shall review the goals and priorities of the plan and make appropriate recommendations to the state board.

C. Programs shall be located in the regular public schools of the district. Involvement of students in any programs shall not have the effect of segregating students by ethnic group, color or national origin.

77-23-6. BILINGUAL INSTRUCTION PROGRAMS -- ELIGIBILITY FOR STATE FINANCIAL SUPPORT

A. To be eligible for state financial support, each program must:

(1) provide for the educational needs of linguistically and culturally different students, including native American children, and other students who may wish to participate, in grades K through six, with priority to be given to programs in grades K through three, in any public school or between a combination of public schools in a district;

(2) fund programs for culturally and linguistically different students in the state in grades K through three for which there is an identifiable need to improve the language capabilities of these students before funding programs at higher grade levels;

(3) use two languages as mediums of instruction for any part or all of the curriculum of the grade level or levels within the program;

(4) use teachers who have specialized in elementary education and who have received special training in bilingual education conducted through the use of two languages; and

(5) emphasize the history and cultures associated with the students' mother tongue.

B. Each program must meet each requirement of Subsection A of this section and be approved by the department, the state superintendent of public instruction or his representative and the chief to be eligible for state financial support.

77-23-7. REPEALED⁶⁹

⁶⁹New Mexico, Statutes, Chapter 77, Article 23, Sections 77-23-1 - 77-23-7.

NEW YORK

New York has a substantial population of language-minority students. Through permissive legislation, local school districts may provide instruction bilingually. Special funding is available to school districts that establish bilingual education programs.

§ 3204. Instruction required

1. Place of instruction. A minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere. The requirements of this section shall apply to such a minor, irrespective of the place of instruction.

2. Quality and language of instruction; textbooks. Instruction may be given only by a competent teacher. In the teaching of the subjects of instruction prescribed by this section, English shall be the language of instruction, and textbooks used shall be written in English, except that for a period of three years, which period may be extended by the commissioner with respect to individual pupils, upon application therefore by the appropriate school authorities, to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth, ancestry or otherwise, experience difficulty in reading and understanding English, may, in the discretion of the board of education, board of trustees or trustee, be instructed in all subjects in their native language and in English. Instructions given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

Bilingual Programs; Appropriations; Regulations

Sections 1 and 2 of L. 1973, c. 720, eff. July 1, 1973, provided:

"Section 1. The sum of one million five hundred thousand dollars (\$1,500,000), or so much thereof as may be necessary, is hereby appropriated to the education department out of any moneys in the state treasury in the general funds to the credit of the local assistance fund not otherwise appropriated for its expenses, including personal service, maintenance and operation for programs in transitional bilingual education in recognition of the educational needs of children of limited English-speaking ability.

"Section 2. The commissioner of education shall promulgate rules and regulations for the development, implementation, operation and financing of such programs subject to approval of the director of the budget."⁷⁰

OHIO

Ohio has special teacher certification in bilingual education. Implicit in this legislation is the right of teachers to practice their profession.

Section 3319.22

Teachers' certificates of state-wide validity shall be issued pursuant to sections 3319.22 to 3319.31 of the Revised Code, or in accordance with standards and rules authorized by law. The grades of certificates shall be designated as "temporary certificates," "one year vocational certificates," "provisional certificates," "professional certificates," and "permanent certificates." Each of such grades of certificates may be issued in each or any of the following types:
 . . . (o) bilingual multicultural, valid for teaching in bilingual multicultural programs in any subject or grade for which the certificate holder is otherwise certificated.⁷¹

OREGON

Oregon, in 1979, began the implementation of special legislation which permitted school districts to operate bilingual education programs to meet the needs of linguistically different children.

SECTION 4. Academic development and proficiency in the English language by the children of the state are encouraged by the use of bilingual education. In order to provide bilingual education for linguistically different

⁷⁰New York, Consolidated Laws, Annotated, Article 65, Sections 3204.

⁷¹Ohio, Revised Code, Annotated, Title 33, Section 3319.22.

children, the district school board of any school district in which there are children under 18 years of age who require bilingual education:

(1) May submit an annual projected activities and cost statement to the Superintendent of Public Instruction for a program of bilingual education for the district's linguistically different children. The proposed district program shall include provisions for providing bilingual education and related services and be designed to meet the unique needs of all resident linguistically different children.

(2) When the board considers a contract to be economically feasible and in the interests of the learning opportunities of eligible children, may contract for bilingual education for such children with another school district or an education service district if:

(a) The district school boards jointly agree to provide bilingual education.

(b) The school districts within the education service district approve the contract by a resolution adopted in the manner provided in subsection (2) of ORS 334.175.

(c) Any school district within the education service district contracts with the education service district in the manner provided in subsection (3) of ORS 334.175 for such bilingual education.⁷²

The preparation of bilingual education teachers by institutions of higher education was addressed by the legislation.

SECTION 10. The Superintendent of Public Instruction, in cooperation with the State Board of Higher Education, may establish in the state institutions of higher learning approved by the Teacher Standards and Practice Commission for the preparation of teachers, centers which will assist in the preparation of bilingual education teachers and which will provide consultant, evaluative and instructional services in education to school districts and to linguistically different children. Funds appropriated for education of linguistically different children may be used to help defray costs of such centers.⁷³

Special funding is available to local districts implementing bilingual education programs.

⁷²Oregon, Revised Statutes, Chapter 343, Section 4.

⁷³Ibid., Section 10.

SECTION 11. Reimbursement to all districts for operation and administration of district bilingual education programs approved by the Superintendent of Public Instruction under sections 2 to 17 of this 1979 Act shall be made subject to the following provisions.⁷⁴

Advisory councils are to be established.

SECTION 15. (1) The Superintendent of Public Instruction shall appoint a State Advisory Council for Linguistically Different Children which shall consist of 12 members.

SECTION 16. The advisory council shall make recommendations to the Superintendent of Public Instruction concerning guidelines for the development and implementation of bilingual education programs and any other subject relating to linguistically different children.

SECTION 17. (1) Every school district, combination of districts or education service district that operates or plans to operate a program of bilingual education under sections 2 to 17 of this 1979 Act shall appoint one or more parent advisory committees.⁷⁵

PENNSYLVANIA

Special provisions are made in Pennsylvania's legislation permitting the state board of education to authorize the establishment and operations of bilingual education programs in local school districts.

Section 1511. Subject of Instruction; Flag Code.

In every elementary public and private school, established and maintained in this Commonwealth, the following subjects shall be taught in the English language and from English texts: English, including spelling, reading, and writing; arithmetic; geography; the history of the United States and Pennsylvania; civics, including loyalty

⁷⁴Ibid., Section 11.

⁷⁵Ibid., Sections 15-17.

to the State and National Government; safety education; and the humane treatment of birds and animals; health, including physical education, and physiology; music; and art. Other subjects shall be taught in the public elementary schools and also in the public high schools and may be prescribed by the standards of the State Board of Education. All such subjects, except foreign languages, shall be taught in the English language and from English texts: Provided, however, that, at the discretion of the Superintendent of Public Instruction, the teaching of subjects in a language other than English may be permitted as part of a sequence in foreign language study or as part of a bilingual education program if the teaching personnel are properly certified in the subject fields. . . .⁷⁶

SOUTH DAKOTA

Interpretation of South Dakota's legislation permits bilingual education as long as it leads toward mastery in the English language.

Section 13-33-11.

Instruction in any school shall be such that it promotes a mastery of the English language in oral and written communication.⁷⁷

UTAH

Utah's permissive legislation and special funding encourage school districts to implement bilingual education programs where needed.

53-7-18. State contribution toward basic program--Minimum basic levy of school district--Contributions for programs in experiment and development in-service training activities, textbooks and supplies, laboratory school at Utah State University, elementary music, gifted and talented students, responsible parenthood, bilingual education, reduction in pupil-teacher ratio, insurance and former handicapped students. . . . The state's contribution of \$499,500 for bilingual education programs shall be allocated to each school district for programs for pupils

⁷⁶Pennsylvania, Statutes Annotated, Title 24, Section 1511.

⁷⁷South Dakota, Compiled Laws Annotated, Title 13, Section 13-33-11.

with bilingual needs based upon the number of pupils with bilingual needs in the district claiming entitlement bears to the total number of such pupils in all districts.⁷⁸

WASHINGTON

The final state to be considered under the category of permissive legislation is Washington. Washington's legislation is such that school districts are encouraged to implement bilingual education programs to meet the needs of language-minority children.

28A.05.015

All students in the common schools of the state of Washington shall be taught in the English language; provided, that nothing in this section shall preclude the teaching of students in a language other than English when such instruction will aid the educational advancement of the students.⁷⁹

States With Prohibitory Legislation Toward Bilingual Education Programs

Relatively few states have legislative enactments that remain prohibitory to the use of any language other than English. At this time, seven states fall within this category. Following is the exact language of each of the states' statutes or constitutional provisions.

ALABAMA

Chapter 28. Section 18-28-1

The terms "private school," "denominational school," and "parochial school," as used in this chapter, shall mean

⁷⁸Utah, Code Annotated, Title 53, Section 53-7-18.

⁷⁹Washington, Revised Code Annotated, Title 28A, Section 28A,05.015.

and only include such schools as hold a certificate issued by the state superintendent of education, showing that such school conforms to the following requirements: . . . (3) The English language shall be used in giving instruction. . . (School Code 1927, § 302, Code 1940, T, § 299)⁸⁰

ARKANSAS

Section 80-1605

The basic language of instruction in the common school branches in all the schools of the State, public and private, shall be the English language only. It shall be the duty of the Commissioner of Education, county superintendent (school supervisor) and city superintendent to see that the provisions of this section are carried out.⁸¹

DELAWARE

Chapter 1, § 122

(b) The Board shall prescribe rules and regulations:

(5) Determining the minimum courses of study for all public elementary schools and all public high schools of the State, including provisions that all elementary school subjects be taught in the English language in all schools in the State . . .⁸²

NEBRASKA

The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language and the common school branches shall be taught in said language in public, private, denominational and parochial schools.⁸³

⁸⁰Alabama, Code, Title 16, Chapter 28, Section 18-28-1.

⁸¹Delaware, Code Annotated, Title 14, § 122.

⁸²Arkansas, Statutes Annotated, Title 80, Sec. 80-1605.

⁸³Nebraska, Constitution, Article I, Section 27.

NORTH CAROLINA

Subchapter X, Article 24

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed.⁸⁴

OKLAHOMA

Section 11-102.

"Instruction given in the several branches of learning in the public schools shall be conducted in the English language except as is necessary for the teaching of foreign languages."⁸⁵

WEST VIRGINIA

18-2-7.

The basic language of instruction in the common school branches in all schools, public, private, and parochial, shall be the English language only.⁸⁶

States Without Constitutional or Statutory
Provisions for Bilingual Education

The final category of states are those with neither a constitutional or statutory provision regarding bilingual education. These

⁸⁴North Carolina, General Statutes, Chapter 115, Subchapter X, Article 24.

⁸⁵Oklahoma, Statutes Annotated, Title 70, Sec. 11.

⁸⁶West Virginia, Code, Chapter 18, Section 18-2-7.

states are: Georgia, Hawaii, Kentucky, Mississippi, Missouri, Montana, Nevada, North Dakota, South Carolina, Tennessee, Vermont, Virginia, and Wyoming.