



Hot Topics Series

Bilingual Education: Time to Take A Second Look?



Center on Evaluation, Development, Research
Phi Delta Kappa

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In 1988 Phi Delta Kappa's Center for Evaluation, Development, and Research (CEDR) published a volume in its Hot Topics series titled *Bilingual Education*. The theme and contents of that volume reflected a positive response to the call for bilingual education in American schools. CEDR recognized at that time that there are competing views about bilingual education based on different educational and philosophical assumptions. CEDR invited readers of the first volume who had alternative, critical positions on bilingual education to propose counter arguments. The present volume, *Bilingual Education: Time to Take a Second Look?*, is the outgrowth of one such proposal.

Compiled and edited by Keith Baker, director of research for Research on English Acquisition and Development, a private consulting firm in Silver Spring, Maryland, this volume is a critical assessment of the bilingual education movement in the United States since the 1974 Supreme Court decision *Lau v. Nichols*.

Larry W. Barber, Director
Center for Evaluation, Development, and Research
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The Center on Evaluation, Development, and Research (CEDR) dedicates the Hot Topics series to administrators and board members who must make responsible, data-based decisions, to teachers and paraprofessionals who must interpret a constantly changing curriculum, and to students and parents who must deal with the current problems and issues in education.

The Hot Topics series presents readers with a selection of the best research and practice available. Topics are based on information gathered from a poll of leading educational organizations. Each volume contains articles carefully selected by the CEDR staff from a number of sources to help readers avoid the repetition and irrelevance that characterize the literature gathered from searches of larger data bases. Each topic reflects a holistic approach by introducing many sides of an issue, and each year the variety of topics will reflect the spectrum of education concerns.

One of CEDR's most important missions is to help educators identify ways to solve problems by seeing the successful solutions of others. We sincerely hope that this volume will fulfill that purpose.

The Hot Topics series is prepared
under the direction of
Larry W. Barber, CEDR Director
November 1990

INTRODUCTION

It is not enough to simply provide a program for language disadvantaged children or even to staff the program with bilingual teachers; rather, the critical question is whether the program is designed to assure as much as is reasonably possible the language deficient child's growth in the English language. An inadequate program is as harmful to the child who does not speak English as is no program at all.

*Rios v. Read, 73 F.D.R.
589 (D.D.N.Y. 1977)*

This book is about bilingual education, one of the most contentious issues in education today. Consequently, we begin by making it clear what bilingual education is and what it is not. The Supreme Court's 1974 *Lau* decision said the schools had to provide some kind of special help to children who do not speak English. The *Lau* decision held that language minority students "who do not speak English" were denied rights of equal treatment under the Civil Rights Act of 1964 if they were taught the same way as were English-speaking children. The court provided no explicit definition of who should receive special language instruction nor of what that instruction should be. In relying on the Department of Health, Education, and Welfare's (HEW) 1970 guidelines for compliance with the 1964 Civil Rights Act, the Court (414 U.S. 563) appeared to accept HEW's definition of the class of children to receive special language instruction — "national origin-minority group language" (*Federal Register*, 1970, 35, 11595). The Court did not realize that few children living in this country will know absolutely no English, or that the ability to speak and understand English is a continuum.

The Supreme Court did not specify any particular program for students who did not speak English. The Court only said that something special and appropriate to their situation had to be done.

The Court imposed two duties on the schools: 1) determine which students need special services, and 2) provide those students with an effective educational program. Failure to carry out either of these steps denies some students their civil rights.

Bilingual education programs have come to be the dominate method of instruction used to meet the Court's requirement.¹ This book is about these bilingual education programs — programs that use two languages to teach English and other subjects to children who do not speak English. This is an important point. Regardless of how valuable bilingualism itself may be, regardless of how desirable it may be for the schools to teach all students a second language, such considerations are irrelevant for our purposes. Our concern is with the quality of the job done by America's schools to satisfy the requirements of *Lau*.

Another note about jargon needs to be made. After *Lau*, later court decisions, legislation, regulations, and policy decided the Supreme Court did not literally mean "children who do not speak English" when the Court said "children who do not speak English." The target group is now called limited English proficient language minority children, LEPs for short. Law and policy give concrete definitions of who or what LEP is. (See Rossell and Baker, this volume.) However, we must remember that behind these definitions is the Supreme Court's concern for *children who are dependent on a language other than English to communicate*. These distinctions are critical in assessing the accomplishments of bilingual education programs, because LEPs and children who are dependent on a language other than English to communicate are not the same. (See Rossell and Baker, this volume; Baker, 1990; and Baker and Rossell, 1986, 1987.)

There are two federal laws central to bilingual education programs — Title VI of the Civil Rights Act of 1964 and Title VII of the Elementary and Secondary Education Act of 1965 (ESEA), the Bilingual Education Act. The *Lau* decision was based on the Civil Rights Act of 1964 and applies to *all* public schools. Title VII is a competitive grant program that gives money to *some* schools for bilingual education programs.

This book provides a critical assessment of how well bilingual education programs have carried out the mandate of the Supreme Court's *Lau* decision. Before taking up the discussion of *Lau*, however, a brief history of bilingual education is presented to set the stage for subsequent chapters. The development of bilingual education is an interesting story in its own right; it reveals much about how educational policy is made in the United States.

Essentially, this book is an appraisal of how well the schools have done in meeting the requirements of *Lau* through bilingual education programs. Four basic issues are examined:

- 1) How are students chosen for assignment to bilingual education programs?
- 2) What teacher qualifications make a good teacher of limited English proficient language minority children?
- 3) What are the effects of bilingual education programs?
- 4) How do alternatives to bilingual education programs fare?

There is an editor's introduction to each chapter of the collection and an editor's conclusion at the end. All references for all the sections by the editor follow the editor's conclusions. Footnotes for each of the editor's sections are at the end of each section.

Keith Baker, Editor

¹Although most limited English proficient (LEP) language minority children who are in a special language program are in a bilingual education program, most LEP children are not in bilingual education programs. (See Young et al., 1984; White, 1984; and Office of Bilingual Bicultural Education, 1981.) The reason is that the Office for Civil Rights of the U.S. Department of Education exempts schools from *Lau* unless there are at least 20 children speaking a common non-English language in two adjacent grades. Most LEP children attend schools where this level of concentration of LEPs is not reached.

Ironically, imposing bilingual education programs to meet the demands of *Lau* resulted in the majority of LEPs failing to receive any program addressing the civil rights protection supposedly guaranteed by *Lau*.

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11	The authors state that to assume that limited English proficient students are more fluent in their native language than in English is an error. Their study indicates that fewer than half of LEP students speak their native language better than they speak English. Dulay and Burt recommend providing for more flexibility in bilingual education programs.	Dulay, Heidi and Marina Burt. "The Relative Proficiency of Limited English Proficient Students." In J. Alatis, ed., <i>Current Issues in Bilingual Education</i> . Washington, D.C.: Georgetown University Press, 1980, pp. 181-200.
31	The lack of consistency among different language proficiency tests suggests that placement in a bilingual education program is largely determined by what test the school chose to buy.¹	Pelavin, Sol H. and Keith Baker. "A Study of Procedures Used to Identify Students Who Need Bilingual Education." Paper presented at the annual meeting of the American Educational Research Association, April 1987.
45	A review of the legally prescribed methods for placing students in bilingual education programs finds them educationally unsound.	Rossell, Christine and Keith Baker. "Selecting and Exiting Students in Bilingual Educational Programs." <i>Journal of Law and Education</i> , vol. 17, no. 4, Fall 1988, pp. 589-623.
81	THE EFFECTS OF BILINGUAL EDUCATION PROGRAMS	
83	Overview	
85	The Congressional Research Service reviewed the literature and found that bilingual education programs are not a superior way to teach LEP students.	Holland, Rick. "Bilingual Education: Recent Evaluations of Local School District Programs and Related Research on Second-Language Learning," Report #86-611. Washington, D.C.: The Library of Congress, March 1986.
127	The Government Accounting Office surveyed bilingual educators and found they affirmed bilingual education programs. The U.S. Department of Education objected to the methods used.	Program Evaluation and Methodology Division. "Research Evidence on Bilingual Education," Report PEMD-87-12BR. Washington, D.C.: United States Government Accounting Office, March 1987. (Excerpted sections reprinted here.)

155 A study of Title VII bilingual education programs determined that bilingual programs help students learn Spanish, have no effect on mathematics achievement, and tend to have a detrimental effect on learning English. Danoff, M., et al. "Evaluation of the Impact of ESEA Title VII Bilingual Education Program: Overview." Palo Alto, Calif.: American Institutes of Research, 1978.

175 Willig reports that LEP students enrolled in bilingual education programs showed small to moderate gains in most subject areas compared to LEP students not enrolled in bilingual programs. However, enrollment in bilingual programs limits development of English language skills. Willig, Ann C. "A Meta-Analysis of Selected Studies on the Effectiveness of Bilingual Education." *Review of Educational Research*, vol. 55, no. 3, Fall 1985, pp. 269-317. (Excerpted sections reprinted here.)

193 The authors assert that a review of the literature finds no evidence that bilingual education programs are effective. Rossell, Christine H. and J. Michael Ross. "The Social Science Evidence on Bilingual Education." *Journal of Law and Education*, vol. 15, no. 4, Fall 1986, pp. 385-419.

229 **WHO SHOULD TEACH LIMITED ENGLISH PROFICIENT LANGUAGE MINORITY CHILDREN?**

231 **Overview**

233 A study designed to measure the effectiveness of bilingual and non-bilingual programs in one school district showed that students enrolled in transitional bilingual classes scored significantly lower on the Tests of Basic Experiences than did other LEP students in the study. Teacher training in bilingual education did not produce positive gains in student achievement. Moore, Fernie Baca and Gerald D. Parr. "Models of Bilingual Education: Comparisons of Effectiveness." *The Elementary School Journal*, vol. 79, no. 2, Nov. 1978, pp. 93-97.

239 Good bilingual education program teachers share the traits of all good teachers; they are not characterized by special preparation or certification as bilingual education teachers. Guthrie, Larry F.; William J. Tikunoff; Charles W. Fisher; Elsie W. Gee. "Significant Bilingual Instructional Features Study: Part I of the Study Report, Volume I - Introduction and Overview of the SBIF Study." San Francisco: The Far West Laboratory, November 1981. (Excerpted sections reprinted here.)

243 Certified bilingual education teachers get no better results in teaching LEP students than do those who are not certified. A bilingual education program does no better, in terms of overall student achievement, than an all-English program. Rossell, Christine H. "Bilingual Education and Bilingual Certified Teachers: Are They Necessary?" Abridged and revised from G. Imhoff, ed., *The Social and Cultural Context of Instruction in Two Languages*. New York: Transaction Books, in press July 1990.

249 **ALTERNATIVES TO BILINGUAL EDUCATION PROGRAMS**

251 **Overview**

253 Studies in two elementary schools showed that an all-English program in the primary grades produces better test scores, grades, and attendance all the way through school and a lower dropout rate than does a bilingual education program. Gersten, Russell and John Woodward. "A Case for Structured Immersion." *Educational Leadership*, vol. 43, no. 1, Sept. 1985, pp. 75-79.

259 With no difference between a bilingual education program and all-English teaching in test scores in science, math, or social studies over three years, the authors concluded more bilingual education is needed. Office of Educational Accountability. "Evaluation of the Bilingual Curriculum Content (BCC) Pilot Project: A Three-Year Study," Final Report. Miami: Dade County Public Schools, 1987. (Excerpted sections reprinted here.)

271 After two years in an all-English ESL program, its graduates scored high in the regular classroom in one of the country's best systems. Office of Research and Evaluation. "A Study of Language Minority Students in Fairfax County, 1983-84 to 1987-88." Fairfax, Va.: Fairfax County Public Schools, Sept. 1989. (Excerpted sections reprinted here.) and Rajpal, Puran L. and Walter D. Mallory. "Follow-Up of Former ESL Students." Fairfax, Va.: Fairfax County Public Schools, April 1987. (Excerpted sections reprinted here.)

283 In trial testimony, a principal described how a district enthusiastically embraced bilingual education, then changed its mind when the students failed to learn English. Calegari, Mitchell. Official Court Transcript: *Teresa P. et al. v. Berkeley Unified School District*. San Francisco: U.S. District Court, Northern District of California, 1988. (Excerpted sections reprinted here.)

291 **CONCLUSION**

295 **REFERENCES**

¹The version of the paper reprinted here contains the authors' original conclusions which were censored by the U.S. Department of Education and did not appear in the AERA paper presentation.

NOTES

A SUMMARY OF LAU V. NICHOLS

In the late 1960s some Hispanic and Chinese organizations in San Francisco lobbied the schools to set up bilingual education programs. In 1970 these organizations and an interested lawyer sued the school district. The district won in Federal District Court; the losers appealed, and the school district won again in Federal Appeals Court. The losers appealed to the U.S. Supreme Court, which overturned the lower courts' decisions in 1974.

Although the Supreme Court decision was unanimous, the Court did not agree on why the school district was wrong, with opinions written by three justices. The majority opinion was by Justice William Douglas:

This class suit brought by non-English speaking Chinese students . . . seeks relief against the unequal educational opportunities which are alleged to violate the 14th Amendment [to the U.S. Constitution]. No specific remedy is urged upon us. Teaching English to students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others. Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.

. . . the California Educational Code states that "English shall be the basic language of instruction in all schools . . . [and they shall] insure the mastery of English by all pupils . . ."

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education . . .

We do not reach the Equal Protection Clause argument . . . but rely solely on [Sec.] 601 of the Civil Rights Act of 1964 . . .

It seems obvious that the Chinese-speaking minority receives less benefits than the English-speaking majority . . . which denies them a meaningful opportunity to participate in the educational program — all earmarks of the discrimination banned [by the Civil Rights Act] . . .¹

Following the Court's decision, the heretofore unsuccessful bilingual education program advocates pressured the San Francisco school system into establishing a bilingual education program, even though there was no research evidence that such programs were effective in meeting the requirements of the *Lau* decision.

To be sure he learned English, Kinney Lau, the student for whom the case was named, refused placement in the bilingual education program.

¹Supreme Court of the United States #72'6520. *Lau v. Nichols*, 483 F.2d, 791 (1973), rev'd, 414 U.S. 563 (1974).

THE RECENT HISTORY OF BILINGUAL EDUCATION: AN OUTLINE^{1,2}

- 1968 Congress passed Title VII of ESEA (The Elementary and Secondary Education Act of 1964). The original sponsor of Title VII described its goal as "transition to the mainstream of American life." The Senate Report accompanying the bill said the instructional methodology to be used was "... left to the discretion and judgment of the local school districts to encourage both varied approaches to the problem and special solutions for particular problems at a given school." (See Toch, 1984.)
- The Coral Way school in Miami started the first modern bilingual education program.
- 1974 The *Lau* decision held that the Civil Rights Act of 1964 required the schools to give extra help to students who do not speak English, but the Supreme Court did not require bilingual education programs. The Court rejected the argument that the 14th Amendment of the Constitution applied.
- Congress amended Title VII under pressure from bilingual education advocates to end local flexibility and provide money only for bilingual education programs.
- 1975 The Office for Civil Rights (OCR) and U.S. Commissioner of Education, Terrel Bell, issued the *Lau* remedies requiring all schools to use bilingual education programs for limited English proficient language minority children whether or not the district received federal funds. The *Lau* remedies required language dominance testing, but this was not enforced as surveys of the methods used by the schools to identify LEPs found very little use of language dominance testing. (See Young et al., 1984, and Cardosa, 1984).
- 1978 OCR reached an out-of-court agreement with a school in Alaska (*Northwest Arctic v. Califano*) that the *Lau* remedies were invalid and must be replaced with federal regulations. This was after OCR set up bilingual education programs under the *Lau* remedies in some 500 school districts. The Alaska school argued they did not have to follow OCR's order to invent a written language for an Eskimo tongue that was only spoken to give the Eskimo students a bilingual education program because the *Lau* remedies had no legal standing. (Schools have to obey laws and federal regulations; the *Lau* remedies were neither.) The Office of the General Council of the U.S. Department of Education agreed with the school district and directed the OCR to settle the Alaska case out of court. As part of this settlement, the U.S. Department of Education agreed to issue regulations on educating LEPs under *Lau*.
- 1980 The U.S. Department of Education issued a revision of the *Lau* remedies as proposed federal regulations. The method for identifying LEPs was changed from the relative language proficiency measure on the *Lau* remedies to a procedure modeled on Title VII of ESEA. One major difference between the Title VII method and that of the proposed regulations was the addition of the 40th percentile as the cut-off score defining LEP. That is, language minority children scoring below the 40th percentile on a standardized test would be placed in bilingual education programs.

School districts flooded congress with protests over the proposed regulations. The White House staff asked the U.S. Department of Education for their evidence that bilingual education programs, required by the regulations, work. The OCR had no evidence. The Evaluation Office of the U.S. Department of Education was directed to review the literature on the effectiveness of bilingual education programs.

Congress legislated a six-month hold prohibiting the U.S. Department of Education from making the regulations final. Before the six months were up, Ronald Reagan became President and Terrel Bell acted. (See 1981, below.)

Several schools in the Rio Grande Valley replaced bilingual education programs with English immersion at the insistence of Mexican immigrant parents who were worried their children were not learning English in bilingual education programs. These English immersion programs could only be done as temporary experiments under a loophole in a Texas state law requiring bilingual education programs as the regular curriculum.

- 1981 Texas appealed the district court decision in *U.S. v. Texas*, which ordered Texas to provide a comprehensive bilingual education program in grades K-12. For the appeal, Texas forced the U.S. Department of Education to release its report on the effectiveness of bilingual education programs.³ (See Baker and de Kanter, 1981.) Baker and de Kanter concluded there was no evidence that bilingual education was superior to other types of instruction for limited English proficient language minority children and recommended changes in federal law (Title VII) and the proposed regulations (*Lau* regulations) to give the local schools more flexibility in choosing programs.

The Appeals Court ruled in Texas's favor, overturning a lower court decision requiring bilingual education programs in grades K-12 in Texas. This was the only judicial loss by the bilingual education program advocates since the Appeals Court decision in *Lau*, which was overturned by the Supreme Court.

U.S. Secretary of Education Bell withdrew the proposed *Lau* regulations. (See Robinson, 1981.) This action appears to leave the U.S. Department of Education technically in violation of the settlement in *Northwest Arctic*.

- 1982 U.S. Secretary of Education Bell withdrew the *Lau* remedies. The OCR told schools they could use whatever program they felt best educated limited English proficient students.
- 1983 The Illinois State Superintendent asked the Illinois State Legislature to repeal the state bilingual education act. Massive lobbying by bilingual education program advocates saved the program.
- 1984 After U.S. Secretary of Education Bennett asked for removal of the restriction to fund only bilingual education programs in Title VII, Congress amended the law to allow 4% of the money to go to alternative instructional methods.
- 1985 Twenty-five percent of the grant applications received by Title VII wanted money for all-English programs; 4% of the money was available. (See 1984, above.)
- 1986 California did not reauthorize the state bilingual education program act, one of the most comprehensive bilingual education programs in the country.

The state bilingual education program office reimposed the bilingual education program by administrative action and took action against Berkeley for giving parents a choice of either bilingual education or an all-English program.

- 1988 Congress amended Title VII to allow 25% of the money to be spent on non-bilingual education programs.
A trial was held on the bilingual education program advocates' suit against Berkeley. The plaintiffs demanded Berkeley adhere to the demands of the state bilingual education program office, hire more certified bilingual education teachers, and stop offering parents the choice of all-English alternatives to bilingual education programs. The Berkeley trial was the first where evidence was introduced showing bilingual education programs are of doubtful effectiveness. Berkeley won, the second loss for the bilingual education program advocates.
- 1989 The New York State Board of Regents expanded bilingual education programs in New York. Among the changes, the cut-off score for eligibility for bilingual education programs was raised from the 21st to the 40th percentile.
Bilingual education program advocates and the Oakland (California) public schools went to court. Oakland wanted to dump a five-year-old out-of-court settlement setting up an extensive bilingual education program as too expensive and ineffective.
The Massachusetts State School Boards Association passed a resolution asking the state legislature to rescind the state bilingual education program law (the first state bilingual education program law) as too expensive and not effective.

¹There were a number of bilingual education programs in large cities around the turn of the century. These became virtually extinct during and after the First World War. This book only considers the bilingual education movement that emerged in the 1960s.

²Details of the development of bilingual education policy can be found in Baker and de Kanter, 1986; Baker and Rossell, 1984; and *Education Week*, 1984.

³Texas filed a Freedom of Information Act request and a federal court subpoena for the report. These were resisted by the U.S. Department of Education because the report was not finished. Texas then got Senator John Tower to seek help from the White House. The U.S. Department of Education was ordered by the White House to give the unfinished report to Texas. The unfinished draft report is included in this book as Baker and de Kanter (1981). The U.S. Department of Education never released the final report, but summaries of it are found in this volume (Baker and de Kanter, 1983; Baker and de Kanter, July 1983).



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