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A study of the compliance review of the NEP/LEP program at Pomona High School

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A STUDY OF THE COMPLIANCE REVIEW OF THE NEP/LEP PROGRAM AT POMONA HIGH SCHOOL

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ABSTRACT

The ineffectiveness of California public schools in eliminating the language barriers denies language minority students equal access to a meaningful education as required by state and federal law (Castaneda v. Pickard, 1981) (Keyes v. School District No. 1, 1983). This prompted the State Department of Education to develop and adopt a compliance monitoring review process to insure program compliance and quality educational approaches in meeting the special educational needs of NEP/LEP students. The state's action was instrumental in securing the district's and Pomona High School's administration support of a compliance review of the NEP/LEP program at the school using the state's adopted process and instrument.

Success for the NEP/LEP students, especially at the high school level, guided the writer's efforts in accomplishing this project. Hopefully, the findings and recommendations will be of value to Pomona High School's and the district's administration for program compliance and in providing meaningful and effective programs for NEP/LEP students.

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INTRODUCTION

To comprehend the importance of equal educational opportunity, one must envision the future and arrive at the realization that without equality the future looks extremely oppressive. To be precise, there is no other public institution like school that has such a great and direct impact in determining one's future. A student's educational success or failure, will, to a large degree, dictate his or her expectations for the future. Will the student aspire to postsecondary education, gainful employment, or will he or she be relegated to a life of depravation? The legal basis for equality of opportunity as it applies to public education was declared in the landmark United States Supreme Court case of Brown v. Board of Education, 1954. The Supreme Court, in its majority opinion held:

> Today education is perhaps the most important function of state and local governments. Compulsory school attendence laws and the great expenditures both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life it he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[1]

Finally in its monumental decision, the United States Supreme Court declared that racial discrimination was a violation of the guarantees and provisions of the United States Constitution. At the same time, the court also emphasized the importance of education in achieving success in American society.

In ideal, equality of opportunity has existed since the writing of the United States Constitution. In legal principle, it was declared and mandated by the United States Supreme Court in 1954. However, the realization of this fundamental right, so important to success in American society, has been consistently denied to minority children, especially to children of Spanish speaking origin that were eventually labeled language minority children. Study after study has indicated that American schools have failed students from language minority groups. The studies have pointed out:

> Compelled to attend school along with their English speaking peers, non-English speaking students are then effectively excluded from the educational processes by educational methods which presuppose an ability to understand and speak English.[2]

Again following the persistent efforts of angered and dismayed parents supported by the Civil Rights Movement, the United States Supreme Court was asked to intervene on behalf of the children. The public school system was being challenged for not providing special instruction for language minority children who were not benefiting from the mainstream educational program. Finally, the United States Supreme Court was asked to decide the issue of functional exclusion versus the rights of language minority students, who claimed systematic denial to a meaningful and effective education because of lack of remedial English or special instruction in the public schools. In 1974, the landmark case of Lau v. Nichols was decided in favor of the language minority children. The Court declared equality of opportunity was the right of all children. This included language minority children of limited or non-English speak-

ing ability whose claim was affirmed.

Considering the tragic neglect of the language minority students and the importance of equality of opportunity in providing these children with a meaningful and fulfilling education, the purpose of this project is a compliance review of Pomona High School's NEP/LEP (Non-English Speaking/ Limited English Speaking) program. In conducting the program review, the writer will be using the recently adopted California State Department of Education Coordinated Compliance Review Instrument. The instrument was developed and adopted in early 1988, to assure compliance with state and federal regulations for providing equality of opportunity to language minority children in relation to the educational programs provided to them. In assessing the needs of language minority children today, it would be useful to analyze and compare their educational experiences from a historical and legal perspective.

Ideally, the goal for language students has been English and academic proficiency in preparation for social and economic success in American society. Realistically, there are few existing school districts in California achieving this goal. In conducting the program review with the state's instrument steps, procedures, and guidelings, it is anticipated that the information gathered would be used to assist the district and Pomona High School staff in providing each NEP/LEP student with an effective and efficient instructional program.

A HISTORICAL PERSPECTIVE: THE SCOPE OF THE PROBLEM

ORIGINS OF THE PROBLEM

To understand the magnitude of the problem that language minority students have endured over the years in the public school system, an examination of their repressive past and tragic present is necessary.

The beginning of the problem can be traced back to the early 1500's, when persons of Spanish speaking origin began to settle in Mexico and the southwest area of America, a century before the first English settlement of Jamestown was estabhished in 1607. During this early period Mexico and the southwestern territory were ruled by Spain until 1821, when Mexico and the southwest area won its independence from Spain.

Then, in 1845, the young nation of Mexico suffered a severe set back over the seccession of Texas from Mexico. The Mexican American War with the United States ensued and Mexico lost. With the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848, Mexico surrendered Texas and the southwest territory (which today incorporates the states of Arizona, California, New Mexico, Utah, Nevada, and parts of Colorado) to the United States. For the Spanish speaking citizens that decided to stay in what they still considered their homeland, the United States guaranteed full citizenship rights and privileges. Their property, language, culture, and religion was also protected by the treaty (McWilliams, 1968).

CAUSES OF THE PROBLEM

About 75,000 persons of Spanish speaking origin decided to stay and

obtain American citizenship. By 1930, the group who stayed would be joined by more than 100,000 Spanish speaking persons from Mexico. The causes of this massive exodus from Mexico were the Mexican Civil War and the United States involvement in World War I, with the latter leaving a large void in industrial and agricultural labor that eventually would be filled with Mexican labor which was convenient and cheap.

With the large increase in the Spanish speaking population, there was an intensification of prejudice and discrimination by the dominant Anglo American society. Despite treaty guarantees, the Mexican Americans and Mexicans were subjected to intolerable indignities and injustices. This is evidenced in Wayne Moquin's work, "A Documentary History of the Mexican American", published in 1971. Moquin states:

> As the only minority, apart from the Indians, ever acquired by conquest, the Mexican Americans have been subjected to economic, social, and political discrimination, as well as a great deal of violence at the hands of their Anglo Conquerors. During the period from 1865 to 1920, there were more lynchings of Mexican Americans in the southwest. But the worst violence has been the unrelenting discrimination against the cultural heritage--the language and customs--of the Mexican Americans, coupled with the economic exploitation of the entire group. Property rights were guaranteed, but not protected, by either the federal or state governments. Equal protection under law has consistently been a mockery in the Mexican American communities.[3]

THE PROBLEM: INEQUALITY OF OPPORTUNITY

If the tragic condition for the Spanish speaking population in the southwestern area of the United States was going to improve, education was the key. Even though they were not able to be involved in the education of their children, parents of language minority children knew the

worth of an education for success in American society. They had, and continue to have, hopes and aspirations of a better life for their children. So firm was their belief in the importance of an education, they totally entrusted their children to the teachers and school system.

> ...For example, the Ramirez, Taylor, and Peterson (1970) study "Mexican American Cultural Membership and Adjustment to School" revealed that 76.9% of Mexican Americans felt it was "good for parents to put pressure on their children to get as much education as possible." A similar study by Hymer in Los Angeles revealed that 78.9% of Mexican Americans felt "it was their duty to keep their children in school every day." The Hymer study was done in 1924![4]

Wanting a better life for their children, parents of language minority children sent their children to school faithfully, not knowing that the majority of school officials and teachers, whose job it was to motivate and educate their children, held a strong belief that these children were educationally and socially inferior. Instead, these children were identified as low achievers with likited human potential by the very same institution that was to better the life of their children--the public school system. Failure for the language minority child in school and society was certain. The plight of these children is clearly stated in the well known California Lindsay report:

> ...These children (Mexican Americans) start school with a decided handicap, fall behind their classmates in the first grade, and each passing year only serves to reinforce their feelings of failure and frustration. Is it any wonder that as soon as they are 16, or can pass for 16, they begin dropping out of school?[5]

GUARANTEED EDUCATIONAL FAILURE

The consequences of the institutional dehumanization, which made language minority students feel sub-human and socially unacceptable, combined with academic retardation were, and continue to be, devastating to the Spanish speaking student and population. Spanish speaking students were relegated to mentally retarded classes and separated from the superior white student. Conditioned to a low self-esteem and low aspirations, they have suffered from a drop-out rate twice the national average since the early 1900's, to the present. Within the American scheme of public education, the Spanish speaking student was being guaranteed socioeconomic failure in American society.

Society and the schools operated with the concept that if they ignored the cultural and linguistic disabilities of the Spanish speaking child and continued to test and classify them by Anglo standards, the problem would go away. Instead, the methods and physical segregation that were inflicted on them produced emotional and psychological barriers that would not disappear in a lifetime. The tragic state of the Spanish speaking student was exposed in the National Education Association's report, "The Invisible Minority". The report concluded:

> The harm done the Mexican American child linguistically is paralleled--perhaps even exceeded--by the harm done to him as a person. In telling him that he must not speak his native language, we are saying to him by implication that Spanish and the culture which it represents are of no worth. there fore, (it follows again) this particular child is of no worth. It should come as no surprise to us, then, that he develops a negative self-concept--an inferiority complex. If he is no good,

how can he succeed? And if he can't succeed, why try?[6]

A MATTER OF PUBLIC RECORD

Histories and studies can easily be documented indicating that a problem of inequality of opportunity has existed for the Spanish speaking student. However, the clearcut indicators that a problem existed were conveniently and unconscionably ignored by school officials and teachers throughout the southwest. Rather than deal with the educational problem of the language minority student, school officials and teachers separated themselves from it. They provided separate, but far from equal, schools for the Spanish speaking students on the grounds that they could not learn because of their language problem. Little effort was made to teach them English well enough to intergrate them to the main stream public schools.

Once established the segregated schools throughout the southwest were rationalized and defended by the experts and concerned citizenry. A well known expert and strong supporter of the segregated system of education, Dr. Roy L. Garis, of Vanderbilt University, addressed the members of congress in 1930, on the issue of Mexican immigration and naturalization. Considered an authority on eugenics, Dr. Garis stated:

> Their minds run to nothing higher than animal functions--eat, sleep, and sexual debauchery. In every huddle of Mexican shacks one meets the same idleness, hordes of hungry dogs, and filthy children with faces plastered with flies, disease, lice, human filth, stench, promiscuous fornication, bastardy, lounging, apathetic peons and lazy squaws, beans and dried chili, liquor, general

> squalor, and envy and hatred of the gringo. These people sleep by day and prowl by night like coyotes, stealing anything they can get their hands on, no matter how useless to them it may be. Nothing left outside is safe unless padlocked or chained down. Yet there are Americans clamoring for more of this human swine to be brought over from Mexico.[7]

In pursuit of recognition and acceptance from the experts like Dr. Garis, aspiring scholars wrote thesis which were heavily biased with false assumptions about the Spanish speaking population. What ensued was:

> ...A mountainous collection of masters' thesis "proved" conclusively that Spanish speaking children were "retarded" because, on the basis of various so-called intelligence tests, they did not measure up to the intellectual calibre of Anglo-American students.[8]

Society was not without its bellwethers in the rationalizing of the unjust treatment of the Spanish speaking population. Societal sentiments were eloquently rationalized by a successful and responsible California farmer who stated:

> If they were miserable or unhappy, I would say, "All right Mr. Educator, do your damndest." But the Mexicans are a happy people, happier than we are; they don't want responsibility, they just want to float along, sing songs, make cigarettes. ...By not compelling Mexicans to go to school, we haven't deprived them of anything, neither earning power or happiness. By compelling them to go, we merely increase their tastes for things they can't acquire, that they haven't the intellect, instinct, nor energy to acquire.[9]

Ironically, the most damaging support in the unequal treatment of the Spanish speaking student was that of school board members throughout the southwest. As elected officials, board members were usually representa-

tive of their constituencies exploitative and discriminatory treatment of the Spanish speaking population (McWilliams, 1968). Entrusted with providing the best possible education for all children, the typical board member's demeanor toward the Spanish speaking student was expressed when an honorable California board member charged:

> The Mexicans are an inferior race, and we mustn't expect them to move up the scale in less than three or four generations.[10]

In Texas, separate but equal was the only way in dealing with the Spanish speaking student and population. Their subjugation was clearly evidenced in the following statement:

> Educating the Mexican is educating him away from his job. He learns English and wants to be a boss. He doesn't want to grub. ...Somebody has to transplant onions. It's a bad task. What would we do if 50% of the Mexican pupils showed up? It would take more teachers and school houses. We would not have enough lumber for school houses, nor enough teachers in Texas, and who wants that?[11]

The tragic situation in Texas up until the late 1940's, was expressed by educator and author George I. Sanchez, who wrote:

> ...some school systems segregated Mexican children throughout the twelve grades of the public school. This extension has served to blind school people, from those in highest authority to those at the classroom level, to the fact that they have used language handicap and bilingualism to justify racial discrimination and their failure to do the kind of teaching job with these children that the American school has done with hundreds of thousands of other children who were similarly situated.[12]

THE PROBLEM DISREGARDED

The evidence that a problem existed for language minority children

has been apparent for many years. As early as 1930, it was revealed in a report done by the U.A. Commission on Civil Rights ("A Better Chance to Learn: Bilingual Bicultural Education", 1975) that Mexican American children were meeting with poor academic achievement and a high dropout rate in comparison to the white and black student. In fact, most Mexican American children never progressed beyond the third grade. It was also pointed out in the Commission's report that only 50% of the school aged Mexican American children attended school, while the percentage of white children was 95%. In most cases, the Mexican American children were segregated from the white children. Texas school officials and educators addressed this dismal situation by pointing out the causes as lack of English knowledge, low socioeconomic status, and inaccurate measurement instruments. However, little or nothing was done to resolve this disaster, a solution was of no consequence to them.

In California, during the 1940's, the routine and accepted practice was to segregate Mexican American children from the first through sixth and sometimes, depending on the district, through the twelfth grade (McWilliams, 1968). It was also common knowledge that school authorities and teachers considered Mexican American students inferior (Wagner and Haug, 1971). The repressive no Spanish language rule was well documented and enforced to the point where the Mexican American students were afraid and ashamed to speak Spanish. So common and accepted was the practice of segregating Mexican American children during this period that a superintendent of an Orange County District wrote his thesis in support of seg-

regated schools for the inferior Mexican American student. The superintendent wrote that segregated schools were necessary:

> ...on the ground of "social differences" between the two groups; the higher percentage of "undesirable" behavior patterns: among Mexican American students; and the "lower moral standards" to be found in the Mexican group.[13]

In addition, the superintendent testified in California's precedent-setting Westminister case on school segregation. In his "expert" testimony, he stated:

> Mexican children were "dirty", that they had lice and impetigo, that their hands, face, neck, and ears were often unwashed, and that generally speaking, they were "inferior" to the other students in point of personal hygiene.[14]

In the less populated states of Arizona, Colorado, and New Mexico, the situation for language minority children was just as severe as that of Texas and California but on a smaller scale. Documentation indicates that the Spanish speaking children were segregated, socially belittled, and then disparaged for their inability to learn. Again, the problem was not attributed to the public educational system, but instead to the inferiority of the language minority children.

PERFUNCTORY SOLUTIONS

The lack of concern for solutions to this tragic problem was prevalent among school officials and educators. It seemed as though the language minority children were invisible to the educational system. However, the few inadequate attempts in addressing the problem were certainly indicative of the blatant disregard for the reprehensible condition

of these students by school officials, teachers, and society.

Efforts during this period raised questions relative to reducing the language handicap of these children. Consideration was given to instruction in reading in the native language to improve learning for these students. There were a few dedicated and bold educators who sought redress to the problem. Recommendations were developed by educator conferences to eliminate the problem. Two such efforts were:

> ...In the 1940's, one researcher called for action to be taken by the Texas Department of Education, teacher training institutions, and schools to better meet the needs of Spanish speaking students. In 1946, the First Regional Conference on the Education of the Spanish speaking people in the southwest was held in Austin, Texas. Recommendations included an end to segregated schools for Spanish speaking children, improved teacher training, and more efficiency in teaching English.[15]

The impact of the two preceeding efforts to eliminate the oppressive educational conditions common to language minority children was minimal, if not futile. This was clearly evidenced by the fact that twenty more years of neglect passed for the Spanish speaking children before another effort was attempted. It wasn't until 1964, that the Conference on the Education of the Spanish Speaking Children and Youth was held in Orange, California. Recommendations of the Orange County Conference were similar to those developed eighteen years earlier in Texas at the Regional Conference of the Education of the Spanish Speaking People in the southwest.

Following the 1964 conference, programs were planned and implemented to remedy this continuing tragedy. Even though well intended, as revealed

in the U.S. Civil Rights Commission's report ("A Better Chance to Learn: Bilingual Bicultural Education", 1975), the programs met with very little success. The programs were plagued with inadequate planning which, in turn, resulted in inadequate programs. Here it was almost thirty years after the Regional Conference of Texas and the needs and rights of the Spanish speaking children were still being denied. This grim denial of rights and needs was documented in a five year study by the U.S. Commission on Civil Rights on Mexican American education from April, 1971, through February, 1974.

> ...It revealed that problems of segregation, teacher training, and language difficulty are still severe of Mexican American students in five southwestern states. In addition, the Commission's State Advisory Committees have examined the problems Puerto Ricans, Native Americans and Asian Americans. All these studies document the continuing failure of public schools to provide language children with a meaningful education.[16]

THE PROBLEM CONTINUES

If the problem of equality of opportunity was critical from the 1920's, today it's at the crisis level. According to estimated census figures, the problem of providing meaningful education to language minority children, especially the Spanish speaking children, has more than doubled since the 1970's. In the National Census of 1970, an estimated 5.2 million limited English speaking students were in the public schools in the five southwestern states of Arizona, California, Colorado, New Mexico, and Texas. For the 1980 census, the number was estimated at over 10

million. Texas and California were the leaders with an estimated 2.5 million Spanish speaking students in each school system.

As indicated by the preceding figures, not only has this population doubled, but so has the problem of meeting the constitutional right of providing these students with meaningful and deserving education. Yet, as in the past, school officials and educators press on in their educational impropriety. They continue to classify these students as low-achievers, attendance problems, and potential dropouts. This is especially critical to Spanish speaking children who are the largest and fastest growing language minority in the United States today (Apodaca, 1985). The risk of failure for this group is extremely high. The drop-out rate for this group is twice that of the national average at 40% or higher. On the socioeconomic scale they oscillate at or below the poverty level.

It is widely recognized that knowledge of English increases the rate of students' success in completing high school. It is also accepted that a meaningful and effective education is directly related to college entrance or gainful employment. It is obvious that if language minority children are going to be successful in our society, they first must succeed in school. School officials and educators can no longer ignore the problem. It is their responsibility to provide equal educational opportunity and a quality to all children.

A LEGAL PERSPECTIVE: FROM BROWN I TO LAU V. NICHOLS TO THE 80's

BROWN I TO THE CIVIL RIGHTS ACT OF 1964

After the Brown proclamation was delivered by the court, the Civil Rights Movement gained national momentum. Central to this movement was the elimination of segregated public schools. Since the Brown decision, there have been many federal court orders issued requiring school officials to desegregate the school system. However, the desegregation process has been a slow and costly one due to appeals by districts wanting to prolong their segregated school systems as long as legally possible. Even though the U.S. Supreme Court rejected every appeal in upholding the Brown decision, districts have continued to use legal ploys to put off intergration as long as possible.

Recognizing the fact that desegregation of school systems was not progressing with all due deliberate speed, the federal government decided to act. The result was the enactment of the Civil Rights Act of 1964. This greatly increased the power of the federal government to eliminate racial discrimination in public schools. Title VI of the Act states:

> No person in the United States shall on the ground of race, color, or national, be excluded from participation in, be denied the benefits of, or be subject to discrimination, under any program or activity receiving federal financial assistance.[17]

LANGUAGE DISCRIMINATION CHARGED

Supported by the Brown decision, court orders, and strengthened by

the Civil Rights Act of 1964, the Civil Rights Movement focused its efforts on the elimination of segregated schools and unequal treatment for blacks. With its increased power, the United States Office of Civil Rights in the 1960's, as called upon by the law and Civil Rights Movement, made significant strides in the elimination of racial discrimination in the public schools.

In the late 1960's, the Office of Civil Rights was still concentrating its efforts on the elimination of the nation's segregated schools when parents of limited and non-English speaking students charged that school officials and schools were not meeting the educational needs of their children. The parents sued and threatened lawsuits against the school officials and school systems of the southwest that were using language discrimination practices to separate the Spanish speaking student from the Anglo student.

THE UNITED STATES OFFICE OF CIVIL RIGHTS 1970 MEMORANDUM

Supported and encouraged by the Civil Rights Movement, the parents of the Spanish speaking students persevered in their efforts to eliminate unequal treatment and discrimination against their children by the public school system. On May 25, 1970, they met with some success when the United States Office of Civil Rights acted on their behalf when the director, J. Stanley Pottinger, issued his momentous memorandum regarding the problem. The memorandum reminded school districts having more than five

percent of national origin minority students of their obligations under the Civil Rights Act of 1964. Title VI of the Act prohibited in the school setting: "discrimination on the basis of race, color, or national origin in federally assisted programs or activities."[18] The legal significance of the memorandum would not be realized until 1974, when it was affirmed by the United States Supreme Court in the landmark decision of Lau vs. Nichols.

The United States Office of Civil Rights was experiencing a dilatorious and arduous success in the elimination of racially segregated schools when, in 1970, it had to focus on another type of discrimination in the public schools of the southwest. Prompted by parents, the Civil Rights Movement, and the memorandum, the United States Office of Civil Rights began its focus on equality of opportunity for Spanish speaking students. Termed language minority, these students spoke little or no English. They were usually identified of Spanish or Mexican heritage.

The plight of these Spanish speaking students was an exposure to the typical discrimination of the public school system that has been imposed on all minorities in general. They were subjected to segregated education, low teacher expectations, cultural incompatability, and a dominant culture orientated curricula. However, the language minority children suffered from another form of discrimination. It was a discrimination that affected them adversely for lack of proficiency in the language of instruction of the public school system.

The suppression of their language and culture by the public schools has resulted in low self-esteem and lack of confidence in the Spanish speaking students. They approached school with a fear and anxiety that guaranteed failure. The condition of the damaged self-image for the Spanish speaking student was reported in 1963, by Daniel Schreiber, the director of NEA's Project Dropout. He emphasized the importance of a positive self-image in student achievement by pointing out:

> "The youngster," he said, "whose school experience begins and ends in failure--and those of minority children often do--having discovered that he is good at nothing, stands a strong chance of becoming good for nothing. And far too many young lives, with all the potentials and real talents and capabilities they embody, are being wasted and crushed. The challenge is to redeem them, through inventiveness and energy and dedication."[19]

While the memorandum revived the Civil Rights Act of 1964, it also empowered the United States Office of Civil Rights as an arm of the Executive branch of government, to cut off federal monies to educational systems that violated the Act. With its new found authority and new area of enforcement, the Office of Civil Rights was prepared to take action to eliminate the problem. Again, the task was slow and arduous as districts reacted with indifference and contempt to the Office of Civil Rights' efforts. For example, in Beeville, Texas, as recorded by education historian Colman B. Stein: "The Superintendent's only response was to redesignate the vocational track as "career education."[20]

THE DEFIANT SOUTHWEST

Although Texas was at the forefront in defiance to the Office of Civil Rights actions to correct the unlawful conditions for the Spanish speaking students, the other southwestern states of Arizona, California, Colorado, and New Mexico are not to be exonerated. In these states it was also common practice to use legal and illegal ploys to stave off Office of Civil Rights actions. It was not uncommon to find Spanish speaking students (Mexican and Mexican American) classified as Caucasian to eliminate segregated schools. This allowed for an integregated school of blacks and Spanish speaking students. The classification of Spanish speaking students as mentally retarded, a condition that required separation from regular school facilities, was also widespread. Ironically, the population of school facilities serving the mentally retarded was largely Spanish speaking students. The most popular and direct ploy used throughout the southwest was the separate but equal facilities school system. Tragically, the use of the above tactics was often racially motivated and in use although legally and morally wrong up until the late 1970's.

LAU VS. NICHOLS: A MOCKERY OF PUBLIC EDUCATION

During the period of the 1970's, there was a great deal of legal activity regarding the inequality of opportunity for language minority children in the public schools. Finally, the condemnation of the public

schools' vain, yet harmful effort in educating the language minority children was declared by the United States Supreme Court in 1974, in the landmark decision of Lau vs. Nichols. In its unanimous decision, the Supreme Court held:

> ...that equality of treatment was not realized merely by providing students with the same facilities, textbooks, teachers, and curriculum, and that requiring children to acquire English skills on their own before they could hope to make any progress in school made "a mockery of public education". The court emphasized that "Basic English skills are at the very core of what these public schools teach," and, therefore, "Students who do not understand English are effectively foreclosed from meaningful education."[21]

The Supreme Court decision was not based on constitutional guarantees, and it found no need to invoke the Equal Protection Clause of the 14th amendment. Instead, the Court found sufficient legal basis for its decision in Title VI of the Civil Rights Act of 1964. Title VI, whose intent was set forth by the director of the Office of Civil Rights in what has become known as the Pottinger Memorandum of 1970, required schools receiving federal monies to provide special assistance to language minority students who had a language deficiency that prevented them from obtaining a meaningful education.

THE MAGNITUDE OF THE PROBLEM

While the Lau vs. Nichols decision ordered state and local school boards of education to apply its expertise to the problem and eliminate the wrongful condition, the Court stopped short of requiring any specific remedies expecting the experts to rise to the task at hand. Instead, those who would persist in the functional exclusion of the language

minority from mainstream education seized the opportunity to continue in their political, legal, and racial chicanery to do otherwise. Solutions or steps rendered by those responsible to rectify the problem would fall short of meeting minimal requirements of Title VI, Section 601 of the Civil Rights Act of 1964 were common practive throughout the southwest.

The magnitude of the problem stunned the United States Office of Civil Rights when, in 1975, its investigators visited 224 districts with large populations of language minority children for compliance reviews. According to David S. Tatel, who later became the director of the Office of Civil Rights, "Most...utterly failed to meet their responsibilities."[22]

THE BATTLE CONTINUES INTO THE 80's

The polarization between those called for solutions to the problem and those who rendered them has widened. Again, solutions and steps to rectify the problem have failed miserably. Most solutions were politically and racially motivated and provided a legal continuance of the problem. It is easily discerned that school boards and school officials at the state and local level have considered social and political factors over sound educational policy for the effective teaching of language minority children. The social and political solutions have also served to perpetuate the stereotype of the language minority children and the denial of their federal right to equality of opportunity.

Ignored has been the discipline where a solution may lie, the language process and the teaching of language. The discipline of languages has been so socially and politically distorted that only a return to

common sense and the fundamentals of pedagogy can guide us back to the problem that the pages of history and research literature have clearly defined. The reasoned accommodation of the rhetoric and polarization that have distorted the rights and educational issues of the language minority children have been the major obstacle in the way of an equitable solution. Again, prompted by what many consider an unconscionalbe situation, many have continued with civil rights litigation alleging that equality of opportunity has been denied to their children.

THE COURTS PROVIDE RELIEF

The U.S. District Court in Colorado, in 1984, approved a consent decree for an out of court settlement in providing for the special needs of language minority children. This action concluded ten years of litigation in the case of Keys vs.School District No. 1 as advocates sought and obtained a consent decree for a strong language rights program in the Denver schools. The consent decree provided for steps to correct the problem that reflects current pedagogical and social science expertise to the legal obligation of the Denver school districts. For the advocates of language minority rights and most experts, the consent decree was a major triumph for resolving the problem sensibly and professionally.

In California a consent decree was agreed upon in 1985, in the case of Comite De Padres De Familia, et al., Plaintiffs vs. Bill Honig, et al., Defendants after six years of litigation. In this case, with an eye to Keyes, the Superior Court of the State of California in and for the

County of Sacramento ordered as to the first course of action the agreed upon decree providing for effective implementation, monitoring, and upgrading of programs provided for the language minority student.

A significant result of the Court decree was the adoption, in 1987, of the Coordinated Compliance Review Instrument to assure equality of opportunity for language minority children in California schools. The eighteen-page comprehensive instrument will be used by the California State Department of Education to guarantee the federal rights of NEP/LEP students pertaining to educational equality of opportunity. As in the Keyes case, this action is also underscored as a major victory in dealing with the problem professionally, as well as legally. It is the same instrument that I will be using in the review of the NEP/LEP program at Pomona High School.

A COORDINATED COMPLIANCE REVIEW OF POMONA HIGH SCHOOL'S NEP/LEP PROGRAM

PURPOSE AND GOAL OF REVIEW

Information gathered in reviewing program data will be shared and discussed with site staff and administration not only for the purpose of program compliance, but also for providing the most meaningful and effective program possible for Pomona High's NEP/LEP students. In addition, all information and recommendations generated by the review will be made available to district administration for appropriate action. It is anticipated that any action taken is representative of the review instrument's stated program goal:

> To develop fluency in English in each student, as efficiently as possible, promote students' positive self-concepts, promote cross-cultural understanding, and provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language.[22]

Even though the review instrument and the monitoring review process were declared an official court order in February, 1985, the State Department of Education had begun a three-year pilot program of the instrument and process in the spring of 1984 that proved successful. Considering the success of the pilot program, the State Department of Education officially adopted the Coordinated Compliance Monitoring Review Process in December of 1987. The State Department of Education with court approval then developed the 1988-89 Coordinated Compliance Monitory Review Manual in order to facilitate the three-year establishment period for the new process. If the court feels that the process is in place and functioning after the three-year period, responsibility for maintenance and improvement of the process is transferred to both parties involved in the court case, the State Department of Education and parents. The court will be open to any alleged violation of its court order that established and approved the review instrument and monitoring process. School districts found in violation of the process will be subject to court action or sanctions.

PURPOSE AND GOALS OF THE COORDINATED COMPLIANCE MONITORING REVIEW PROCESS

As developed and then adopted, the primary purpose of the Coordinated Compliance Monitoring Review process was and is the assurance of

program in compliance with state law, federal law, and guidelines for meeting the special needs of language minority students. In achieving this purpose, the process requires effective and meaningful programs in providing educational equality of opportunity for language minority children (The California Education Rights Alliance, 1988).

The established goals adopted in the monitoring review process by the State Department of Education for accomplishing its purpose were and continue to be (1988-89 Coordinated Compliance Monitoring Review Manual, 1988):

- An effective and expedient monitoring review process.
- An increase in the responsibility of local districts in the monitoring and review process.
- An assurance that specially funded programs provide access to the core curriculum to students with special needs.
- The providing of technical and management assistance in resolving and preventing violations.

THE COORDINATED COMPLIANCE REVIEW INSTRUMENT

As adopted (1988-89 Coordinated Compliance Monitoring Review Manual, 1988), the review instrument is eighteen pages in length and is organized into four parts. At the beginning of the compliance instrument are stated the program goals for the program under review. The program goals describe the intent of the program and also give the review process or direction.

Following the program goals are listed the key strategy statements.

These statements support the program goal and reflect key policy requirements of the program under review as prescribed by state and federal law. These statements give order to the items for review.

Next in order are the compliance items for review which are organized under the key strategy statements. These items summarize the state and federal requirements for program compliance review.

The compliance tests are the final part in the organization of the compliance instrument. These tests are the specific legal requirements and precise regulatory processes vital to program compliance. Each test for compliance is identified as a primary or secondary test. In some instances, the compliance item is the compliance test. The primary compliance tests are central to the law and civil rights guarantees for the program under review. Secondary compliance tests are applied only when the primary compliance tests are not met. All primary compliance tests must be fulfilled for program compliance. Currently the compliance instrument consists of ten primary tests and seven secondary tests for program review of the NEP/LEP programs offered by local districts or school sites.

A COORDINATED COMPLIANCE REVIEW OF POMONA HIGH SCHOOL'S NEP/LEP PROGRAM

THE PROCESS OF REVIEW

The state's review instrument focuses on key process and procedural areas for compliance in program delivery. Affected local school districts,

otherwise called local educational agencies by the instrument will be hald accountable in the following key areas for program compliance and deportment:

- LEAs identify, assess, and report each eligible LEP student.
- LEAs provide programs of instruction for each identified LEP student which comply with state law and federal legal requirements.
- LEAs allocate adequate resources from local, state, and other funds to serve LEP students.
- LEAs change a LEP student's designation from LEP to FEP on the basis of objective criteria.
- LEAs involve parents of students in the program designed for their children.[23]

As indicated in the introduction, the writer's emphasis will be on school site level review. However, district level review will be taken into account when appropriate. In conducting the school site review, the writer will examine the following review items for determining program compliance (The California Educational Rights Alliance [CERA] 1988).

1a. Primary

There is a Home Language Survey (HLS) on file for each student.

1b. Primary

Students with a language other than English on the HLS or

no HLS on file are tested for English oral proficiency within 30 days of initial enrollment.

1c. Primary

Each NEP/LEP student has been assessed for primary language proficiency in understanding, speaking, reading, and writing within 90 days of initial enrollment for the purpose of designating students who need academic instruction through the primary language.

1d. Secondary

The site annual census report (R-30-LC) of all NEP/LEP students has been properly completed and submitted to the State Department of Education.

2. Primary

Each NEP/LEP student is provided with a program of instruction in English language development in order to develop English proficiency effectively and as swiftly as possible.

3. Primary

To provide equality of academic achievement and prevention of academic deficiency to each NEP/LEP student whose diagnosis makes it necessary for academic instruction in the student's primary language is provided with such instruction.

4. Primary

For equality of opportunity and to prevent academic setbacks, each NEP/LEP student whose diagnosis makes it necessary is provided with specially designed academic instruction in English.

5. Secondary

Each NEP/LEP student is made aware of the importance of his or her positive self-concept and the importance of multi-cultural understanding through the instructional program.

6. Primary

An adequate number of qualified teachers is assigned to deliver required English development instruction to each NEP/LEP student. If a shortage of qualified teachers exists, what or is there a process established to eliminate shortages?

7. Primary

When required, the number of qualified teachers to provide academic instruction in the primary language is sufficient. Is there a process in place to eliminate shortages of qualified teachers as the need arises?

8. Primary

An inservice program is provided by the district to qualify present and future teachers in the bilingual/cross cultural skills necessary to teach NEP/LEP students.

9. Secondary

Adequate basic and supplemental resources are provided to

each NEP/LEP student with bilingual learning opportunities in an appropriate program to maintain academic achievement. Such resources are not contingent upon receiving state and federal categorical monies.

10. Primary

A student's redesignation from LEP to FEP is determined on objective criteria which establish that the student has overcome the English language barriers which denied him/her equality of opportunity to the school's mainstream program, as well as eliminating any substantive academic deficit(s).

11. Secondary

The parents of NEP/LEP students are informed of their child's English and primary language assessment results.

12. Secondary

A procedure exists to inform parents that student participation in the program is voluntary.

13. Secondary

A Bilingual Advisory Committee (BAC) is established by the district office when fifty-one or more NEP/LEP students are enrolled district-wide.

14. Secondary

A Site Bilingual Advisory Committee (SAC) is established when twenty-one or more NEP/LEP students are enrolled at the site level.

THE SCHOOL SITE REVIEW

At the school site level, state review of compliance items is accomplished by minimally sampling student program data of two students at each grade level. In conducting the program review of Pomona High School's NEP/LEP program, the writer will exceed the two-student minimum and will randomly sample program data of ten students at each grade level. In doing so, the writer will endeavor to achieve a more comprehensive site specific review. Such a site review, it is anticipated, will result in a more meaningful and valid review to the interest of Pomona High School's program serving the non and limited English speaking students.

In conducting the Coordinated Compliance Review of Pomona High School's NEP/LEP program, the student's permanent file and program folder will be the primary sources of data and information. Other relevant data and information as required by the review instrument will be derived from school program records, district program records, program administrators interviews, program staff interviews, parent interviews, student interviews, and classroom observations.

Information gathered in reviewing program data will be shared and discussed with site staff and administration not only for the purpose of program compliance, but also for providing the most meaningful and effective program possible for Pomona High's NEP/LEP students. In addition, all information and recommendations generated by the review will be made available to district administration for appropriate action. It is anticipated that any action taken is representative of the review

instrument's stated program goal:

> To develop fluency in English in each student, as efficiently as possible, promote students' positive self-concepts, promote cross-cultural understanding, and provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language.[22]

THE REVIEW: NONCOMPLIANCE FINDINGS

In conducting the program compliance review with the state's Coordinated Compliance Review Instrument on the state program for students of limited English proficiency, the writer will develop compliance items found to be out of compliance. The developed findings will reflect the state law, federal law, and program guidelines stated in the review instrument for determination of program compliance. The review process for each finding will also be explained.

1a. In reviewing the ten student program folders and ten student permanent files at each of four grade levels, it was discovered that sixteen, or forty percent, of the sample students had no record of a Home Language Survey to determine student's primary language. It was also found that two students had no program folder.

b. The review of student program records does not indicate that each student with a language other than English on the Home Language Survey or with no Home Language Survey on file as having been tested for English oral language proficiency; and when appropriate for English reading and writing

proficiency, within 30 days of initial school enrollment. Student records indicated that 60 percent or 24 of the students were not tested within the 30-day period from initial enrollment as required. Further review revealed that English language assessment of reading and writing with use of a state authorized test was not reflected in any of the student records.

c. The review of student permanent files and program folders pointed out that primary language assessment for NEP/LEP students in their primary language for udnerstanding, speaking, reading, and writing is not done, nor is it considered requiring academic instruction through the primary language. The comprehensive assessment of primary language skills was not reflected in any of the student records reviewed.

d. Review of the R-30 Language Census Report seems to reflect an accurate count of total students in the program. However, the school language classification list is unclear on students who score fluent (F) or mastery (M) on the IPTII English Oral Language Proficiency Test. Thest students are listed Fluent English Proficient (FEP) on the school language classification list and listed as Limited English Proficient (LEP) on the district's R-30 Language Census Report since they have not passed the district's writing requirements.

2. Upon examination of student files and program staff interviews, it was determined that each NEP/LEP student is not consistently provided with an individually planned and well coordinated English program (IEP) and content area instruction that promotes individual language acquisition in an effective and efficient manner. It was also determined from student program files, program records, and district records that an effective monitoring component of student and group progress was not in place. The district lacks a simplified Individual Education Plan form (IEP) to facilitate the collection of data for monitoring purposes.
3. Review of student program folders, program records, and staff interviews revealed that effective assessment of primary language proficiency and academic instruction in the primary language for students who may require it in order to have equality of opportunity and to provide equal access to the academic content area is not in place. The district lacks a consistent primary language assessment instrument for all appropriate grade levesl, especially at the secondary level.
4. Upon reviewing of student program folders, program records and staff interviews, it was determined that there are not adequate qualified teachers to provide the instructional approach to make academic instruction in English understandable

and effective to limited English proficient students in the content areas. At the time of the program review, six teachers were involved in Pomona High's NEP/LEP program servicing 181 students. Two of the teachers were fully qualified and four were on waiver--not qualified.

5. Upon interviewing students, parents, program staff and reviewing district goals and objectives, it was evident that no specific program or process is in place that provides for the recognition and enrichment of the multiethnic enrollment of the district.

6. In reviewing the staffing information of qualified teachers assigned to provide English language development instruction to meet the special language needs of 181 limited English speaking students, a significant shortage of qualified teachers was revealed in meeting the needs of Hispanic NEP/LEP students. At the time of the review there was one qualified teacher and one instructional aide to meet the needs of 25 Vietnamese NEP/LEP students, and one qualified teacher and three instructional aides to meet the needs for 159 Hispanic NEP/LEP students.

7. In reviewing the staffing of qualified teachers assigned to provide academic content instruction through the students' primary language, it was found that no qualified staff are

assigned in this area. Consequently, primary language instruction in the content area is not in place for NEP/LEP students requiring it.

8. Upon review of school program records, district records, and staff interviews, it was concluded that the limited inservice programs at the school and district level are inadequate to qualify present and future program staff in the bilingual and cross-cultural teaching skills essential in serving each NEP/LEP student.

9. Review of program records, school records, district records, and staff interviews indicated that the program staff, supplemental staff, and materials are inadequate for meeting the legal requirements for servicing the various linguistic needs of NEP/LEP students in the content areas for insuring equality of opportunity and achievement.

10. Review of program records and school records revealed that the process for informing prospective NEP/LEP parents of the voluntary nature of the program must be clear in the parent notification letter.

11. After attending the district's June, 1987, Bilingual Advisory Committee meeting and interviewing two of the seven members in attendance, it was determined that the district level bilingual Advisory Committee is inadequate. Its membership

is not representative of the required composition of said committee and its functioning is passive in nature. In June's meeting members expressed arguments and concern over their paper role.

12. The review of program records, staff interviews, and parent member interviews revealed that the school site Bilingual Advisory Committee is also inadequate. Its membership is not representative of teh required composition of said committee and its functioning is passive in nature. Interviewed parent members expressed that the committee functioned as an informative body rather than a participatory advisement body to the school or district.

RECOMMENDATIONS FOR PROGRAM COMPLIANCE

In the development of recommendations for rectifying non-compliance findings, the writer will rely on the compliance review instrument's inherent state law, federal law, and program guidelines for program compliance and improvement. Consideration will be given to current research in linguistics and language instruction when appropriate in making compliance recommendations for an effective and meaningful program for meeting the special language needs of Pomona High School's limited English speaking students.

1a. The district superintendent and appropriate staff administration must insure that school principlas and

appropriate line administration of affected school sites are informed and advised of their legal responsibility to state and federal requirements for the proper identification of all students with a primary language other than English. As authorized by the State Department of Education, the Home Language Survey (HLS) is to be completed during each student's initial enrollment. If unable to complete the HLS after several indisputable efforts, the school site administration must insure that official documentation to that effect is on file. This applies specifically to students transferred from the junior high where the student's permanent file may be incomplete. The responsibility for distribution, collection, and filing of the HLS along with all other important program data and information should ultimately rest with the program's administrator.

1b. & 1c. The site and district must satisfy its legal obligation of identifying, assessing, and placing NEP/LEP students in an expedient and comprehensive manner within 30 days of each student's initial enrollment. District responsibility for the proper assessment and placement of NEP/LEP students must be accomplished through a comprehensive and effectively coordinated assessment and placement program in English and the primary language. Such a program, especially at the secondary level, requires comprehensive assessment in speaking,

understanding, reading and writing in both languages. It is highly recommended that district and school administration consider use of the following State Department of Education approved testing instruments for providing a comprehensive NEP/LEP assessment program to assure effective assessment and placement of limited English speaking students. Please note that these assessment instruments are available through the California State Department of Education Bilingual Education Office. (The California Education Rights Alliance [CERA]: BINL [K-12], BSM I, II [K-12], LAS I, II Forms A, B and short form [K-12]).

It is also recommended, especially at the high school level, that guidance counselors take an active role in the assessment and placement process of NEP/LEP students. Counselors serving NEP/LEP students should possess the same special skills that qualified program teachers have with the exception of teaching skills.

1d. The school site in cooperation with the district office must keep and maintain clear and accurate site language classification list of NEP/LEP students in the program. Thoroughness and accuracy of the site language classification list must be clear in indicating fluent English speaking with a score of Fluent or Mastery on Idea Oral Language Proficiency Test II (IPT II) and who are not classified as Fluent English

Proficient (FEP) on the Language Census Report (R-30), because they have not fulfilled the district's writing requirements.

2. Each NEP/LEP student as required must be provided with language development lessons appropriate to his/her identified level of language proficiency. Program development for each student must reflect effective curriculum, materials, and teaching methodologies designed to advance NEP/LEP students proficiency in understanding, speaking, reading, and writing skills in the English language. Individual instruction should be a program priority considering the varying levels of ability of NEP/LEP students. Group processes should be used in support of individualized instruction.

A monitoring component relying on objective data and information for determination of student progress and program effectiveness needs to be established. The district needs to draw up a simplified Individualized Lesson Plan (ILP) in order to facilitate this process. These important individual student data and program data should be readily accessible and available for ongoing school, district, and state monitoring purposes. It is highly recommended for prompt and efficient access and retrieval that such information be programmed and updated into the district-wide computer system.

3. District level administration and especially the school principal must provide as required by law limited English

speaking students with special educational assistance to eliminate the language deficiencies that deny them equality of opportunity in the school's regular English instructional program. The special educational assistance provided must meet three criteria in assuring equality of opportunity for limited English speaking students (The California Education Rights Alliance [CERA]), 1988.

First, the special instruction must be sound in educational theory or principles. Secondly, the district must provide all the necessary qualified staff, resources, and support for the effective and efficient implementation of the special program. Finally, it must be determined within a reasonable time line if the special assistance is successful in removing the English language barriers and any academic retardation that would prevent NEP/LEP students from equal participation in the school's regular English program.

In meeting these three required program criteria, the district level administration and the school principal must go beyond the typical ESL or English as a Second Language approach. This approach concentrates at the same time on the immediate English language development skills and the academic subject area needs of the limited English speaking student. Idealistically, the approach presents high aspirations for meeting the special educational needs of teh NEP/LEP student, but realistically, its workableness is decreased due to the

conceptual drawback of learning the language of instruction, English, and the academic subject matter in English at the same time (A Better Chance to Learn: Bilingual-Bicultural Education, 1975). Experts in linguistics and the area of language acquisition point out the severity of this drawback in that it takes approximately two years to learn English oral proficiency and five to seven years to read and write well enough to function successfully in an academic English language classroom (Hakuta and Gould, 1987).

High school principals and district level administration must realize that the ESL approach is inadequate to meet the required special educational needs of NEP/LEP students. At the high school level the ESL drawback becomes critical due to the four-year time constraint and a more comprehensive and complicated English academic curriculum. It defies rationality and sound educational theory to believe that an ESL approach with a priority in English language development will also make understandable an academic subject curriculum in a language, English, that is yet not comprehensible to the student (Hakuta and Snow, 1986).

The popular use of the traditional ESL approach in the public school system has proven ineffective (Crawford, 1987), in eliminating the language and academic barriers that limit and deny NEP/LEP students the benefits of a quality education. For Hispanics, this is very critical, since they make

up the large majority of NEP/LEP students (Gold, 1986). The public school systems and their leadership who continue to offer an English only ESL approach are assuring limited English speaking students continued failure in the academic content area (Apodaca, 1985). Even though well intended, the use of the ESL approach was in fact guaranteeing failure for NEP/LEP students requiring primary language instruction.

In order to make a sincere and legitimate effort in providing for the required special language and academic needs of their NEP/LEP students, Pomona High School's administration must go beyond offering the traditional ESL approach. The school's principals must with strong district commitment and support take the proper action for assuring the offering of the most effective and theoretically sound approach for complete English language development and academic core curriculum adquisition to its NEP/LEP students. Such an approach based on the extensive review, (Hakuta & Snow, 1986; Hakuta & Gould, 1987), of current research in linguistics and language acquisition by private and government experts, calls for bilingual education approach.

The bilingual approach that for the last decade has withstood one of America's most vigorous and well organized anti-bilingual campaigns (Crawford, 1987) supported by American nonexperts and political zealots was found to be superior to

the more popular and widely used ESL approach in meeting the special language and academic needs of the NEP/LEP student. It is also significant to understand that the strong anti-bilingual movement that ran high on anti-American feelings and emotions was discredited and refuted (Crawford, 1987) by Reagan's administration panel of ten experts that was established to once and for all do away with bilingual education. The panel to the shock and dismay of the anti-bilingual forces released their findings in support of the effectiveness of bilingual education in meeting the special educational needs of NEP/LEP students.

It is evident that the ESL approach cannot fully satisfy the federal mandate of providing primary language instruction in the academic content area to prevent serious or permanent academic subject retardation. The ineffectiveness of the ESL approach over the past decade is apparent in the high retention and dropout rate among Hispanic NEP/LEP students with no relief in sight. At the current rate for the state of California by the year 2001 the number of NEP/LEP dropouts would be a staggering 1.5 million (Gould, 1986). This deplorable educational condition could result, if not remedied, in one of America's greatest educational disasters with serious social and economic consequences (Gould, 1986).

It has been approximately fifteen years since the United

States Supreme Court mandated (Lau v. Nichols, 1974) school systems and their leadership to apply their expertise in eliminating the language barriers and academic barriers denying limited English speaking students equal access to an effective and meaningful education. The apparent failure of the school systems became clear in the early 1980's when concerned parents and civil rights proponents sought relief again through the federal courts filed in Texas (Castaneda v. Pickard, 1981) and in Colorado (Keyes v. School District, 1984) for the educational rights of their limited English speaking students. In each case the court declared that the school systems were in violation of federal law in not providing a sound educational approach for overcoming the language and academic barriers that deny limited English speaking students equal access to an effective and meaningful education.

The court action of the lower federal courts did not follow the action taken by the U.S. Supreme Court in its 1974 Lau Decision of entrusting the school system and its leadership to make a good faith effort in solving the problem within a reasonable time. In carrying out their decisions the lower federal courts required all parties involved in the case to work together in developing a sound and workable solution within a set timeline. The agreed upon solution would have the final approval of the court in the form of a court decree making the solution a court order.

The parties in each federal case under the close supervision of the court agreed to similar solutions requiring a comprehensive process of program review, program compliance, and program monitoring for determining the lawfulness and effectiveness of instructional program provided for NEP/LEP students. Approved by each respective court, the solutions were declared court orders under each court's jurisdiction. In order to assure proper and timely implementation, each school system and its leadership would be subject to court sanctions for violation of its respective court approved solution. In their actions the lower federal courts of Texas and Colorado actively enforced the 1974 U.S. Supreme Court landmark decision of Lau v. Nichols that declared language discrimination a violation of federal law.

The reaffirming of the Lau decision by the lower courts also served notice to the nation's educational leaders and school districts serving limited English speaking students that it is an unlawful act to deny or neglect the special language and academic needs of these students. School districts and their leadership found guilty of such neglect or denial would be subject to court sanctions or penalties if the problem was not rectified within a court assigned timeline. Depending on the nature and degree of the violation, a school system would have a year or less to correct the problem.

It is fact that each court closely examined and took into consideration the dismal success of each school system in providing for the needs of their NEP/LEP students in establishing a rigid process of program review and compliance (Keyes v. School District, 1984). It should be clear to school systems and educational leaders that more noncompliance lawsuits will follow as concerned parents and civil rights groups (The California Education Rights Alliance (CERA) 1988) continue their effort to assure for the NEP/LEP students a quality education that is guaranteed to them under state and federal law.

In California this has and is taking place in the Superior Court of Sacramento County and in the United States District Court in the Northern District of California (The California Education Rights Alliance (CERA) 1988). With the exception of the partial settlement of the California Superior Court case filed against the California STate Department of Education, reference as to the decisions of these cases would be premature and inappropriate since the cases are still in litigation. The significance of the partial settlement of the Superior Court case was the establishment of a state court process of compliance review very similar to the federal court process established in the Castaneda and Keyes cases.

The California Superior Court in actively enforcing federal law (Lau v. Nichols, 1974) was holding the California State Department of Education and its leadership responsible

for the violation of the educational rights of NEP/LEP students. At the same time the Superior Court's action was a clear statement to all the state's school systems serving NEP/LEP students that they would be held accountable for denying them an equal educational opportunity as required by federal law (Lau v. Nichols, 1974). In fact the Compliance Review Instrument being used by the writer in the project is the partial settlement of the Superior Court's action.

The results based on the application of the Compliance Review Instrument and evaluation of current research indicates that Pomona High School's ESL program is inadequate in meeting the special language and educational needs of its NEP/LEP students (refer to Appendix A for text of instrument). It is evident that Pomona High School's leadership and the district must take immediate action in providing for the special educational needs of its NEP/LEP students. Based on recent linguistic and education research (James Crawford, 1987), the best approach is a bilingual education program. Such a program reflecting the recent court actions must have adequate financing, staffing, and monitoring to insure the success and meaningful bilingual educational approach Pomona High School's leadership and the district will be offering what has been denied in the past to NEP/LEP students--the completion of a meaningful education within their group.

4. The school administration must take immediate action to establish an effective English language assessment process for the efficient diagnosis and placement of limited English speaking students who may require academic instruction in English. In providing the English academic instruction to LEP students, site administration must make certain that the course content is not watered down. The academic curriculum must be made comprehensible to the Limited English student through the use of sound and proven educational approaches. Based on the current research in linguistics and language acquisition as covered in item three, the educational soundness and success of the bilingual education approach calls for its use in the delivery of English academic instruction to Pomona High School's limited English speaking students requiring such specialized instruction (Hakuta and Snow, 1986).

The importance of assigning an adequate number of qualified teachers and support staff to implement and deliver the specialized instruction cannot be overemphasized. It is imperative for site administration to make certain that all teachers and support staff who are to provide the specialized English academic instruction to be fully qualified. Every effort must be made to provide qualified bilingual teachers or teachers specially trained in sheltered English teaching techniques developed for non-native speakers of English.

The primary language of the LEP student must be utilized as required to make the instruction understandable. In either case, the bilingual instruction or sheltered English instruction lesson deportment and comprehensibility must be equal to that of the English only mainstream core curriculum.

5. As indicated by recent research, program and curriculum development cannot ignore the direct correlation between the positive self-concept and the motivation to learn (Lambert and Gardner, 1972). The site's carefully planned and implemented educational program for NEP/LEP students must take a strong position in the positive development of the students' self-concept and their ability of identifying with others for mutual acceptance. The site administration, program staff, instructional materials, and parents must cultivate in the NEP/LEP student a positive self-concept by recognizing and valuing the student's language and culture. The positive self-concept must be considered just as important as the acquisition of knowledge.

6. The great disparity between one qualified teacher and one instructional aide for approximately twenty-five Vietnamese NEP/LEP students and one qualified teacher/coordinator and three instructional aides for approximately one hundred and fifty-nine Hispanic NEP/LEP students is highly inequitable. The site administration must eliminate this disparity by developing and adopting a formula for generating logical

teacher to student ratios. The ideal formula of a one-to-twelve minimum and one-to-twenty maximum teacher to student ratio reflects current studies and Board of Education and Associated Pomona Teachers agreement (February 1, 1988 - January 31, 1991) of a maximum of twenty class size for remedial education, which should be inclusive of the special needs of NEP/LEP students. Such a formula would work in this manner; when twelve or more students are assessed as NEP/LEP in the same language and grade level, a classroom and qualified teacher will be required.

Future qualified teachers or teachers providing English language development instruction to NEP/LEP students must be certified by the Commission on Teacher Credentialing as qualified or determined by the district office as having the required teaching skills for meeting the special educational needs of NEP/LEP students. Teachers and aides designated by the district to teach NEP/LEP students must be assessed using objective criteria indicating they have the required skills to effectively meet the special needs of NEP/LEP students.

7. The school's administration must insure that the district complies to its legal responsibility of providing primary language to NEP/LEP students requiring it in order to prevent serious or permanent setbacks in the academic content areas. The district with site input, especially at the secondary level, must plan, adopt, and properly implement a

bilingual education program to remedy the denial of academic instruction in the primary language to NEP/LEP students.

It is also imperative that the program be fully staffed with qualified teachers. Teachers providing academic instruction in the primary language must have a bilingual teaching authorization from the Commission on Teacher Credentialing. The district can also assess teachers as having the required skills and language proficiency essential to teaching in the NEP/LEP student's primary language. It is recommended that this option be used only after all efforts to provide qualified bilingual teachers have been exhausted. It is also important to the success of the program that each qualified teacher be provided with a qualified bilingual paraprofessional.

The district level leadership must develop and adopt an ongoing inservice program that offers the required training to teachers assigned to provide special Engliah language development and primary language instruction in the academic content areas to NEP/LEP students. The inservice program must also account for the remedy and prevention of any teacher shortage in this special needs area.

8. Ultimately, it is the responsibility of the site administration to assure that all students are afforded the most effective and efficient educational program possible. As recommended in items three and seven, the quality of educational programs and teachers cannot be compromised if the special educa-

tional needs of NEP/LEP students are going to be served. However, an educational program is only as good as its support system. Central to the support system is an effective and efficient inservice mechanism that maintains, enhances, and overhauls the program as required (Gonzales, 1983). As important as this component is to the success of educational programs, it is often neglected and not in place. The site administration, NEP/LEP staff, and concerned parents must actively work with appropriate district administration to put into place an effective NEP/LEP inservice program. The ideal inservice program put into place must be cooperatively planned with active site input and must have strong district support. In selecting inservice topics or areas, current research and sstaff program concerns must be considered in providing NEP/LEP students with the most effective and efficient program possible (Gonzales, 1983). Inservice topics or areas that should be basic to an effective and efficient program are:

- Bilingual cross cultural teaching methodologies;
- Bilingual competency in the academic content area;
- English language development teaching methodologies;
- Identifying and meeting the special needs of NEP/LEP students;
- Individualized instructional techniques for NEP/LEP students;
- The positive self-concept and NEP.LEP students;

- Effective NEP/LEP parent involvement;
- Effective monitoring for increased program effectiveness and increased teacher competency.

An effective inservice program must meet the district, site and individual needs in qualifying present and future teachers in meeting the special educational needs of NEP/LEP students. The program should also remedy and prevent shortages of qualified teachers required to meet the needs of each NEP/LEP student.

9. The district administration must provide the appropriate and required primary language and English language resources necessary for making academic content area achievement possible for each NEP/LEP student. The special resources must support effective and efficient educational programs required by NEP/LEP students for learning the English language and academic course content at the same time.

At the high school level the learning of the English language and academic course content at the same time can become very difficult, if not impossible, for the NEP/LEP student with poorly developed language skills in his or her primary language and limited or no language skills in the English language (Freeman and Others, 1986). It is important that the school's principal, as the school's educational leader, be knowldegeable and sensitive to the critical situation faced by NEP/LEP high school students if the special educa-

tional needs of these students are to be effectively served.

As the site administrator and educational leader, the principal is responsible for the efficient management of funding sources, resources, and the implementation of the special programs designed to meet the special educational needs of each NEP/LEP student. In providing the special educational assistance to remove the language barriers faced by NEP/LEP students as required by law (Castaneda v. Pickard, 1981) (Keyes v. School District No. 1, Denver, 1983) the principal as the school's educational leader of the school must use sound and proven educational methods and strategies for the effective teaching of NEP/LEP students.

Based on current research and practice the principal and the district office have the following methods and strategies available for the effective teaching of NEP/LEP students (The California Education Rights Alliance (CERA), 1988):

- An effective and properly implemented bilingual program staffed with qualified teachers and aides.
- Enough material and audio visual resources in both the student's primary language and English to enable the NEP/LEP student to learn the teaching as well as the English proficient student.
- Qualifying regular classroom teachers assigned to NEP/LEP students in the skills necessary to meet their needs.

- Motivate and inservice the regular classroom teacher to learn the student's native language and culture.
- Provide specifically designed English or primary language programs to prevent NEP/LEP students from falling behind in the content area.
- Provide specific activities to develop the students' positive self-awareness.

A final and important note to district leadership and the site principal relative to funding. The district's obligations under state and federal law are not contingent in any way upon received state and federal funds. The district must meet its legal obligations to NEP/LEP students whether they receive funds exclusively for that purpose or not (The California Educational Rights Alliance (CERA), 1988).

12. The site principal must assure that the NEP/LEP program notification letter is available in English and in the student's primary language. A procedure must be in place assuring that all parents are advised of teh special programs required and available to their child. In situations where parents are unable to understand written communication the district must provide an oral communication (The California Educational Rights Alliance (CERA), 1988). The written and oral communication must be clear in advising parents of the benefits and voluntary nature of the programs. The school and district must maintain records indicating that parent

notifications were made.

13. The district must establish and maintain a functioning District Bilingual Advisory Committee that reflects the state's education code for membership composition. The committee will actively work in carrying out its responsibilities by developing and approving the following (The California Educational Rights Alliance (CERA), 1988):

- The district program goals and objectives for the education of NEP/LEP students.
- A district needs assessment of what is required for meeting the special educational needs of NEP/LEP students on a school by school basis.
- A district plan for compliance with state and federal legal requirements for programs for NEP/LEP students.
- A district plan for administration of the language census.
- A timeline for completion of all the above.

14. The school must have a functioning site Bilingual Advisory Committee that reflects state guidelines for membership. The site committee will actively meet in carrying out the following committee responsibilities (The California Educational Rights Alliance (CERA), 1988):

- Assist in school's needs assessment.
- Assist in developing of a school plan for meeting the educational needs of each NEP/LEP student.
- Assist in administering Home Language Survey (HLS).

- Development of plan for effective parent involvement.
- A timeline for completion of all the above.

STRENGTHS OF POMONA HIGH SCHOOL'S NEP/LEP PROGRAM

In accomplishing the Compliance Review Process and in developing the recommendations for state and federal law program compliance, the writer noted some very positive areas of Pomona High School's NEP/LEP program. These areas of program strengths as noted by the writer are the following:

1. A strong ESL program that focuses on the effective acquisition of English listening, reading, and writing skills.
2. The ESL program has been brought in line with the regular English curriculum. The three higher level classes of ESL are accepted for college entrance at the U.C. and Cal State systems.
3. The program's reclassification process for limited English speaking to fluent English proficiency is comprehensive and efficient in assuring student success in the mainstream curriculum. Student follow-up and action by ESL staff supports student success.
4. Although in its infancy, program curriculum development at the site and district level seem to be progressing in a positive direction. Recent curriculum development has focused on the development and implementation of educational programs to meet the special educational needs of the district's NEP/LEP population.
5. The sites and district are in the planning phases of a comprehensive staff development program that will insure that all future and current staff are qualified to meet the varied needs of the

NEP/LEP student population. The plan will also focus on eliminating the critical shortage of qualified staff required to meet the special needs of NEP/LEP students.

6. The NEP/LEP staff at Pomona High School are highly professional and dedicated to meeting the special needs of the NEP/LEP population they serve. Their dedication and eagerness in providing the best educational program possible under the most demanding conditions to these otherwise neglected students is exemplary. They are held in the highest esteem by their students and parents.

CONCLUSION

In completing the study and Compliance Review of Pomona High School's NEP/LEP program it became apparent to the writer that language minority children have, over the years, been systematically denied equality of opportunity in the public school system due to their language handicap and background.

It is to the success of these students especially at the secondary level and in particular Pomona High School's NEP/LEP population that the writer's efforts were directed in attempting the project. Hopefully, the findings and recommendations will be of some value to Pomona High School's and the district's administration in addressing program compliance for the site's and district's NEP/LEP program. Finally, the writer trusts that the project will contribute to Pomona High School's and the district's efforts in assuring effective and meaningful educational programs for NEP/LEP students.

APPENDIX A

Footnotes

[1]Brown v. Board of Education of Topeka, 347 U.S. 483, 493 (1954), cited by Martha M. McCarthy and Nelda H. Cambron, Public School Law: Teachers and Students Rights, (Boston: Allyn & Bacon, 1981), pp. 219-220.

[2]U.S. Commission on Civil Rights, A Better Chance to Learn: Bilingual Bicultural Education, (Washington, D.C.: Clearinghouse Publication No. 51, 1975), p. 142.

[3]Wayne Moquin et al., eds., A Documentary History of the Mexican American (New York: Frederick A. Praeger, Publishers, 1971), p. 185.

[4]Nathaniel N. Wagner, Ph.D., and Marsha J. Haug, B.S., Chicanos Social and Psychological Perspectives, (St. Louis: The C.V. Mosby Company, 1971), p. XVI.

[5]John H. Burma, Mexican Americans in the United States: A Reader, (Cambridge: Schenkman Publishing Co., Inc., 1970), pp. 107-108.

[6]John H. Burma, Mexican Americans in the United States: A Reader, (Cambridge: Schenkman Publishing Company, Inc., 1970), p. 112.

[7] U.S. Congress, House, Committee on Immigration and Naturalization, "Mexican Immigration: A Report by Roy I. Garis for the Information of the Members of Congress," Western Hemisphere Immigration, H.R. 8523, H.R. 8530, H.R. 8702, 71st Cong. 2d sess., 1930, p. 436, cited by Rodolfo Acuna, Occupied America: The Chicano's Struggle Toward Liberation, (New York: Harper & Row Publishers, 1972), p. 140.

[8]Carey McWilliams, North From Mexico: The Spanish Speaking People of the United States, (New York: Greenwood Press, Publishers, 1968), pp. 206-207.

[9]Paul Shuster Taylor, Mexican Labor in the United States: Imperial Valley, University of California Publication in Economics, Vol. 6, no. 1 (Berkeley: University of California Press, 1930): 78-79, cited by Rodolfo Acuna, Occupied America: The Chicano's Struggle Toward Liberation, (New York: Harper & Row Publishers, Inc., 1972), p. 142.

[10]Ibid.

[11]B. Schrieke, Alien Americans (New York: The Viking Press, 1936), cited by Nathaniel N. Wagner, Ph.D., and Marsha J. Haugh, B.S., Chicanos Social and Psychological Perspectives, (St. Louis: The C.V. Mosby Co., 1971), p. XVI.

[12]George I. Sanchez, "History, Culture, and Education," Library of Congress Catalog Card No.: 66-24919, cited by Julian Samora, La Raza: Forgotten Americans, (Indiana: University of Notre Dame Press, 1966), p. 16.

[13]Carey McWilliams, North From Mexico, (New York: Greenwood Press, 1968), p. 281.

[14]Ibid., p. 182.

[15]U.S. Commission on Civil Rights, A Better Chance to Learn: Bilingual Bicultural Education, (Washington, D.C.: Clearinghouse Publication No. 51, 1975), pp. 15-16.

[16]Ibid., pp. 16-17.

[17]Edgar L. Morphet, Roe L. Johns, and Theodore L. Reller, Educational

Organization and Administration: Concepts, Practices, and Issues, (New Jersey: Prentice Hall, 1982), p. 203.

[18]Martha M. McCarthy and Nelda H. Cambron, Public School Law: Teachers and Students Rights, (Boston: Allyn and Bacon, 1981), p. 12.

[19]John H. Burma, Mexican-Americans in the United States: A Reader, (Cambridge: Schenkman Publishing Company, 1970), p. 113.

[20]James Crawford, "Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks," Education Week, Vol. VI, No. 27, April 1, 1987, p. 23.

[21]414 U.S. 566. Section 601 of the Civil Rights Act of 1964, 42 U.S.C., cited by Martha M. McCarthy and Nelda H. Cambron, Public School Law: Teachers and Students Rights, (Boston: Allyn and Bacon, 1981), pp. 241-242.

[22]James Crawford, "Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks," Education Week, Vol. VI. No. 27, April 1, 1987, p. 24.

[23]California State Department of Education, Bilingual Education Office, Coordinated Compliance Review Instrument for Students of Limited English Proficiency, 1987, p. F-1.

COORDINATED COMPLIANCE REVIEW

INSTRUMENT

WORKING DRAFT

SECTION ON THE STATE PROGRAM

FOR

STUDENTS OF LIMITED ENGLISH PROFICIENCY

This section of the Coordinated Compliance Review (CCR) Instrument is being distributed by the Bilingual Education Office for orientation and training purposes only. The complete CCR Instrument is scheduled for distribution around December 1, 1987.

Questions regarding the section on the State Program for Students of Limited English Proficiency should be directed to the Bilingual Education Office at (916) 445-2872. Questions related to other sections of the instrument or other aspects of the CCR process may be directed to the Coordinated Compliance Review Units (Northern California: (916) 322-3776, Southern California (916) 322-3483).

BILINGUAL EDUCATION OFFICE

PROGRAM: State Program for Students of Limited English Proficiency

PROGRAM GOAL

To develop fluency in English in each student, as effectively and efficiently as possible, promote students' positive self-concepts, promote cross-cultural understanding, and provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language

KEY STRATEGIES

- LEAs identify, assess, and report each eligible LEP student.
- LEAs provide programs of instruction for each identified LEP student which comply with state law and federal legal requirements.
- LEAs allocate adequate resources from local, state, and other funds to serve LEP students.
- LEAs change a LEP student's designation from LEP to FEP on the basis of objective criteria.
- LEAs involve parents of students in the programs designed for their children.

Program: State Program for Students of Limited English Proficiency (LEP)

Program Goal: To develop fluency in English in each student as effectively and efficiently as possible, promote students' positive self-concepts, promote cross-cultural understanding, and provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language

Key Strategy: LEAs identify, assess, and report each eligible LEP student.

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
LEP.1 The district has properly identified, assessed, and reported all students who have a primary language other than English and who are of limited English proficiency (LEP).			
Primary tests **LEP.1a There is a Home Language Survey (HLS) on file for each student in the district, including migrant, special education, and continuation school enrollees.** **(EC 62002, Former EC 52164.1; CAC T5 4304)**	**Site** - **Take a sample of at least 2 LEP and 2 non-LEP students per grade level from at least 3 grade levels at the school and ask to see an HLS for each student.**	- **Each student has an HLS on file, with each state-authorized question answered and a parent's signature. If a parent's signature could not be obtained after reasonable efforts by the district, alternate documentation is on file. (See the next test if this is not true.)**	
LEP.1b Each student with a language other than English on the HLS or who does not have an HLS on file has been tested within 30 school days of initial enrollment on a state-authorized instrument of English oral language proficiency and, when appropriate, for English reading and writing proficiency. **(EC 62002, Former EC 52164.1; CAC T5 4304, 4305)** **NOTE: Testing is optional for students whose HLS includes a language other than English on the fourth question only.**	**District or Site** - **Review evidence of the language abilities and training of at least 3 assessors or 30 percent of the assessors, whichever is less.** - **Review district policies and procedures for the identification of LEP students.**	- **Tests are administered to LEP students by staff who are bilingual in English and the primary language of the students tested, unless the district has a currently approved waiver of this requirement on file.**	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
NOTE: State-authorized tests for 1987-88 are: - The BINL (K-12) - BSM I/II (K-12) - The IPT I/II (K-12) - The LAS I/II, Forms A and B and the short form (K-12) - The pre-LAS (ages 4-6 only) - The QSE (K-6 only). No other instruments may be used without a state-approved waiver. (EC 62002, Former EC 52164.1(c))	Site - Use the sample of LEP students in test LEP.1a and take a similar sample of fluent-English-proficient (FEP) students (not former LEP students): (1) Review their English oral language proficiency test results; (2) English reading and writing test results for students in grades 3-12 who scored fluent on the English oral language proficiency test; (3) the date when the tests were administered, the publisher's norms for the English oral language proficiency test; (4) and the district's norms for the English reading and writing tests.	- Each LEP student has a score of less than fluent according to publisher's norms on a state-authorized test of oral language proficiency (K-12), or a score of fluent on the English oral language proficiency test AND a score below the district-established standards on the district's English reading and writing assessments. These data were collected within 30 school days of enrollment. - Each FEP student has test results on file, collected within 30 school days of enrollment, indicating at least oral proficiency (K-2) and oral, reading, and writing proficiency (3-12). NOTE: Students scoring fluent on the oral/aural test in grades 3-12 must pass district-established reading and writing standards comparable to the proficiency of the majority of pupils in the district of the same age or grade whose primary language is English.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments

Key Strategy: *LEAs provide programs of instruction for each identified LEP student which comply with state law and federal legal requirements.*

Primary item **LEP.2 Each LEP student receives a program of instruction in English language development in order to develop proficiency in English as effectively and efficiently as possible.** (EC 62002, Former EC 52161; 20 U.S.C. Section 1703 (f); Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1011; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)	District - Review any existing district plans or policy statements related to English-language development instruction for LEP students. Site - Take a sample of at least 2 LEP students per grade level from at least 3 grade levels and review (1) documentation of lessons in English language development, (2) individual student progress in acquiring English language proficiency, and (3) lessons provided for the sampled students. - Review annual assessments or other group profiles of LEP student performance in English language development.	- LEP students participate in English language development lessons which are appropriate for their identified level of language proficiency. - English language development lessons reflect curriculum, materials, and approaches which are designed to promote LEP students' second language acquisition of listening, speaking, reading, and writing skills. - Individual LEP students sampled are making progress in acquiring English language proficiency. - There are group data, by age and time in the program, which indicate that LEP students are acquiring English language proficiency.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
LEP.1c The district has assessed each LEP student for primary language proficiency in understanding, speaking, reading, and writing within 90 calendar days of initial enrollment which has resulted in designating each student who requires academic instruction through the primary language. (EC 62002, Former EC 52161, 52164.1; 20 U.S.C. Section 1703(f) and CAC TS 4305)	District - Review documents related to identification, assessment, and designation of those LEP students who require academic instruction through the primary language. Site - Use the sample of LEP students in school 90 days or more in test LEP.1a and review a dated primary language assessment on file for each student who requires academic instruction through the primary language.	- The district documents contain criteria which are used to determine which LEP students are to be designated as requiring academic instruction through the primary language based on assessments in the primary language and in English. - Each LEP student in the sample has formal test results, (using parallel forms of the tests used to determine English proficiency, to the degree instruments are available or, at a minimum, informal diagnostic data) on file regarding the student's primary language proficiency. These data were collected within 90 calendar days of the student's enrollment. - Each LEP student in the sample has assessment information in English and the primary language which resulted in a designation of the extent to which the student requires academic instruction through the primary language.	
Secondary test **LEP.1d** The district has completed properly and submitted annual language census reports (R30-LC) which include all LEP and FEP students. (EC 62002, 62003, Former EC 52164.1, 52164.2, 52164.5; CAC TS 4304)	District or Site - Review current R30-LC reports for corrections and completion. - Review accuracy of LEP, FEP and EO counts. - Review language proficiency and academic assessments which are used for making LEP and FEP designations.	- The LEP and FEP data reports are based on appropriate oral language proficiency and academic assessments in English. The reports have accurate counts of LEP and FEP students.	

Compliance item/test	How to test for compliance	What to look for	Comments
Primary item **LEP.3 In order to provide equal opportunity for academic achievement and to prevent any substantial academic deficits, each LEP student, whose diagnosis makes academic instruction through the primary language necessary receives such instruction.** (EC 62002, Former EC 52161; 20 U.S.C. Section 1703 (f); Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1011; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)	**District** - Review any existing district plans or policy statements related to academic instruction in the primary language for LEP students. **Site** - Take a sample of LEP students whose diagnoses make academic instruction through the primary language necessary: at least 2 LEP students per grade level from at least 3 grade levels. Review (1) documentation of academic lessons conducted through the primary language; and (2) lessons conducted through the primary language for the sampled students. - Review a profile of the academic achievement of the sampled LEP students in lessons delivered through the primary language as shown in such measures as continua, teacher assessments, district tests, commercial tests, etc.	- Sampled LEP students are receiving academic instruction through the primary language. - Lessons reflect curriculum, materials, and approaches which are designed for LEP students - Content for primary language lessons is drawn from academic courses designed for FEP and EO students in the district. - For LEP students who require academic instruction through the primary language, there are group data by age and time in the program which indicate that students are learning the core curriculum.	

Compliance item/test	How to test for compliance	What to look for
Primary item **LEP.4 In order to provide equal opportunity for academic achievement and to prevent any substantive academic deficits, each LEP student whose diagnosis makes it necessary receives specially designed academic instruction in English.** **(EC 62002, Former EC 52161; 20 U.S.C. Section 1703 (f); Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1011; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)**	**District** - Review any existing district plans or policy statements related to specially designed academic instruction in English for LEP students. **Site** - Take a sample of LEP students whose diagnoses makes specially designed academic instruction in English necessary: at least 2 LEP students per grade level from at least 3 grade levels. Review (1) documentation of academic lessons conducted in English; and (2) lessons conducted in English for the sampled students. - Review a profile of the academic achievement of the sampled LEP students in lessons delivered in specially designed English as shown in such measures as continua, teacher assessments, district tests, commercial tests, etc.	- When academic instruction is provided in English to sampled LEP students, teachers use instructional methodology specially designed for non-native speakers of English in order to increase the comprehensibility of the lessons (e.g., sheltered English approaches). - Content for academic instruction in English is drawn from academic courses designed for FEP and EO students in the district. - There are group data for LEP students, by age and time in the program, which indicate that LEP students are learning the core curriculum.

Compliance item/test	How to test for compliance	What to look for	Comments
Secondary item **LEP.5 Each LEP student receives, as part of the district's program, instruction which promotes his or her self-concept and cross-cultural understanding.** **(EC 62002, Former EC 52161)**	**Site** **- Interview resource or classroom staff.** **- Observe classrooms.**		
Key Strategy: ***LEAs allocate adequate resources from local, state, and other funds to serve LEP students.***			
Primary item **LEP.6 An adequate number of qualified teachers has been assigned to implement the required English language development instruction for each LEP student. Upon documentation of a local shortage of qualified teachers to perform English language development instruction, the district has adopted and is implementing measures by which it plans to remedy the shortage.** **(EC 62002, Former EC 52161; 20 U.S.C. Section 1703 (f); Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1011; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)** **NOTE: Since the general and bilingual statutory provisions involving credentialing have not expired (e.g., sections 44001, 44831, and 44253.5), the Commission on Teacher Credentialing (CTC) has informed the Department that it believes the current requirements for bilingual credentialing are still in effect in certain situations. CTC is delaying issuance of "coded correspondence" related to bilingual certificates and authorizations pending receipt of an Attorney General's opinion. This note also applies to item LEP.7.**	**Site** **- Review the staffing information for the school site for the following:** **• A list of all LEP students** **• A list of all teachers assigned to provide English language development instruction** **• The ratio of regular classroom teachers to students in the regular school program** **• The ratio of qualified teachers providing English language development instruction to LEP students** **• Other relevant information**	**- Each teacher providing English language development instruction meets one of the following specifications:** **• Holds a bilingual teaching or language development specialist (LDS) authorization* issued by CTC, or** **• Has been determined by the local school district to have the requisite teaching skills to carry out his/her respective assignment.** ***CTC issues two credentials and a certificate of competency, all of which authorize individuals to serve as qualified bilingual teachers (Bilingual-Crosscultural Specialist Credential, Bilingual Crosscultural Emphasis, Bilingual Certificate of Competence). It also issues an LDS Certificate which authorizes teachers to provide English-language development instruction.** **- The ratio of qualified teachers to LEP students (full-time equivalents) receiving English-language development instruction is not substantially greater than the ratio of regular classroom teachers to students in the regular school program.**	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
	- Observe selected English language development lessons for LEP students. Follow a sample of at least 2 LEP students in at least 3 grade levels in the school.	- Each LEP student is receiving English language development instruction from a qualified teacher.	
	District or Site - Review documentation that the district has established criteria to determine the qualifications teachers who have been assigned to English language development instruction for LEP students but who do not possess a bilingual teaching or LDS authorization issued by CTC.	- District criteria include standards for the requisite skills in English language development teaching methodology. - Each teacher providing English language development instruction to LEP students who lacks a bilingual teaching or LDS authorization from CTC has met district-adopted criteria.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
Primary item **LEP.7 An adequate number of qualified teachers has been assigned to implement academic instruction through the primary language for each LEP student when it has been determined to be necessary. Upon documentation of a local shortage of qualified teachers to perform academic instruction through the primary language for each such LEP student, the district has adopted and is implementing measures by which it plans to remedy the shortage.** **(EC 62002, Former EC 52161; 20 USC 1703(f); Castaneda v. Pickard (5th cir. 1981) 698 F.2d 989, 1011; and Keyes v. School District No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518).** **NOTE: In response to a district shortage of teachers qualified to perform academic instruction through the primary language when necessary, bilingual paraprofessionals may be teamed with regular teachers on an interim basis to meet this staffing requirement.**	Site - Review the staffing information for the school site for the following: • A list of all LEP students who have been assessed as requiring academic instruction through the primary language • A list of all teachers assigned to provide academic instruction through the primary language • The ratio of regular classroom teachers to students in the regular school program • The ratio of qualified teachers providing primary language instruction to LEP students receiving such instruction • Other relevant information - Observe selected academic lessons conducted in the primary language. Follow a sample of at least 2 LEP students in at least 3 grade levels in the school. - When bilingual paraprofessional/regular teacher teams are formed to meet the primary language instruction staffing requirement, observe a sample of at least 2 academic lessons conducted in the primary language by such teams. Independently interview each member of the teams observed.	- Each teacher providing academic instruction through the primary language meets one of the following specifications: • Holds a bilingual teaching authorization issued by CTC, or • Has been determined by the local school district to have the requisite teaching skills and language proficiency necessary to carry out his or her respective assignment. - The ratio of qualified teachers to LEP students (full-time equivalents) receiving academic instruction through the primary language is not substantially greater than the ratio of regular classroom teachers to students in the regular school program. - Each LEP student assessed as requiring academic instruction through the primary language is receiving such instruction from a qualified teacher. - Bilingual paraprofessionals work under the direct supervision of teacher counterparts in terms of both the content and instructional methodology used for academic lessons in the primary language.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
	District - Review documentation that the district has established criteria to determine the qualifications of teachers who have been assigned to provide academic instruction through the primary language but who do not possess a bilingual teaching authorization issued by CTC.	- District criteria include standards for (1) requisite skills in bilingual teaching methodology, and (2) requisite levels of proficiency in the primary language of LEP students. - Each teacher providing academic instruction through the primary language who lacks a bilingual teaching authorization from CTC has met district-adopted criteria.	
	- Review the staffing information for the school district for the following: • The number of teachers needed to provide academic instruction through the primary language • The number of qualified teachers available for such instruction • Actions being utilized to recruit, hire, and/or train teachers to provide such instruction • The time line to accomplish these actions • Other relevant information	- Actions have resulted in progress toward meeting staffing requirements as evidenced by (1) the number of newly hired teachers within the current school year who hold bilingual teaching or LDS authorizations; and (2) the number of teachers who have met locally established criteria to determine their eligibility to provide academic instruction through the primary language and/or English language development instruction to LEP students.	

Compliance item/test	How to test for compliance	What to look for	Comments
	- Review documentation demonstrating that the district has established criteria to determine the qualifications of bilingual paraprofessionals who have been assigned as team members to provide academic instruction through the primary language.	- Each bilingual paraprofessional assigned as a team member to provide academic instruction through the primary language has met district-adopted criteria for proficiency in the primary language of LEP students.	
Primary item **LEP.8 The district provides for an inservice program to qualify existing and future personnel in the bilingual and cross-cultural teaching skills necessary to serve each LEP student.** EC 62002, Former EC 52161; 20 USC 1703(f); Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1011; and Keyes v. School District No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)	District or Site - Review a description of the inservice program including the following information: • A description of inservice activities and corresponding schedules • A list of all teachers assigned to primary language and/or English language development instruction for LEP students who do not possess the appropriate teaching authorizations from CTC or who have not met district-adopted criteria. - Review attendance records of inservice activities offered during the current school year.	- The district has offered inservice opportunities in at least the following areas: • English-language development teaching methodology • Bilingual crosscultural teaching methodology • Acquisition of the primary language of LEP students on the part of teaching staff - Inservice is offered for those teachers who are assigned to primary language and/or English-language development instruction for LEP students who do not possess the appropriate teaching authorizations from CTC or who have not met district-adopted criteria. - Teachers have participated in the inservice program. - The district has made progress in qualifying existing and future personnel as teachers of LEP students as evidenced by: • The number of teachers who during the current school year have obtained a bilingual teaching or LDS authorization from CTC.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
		• The number of teachers who, during the current school year, have met district adopted criteria in (a) bilingual teaching methodology and language proficiency in the primary language of LEP students and/or (b) English language development teaching methodology	
Secondary item **LEP.9 There are adequate basic and supplemental resources to provide each LEP student with bilingual learning opportunities in an appropriate program to sustain academic achievement. The provision of these services is not contingent upon the receipt of state or federal categorical aid funds.** **(EC 62002, Former EC 52161; 20 USC 1703(f); Castaneda vs. Pickard (5th Cir. 1981, 648 F.2d 989, 1010, 1012-1013); and Keyes vs. School District No. 1 (D. Colo. 1983); 576 F. Supp. 1503, 1516-1518)**	**District or Site** - Review the district's EIA allocation plan as specified in the SDE-100 and compare that with actual school site budgets. - Identify which LEP services are being provided from the general fund and which from EIA-LEP supplementary funds. - Review the availability of primary language materials and materials in English appropriate to non-native speakers relative to the core curriculum; e.g., basic and supplementary classroom materials, library collections, etc. Determine their appropriateness to the core curriculum. - Review the adequacy of materials for LEP students. Compare the amount of materials and expenditures for LEP students with the proportion of LEP students to the total school enrollment.	- The school site budgets correspond to the district allocation plan. - EIA-LEP funds are spent for basic excess-cost services, such as resource personnel, bilingual aides, bilingual assessment, primary language and ESL materials, parent involvement, and staff training. - The district and site provide adequate and appropriate primary language and English resources from local, state, and other funds to support the LEP students' learning of the core curriculum.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments

Key Strategy: ***LEAs change a LEP student's designation from LEP to FEP on the basis of objective criteria.***

Primary item **LEP.10 Each former LEP student whose designation has been changed to FEP has demonstrated English proficiency and academic achievement in English by means of objective criteria which establish that he or she has overcome the English language barriers which impeded his or her equal participation in the school's regular instructional program and he or she is not left with any substantive academic deficit(s).** **(EC 62002, Former EC 52164.1; CAC T5 3942; 20 USC Section 1703(f); see generally Gomez v. Illinois State Bd. of Education (7th Cir. 1987) 811 F.2d 1030, 1041-1042; Castaneda v. Pickard (5th Cir. 1981) 648 F. 2d 989, 1009-1010; Keyes v. School District No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1516-1522.)**	**District** - **Review the district policy on language redesignation from LEP to FEP.**	- **The district's policy includes standard procedures for assessing oral English proficiency and academic achievement, and may include multiple criteria such as:** • **Teacher evaluation of the student's English language proficiency and curriculum mastery** • **Objective assessment of the student's English oral language proficiency** • **Objective assessment of the student's English writing skills** • **Parental opinion or consultation during a redesignation interview** • **Objective data on the student's academic performance in English.** • **Other criteria as adopted**	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
	Site - Take a sample of at least 2 former LEP students from 3 different grade levels who have been designated as FEP within the past year. - Review the data collected and considered in deciding to designate a former LEP student as FEP.	- Data and other evidence are available which indicate that the district has used these consistent, verifiable criteria to consider the student's English language proficiency and academic achievement. - Data indicate that each student in the sample redesignated as FEP has the English language skills of comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional program. - The district or site has evidence of how former LEP students as a group are performing in comparison with their native-English-speaking peers in the core curriculum, e.g., GPA, success rate in passing district proficiency tests, norm-referenced test scores, etc. This evidence demonstrates that the former LEP students have not been left with any substantive academic deficits. - The district or site has evidence of the rate of LEP student redesignation to FEP, e.g., percentage/year, mean months in the program before redesignation, comparisons with previous years' rates, by language group, by grade level, by program type, etc.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
Key Strategy: *LEAs involve parents of students in the programs designed for their children.*			
Secondary item **LEP.11 All parents of LEP and FEP students have been notified in writing of their child's English and primary language proficiency assessment results.** **(EC 62002, Former EC 52164.1(b); CAC T5 4308)**	**District or Site** - Review written notification sent to parents of LEP and FEP students. - Review school records that indicate notifications were mailed, sent home, or communicated orally.	- The notification to parents of LEP students contains their child's English and primary language proficiency assessment results. - The notification to parents of FEP students contains their child's English language proficiency assessment results. - Written notification is available in English and in the primary language of the student. - An indication that the results were communicated orally to parents or guardians unable to understand written communication.	
Secondary item **LEP.12 A procedure exists which ensures that the participation of each student enrolled in a bilingual program is voluntary on the part of the parent or guardian.** **(EC 62002, Former EC 52161)**	**District or Site** - Review the notification process to parents informing them of their child's initial enrollment in programs. - Review school records that indicate notice was given to the parent or guardian of each student enrolled in a bilingual program.	- The notice stated that each child's participation in the district's alternative program is voluntary. It may also have included a brief nontechnical description of the program or services their child will be enrolled in as well as other instructional options that may be available. - Notifications informing parents of voluntary participation in the program are given in English and the primary language of the child.	

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
Secondary item **LEP.13 Whenever there are 51 or more LEP students in a district, there is a functioning district bilingual advisory committee (BAC) or subcommittee of an existing committee which has met ALL of the following:** - **Has had the opportunity to advise the governing board regarding:** a.* **A timetable for and development of a master plan for bilingual education** b.* **A districtwide needs assessment on a school-by-school basis** c.* **District bilingual education goals and objectives** d. **Administration of the language census** e. **Review and comment on the written notification of initial enrollment.** - **Has a majority membership of parents of LEP students not employed by the district. In the event an existing committee is used for these purposes, the membership of parents of LEP students shall be made up of at least the same percentage as that of the LEP students in the district.** - **Has received training materials and training, developed in consultation with the committee, appropriate to assist parent members in carrying out their responsibilities.** **(EC 62002.5, Former EC 52176; CAC T5 4312)** ***NOTE: Initial development of these items is optional on the part of school districts. Once developed, however, the committee must be given an opportunity to review and advise on the specific items.**	**District** - **Review records of the membership and the activities of the district-level BAC or subcommittee for the past 12 months.** - **Interview at least 1 parent member of the district-level committee.**		

Compliance item/test	Review level/ How to test for compliance	What to look for	Comments
Secondary item **LEP.14 Whenever there are 21 or more LEP students at a school site, there is a functioning bilingual advisory committee (BAC) which has met ALL of the following:** - **Has advised the principal and staff in:** a. **The development of the school plan for bilingual education submitted to the governing board** b.* **Conducting the school's needs assessment** c. **Administration of the school's language census** d. **Efforts to make parents aware of the importance of regular school attendance** - **Has a membership of LEP parents in at least the same percentage as there are LEP students at the school** - **Has had an election of members in which all parents of LEP students have had an opportunity to vote** - **Has had the opportunity to elect at least 1 member of the bilingual district advisory committee or participated in a proportionate regional representation scheme where there are 31 or more BACs in the district** - **Has received training materials and training appropriate to assist parent members in carrying out their responsibilities** **(EC 62002.5, Former EC 52176; CAC T5 4312)** ***NOTE:** Initial development of this item is optional on the part of school districts. Once developed; however, the committee must be given an opportunity to review and advise on the specific items.	**Site** - **Review records of the membership and the activities of the school-level BAC or subcommittee for the past 12 months.** - **Interview at least 1 parent member of the school-level BAC.**		

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