A descriptive study of three legal challenges for placing Mexican-American and other linguistically and culturally different children into educably mentally retarded classes.

Henry J. Casso

University of Massachusetts Amherst

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A DESCRIPTIVE STUDY OF THREE LEGAL CHALLENGES FOR PLACING MEXICAN AMERICAN AND OTHER LINGUISTICALLY AND CULTURALLY DIFFERENT CHILDREN INTO EDUCABLY MENTALLY RETARDED CLASSES

A Dissertation Presented
by
Henry J. Casso

Submitted to the Graduate School of the University of Massachusetts in partial fulfillment of the requirements for the degree of DOCTOR OF EDUCATION
March 1973
Major Subject: Education Administration
DEDICATION

I dedicate this work to the many brave families who were so courageous enough to step forward and call a halt to what must be one of the greatest travesties in American public education.

To my family, relatives and friends who have stood by me these many years.

To my wife and child, Blanca and María Louisa who tolerated my grief as I anguised with the hurt that has been inflicted on so many innocent children, and who sacrificed so much so that this work would become a reality.
A DESCRIPTIVE STUDY OF THREE LEGAL CHALLENGES FOR
PLACING MEXICAN AMERICAN AND OTHER LINGUISTICALLY
AND CULTURALLY DIFFERENT CHILDREN INTO EDUCABLY
MENTALLY RETARDED CLASSES

A Dissertation

by

HENRY J. CASSO

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School of Education
University of Massachusetts
Amherst, Massachusetts

March, 1973
A SOUTHWESTERN DREAM

Midst shifting dunes and desert sands
From fertile oasis valley lands
Neath mountain crests where arroyos run
The brown-eyed, black-haired children come.
They come to seek a better place,
And find a world's averted face.

Who will answer?

From quiet town with shaded streets
Near feeding lots and fields of beets
Across the tracks with driving urge
The brown-eyed, black-haired children surge.
They bring a peoples' native pride,
And find their culture is denied.

Who will answer?

From ghetto grim and barrio slum
On urban streets where factories hum
Across a crowded freeway's roar
The brown-eyed, black-haired children pour.
They seek themselves identified,
And find a world turned aside.

And who will answer?

This land we love - it needs them all
To meet its history's constant call;
It cannot waste a people entire
And hope to stand the eternal fire
That comes to those who learn too late
That greatness cannot grow through hate.

But who will answer?

Now in schools where the children sit
The decision daily must be met,
And those who teach must decide
What stays - and what passes aside;
Whether in brotherhood we live - and learn,
Whether God - and Man! - we affirm.

Who will answer?

We will answer!

We will answer!

Amen.

James P. Miller
Anthony, New Mexico

Presented by Dr. John Aragon, Director of
the Cultural Awareness Center, University of
New Mexico, to Bilingual Bicultural Task
Force of the Office of Civil Rights - HEW on
Thursday, April 29th, 1971 in San Diego, California.
ACKNOWLEDGMENTS

This investigator wishes to acknowledge the following persons:
Special recognition must be given to the plaintiff parents and children who stood firm with courage, hope and dreams during the litigation of the cases of this study. The legal pioneers must be recognized, Herman Sillas, Phil Montez, Joe Neeper, Wally Davis, Marty Glick, "who took the cry from the streets into the respectability of the courts." (Montez)

The U.S. Commission on Civil Rights Director and the Mexican-American Education Study staff were most generous in providing data. Special thanks to the Chief of the Western Division of the U.S. Commission on Civil Rights, Los Angeles, California, Mr. Phil Montez, also to the Mexican-American Legal Defense and Education Fund attorneys, Mario Obledo, Joe Ortega and Allen Exelrod who provided the legal briefs, testimony and documents.

Without the Fellowship from the Ford Foundation to pursue my doctorate in education it would not have been possible to dedicate precious time from my life and community to write this information. Dr. Dave Flight, Director of the Center for Leadership and Administration, School of Education had great faith and confidence in me. Mr. Dimitri Gat had the patience to make sure I said what I wanted to mean. Other committee members gave support, confidence and guidance, Dr. Emma Cappelluzzo and Dr. Robert Gonzales.

Mrs. Young-Ja Chon’s skill and personal touch added much to the presentability of this study.

Finally, special thanks for a man from whom I have learned much, the chairman of my committee, Dr. Arthur Eve.
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"Mexican Americans have been shackled by the chains of ignorance and consequence, poverty. The educational system in the Southwest has created a regional Biafra in America with the attendant problems of crime and disease."

"We have in America the largest public school system on earth, the most expensive college buildings, the most extensive curriculum. But nowhere else is education so blind to its objectives, so indifferent to any real goals as in America. The American educational system has aimed at the repression of faults rather than the creation of virtues."

"It is the educational system which needs to be changed and restructured rather than the Mexican American child. The school system is in urgent need of reform lest it keep compounding the crime of attempting to remold every brown child into a cog for the white middle-class machine."

Obledo  

CHAPTER I  

Background of the Problem  

The human struggles of the 60's reached and influenced every facet of life, every segment of population in the United States. The many powerful forces at work during these years of American history were rooted in the nation's quest for quality of life, dignity of the human being, civil rights, and the right to equal opportunity, equal employment, equal health, equal housing, equal and quality education.

---

During these years the Mexican American people, the nation's second largest minority, as well as the largest Spanish speaking community in the U.S., made some of the most dramatic and dynamic progress since the ceding of the Southwestern states by Mexico to the United States. Although this movement and struggle took on many forms and challenged every institution which had direct or indirect effect on Mexican American life, it was the educational institutions, chiefly the public schools which were the focus of community efforts, since it was they which were identified as offering the greatest hope, and were directed by societal responsibility, yet were causing the greatest harm to a whole people:

"...for the first time the schools became a foremost symbol of oppression and powerlessness to various segments of the Chicano community and therefore, a prime protest target."\(^3\)

In the 60's, their traditional trust shaken, the Chicano* community, especially the youth, became more acutely aware and actively involved in the fact that the public schools had largely failed in their mission and societal responsibility to train, teach, and educate


*The term Chicano is a contemporary term used in reference to the Mexican American and used throughout this study interchangeably with it.
them. Historically the schools refused to accept any responsibility for professional, educational failure and inevitably attempted to blame the Mexican American child or his parents, for his low academic achievement. It was rare that the educational status of the Mexican American was seen as an effect of an educational process which, in fact, did not take into account the unique characteristics of the linguistically and culturally different child. In the important work of the U.S. Commission on Civil Rights – The Mexican American Education Study Project the first director, Henry Ramirez* wrote:

"...it is not a study of students, but of schools. Educators have traditionally accepted the low achievement, low attainment, and alienation of the Chicano student as the natural order of things, and have sought the origins of the problem by studying the social, economic, and familial characteristic of the child."

"Rarely, however, does one find educators turning their glances inward and assessing the effects their own educational conditions, practices, and policies are having on the child."

"It is the firm conviction of the U.S. Commission on Civil Rights that the roots of the alienation, hostility, and low academic achievement manifested so frequently among Mexican American students will be more fully understood when educators stop dissecting students and start taking a closer look at the schools as they respond, or fail to respond, to minority groups."4


*Henry Ramirez is no longer with this Study. However he was instrumental in the design survey and early documents which came from it.
As is seen throughout the course of this study, the work of the Commission played a valuable role in identifying some of the educational reasons for the alleged low scholastic achievement of the Mexican American child on the one hand, and the concomitant failure of the schools on the other.

An indication of how this alleged low scholastic achievement of the Mexican American child is reflected by the representatives of the public schools, a principal of an Arizona school quotes one of his teachers:

"Just try your best, Miss Jones, but don't expect too much success. You know this inability to learn is hereditary among Mexicans."\(^5\)

There are administrators who hold similar attitudes, even some who dictate administrative policy and direction in schools where the greater percentage of students are Mexican Americans such as is found in the following dialogue. The following dialogue with a Junior High Principal recorded during the education section of the U.S. Commission on Civil Rights Hearings in San Antonio, Texas (1968):

"Mr. Rubin: Would it be fair to say that you feel that there are genetic factors involved which account for the differences in people?"

"Mr. Higdon (Principal of Hawthorne Jr. High* in San Antonio, Texas): Well, when you are in my office, I made that statement to you and I will stick by it. I think that the -- I am not an historian, ...I do better at grasses. I am not an historian, but I would say that in the feeble knowledge that I have of history and looking at it from the past 2,000 years, Western Europe has been a battleground, and certainly where armies trample you have genes remaining. And the very measuring stick that we are trying to use here today is fundamentally a product of Western Europe's culture transplanted in America, and that is the measuring stick that we are trying to measure the Mexican American by."

Up to this point in time the blame and statements such as the above were somewhat tolerated, though not accepted. Although few were in a position to effectively voice opposition, the Chicanos knew that in fact, it was the schools which failed the Mexican American child:

"Though as elsewhere in the Southwest, most Mexican American parents were in no condition even to think of challenging the education their children were receiving, there had been a history of protests."7

If Silberman's comment about his feelings of "Crisis in the Classroom"8 ..."I am indignant at the failure of the public schools themselves," could be justifiably directed to public education; how much more significance is found in the words of Attorney Mario Obledo,

---

6Hearings before the United States Commission on Civil Rights, (San Antonio, Texas. 1968), p. 149.

7Hearings before the Senate Committee on Equal Education Opportunity, op. cit., p. 1.


*Hawthorne Jr. High School according to the 1970 Fall HEW/OCR Directory of Public Elementary and Secondary Schools has a 49 percent Mexican American student population. Of the 25 teachers 2 are Mexican American, 4 are blacks and the rest are Anglos.
the General Counsel for the Mexican American Legal Defense and Edu-
cational Fund when he says:

"The Mexican American has the lowest educational level
than either black or Anglo; the highest drop out rate;
and the highest illiteracy rate. These truths stand as
massive indictments against the present educational
systems."\(^9\)

The strong and persistent activities, especially those by the
Chicano youth, caused serious questioning of this educational failure
and laid the ground work for comments from educators such as the
former U.S. Commissioner of Education, Harold Howe, who, in 1968 at
the First National Mexican American Education Opportunity Conference,
stated:

"I would like to talk about 'the education problem' --
and it is basically just one problem: helping every
youngster -- whatever his home background, whatever his
home language, whatever his ability -- become all he has
it in him to become."

"Such a goal is a lofty one, and it is doubtful that the
schools will ever achieve it perfectly. What must concern
us is the degree to which many schools fail to come within
a country mile of that goal. And if Mexican American
children have a higher drop-out rate than any other
identifiable group in the nation--and they do--the schools
cannot explain away their failure by belaboring the
'Mexican-American problem.' The problem, simply, is that
the schools have failed with these children."\(^10\)

---

\(^9\)Hearings before the Senate Committee on Equal Education

\(^10\)U.S. Office of Education in Association with the Southwest
Educational Development Laboratory. \textit{Proceedings on the National
Conference on Educational Opportunities for Mexican Americans} (Austin,
The Mexican American community no longer accepted the blame for the "failure of the schools." Dr. Ballesteros speaking "Toward An Advantaged Society" wrote:

"The time has come for schools to recognize that they must change their program to meet the needs of students instead of trying to compensate the students for failure to meet the needs of schools. Poor teaching cannot be protected in our schools by the assumption that the student does not have the ability to learn. Disproportionate numbers of Spanish-speaking students are placed in classes for the mentally retarded because they cannot cope with placement in English. Many are also placed in remedial and non-academic classes. And so frustrated and misunderstood, Spanish-speaking students are rushed through or pushed out of schools."

The rejection for past blame took many forms. A particular phenomena developed among the students themselves during the later part of the 60's. No longer did the students just drop out or were they pushed out of school, but now, in community after community they actually walked out of, massively boycotted and challenged the public elementary and secondary schools of most major communities in the Southwest. A description of this is given in the 1971 U.S. Senate Hearings for Equal Educational opportunity:

"The student walkouts were not confined to any one area, the Mexican American young in Los Angeles, Calif.; San Antonio, Tex.; Crystal City, Texas; Abilene, Texas; Del Rio, Texas; Chicago, Ill.; Albuquerque, New Mexico; Denver, Colorado; but to name a few of the places."

"Our young Mexican American students, notwithstanding the great human sufferings, the jailings, the clubbings by police, the abuses by the Texas Rangers, stood tall and continued to demand what this Nation says they have a right to seek."

"What they demanded and how it was said varied from one area to the next, but the central theme and the demands were the same: 'We want an education to prepare us to equally compete in the arena of American economic life.' 'We want a part of that dream America says is ours, and for which many of our brothers have died on the battlefields for this country."¹²

The walk-outs directed themselves to the need to reexamine the record of public education as it related to the Mexican American child. This is what the U.S. Commission on Civil rights did when it initiated the Mexican American Project Study, which found that the schools in the Southwest were, in fact, failing in the following major identifiable areas:

"(a) the schools holding power of the Mexican American student; (b) the seriously low level of reading; (c) the frequent grade repetition by the Mexican American students; (d) the high percentage of Mexican American students over-aged in each grade; (e) the number of students who actually enrolled in college."¹³

The student's position was echoed again by Obledo, "Thus, one can say without being controverted, that the educational system failed

¹² Hearings before the Senate Committee on Equal Education Opportunity, p. 2529, op. cit., p. 1.

the Mexican American. The Mexican American has not failed the educational system."^{14}

In seeking answers to this serious accusation of educational failure, one of the foremost Mexican American educators, Armando Rodriguez, placed his finger on a fundamental cause when he testified at the U.S. Senate Hearings for Equal Educational Opportunity:

"Senator, as you well know, our educational system has been a system that was established to sift out, to reject people, to exclude people, especially people who did not fit the educational mold. In 1954 there was a Supreme Court ruling saying that equal educational opportunity shall now be provided everyone. But we are asking an institution that was created to exclude to now become an including institution. There is no way it can be done."^{15}

Responding to this testimony, the author of the recent book "Mexican Americans in School: A History of Educational Neglect" stated: (Carter)

"There is no question that this is what they do. This is their social function, the screening device to allocate people to different slots in society, the ditch digger slot or the Ph.D. or M.D. slot. But one of the real problems of schools is that they subscribe to the opposite belief. They subscribe to the myth that the school include and that it is the way up the social ladder."^{16}

Putting it in another way, more to express the anxiety of the movement in the Chicano community:

^{14}Hearings before the Senate Committee on Equal Education Opportunity, p. 2520, op. cit., p. 1.

^{15}Hearings before the Senate Committee on Equal Education Opportunity, p. 2608, op. cit., p. 1.

^{16}Ibid.
"In the case of the Chicanos, the struggle is between (1) those institutions which perpetuate a dominant social order and culture and (2) a people which, through the process of Anglo colonization, have become a powerless cultural minority in a hostile, modern technological society. In this regard, schools have contributed toward defining the powerless status of the Chicano."17

It was found that the process of screening and allocating people to different slots in society for the Mexican American students, in many instances, began at the pre-school or first grade. It began at the earliest and most precious formative years of young Chicano children with and by tests intended to be of educational benefit, to help determine mental ability and future educational potential. Specifically this was intelligence tests and the whole process of placing Mexican American children into educably mentally retarded classes. In the present study the investigator has shown it is the public school which is the biggest user of this process and has therefore had the earliest and most damaging impact on the Mexican American child. Carter observed:

"...perhaps more has been written about Mexican American low academic achievement and I.Q. than about any other educational topic. There have been literally hundreds of studies comparing Mexican American group achievement scores to those of Negroes and Anglos, or to their individual capacity as measured by various psychometric instruments. Interviews corroborate the general picture. Mexican Americans as a group fail to achieve well on standard tests of academic achievement, and they do not do as well as their Anglo counterparts in the more subjective evaluations of achievement."18

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17 Munoz, op. cit., p. 2.

As multifaceted as the Mexican American thrust for educational change manifested itself,\(^{19}\) it was the I.Q. and testing issues which stood constantly in the forefront as stated in the "Challenge for Educators":

"In addition, testing has always been a serious educational roadblock for us. In the past, intelligence and achievement tests have produced de facto ethnic segregation in the classroom. Spanish-speaking children have often been categorized as 'slow' and 'mentally retarded' because of low scores on tests and were unrelated to their cultural experience. These low scores place many in modified or slow tracks. As a result, a great number of children strike out at an early age because opportunities are cut off before they have a fair chance to prove themselves."\(^{20}\)

Dr. Alfredo Castaneda from the Systems and Evaluations in Education Center of Riverside, California, referring to education as it related to the Mexican American child, and testing in particular, wrote in a letter to the attorneys preparing for the last of the three EMR* law suits of this study:

"It is our contention that the learning environments in the majority (if not all) the schools in the Southwest along with the testing procedures are not geared to allow Mexican American youngsters to succeed."\(^{21}\)

\(^{19}\)Mexican American Studies Program. Proceeding on the Symposium on Mexican Americans and Educational Change. ed. by Alfredo Castaneda, et al., (Riverside, California, 1971)


\(^{21}\)Michael Justin Myers, business letter.

*EMR - Educable Mentally Retarded Class. It will be written as EMR throughout this study.
Having interviewed some 268 mothers of children who were in classes for the educable mentally retarded in two public school districts in Southern California, Dr. Jane Mercer* identified three major issues dealing with testing and the Mexican American child:

"...biases in the assessment procedures used to label children as mentally retarded; (2) the stigmatization associated with special class placement; and (3) inadequate programming. She concluded, 'we find many children in classes for the mentally retarded whose adaptive behavior in nonacademic settings, clearly demonstrates that their problems are schools specific and that they are not comprehensively incompetent.'22

In another research project Dr. Mercer studied a medium sized California school system which had comparable practices and procedures in other parts of the state. In the year of that study, 1,234 children had been referred for I.Q. evaluation. 6.9 percent of these were Mexican American. She reported that because "school psychologists did not have enough time to administer individual I.Q. tests to every referred child, they had to decide which children were to be tested. 7.6 percent of those tested were Mexican American. Of these:23

\[\begin{align*}
23 & \text{Current Retardation Procedures and the Psychological and Social Implications on the Mexican American, A Position Paper Prepared by Dr. Jane R. Mercer, Associate Professor, Sociology, University of California, Riverside. For: Southwestern Cooperative Educational Laboratory, Albuquerque, New Mexico, April, 1970.} \\
* & \text{Dr. Jane Mercer is a sociologist at the University of California at Riverside. She has probably conducted the most extensive research through federal grants on the Chicano and the EMR issue.}
\end{align*}\]
134 had an I.Q. of 79 or below eligible for EMR
32.7% of these were Mexican American
81 children were recommended for EMR placement
40.9% of these were Mexican American
71 children were actually placed in EMR classes
45% of these were Mexican American

On the basis of this and other findings, Dr. Mercer concluded that:

"Although teacher-principal teams referred Mexican American children at a rate lower than their percentage in the population and proportionately fewer were given I.Q. tests by school psychologists, three times as many Mexican American children appeared among those failing the I.Q. test as we would expect from their proportion in the population of the school district. Subsequently, this disproportion increased so that four times as many Mexican American children were placed in special education classes as would be expected from their percentage in the district because proportionately more children with low I.Q.s from Mexican American backgrounds were recommended for placement and were ultimately placed. It is at the point in the referral process when the I.Q. test is administered that the sharp ethnic disparities first appeared. The referral process in this district was not discriminatory. Disproportions appeared only in the clinical process of I.Q. testing."^24

Attorney Mario Obledo spoke more emphatically when he testified:

"...they (the schools) are indictments of either negligent or intended homicide against a minority group. In essence, what this system has done is to smother the soul and spirit of an entire people."^25

A principal speaker at the 1969 NEA Human Relations Conference in Washington, D.C. was to refer this whole process as the "great rape of the mind."^26

^24 Ibid.


One would think that the extensive litigation dealing with educational rights and equal educational opportunities would have provided legal recourse for the Mexican American community. However, as Martin Gerry, of the Civil Rights Office of the Department of Health, Education, and Welfare observes:

"...between 1954-1970 neither the courts nor the Executive Branch seriously attacked either the segregation of Mexican American, Puerto Rican, and Native American children or the individual discriminatory practices utilized by school districts in the operation of educational programs within schools." 

Although there had been many and varied activities which brought about educational change, this change was neither sufficient nor that which adequately met the goals and objectives of the Mexican American or any other linguistically and culturally different community. This is well attested to in the remarks of a Chicano educator, considered the "Dean of Mexican American educators."

"George I. Sanchez, dean of the Chicano educational movement and for nearly half a century a paladin of educational reform, issues a severe indictment of U.S. society in his discussion of the education of Mexican American children. Reviewing what he cynically terms 'Educational Change in Historical Perspective,' Sanchez writes, 'While I have seen some changes and improvements in this long-standing dismal picture, I cannot in conscience or as a professional educator take any satisfaction in those developments. The picture is a shameful and embarrassing one.'"

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The shame and embarrassment of Sanchez is more humanly felt when the issue of EMR education, testing and the resultant disproportionate placement of Chicano children into educably mentally retarded classes is translated into numbers and examined against the public school's unwillingness to change. Charles A. Ericksen, an investigator for the Western field office of the U.S. Commission on Civil Rights, provided an excellent backdrop for understanding this observation when he wrote of one of the three communities involved in EMR litigation of this study:

"Sixty-five percent of San Diego's (California) educable mentally retarded (e.m.r.) classes are presently filled with Mexican American and Black children, while these groups comprise barely 20 percent of the district's student population."

"This disproportion exists in spite of the fact that the district has already responded to professional and lay pressure by removing nearly 500 minority students from its e.m.r. classes over the past year."

"While California developed many guidelines to govern the placement of students in E.M.R. classes, it has been extremely lax in its enforcement of such regulations. The fact that it pays local districts roughly double for E.M.R. students on their attendance rolls seems to have encouraged the fantastic growth of E.M.R. classes state-wide--from 7,541 students in 1948 to a high of 57,148 in 1968."

The Mexican American community was determined that this serious general practice of indiscriminate, highly disproportionate placing of innocent, mentally sound children into educably mentally retarded classes be stopped. This has been accomplished to a large extent through court orders and outside observers, the first alternative being much more effective and preferable. The second, however, is much cheaper for administering and has been utilized when necessary. It is obvious that the Mexican American community has been successful in this battle and has begun to understand and accept it's traditional role of being a coproduction in the education system."

29 Charlie Ericksen, Focus Interview held with selected key participants in the EMR issue, San Diego, California, January 1970.
classes should be ended. As seen from the above, notwithstanding
the protests, the walkouts, the boycotts, the turmoil, the schools
would or could not change under their own impetus. Therefore, in
June of 1968, the preparation for a new decade, the Mexican American
community brought unprecedented civil action dealing with this issue
of intelligence testing, the whole question of the EMR, and the
Mexican American and linguistically and culturally different child
into the Courts of California; one case in the State Court and two in
the U.S. Federal Court. It was in that State with the highest popu-
lation of Mexican Americans where these law suits took place. The
three communities involved are Santa Ana, California, (Arreola v.
Board of Education);\textsuperscript{30} Soledad, California (Diana v. State Board of
Education);\textsuperscript{31} and San Diego, California,* (Covarrubias v. San Diego
Unified School District).\textsuperscript{32}

The 60's saw an awakening in the Mexican American community which
examined the institutions which effected it. Education was identified
especially by the students through their walkouts, protests, and boycotts,
as a key institution; leaders responded by identifying community charges.

\textsuperscript{30}Arreola v. Board of Education, Santa Ana Unified School District, 150577, Ca.

\textsuperscript{31}Diana v. State Board of Education, Soledad, C70-37-RFP, Ca.


*Throughout this study these three law suits will be referred to as
Santa Ana, Soledad and San Diego.
Causes contributing to the alleged low achievement of the Mexican American child were identified as even beginning in the very process of testing and measuring intelligence. This process began at the start of a child's educational career—the first grade. The Mexican American community, determined to expose and rectify this problem, initiated three EMR legal challenges which are the object of this study. It is interesting to note that the Chicano community turned to another important institution, the legal system, and for the first time legally challenged the critical and psychologically damaging issue of the disproportionate placement of Mexican American and other linguistically and culturally different children into classes for the educably mentally retarded. With these three EMR legal challenges came many educational changes in the educational policies and strategies effecting the educational development of the Chicano and other linguistically and culturally different children.
Statement of the Problem

The previous overview has demonstrated that the Mexican American community focused on the indiscriminate use of intelligence tests and the current process which resulted in disproportionate numbers of Chicano children placed in educably mentally retarded classes. It was seen that this practice was a major contributing cause to the low educational status of the Mexican American community and seriously damaged the psychological and educational well-being of its children. Determined to rectify this situation, the Mexican American community sought legal recourse from the Federal and State courts of California. These three unprecedented EMR law suits took place in San Ana, Soledad and San Diego, California.

A chief objective of this study was to identify the major educational issues surrounding EMR testing and education -- contained in these three EMR legal court actions and relate those educational changes which directly stemmed from them. The purposes of the study were:

1. Through a review of related literature, to determine the educational issues contributing to the psychological and scholastic damage of large numbers of Mexican American children by disproportionate placement of them into educably mentally retarded classes.

2. Through a review of current research, and literature, to determine the important major issues in these three law suits.

3. Through a review of each of the three California EMR law suits, to identify the major similar and distinct educational issues in each case.
4. Through an analysis of the court actions, to identify the court determinations, the immediate results of court action and identify the wider educational impact and implications.

5. Through information obtained from selected community educators by means of focus interviews, the educational impact and importance of these legal actions moving toward educational changes will be determined.

**Definition of Terms**

The following terms are defined operationally as they are used in this study.

**Anglo** -- this term will be used to refer to White persons who are not Mexican American or members of other Spanish surnames groups and is used in the same connotation as it is used commonly in the Southwest.

**Barrio** -- is a very frequently used term to refer to a heavy concentration of Mexican American or other Spanish speaking people living in a neighborhood.

**Chicano** -- is another term used to identify members of the Mexican American community. The term has in recent years gained a great deal of acceptance among young people, while among older Mexican Americans the term has long been in private use and is now increasingly being used publicly. The term is receiving wide currency in the mass media. As used in this study the term Chicano is intended only as a variation of the term Mexican American and will be used interchangeably.

**Cultural Pluralism** -- the ability to function competently and comfortably in the culture represented by the child's family as well as the culture represented by the majority of America.

**Culturally Democratic Education** -- as defined by Dr. Manuel Ramirez, is that education which enables a child to retain and develop his cultural identity while he adopts the values and life styles of mainstream America.
Educably Mentally Retarded -- Dr. Jane Mercer's usage of the term will be used here, namely, mildly mentally retarded.

Focus Interview -- As used in this study is a personal interview with specifically identified persons who had first hand experience with one or all three of the cases of this study.

The interview concentrated on a specific set of questions with the objective of obtaining background data, much of which has never been recorded, nor made public. (see Appendix)

I.Q. -- (Intelligence quotient). This study will use the abbreviated form as commonly used to refer to those tests designed to measure intelligence.

Mentally Retarded -- will be used in this study as defined by "Group for Advancement of Psychiatry, 1959:" a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning as measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individuals own social environment. Conversely, these patients show a slow rate of maturation, physical and/or psychological, together with impaired learning capacity.

May 25th Memorandum -- this is a regularly used reference to a Memorandum released by the Director, Office for Civil Rights, (Mr. Stan Pottinger) Department of Health, Education and Welfare, May 25, 1970, regarding the Identification of Discrimination and Denial of Services on the Basis of National Origin.

Mexican American -- this study will use this term to refer to persons who were born in Mexico and now hold United States citizenship or whose parents or more remote ancestors immigrated to the United States from Mexico. It also refers to persons who trace their lineage to Hispanic, Indo-Hispanic, or Mexican forebears who resided within Spanish or Mexican territory that is now part of the Southwestern United States.

Southwest -- is used to refer to the five states of Arizona, California, Colorado, New Mexico and Texas.
Spanish surname or surnamed -- is used to refer to all persons of Spanish surname in the United States, including those outside the Southwest, except when such persons are referred to specifically by national origin, i.e., Mexican American, Puerto Rican, Cuban and others.

Assumptions in the Study

1. Each law suit reflects some of the major educational issues surrounding intelligence testing and the actual process of placing Mexican American children into educably mentally retarded classes in its respective community.

2. The current psychological research used as the basis for each of the three law suits reflects contemporary psychological theories.

3. The actions of the courts are based on contemporary psychological theories.

4. Educational impact is identifiable in each of the three law suits.

5. Respondents will react candidly and honestly to a focus interview concerning educational change resulting from these three law suits.

Limitations of the Study

1. These three law suits dealing with the EMR issue are a first of their kind for the Mexican American community, as well as for the larger society. As a result, the present study is limited to most current literature and research, much of which has been developed parallel to, in preparation for, or as a result of each law suit. The study will limit itself to this available information.

2. Although there is definite evidence that the issue of Mexican American students in EMR classes critical in other communities and states where the Chicano resides, such as Arizona, Colorado, Indiana, Illinois, Michigan, New Mexico, Texas, Utah, to name a
few, this study is limited to these three communities of Santa Ana, Soledad and San Diego, California, the locale of each of the law suits.

3. There is evidence that these issues are critical for other minorities such as the other Spanish speaking people, particularly the Puerto Rican and the Blacks, however, this study limits itself to the Mexican American child. The first two law suits were on behalf of Mexican American children and in the last, San Diego, half of the plaintiffs were black.

4. The time considered is determined by the chronological dates of each of the three law suits themselves, the first of which began in June of 1968. Soledad and San Diego have reached an out of court judgment. Santa Ana as of January 1973 is still in the state courts.

5. The chronological development of some events and subsequent changes resulting from these law suits must be verified by the judgment of some of the principle actors. Little has been written or attempted in this area, therefore, this study must rely on these judgments. Although this study is concerned with time factors surrounding each case, enough events have taken place so that educational impact can be shown. Because of our closeness to many of these historical relationships, the judgment of principle actors is most critical, however subjective sometimes it may be. The writer used personal interviews to clearly identify resultant educational changes.

6. This study identified and explored the educational issues surrounding intelligence testing and the process whereby Mexican American children are placed disproportionately into EMR classes, as identified specifically by these three law suits: (1) Arreola v. Board of Education – Santa Ana, California; (2) Diana v. Board of Education – Soledad, California; (3) Cavarrubias v. San Diego Unified States School District – San Diego, California. Therefore, the writer did not intend that this be a psychological study or attempted to deal with the technicalities of law identified in any or all three cases.
The Design of the Study

The method utilized in this study consisted primarily of gathering, reviewing and analysing data from current research, reports, surveys, investigations, and interviews, such as:

1. The research reports of the U.S. Commission on Civil Rights, Western Division Office, Los Angeles, California.

2. The legal briefs filed in the three first law suits during the period of 1970 through 1972:
   a. Arreola v. Board of Education - Santa Ana, California, #150577
   b. Diana v. State Board of Education - Soledad, California, #C70-37-RFP
   c. Cavarrubias v. San Diego Unified School District, San Diego, California. #70 394 T

3. The related preparatory investigations for each of the three law suits, as well as the psychological testing of all the children in each case.

4. The three year research by the Mexican American Education Project Study of the U.S. Commission on Civil Rights.

5. Those sources which demonstrated the correlation between each of the legal cases and the administrative local, state and national changes which occurred.

In order to supplement the background data collected in each of these legal cases, series of focus interviews were conducted. Persons interviewed were:

a. Those identified with the preparatory investigations;

b. Community leaders surrounding each law suit;

c. Attorneys who had an integral part in each law suit;
d. Key parents of children involved in these law suits;

e. Educators with responsibilities effecting these involved communities.

Important psychological research and studies have been developed parallel to, in preparation for, or as a result of each of these law suits. This study has identified and utilized this current information, especially that from:

a. The National Multilingual Assessment Center in Stockton, California - Dr. Ed Di-Avila and Joe Ulibarri.

b. The Multilingual Assessment Project of the Systems and Evaluations in Education Organization, Riverside, California - Dr. Manuel Ramirez and Dr. Alfredo Castaneda.

c. The five year research projects of the University of California, Riverside, Dr. Jane Mercer.

d. The Institute for Personal Effectiveness in Children, San Diego, California - Dr. Uvaldo Polomares.

e. The position papers by the National Task Force on Implementation of the May 25th Memorandum of the Office of Civil Rights, Department of Health, Education and Welfare - Mr. Marty Gerry.

Finally, since this issue was raised by the Mexican American community, the writer will identify educational changes associated with these three EMR law suits through focused interviews.*

**Importance of the Study**

The issue of Mexican American children wrongly placed and placed in EMR classes disproportionately to their population has been and

*See definitions.
continue to be a serious, burning one which has left its damaging impact on the social, educational, psychological and economic well-being of a whole people.

In the late 60's it was especially the Chicano teenager who walked out of elementary and secondary schools, protested and boycotted them, especially in the Southwest, and refused to be identified with an institution which abused the trust of their parents as well as failed in their social responsibility of education. A key issue was the indiscriminate placing and the process whereby this was brought about, of their younger brothers and sisters, even in their earliest formative years, into an educational process which systematically condemned them to a "cycle of poverty," and exclusion.

After years of extensive research, Dr. Mercer concludes what many Chicano parents and community leaders felt for so long:

"Disproportionately large numbers of children of Mexican American heritage are labeled as mentally retarded by the public schools and placed in special education classes. This phenomenon appears to be true throughout the Southwestern states and in most communities with a sizable Mexican American population."33

Therefore, this study of these three critical EMR law suits, the first of their kind in North America, showed how this important educational issue raised by the community themselves, sought legal recourse for educational change. The investigator shows how these legal

33Current Retardation Procedures and the Psychological and Social Implications on the Mexican American, A Position Paper - Dr. Jane Mercer, Southwestern Cooperative Educational Laboratory, Albuquerque, New Mexico, April, 1970.
challenges cut through to the very core of the problem, namely, that the past and present I.Q. tests used as measuring instruments, and the process of placement are invalid and necessarily inadequate for the Mexican American child, and raises serious question as to their validity for other linguistically and culturally different children of the U.S.

This study shows how these three law suits challenged the validity of the I.Q. tests, showing that the Mexican American child was not included in the norming of the original tests. It shows the social and psychological and educational damage done to so many normal linguistically and culturally different Chicano children. One of the three EMR law suits filed for punitive damages for each of the child plaintiffs, an unprecedented community and legal action.

This is the first study attempting to identify the issues in each of these law suits to make a comparative analysis between each of the law suits, and to show the educational changes which resulted from them.

An underlying importance of this study is that the Mexican American community not only challenged the very philosophical foundation upon which American public education has rested for over two hundred years, the melting pot philosophy, but offers in its place an alternative educational philosophy which recognized the cultural diversity of this country - Cultural Pluralism.
Finally, this study records the important educational changes which resulted from the original complaints in the respective communities. It shows that these educational changes came about not only in the given local community but statewide, regionally and even nationally. It is intended that this can be a case in point to parents that their voices, criticisms and challenges can bring about educational reform. On the other hand, administrators of schools can find in this study the assurance that when parents and community are determined to protect their children, educational changes will come about, with or without the administrator.
CHAPTER II

Related Literature and Research

The previous chapter considered the educational challenges especially by the Chicano youth of the public school systems, in their quest for equal and quality education. The youth rejected the traditional blame by school systems for the low educational attainment of the Mexican American community in general. They accused the schools not only for failure but also for actual implementation of educational strategies, decisions, policies, and programs which were seriously damaging to the Chicano. As was shown, this blame was further echoed by Howe and Obledo. It was shown by Castaneda, Mercer and Carter, that the schools were a screening device allocating people—in our case, the Chicanos—to different societal slots. It was found that this was specifically true in testing for mental ability procedures, particularly I.Q. testing. Munoz went one step further and blamed the schools for "rendering a whole people powerless." Obledo suggested this was "intended or unintended homicide." It was found that the Chicano community was affected, not only by this specific educational process but by many other educational strategies as well, each of which was extremely damaging to it and contributed to the Chicano's low educational status. Unwilling to leave the resolution of these issues to traditional institutions—namely educational, religious and political—upon which it historically depended, the community decided to turn to state and federal courts for change. The Chicano community
alleged educational neglect, abuse, failure, and psychological homicide with resultant negative socialization effects on its youth.

It pointed out that this educational neglect not only began at a very early age but started the first day of school and plagued each child affected with a label or stigma for the rest of his or her life. This situation is further elaborated on by Dr. Clark Knowlton, a longtime educator in the Southwest as he describes the specific kind of negative impact that has taken place:

"Not only has the American school system failed to educate the Mexican American children but likewise has closed the doors of social and economic opportunity in their faces. The school system has hampered their adjustment to Anglo-American society. It has damaged their identity, created feelings of inferiority, inadequacy, self-rejection, and group rejection, and it is now partially responsible for constantly increasing unrest and tensions among the Mexican American student population."¹

That the EMR issue is an embodiment of the educational issues which confront the Chicano community is well expressed by the field consultant for the Western Office of the United States Commission on Civil Rights who did much of the interviewing for their special Urban

These interviews laid the groundwork for the subsequent San Diego EMR Law suit:

"EMR educational issues is nothing more than a microcosm of what is happening to the Chicano in public education. It is symptomatic of all the ills which the Chicano finds himself or herself confronted within an educational pursuit."²

The exact degree of negative impact is subject for more extensive research and study. This investigation intends to study the first three EMR legal challenges in California, dealing with the issue of the disproportionate placement and misplacement of Mexican Americans and other linguistically and culturally different children, into mentally retarded classes in Santa Ana, Soledad and San Diego, California. It will be seen that the EMR education issue is certainly one which begins early in the life of a child and has a lasting impact on him and his community.

These three EMR law suits are the first of their kind in California or the United States. They are related one with the other, each building on the other.³ These law suits were important to the

²Salley James, Focus Interview, Los Angeles, California, August, 1972
³Phil Montez, Focus Interview, Los Angeles, California, August, 1972.

*The U.S. Commission on Civil Rights Field Offices undertook a major activity which was called the Urban Project (1970). The Western Field Office, under the leadership of Phil Montez, selected San Diego, California as the site for its project. The issue of EMR education had been already raised in two other California communities. The issue concentrated on the Mexican American. The Urban Project expanded the issue to include the Black and the Chicano which gave added significance to the importance of this educational issue.
Chicano community and the educational establishments of California because they pinpointed a specific area of educational neglect, intended or unintended. The psychological damage which resulted had not only short but also long range effects on a whole people. As will be seen, this issue raised in both state and federal courts was to effect new state legislation, new state board policy as well as national guidelines for schooling as it relates to the linguistically and culturally different child.

In order to appreciate more fully the gravity of the allegations made by the three specific communities of Santa Ana, Soledad and San Diego, California, and before considering the issues of the EMR in these three California cases, it is noteworthy to look at further data indicating the educational failure of the schools and the resultant effect on the Chicano community to the degree that Munoz could say "he (the Chicano) is powerless." As gravely serious as the EMR question is, however, it must be seen in its context as only one of many educational strategies that have systematically damaged, alienated and excluded the Chicano, not only from educational advancement, but advancement and meaningful participation in American society as well.

This chapter, therefore, will pursue three major objectives:

1. Show evidence that the schools in fact have failed the Mexican American in California.

2. Show how this failure by the schools has contributed to "the powerlessness of a people."
3. Show a specific area where schooling has damaged the Mexican American and other linguistically and culturally different children— the EMR issue, the three California law suits and related literature and research.

Evidence That The Schools in Fact Have Failed The Mexican American in California

The most extensive educational survey to assess the effectiveness of the public schools in the Southwest is the Mexican American Education Study of the United States Commission on Civil Rights. For


In the HEW survey, questionnaires were sent to a random, stratified sample of school districts throughout the continental United States. Approximately 1,300 (forty percent) of the more than 2,900 districts in the Southwest received HEW questionnaires.

The Commission’s Spring 1969 survey sought more extensive information than that of HEW. The Commission survey encompasses only those districts which have a Mexican-American enrollment of ten percent or more. This survey enabled the Commission to describe many aspects of the education provided nearly eighty percent of the Mexican American pupils and about fifty percent of the total school population of the Southwest.

Questionnaires were mailed in April 1969 to superintendents of 538 districts who had reported to HEW that ten percent or more of the total district enrollment was Spanish surnamed.

In addition to the 538 district superintendents, the principals of 1,166 elementary and secondary schools located within the sample districts were sent questionnaires.

our purposes, the data applied to California has been extrapolated and presented here since it offers educational backd providing a keener appreciation of the EMR issues.

The MAES\textsuperscript{5} study assessed the schools in the Southwest, and in our case, the schools of California in five categories:

1. The holding power of the schools.
2. The reading levels of the children in the schools.
3. The grade repetition of children in schools.
4. The overageness of children in given grades.
5. The post graduate outcomes.\textsuperscript{6}

The Holding Power of the Public Schools in California:

Although California schools do have a better holding power record than any of the other southwestern states, "fewer than two out of every three Mexican American students, or sixty-four percent ever graduate. Already by the eighth grade, six percent have left school."\textsuperscript{7}

(see Table 1 and Appendix)

Given the six percent drop-out by the eighth grade in 1968, it was projected from the MAES survey that 120,000 or thirty-six percent

\textsuperscript{5}MAES will be used to refer to "The Mexican American Education Study" of the U.S. Commission on Civil Rights.


\textsuperscript{7}Ibid., p. 12.
TABLE 1

California School Holding Power

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<tr>
<th></th>
<th>Grade 8</th>
<th>Grade 12</th>
<th>Enter College</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo</td>
<td>100.0</td>
<td>85.7</td>
<td>46.9</td>
</tr>
<tr>
<td>Mexican American</td>
<td>93.8</td>
<td>63.8</td>
<td>28.9</td>
</tr>
<tr>
<td>Black</td>
<td>97.3</td>
<td>67.3</td>
<td>34.0</td>
</tr>
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of the Mexican American students would fail to graduate from high school.\textsuperscript{9}

The Reading Levels of the Children in the Public Schools of California:

The MAES survey took into account the poor reading achievement of the California student during this period. It found that the student does not improve in higher grades, nor as the student advanced in grades. It was shown that already by the fourth grade, although twenty-seven percent of the Anglo students were reading below grade level, the percentage is double or fifty-two percent for Mexican American fourth graders reading below grade level. Upon graduation, sixty-three percent had not advanced beyond the tenth grade in reading. Nearly one quarter or twenty-two percent of the twelfth grade Mexican American students in California were reading at the ninth grade level or lower.\textsuperscript{10} (see Table 3 and Appendix)

Grade Repetition and Overageness in California Schools:

A third educational outcome studied by the survey with its concomitant result is that of overageness. It concluded that the primary cause contributing to a child's overageness in school is grade

\textsuperscript{9}Ibid.

\textsuperscript{10}Clearly if one would consider the reading level as a programmatic failure, it follows that schools are confused as what to do. NEA's "The Invisible Minority, 1966 Report" expressed in it's Prefact that "there was a great desire to do something, but teachers and administrators did not know what to do." (Volume II, p. 28).
TABLE 2
ESTIMATES OF SCHOOL HOLDING POWER RATES
FOR EACH ETHNIC GROUP

CALIFORNIA

<table>
<thead>
<tr>
<th>Grade</th>
<th>Anglo</th>
<th>Mexican American</th>
<th>Black</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>8</td>
<td>100.0</td>
<td>93.8</td>
<td>97.3</td>
</tr>
<tr>
<td>12</td>
<td>85.7</td>
<td>63.8</td>
<td>67.3</td>
</tr>
<tr>
<td>Enter College</td>
<td>46.9</td>
<td>28.2</td>
<td>34.0</td>
</tr>
</tbody>
</table>

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### Table 9

**-ESTIMATED READING LEVELS IN CALIFORNIA**

<table>
<thead>
<tr>
<th></th>
<th>Percent Below Grade Level</th>
<th>Percent Above Grade Level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4th Grade</td>
<td>8th Grade</td>
</tr>
<tr>
<td>Anglo</td>
<td>1.8</td>
<td>22.4</td>
</tr>
<tr>
<td>Mexican American</td>
<td>5.1</td>
<td>5.1</td>
</tr>
<tr>
<td>Black</td>
<td>6.9</td>
<td>12.0</td>
</tr>
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</table>

### Eighth Grade

<table>
<thead>
<tr>
<th></th>
<th>Percent Below Grade Level</th>
<th>Percent Above Grade Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo</td>
<td>27.1</td>
<td>22.0</td>
</tr>
<tr>
<td>Mexican American</td>
<td>37.2</td>
<td>17.5</td>
</tr>
<tr>
<td>Black</td>
<td>55.0</td>
<td>9.5</td>
</tr>
</tbody>
</table>

### Twelfth Grade

<table>
<thead>
<tr>
<th></th>
<th>Percent Below Grade Level</th>
<th>Percent Above Grade Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo</td>
<td>34.1</td>
<td>16.9</td>
</tr>
<tr>
<td>Mexican American</td>
<td>62.8</td>
<td>16.6</td>
</tr>
<tr>
<td>Black</td>
<td>58.7</td>
<td>20.2</td>
</tr>
</tbody>
</table>

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repetition. From some of the responses, it was found that some school districts kept Mexican American children back as a matter of regular school practice. It became clear that this grade repetition most frequently took place in the first grade and that Mexican American youngsters in the schools surveyed were retained more frequently than Blacks and Anglos (see Table 4 and Appendix). "It was found that in California, repetition for the Mexican American in the first grade ran about ten percent which contrasted with six percent for Anglos and Blacks."12

An interesting factor was found; namely, that Mexican Americans are still the group most likely to be held back again at the fourth grade, with a two to one chance this would occur in comparison with the Anglo and Black.13

Severe Overageness in the Public Schools of California:

It was very clear from the data that once again, overageness was more severe for Mexican American children than for Anglos and Blacks.

11AMES Report II, p. 35.

12Ibid., p. 36.

13Unless a student begins school before the normal age, one school year repetition will make him one year older than other students at his grade level, two repetitions, two years older, and so on throughout his school career.

If one considers this serious factor, cuppled with a child who was misplaced in an EMR class, these are grave aggravations contributing to alienation, disallusionment, negative self-perceptions, failure, resentment, unwantedness, all ingredients for dropping out or feeling shoved out of school.
Table 4

Percent of Students Repeating Grades in the First and Fourth Grades by State and Ethnic Group, 1969

<table>
<thead>
<tr>
<th></th>
<th>Arizona</th>
<th>California</th>
<th>Colorado</th>
<th>New Mexico</th>
<th>Texas</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Anglo</strong></td>
<td>5.7</td>
<td>5.6</td>
<td>3.9</td>
<td>8.5</td>
<td>7.3</td>
<td>6.0</td>
</tr>
<tr>
<td><strong>Mexican American</strong></td>
<td>14.4</td>
<td>9.8</td>
<td>9.7</td>
<td>14.9</td>
<td>22.3</td>
<td>15.9</td>
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<tr>
<td><strong>Black</strong></td>
<td>9.1</td>
<td>5.7</td>
<td>7.7</td>
<td>19.0</td>
<td>20.9</td>
<td>8.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Arizona</th>
<th>California</th>
<th>Colorado</th>
<th>New Mexico</th>
<th>Texas</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Anglo</strong></td>
<td>0.8</td>
<td>1.6</td>
<td>0.7</td>
<td>0.9</td>
<td>2.1</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Mexican American</strong></td>
<td>2.7</td>
<td>2.2</td>
<td>1.7</td>
<td>4.2</td>
<td>4.5</td>
<td>3.4</td>
</tr>
<tr>
<td><strong>Black</strong></td>
<td>0.7</td>
<td>1.0</td>
<td>1.3</td>
<td>1.0</td>
<td>5.1</td>
<td>1.8</td>
</tr>
</tbody>
</table>

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The survey produced these facts: (see Table 5)

"First grade level Mexican American children are four times likely to be two or more years overaged than Anglos or Blacks."

"By the eighth grade, (9.4 percent) the student population of those who are overaged is almost eight times as high for Mexican Americans as for Anglos, and more than four times as high for Black students.14

In the same survey, it was found that in those districts with a ten percent or more Mexican American student population, the principals of these schools estimated that fifty percent of the Chicano children did not speak English as well as the average Anglo first grader,15

This fact is especially significant for our study since many children are frequently relegated to classes for Educable Mentally Retarded simply because many teachers equate language ability with

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15 The MAES interviewed one principal in a California school where one-third of its students were Chicano. Students in the first grade considered unprepared for the first grade were placed in "Junior First," many repeating the first. The principal estimated ninety percent of the 1969 kindergarten class were placed in this level.

It is clear from this evidence that school administrators that the linguistically and culturally different children differently. As will be seen in the EMR issues, this different treatment is not only systematic and detrimental, it is broad-scaled.

If a California child survives the high probability of not being placed in "Pre-First," he still faces the numerical probability of being placed in an EMR class.

Considering the given that California is progressively much further ahead educationally than the other four southwestern states, the educational picture in each of them becomes much bleaker.
<table>
<thead>
<tr>
<th>Ethnic Group</th>
<th>Grade</th>
<th>Arizona</th>
<th>California</th>
<th>Colorado</th>
<th>New Mexico</th>
<th>Texas</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo</td>
<td>1</td>
<td>0.7</td>
<td>0.9</td>
<td>0.7</td>
<td>0.4</td>
<td>0.7</td>
<td>0.8</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>1.2</td>
<td>0.7</td>
<td>0.5</td>
<td>2.7</td>
<td>1.3</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>1.1</td>
<td>0.8</td>
<td>0.6</td>
<td>2.3</td>
<td>2.1</td>
<td>1.2</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>1.4</td>
<td>0.1</td>
<td>2.5</td>
<td>1.7</td>
<td>4.9</td>
<td>1.4</td>
</tr>
<tr>
<td>Mexican American</td>
<td>1</td>
<td>2.5</td>
<td>1.7</td>
<td>2.1</td>
<td>1.7</td>
<td>6.6</td>
<td>3.9</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>5.6</td>
<td>2.1</td>
<td>2.3</td>
<td>5.5</td>
<td>12.0</td>
<td>6.9</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>11.8</td>
<td>2.3</td>
<td>1.5</td>
<td>10.8</td>
<td>16.5</td>
<td>9.4</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>10.9</td>
<td>2.3</td>
<td>3.9</td>
<td>6.8</td>
<td>10.5</td>
<td>5.5</td>
</tr>
<tr>
<td>Black</td>
<td>1</td>
<td>1.5</td>
<td>0.7</td>
<td>0.9</td>
<td>...</td>
<td>3.2</td>
<td>1.2</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>1.3</td>
<td>0.7</td>
<td>0.7</td>
<td>2.0</td>
<td>6.1</td>
<td>1.8</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>3.0</td>
<td>0.3</td>
<td>...</td>
<td>1.8</td>
<td>6.7</td>
<td>2.1</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>5.5</td>
<td>1.9</td>
<td>5.4</td>
<td>9.1</td>
<td>4.6</td>
<td>4.4</td>
</tr>
</tbody>
</table>

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intellectual ability. In California, Mexican American children account for more than forty percent of the so-called mentally retarded.16

Post Graduate Outcomes:

That the aforementioned educational procedures have a negative effect on a whole population, "a whole generation of a people" (Obledo) is evident from the fact that the fifth criteria measuring the success of the public schools shows that in California, although the Mexican American in 1968 represented 15.6 percent (404,750) of the elementary, 13.6 percent (104,264) of the intermediate and 12.3 percent (137,268) of the secondary or a total of 14.4 percent (646,282) of the total non-college school population, representation in undergraduate college was 31,858 or only 5.5 percent. On the other hand, the Anglo school counterpart represented 74.2 percent of the total school population or 3,323,478 in 1968 and for the same year had 84.5 percent or 487,137 in undergraduate college enrollment. This shows that one in seven Anglos went on to college while one in twenty Chicanos for the same period did so.17


The statistical data in the five described outcomes clearly demonstrates that in these five critical educational outcomes, the public schools in California have failed the Mexican American. This data strongly substantiates the young Chicano's challenge of the public educational system in accomplishing the objectives for which they carry public responsibility.

In Brown vs. Board of Education, the Supreme Court considered the importance of public education's role in the preparation of a child for societal life:

"Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society... Today, it is a principle 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 if 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."

Conversely, if education is not provided on equal terms, in the case of the misplaced normal child in EMR classes, then it can be reasonably concluded that a child so placed will not have an awakening of culture values, preparation for later professional training, nor aided in normal adjustment to his environment.

The role of the public school is a topic about which many volumes have been, surely many more will be written especially as it relates to the linguistically and culturally different child. For the purposes of this study, having seen the outcomes of public education in five critical educational areas, it is important to consider the results and concomitant impact of this educational neglect on a people.

Silberman says:

"... (T) education is becoming the gateway to the middle and upper-reaches of society which means that the schools and colleges thereby become the gate-keepers of the society. And this transforms the nature of educational institutions. They are inevitably politicized for whoever controls the gateways to affluence and social position exercises political power, whether he likes it or not, and whether he is conscious of the fact or not." 19

Jane Mercer seems to go one step further in saying that schools in fact allocate people to adult status and roles:

"The schools are the primary social institution allocating persons to adult statuses and roles in American society. The kind and amount of education which a person has determines to a large extent whether he will participate in the mainstream of American life or be shunted into byways. Educational decisions which systematically favor one group over another predetermines what group will occupy the seats of power and which group will remain powerless." 20

The now famous education law suit in California which will contribute toward reshaping the financial structure for public school systems, Serrano vs. Priest, had this to say:

---


"We, therefore, begin by examining the indispensable role which education plays in the modern industrial state. This role, we believe, has two significant aspects: First, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life. ...the pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable."  

Again, appropriate for our study, Serrano vs. Priest says:

"Opportunities for securing employment are often more or less dependent upon the rating which a youth, as a pupil of our public institutions, has received in his school work."  

Moving away from the general to the particular and more apropos to the issues contained in the three law suits of our study dealing with the impact of displacement of children into EMR classes through the educational process of I.Q. testing, Hurley says:

"Perhaps no single concept in any discipline has been as lethally criticized, by as many investigators, as that of IQ. Yet it remains a sanctified, unchallengeable point of reference for educators and for the middle class. Its potency is so great that it can generate an identity crisis in a child who is doing excellent school work but who discovers that his IQ is only average. Despite protestations to the contrary, it is used by teachers from the very first year of school as an untainted criterion that can be used to evaluate and categorize students. As an "accurate" measure of intellectual potential, it becomes the greatest

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22 Ibid., p. 39.
influence in determining which child is to enter the enriched educational program and which is to be placed on the slower, inferior track."  

As this investigation progresses in its study of the EMR issues in those school districts challenged by these three law suits, the question of the role and responsiveness of the schools necessarily arises in the mind of any one concerned with public education. Particularly this is true when it is apparent that the interests of the schools seem to be in conflict, in opposition, or harmful to children and parents of that given school system. During the Focus Interview with Attorney Joe Neeper in San Diego, he raised this very concern:

"A major issue is raised in this EMR legal challenge, what is the role of the school? Whose interest is the school to look out for? How can a school system through its administrators take an intransigent position when parents, community organizations, attorneys, psychologists, educators, point out a particular failure?"  

It does not require a very complex assessment to conclude that the Chicano is not in the mainstream of American decision-making determining even remotely those things which effect his or her own life, that he does not have control of seats of power, and is, from a self-determination perspective, powerless. Munoz raised the question of "powerlessness" in applying it to the neglect of the public schools, therefore, in order to substantiate this conclusion on his part, and

---


24 Joe Neeper, Focus Interview, San Diego, August, 1972.
seeing how the above statements refer to the Chicano community, perhaps it is well that this study examine some of the important arenas of societal life in that state where the Chicano population is highest: California.

There are four significant areas in decision-making in California wherein one can conclude that the Mexican American is "powerless." They are:

1. Political powerlessness.
2. Judicial powerlessness.
3. Economic powerlessness.
4. Educational powerlessness.

This study will treat each of them in this order.

Political Powerlessness of the Chicano in California:

Decisions made by top elected and appointed state officials influence every aspect of life in a given state, and in our case, California. For a people, especially ones who were the controlling voice in a land which was once theirs, to have self-determination through access to these positions of decision-making is most essential. However, even as late as 1971 it was found that of the 15,650 elected and appointed officials at municipal, county, state, and federal levels in California, only 310 or 1.98 percent were Mexican American. 25

As of the hearings by the State Advisory Committee to the United States Commission on Civil Rights, August of 1971, there were no Mexican Americans of the top forty state officials nor of the twenty-eight Governor's advisors. 26

Important state decisions--policy and administrative--are made by 4,023 employees in the executive branch of California government which included boards, commissions and advisories, only sixty or 1.5 percent are Mexican Americans. (Note: Most of these positions are appointed, not elected.) 27

In city and country government decision-making positions, there are only 241 or 2.2 percent of the 10,907 employees who are Mexican American.

Judicial Powerlessness of the Chicano in California:

The use of power, administration of law, the manner of self-determination are definitely influenced by the decisions rendered by the justices of a state or federal court. However, as of 1971, there were no top state of California court positions held by Mexican Americans in the top 132 posts. This includes seven Supreme Court Justices, the Judicial Council, the Administrative Office of the Courts, the Commission on Judicial Qualifications and the State Court of Appeals. 28

26 Ibid.
27 Ibid.
28 Ibid.
Of the 874 decision-making positions held on a federal level effecting California, many of which are appointed, there are only fourteen Mexican Americans. This covers such roles as legislators, judges, marshals, commissioners, United States attorneys and their assistants. None of the eighty-seven United States assistant attorneys are Mexican American. "In the United States Court of Appeals and the United States District Court of California, including United States judges, referees, probation officers, commissioners, and marshals, there are 262 positions of which only six are filled by Mexican Americans."29

Certainly it becomes most obvious that the Mexican American is not proportionately represented in the important judicial decision-making arena so that it can be concluded he is powerless in judicial decisions in California.

Economic Powerlessness of the Chicano in California:

Employment Case. In an administrative complaint brought by six Mexican American and Spanish-speaking organizations against HEW (1970), which at the time of the complaint was spending 1.1 billion dollars in California, it was alleged that of the 53,221 persons employed in HEW programs in that state, only 1,635 (3.1 percent) are Mexican Americans.30

29 Ibid.

There were at the time of the complaint three million Spanish surnamed Californians, the majority of whom are Mexican American. In decision-making influencing programmatic utilization of HEW federal monies, Mexican Americans are somewhat powerless.

**Economic Case.** According to "A Study by Responsible Corporate Action of San Francisco," there are some sixty-seven major corporations in California. It is estimated that in 1969, these corporations grossed income over eighty-two billion dollars. This study revealed:

The California 67:31

1. Have assets in excess of 111 billion dollars ($111,732,877,000);
2. Have annual gross revenue in excess of eighty-two billion dollars ($82,673,471,000);
3. Have net income in excess of three billion dollars ($3,087,703,000);
4. Employ more than 1.5 million Americans (1,552,167), a substantial portion of whom are Californians.

An examination of the makeup of the decision-makers who control such vast wealth as well as the economic destiny of so many people, found that as of 1970, "of the 1,008 Directors of the Board and of the 1,268 top corporate officials and executives, there is no Mexican American. 32


32 Of the Board of Directors, one has a Spanish surname who is Basque, and one executive is a Mexican resident.
It is clear from this evidence that Mexican Americans have no
decision-making influence in the expenditure of this vast amount of
wealth and therefore must be considered powerless in these decisions.

Educational Decision-Making Powerlessness
of the Chicano in the Southwest: 33

The one area where Mexican Americans have representation in a
greater number than in any other profession is that of education. In
this profession, although there are more who have entered it as
teachers, principals, superintendents, especially in California, the
Mexican American does not hold these positions in representative pro-
portion to his population. It is precisely in this profession where
some of the first and most meaningful contacts offer the valuable
opportunity for role models who by their very witness encourage
Chicano youth on into higher education and into the various decision-
making arenas of American life. Certainly it is one of the most
important social arenas where a child can develop positive self-image.
Because of the importance of this arena, it would be well to look at
current information from the Mexican American Education Project Report
which provides data for the Southwest:

"Except for those in the positions of custodian or teachers'
aide, Mexican Americans comprise substantially less of school
staff than they do of enrollment."

"Mexican-Americans are grossly under-represented among
teachers. Of approximately 325,000 teachers in the

33 Since this is considered so important, this data is for the
Southwest and not just California.
Southwest, only about 12,000 or four percent are Mexican American, while about seventeen percent of the enrollment is Mexican American. Furthermore, Black teachers, although they are also under-represented, outnumber Mexican American teachers by almost two to one."

"An even smaller proportion of principals than teachers is Mexican American. Of approximately 12,000 school principals in the Southwest, less than four hundred (three percent) are Mexican American. Furthermore, Mexican American principals are outnumbered by Black principals."

"Employment and school assignment patterns for Mexican Americans in other non-teaching professional positions such as assistant principals, counselors and librarians is similar to that of Mexican American teachers and principals. ...to a greater extent, Mexican Americans are employed as teachers' aides or as non-professionals, especially custodians rather than as professionals."

"About fifty of the 480 are superintendents or associate or assistant superintendents. The majority of these are in New Mexico."\(^{34}\)

In the arena of educational decision-making, it is clear that the Chicano does better than in any other profession. Even so, there is a long way to go just to be able to reach proportionate representation even in those communities where the Chicano resides in large numbers. Information observed during the course of this researcher's experience as Director of Education for the Mexican American Legal Defense and Educational Fund can be noted here. In 1971, from a review of the applicants for MALDEF Educational Law Grants showed that a sizeable number of law school applicants seemed to be leaving the teaching profession and were applying for law school. From every

indication, this is in favor of a new career, a new trend both interesting and encouraging. Interesting from the standpoint that education, up to this point in time, was considered a professional plateau in the advancement of the Chicano community. Encouraging, since it showed that Chicano were looking toward other needed professional careers critical in the socialization process of the Chicano in his objective for self-determination. 35

The above information makes it very obvious that in that state where the Chicano from a Chicano population perspective is locked out of the mainstream of decision-making, especially in those crucial arenas essential to breaking the hellish cycle of economic inferiority, ignorance and powerlessness. One wonders how the situation must be in those other states where the Chicano is heavily populated. Deductively, a quick response is, it is worse.

It is clear then that in that state with the highest population concentration of Mexican Americans--California--sufficient data substantiates the strong community position that the public schools have in fact failed the Chicano community, especially in the five previously mentioned important measurable areas. This failure has had a serious resultant effect on the Chicano so that he is presently excluded from significant societal decision-making which in essence, finds the

35 In May of 1972, the first eighty MALDEF grantees graduated from twenty-four law schools in the United States. Considering that it is from the legal profession where the greater percentage of public officials come (judges, politicians, etc.), this will be an important point in the Chicano development. Presently, there are over two hundred law students receiving grants from MALDEF.
Mexican American community "powerless." (Munoz)

A Specific Area Where Schooling Has Damaged The Mexican American and Other Linguistically and Culturally Different Children: The EMR Issue

There are many programs, decisions and policies contributing toward the above mentioned educational failure. However, it is one of the objectives of this study to show that contained in the issues of the three EMR legal challenges of California is sufficient powerful evidence to show that I.Q. referral testing and placement, joined with EMR education, is one of the earliest, significant, damaging, and lasting educational strategies which has harmed the Chicano and other linguistically and culturally different children and adults today. As such, then I.Q. testing, placement and EMR education stand and must share much of the serious responsibility for the educational and social status of many Chicano, Black and other linguistically and culturally different children and adults today.

Phil Montez, the chief of the Western Office of the United States Commission on Civil Rights, was asked "why the Chicano community chose to concentrate on the EMR issue when there were in fact so many other educational issues which plagued the Chicano?" He responded, "... the time was ripe for the Mexican American to take it (EMR) on in California specifically. Education—we deal with it every day, we deal with our kids' frustrations every day, and in the EMR issue, even more so."36

36Phil Montez, Focus Interview, Los Angeles, California, August, 1972.
If Hurley, in his "New Assessment—Poverty and Mental Retardation" as was seen above, can say "perhaps no single concept in any discipline has been as lethally criticized by as many investigators as that of I.Q.," in general reference to American education, how much more can it be applied to the Chicano and the linguistically and culturally different child?

One of the early attorneys in the EMR legal challenges, Joe Ortega of the Mexican American Legal Defense and Educational Fund, substantiated this position with the following observation: "Socially, this is not the only area where we have education problems. This was an area where the evidence of real racism is institutionalized, recognized and where we could get hard data. This is where we chose to attack."37

That the Chicano community viewed the EMR educational issue a severe one is noted from the anguish of Julian Nava, the President of the Los Angeles Public School System: "... many thousand have been kept longer in these EMR programs. Many should not have been there in the first place. This is a good example of man's inhumanity to man, man's inhumanity to children." 38

Although this study is concerned with the EMR question in the three specific communities of Santa Ana, Soledad and San Diego,

37 Joe Ortega, Focus Interview, Los Angeles, California, August, 1972.
38 Julian Nava, Focus Interview, Aspen, Colorado, August, 1972.
California, it does not wish to create the impression that these were the only communities in California, the Southwest or the United States where the question of disproportionate and misplacement of Chicanos and other linguistically and culturally different children into EMR classes—the whole EMR education—was a serious education problem or where this kind of law suit could have been filed. Before going into this further, it is important to show that from an analysis of the major complaints in the three cases of this study and those complaints contained in EMR law suits which followed these three in other parts of the country, there are a number of common identifiable complaints and subsequent issues which consistently underlie each of the law suits. This study has identified forty-five distinct identifiable major issues (see Appendix) particularly in the three cases of this study. They were categorized into twelve major areas.

Twelve Major Areas of EMR Issues

1. State policies and guidelines of the California State Department of Education regarding EMR education existed, but were not adhered to by school districts and administrators.

2. Mexican American and Black children who were not mentally retarded were in fact misplaced in mentally retarded classes.

3. Determination and placement of the linguistically and culturally different children was made on the basis of
I.Q. tests alone, which tests were not normed to include them nor provided for language and cultural differences.

4. The I.Q. tests used were culturally biased in favor of the Anglo middle class Midwestern child to the detriment of the linguistically and culturally different child.

5. The I.Q. tests used measured more a child's English language competency rather than the Mexican American and Black child's mental ability.

6. Mexican American and Black children were placed in EMR classes disproportionately to their respective student population in the given school districts.

7. The children wrongfully placed in EMR classes were not provided with a quality curriculum sufficient to educationally challenge them to allow for mental growth with any hope to progress out of the EMR classes.

8. The consent of the parents whose children were wrongfully placed, which consent was provided for by law, was not an informed, true or valid consent.

9. The Mexican American and Black children misplaced in these EMR classes were stigmatized for life. This misplacement was tantamount to a life sentence of illiteracy, public dependency and lack of real opportunities.

10. The privacy of the misplaced children was violated since the EMR status was permanently on the children's records,
available to teachers throughout one's school life and to employers throughout one's work life.

11. Serious psychological, economic, educational, social damage resulted from misplacement of children into the EMR classes.

12. The fundamental educational rights of these Chicano and Black children were violated.

The Notion of Disproportionate Representation of Mexican Americans and Blacks in EMR Classes

It is almost impossible to prove misplacement of a given Mexican American or Black child into an EMR class as an intended, culpable discriminatory act on the part of a teacher, tester, administrator or school system, although this is a frequent allegation in the various EMR law suits. A notion which has received and continues to receive wider acceptance, however, is that of "disproportionate representation," based on the theory that the Mexican American and Black student population in EMR classes should be reflective of the percentage of the regular student population. Indications of this are found in the California State Department official documents and two of a number of recent EMR court settlements.

The California State Board of Education's position is:

"...unless it can be clearly demonstrated that the incidence of mental retardation is related to some third factor not having been measured, it should be assumed that any claims
for the incidence of mental retardation in excess of two percent of any criterion population is spurious."39

One of the three law suits of this study--Soledad-- was the first to have been settled through the courts. The court order dealt with the matter of "disproportionate representation" in its final judgment:

"#2: The State Department of Education in implementing Section 2011 (b) of Title 5 of the California Administrative Code shall require districts to get statistics sufficient to enable determination to be made of the numbers and percentages of the various racial and ethnic groups in each Educable Mentally Retarded class in the district. In the event that the State Department of Education determines that there is a significant variance in racial or ethnic makeup between its EMR classes and the total enrollment of students in the district, the district shall submit an explanation of the variance."40

That the courts are moving toward acceptance of the notion of "disproportionate representation" is further seen in a recent court stipulation and order in a case which followed closely the educational issues of San Diego--Guadalupe vs. Tempe (Arizona) Elementary School District (1972):

"...where a school district enrolls any children of any class for exceptional children in substantially greater or lesser percentages than the percentages of such racial or linguistic or ethnic group in the school population of the district as a whole, such a school district should be prepared to offer a compelling educational justification for such disproportionate enrollment."41


40 Diana vs. State Board of Education, February 3, 1970, C-70 37 RFP Order, United States District, Court, Northern District of California.

Notwithstanding the pressure of the three law suits of this study, the state hearings resulting from these suits, the change of the Educational Code almost three years after the first law suit in Santa Ana, a court order in June (21) of 1972 was handed down in the San Francisco, California courts:

"...accordingly, this court is of the opinion that if plaintiffs can demonstrate that the I.Q. tests challenged therein are the primary determinant of whether a child is placed in an EMR class, and that racial imbalance exists in the composition of such classes, then the burden must shift to the defendants (schools) to demonstrate the rational connection between the tests and the purpose for which they allegedly are used. The fact of racial imbalance is demonstrated by plaintiffs' undisputed statistics which indicate that while Blacks constitute 28.5 percent of all students in the San Francisco Unified School District, sixty-six percent of all students in San Francisco's EMR program are Black. Statewide, the disproportion is similar. Blacks comprise 9.1 percent of all school children in California, but 27.5 percent of all school children in EMR classes. Certainly these statistics indicate that there is a significant disproportion of Blacks in EMR classes in San Francisco and in California."\(^{42}\)

The notion of "disproportionate representation" is further developed in current developments of the Office of Civil Rights of the United States Department of Health, Education and Welfare's acceptable criteria for selection of children for EMR classes. Two specific instances are found in the draft presented to the state directors of special education in November of 1972, Washington, D.C.:

"Data will be collected and analyzed in order to identify school districts which are operating special education classes for the mentally retarded, the racial composition of which (class or classes) is substantially disproportionate

to the racial composition of the student population from which students may be assigned to such class or classes; and

"In addition to creating an over-representation of minority children in special education classes for the mentally retarded, this failure to utilize evaluation techniques for minority children which are as effective or appropriate as those used for non-minority children has resulted in a higher incidence of improper placement or improper non-placement of minority children in such classes than of non-minority children." 43

**Some Factors Contributing to Disproportionate Representation of Mexican American and Blacks into EMR Classes**

Agreement as to why disproportionate representation of the linguistic and culturally different child exists, not only in the communities of the three law suits of this study but likewise throughout the state of California, is not easy to obtain since there are many opinions about the causes. However, the following should give a deeper insight as to some of the factors contributing to this reality:

1. The United States Commission on Civil Right's Urban Project from which stemmed the San Diego law suit, concluded that the high rate of minority representation in EMR classes was symptomatic of two major educational problems:

(a) Failure on the part of the school administrations to understand and utilize the unique cultural backgrounds of minority children; 

(b) A conscious or subconscious effort to retain minority groups in subordinate status.\footnote{44}

2. Dr. Jane Mercer on the other hand attributes it to three different major reasons:

(a) I.Q. cutoff used by educational institutions in defining mental retardation varies significantly from school district to school district.

(b) Although the American Association for Mental Deficiency proposes a two dimensional definition taking into consideration: 1) intellectual performance, and 2) adaptive behavior, most school psychologists use the I.Q. test alone for their assessment.

(c) The use of culturally biased I.Q. tests which are Anglocentric.\footnote{45}

This is supported by George Harris, Editor in Chief of Psychology Today:

"Mercer proves beyond doubt the retarded label upon thousands of children who should not be so classified. Since the I.Q. tests are culture loaded for the Anglo middle class, Chicano and Black children suffer most of the destructive branding."\footnote{46}

\footnote{44}Charlie Erickson, \textit{Focus Interview}, Los Angeles, California, August, 1972.


3. The eminent child psychologist, Dr. Alfredo Castaneda, presently of Stanford University, was asked for his professional opinion surrounding the EMR issues in the San Diego law suit. In his six-page response, he cited extensively the current research of Dr. Jane Mercer, Sociologist and Ms. Vera Martinez at the University of California, Riverside. He was very explicit in his identification of the shortcomings of the learning environments and testing procedures of public school systems in the Southwest. According to him, they were fundamentally incapable of aiding a Chicano child to scholastically succeed. He based this criticism on his position that the school systems in the education process of young Chicanos in the Southwest refused to become aware of, sensitive to and accommodating to the cognitive, incentive and motivational and learning styles unique to the Chicano and linguistically and culturally different child. The EMR issue for him was a good case in point. This is consistent with the two earlier statements, "we do not know what to do with them."

"It is our contention that the learning environments in the majority (if not all) the schools in the Southwest along with the testing procedures are not geared to allow Mexican American youngsters to succeed. The curricula and teaching strategies do not take into account the unique cognitive, incentive-motivational and learning styles which these youngsters bring with
them as a result of their prior interaction with the family and their ethnic community. As long as this is the case, Mexican American youngsters will continue to fail in disproportionate numbers in the school system, and it is irrelevant what instruments are used to predict success, whether or not these instruments are standardized for Mexican American youngsters. What is needed are instruments which can assess the unique cognitive and incentive-motivational styles of youngsters so that the teacher can adapt the curriculum and teaching strategies to fit the unique learning styles which they bring with them. Only when this is accomplished will Mexican American youngsters truly have an equal opportunity to succeed in school."

4. Repeated often enough in the various Focus Interviews conducted for this study was the report that approximately six hundred dollars per EMR child, over and beyond the regular school funds, were received by the given school. The reality that this is an underlying contributing factor to the disproportionate representation of Mexican American and Blacks in EMR classes is supported by a number of professionals in California, some of whom are Dr. Julian Nava, President of the Los Angeles California School Board, Mr. Joe Neeper, lead attorney in San Diego law suit, and Dr. Alfredo Merino, former Junior High Principal in San Bernadino, California. 48

Dr. Nava had this to say:


48Julian Nava, Joe Neeper and Alfredo Merino, Focus Interview, August, September, October, 1972.
"One has to say, we cannot doubt the benefit of the EMR program as helping children, however, it has to be documented sufficiently that EMR programs have been funded in order to subsidize other educational programs. Such abuses are wide spread and are completely unjustified even at the expense of one student." 49

Attorney Joe Neeper recognized the role of added state income to the school districts conducting EMR classes calling it a financial incentive:

"...a financial incentive existed at the time, school systems could make money while going through the semblance of a process showing at least on record that they were doing something. The schools could do it with a people who--up to this point--never objected." 50

A review of the California State Department Hearings on the EMR issue provides some historical insight as one educator's explanation as to how the disproportion came about: (Ron Caselli)

"The history of California special education programming indicates an initial thrust in the late 1940's to create a complex system of segregated classes. This segregation was justified on the ground that groupings of students with like handicaps could be better served in relative isolation, free from the competition of the regular academically oriented classroom. Unfortunately, the plan was adopted, and subsequently heavily financed without regard for continuing evaluation. Thus the special education system has grown enormously and has become, in a word, self-perpetuating. It is evident that we stand in dire need of sound, goal-oriented procedures for evaluating special education in California.

49 Julian Nava, Focus Interview, Aspen, Colorado, August, 1972.

50 Joe Neeper, Focus Interview, San Diego, California, August, 1972.
Language, of course, emerges as the number one hang-up in testing these children, whether they are bilingual Mexican American youngsters or Black children. 51

Giving a rationale for the interest and the position of the Civil Rights Office of HEW, the department shared its experience:

"Our reviews of many local educational agencies lead us to believe that in many instances the racial and ethnic isolation minority children in such classes which has occurred, has in turn resulted from a failure by local educational agencies to utilize non-discriminatory evaluation and assignment standards and procedures with respect to minority children."52

Since this study will be making recommendations to school administrators on the basis of its conclusions, two opinions expressed by school administrators in several different communities where law suits of this study took place are of particular interest.

One administrator, director of San Diego's special education program, expressed his opinion about the disproportionate representation to one of the consultants for the San Diego Urban Project of the United States Commission on Civil Rights: "There are three reasons for this over-representation: (1) a language barrier; (2) poor nutrition, poor pre- and post-natal care; (3) we just don't know what to do with them."53


53Salley James, Focus Interview, Los Angeles, California, August, 1972.
Another administrator gave his unique opinion on January 22, 1968 at a meeting held in the Office of the Superintendent of the Santa Ana School District, the community which first raised the question of the EMR. In attendance at this meeting were community people, attorneys and the school psychologist. The Chicano community had expressed their concern over the label of mental retardation and the stigma which followed, incurred by the children who had been misplaced in the EMR classes. It was on this occasion that the school psychologist made the following response: "You failed to realize the advantages of being tagged 'mentally retarded.' With these tags, these people will be eligible for social security at age eighteen."\(^54\)

This study recognizes the reality that the question of disproportionate and misplacement of Chicanos and other linguistically and culturally different children exists in other school districts of California, the Southwest and the United States, and as such stands as a serious challenge to public education in general and present and future educational administrators in particular. As this study examines evidence to substantiate the extensiveness of this issue, it would be important to keep in mind the findings of this writer that the above mentioned twelve particular areas will be proved to exist in those other communities beyond Santa Ana, Soledad and San Diego.\(^55\)

\(^{54}\)Samuel J. Simmons, Western Program, United States Commission on Civil Rights Office Memo, April 16, 1969, p. 4.

\(^{55}\)See Table 6.
California State Senator Clair W. Burgener of San Diego was not only instrumental in pushing forward the California legislation providing for reform in EMR education but also helped influence the President's Panel on Mental Retardation, he noted:

"The legislature received reports that some school districts in California were inappropriately identifying and placing youngsters in classes for the educable mentally retarded. Some students so placed were later found to have I.Q.'s substantially higher than those we ordinarily think of for EMR classes. Many children from minority group backgrounds could not communicate properly for testing. Such children may have been of normal intelligence although possibly functioning at a retarded academic level. For in 1967, 26.3 percent of all children in special classes had Spanish surnames although only thirteen percent attending public schools in California have Spanish surnames."

The question of "extensiveness" of the EMR issue was posed to Mr. Herman Sillas, the first attorney in California to file and prepare a legal brief (Santa Ana) challenging the EMR issue:

**Question:** Do you feel that the EMR issue exists in other communities outside of Santa Ana, Soledad and San Diego, California?

**Answer:** I am of the opinion that this kind of law suit could be filed in every school district in California and in other parts of the United States. Immediately after filing the Santa Ana law suit, I received requests from over thirty communities in California and other states for the legal briefs.

Sillas, later acting in his capacity as chairman of the California Advisory to the United States Commission on Civil Rights, reported a

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57 Herman Sillas, Focus Interview, Los Angeles, California, August, 1972.
very dramatic and sorrowful case:

"The California State Advisory held recent hearings in Lucia Mar and Guadalupe, California. These two rural communities have an eighty-five and twenty-five percent Mexican American population, respectively. They are rural, feudal systems with Anglo landlords."

"These systems (schools) are not even near the EMR conditions in Santa Ana since the regular classroom settings are considered and treated as mentally retarded. There is no advancing. Children have their mouths taped because they speak in class. Can you imagine if this is happening in these small towns, what must be happening to the migrants?"58

Mr. Joe Neeper, the lead attorney in the San Diego law suit, agrees that the EMR issue exists in other communities other than San Diego. Describing the reaction of administrators in San Diego as a result of the EMR law suit, he says:

"The top administrators felt they were doing an excellent job; as a matter of fact, were very hurt over the EMR law suit since they considered themselves leaders in this field. The administrators even asked why we did not push our law suit in other communities and they named a few other California communities."59

What is clear from this information is that even top school administrators knew of other communities where the EMR issue was more serious than their own school district. After studying the court settlement in San Diego, the conditions of some of these other school districts raises serious questioning why the administrators themselves,

58 Herman Sillas, Focus Interview, Los Angeles, California, October, 1972.

59 Joe Neeper, Focus Interview, San Diego, California, September, 1972.
knowledgeable as they were about these conditions, did not move to bring about educational change.

As a result of the first EMR lawsuit in Santa Ana, California, the "New Republic"--May 30, 1970--devoted a major article to the EMR issue. It quoted the "First Racial Analysis of California Report" wherein it indicated there were "sixty-five thousand mentally retarded children in January of 1970." It further went on to report that "2.14 percent of all the Spanish surnamed children and 3.26 percent of all the Black children were in EMR classes. On the other hand, only .71 percent of all the white children were so classified." 60

Senator Burgener's figures differ from those reported in the New Republic's "Children Who Are Tested in an Alien Language." He (Burgener) pointed out:

"Spanish surnames constitute 15.22 percent of the general school population in California but represent 28.34 percent of the EMR classes. Blacks on the other hand are 8.85 percent of the total school population but are 25.5 percent of the EMR classes." 61

Using the standard reported earlier by the State Department of Education, "...incidence of mental retardation in excess of two percent of any criterion population is spurious," it is clear there are any number of communities reported in the "Racial and Ethnic Survey of California Public Schools," which have an extremely high percentage


of linguistically and culturally different children location in the 
EMR classes.

There is no agreement as to the exact percentage which is used 
to determine variance as is seen from the President's Panel on Mental 
Retardation:

"Using the conventional reasoning, the Presidential Panel 
on Mental Retardation and nearly every other major organi-
ization in the field of mental retardation contends that 
about three percent of the population is mentally retarded. 
This figure is widely used despite the fact that it has 
never been proven."62

The variance between the President's Panel on Mental Retardation 
and the figure used by the California State Department of Education 
is noted. Without entering into debate over how much variance is 
acceptable, the point this study wishes to make is there was sufficient 
data for educators, particularly the school administrators, to have 
recognized drastic desparity or disproportionate placement of the 
linguistically and culturally different child in EMR classes (see 
Table 6). This disparity was sufficient to have warranted that new 
educational strategies be established by school administrators to ac-
commodate the educational needs of so many children. Certainly, if 
the administrators would have listened to the complaints of the com-
munities and had examined the data by the State Department of Education, 
the law suits could have been avoided, educational programs would have 
been initiated to accommodate the issues surrounding EMR education, and

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62 Rodger Hurley, A New Assessment—Poverty and Mental Retardation—
ENROLLMENT BY ETHNIC GROUP IN SPECIAL EDUCATION CLASSES FOR CALIFORNIA COUNTIES HAVING FIVE PERCENT OR MORE NEGRO AND/OR SPANISH SURNAME CHILDREN ENROLLED IN SCHOOL

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<th>County</th>
<th>%Spanish Surname Total Enrollment</th>
<th>%Spanish Surname Special Education</th>
<th>%Negro in Total Enrollment</th>
<th>%Negro in Special Education</th>
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<td>38.45</td>
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<td>Ventura</td>
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<tr>
<td>Yolo</td>
<td>15.21</td>
<td>33.13</td>
<td>33.13</td>
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</tr>
</tbody>
</table>

valuable community and school funds could have been used for more useful purposes than battle in court. For whatever reasons given to explain away the presence of so many children in the EMR classes of the three communities of this study, and for those communities with very high percentages of Mexican American and Black children in the EMR classes, the stark reality of the data itself stands as an indictment to educational administrators who had a real challenge and did not stand up to it.

**Speed of EMR Student Population Growth**

A very special note of interest to this study pointing to the gravity and extensiveness of the EMR issue is the speed of growth of minority student population in the California EMR classes. The growth was speedy and astronomical between 1948 and 1958 when the growth nearly quadrupled from 7,541 to 29,894. As a matter of fact, it far exceeded the normal growth of the state population. In the following ten years, the EMR student population nearly doubled again. By the 1968-1969 school year, the pattern of minority child over-placement in EMR classes became flagrant. 63

A review of the growth figures by each year from 1948 to 1970 gives a more dramatic appreciation of the speed and extensiveness of the EMR issue in California (see Table 7). In 1969 57,148 students were in EMR classes, the majority of whom were minority.

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Statistics on Enrollment in Special Training Classes for the Educable Mentally Retarded Minors in the Public Schools of California

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NUMBER OF STUDENTS</th>
<th>YEAR</th>
<th>NUMBER OF STUDENTS</th>
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<tbody>
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<td>1948-1949</td>
<td>7,541</td>
<td>1959-1960</td>
<td>33,966</td>
</tr>
<tr>
<td>1949-1950</td>
<td>9,964</td>
<td>1960-1961</td>
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<td>1951-1952</td>
<td>13,814</td>
<td>1962-1963</td>
<td>45,008</td>
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<tr>
<td>1952-1953</td>
<td>14,583</td>
<td>1963-1964</td>
<td>48,388</td>
</tr>
<tr>
<td>1954-1955</td>
<td>17,638</td>
<td>1965-1966</td>
<td>52,157</td>
</tr>
</tbody>
</table>
Three recent indications of the broad spectrum of this EMR issue are found in two federal documents. The first is the Mexican American Education Study which has been used extensively in this study. According to this survey:

"...it was found that in the five Southwestern states, Mexican American and Black students are systematically over-represented in special education classes for the mentally retarded. Regardless of the socio-economic status of the school, (a) Mexican Americans are over-represented from three to five times as compared to Anglos; (b) Blacks are over-represented from four to five times as compared to Anglos. The percentage of Chicano and Black students classified as EMR remains constant regardless of socio-economic status while the percentage of Anglo students classified as EMR varies in inverse proportion to socio-economic status."

The other document is that of the Civil Rights Office of HEW. In December of 1971 (17), this office gave a brief summary as to why it had moved toward a document which is referred to today as the May 25th Memorandum, which will be discussed in Chapter IV. Under the title of "Recommendations for New Policy Position and Strategy for Implementation--Action Memorandum," the following summary was given which should help us understand the extent of the EMR issue:

"School districts throughout the nation have, for the past several years, been misplacing disproportionately large numbers of minority children into classes for the mentally retarded."

"This has been happening to Blacks in the south and other large urban areas, to Puerto Ricans in New York and most dramatically, to Mexican Americans in the Southwest."

"Educable mentally retarded (EMR) classes have become the dumping ground for minority children whom the system because

64 Ibid.
of its own inadequacies, has been unable to or unwilling to reach or teach."

"The President's Committee on Mental Retardation reviewed the problem almost three years ago and concluded that these minority children were "six-hour retardates"—capable of functioning normally outside a school setting but treated as retarded children by their teachers."65

A Random Survey to Determine the Extensiveness of the EMR Issue

Since this study will make recommendations for public school administrators who are trained throughout the United States, this investigator developed a survey to administer at the Second National Bilingual Conference in Austin, Texas in May of 1972. One hundred seven participants from ten different states responded. Thirty-four participants identified themselves as teachers in a bilingual/bicultural program, thirty-two were administrators. The survey found that of the 107 respondents, eighty-five percent were aware of disproportionate placement of Spanish-speaking students in EMR classes in their area; eighty-five percent felt this procedure generally contributed to the low achievement of Spanish-speaking children in the United States; seventy-four percent indicated it was a problem in their immediate area; seventy-four percent indicated it was either a serious and major problem or a very serious problem.66


66A Survey to Determine the Awareness of the Participants at the 1972 National Bilingual Conference of the EMR Issue and the May 25th Memorandum, May 2, 1972, by Henry J. Casso, Center for Leadership and Administration, University of Massachusetts, Amherst, Massachusetts.
Some 107 participants of the National Bilingual Conference, April 13 and 14, 1972 in Austin, Texas, responded, indicating that they were from the following state:

### TABLE 8

<table>
<thead>
<tr>
<th>State</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>2</td>
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<tr>
<td>California</td>
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<td>Colorado</td>
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<td>New Mexico</td>
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<td>3</td>
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<tr>
<td><strong>Total</strong></td>
<td>107</td>
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</tbody>
</table>

Survey Response to Determine the Extensiveness of the EMR Issue at National Bilingual Bicultural Conference

The respondents were asked to indicate one of five categories of involvement in which they were working; namely, administrator, teacher in a bilingual/bicultural program, project director, paraprofessional or a community representative. The last six of the
eleven categories in the list below were added by the various respondents:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Administrators</td>
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<td>2. Teachers in a bilingual/bicultural program</td>
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<td>3. Project directors</td>
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<td>4. Para-professionals</td>
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<td>5. Community representative</td>
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<td>6. Student</td>
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<tr>
<td>7. Evaluators</td>
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<td>8. State Board of Education</td>
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</tr>
<tr>
<td>9. School board member</td>
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</tr>
<tr>
<td>10. Bilingual coordinator</td>
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<tr>
<td>11. Blank</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>107</td>
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</table>

Professional Categorization of Respondents to National Survey at Bilingual Bicultural Conference

Although there were a sum total of fourteen questions in the survey, for the purposes of this report, only seven of these were pertinent.
Awareness of the EMR Issue

**Question #2:** Are you aware of the disproportionate placement of Spanish-speaking students in EMR classes?

- 85% responded YES
- 14% responded NO
- 1% chose not to respond

**Question #3:** Do you feel this procedure has generally contributed to the low achievement of Spanish-speaking children in the United States?

- 85% responded YES
- 7% responded NO
- 8% chose not to respond

**Question #4:** Does the problem of disproportionate placement of Spanish-speaking students in EMR classes exist in your area? If so, how serious is it?

Of the 79% of those responding to this question indicating some opinion of the EMR issue in their given locale:

- 12% indicated they actually did not know
- 74% indicated it was a problem in their area
- 14% indicated no problem existed in their area

Only 70% chose to give an opinion as to the seriousness of the EMR issue in their given area, the second portion of Question #4. Of those who responded, however,

- 26% indicated it was **serious, but not a major problem**
- 54% indicated it was **serious and a major problem**
- 20% thought it was a **very serious problem**
Movement Toward the Law Suits

It was noted earlier that in 1968 to 1969, the EMR enrollment in California reached its highest peak. This was the historical time period of the first legal complaint which was filed in Santa Ana, California. The Chicano community, although it did not have access to the current data, sensed, as was indicated in Chapter I, something was drastically wrong. In Santa Ana, a number of attempts were made to communicate the communities' anxieties and concerns to school administrators who all but ignored them. This is most evident from the interview with Herman Sillas, the attorney of record in the Santa Ana law suit:

"I was invited to a meeting in Santa Ana by Mr. Richard a la Torre who at the time was field representative of the NAACP Legal Defense and Educational Fund. The meeting took place in a playground. Seven or eight parents were present along with some community coordinators. Several other attorneys were present, both from the community of Santa Ana and from UCLA Law School. Representatives from Civil Rights Groups outlined the various steps, meetings, letters, petitions that had taken place regarding this issue of the EMR in Santa Ana. I saw these people really at their last end. They had attempted to get the school board and school administrators to act, but without success. I could see these people were so frustrated because no one would believe them, particularly the school administrators. It was a very frustrating evening for me. I could not believe what I was hearing. Those who should have been involved did not care. These parents would just have dropped out of society. Frankly, I was of the opinion the people were fed a lot of "bull-shit". I offered to file the law suit."

67 Herman Sillas, Focus Interview, Los Angeles, California, August, 1972.
The unresponsive attitude of school administrators was not unique to Santa Ana. From the *Focus Interview* with Attorney Joe Neeper in San Diego, it was clear that school administrators in San Diego were either too slow responding or insensitive to the expressed needs of the community:

"By the time the law suit was prepared, community groups had already decided they had been thwarted too many times. They were ignored...the groups, parents, felt nothing but a judgment from a judge would satisfy them. The time for talking with school officials was over."

"School administrators who for several years were making proposals to top administration told me that a stack of proposals three feet high had been submitted and not acted upon. Very frustrating."  

An immediate result of the Santa Ana law suit caused the unleashing of the pent-up feelings of Chicano parents, community representatives, educators and psychologists from around the state. State Assemblyman, Waddie Deddeh, as a result of the interest in the issues of the Santa Ana law suit, was instrumental in pushing the State Department of Education to host a series of hearings throughout the state of California treating the EMR issue. He pushed to make sure these hearings were effectively implemented.

"In the past two or three years, it has come to my attention that a certain percentage of students, that happened to be mostly Mexican Americans, have been assigned to special classes.

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68 Joe Neeper, *Focus Interview*, San Diego, California, September, 1972.
69 Herman Sillas, *Focus Interview*, Los Angeles, California, August, 1972; Allen Exelrod, *Focus Interview*, San Francisco, California, August, 1972.
"...I am appealing to you to tell me and to tell the eighty members of the assembly and the forty members of the senate... what is it that we have not done that we ought to do, to shed light or correct this problem. ...I also ought to warn you that in the absence of some type of constructive leadership on your part, some kind of constructive recommendations, the legislature will have to act."

Assemblyman Deddeh opened the first of three EMR issue hearings in October, beginning in San Diego. Two months later in San Jose, a parent, Mrs. Jessie Ramirez, as if summing up the feelings of all mothers of children who had for years had their children misplaced in EMR classes, lashed out at the school administrators:

"I am not a professional; I am not an educator; I am just a mother and a housewife; and, I am a very angry Chicano."

First of all, I think and I truly believe that there is mental retardation in our society, and it is for the educators, for the administrators, and for the psychologists. It is for this segment of society who have been responsible by their own choosing to be the developers of human intellect and have placed over 23,000 Mexican American children in the mentally retarded classes for the simple reason that they do not know what to do with them."

"Stop creating more garbage, human garbage dumps! ... as I said before, we Mexican parents are getting awfully tired. We just can't stand this anymore. We are not going to stand for this anymore. We are just going to have to bug you people 'til we get something..."

This issue was not a new one. It was only becoming more recognized and the Chicano community more vocal about it. At the October 1969 hearing, psychologist Dr. Steve Moreno who had long been trying to move the State Department of Education on this issue and acting

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71 Ibid.
for the Chicano Federation and the Association of Mexican American Educators, reported, "...that he and his organization had been and will continue to discuss the issue (EMR) for years."72

Other California school psychologists of the California Psychologist's Association supported Moreno's and the Chicano communities challenge surrounding EMR education. Of particular interest are the observations of the Chairman of the EMR Sub-Committee of the California Association of School Psychologists and Psychometrists:

"We feel it is presumptuous to label a child retarded simply because he has a low test score if his background of experiences has not been given adequate and due consideration in determining what a low score may mean for the particular, individual child. We feel that there should always be a requirement for making judgments which clarify and balance out possible cultural differences, language differences, and other subtle differences which shape attitudes of failure and the very fiber of a child's being."73

A review of the testimony of Pat Sheffer, School Psychologist from Morgan Hill California Unified School District, some insights into the various practices which school administrators allowed:

Assumption: Once an EMR always an EMR. False! Over fifty percent of our kindergarteners could probably be placed in EMR programs if tested on the Binet. Most of them would have been falsely placed.

Assumption: Children failing the test for any reason, including language deficit, are better placed in EMR classes than being allowed to fail in a regular class. Not so.

Assumption: In an EMR class, the child will get extra help! False! No teacher by herself can successfully remediate in a class of eighteen children with several language and learning problems.

72 Ibid.

73 Ibid., p. 13.
Assumption: Segregation of children for special help in EMR classes is better for them. False! The emotional damage of being called EMR and so placed is immeasurable.74

Sheffer went on to conclude his testimony with his own opinion that the "EMR placement is a self-fulfilling prophecy and should be discontinued."75

The Terms Special Education and EMR Are Used Interchangeably

It is evident from the study of the three EMR lawsuits that serious and frequent confusion exists between the interchangeable and unclear use of the terms "Special Education" and "Educable Mentally Retarded" or EMR. To many of the parents in each of the three cases, the words, "Special Education" and "EMR" meant exactly what the words say they mean. On the other hand, the use of the term "Special Education" as meaning the "EMR" class by some school administrators is a precise area where controversy, misunderstanding and conflict arose.

In Santa Ana, the complaint specifically stated:

"The parents were informed by the administrators that the children were going to be placed in a special class with fewer children and a special teacher who would devote more time to the children. The children's parents were asked to consent to the placing of their children into said class; administrators did not inform the children's parents that these special classes were mentally retarded classes..."76

74 San Jose Hearings, p. 6.
75 Ibid.
San Diego had a very similar complaint which indicates the problem was not unique to Santa Ana: "Neither children nor parents nor guardians were informed or knew of the meaning or significance of the EMR program of the schools; ...."\(^77\)

When this problem was presented to Joe Neeper, the attorney in the San Diego law suit, he responded: "...parents were told the child was going into a Special Education Program but were not told it was EMR. Often the parents were told that the child was put into a class in order to catch up."\(^78\)

Mr. Neeper then quoted from testimony which he had derived from the parents themselves: "...most, if not all minority parents, expressed to us when told--if they were told--their children were to be placed in special programs because of having troubled in school so that they could catch up."\(^79\)

Evidence is clear that this confusion of terms is not relegated only to the California schools where the law suits took place. In the Boston, Massachusetts law suit dealing with the EMR (1970), the following is found:

"The action challenges the arbitrary, irrational and discriminatory manner in which students in the Boston public schools are denied the right to an education by being classified as mentally retarded and placed in so called "Special Classes."\(^80\)

\(^77\) Covarrubia vs. San Diego Unified School District, 70-394-T.

\(^78\) Joe Neeper, Focus Interview, San Diego, California, August, 1972.

\(^79\) Ibid.

\(^80\) Pearl V. Philips. No. 70-1199F Classification Materials, Harvard Center for Law and Education, Cambridge, Massachusetts.
On November 30, 1972, this researcher was part of a panel presentation to the State Special Education Director's Meeting in Washington, D.C. Since the panel dealt with EMR issues, problems and new federal guidelines, I asked the sixty to seventy participants their reaction to the confusion between the terms "Special Education" and "EMR". The reaction of the directors was such that it confirms this finding in this study, however, it is recommended that more research be done on this point. It is the strong opinion of this study that this confusion is one of the underlying reasons why, in the EMR issue dealing with "consent," the parents almost in every instance did not recall either giving verbal or written consent to the placement of their children into EMR classes. On the other hand, the administrators were firm in their position that no child was placed without parental consent.

Projected Economic Significance

In each of the three EMR legal challenges, the issue of misplacement and negative economic impact was treated. Earlier in Chapter II, this study identified some causes for the low educational status of the Chicano. Some of these were found to be "high overageness," "high grade repetition," "high drop-out rate," and "low reading levels." When one now adds to these failures of public education, our findings surrounding the circumstance of misplacement of Chicano and Black children into an educational process which systematically locks a child out, not only of a future scholastic but future social and
economic mobility, then is more fully appreciated the significance of their negative impacting on a whole community of people. This is what these law suits were trying to point out. It is the opinion of this researcher that these above sets of causes are some of the most aggravating factors contributing toward the high percentage of Chicano students not completing school—yes, even grade and high school.

An importance of identifying these as contributing causes to the high scholastic drop-out of the Chicano and other linguistically different children is more readily appreciated when looked at as what this really means to the future economic potential of a person or that of a whole community.

Since the first of these three law suits began with the data of 1967 to 1968, this study has taken economic data closest to that period. According to the United States Bureau of the Census (Population Division), figures for 1968 show lifetime incomes of Americans—age twenty-five till death (see Table 10).

**Psychological Retesting**

Each of the three legal challenges took the firm position that their respective plaintiff children were not, in fact, mentally retarded and as such were wrongfully placed into EMR classes.

To support this position, the children in each of the three law suits were independently retested by bilingual testers licensed by the State Department of California. As in the case of San Diego, the tester used "certain techniques tending to compensate for the bilingual
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<tr>
<th>Educational Achievement</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
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<td>Elementary school, less than 8 years</td>
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<td>$95,000</td>
</tr>
<tr>
<td>Elementary school, eight years</td>
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</tr>
<tr>
<td>High school, one to three years</td>
<td>294,000</td>
<td>132,000</td>
</tr>
<tr>
<td>High school, four years</td>
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</tr>
<tr>
<td>College, one to three years</td>
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<td>College, four years</td>
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<td>College, four years or more</td>
<td>586,000</td>
<td>270,000</td>
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<tr>
<td>College, five years or more</td>
<td>615,000</td>
<td>342,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$340,000</td>
<td>$154,000</td>
</tr>
</tbody>
</table>

The Lifetime Income Potential as Associated with Years of Education

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81 Charles Ericksen, Memo of May 7, 1970 on United States Lifetime Income Potential, Urban Study Project, to Pat Crowell, Joe Neeper and Herman Sillas, San Diego, California.

*The majority of combined children plaintiffs in the EMR law suits were young girls. The disproportionate life income show the female to be doubly affected.
and bicultural problems of plaintiffs." A result of this private testing with compensation, every one of the plaintiff children in San Diego's law suit scored above the acceptable minimum score established in California determining the EMR classification. 82

As a matter of fact, retesting produced the following information:

1. The children scored higher on the "performance"on each test than on the "verbal" portion.
2. In some cases, the difference between "verbal" and "performance" was as high as twenty-nine I.Q. points.
3. None of the retested children had a performance I.Q. below the maximum ceiling for mental retardation used in San Diego County (seventy).
4. None had scores in the seventies.
5. Four children had over a one hundred I.Q.
6. Eleven children had scores of above ninety-five. 83

Similar information was found in the retesting in Soledad. The nine plaintiff children originally were reported to have I.Q. scores ranging from thirty to seventy-two. After the retesting, it was noted that there was a dramatic average fifteen point change for each child. They averaged seventy-five on the "verbal" and eighty-four on the "performance" section of the I.Q. tests.

82 Covarrubia vs. San Diego Unified School District, 70-394-T.
83 Ibid.
The retesting of the nine plaintiff children in the Soledad case resulted in the following information:

1. Seven scored above seventy;
2. One scored on the dividing line;
3. One scored three points below the California minimum (seventy).\(^{84}\)

Significantly, the official legal name of the Soledad law suit is Diana vs. California State Department of Education. Diana was eight years of age and was reported to have an I.Q. score of thirty. With this score, she physically could not take care of herself. After she was retested, her I.Q. score jumped from thirty to seventy-nine—a jump of over one hundred percent.\(^ {85}\)

Earlier in this chapter, it was shown that the EMR issues were educational issues not only in the three given communities of the law suits but likewise throughout California, the Southwest and the United States. With this in mind, a number of conclusions could be drawn from the retesting data of the plaintiff children in each of the three law suits. However, it is fortunate that the California State Department of Education, much in response to the extreme movement and interest generated by the Santa Ana and Soledad law suits, commissioned its own

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\(^{85}\) The National Catholic Reporter, Volume 6, Number 14, February 4, 1970.
study of the EMR situation in California. The study was to evaluate Mexican American children in select school districts placed in EMR classes in California. The study sought to find out two things:

1. Whether these pupils should have been placed in classes for the educable mentally retarded; and/or

2. Whether a language barrier prevented them from being assessed properly as to their native abilities to perform cognitive tasks.

To accomplish the objectives of this study, two geographically and demographically different sites were chosen—one rural and the other urban.

Three criteria were established for the selection of the sampled children:

1. They had to be of Mexican descent;

2. They had to be currently enrolled in EMR classes;

3. They had to have evidenced a problem in using the English language due to their native language being Spanish.

In all, there were some forty-seven pupils from grades three through eight—seventeen were from a rural community and thirty were from an urban community.

The assessment instrument was the Escala de Inteligencia Wechsler para Ninos—the Spanish version of the Wechsler Intelligence Scale for

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86 Phil Montez, Focus Interview, Los Angeles, California, August, 1972.

87 The Journal of Mexican American Studies, Volume 1, Anaheim, California, Fall, 1970.

88 Ibid.
children. Since the test was normed for Puerto Rican children, some items were reworded to fit the Spanish common to the Mexican American child in California.

Although the test was conducted in Spanish—the language of the test—English was used in order to help comprehension. Students were urged to relax and were not pressured to begin the tests.

Results of the testing in the two districts—rural and urban—provided the following information:

1. The average (mean) gain between the prior scores and the present test scores was 13.15 I.Q. points. The prior I.Q. mean being 68.61 and the present I.Q. mean being 81.76.

2. The mean I.Q. point difference between the prior scores and the present scores was +12.45 points, indicating a significant gain in the overall point score, thus exceeding chance.

3. The median score for the prior I.Q. was seventy, while the median score for the present I.Q. was eighty-three, an increase of thirteen I.Q. points.

4. Of the forty-seven children retested, twenty-seven scored I.Q. ratings of eighty or over. Thirty-seven had I.Q. ratings of seventy-five or above.90

The conclusions which this Mexican American Education Research Project of the California State Department of Education came to were:

1. There are indications that many of the Mexican American children were placed in the EMR classes solely on the basis of performance on an invalid I.Q. test.

89 Ibid.
90 Ibid.

*These increased changes after retesting were made notwithstanding the fact that the tests used were merely translated from English into Spanish in Puerto Rico. The Spanish was not necessarily compatible to the Mexican American in California, the target student population upon whom this information is based.
<table>
<thead>
<tr>
<th>PUPIL NUMBER</th>
<th>Verbal IQ</th>
<th>POINT DIFF.</th>
<th>Performance IQ</th>
<th>POINT DIFF.</th>
<th>Total Battery</th>
<th>POINT DIFF.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PRIOR</td>
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</table>
### TABLE 12

Comparison Of WISC Test Scores Made By Selected Mexican-American Pupils Enrolled In A School District Located In An Urban Area Of California

<table>
<thead>
<tr>
<th>PUPIL NUMBER</th>
<th><strong>Verbal IQ</strong></th>
<th><strong>Performance IQ</strong></th>
<th><strong>Total Battery</strong></th>
<th><strong>POINT DIFF.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PRIOR</td>
<td>PRESENT</td>
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<td>47</td>
<td>82</td>
<td>82</td>
<td>85</td>
<td>85</td>
</tr>
</tbody>
</table>
2. The test is termed invalid because this particular sub-population of pupils lacks a facility and understanding of the English language; therefore, when tested in English, they cannot perform well.

3. When these same pupils are given the opportunity to perform in the language with which they are most familiar and comfortable—usually Spanish—this performance in many cases is above the cut-off level of the educable mentally retarded category (approximate I.Q. of seventy-five).

This state Department of Education study strongly supports the individual psychological retesting findings of each of the three EMR law suits and weighs heavily in support of the plaintiff position that "these children have not, nor are now, mentally retarded" and have been wrongfully placed in the EMR classes.
CHAPTER III

Comparative Analysis Including Background, Issues and Court Actions

In the previous chapter, intelligence testing or the use and process of I.Q. tests by the public schools in California, especially the issue and causes of the disproportionate assignment of Mexican Americans and Blacks into Educably Mentally Retarded classes were shown to be serious community issues. This was particularly true in the three communities of Santa Ana, Soledad and San Diego, California—the locations of the first three EMR legal challenges surrounding this educational issue.

A review of current literature, studies and research substantiate the gravity and extensiveness of these EMR issues originally raised by the Mexican American community.

Chapter III will examine the three California EMR legal plaintiff briefs and identify the particular issues as raised by each of the legal complaints. The study will then make a comparative analysis of each of the three legal complaints, identifying how each complaint treated the particular major issues. Central to this study is to show that, although these legal challenges occurred in three different communities of California, many of the issues surrounding the whole process of I.Q. testing were the same. Since each of these three EMR law suits actually involved a relatively small number of plaintiff children (in the case of Santa Ana there were sixteen plaintiff
children) description of the EMR classes in two of the communities is given in order to get a better appreciation of the larger scope of the EMR issue in these three communities.

PART ONE

SANTA ANA

A. Background of the EMR School Data:

The Santa Ana EMR law suit was filed as a result of the persistent community interest chiefly pushed by a resident leader, Ray Villa.1 It was the opinion of Herman Sillas that the community had done everything possible administratively with the Santa Ana School District to get the issue of the "disproportionate placement" of Mexican American students in EMR classes resolved.2 As this complaint came to court, the judge requested that the two parties make every attempt to resolve the issues out of court. However, it was the community viewpoint that no progress was made and that going into court was the last resort.

Although the whole EMR question was a serious and extensive one, this was the first time it was brought to court

1 Herman Sillas, Focus Interview, Los Angeles, California, August, 1972.

2 Ibid.
in California. It was the hope of the designers of this law suit that its impact would not only change the local situation in Santa Ana, but would influence the state legislature for state educational policy changes as well.³

In all, some sixteen Chicano children--boys and girls ages seven through twelve--were plaintiffs in the Santa Ana EMR law suit. They came from four elementary schools in Santa Ana: Muir, Sierra, Hoover, and Wilson:

<table>
<thead>
<tr>
<th>Division by Elementary Schools</th>
<th>Division by Sex</th>
<th>Division by Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muir 1</td>
<td>Seven 1</td>
<td>Male 6</td>
</tr>
<tr>
<td>Sierra 8</td>
<td>Eight 4</td>
<td>Female 10</td>
</tr>
<tr>
<td>Hoover 2</td>
<td>Nine 6</td>
<td></td>
</tr>
<tr>
<td>Wilson 5</td>
<td>Ten 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Eleven 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Twelve 2</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL 16</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Santa Ana Plaintiff Children - Division by Schools, Sex, Age.

Two of the four elementary schools, Wilson and Hoover, in Santa Ana Unified School District attended by the plaintiff children were part of a random sample by the Mexican American Education Project of the U.S. Commission on Civil Rights in

³Joe Ortega, *Focus Interview*, Los Angeles, California, August, 1972.
1969. It reported the following information, which gives a general background of the EMR status in that community:

Wilson School:

As an elementary school, it houses grades one through six with eighty-seven students in the first grade. Twenty of these were Mexican American—one Black and sixty-six Anglos.

---

4 The Mexican American Education Study of the U.S. Commission on Civil Rights (1969) conducted a mail survey designed to provide a broad range of detailed information on Mexican American education in the Southwest. To collect this information, the survey utilized two questionnaires, one sent to school district superintendents, the other to school principals. These instruments asked for data that would answer three basic questions:

1. What current practices in Southwestern schools appear significantly to affect educational opportunities for Mexican Americans?
2. What current conditions in Southwestern schools appear significantly to affect educational opportunities for Mexican Americans?
3. What are the significant relationships between practices and conditions and educational outcomes for Mexican Americans?

The Commission sample included the 538 districts responding to HEW by March, 1969 in which ten percent or more of the students were Mexican American.

The Commission Mail Survey involved a questionnaire for the district superintendents and a questionnaire for school principals. The superintendents' form was sent to all 538 districts. The principals' form was sent only to a sample of schools within these districts. The EMR insights into the status of these programs comes from the principal's report of his own school in two of the three law suit communities, namely, Santa Ana and San Diego.

The author of this study is chairman of the Advisory to Mexican American Education Study and has used much data not formerly reported because of the vast data acquired.

In the sixth grade, there were a total of seventy-six students, fourteen of whom were Mexican American and two Blacks with fifty-nine Anglos.

The EMR class had a total of seventy-one students, thirty-nine of whom were Mexican American, fifteen Blacks, and seventeen Anglos.

The EMR classes had more Mexican American students—thirty-nine—than their student population in both the first and sixth grades—thirty-four—put together.

On the other hand, analyzing question 18 of the survey for Santa Ana, it is noted that the same number of Chicano students as Anglos repeated the first grade and that the same number of students (three) for the Chicano and Anglo were two or more years overaged in the first grade.

The survey wanted to determine "what number of Spanish surnamed first graders speak English as well as the average Anglo first grader?" While there were only twenty Chicano children reported in the first grade of this school, it was noted that eighteen first grade Chicanos spoke English as well as the average Anglo first grader.

From the above survey responses themselves—written by the school administrators—it can be concluded that the Chicano child in the regular classes was functioning educationally as well as his Anglo peer. However, in Wilson School, the stark reality reported was that with a total of seventy-one children in the EMR classes, more than
one-half of these were Chicano children (thirty-one), fifteen were Blacks, and seventeen were Anglos. In other words, Chicanos were placed in EMR classes at a ratio of two to one Anglo's in Wilson School (see Table 14).

Hoover School:

The school administration reported that there was a total of seventy-four first grade students--six Chicanos, no Blacks, and sixty-eight Anglos in this school.

Sixty-eight sixth graders were reported, six of whom were Chicanos and sixty-one were Anglos. No student enrollment was indicated for the EMR classes.

As was noted above, Hoover and Wilson were two of the four Santa Ana elementary schools from which plaintiff EMR law suit children were taken, two came from Hoover and five came from Wilson:

Two other schools not included in the MAEP Report for 1969 were Sierra and Muir Elementary. These two schools are important to this study since eight of the plaintiff children were from Sierra Elementary and one was from Muir Elementary.

It is an interesting note that two other schools, Tremont and Monte Vista Elementary, included in the MAEP Survey had a total of 341 students in the first grade, but had indicated NO children in their EMR classes. However, Tremont had twenty-six Chicanos repeating first grade while ten Blacks and only six Anglos did so. Monte Vista had

5 USCCR Mexican American Education Study, Principals' Report Forms. The high percentage of grade repetition for Mexican Americans was pointed out in Chapter II.
EMR data of the elementary schools of Santa Ana School District, compiled for this study from the 1969 Principal's report to the U.S. Commission on Civil Rights' Mexican American Education Study Project

<table>
<thead>
<tr>
<th>Name of School</th>
<th>Number of Students in EMR Class</th>
<th>Number in 1st and 6th Grade*3</th>
<th>Total Students in all classes</th>
<th>Number of Students Repeated 1st Grade</th>
<th>Number of Students Recorder below 70 I.Q. *4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. John C. Fremont</td>
<td>MA*2</td>
<td>181</td>
<td>590</td>
<td>26</td>
<td>0</td>
</tr>
<tr>
<td>Grads</td>
<td>Low 1st</td>
<td>31</td>
<td>119</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>49</td>
<td>159</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>2. Herbert Hoover</td>
<td>MA</td>
<td>12</td>
<td>61</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Low 1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>129</td>
<td>509</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>3. Monte Vista</td>
<td>MA</td>
<td>90</td>
<td>397</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Low 1</td>
<td>157</td>
<td>342</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>81</td>
<td>344</td>
<td>6</td>
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<tr>
<td>4. Roosevelt Elem.</td>
<td>MA</td>
<td>59</td>
<td>268</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
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<td>High</td>
<td>43</td>
<td>161</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5. Wilson Elem.</td>
<td>MA</td>
<td>39</td>
<td>140</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Low 1</td>
<td>3</td>
<td>20</td>
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<td>0</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>125</td>
<td>444</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>6. Shedley Jr. High</td>
<td>MA</td>
<td>7</td>
<td>553</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Low 7</td>
<td>3</td>
<td>287</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>High</td>
<td>630</td>
<td>937</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

1. Low/High were the lowest and highest grade in the surveyed school.

2. MA/ Mexican American, B/Black, A/Anglo

3. The Survey sought data only from grades one (1) and six (6)

4. Note: No administrator reported having any students with an I.Q. below 70, however, two schools reported students in their EMR classes, Wilson, seventy-one (71) and Shedley Jr. High twenty-three (23).*

11/20/72
eight Chicanos, eight Blacks, and six Anglos repeating the first grade.

B. Issues as Raised and as They Appear in the Santa Ana Legal Complaint:

This lawsuit was filed on behalf of sixteen children, their parents and those children formerly from the EMR classes of Santa Ana School District.

Although the brief points out that the age of the plaintiff students was from five through eighteen, in fact, after careful study of the ages of each of the sixteen plaintiffs, none were below seven years of age, nor were there any above twelve years.

The lawsuit was filed in the Superior Court of the state of California, Orange County. An objective of the lawsuit was to obtain injunctive and declaratory relief.

Since boards of education set policy for the schools, it can be noted that the board of education members, the chief administrators of the Santa Ana Unified School District, were the actual defendants in the case.

In all, the complaint sets forth seven causes of action, each cause is divided into several points, depending on the issues which were raised in each.
First Cause of Action:

Section One:

This sets forth the age of the plaintiff children, verifies the fact that they each attend the public schools of Santa Ana, that they have been or are (at the time of the suit) actually in EMR classes. The fact that these named children, along with those children who were formerly in EMR classes as well as their parents are those bringing the law suit is established. That these children are actual residents of the school district and are of Mexican descent is determined.

Section Two:

The brief uses this portion to actually name each of the sixteen children, their school and their parent or guardian, as well as their age. It verifies that the four named schools of Muir, Sierra, Hoover and Wilson are in fact located in the Santa Ana Unified School District.

Section Three:

The Board of Education and the Santa Ana Unified School District are identified as the two entities responsible for the educational decisions and policy.

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6This format is used in order to allow the reader to know how each of these issues appeared in each of the legal complaints.
As they are therefore the defendants of the complaint. Although the earlier briefs do not include the actual names of the parties holding these responsible positions and who are to be held accountable for the lawsuit purposes, these names were submitted at a later date.

Section Four:

In this section, further mention is made that the EMR student plaintiffs are bringing this action (a) on their own behalf, (b) on behalf of those students who were in and have left the EMR Program, and (c) the parents of both groups. In Section Four, first mention is made of the notions of quality, equality of education and due process surrounding the placing of children into EMR classes. The complaint takes the position that the plaintiff children and their parents can adequately and fairly protect the community interest and as such substantiates this case as a Class Action Suit.

Section Five:

General reference is made to sections 6901-6919 of the California Education Code which govern the education of the Educable Mentally Retarded. This should be noted since it is important to realize that laws and state education policy guidelines did in fact exist at the time of the first raising of these issues.7

7From the focus interviews, all interviewed repeatedly made mention of the fact that laws and policy guidelines were not followed.
Section Six:

Recalls that Section 6904 of the California Code does indicate that the School Boards of any unified school district have the responsibility to provide for special education or classes for the mentally retarded minors residing in their respective school districts.

Section Seven:

This section is very important since these three points are underlying the complaints in most communities.

Section 6908 of the California Code is referred to as providing for the process and procedure school districts must follow before a child can be placed in a school or class for the mentally retarded:

(a) he shall be given a careful individual examination by a competent psychologist holding a credential by the State Board of Education, or one under his/her supervision with a credential from the same source;

(b) consultation with the parents or guardians must be held;

(c) a psychiatrist may be consulted for specific cases when the governing board of the district deems it necessary.
Section Eight:

Merely refers to Section 6909 which protects the rights of parents to object to examination mentioned in Section Seven should they wish to do so on religious grounds.

Section Nine:

Raises five important points surrounding retaining of records of the children placed in the EMR classes: (1) the permanent school record states that a child is, or was, in an EMR class and this is available to teachers, future teachers, employers and all governmental agencies; (2) this designation and recordation is considered a stigma, since they are believed to be mentally retarded; (3) this designation and stigma causes irreparable damage by not allowing such designated children to participate in regular class work with their peers; (4) future employment will be effected by this notation, and finally; (5) should a child at a future date desire to go on into higher education reference to being mentally retarded will be constantly referred to.

Section Ten:

This section is one of the major reasons why this case has taken so long to resolve, since it alleges that Section 6908 of the California Education Code is
unconstitutional because it deprives children of the right to due process of law. This means that children who are designated to be placed in the EMR classes according to the guidelines of the California Education Code do not have an opportunity of a hearing, and examination of the evidence obtained by the school nor an opportunity to present evidence challenging the fact that a child may not be mentally retarded.

Section Ten uses as the basis for this charge of unconstitutionality: (a) Article 1, Section 13 of the California Constitution; (b) Article 1, Section 3, Clause 6 of the California Constitution; and (c) the Fourteenth Amendment of the United States Constitution.

Section Eleven:

Having raised the question in Section Ten of the constitutionality of placement of children into EMR classes without a hearing, the suit now moves on to state that the schools are: (a) continuing to place children into mentally retarded classes, (b) they will continue to do so, notwithstanding the fact that (c) the minor children of the suit were retested by a qualified psychologist not connected with the school district and were determined not to be mentally retarded, (d) should there have been a hearing, the cases
of these children could have prohibited their actual placement into EMR classes.

Section Twelve:
The suit looks toward enjoining and restraining the school district by order of the court from continued placement of children into the EMR classes when in fact they are not mentally retarded. Should children who are not mentally retarded actually continue to be so placed, the suit takes the position there will be: (a) great and irreparable injury to the children whose education will not be the same as their peers not so placed in EMR classes, (b) they will continue to be treated as mentally retarded children when in fact they are not, (c) full learning capacity cannot be reached since these children will not be intellectually challenged in the EMR class settings.

Section Thirteen:
Raises the question that even if the children who have already been placed in EMR classes, who are in fact not mentally retarded, are removed, they would have been damaged since they have now fallen behind their peers educationally. Further mention is made that notations of attendance in these classes are on their permanent record and will be available to future employers who
will, because of EMR classification, be prejudiced against hiring them.

Second Cause of Action:

Section One:

The first nine parts of the First Cause of Action are incorporated in this section as part of the Second Cause of Action.

Section Two:

This section raises again the unconstitutionality question of the Educational Code which provides for the educational placement of children into EMR classes without the process of a hearing. The basis for this challenge is repeated as the Article 1, Section 13, Clause 6 of the California Constitution; the Fourteenth Amendment of the United States Constitution; and Article 1, Section 3 of the California Constitution.

Section Three:

Having raised the unconstitutionality question of the statute which provided for the placement of children into EMR classes, this section reveals that as a resultant effect of this application the schools have placed and continue to place children into EMR classes despite their not being, in fact, mentally retarded and therefore, not required to be in these classes. These children were
retested by a school psychologist and were found not to be mentally retarded. Should a hearing have taken place, these facts could have been brought forth and the children would not have been placed in EMR classes.

Section Four:

The attorneys for the children suggest that continued danger and harm will be brought to the children placed in the EMR classes. This irreparable damage will occur: (a) since those wrongly placed children will not receive the regular curriculum and will, as a result, would have fallen behind their peers; (b) those children are tested as if they were mentally retarded although they are normal and above average; (c) no intellectual challenge is provided for those wrongly place children; (d) which has a final result of prohibiting full learning capacity.

Section Five:

Having suffered the injuries of being wrongly placed in EMR classes, the children have no adequate remedy at law since they would still be behind their scholastic peers, even if they were removed. More than this, the fact that they were in mentally retarded classes would remain on their records for the duration of their lives.
Third Cause of Action:

Section One:

Again, the first nine parts of the First Cause of Action is set forth as Section One.

Section Two:

This section deals with the unconstitutionality of the California Educational Code when applied to children who are specifically Mexican American. Here an effort is made to show the culture conflicts between the Mexican and American cultures. It points out that as part of this culture, many Mexican American children are brought up speaking only Spanish, the language of their home, not English—the official language of the country. However, the inability to speak English causes the children to be treated as if they had mental deficiencies. The children are not mentally deficient. They are very proficient, but in their own language—Spanish. To measure mental ability of these children, the schools use tests which do not take into consideration the bilingual, bicultural nature of the children. This section then declares these tests improper for the bilingual, bicultural child.

Section Three:

This section deals with statistical make-up of the Santa Ana Unified School District: 7,068 Mexican American
students; 26.4 percent of the total school population; approximately 243 Mexican American children in the EMR classes. This demonstrates the fact that although the Chicano child makes up only 26.4 percent of the school population, he is fifty-eight percent of the total enrollment in the mentally retarded classes. The issue of disproportionate percentage is raised for the first time. The cause for this is identified as the I.Q. tests provided by the school. These tests do not consider the bilingual, bicultural ability of the Chicano children.

Section Four:
The I.Q. tests used by the schools to determine mental ability of the Chicano child offend the rights guaranteed the children under the equal protection clause of the Fourteenth Amendment of the United States Constitution and the Treaty of Guadalupe Hidalgo.  

Section Five:
Unless the tests used to determine mental abilities are culturally adapted, irreparable damage of the plaintiff children will take place. As a result, full learning is not attained.

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Section Six:

No adequate remedy at law is mentioned, even if these children were removed from the EMR classes. It points out they would be behind their peers and the indication on records will be permanent.

Fourth Cause of Action:

Section One:

Once again, the first nine sections of the First Cause of Action are intended to be incorporated under Section One of the Fourth Cause of Action.

Section Two:

Informing of parents and consent are the major points of this section. Although parents were informed, the issue at hand is that they were not informed sufficiently to know that the Special Education class was in reality an EMR class. This section states that the school officials presented only half-truths in the seeking of parental consent and intended to do so with actual design of securing the necessary consent. Should the parents have been adequately informed that the Special Education classes were in fact EMR classes, they would not have consented to their children being placed in them.
Section Three:

The issue here is that as a result of the inadequate information provided the parents, called misrepresentation, the sixteen Chicano children are in EMR classes, although they are not mentally retarded.

Section Four:

This issue is repeated several times in the various causes of action; namely, that the Chicano children misplaced in EMR classes will receive great and irreparable injury by not receiving regular instruction, being treated as mentally retarded, and not receiving intellectual challenge, all of which is preventing them from reaching their full learning capacity.

Section Five:

It is again repeated that inadequate remedy at law is available to the children, even if they were not removed from the EMR classes where these sixteen children had been wrongly placed. This fact remains as a permanent reference on the records of the children.

Section Six:

Here the school officials are accused of not fulfilling section 6908 of the California Educational Code which requires consultation with a minor's parents before he is placed in an EMR class. Should a consultation of this
nature have taken place and the parents were adequately informed, they never would have allowed their child into an EMR class.

Section Seven:
Developing further the charge that schools violated the requirements of Section 6908 of the California Educational Code, the suit now accuses the school officials of violating the California Constitution and the Fourteenth Amendment of the United States Constitution.

Section Eight:
Reference is made to the existence of an actual controversy between the sixteen misplaced children and the school officials. It is the contention of the parents and children that the schools are not adequately enforcing the EMR educational statute according to the intent of the California State Legislature since the fundamental rights of the children are being violated.

Section Nine:
The parents and children want their rights declared and a full disclosure of the information acquired by the school at the time of the parent consultation which is required by Section 6908 of the California Educational Code.
Fifth Cause of Action:

Section One:

Sections One, Three, Four, Five, Six and Seven of the First Cause of Action are repeated and included here.

Section Two:

The names of three specific children are mentioned—two who are nine years of age and one who is eight—they are identified as not being able to read English.

Section Three:

The Class Action interest is extended beyond the above mentioned three Chicano children to other children and their parents who do not speak or write English and who are actually in the EMR classes of the Santa Ana Unified School District. Justification of Class Action is given since subject matter is of interest to all other pupils and their parents in EMR classes affected by the lack of quality and equality education.

Section Four:

The parental consent issue further developed in this section indicates that the consent form used by the schools was in English and the parents of the children in question could read only Spanish. The suit accuses the school district of actually knowing this. Had the parents been informed in their own language, they would not have
allowed their children to have been placed in EMR classes.

Section Five:
The above actions are given as a proximate reason why the sixteen Chicano children are wrongfully in the EMR classes.

Section Six:
Sections Four, Five, Six, Seven, Eight, and Nine of the Fourth Cause of Action are included in this section.

Sixth Cause of Action:

Section One:
Sections One, Three, Five, Six, Seven, Eight, and Nine of the First Cause of Action are included here.

Section Two:
Two other children--ages twelve and seven--attending Hoover and Sierra Elementary Schools are mentioned. This cause of action will be extended to include other Chicano children misplaced in the EMR classes.

Section Three:
This section accuses the school officials of placing two children--Evelyn and Frances--in the EMR classes, although the parents refused to give their consent, knowing full well their children were not mentally retarded.
Section Four:

Does no more than mention that these two children are in EMR classes at the time of the suit.

Section Five:

Since the consent of the parents was not given, and since there was no hearing, the school is accused of violating Article 1, Section 13, Clause 6 of the California Constitution; and the Fourteenth Amendment of the United States Constitution; and Article 1, Section 3 of the California Constitution.

Section Six:

The consent of the parents not being given and the children not, in fact, being mentally retarded, the suit alleges that the irreparable injury will be brought to these two specific children by being treated as mentally retarded.

Section Seven:

Even if the two children were removed from the EMR classes, they would be very much behind their peers and thus have no adequate remedy at law. They will be affected for the rest of their lives.

Section Eight:

This section states there are the two differing opinions: one held by the children and parents maintaining that the educational statute is invalid and unconstitutional, and
another held by the school which claims the statute and
its application to the children is valid.

Section Nine:
The declaration of the children's rights to a hearing
by a judicial or an independent administrative body at
which the children and their parents could present their
evidence of non-mental retardation is requested. The
importance of this request is to clearly set forth the
rights of the children under the California Educational
Statute, Section 6908.

Seventh Cause of Action:

Section One:
Sections One, Two, Three, Four, Five, Six, Seven, and
Eight of the First Cause of Action is included here.

Section Two:
The school is now accused of improperly administering
the EMR program by not providing a "meaningful and edu-
cational curriculum" for the children who are in the
EMR classes. For the first time, it raises the question
that the schools have not retested the children who have
been in the EMR classes for a period of time in order to
determine if these children should remain in the EMR
classes.
Section Three:

The suit takes the position that the failure to require periodic retesting is an act which deprives the children of due process provided for by Article 1, Section 13, Clause 6 of the California Constitution and the Fourteenth Amendment of the United States Constitution. Since the children no longer have the liberty and freedom to equally share in the educational advantages and facilities as other children, the suit raises the question of equal protection of law.

Section Four:

The suit had been developing the fact that the curriculum and learning experience of the children in the EMR classes were such as not to provide hope for educational development or the opportunity to improve mental ability. Therefore, the school is accused of not providing equal protection of the law for the children.

Section Five:

It is indicated that there is a controversy over the rights of the children and the school. The children take the position that their constitutional rights were not respected in that they were not retested nor provided a meaningful educational curriculum while in the EMR classes. The schools take the opposite position. The children and
parents want a declaration of rights stating that the
failure to retest and provide meaningful educational
curriculum is a deprivation of their constitutional
rights.

Section Six:
Since the curriculum and lack of tests have had the
resultant effect of keeping the children in the mentally
retarded classes longer than necessary and has resulted
in them falling further behind their peers, the suit
finally seeks the following:

Arreola vs. Board of Education, Santa Ana Unified School
District

**Plaintiffs prayer**

WHEREFORE, plaintiffs pray Judgment against defendants and
each of them as follows:

1. For an order requiring defendants to show cause, if any
   they have, why they should not be enjoined as hereinafter
   set forth, during the pendency of this action;

2. For a temporary restraining order, a preliminary
   injunction and a permanent injunction, all enjoining
   defendants and each of them, and their agents, servants and
   employees and all persons acting under, in concert with, or
   for them:

   (1) a. From conducting any mentally retarded classes
       because the statute is unconstitutional.
b. From conducting any mentally retarded classes until all students presently in said classes have been provided a hearing to determine their mental abilities.

c. From detailing any of plaintiffs in said classes until an appropriate test recognizing both the Mexican culture and American culture has been given to those plaintiffs of Mexican descent and their score reveals they are mentally retarded.

d. From misrepresenting the facts to plaintiffs or any other persons as to the type of classes said mentally retarded classes are in order to obtain consents.

e. From obtaining the consent of plaintiffs who do not read English without providing a translator.

f. From conducting any classes for the mentally retarded which do not provide a proper and meaningful curriculum and periodic re-testing.

(2) To remove the notation from any and all records in defendants possession or control that plaintiffs were in mentally retarded classes until a hearing has been provided for plaintiffs.

(3) Upon the removal of any child mistakenly placed in said mentally retarded class to provide remedial and tutorial assistance necessary to have said child function at the same level as his peers who were not placed in mentally retarded classes.
3. For a declaration of the respective rights and duties of plaintiffs and defendants under the statute in question and that by said declaration and judgment it be declared that said statute is unconstitutional, invalid, and void.
4. For costs of suit incurred herein.
5. For such other and further equitable relief as to this Court deems just and proper in the premises.

Herman Sillas, Jr.
Wallace R. Davis
Santa Ana, California

SOLEDAD

A. Background of the EMR School Data:

The lawsuit is filed on behalf of two sets of Mexican American children with their parents. The first group of nine children come from homes where Spanish is the dominant language and have been in EMR classes for a period of up to three years. The second group of children are from the same families with the same language and cultural background who however are about to enter the first grade or who are in the first and second grades and about to be given I.Q. tests.

The brief is not clear with regard to which schools the students are actually from. However, from the information which follows, they could have come from only two schools. According to the 1969 Mexican American Education Study of the United States
Commission on Civil Rights, the Soledad School District provided the following information:

"There were 161 Mexican American children in the first grades, one Black and thirty nine Anglos with three others recorded for a sum total of 204 children in the first grade."

"In the fourth grade, there were ninety Mexican American children, one Black and twenty-nine Anglos with two recorded as others for a total of 122 children in the fourth grade."

"In the eighth grade, there were seventy-six Mexican American children, no Blacks, twenty-three Anglos, and two others for a total of 101 children in the eighth grade."9

From the information provided in the Mexican American Education Study Questionnaires, it is concluded that there were only two elementary schools: San Vicente and Main Street Schools. These two had the following breakdown in student population:10

<table>
<thead>
<tr>
<th></th>
<th>Mex-Amer</th>
<th>Black</th>
<th>Anglo</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Vicente</td>
<td>519</td>
<td>3</td>
<td>127</td>
<td>6</td>
<td>655</td>
</tr>
<tr>
<td>Main Street</td>
<td>558</td>
<td>2</td>
<td>152</td>
<td>3</td>
<td>715</td>
</tr>
<tr>
<td>District Total</td>
<td>1,017</td>
<td>5</td>
<td>279</td>
<td>9</td>
<td>1,370</td>
</tr>
</tbody>
</table>

Division of Student Population in Two Plaintiff Schools - Soledad, California


10 EMR information in these two schools was not available for that year. This information does however allow us to see the high percentage of Mexican American students, Ibid.
B. Issues as Raised and as They Appear in the Soledad Legal Brief:

Soledad: Diana vs. State Board of Education
Superintendent of Public Instruction for the State of California
Comptroller for the State of California
Treasurer of the State of California
Board of Trustees of the Soledad Elementary School
Superintendent of the Soledad Elementary School District

Although the Santa Ana (Diana vs. Santa Ana Unified School District) law suit was the first EMR law suit in California, it was filed in the superior state court. Soledad is the first EMR law suit to be filed in the Federal Court and the defendants in this case were expanded not only to include the local Soledad Elementary School District, but also:

The State Board of Education
The Superintendent of Public Instruction for California
The Comptroller for the State of California
The State Treasurer
The Board of Trustees of the Soledad Elementary School District

The suit was filed on January 7, 1970.

The format of this complaint is much different from that of the Santa Ana EMR law suit. The complaint lists thirty-six issues.

Section One:

Justification to take this legal action is stated to be found in several sources:

(b) From the Constitution and Laws of the State of California, Article 9, Section 5 of the Constitution; The Education Code Sections 1051, 1054, 5051, and 5054 (right to education); Education Code Sections 6902 et seq. (education of mentally retarded minors).

(c) Declaration of rights is sought under the Declaratory Judgment Act, Section 2201 (28 U.S.C.).

Classes for the Mentally Retarded:

Section Two:

This section refers to the fact that California does, in fact, authorize and provides for separate classes for the mentally retarded. It describes what is provided for in these classes; namely, minimal training in reading, spelling, and math. Care of the body and its cleanliness are also stressed. Reference is made to Section 6902 of the California Education Code which goes into the actual design of the EMR class in order to "make them (the children) economically useful and socially adjusted."
Section Three:

The position of this complaint is that to be placed in one of these EMR classes is to be relegated to a life of illiteracy and public dependency. There is a stigma in being called EMR and the ridicule to which the child is subjected creates a deep sense of inferiority and shame. Because of these facts, before a child is actually placed in these EMR classes, it must be certain beyond a reasonable doubt that the child is in fact, mentally retarded.

Placement:

Section Four:

The age at which children in the Soledad Unified School District are given I.Q. tests is identified at being between four and eight years of age. The two I.Q. tests identified as the most used in California are the Stanford-Binet or Weschler (WISC) and in most areas of California, the tests are given in English. The school districts in Monterrey County have chosen to use the 70-55 score on the WISC test or 68-52 on the Stanford-Binet for placement in the EMR classes. It is alleged that most school districts in California use this same cut-off point. Accordingly, it is the position of this complaint that the children in the law suit were placed in EMR classes based on this criteria.
Section Five:

The names of the specific Chicano children who are actually in EMR classes and their years of age are given. Mention is made that the children have in fact, been in their EMR classes up to three years; they attend Soledad Elementary School District; and that Spanish is the dominant language of the home, in some cases the only language.

Section Six:

This section refers to those children about to be tested coming from pre-school or from the first and second grades. There is fear on the part of the children that they will be placed in the EMR classes, like their brothers and sisters.

Section Seven:

It is the position of this suit that these children are not mentally retarded and if anything, some of them are above average. They are but the victims of tests given in a language unfamiliar to them. They have been tested by a bilingual tester in Spanish and English who has verified that they are not mentally retarded.

Section Eight:

This section deals with the retesting on November first and second of 1969, of the first nine children in this
law suit by an accredited California school psychologist. All but one of the children scored with a rating which would not place them in EMR classes. The average points gained on the Stanford-Binet test was fifteen. The scores are given here to prove that the children should not have been in the EMR classes. Reference is made to an Exhibit A which contains the findings of the school psychologist.

Invalid I.Q. Comparison:

Section Nine:

Question is raised regarding the psychological assumptions upon which I.Q. testing is formulated; namely, that all children of the same age can be tested, since it is assumed that they have had the same exposure to learning.

Section Ten:

It is pointed out that the children in this law suit range in age from eight to thirteen years of age, yet receive instruction in the same class setting. Sometimes, it is stated, the class is divided into two sections, but since there is one teacher, they are taught simultaneously. In the given case of one student in the EMR class, comparison with chronological peers shows that there is a five-year difference in the kind of instruction both sections of children receive.
Section Eleven:

Authorities in child learning are given to substantiate the position of the complaint that diversity of exposure to learn for low income and minority children is such that I.Q. scores do not show a relation to the real learning ability of these children.\(^{11}\)

Section Twelve:

The verbal and performance nature of Weschler (WISC) is discussed. Both parts are described. The brief takes the position that examining the results, "the two sections show clearly the impact of culture and language on their (the children's) ability to perform well on the test."

The case of one child who never was taught the Alphabet was presented. It is pointed out that "none of the children has a performance I.Q. below the maximum ceiling for mental retardation used in Monterrey County and only three have scores in the seventies."

Section Thirteen:

Verbal nature of the Stanford-Binet test is brought out.

A case is presented of a young Chicano who was given the

Stanford-Binet Test only in English. As a result, the child received a score of thirty (30). The position of the children and parents is that with such a low score, they could not be able to physically care for herself. Placing this score on the child's record did not indicate

**Cultural Bias:**

**Section Fourteen:**

Raising the issue as to the cultural bias in tests, this section gives examples in General Information, General Comprehension and Vocabulary Section of why the question of cultural bias can be raised. In other words, examples of words, events, situations common to one culture but uncommon to another are shown. These differences are not accommodated for in the I.Q. tests.

**Section Fifteen:**

The validity of testing verbal skills as a predictor of learning ability is questioned. The position of the complaint is that a vast difference exists between the Mexican American home and the Anglo-American middle class home, factors not taken into consideration in the I.Q. tests used in Soledad School System.

**Section Sixteen:**

Most of the plaintiff children are from a farm-working background. Their travel experience is limited to rural
areas, and their inexperience with books, pictures and magazines is such as to make it impossible to make a valid comparison with similar aged children in an urban metropolitan area. However, the I.Q. test does not take different experience factor into consideration. The validity of the I.Q. test is seriously questioned on this basis.

Section Seventeen:

Reference is made to the 1968 California State Department of Education Research in Wasco, California, having to do with the fact that Mexican American children in the study area scored "considerably higher than the middle class normative population" in the two areas of "social ability" and "adjustment." This was attributed to cultural differences and expectations. Causes of this was: (1) self-care of children at an early age; (2) care of younger siblings; (3) significant housework assignments; (4) helping to earn income; (5) sharing in adult decision-making. It is the position of this complaint that notwithstanding the above findings, I.Q. tests and testing do not take this factor into consideration in determining whether a Chicano child is mentally retarded or not.

Section Eighteen:

The issue of I.Q. score effected by cultural environment and family income is brought out. Although reference is made to experiments and studies, they are not specifically identified in this section.

Tests Not Properly Standardized:

Section Nineteen:

A background and historical development of the norming for both Stanford-Binet and the WISC tests is presented. It is the position of the children and parents that both these tests were normed on or for the dominant Anglo middle-American culture, the first in 1937 on 3,184 subjects and the second in 1950 on or for some 2,200 subjects. Neither had been restandardized to include others who were excluded from the norming, such as the linguistically and culturally different child. In the case of this complaint, the Mexican American child was not represented in the norming; however, the tests are used to evaluate him on the basis of which findings the Chicano child's whole life is affected.

Statistics:

Section Twenty:

It is shown that twelve of the thirteen plaintiff children are Mexican American. In Monterrey County,
while the Chicanos make up about eighteen and one-half percent of the total student population, they make up nearly one-third (33%) of the children in the EMR classes. It is the position of this complaint that this not only is representative of discriminatory over-population for Soledad, but is representative of conditions throughout the state. The 1966-1967 California Ethnic Review of the Schools of California is referred to. The suit uses the figure of 85,000 children in EMR classes in California. Twenty-six percent of these were Spanish surname, although they had only a thirteen percent student population representation. It is the position of this complaint that the numerical probability of this happening by "random chance" is "odds in excess of one in one hundred billion."

State Recognition of the Inequity:

Section Twenty-One:

The brief uses a random study of the State Department of Education of forty-seven Mexican American children in EMR classes in various sections of the state in June of 1969. Soledad incorporated the following information into its case:

(a) Forty-two of the forty-seven scored over the I.Q. ceiling for EMR classification;

(b) Thirty-seven scored seventy-five or higher;
(c) Over half of the students scored higher than eighty;

(d) One out of six scored in the nineties and one hundreds;

(e) Average improvement over earlier tests was 13.15 I.Q. points;

(f) They scored an average of eight points higher on performance I.Q. than on verbal I.Q.

(g) Nine children scored twenty points higher on the performance sections.13

Section Twenty-Two:

To further show recognition of the Chicano disproportionate representation in EMR classes on a state level, the complaint makes reference to the August 6, 1969 California Assembly House Resolution, No. 444, (see Appendix) which not only recognizes the disproportionate number of minority children in EMR classes in California, but instructed schools, school psychologists, and parents to reevaluate all children in EMR classes and asked the State Board of Education to work toward changes in special education (EMR) categories.

Section Twenty-Three:

Quotes the superintendent of public instruction for California: "If the test instrument is discriminating against a kid because he speaks Spanish, then the test is wrong and should be discarded." Since proving dis-

13Soledad - Diana vs. State Board of Education
The complaint accuses the schools that notwithstanding the State Resolution, state policy, and the position of the Superintendent of Public Instruction, they have not taken steps to remedy the EMR situation in Soledad.

Section Twenty-Five and Twenty-Six:
Reveal that the EMR issue was first brought to the attention of the Soledad School District in September of 1969. "That on December 15, 1969, a meeting between the children and parents' attorney and the superintendent took place." The superintendent concurred as to the unfair testing of Mexican American students. Promise was made to indicate change after Christmas. However, on return from the holidays, the children were told to remain in the EMR classes. The parents were so informed by a letter from the school officials.

Class Action:
Section Twenty-Seven:
The complaint is calling for a class action suit using Rule 23 of the Federal Rules of Civil Procedure as basis for the claim. Specifically, these children and parents wish to represent two classes of others:
1. Bilingual Mexican American children now placed in California classes for the mentally retarded.

2. Pre-school and other young bilingual Mexican American children who will be given an I.Q. test and thus be in substantial danger of placement in a class for the mentally retarded, regardless of their ability to learn.

**Defendants:**

Section Twenty-Eight:

The actual names of those against whom the suit is filed are mentioned and their position is given.

**Right to an Education:**

Section Twenty-Nine:

Education as a fundamental right of every child in California is stated. Article 9, Section 5 of the California Constitution is quoted. "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year..." Education Code Sections 1051 and 5011 are referred to which invest the power of maintaining schools and classes in local school boards. Sections 1054 and 5015 require school boards to maintain their schools with equal rights and privileges.

Section Thirty:

These regulations, speaking to the Right to an Education, provide... “that each school system has an affirmative duty to take prompt and effective action to eliminate... discrimination based on... national origin, and to correct the effects of past discrimination (Section Six).” Although this section does not cite references for other areas in the regulations dealing with Civil Rights, it does mention that the regulations "require equal opportunity in available classes, curricula, school activities, teachers, facilities, and text books."

Section Thirty-One:

The complaint holds that schools receive extra money for every child assigned to an EMR class. It cites the Education Code Section 1812.24. It is the position of the parents and children that this added money provides an incentive toward placing children into EMR classes. It is pointed out that other sources of funds are available for the educational development of children who had been wrongfully placed in EMR classes or who may be having language difficulties. The four sources referred to are:

(1) Title I of the Elementary and Secondary Act; (2) Title VII, The Bilingual Education Act; (3) Aid to the Educationally Handicapped through the State Education Program; (4) The Miller-Unruh Act of California.
Controversy:

Section Thirty-Two:

Recognition is given to the reality that there is a real and actual controversy. The parents and children seek a "declaration of the legal rights and relationships involved in the issues and controversy."

Irreparable Injury:

Section Thirty-Three:

Based on the guarantees of the "Federal and State Laws" as well as "Due Process" and "Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States," it is the position of this complaint that denials of rights are involved: "The children misplaced in the EMR classes are denied their right to receive an education, their right to equal educational opportunity, and their right not to be placed in a segregated classroom."

Section Thirty-Four:

Since it is the contention of the complaint that children have been wrongfully placed in EMR classes, it is stated here that several immediate steps must be taken: (1) removal of children from EMR classes; (2) children should be placed in regular classrooms; (3) intensive supplemental training in language skills and mathematics must be given
to raise skill levels to those of non-EMR students. If these steps are not followed, immediate and irreparable injury will continue, resulting in educational and psychological damage. Likewise, gainful employment will be cut off, many will be forced into the further humiliation of reliance upon public assistance.

Section Thirty-Five:
An objective of this complaint is to secure a restraining order by the court prohibiting the school district from "administering unfair I.Q. tests in English" to the bilingual class and the Spanish-speaking children. The feeling of the parents and children is that if this restraining order cannot be carried out, "irreparable injury of a grossly inadequate education and the stigma of mental retardation" will take place.

Section Thirty-Six:
Declaratory and injunctive relief is sought as the ultimate recourse in bringing about rectification of the issues raised in this complaint.

Diana vs. State Board of Education

Plaintiffs prayer

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court enter its order and judgment:
A. Temporarily and preliminarily restraining defendants from placement of any Spanish-speaking or bilingual children in classes for the mentally retarded by administration of an I.Q. test solely in English, pending a hearing on the matter. 
B. Temporarily restraining defendants from either (1) refusing to accept the results of the I.Q. tests administered to plaintiffs on November 1 and 2, 1969, and the recommendations made pursuant thereto, or in the event that defendants have substantial grounds for objections to the validity of these tests (2) refusing to retest immediately the nine plaintiff children with an I.Q. test administered by a bilingual qualified tester armed with tests both in Spanish and English. 
C. Preliminarily and permanently enjoining defendants from refusing to place plaintiffs into regular classrooms, from refusing to provide them with intensive supplemental training in language and mathematics to allow them to achieve parity with their peers as possible, and from refusing to remove from their school records any and all indications that these children were or are mentally retarded or in a class for mental retards. 
D. Preliminarily and permanently enjoining defendants from placing any bilingual or Spanish-speaking child who scores over the I.Q. ceiling for mental retardation on the "Performance" sections of the Weschler (WISC) test in a class for mental retards.
E. Preliminarily enjoining defendants from refusing to retest all bilingual and Spanish-speaking children currently placed in California EMR classes, from having the retests conducted by a qualified bilingual tester armed with tests both in Spanish and English, and from failing to reassign children in accordance with paragraphs C and D of this prayer.

F. Permanently enjoining defendants from placing any child in an EMR class prior to the age of 10 years and from placing any bilingual or Spanish-speaking child in an EMR class unless an I.Q. test, standardized by culture in Spanish and English and constructed to reflect cultural values of the Mexican American, has been administered and the child has scored below the ceiling for mental retardation as established by the test standardization.

G. Declaring, pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1964, and the current assignment of Mexican American students to California mentally retarded classes resulting in excessive segregation of Mexican American children into these classes is unlawful and unconstitutional and may not be justified by administration of the currently available I.Q. tests in English only to these bilingual and Spanish-speaking school children.

H. Awarding to plaintiffs their costs of suit.
I. Granting such further relief as the Court may deem just and appropriate and retaining jurisdiction of the matter until complete relief has been effected.

Dennis Powell
Martin Glick
California Rural Legal Assistance
San Francisco, California

SAN DIEGO

A. Background of the EMR School Data:

This complaint does not go into detail as to the age of the students. It only gives age of each indicating that they are attending elementary or junior high schools in the San Diego School District. In all, there are twenty plaintiff children. Eighteen of the children are male and two are female. This is the first of the three EMR law suits which deals with the disproportionate placement issue as it relates both to the Mexican American and Blacks.

As of March 31, 1969, some seventeen elementary schools were reported in the San Diego Elementary School District Survey information as reported to the United States Commission on Civil Right's Mexican American Education Study. Only 472 children were reported being in the EMR classes of an elementary school population of 29,971.14

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14Report to the Western Regional Director of the U.S. Commission on Civil Rights, Minority Students in San Diego Educable Mentally Retarded Classes, The San Diego Urban Project, Los Angeles, California, April 16, 1970.
TABLE 16

<table>
<thead>
<tr>
<th>Name of School</th>
<th>Number of Students in ESR Class</th>
<th>Number of Students in 1st and 6th Grade</th>
<th>Total Students in all Classes</th>
<th>Number of Students Repeated 1st Grade</th>
<th>Number of Students Recorded below 70 I.Q.</th>
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</thead>
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<tr>
<td>1. Weinberger Elementary MA</td>
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<td>6</td>
<td>21</td>
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<td>4</td>
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<td>1</td>
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<tr>
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<td>B</td>
<td>3</td>
<td>134</td>
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<tr>
<td>5. McKinley Elementary</td>
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<tr>
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<tr>
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<td>9</td>
<td>29</td>
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<td>2</td>
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<td>570</td>
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<td>B</td>
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<td>1</td>
<td>6</td>
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</tr>
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<td>229</td>
<td>782</td>
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<td>15. Brooklyn Elementary</td>
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<td>270</td>
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<td>0</td>
</tr>
<tr>
<td>Low 1</td>
<td>B</td>
<td>1</td>
<td>7</td>
<td>23</td>
<td>1</td>
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<tr>
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<td>A</td>
<td>10</td>
<td>204</td>
<td>695</td>
<td>5</td>
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<td>17</td>
<td>33</td>
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<td>0</td>
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<td>7</td>
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</tr>
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<td>A</td>
<td>0</td>
<td>180</td>
<td>651</td>
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<tr>
<td>17. Hans Christian Anderson Elementary</td>
<td>MA 6*</td>
<td>8</td>
<td>20</td>
<td>0</td>
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<tr>
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<td>B</td>
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<td>4</td>
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<td>A</td>
<td>0</td>
<td>160</td>
<td>614</td>
<td>3</td>
</tr>
</tbody>
</table>

*only six (6) are recorded in the ESR classes and all of them are Mexican American.

Note: There are instances where the Anglo is recorded having a higher repeat in the first grade, even in these instances minorities have more in ESR class. No administrator reported having any students with an I.Q. below 70, however, 10 schools reported students in their ESR classes. Lowell has 86 ESR reported students.

1. Low/High were the lowest and highest grade in the surveyed school.
2. MA/ Mexican American, B/Black, A/Anglo
3. The Survey sought data only from grades one (1) and six (6)
On the other hand, a minority census of the EMR students in San Diego School District taken in October of 1969 shows:

TABLE 17

<table>
<thead>
<tr>
<th>Minority</th>
<th>Number of Students</th>
<th>Percentage of EMR Enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish speaking</td>
<td>587 students</td>
<td>20.0%</td>
</tr>
<tr>
<td>Other White</td>
<td>899 &quot;</td>
<td>32.3% &quot;</td>
</tr>
<tr>
<td>Oriental</td>
<td>15 &quot;</td>
<td>.6% &quot;</td>
</tr>
<tr>
<td>Negro</td>
<td>1,255 &quot;</td>
<td>45.1% &quot;</td>
</tr>
<tr>
<td>American-Indian</td>
<td>5 &quot;</td>
<td>.1% &quot;</td>
</tr>
<tr>
<td>Other Non-White</td>
<td>29 &quot;</td>
<td>1.1% &quot;</td>
</tr>
</tbody>
</table>

Minority Census of the EMR Students in San Diego School District - 1969 (October)

This year, there are 2,790 students in San Diego's EMR Program. Last year, there were 3,238 students. That is a reduction of 448 students.15

B. Issues as Raised and as They Appear in the San Diego Legal Brief:16

The San Diego EMR law suit is the third and last of the series of three with which this study is concerned. It is divided into three main Causes of Action.

15Ibid.
16San Diego - Covarrubias vs. San Diego Unified School District.
First Cause of Action:

Jurisdiction:

Section One:

This section identifies the legal basis upon which these complaints can be brought to the Federal Court. The chief sources are:

Title 28 of the United States Code, Sections 1331, 1337, and 1343.

Title 42 of the United States Code, Sections 1983 and 1985, both of the Civil Rights Act of 1871.

Title 42 of the United States, Fourteenth Amendment, The Civil Rights Act of 1964.

Article IX, Section 5 of the California State Constitution.

The California Education Code, Sections 1051, 1054, 5051, and 5054, Dealing with the Right to Education.

The California Education Code, Section 6901, Dealing with Education of Mentally Retarded Minors.

Declaration of Rights under the Declaratory Judgment Act, Title 28 of the United States Code, Section 2201.

Exhaustion of Prior Remedies:

Section Two:

This complaint states that a copy of the complaint and a claim in excess of $10,000 for each of the children in the suit was presented to the school district on or about April 27, 1970.
Section Three:

This section indicates that the above mentioned complaint was not acted on within the necessary forty-five days by the San Diego School District.

Plaintiffs:

Section Four:

Reference is made to the fact that the group of plaintiffs named in the introduction is made up of Mexican American and Negro school children who in fact are students at the elementary or junior high schools of San Diego Unified School District.

Section Five:

This complaint identifies the Mexican American students as coming from families wherein Spanish is the "pre-dominent if not the only language spoken in the home." It further states that because of this, there are "inevitable economic and cultural differences."

Section Six:

It is further the position of this complaint that the Black students come from "homes of subsistence or sub-subsistence level economic conditions located in the ghetto." It takes the position that there is therefore a necessary cultural difference which results.
Defendants:

Section Seven:

Since San Diego Unified School District is that school district which has the responsibility by California law to operate and maintain public instruction in the community wherein the disproportionate placement of Mexican Americans and Blacks has become an issue, it is it against which the suit is brought.

Section Eight:

The Board of Education of the San Diego Unified School District as an elected board charged with the responsibility to administer all public instruction in San Diego, it too is considered a defendant in this case.

Section Nine:

This section identifies by legal terminology some sixty persons who are likewise sued since they hold responsible positions in the processes whereby Mexican American and Black students are disproportionately placed in EMR classes in the San Diego School District.

Plaintiffs' Right to an Equal Education:

Section Ten:

It is the position of the plaintiff children and their guardians that every child has a fundamental right to an equal education in California. The California
Constitution, Article 9, Section 5, states: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year..."

Section Eleven:

The Right to Equal Education is further supported by the Code of the State of California not only placing the duty to maintain schools and classes on the boards, but further mandates that these same boards "insofar as possible maintain their schools 'with equal rights and privileges.'"

Section Twelve:

The Right to Equal Education is strengthened by the Civil Rights Act of 1871, prohibiting discrimination based "on race or color" (42 U.S.C., Section 1983) and prohibits conspiracy by two or more persons "to deprive any person of equal protection of the laws of equal privileges under the law, damages being allowed. (42 U.S.C., Section 1985-3)

Section Thirteen:

The Right to Equal Education is likewise assisted by the Civil Rights Act of 1870 holding "all persons in the United States shall have the same right in every state." (42 U.S.C., Section 1981)
Section Fourteen:

This section shows that the Constitution of the United States and the state of California upholds that the children in this complaint are entitled to the same educational rights enjoyed by others.

Section Fifteen:

Reference is made to the 1964 Civil Rights Act and the publications in the Federal Register on March 23, 1968, page 4950, Volume 33, Number 58. This Act not only provides for "equal rights," but places the burden of affirmative action on the schools. More so, it states that corrective actions must be indicated to overcome past discrimination. It goes so far as to state that equal educational opportunity means "equal opportunity in available classes, curricula, school activities, teachers, facilities, and test books." "There is a reaffirmation of federal policy under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requiring of all the states equal treatment of all citizens in educational opportunity."

Classes for Mentally Retarded Children:

Section Sixteen:

The age of the plaintiff children are given as falling between six and fourteen. Verification that the plaintiff
children are in fact students in San Diego School District is given. Reference is made to the authority invested in the district to conduct special and separate classes for the mentally retarded under the California Education Code. These classes are to provide "minimal training in reading, spelling, mathematics, and basic English (ESL for the Spanish-speaking)." "Basic body care and cleanliness is taught." Section 6902 of the California Education Code states: "...make them (the children) economically useful and socially adjusted."

Section Seventeen:
This section points out that the California Education Code Sections 6901 through 6919 speak to a "total educational scheme" for the education of the mentally retarded. It further speaks to whoever is responsible for this education.

Section Eighteen:
Referring to Section 6908 of the California Education Code, several requisites are pointed out to be required by California Law before any child can be placed in an EMR class: (1) a careful individual examination by a competent psychologist (he must hold a California certificate); (2) consultation with his parents or guardians be held.
Section Nineteen:

Section 6909 of the Code provides for objection by parents on religious grounds.

Section Twenty:

Sections 6902.4, 6905, and 6906 provide for several important points:

(1) A committee composed of a teacher, nurse (or social worker), psychologist or tester, doctor, and a principal. It will be the function of this committee to administer entry of a child into the EMR classes.

(2) Mandatory annual review and report and require personal consultation by a member of the committee and a parent prior to requiring any child to participate in the EMR Program.

Improper Placement of Plaintiffs:

Section Twenty-One:

The position of the plaintiff children is stated; namely, they are not now nor have they ever been mentally retarded. These children have been subjected as "victims" to the testing procedure. The tests do not take into consideration the difference in cultural background or lack of facility in English.

Section Twenty-Two:

Goes into the description of the two principle tests; namely, Weschler (WISC) test and the Stanford-Binet Intelligence Test. It describes the verbal and performance nature of the tests. These tests were the sole
determinants for the placing of the plaintiff children into the EMR classes. These tests were administered "by defendants in the normal course of conducting the schools business and for the very purpose of fettering out mental retards in its schools."

Section Twenty-Three:

Section Twenty-Three and Twenty-Four go into detail to describe the two tests used in San Diego. This section takes the position that the Stanford-Binet test used was written by and for the dominant culture in 1937 normed on 3,184 children and had not been restandardized since 1937.

Section Twenty-Four:

The WISC test was standardized on 2,200 non-minority persons and not restandardized since 1950. It is the position of the plaintiffs that the WISC cannot determine the mental ability of the culturally and linguistically different child. Because of these facts, it is the position of the plaintiffs that the Stanford-Binet and the WISC "were wholly an improper bases upon which to make decision that a certain child should be put in the EMR classes."

Section Twenty-Five:

In February of 1970, each of the plaintiff children in the EMR classes were retested by a licensed California
School Psychologist who found in every case," ... plaintiffs scored above the maximum score set by the defendants as a ceiling for mentally retarded students."

"Performance" was far greater than the "Verbal" success on the tests.

Section Twenty-Six:

Based on the greater success of "performance score rather than the "verbal", it concludes that this is an "indication of the impact culture and language has on plaintiffs' ability to perform well on the tests. Some of the findings used in this section are:

Plaintiffs scored higher on "performance" than on "verbal" portion.

In some cases, difference was in the range of twenty-nine I.Q. points.

None of the children tested had performance I.Q. below the maximum ceiling for EMR used in San Diego County (1970).

None have scores in the seventies.

Four had over one hundred, eleven had scores above ninety-five.

Section Twenty-Seven:

This complaint concludes that on the basis of these findings, the plaintiff children were wrongfully placed, but are wrongfully being kept in EMR classes.
Section Twenty-Eight:

Based on the 1968 California Department of Education statistics, (a) The percentage of Mexican American in San Diego placed in EMR classes is twice as large as that of the percentage of their school population; (b) Negros in San Diego in the EMR classes is four times as large as their school population. A 1970 San Diego Unified School District Report is referred to which shows a "disproportionately low I.Q. measurement in schools having significant minority population."

Section Twenty-Nine:

The complaint sees that either one of two inescapable conclusions can be drawn from the issues raised in the first twenty-eight sections. That either:

(a) The plaintiff children and all other members of the class they represent are not as intelligent as their White, Anglo-Saxon counterparts, or

(b) The I.Q. testing and placement procedure for the EMR Program is invalid as it is being and has been used to place plaintiffs and other non-White members of the class into and retain them in the EMR Program by the schools.

*These facts were not noted on the Principals' Report to the U.S. Commission on Civil Rights. As a matter of fact, in every instance in the seventeen schools including Logan and Emerson, this question was never dealt with but left blank.
Section Thirty:

This section deals with the reality that children placed in EMR classes have this fact recorded on their permanent school documents. These are available upon request to teachers, law enforcement agencies, and other governmental agencies.

Concealment by Defendants of EMR Status of Plaintiffs:

Section Thirty-One:

At issue in this section is that the children or their parents were not "informed" or "knew of the meaning" or "significance of the EMR Program, nor the "manner of selection for such a program," or "the manner of determining continued placement of children in such a program."

It is the position of the plaintiffs that the "consultation with the parents or guardians was not "real" or "meaningful" and that "no real consent was given by them."

"Neither the plaintiff children, guardians nor parents have consented and they do not now consent;" they withdraw any consent conceivably given to placement into EMR classes.

Section Thirty-Two:

This section contains the accusation that the district and the administrators knew the I.Q. tests placement were invalid; that the procedure dealing with parent consultation and individual child examination required by the
Education Code was not properly carried out; that no retesting of children was performed; that yearly retesting and consultation with parents to undo wrong was not carried out. Finally, knowledge of such wrong, the school administrators "fraudulently concealed the same from plaintiffs and continue to do so."

Class Action:

Section Thirty-Three:

Justification to be able to file a class action suit is set forth under "Rule 23 of the Federal Rules of Civil Procedure." The complaint established that the plaintiff children can represent themselves, "all other minority pupils in the San Diego Unified School District" who have been "wrongfully placed" and are "wrongfully retained" in the EMR Program. It is the position of the plaintiff children and parents that there are some issues which are "common questions of law and fact which affect the rights of minor plaintiffs herein as well as the rights of all of the other members of the class.

Damage to Plaintiffs and Class Members:

Section Thirty-Four:

This complaint holds that the "continued placement and retention of these children in EMR classes" is an act of discrimination. The continued presence of these children in these EMR classes will result in:
(a) being cut off from economic gains available to regular children;
(b) gainful employment;
(c) many will be forced into further humiliation of reliance upon public assistance.

Section Thirty-Five:
Given the position that the plaintiff children are in the EMR classes wrongfully, they should be removed. Should any of them have been damaged, "all possible measures should be undertaken to minimize the damage already done." Before any child is placed in EMR classes, it should be established "beyond any reasonable doubt that he or she does in fact suffer from mental retardation sufficiently to meet the criteria for placement in such classes." Especially is this true for bilingual, bi-cultural students.

Section Thirty-Six:
Damage resulting from wrongful placement and retention are the following:
(a) Notation on permanent records of children.

These records are available to future teachers, faculty advisors for the duration of schooling, governmental authorities, including armed forces, recruiting offices, and employers.

Stigma attached to being in an EMR class will effect the objective judgment for future competition, especially effecting institutions of higher learning.
(b) The educational gap between children in the EMR classes and the Anglo-Saxon student widens.

(c) Children in EMR classes have been "taunted" in school and home for being in the EMR classes.

Shame and guilt have resulted from this treatment.

Adjustment to life and school is made more difficult.

Psychological problems result.

(d) The stigma and widening gap together will deter the children in EMR classes from an improved life socially and economically.

(e) "Loss of faith and loss of hope" for being treated as if they were mentally retarded will "consign them to dependency on welfare" and menial labor...for entire productive lives.

(f) Because of (e), the economic damage will effect their productivity for the rest of their lives.

Section Thirty-Seven:

Economic damage for being wrongfully placed in EMR classes is beyond $10,000.

Section Thirty-Eight:

The damages mentioned in Section Thirty-Six will continue unless intensive supplemental and individual training commensurate to education of their White peers is provided.

Section Thirty-Nine:

Since it is the position of this complaint that the school administration acted "with full knowledge of the wrongfulness...discriminatory...and injurious nature of these acts," this section concludes that the children and their parents are entitled to damages.
Section Forty:
Because of the school districts..."intractability in the face of substantial community pressure," this law suit was necessary. It is therefore the position of the plaintiff children and parents that the school district pay their "reasonable attorneys' fees."

Second Cause of Action:
The Need for Injunctive and Declaratory Relief:
Section Forty-One:
Asks that all issues raised in the first forty sections be incorporated in this second cause of action.

Section Forty-Two:
"Unless plaintiffs and their class of bilingual and bicultural minority children in EMR classes are taken out of the mentally retarded program immediately and placed in regular classes, given intensive individual instruction, tutoring, and help in regaining the ground lost while wrongfully in the EMR Program, they will be damaged beyond saving in terms of their educational opportunity."

Section Forty-Three:
Since the plaintiff children and parents have exhausted all other recourses to remedy these EMR issues, this suit "for declaratory and injunctive relief" is the only means left to "secure relief."
Section Forty-Four:

Unless the schools are "restrained" from administering these I.Q. tests, further damage will come about to other children who will be placed in EMR classes.

Section Forty-Five:

It is the position of this brief that there is an "actual controversy." Children and parents are of the mind that "illegal and wrongful placement and retention in EMR classes did take place," while the school administrators on the other hand take the position that their "conduct was proper."

Third Cause of Action:

Action Based on Conspiracy:

Section Forty-Six:

All issues of the previous two causes of action are asked to be incorporated here.

Section Forty-Seven:

It is the position of this complaint that all of the above acts were "accomplished pursuant to a conspiracy among defendant school district, the officers, agents, and employees of it concerned with initiating, implementing, and operating the EMR Program." This began even as the EMR legislation started and is continuing today.
Covarrubias vs. San Diego Unified School District

Plaintiffs prayer

WHEREFORE, plaintiffs, on behalf of themselves and all members of the class they represent, pray judgment as follows:

1. That defendants, their officers, agents, representatives, attorneys, and all other acting for, on behalf of, or in concert with them, or any of them, be permanently enjoined from:

   A. Causing, instigating or participating in the detention of plaintiffs and those similarly situated in classes for the mentally retarded.

   B. Causing, instigating or participating in any act to prevent admission of plaintiffs and those similarly situated to regular classes.

   C. Causing, instigating or participating in any placement of plaintiffs and all others similarly situated, in classes for mentally retarded children by the use of invalid I.Q. tests or methods.

   D. Causing, instigating or participating in any I.Q. testing of plaintiffs and all others similarly situated by means of tests or testing methods which do not properly account for language and cultural backgrounds different than those for whom the tests were originally constructed.

   E. Causing, instigating or participating in any program which does not provide for plaintiffs and others similarly situated
sufficient intensive, supplemental individual training in language skills, mathematics, and other areas of the school curricula in order to being plaintiffs and others similarly situated up to the level of achievement of their peers.

F. Causing, instigating or participating in any misrepresentation or concealment to plaintiffs and others similarly situated, and to the parents of plaintiffs and others similarly situated, of the true and complete nature of placement and retention in EMR classes.

G. Causing, instigating or participating in any act to obtain the consent of the parents of plaintiffs and others similarly situated for placement in EMR classes without providing a translator for those parents who are unable to fluently speak, read or understand English.

H. Causing, instigating or participating in any notation on the permanent school records of plaintiffs and those similarly situated, indicating that they are mentally retarded and have been placed in special EMR classes.

I. Causing, instigating or continuing the retention of permanent school records of plaintiffs and those similarly situated showing that they are mentally retarded and have been placed in special EMR classes.

2. That an order be made directing the defendants to show cause at a time and place specified therein, why they, their officers,
agents, representatives, attorneys, and all others acting for, on behalf of, or in concert with them, or any of them, should not be enjoined from doing any of the acts set forth in paragraph 1 pending a trial of this cause.

3. For an order declaring that plaintiffs and those similarly situated are not and never have been mentally retarded.

4. For an order declaring that plaintiffs and those similarly situated are and were illegally and improperly placed by defendants in EMR classes and that defendants are illegally detaining them there.

5. For damages to each plaintiff in excess of $10,000.00 according to proof.

6. For punitive damages to each plaintiff in excess of $10,000.00 according to proof.

7. For plaintiffs' reasonable attorneys' fees.

8. For plaintiffs' costs of suit herein incurred.

9. For all other further relief as the court may deem just and appropriate while retaining jurisdiction of the matter until complete relief has been effected.

F. P. Crowell
Josiah L. Neeper
Herman Sillas, Jr.
Mario Obledo
Joe Ortega

MALDEF

Oscar Williams
NAACP
San Diego, California
PART TWO

Comparative Analysis of Each of the Three Law Suits

Recognition of Legal Jurisdiction:

Santa Ana, the first of the EMR California legal challenges, was filed on behalf of sixteen Mexican American children and their parents in the State Superior Court of California. Of the three cases, it alone was filed in a state court. The other two were filed in a federal court either in Southern or Northern California. Santa Ana considered that portion of the California Education Code unconstitutional which had to do with the EMR education of the Chicano child since the tests used to determine the mental capacity of the Chicano child did not take his language and culture into consideration. Soledad and San Diego do not raise this issue.

Central and unique to the Santa Ana suit is its position that "due process," namely the right to a hearing before a child is placed in the EMR classes, was violated. Both the Fourteenth Amendment of the Constitution and the California Constitution were given as bases for this position.

As far as the actual tests are concerned, Santa Ana took the position that the children's rights "to equal protection" were offended as protected by the Fourteenth Amendment of the United States Constitution and the Treaty of Guadalupe. Santa Ana alone, of the three cases, uses the "rights guaranteed by the Treaty of Guadalupe."
Soledad was the first of the three law suits filed in federal court. It was filed on behalf of thirteen children. As was San Diego, the two relied heavily on the Civil Rights Act of 1964. The California Code was used in all three cases, the degree of dependency on the various statutes varied. Basically, these sections dealt with the "right to an education" and "the authority, process and description of EMR classes."

San Diego, the last of the three challenges, was filed in federal court in Southern California on behalf of twenty-one children—twelve Black and nine Mexican American. It was more inclusive in citing legal basis for its challenge from the "Right to Equal Protection" by the Civil Rights Act of 1870 and 1871. This same equal protection was cited in the publication of the 1964 Civil Rights Act in the Federal Register of March 23, 1968. San Diego alone makes these last two citations. Unlike the other two cases, it pushes the concept of "affirmative action" for equal educational opportunity as contained in the 1968 Federal Register Publication.

Each of the three suits was filed as Class Action suits which included all other children in the same school district similarly affected. However, since Soledad raised the issue of "fear amongst the pre-schoolers," it especially mentioned their inclusion as those "class members" about to be tested.

Specifically, each of the law suits wished to convey the awareness that California Laws and Policy surrounding the education of the
Educably Mentally Retarded, did in fact actually exist at the time of each of the law suits.

Although there were legislative changes after Soledad, it must be noted that Santa Ana, the first law suit, not only cited the California Education Code, Sections 6901 through 6919, but likewise spelled out three major provisions of the Code:

(a) Careful individual examination by a competent psychologist with credentials by the State Board of Education or his credentialed representative.

(b) Consultation with parents or guardians be held.

(c) A psychiatrist may be consulted for specific cases when deemed necessary by the school board.

The use of the California Code citation is important to show that administrators, for whatever reason, were not fulfilling the then established law and education policy. All three cases stand firm in that fundamental human and equal rights of their children and parents have been violated. Basically, the issue at hand is that of discrimination. The San Diego complaint actually states: "Continued presence of malplaced Chicanos in EMR classes is an 'act of discrimination.'"

Who Was Sued:

In each of the three suits, the local school board was the defendant since it is they who were enthused with the state responsibility to oversee and set policy for local public education. Santa Ana included the "Administration of the School," Soledad extended it to the "School District" without specifying further. Since Soledad
was interested in applying the findings throughout the state, it sued the Department of Public Instruction for the state, the State Comptroller and the State Treasurer. It took the position that these state personnel were responsible for policy, administering or funding educational programs directed toward the educably mentally retarded, therefore they must assume the responsibility for the issues in this case.

**Tests Involved:**

All three cases challenged the validity of the I.Q. Tests used by the school to measure mental ability of the linguistically and culturally different child. San Diego alone raised this issue to include the Black child. As a result, one-half of the children plaintiffs in the San Diego case were Black. This was the first inclusion of the Blacks into the EMR issue.

Soledad went into greatest detail of the three suits, actually going into the history, description of, and research examples of the I.Q. tests. It alone actually accused the I.Q. tests of being "culturally biased."

Soledad and San Diego singled out the Stanford-Binet and the Weschler (WISC) as the tests which were used most frequently and extensively in their respective districts and California. Some major points stand out from the challenge of these two tests:

(a) Their norming did not include the Mexican American and Black or the linguistically and culturally different child.
(b) These tests do not take the language and culture or experience of the Mexican American, Black or linguistically and culturally different child into consideration and as such are invalid in the ability to measure their mental capabilities.

(c) These tests were not renormed since 1937 (Stanford-Binet) and 1950 (WISC).

(d) These tests are given to children in a language unfamiliar to them.

(e) Tests measured a child's English language capabilities more than it measured his or her mental ability.

None of the three cases actually asked for the cessation of I.Q. testing. It was clear however, that they asked that all testing be stopped in the schools located in the communities of three cases until and unless the tests were adapted to accommodate the Mexican American and Black students' cultural and linguistic necessities, up to now ignored in I.Q. testing.

Soledad and San Diego delves into the Verbal and Performance nature of the I.Q. tests. San Diego, referring to the psychological retesting of its plaintiff children, indicates that the performance achievement far surpasses the verbal achievement of the tests. It was Soledad, however, which actually raised the question of "the validity of testing on verbal skills as a predictor of learning ability."

Santa Ana does not differentiate between the learning experiences of the Chicano and the middle class urban child as evaluated on the tests. San Diego does speak of the "barrio and ghetto experiences."

Soledad having a high migrant worker population, does raise the
question of valid comparison between two classes of children, experiences of travel, reading, home environment in a rural setting, and that of the urban metropolitan child. Soledad alone actually challenges a basic assumption of the I.Q. tests used in that school system; namely, "All children of the same age have had the same experiences."

**Disproportionate Representation:**

The notion of "disproportionate representation" of Mexican American children in EMR classes was developed in each of the three cases. The same issue as applied to the Blacks was raised only by San Diego. That this concept can be used as a valid argument is substantiated even by the State Department of Education's usage: "It should be assumed that any claims for the incidence of mental retardation in excess of two percent of any criterion population is spurious."\(^{17}\)

Santa Ana stating this concept as a fact referred to its own school community statistics. "There are 7,068 Mexican American students enrolled in Santa Ana School District." Approximately "243 Mexican Americans are in the EMR classes making up approximately fifty-eight percent of the EMR students." They substantiated their claim with the "Statistics of the Ethnic Distribution of Students" for San Diego took the position that this issue was a result of the "invalidity and impropriety of testing methods." Quoting from the 1968 State Department

of Education Ethnic Survey, it shows: "The percentage of Spanish-American children in EMR Programs in San Diego County was over twice as great as their total school population...the percentage of Negros in EMR was four times as great."18

Soledad developed the disproportionate representation issue under its "Statistics Section." It not only uses this concept of "disproportionate representation" to show it as an issue resulting from the "invalid I.Q. tests and testing," but goes further to call it "discriminatory over-population." It expands the problem beyond the community of Soledad to include the whole state of California. Locally, it uses the facts that "whereas the Spanish surname represents eighteen and one-half percent of the student population, they make up one-third of the EMR population." On the other hand, it uses the data for the state level to reflect that "there are approximately 85,000 children in EMR classes across California. In the 1966-1967 state study, twenty-six percent of the children in EMR classes were Spanish surname, while such students comprised only thirteen percent of the total student population."19 Soledad considers disproportionate representation as "discrimination."20

18Op. Cit., Table 4
20Ibid.
Children Retested and Found Not to be Mentally Retarded:

Each of the three law suits had their respective plaintiff children psychologically retested by California registered school psychologists. All three took the position based on their own retesting that "none of the children are mentally retarded and should not have been placed in an EMR class." On the strong evidence of their findings, they challenged the validity, constitutionality and effectiveness of these tests.

Santa Ana said the least of the three law suits about either the retesting, the process or the findings, it merely states that: "... plaintiffs have been retested by qualified psychologists...(they) have taken into account plaintiffs' bilingual and bicultural abilities... tests have proven that plaintiffs are not mentally retarded."21

Soledad on the other hand, consistent with its dedicating great interest in and description of the very make up of the tests, goes into the details of the Weschler (WISC) and the Stanford-Binet Tests. Its findings were that: "The nine plaintiffs on the two sections (Verbal and Performance) show clearly the impact culture and language have on their ability to perform well on the test."22

It was found that "on the verbal I.Q. scale, their mean score is seventy-five and the median seventy-four. It found that performance wise, the I.Q. averages were ten to eleven points higher with a mean


22 Diana vs. State Board of Education, Soledad, C 70-37 RFP Ca.
of eighty-four and a median of eighty-six."\textsuperscript{23} It is important to note
that, "none of the children have a performance I.Q. below the maximum
ceiling for mental retardation used in Monterrey County and only three
have scores in the seventies."\textsuperscript{24}

Reference was made in Soledad to the one hundred percent verbal
nature of Stanford-Binet which was given only in English. Using an
"ad absurdum" argument, it shows how one child tested in English with
the Stanford-Binet, scored an I.Q. of thirty. Persons with I.Q.'s
this low would be completely incapacitated. In the case of this child,
this was never questioned by the school administrators supposedly
knowledgeable of testing.

San Diego chose to raise the issue of "retesting" immediately
after it treated the whole make up of various I.Q. tests, especially
the Stanford-Binet and Weschler (WISC) Tests. Without going into an
intricate detail as Soledad, it merely states:

"...in every instance, plaintiffs scored above the maximum
score set by the defendants (schools) as a ceiling for
mentally retarded students.... In substantially all such
instances, plaintiffs each scored higher on the performance
portion of the test than on the verbal portion."\textsuperscript{25}

San Diego found that there was as much as twenty-nine I.Q. points
range of difference between the "performance" and "verbal" portion.\textsuperscript{26}

\textsuperscript{23}\textit{Ibid.}
\textsuperscript{24}\textit{Ibid.}
\textsuperscript{25}\textit{Covarrubias vs. San Diego Unified School District, 70-394-T.}
\textsuperscript{26}\textit{Ibid.}
The conclusions of San Diego which seems to be much stronger than those of Soledad and Santa Ana are that:

(a) None of the children had a performance score below the maximum for mental retardation used in San Diego County (70).

(b) None have scores in the seventies.

(c) Four had over one hundred. Eleven had scores of above ninety-five.27

Since Soledad was interested in raising the EMR "Ethnic Disproportionate Representation" to a statewide level, it is understandable that it utilized research performed in Wasco, California by the California State Department of Education in 1968. It shows that in social ability and adjustment, the Mexican Americans scored "considerably higher than the middle class normative population."

San Diego further used the 1966-1967 statistics from the Ethnic Review of the state of California along with a June, 1969 State Department random study of forty-seven Chicano students to prove its point of the statewide seriousness of the EMR issue.28

San Diego posed an interesting question: "Either the children and their class are not as intelligent as their White Anglo peers or the I.Q. testing and placement procedure for EMR Programs is invalid." Precisely, the invalidity of the I.Q. testing is the position of the plaintiffs and the Chicano and Black community. This seems to be the

27 Ibid.
28 Ibid.
crux of the controversy since the parents and community--Chicanos and Blacks--refuse to accept the first part, and the schools and the administrators refuse to accept the second.

It is very understandable that San Diego was much stronger in its use of factually oriented conclusions, since it was the third of the three EMR challenges. Certainly, it evidences tremendous growth from Santa Ana, which legal brief, by the way, was written by the same lawyer who cooperated in the San Diego brief, Attorney Herman Sillas of Los Angeles, California.

**Damage to the Child:**

Since each of the three law suits took the position that their respective Chicano and Black children plaintiffs were in fact "not mentally retarded" and had been "wrongfully placed" in the mentally retarded classes, they each proceeded to show the psychological, educational, economic and social damage resulting from this malplacement. However, each presented this issue differently and with varying stress on particular issues.

Santa Ana's position was that the EMR California statute "was invalid" and if allowed to continue, would cause "great and irreparable injury" to (children) plaintiffs. Reasons given for this damage were that the "curriculum" was not similar to that received by regular students, and although the children were not mentally retarded, were in fact treated as such. Santa Ana challenged the curriculum as one which was not intellectually challenging to the degree that it would
have the damaging effect of not allowing these malplaced children to "reach full learning capacity."\textsuperscript{29}

Santa Ana saw the Chicano children as being damaged from the EMR placement notation on the permanent records which were available to future "employers who would not employ 'those' because of such classification."

It was further the position of Santa Ana that even if the malplaced children were removed from the EMR classes, they would have been damaged by the very fact "that an educational gap would have been artificially created between these children and their contemporaries."

Soledad refers to the Chicanos malplaced in the EMR classes as "victims of a procedure which tested their facility in English."\textsuperscript{30}

Unlike Santa Ana, Soledad provides a whole section entitled "Irreparable Injury." It suggests that "unless the Chicanos are removed from EMR classes, they will continue to suffer immediate and irreparable injury of inadequate education and the stigma of mental retardation."\textsuperscript{31}

Like Santa Ana, it mentions the issue of future employment, but chooses to state it differently in that the children "...will be cut

\textsuperscript{29} Op. Cit., Arreola vs. Board of Education.
\textsuperscript{30} Op. Cit., Diana vs. Board of Education
\textsuperscript{31} Ibid.
off from any chance to be gainfully employed." It goes further than Santa Ana in stating that a child misplaced in the EMR classes "will be forced into the further humiliation of reliance upon public assistance." 32

San Diego, like Soledad, attributes a special section of damage under "Damage to Plaintiffs" and "Class Members." However, unlike Soledad and Santa Ana, it goes into much greater detail. It takes the position that the continued placement and retention of the Chicanos in the EMR classes will have an effect on the economic future of the children and "will subject them to humiliation of reliance on public assistance." 33

Rather than speak of possible damage, San Diego holds that damage has already taken place by the very fact that the children have been wrongfully placed in the EMR classes.

The issue of "notation on permanent records" is expanded much further by San Diego than in the two other cases. Besides to teachers and employers, it indicates that these records are available to "faculty advisors, governmental authorities, and armed forces recruiting officers." 34 In other words, the future of each child will be affected since every option of opportunity he or she may wish to

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34 Ibid.
chose will be effectively cut off. In this light, San Diego indicates that such notations will even hinder the child's chances of getting into higher education.35

It, like Santa Ana and Soledad, raises the issue of an "Educational Gap" created between the misplaced non-EMR and the regular student. However, unlike the other two, San Diego speaks of the gap developed between those in the EMR classes and "the White Anglo-Saxon competitors."36 This is the first use of the term Anglo-Saxon and the notion of "competition."

For the first time in any of the legal challenges, the issue of "shame and guilt" resulting from taunting of the children is posed. San Diego takes the position that this is coupled with second rate and inferior learning achievement "which further complicates the kinds of damages that are brought about."37

Although Santa Ana spoke of "curriculum not being intellectually challenging," Soledad poses the issue that a resultant effect is the denial of "any practical change to realize their potential in college, armed forces officer program, executive or management programs."

The loss of faith and loss of hope are two new issues raised by Soledad. It is their position that this occurs when the EMR children

35Ibid.
36Ibid.
37Ibid.
and parents become aware that they are treated as "mentally deficient and retarded." It holds further that a resultant effect of this is to "consign these children to dependency on welfare...or menial labor at low wages for their entire lives." 38

The final permanent damage San Diego raises is one which results from combining of all other damage issues; namely, "the children, their families, and the members of their class... will be greatly damaged economically for their productive lives." 39

San Diego alone puts a dollar figure on the amount of damage brought on the children as a result of being malplaced in the EMR classes. As such, it sues for $10,000 per child; the first time a law suit is filed in the United States asking money for this kind of damage. This is one of the most significant features of the San Diego law suit.

Perhaps what best summarizes what happens to a child is expressed by Soledad when it considers the misplaced Chicano in EMR classes as "victims." 40

**Due Process and the Right to a Hearing:**

Santa Ana alone raises the issue of the right of "Due Process" 41 as it relates to the rights of the students and parents before any

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38Op. Cit., Diana vs. Board of Education.

39Ibid.

40Op. Cit., Diana vs. Board of Education.

child is placed in the EMR classes. As it stands on its position that this is a right, it moves to challenge the schools having violated their basic right of the EMR children.

Consent:

The whole issue of consent of parents and how it was given, received, understood, and subsequently dealt with by the schools is a very important issue in the EMR question. It is developed only in the Santa Ana and San Diego cases. Soledad remains strangely silent about this issue.

Although reference in each of the three legal challenges to the California Code, Section 6909 dealing with the right to object on religious grounds, no parent refused to give their consent on this ground. Thus, consent or no consent here is strictly on an educational and psychological basis.

Santa Ana accuses the schools of having informed the parents that their children would be in special classes with fewer children and special teachers, but did not tell them these were EMR classes.\(^{42}\) It took the strong position that "this was intended in order to obtain consent."\(^{43}\) It went further to allege that because of "the half truths, consent was given and had the parents been told the truth as to what the classes really were, they would not have consented."\(^{44}\)

\(^{42}\) Ibid.
\(^{43}\) Ibid.
\(^{44}\) Ibid.
Surrounding the issue of parents understanding what the schools were really asking of them is the reality that there were instances when the consent form sent by the school to the parents was in English when in fact there were parents who could neither read nor write in this language. Spanish was their home language and there was no effort to communicate with the parents in their own language. Notwithstanding, the parents were asked to sign this document consenting to allow their children to be placed in the EMR classes. In two instances, parents actually objected to the placing of their children into the EMR classes and their children were still placed in EMR classes notwithstanding.\textsuperscript{45}

San Diego is much stronger than Santa Ana in its position that "the children, parents or guardians were not actually informed nor knew of the real meaning of the EMR Program."\textsuperscript{46} The brief, likewise, covers the issue that the parents were unaware even of the process whereby "continued placement" was determined. As if to erase any doubt about an affirmative assent based on these issues, San Diego took the position "parents withdraw any consent conceivably given to placement of their children into EMR classes."\textsuperscript{47}

\textsuperscript{45}Ibid.

\textsuperscript{46}Op. Cit., Covarrubias vs. Unified School District.

\textsuperscript{47}Ibid.
It is interesting to note that the major portion of the "consent" issue in the San Diego case is treated under the heading of "Concealment by Defendants of EMR."\(^{48}\)

San Diego accused the school district of not only failing to comply with the California Education Code which required "parental consultation,"\(^{49}\) but also accused them of "not complying" with the yearly retesting and consultation of parents." It then accuses the schools of actually "conspiring to fraudulently concealing knowledge of its wrong from the parents."\(^{50}\)

**Curriculum:**

Although the issue is dealt with somewhat in other sections, it is of such importance that consideration should be given to it as a separate issue. Each of the three law suits raises the issue of "quality curriculum," however, each does so with its own emphasis and importance.

Santa Ana raised the issue that the curriculum in an EMR class was not "meaningful," "educational," nor the same as that "received by regular classes."\(^{51}\) The resultant effect was that a child was not

\(^{48}\)Ibid.  
\(^{49}\)Ibid.  
\(^{50}\)Ibid.  
\(^{51}\)Arreola vs. State Board of Education
challenged sufficiently to allow for educational or mental growth. Repeatedly, Santa Ana states that a child in an EMR class does not "reach their full learning capacity." 52

Soledad raises the "Curriculum Issue" with two different approaches than Santa Ana: (1) The length of time a child stays in the EMR class; (2) the great age span of children in the EMR classes. In one set of facts, it chose to show the age span of children being taught in the same learning situation was from ages eight to thirteen years of age. As a further indirect challenge to the issue of quality curriculum, Soledad sought to remove those children wrongly placed in EMR classes as well as provide that they were given "immediate supplemental training to catch up."

San Diego indirectly speaks to the inadequate curriculum issue by showing the educational gap between the linguistically and culturally different child in the EMR classes, and the Anglo child who is in regular classes.

Indirectly, San Diego speaks to poor curriculum when it takes the position that "drastically decelerated pace of experience and learning in the EMR classes" causes a widening gap between those in EMR classes and the regular student. 53

52 Ibid.

Stigma:

The issue of stigma is raised in each of the three law suits. San Diego of the three, gives it the most attention, treating it under a section set aside under "Damages." San Diego associates stigma with the very presence or enrollment in a EMR class and goes further to identify specific kinds of effects this stigma has on the Chicano and Black child:

(a) It will cause humiliation in reliance on public assistance.

(b) It will effect the "objective evaluation" of those who may determine if these children will get into a higher education institution.

(c) San Diego sees stigma coming from the notation of such attendance on permanent records which will effect all future upward mobility, opportunities, colleges, administrative posts, executive posts, etc.

(d) One further issue when the student becomes aware of what has happened, it causes a personal "loss of faith."5^5

Both San Diego and Soledad make mention of stigma as being the reason for "taunts" from other children.5^5 Soledad calls it "ridicule" from other children which has the resultant effect of "a profound sense of inferiority and shame in the child."

Soledad does not dwell at any length on the issue of stigma, but merely states it as a strong reality.

Santa Ana places "designation and stigma" under irreparable damage without too much development of the issue or its effects.5^6

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5^4 Ibid.
5^5 Ibid.
Fear on the Part of Pre-Schoolers:

Fear as an expressed issue is considered only by Soledad. It is raised chiefly as an effect on the younger brothers and sisters who have members of their family in existing EMR classes. Soledad wishes to make this point in order to show the "numerical impossibility" the frequency of members from the same family truly being in EMR classes.\(^{57}\)

During the various focus interviews, this issue was discussed. From information gathered in them, we can consider that this "fear" was an underlying cause for the parents in Santa Ana to have taken the position "if we had known the EMR classes were what the schools were calling 'Special Education,' we would never have consented."\(^{58}\)

Action by Administrators:

San Diego finally accused the schools of an "intractable position;" namely, they refused to hear and deal with the issues raised by the community, parents, leaders, and lawyers... "Defendants intractability in the face of substantial community pressure has made necessary the initiation and prosecution of this action."\(^{59}\) Soledad does not get as pointed as this, but shows that the local superintendent did decide to take misplaced Chicano students from his EMR

\(^{57}\)Op. Cit., Diana vs. State Board of Education.

\(^{58}\)Op. Cit., Arreola vs. State Board of Education.

classes. However, he changed his mind and from this point on, it was necessary for the community to go to court to get a solution to their complaint. 60

PART THREE

Status of Three Law Suits and Court Settlements

To complete the treaties of the EMR issues and the three legal complaints, the writer will identify specific EMR issues together with a summary description of the court's mandated settlement based on an agreement both by the children and parents, and the respective school systems.

Santa Ana: Arreola vs. Board of Education

Although Santa Ana was the first of the three law suits filed in California, it is taking the longest time to resolve. The latest status of this suit is that "there seems to be an agreement to settle on all of the major educational and social issues of the case, except the central issue of "Due Process" which Santa Ana alone raises. At controversy is whether a child or parent has a constitutional right to a hearing before he or she is placed in an EMR classes. 61 This

60 Op. Cit., Diana vs. School Board of Education.

61 Herman Sillas, Focus Interview, Los Angeles, California, August, 1972.
may have to go to trial for settlement which is not expected to occur for another year.

For purposes of this study, one of our major concerns is to see how the educational issues were raised, considered and caused change in school policy and administration. With this in mind, this study can consider the issues raised in Santa Ana since most of them became mute as legislative change occurred as a result of these law suits. This will be considered in Chapter IV.

Since both Soledad and San Diego have been finalized, deductively, we can rationalize how the educational and social issues in Santa Ana, common in the other two suits, would or could be concluded. Soledad and San Diego did not go to trial, but were settled out of court. Soledad was agreed upon on February 5, 1970 and San Diego on July 31, 1972 (see Appendix).

In the settlement in both instances, the major issues raised by the Chicano and Black community were dealt with in such a way as to insure parents and children that their grievances were valid. Although in an agreement where guilt or non-guilt is not established, it would seem that educational and human rights would not need to be restated or reassured if they had not been abused, threatened or frustrated in the first place, for whatever reason.
Soledad: Diana vs. State Board of Education  (see Appendix for full court decision)

1. The issue of I.Q. testing in an unfamiliar language:

The court determined that: All children whose primary home language is other than English (e.g. Spanish, Chinese, etc.) from now on must be tested in both their primary language and in English.

2. The issue of I.Q. tests with unfair verbal questions:

The court determined that: They may be tested only with tests or sections of tests that do not depend on such things as vocabulary, general information ("Who wrote Romeo and Juliet?") and other similar unfair verbal questions.

3. The issue of retesting Mexican-American (linguistic and culturally different child) children already in EMR classes:

The court determined that: Mexican American and Chinese* children already in classes for mentally retardedness must be retested in their primary language (unless they were previously tested in it) and must be reevaluated only as to their achievement on non-verbal tests or sections of tests.

4. The issue of "Educational Gap" between students misplaced in EMR and regular classes:

The court determined that: Each school district is to submit to the state in time for next school year, a summary of re-testing and re-evaluation and a plan listing special supplemental individual training which will be provided to help each child into regular school classes.

5. The issue of "Exclusion of Mexican Americans from the Norming" of I.Q. tests used in Soledad:

The court determined that: State psychologists are to work on norming a new or revised I.Q. test to reflect Mexican American culture. This test will be normed by giving it only to California Mexican Americans so that in the future, Mexican Americans

*Although the legal brief does not make reference to the Chinese student, they are included in the settlement. This is important to note since considering the three EMR legal suits, the linguistical and culturally different groups mentioned are Chicanos, Blacks and Chinese.
American children tested will be judged only by how they compare to the performance of their peers, not the population as a whole.

6. The issue of "Disproportionate Representation" of Mexican Americans in EMR classes in Soledad and the state:

The court determined that: Any school district which has a significant disparity between the percentage of Mexican American students in its regular classes and in its classes for the retarded must submit an explanation setting out the reasons for this disparity.

San Diego: Covarrubias vs. San Diego Unified School District (see Appendix for full court decision).

1. The issue of retesting to determine who has been misplaced:

The court determined that: All students enrolled at the end of the regular school term during June of 1970 in EMR classes, and continued in EMR classes during 1970 to 1971 school year, were retested and reevaluated prior to conclusion of 1970 year.

2. The issue of culturally relevant tests:

The court determined that: The school district has not assigned and will not assign any new students to any EMR class without having first conducted the appropriate tests and evaluation.

3. The issue of informed consent of parents before placement of their children into EMR classes:

The court determined that: The school will notify parents when their children are determined to need EMR classes, in such a way that they will fully understand the nature of curriculum and educational goals of the EMR Program.

4. The issue of informing parents in their home language:

The court determined that: No student will be assigned to EMR classes except upon written consent by the parents in the primary language of the parents.

5. The issue of reevaluation of children in EMR classes to determine educational growth of children in these classes:
The court determined that: After each year enrollment in a EMR class, the school must provide for reevaluation of each student and the results must be communicated to the parents.

6. The issue of "Educational Gap" between misplaced Chicanos and Blacks in EMR and regular classes:

The court determined that: The school district shall establish programs of instruction to bridge the gap between EMR and regular classes for those students who return from EMR classes.

7. The issue of curriculum in EMR and regular classes:

The court determined that: In all cases of students assigned to EMR classes, the school district shall endeavor to provide intensive, supplemental training in language skills, mathematics and other areas of school curricula in an effort to bring them up to the level of achievement appropriate to their age, grade level and educational development.

8. The issue of notation on the permanent records of misplaced students in EMR classes:

The court determined that: The school district shall remove any notation of a child's assignment to an EMR class if he has been misplaced through failure to observe the statute through error or irregularity of assignment.

9. The issue of damage for being misplaced in EMR classes:

The court determined that: The school district shall pay to each plaintiff and the members of the class action the sum of one dollar in "compromise of his or her claim to an award of damages for being placed in an EMR class.

Three points agreed upon in this settlement are built-in assurances that the Federal Court Order will be carried out:

1. Establishment of a Citizens Committee: (see Appendix)

A Citizens Committee on the EMR Program acting as advisory to the superintendent of schools shall be established.

2. Annual Report to the Citizens Committee:

The school district must make and report annually for three years, a full and complete report to the Citizens Committee.
in the EMR Program. Such things as manner of testing and evaluation screening and placement will be reviewed.

3. **Regular Evaluations:**

The school superintendent shall have regular evaluations of the EMR Program on the basis of which he shall make recommendations to the School board of Education for improvements.

One agreed upon issue gave further protection to the parents to allow for another objective evaluation and use of an independent psychologist in determining mental ability of his or her child.

"Whenever the school district's testing, evaluation, retesting, or reevaluation of any student proposed for EMR class is at variance with an independent psychologists, the school psychologist must discuss variance with the private psychologist at the request of the parents."

The chapter showed how the educational and social issues surrounding I.Q. testing and disproportionate assignment of the linguistically and culturally different child to EMR classes became formulated into a legal complaint, an analysis of the three legal complaints, treatment of the important common issues, and finally the court settlement of these issues.
CHAPTER IV

Significant Educational and Social Development Attributable to the Three EMR Law Suits

In Chapters one and two, this study pointed out that the EMR educational issues highlighted in the three legal challenges of Santa Ana, Soledad and San Diego were but a microcosm of many educational problems which the Chicano and other linguistically and culturally different students are confronted with in their pursuit of equal and quality public education. Chapter two identified issues, then capsulized into twelve major educational areas those which were umbrella issues that began as parental and community complaints and were found to consistently appear in each of the EMR law suits of this study. It was found that the Chicano communities were so exasperated with what it knew was happening to its children in two cases—Santa Ana and San Diego—that they were determined that changes had to be made, especially by and in those involved school systems. The communities, having been thwarted by the educational institution, turned to the legal institutions—the courts—for those changes which had to be made in EMR education.

In the Focus Interviews, conducted by and for this study, the question was asked, "Could there have been any gains without the law suits?" Replies indicated that there was total agreement that there could have been some gains, some changes, but not as significant, meaningful and permanent as those which came about as a result of the
law suits. Some of these replies were: "...the community could have chosen other ways to proceed; for example, violence. They would have brought about some changes, but not as effective and permanent as those of the law suit."¹ "...the superintendent welcomed the law suit since it was the only way to get the administrators to change."² "...the law suit created community pressure which was very important especially as this was developed with follow through. The legal pressure, the courts, took the EMR issue from a wild battle in the streets to a battle in the courts which gave the challenges the respectability of the courts."³ "...we had been trying for some time to get the school district (San Diego) to do something about the EMR issue and they refused to budge. However, as soon as they saw the law suit coming, there were immediate changes."⁴

Important to this study is to demonstrate for school administrators that when parents and communities are "ignored," "thwarted" and "abused" but yet are determined in their quest for improvement of the calibre of decisions and education that effect their children, changes will come, with or without those responsible school administrators on the educational scene at that given moment of history. When there is apparent

¹Joe Neeper, Focus Interview, San Diego, California, August, 1972.
²Salley James, Focus Interview, Los Angeles, California, August, 1972.
³Phil Montez, Focus Interview, Los Angeles, California, August, 1972.
⁴Leonard Fieros, Focus Interview, San Diego, California, September, 1972.
conflict with the community, it is essential that administrators comprehend the anguish which fuels that conflict, especially when it arises in an ethnic community which, at least up to this point in history, has had great faith and confidence in the educational institution.

This study recognizes that there have, in fact, been many significant educational and social changes attributable to the three EMR law suits in Santa Ana, Soledad and San Diego and that these benefited not only the given three communities, but also others in and outside California. To demonstrate this finding, some key local, state, regional and national educational events have been identified as associated with the raising of these educational issues and activities in the three respective communities which subsequently became the legal arguments of the three EMR law suits.

Some of these events identified for purposes of showing the kinds and degree of educational change resulting from the cases discussed in this study are:

1. Effects on EMR children in the communities of the law suits and throughout the state;
2. The impact (effects) on the EMR parents and the involved Chicano communities;
3. The effects on initiating two assembly resolutions and their resultant EMR statewide studies;
4. New state legislation stemming from EMR law suits;
5. Changes in state department of education EMR policies and procedures following the new state EMR legislation.
6. The effects on the Office of Civil Rights, HEW, Washington, D. C.

Some Effects on EMR Children

The retesting and subsequent removal of the specifically named plaintiff children of each of the three EMR law suits has already been dealt with in Chapters two and three. For the purposes of this document, the benefit and changes of the law suits went far beyond the retesting and transfer of the comparatively small number of children from EMR classes actually named in each law suit. What was even more significant was the benefit affecting the removal of many, many more children around the state. Indications of the magnitude of those affected can be seen in the relatively quick removal of thousands of children from EMR classes in the ensuing nine-month period.

The retesting of EMR children in the state of California was brought about by the passage of House Resolution Number 444 in the California legislature. This resolution was generated specifically by the Santa Ana law suit:

"...in the past two or three years, it has come to my attention that a certain percentage of students that happened to be mostly Mexican Americans have been assigned to special classes; larger than the percentage would require, and the question was "Why?" ...and I thought what a wonderful idea it would be if I were to introduce a resolution to the legislature asking of my colleagues to charge you--the State Department of Education--to look into this problem that is more serious than any of you think."

"I am appealing to you to tell me and to tell the eighty members of the assembly and the forty members of the senate sometime by January, February or March, what is it that we
have not done that we ought to do, to shed light or correct this problem. ...I assure you that the legislature will act and I will be the one, with or without recommendations from you, who will make the proposals to the legislature, some of them which might not be the wisest or the best, perhaps."5

The study which resulted from House Resolution Number 444 was, "A Report to State Board of Education Regarding House Resolution Number 444: Relative to Special Education (Mentally Retarded), prepared by the staff, Bureau for Mentally Exceptional Children, the Division of Special Education." This study found that some "four thousand children were transferred from EMR classes." It must be kept in mind that the call to look into the EMR question was made early in 1969 by House Resolution Number 444. By the time of the report from the State Department of Education to the State Board of Education dated January of 1970, substantial numbers of children were removed from EMR classes: "...the overall enrollment in programs for the educable mentally retarded has dropped four thousand pupils."6 In other words, four thousand children were transferred in five months! By August of 1970, the number of children re-tested and transferred from the EMR programs in California almost doubled.

In a State Department of Education Report entitled: "Placement of Pupils in Classes for the Mentally Retarded--A Report to the California Legislature as Required by House Resolution 262, it was noted that some

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5House Resolution Number 444, October 21, 1969, Appendix A, Rafferty Memo.

6Joseph P. Rice, Chief, "A Report to the State Board of Education Regarding House Resolution Number 444," relative to Special Education (Mentally Retarded), Bureau for Mentally Exceptional Children, Division of Special Education.
7,917 pupils were removed from EMR schools in 322 school districts. By 1971, this number increased to 9,284 students transferred out of EMR classes." (see Appendix) The major point here is to show that by 1971, there was a major change in EMR enrollment attributable directly to the two above mentioned House Resolutions. It can be reasonably conjectured that had not these two house resolutions pushed the State Department of Education, the 9,284 children would not have been transferred out of EMR classes since, as was seen in Chapter II, the data available already in 1966 showed the high disproportion of minority children in EMR classes and nothing was done. As a matter of fact, the number of students in EMR classes increased until 1968, when a drastic decrease is recorded.

In San Diego, Charlie Erickson pointed out that at the "time of the EMR law suit in San Diego, some four hundred children were immediately transferred from the EMR classes."  

Finally, as a result of the EMR law suit in San Diego, and agreed upon in the court settlement, some 2,566 children who were in EMR classes were awarded the nominal fee of one dollar. Although the money was minimal such payment in principle is an unprecedented event in American public education. This means that there was an agreement to the transfer out of 2,566 children misplaced in EMR classes from 1968

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7 Ibid.
8 Charlie Erickson, Focus Interview, San Diego, California, August, 1972.
to 1970. The significance of the payment, even of one dollar to the 2,566 children, contains the vivid implication that these children were misplaced in the EMR classes, were in fact removed, and should not have been in them in the first place.  

Some Effects on the Parents and Community

This study cannot give an indepth analysis of the degree of changes which took place among the parents and the community since this is material sufficient for a study in itself. For purposes of this study, it can be pointed out that a number of changes have been identified:

1. The inclusion of parents and community members in the EMR committee to oversee the whole process of EMR selection, testing and training in San Diego. This is an unprecedented gain since parental representation was to be had in crucial decision-making. Joe Neeper, who interviewed all of the parents in the San Diego law suit, pointed out that:

"The inclusion of parents and community representation on the EMR School Committee was one of the most significant changes."  

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9 Joe Neeper, Mary Hammon and Charlie Erickson, Focus Interview, Los Angeles, San Diego and Sacramento, California, August, 1972.

10 Dr. Jack Share of UCLA and Mary Hammond, working with him, are presently working on a study dealing with "two years after" which should give us deeper insights into this subject.

11 Joe Neeper, Focus Interview, San Diego, California, August, 1972.
2. Parents who otherwise had been frustrated now were able to see some kind of hope:

"...the law suits had a tremendous impact on the parents and community since it gave renewed hope and confidence to the parents that they could take on the system and win."  \(^{12}\)

3. The importance of parents being more actively involved in the educational process of their children was more greatly realized:

"The parents became more aware that they had to take a greater interest and involvement in the education of their children. They could no longer entrust the education of their children to the schools."  \(^{13}\)

The law suits were long and drawn out processes. As a case in point, Santa Ana EMR law suit began in 1968 and as of January of 1973, was still in the California state courts. At the time of the filing of the law suits, there was tremendous parental and community interest. It is difficult to sustain the enthusiasm and interest which surrounds the filing of the law suit because of the great amount of time required for Due Process. Nonetheless, when the judgments of the courts were given in Soledad and Santa Ana, there was "great pride and feeling of accomplishment on the part of the parents."  \(^{14}\)

\(^{12}\)Charlie Erickson, *Focus Interview*, Sacramento, California, August, 1972.

\(^{13}\)Mary Hammond, *Focus Interview*, Los Angeles, California, August, 1972.

\(^{14}\)Sillas, Neeper, Montez, and Hammond, *Focus Interview*, Los Angeles, California, August, 1972.
Two House Resolutions and Their Resultant EMR Statewide Studies

One of the objectives for the filing of the Santa Ana law suit in the state courts of California was to influence statewide legislative changes in EMR law policy and education through legislation. As a result, the state was not included as a defendant along with the school district and the school board of Santa Ana so that the state Attorney General could enter into the law suit in the interest of the plaintiff children. This would have been impossible if the State Board of Education had been included as a defendant.

The Santa Ana law suit accomplished one of its objectives since it helped bring about statewide interest and subsequent legislative change. As was mentioned on page three of this chapter, Assemblyman Wadie Deddeh from the Chula Vista area became quite interested in this issue and as a result, pushed and passed two house resolutions—House Resolution Number 444, in the closing sessions of the 1969 legislature, and later House Resolution Number 262, in the opening sessions of 1970.

House Resolution Number 444 recognized the "mounting criticism" and pressure particularly from the Chicano community to effectively challenge EMR testing, placement and education. It called for:

1. Parents of EMR children to be involved in placement of their children in EMR classes.

2. The State Board of Education to assist in bringing about changes in special education.

15Sillas, Ortega, Montez, and Exelrod, Focus Interview, Los Angeles, California, August, 1972.
3. Suggestions from the State Board of Education regarding EMR education. It was willing to accept recommendations for legislative changes.16

As an immediate result of House Resolution 444, a major report was prepared by the staff of the Bureau for Mentally Exceptional Children entitled: "A Report to State Board of Education Regarding House Resolution Number 444 (relative to special education--mentally retarded). The date of transmittal from the Office of the Superintendent of Public Instruction and Director of Education was January 27, 1970. This extensive report, among other things, included:


3. Findings from three public hearings in San Diego (October 21, 1969), Los Angeles (November 17, 1969) and San Jose (December 5, 1969).17

The relation between the report to the State Board of Education and the action of Assemblyman Deddeh's House Resolution is recognized in the opening paragraph of the introduction:

"Pursuant to House Resolution 444, this report was prepared for the State Board of Education by the Division of Special Education in the State Department of Education. It is based on information derived from: (1) committee work carried on within the Department of Education; and (2) a series of three public hearings held at San Diego, Los Angeles and San Jose

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16House Resolution Number 444 was the beginning of a sequence of events which contributed toward greater awareness of the EMR problem, legislation and finally state educational changes.

17Memo of Transmittal, see Appendix.
on October 21, November 17 and December 5, 1969, respectively; and (3) the 1969 racial and ethnic survey conducted by the Bureau of Intergroup Relations, Division of Compensatory Education."

In summary, the report was looking for the answers to two major questions:

1. Are minority children—Mexican American and Negro—disproportionately represented in EMR classes?

2. What are contributing factors to disproportionate representation of minorities in EMR classes?

The report is important for many reasons; however, one of the more significant findings of this State Department of Education document is its own admission that "there does exist a disproportionate enrollment of Spanish surnamed and Negro pupils in classes for the educable mentally retarded in California.

In an effort to determine the causes, the State Department report was willing to hold to a "tentative" position. Thus, the report at least takes a position, although a tenuous one, found in the introductory paragraph. Note the three words "tentatively," "regional disproportionate enrollment," and "may be due to some combination":

"Tentatively, the regional disproportionate enrollment of minority group pupils in certain counties and districts may be due to some combination of the following problems:

1. The lack of Spanish speaking psychologists and teachers in some programs coupled with a refusal to recruit such personnel for programs.

2. An inappropriate definition of mental retardation espoused by some school districts to the effect that educable mental retardation is synonymous with academic retardation.

3. An unwillingness, or inability to implement additional and supplemental education programs to meet the needs of Spanish speaking and minority group pupils.

4. The counties tending to overenroll Spanish surnamed tend to be the same counties overenrolling Negro pupils. This tendency might point to unsympathetic capabilities of dealing with the problems of minority group pupils in regular education programs."19

The report went on to identify at least seven major concerns which were summarized from the three state department of education sponsored hearings held in San Diego, Los Angeles, and San Jose:

1. The label "mental retardation."

2. The segregated nature of the special class for educable mentally retarded pupils.

3. The lack of flexibility in establishing alternatives to special class placement.

4. The manner in which test instruments were standardized.

5. The lack of effective communication between the examiner and the pupil.

6. The interpretation and use of test scores for the designation of mental retardation.

7. The lack of meaningful communication between parents and recommendations based on these results.20

House Resolution Number 262

Subsequent to the House Resolution Number 444 which brought about the aforementioned major report containing the public admission that

19 Ibid.

20 Ibid., pp. 3-4.
"disproportionate representation of minorities in EMR classes did exist," Assemblyman Wadie P. Deddeh caused another resolution—House Resolution Number 262, to be passed in the California Assembly. It is dated August 20, 1970. This resolution called for another report to be made by the State Department of Education to the Legislature which was to contain the following:

1. The number of districts which have complied with required reevaluation of children presently placed in classes for the mentally retarded.

2. The number of children that have been transferred from classes for the mentally retarded to the normal classroom.

3. The availability of learning assistance or other remedial programs to facilitate the transfer of children formerly classified as mentally retarded to the normal classroom.

4. The current status of ethnic enrollment in special classes for the mentally retarded.

The causal relationship of Assemblyman Deddeh and House Resolution 444 to the "Report to the Legislature on the Placement of Pupils in Classes for the Mentally Retarded" is recognized in the opening paragraph:

"House Resolution 262, introduced by Assemblyman Wadie Deddeh on August 20, 1970, is a follow-up to House Resolution 444, which he had introduced in the 1969 legislative session. House Resolution 444 had requested plans for correcting the purported "disproportionate number" of children from "certain minority groups, most particularly culturally bilingual groups," who were enrolled in classes for educable mentally retarded minors."22

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22House Resolution Number 262, Report to the Legislature on the Placement of Pupils in Classes for the Mentally Retarded.
The report in response to the House Resolution 444 did admit that there was "disproportionate representation" of minorities in EMR classes. However, as was noted on page 203 of this chapter, the report gave the impression that the EMR issue was "a regional problem."

An importance of this document prepared in response to House Resolution 262, "Placement of Pupils in Classes for the Mentally Retarded," was that it provided State Department of Education data which allows one to deduce that was not a "regional problem" but a statewide concern since some..."322 school districts transferred (EMR) pupils to regular classes and maintained supplementary educational programs"...and another "fifty-seven school districts did so but did not maintain supplementary educational programs." The action generated by this House Resolution revealed the following:

1. By October of 1969, 463 school districts and forty-three offices of county superintendents of schools reported on: (a) reevaluation; (b) transfer into regular classes; (c) transfer to other special programs of EMR students. Of these, 322 transferred EMR children into regular programs.

2. 55,519 children were identified in EMR classes.

3. 48,080 children were reevaluated.


5. On the other hand, the number of children enrolled in EMR classes in 1969 and 1970 by ethnic group was shown to be a total of 55,519 in October and 47,605 children in August—a change of total of 7,917.23 (see Table 3)

23Ibid.
New State EMR Legislation Identified with EMR Lawsuits

Subsequent to the House Resolution 262 by Assemblyman Waddie Deddeh, two bills were submitted for emergency passage—one sponsored in the senate by senator Clair Burgener of San Diego, and the other in the Assembly by Assemblyman Waddie Deddeh of Chula Vista. From a historical, social and educational perspective, it is significant to note that the House Resolutions were quickly followed through with recommended state legislation. A two-pronged attack of the EMR issue, therefore, unfolded—one judicial and the other legislative.

There are two senate bills and one assembly bill of record, approved by the Governor on the same date, September 20, 1970; Senate Bill (see Appendix) 1327 (Chapter 1569), Senate Bill 529 (Chapter 1562) and Assembly Bill 1625.

Basically, Senate Bill 1327 makes it clear that:

1. Individual I.Q. tests should be given to a child before he is placed into an EMR class;
2. The test(s) must be verbal and non-verbal in the preferred home language of the child;
3. Higher than two points below standard norm would prohibit entrance into EMR class;
4. Approved I.Q. tests were to be designated by the State Board of Education;

The influence of Dr. Jane Mercer's major EMR research is particularly found in the next provision; namely, that:
5. Credentialed school psychologists must take into consideration, over and beyond the I.Q. tests and scores: (a) developmental history, (b) cultural background, (c) school achievement;

6. Parental written informed consent must be given before a child is admitted into an EMR class.

Senate Bill Number 529 dealt with the need for supplemental educational programs for children who were retested after being identified as EMR children and provided added state monies for those programs which would assist a student to make transition from EMR classes into a regular academic program. It recognized the school districts responsibility to use and annually report the use of such funds.

Assembly Bill Number 1625 essentially stipulates the provisions identified in Senate Bill Number 1327. However, there are some provisions included in Assembly Bill Number 1625 which go far beyond the Senate Bill. These additions not only make very important contributions to the improvement of EMR education, but also provide assurances to avoid many of the shortcomings and administrative practices which led to the lawsuits.

1. All children in EMR classes were to be retested before the end of the 1970 calendar year.

2. A child designated as misplaced in EMR classes shall be withdrawn upon consultation with his parents and can be placed in such programs to accelerate his education toward participation in his regular classes.

3. Any significant disproportionate ethnic and racial variance in each school district of the state must be reported
annually by the Superintendent of Public Instruction to the State Board of Education.

4. This Bill called for appropriate additions to Section 8102.12 of the Education Code.\(^{24}\)

**Senate Bill Number 33, Chapter 78**

On May 18, 1971 the Governor approved a new Senate Bill which had as its objective the broadening and strengthening of the 1970 statutes. In essence, it called for the repeal of Section 6902.06 of the Education Code as added by Chapter 1543 of the Statutes of 1970. Or in other words, it repealed the Senate Bill passed in September of 1970 and went much further, again to the benefit of improved EMR education in California:

1. It firmly clarified the legislature's position, declaring "the people of California have a primary interest in providing equal educational opportunity to children of all...groups." Children should not be placed in EMR or special education programs if they can be served in regular classes.

2. It declares there should not be disproportionate enrollment of any socioeconomic, minority or ethnic group in EMR classes.

3. The verbal portion of intelligence tests used by some schools for EMR determination tend to underestimate the academic ability of some children.

4. The home language position of the former bill was upheld.

5. The two standard deviation below the norm position of the former bill was upheld.

6. The former language position is maintained.

\(^{24}\)Assembly Bill Number 1625 (see Appendix).
7. The complete psychological examination is safeguarded with some additions. There is a first time mention of "adaptive behavior" inclusion with the developmental history, cultural background and school achievement of the child considered for EMR classes.

8. The law recognizes that adaptive behavior scales are not normed and approved. Provisions are outlined requiring "visit to the home" by school psychologist or designate, "interviews of members of minor's family at home," "interviews in the language of home."

9. After referral, "individual psychological evaluation shall be secured in a conference with school officials, parents or authorized representatives. Recommendations must be conferred with parents. Admissions Committee decisions must be communicated to the parents who must give written permission, if placement in EMR is decided.

10. Parents must be given a complete explanation of the special education program.

11. Permission documents for individual psychological evaluation and placement shall be in English and in the language of the parents.

12. Conferences, notices to inform the parents of the nature of placement process, committee conclusions and the explanations of the special education program shall be in the parents' home language.

13. Provisions are made for those cases where there may be a unanimous vote by the admission committee to have a child placed in EMR class.

14. The former requisite provided for in the previous Bill requiring annual reporting by school districts to the Department of Education is upheld; however, this Senate Bill requires more detailed reporting:

(a) There must be ethnic breakdown of children already in special education classes for mentally retarded.

(b) There must be ethnic breakdown of children newly placed in EMR classes:

(1) By standard admissions procedure;

(2) By exceptional unanimous current procedures.
15. In the event that a given school district has a variance of more than fifteen percent of any minority group, this must be reported in writing to the State Department of Education.

It must be noted that this latest bill, as well as the previous ones of the senate and house, were submitted and passed into law as "urgency statutes necessary for the immediate preservation of the public peace, health or safety" necessitating immediate effect and application. It seems the legislators saw the gravity, extensiveness and harm of this educational issue and so stated and acted.

In Chapter III, the major EMR issues in the cases of Santa Ana, Soledad and San Diego were presented as they appeared in the respective legal complaints. In that, as well as in this chapter, it was pointed out that "one of the chief objectives of Santa Ana and Soledad was to bring about statewide educational changes in EMR testing, placement and education, particularly as it related to the Chicano and other linguistically and culturally different children." Having now seen the legislative development, the EMR issues of the three cases are very apparent in those changes which now stand as legislation for California. Although San Diego law suit was filed on December 1 of 1970, three months after the first legislation was passed, it must be kept in mind that the ground work, interviews, research, investigation, the basis for the law suit, by the Urban Project of the Western Office of the United States

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25 Senate Bill Number 33.
Commission on Civil Rights, had been going on since August of 1969. 26

Both Joe Neeper and Charlie Erickson, in their interviews, stated that in their opinions, "the San Diego law suit EMR issues were reflected in the 1970 and 1971 legislation."

Changes in State Department of Education
EMR Policies and Procedures

Thus far, some major activities and resultant changes surrounding the challenge of grave disproportionate representation of Chicano and other linguistically and culturally different children in EMR education in California have been identified. The legislative changes which came about as a result of the EMR issues raised in the various communities of the law suits have just been shown. To implement the legislation, the State Department of Education made changes in policy and procedures to accommodate the new legislation.

In a memo dated September 30, 1969, the Chief of the Department for Mentally Exceptional Children of the California State Department of Education submitted changes dealing with mental retardation. The title of this memo is: "Policies and Procedures for the Assessment of Minors to Special Education Programs for the Mentally Retarded Incorporating the Provisions of Assembly Bill 606 and CAC Title 5 Regulations." 27


This memo states that "since February of 1968, the Department of Education has been focusing special attention on this matter." However, it further states that new regulations were adopted by the California State Board of Education at their "July, 1969 meeting designed to clarify the operation of the special education programs for the mentally retarded."

The introduction of the memo does recognize the contemporary activities challenging EMR testing, placement and education: "There is growing concern throughout the state of California regarding the disproportionate placement of minority group pupils into programs for the mentally retarded." 28

These "policies and procedures" were intended to incorporate the "legal and regulatory provisions" of the new regulations passed by the July, 1969 meeting of the California State Board of Education. It is not clear from State Department of Education documents the degree either the preparation for the Santa Ana law suit or its actual filing in June of 1968, influenced these changes. What is very evident is that the "extensive activities" surrounding EMR education were recognized. It will be shown that these "policies and procedures" were again changed five months later on February 6, 1970 and again in August of 1971. One thing is certain, there were changes, and they were intended to improve EMR education. This was the objective of the community complaints and the EMR law suits.

28Ibid.
The September 30, 1969 Memorandum--Content and Policy

The introduction of this September 30th Memo gives the California Education Code's definition of mentally retarded minors as: "All minors, who because of retarded intellectual development are incapable of being educated efficiently and profitably through ordinary classroom instruction."^29

The document states that "each minor placed in EMR classes must have individual evaluation and consideration by a local admission committee." The make-up of the local admission committee is outlined:^30

I. Screening and Referral:

1) It urges school systems to establish and maintain "an screening and referral process."

2) Description of those who could do the referring for individual EMR evaluation are categorized into five possibilities.

3) Group tests cannot be used for exclusively determining designation of a child into an EMR class.

4) Five types of pupils who were as a matter of routine to be referred to the school psychologist and local admissions committee are given.

5) An approved list of eleven group intelligence tests which could be used for screening and referral are given.^31

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^29 California Education Code Section 6901.

^30 The outline format used here from I to VII is the same as that found in the September 30, 1969 memorandum (see Appendix) so that the reader may more quickly make a comparative reference to the original document and more easily recognize the changes to which reference is made.

^31 The first three points should be studied in light of the findings in Chapter II dealing with regular practices by some school systems to retain, and fail the children with language differences. How these children then are routinely referred should be kept in mind.
II. Individual Case Study:

Justification of placement of a child is to be made on objective data accumulated during the suggested individual case study. This called for an analysis of the following areas:

1) Educational History:

This was to be a background of behavior, scores on group standardized tests, teachers academic reports, and teachers observations.

2) Psychological Evaluation:

(a) It urged "sufficient administered psychological tests necessary to establish a valid estimate of the level of intellectual functioning" of the minor.

(b) A list of five approved intelligence tests were given from which one or more were (must) to be administered.

(c) Some twelve supplemental tests from which one or more could be selected was provided.

(d) The case study was to contain how the child evaluated was expected to do and actually performed in his program. "Prior experience or achievements on group tests were to be noted."

3) Social, Economic, and Cultural Background:

(a) It was urged (should) that family background be obtained from the parents through a conference, in the language of the family. This information was to include "family mobility, occupation and sibling relationships."

(b) "Evidence of deprivation" such as "isolation of home, availability of educational materials and home environment helpful or detrimental to a child were to be recorded."

4) Development History:

This information was to come from the conference with the parents. It was to provide knowledge concerning the
activity and responsibility of the child in the home as well as "peer" relationship with home and community.

5) Peer Relationship:
"The case study should contain present peer, classroom and home relationship."

6) Health History:
This called for a report on the physical condition of the referred child, a report on any school administered tests, noting any "sensory and motor disabilities" with a notation of whatever recommendations for remedy.

III. Local Admission Committee: 32

Although the make-up of the committee was outlined in the beginning, the "functions" of the committee are stipulated here with some detail. In general, the functions of the committee were to cover:

1) Careful analysis of each case.

2) The best educational program they recommended.

3) Assignment would be made with the majority vote as long as the school psychologist agreed. Trial assignment could be recommended.

4) Written report of the conference of the committee must be kept. The contents are described.

5) Provisions are made for the dissent of any member, which was to be attached to the case report.

IV. Conference with Parents:

1) The policy required that "a conference shall be held with the parents of each minor recommended for EMR classes. A

32 Henceforth, the Local Admissions Committee will be abbreviated as LAC.
member of the LAC would conduct it in language understandable to parents, explaining the findings of LAC, explaining the EMR classes." Interpreters could be provided.

2) The written report of the conference with the parents was to be a part of the case report.

V. Placement:

1) A transitional program gradually working a child from a regular class to EMR class is recommended.

2) The EMR teacher is urged to use this period to familiarize himself with the case history of the student.

3) School psychologist should provide EMR teacher with information to assist in developing appropriate learning activities.

4) If a trial period is designated, a specific date for re-evaluation should be given, on the occasion of which LAC should re-evaluate.

VI. Annual Review and Complete Reevaluation:

1) The local Admissions Committee is charged to conduct an annual review of all children in EMR classes.

2) Any continuation of a child in an EMR class must be made by that local committee.

3) The annual review would consider the reports from the teacher, instructional staff and other professionals dealing with the child.

4) At the end of three years, a child must be completely re-evaluated.

5) Any of the above mentioned "recognizing behavioral changes" can call for a reevaluation.

6) Complete evaluation was to include EMR staff, LAC and the conference with parents. What was to be done with results is outlined.
VII. Transfer to Regular Instruction Program:

Transfer out of the EMR program is made on the recommendation of LAC. Caution is urged to use the "transitional program... in order to guarantee...smooth transition to the regular class placement."

The Memorandum of January 11, 1970

On January 11, 1970 the State Board of Education adopted new standards for individual evaluation of children to be placed in EMR classes.

This memorandum was from Charles W. Watson, Chief of the Division of Special Education to the County Superintendents, District Superintendents and Administrators of Special Education Programs, February 6, 1970. Essentially, this memo was an explanation and adoption into policy of the State Board of Education's new position:

"Enclosed are amended regulations...relating to standards for the individual evaluation of mentally retarded minors, adopted by the State Board of Education on January 11, 1970 and which became effective February of 1970, which should be implemented forthwith."33

Specifically, the amended regulations were to provide that:

1. All children who came from homes in which the primary language is other than English shall be interviewed and examined, both in English and in the primary language used in his home.

2. The examiner should "take cognizance" of the child's different language.

33 Memorandum from Charles W. Watson, Chief of the Division of Special Education to the County Superintendents, District Superintendents and Administrators of Special Education Programs, February 6, 1970.
3. Assessment should be made on the basis of a child's familiar language.

4. For the bilingual child, it is "recommended that more than one instrument, including performance test, be used."

5. Continuance of minors now enrolled in programs for the mentally retarded...should be recommended only on the basis of evaluation standards, including any necessary retesting, as described in Title 5 of the California Administrative Code...

The August 31, 1971 Memorandum

A year and seven months after the amended regulations and change in EMR policy, another memorandum was sent to the county superintendents and superintendents of the schools of California. This was sent from the Bureau Chief for Mentally Exceptional Children. This new policy was a complete revamping of the EMR policy and procedure as originally established in 1969 and as amended in 1970. The change was immediately due to the new Senate Bill Number 33. The title of the memorandum was: "Policies and Procedures for the Identification, Assessment and Placement of Minors to Special Education Programs for the Educable Mentally Retarded, Pursuant to Education Code Section 902, Incorporating the Provisions of Senate Bill 33 and CAC, Title 5, Regulations." (see Appendix)

An analysis of the August 31, 1971 memo provides some insights which, after reviewing the many activities surrounding the EMR challenge, take on added meaning. The comparative changes noted here are with the September 30, 1969 policy and procedure outlined earlier:34

34Chapter 78, Statutes of 1971, May 18, 1971.
1. Relationship between Senate Bill 33 (May 18, 1971—three months earlier) is established: "Senate Bill 33 has direct and immediate implications for special education programs for the mentally retarded."

2. These policies are given as minimum standards and treat every facet of EMR education, referral, evaluation and placement: "The attached policies and procedures include minimum standards for the identification, assessment and placement of EMR minors."

3. Although Senate Bill 33 is attached at the end of the document, the memo makes neither mention nor reference to the existing extensive September 30, 1969 "Policies and Procedures for the Assessment and Assignment of Minors to Special Education Programs for the Mentally Retarded Incorporating the Provisions of Assembly Bill 606 and CAC Title 5 or the Regulations on the February 6, 1970, Amended Regulations Relating to the Education of Mentally Retarded Minors."

4. The statement of access to equal educational opportunities for the linguistically and culturally different child and regular classes is made in such a way as to leave itself open to interpretation that this access was not happening—the very issues of the legal complaints: "Children of all ethnic, socio-economic and cultural groups shall be provided with equal education opportunities and shall not be placed in classes or other special programs for the educable mentally retarded if they can be served in regular classes."

5. The objectives of the "policies and procedures" are given: "...to assure that each minor receives a complete and individual evaluation and that proper educational placement is made for that minor."

6. Admission is made that the implementation of these changes would be difficult: "It is recognized that implementation of these policies and procedures may be difficult."35

35 This statement has particular significance since it is the opinion of several that some of the reasons for the EMR problems were due to administrative and economic hardships.
Screening and Referral

This section remains identically the same as the September 30, 1969 position (see Appendix) with the following changes:36

1. In addition to the parents and guardians recognized as able to give approval for testing and placement of a child in EMR classes, any "authorized representative" added. It is understood that the parents would give this authorization.

2. Any teacher having instructional responsibilities for the "minor" could make referrals for I.Q. testing.

3. "The school psychologist," as a referral agent, was dropped.

4. The doctor to perform medical examination was changed from physician of the school to that of the "minor."

5. The school counselor was added as a referral agent.

6. Instead of those "persons deemed appropriate by the head of the school district," it was changed to "the administrator for such responsibilities." Seemingly what this means is that it now is a function of the particular school rather than the central administration.

There was a major movement from "pupils should be routinely referred..." (if they fell into the five indicated categories of the 1969 policy) to those who "demonstrated a general pattern of low academic achievement, mal-adaptive behavior, poor social relationship and consistently low standardized test scores."

Written Permission for Psychological Evaluation

Whereas the September 30, 1969 policy called for a conference with parents, the "new policies," following the strong statement of Senate

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36 Identifiable Policy Changes from the September 30, 1969 position as compared to the policies and procedures of August 31, 1971, adapted to the new Senate Bill Number 33.
Bill 33, stipulating "permission," "referral," "nature of evaluation," "confidentiality of information," all was to be in English and the language of the parents. It was to be communicated completely and understood by the parents. Greater emphasis for more informed consent and participation of the parents was stressed.

**Individual Case Study**

The new policy surrounding "Individual Case Study" is clearly identified with that which is stipulated by Senate Bill Number 33:

"No minor may be placed in a special education program for the mentally retarded unless a complete psychological investigating such factors as developmental history, cultural background, and school achievement substantiates the retarded intellectual development indicated by the individual test scores. This examination shall include estimates of adaptive behavior."37

The State Department of Education does urge that the case study be as thorough as possible.

As for the categories to be included in the Case Study, basically they are the same as the prior policy, with the following changes:38

I. **Educational History and School Achievement**:

The former policy stressed more teachers' reports. The new policy accentuated analysis of various "records," "academic achievement," "communication skills," "special help programs."

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37 *Senate Bill EDC 6902.085.*

38 Again, the outline format used here, in comparing the September 30, 1969 policy with the August 31, 1971 new policy, is the same as used in both documents so that the reader may more easily make a comparative reference to the original documents. (see Appendix) The changes referred to are more easily recognized.
II. Psychometric Assessment:

The prior heading came under "Psychological Evaluation." The authority of Senate Bill 33 was quoted whereby a child, before placement had to have verbal and non-verbal individual tests in the language of the child's home. The list of tests to be administered and the supplements are the same as the former policy. The use of, when they can be selected and the role of interpreters is very minutely stipulated. The written permission of parents must be obtained. To protect confidentiality of child and parents the interpreter must sign a letter of respect for confidentiality.

There is a definite growth and improvement of the former position. Greater protection for the child tested is provided for.

III. Social, Economic and Cultural Background:

This section under the September 30, 1969 policy did not make mention of the term "adaptive behavior" although the source of information for family background are identical. In the new policy, the term "adaptive behavior" is outlined as that which "...refers to an individual's ability to perform successfully in the social roles considered appropriate for his age and sex."

IV. Developmental History:

This is identically the same as the 1969 position with one addition of a recommended use of "standardized instruments."
Two specifically named instruments are given only as examples.

V. **Peer Relationships:**

This section is the same as that of the previous policy.

VI. **Health History:**

Two additions to the former policy are made in this area:

1) Visual and auditory tests reported must have been given within the preceding twelve months.

2) A statement is included without elaboration: "It is important to rule out the possibility that a physical condition is the primary handicap."

VII. **Psychological Adjustment:**

This is a new category. It seeks to determine the child's "overall adjustment" and "feelings about himself," "levels of awareness," "aspiration and preference patterns."

VIII. This section has no name or title. It merely leaves open the acquisition of other "pertinent" information to the "Local Admissions Committee" in both the new and previous policies.

**Local Admissions Committee**

1. The function of the LAC is identical as that outlined in the previous policy.

2. Basically, the "final recommendations" of the committee remain the same with several changes:
   
   (a) Two additional programs are recommended in the special education program for the EMR's.
(b) The "trial placement" practice was dropped.

3. This section is considerably strengthened since it requests that those educational approaches recommended by the committee actually be indicated. Integration into regular classes is stated as a preference. No placement or assignment is to be considered permanent. There should be planned continual re-evaluation.

The "two standard deviation below the norm" portion of Senate Bill 33 is quoted "as policy." The provision in Senate Bill 33 relative to the "non-native speakers of English scoring two standard deviations below norm" is made policy.

Conference with Parents

Although Senate Bill 33, which portion is quoted here, addresses this point, basically it is the same as the previous policy. There are, however, several notable changes:

1. To strengthen parental information and participation, "it must also be explained to the parents that the program into which their child is recommended is for those students who have retarded intellectual development."

2. A sentence from the 1969 policy which could be wrongly interpreted and abused was dropped: "Every effort should be made to secure parental approval for the special education placement for the minor." \(^{39}\)

Written Consent

This stipulation as a specific section is a new addition. It requires that the parental consent for placement in EMR classes must be

\(^{39}\)Senate Bill Number 33, p. 5 (see Appendix).
written, information pertaining to the permission must be in English and the language of the parents. Actually, no policy is made other than quoting Senate Bill 33 in this matter. This is another instance where parental protection is strengthened.

**Assignment to an EMR Program**

The former categorization was "Placement." The new policy specifically is for EMR programs. The two sections are essentially the same with a few variations. The former, urging for a transitional program before EMR, is eliminated. Specific mention of a "trial placement" is done away with.

"Frequent evaluation is urged" without any elaboration as to time and circumstances. The description of this evaluation is provided for in other sections.

**Placement in Exceptional Circumstances**

This provision is provided for by the specific quotation of the given section in Senate Bill 33. There is but one administrative addition to the legislation—that those children be integrated into the regular program whenever possible.

**Annual Report to Department of Education**

Basically, this section is taken verbatim from Senate Bill 33:
"Beginning in the 1971-72 school year, each school district shall report annually to the Department of Education." The matter to be reported is:
1. Ethnic representation in EMR classes.

2. How the child was placed in these classes, ethnically, either by standard or exceptional procedures.

The fifteen percent variance position of Senate Bill 33 is stated. The policy merely quotes the law and gives an example of how the fifteen percent works. It does indicate that "investigations may follow" after analysis is made by the State Department.40

Summary of Parent-School Contacts

The importance of the role of parents, parental consent and safeguard of parental rights is accentuated by the fact that this section summarizes that which was previously stated by Senate Bill 33 and the policy of the state board in various sections mentioned above. Essentially, the major change here is that the parents were to be more protected and more involved in the decisions, process and education of their child as far as EMR education was concerned.

Annual Review and Complete Re-evaluation

The policy position of 1969 and that of 1971 are almost identical. Two statements from the prior policy are not carried over into the new policy. Movement away from the practice contained in these two statements is seen by this investigator as significant changes which should

40 At no time has there been mention of penalty for continual breaking of the law, nor is there reference to the kinds of enforcement outside of the statement that investigation "may" follow. This lack of enforcement is mentioned in the OCR/HEW rationale for the May 25th memorandum.
provide not only greater protection for children but also assurance that the EMR program will serve those for whom it was originally intended:

"...only after careful and complete evaluation and exploring all available alternative should a recommendation be made to the administrative head of the district that the minor be withdrawn from the school program."

"In arriving at this decision (transfer), the committee must give special consideration to the readiness of the pupil for placement in the less sheltered environment of a regular class especially when he has been enrolled in the special education program for a period of years."

**Influence on the Federal Government:**

Earlier in this chapter, this study took the position that many educational changes occurred not only in the three specifically involved school districts, but also in other school districts and communities of California, the Southwest and the United States.

Significant legislative and state educational policy changes have already been recognized. Two specific and extremely important areas influenced by the EMR legal challenges were the bringing about a new awareness for the national enforcement of the Civil Rights Act of 1964 for the linguistically and culturally different child through the Civil Rights Office of the United States Department of Health, Education and Welfare and the development of the May 25th Memorandum by OCR/HEW.  

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41 Senate Bill Number 33 (see Appendix).  
42 Further use of these two terms will be indicated by OCR/HEW.
General protection of civil rights for all children participating in public or private programs receiving federal funds was intended to be provided for through the Civil Rights Act of 1964. This law provided that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted program. In March of 1968, the 1964 Civil Rights Law was further elaborated on to clearly include assignment to curricula, classes and activities within a school:

"...all school systems receiving federal financial assistance from HEW are responsible for assuring that there is no discrimination on the ground of race, color or national origin in the assignment of students to curricula, classes and activities within a school."43

Notwithstanding the existence of the Civil Rights Act of 1964 and the 1968 Elementary and Secondary Policies, it is clear from the evidence of Chapter II that greater clarification, application and enforcement was needed to strengthen the intent of the law to its inclusion of the linguistically and culturally different child. In the minds of too many, the Civil Rights laws were applicable strictly on a Black and White basis. Indications of this are clearly seen in the development of integration strategies mandated by the courts in communities such as Houston, Texas; Corpus Christi, Texas; Denver, Colorado; San Francisco, California; just to mention a few. Marty H. Gerry, Assistant Director of the OCR/HEW, makes reference to this practice in his "Cultural Freedom in the School:

43 Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964.
The Right of Mexican-American Children to Succeed," (May 21, 1971):

"While the Supreme Court has never directly addressed the question of discrimination in public education against Mexican American, Puerto Rican, native American or other minority group children, it is implicit in the equal protection guarantee that the same principles enumerated in the Brown decision extend to all minority children. Court ordered desegregation plans in Texas from 1954 to 1970 usually treated Mexican American children as "white" for purposes of student assignment. Issues related to the treatment of children within desegregated schools, including those related to in-school desegregation and equal access to the full benefits of public education, have not been considered by the court."44

Although the next reference is only a footnote in the aforementioned work, it is significant enough to mention here since it further strengthens the importance of the EMR legal challenges as well as it points out the tremendous education task which lies ahead:

"In Perez vs. Sonora Independent School District, the Department of Justice intervened on behalf of the United States in order to seek relief for Mexican American children segregated and discriminated against in schools of the district on the basis of their national origin. A final decision in the case is still pending."45

The EMR law suits, especially the Soledad Case (Diana vs. State Board of Education), were most instrumental in pressuring the OCR of HEW to make necessary clarification with the resultant enforcement of this application to the EMR issues:


"Over the past few years, a number of legal actions attacking certain aspects of the problem have been taken. Nearly all were initiated or pressured by community groups--frequently laymen--who received some help, but little leadership from governmental sources."

Recognizing the role of the Soledad EMR law suit, it went further to report:

"On January 7, 1970, the California Rural Legal Assistance Attorneys (along with the Mexican American Legal Defense and Educational Fund), instituted the action Diana vs. State Board of Education on behalf of nine Mexican American students who were placed in classes for the Educable Mentally Retarded in the Soledad Elementary School in Monterey County."

Again, recognition of the impact of the Soledad case is found in a personal letter from Martin H. Gerry (October 12, 1972), wherein he makes direct reference to the relationship of the EMR law suit to the subsequent actions of the OCR/HEW in the development of what is now called the "May 25th Memorandum":

"You will notice that on page five of the legal memorandum specific mention is made of the decision in Diana vs. State Board of Education as providing direct legal support for the policy position to be taken in the May 25th Memorandum. I believe that the case did indeed have a substantial impact on both the timing and the content of the memorandum."

The "May 25th Memorandum" is the commonly used name to refer to that document--in memorandum form--outlining the OCR/HEW position

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47 Ibid.

relative to the 1964 Civil Rights application to the linguistically and culturally different child. The author of the position is Mr. Stan Pottinger, Director of the Civil Rights Office of HEW. The formal title of the memorandum is "The Identification of Discrimination and Denial of Services on the Basis of National Origin." (see Appendix) The memorandum was directed to all "school districts with more than five percent national origin minority group children." It recognized the "common practices of some school districts which have the effect of denying equality of educational opportunity to Spanish surnamed pupils." Consistent with the position and findings of this study, this has certainly been proven to be true in the EMR referral, evaluation and education, not only of the Spanish surnamed but other linguistically and culturally different children as well. The memorandum made reference to other minority groups with particular mention of the Chinese and the Portuguese.

The memorandum intended to outline the responsibility of school districts in providing access to equal educational opportunity to the linguistically and culturally different children, particularly those "deficient in English language."

As such then, it stipulated four major areas which "relate to compliance with Title VI of the 1964 Civil Rights Act":

1. Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
2. School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills.

3. Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

4. School districts have the responsibility to adequately notify national origin minority group parents of school activities which are called to the attention of other parents. Such notices in order to be adequate may have to be provided in a language other than English.49

In June of 1970, a special task group met in Denver, Colorado to determine the focus for the policy development of the May 25th Memorandum. The task group was made up of "Mexican-American and Puerto Rican educators, psychologists, community and civil rights leaders with expertise in the bilingual, bicultural educational field."50

A working committee of the task group presented a draft at a meeting held on November 18, 1970 in San Diego, California. The draft guidelines and criteria were accepted. Although the thrust for resolving the EMR issue was initiated and sustained by the Chicano and Spanish-speaking communities, the task force quickly addressed itself


50 Letter from Martin H. Gerry, October 12, 1972, p. 2.
to the urgency to include other groups similarly effected. This had already been done in the San Diego EMR law suit, as was seen in Chapter II and III.

"The task group univocally decided that the discriminatory treatment of Black children as regards the assignment of such children to special education classes for the mentally retarded is neither educationally nor legally separable from that of other minority children and, therefore, the proposed position and accompanying discussion presented is directed toward procedures for assuring non-discriminatory treatment of all children protected by Title VI, not just those of national origin minorities (i.e. Spanish surnamed).\(^{51}\)

On November 30, 1972, the task group's new policies surrounding EMR education were presented to the Annual Meeting of the National Association of State Directors of Special Education in Washington, D.C. The purpose of the presentation was to discuss both the underlying theory of the policy statement and the specific requirements set forth therein from the standpoint of eliminating racial and ethnic bias in the delivery of educational services of all children.\(^{52}\)

Since the task group selected the EMR issue as the most pressing of those contained in the May 25th Memorandum, the first guidelines of that memo centered around this concern. The presentation then, to the special education directors, contained the official position of OCR/HEW in applying the May 25th Memorandum toward safeguarding the placement of any ethnic or racial minority into mentally retarded


\(^{52}\)Personal letter from Martin H. Gerry to Henry J. Casso, October 30, 1972.
classes. For any procedures surrounding EMR education to be acceptable to OCR/HEW, they had to be predicated on a careful review of the information developed by:

1. Psychometric indicators interpreted with medical and socio-cultural background data and the teacher's report;
2. Adaptive behavior data.

As minimum acceptable procedures to come within compliance according to the OCR/HEW regulations, as contained in the May 25th Memorandum, six major criteria were stipulated: 53

1. Before a student may be assigned to a special education class for the mentally retarded, the school district must gather, analyze and evaluate adaptive behavior data and socio-cultural background information.

2. If the process for assignment of students to special education classes for the mentally retarded involved a teacher referral or recommendation for individualized testing and evaluation, before such a referral or recommendation may be made, the teacher or other professional making the referral or recommendation (e.g. school or social worker) must, in addition to observing school behavior and assessing academic performance, gather and analyze, with the assistance and advice of a representative of the Assessment Board and/or school psychologist socio-cultural background information and adaptive behavior data.

3. Before the testing and evaluation of a student may be approved, the school district must ensure that the student is provided with a thorough medical examination covering as a minimum visual, auditory, vocal, and motor systems. A written medical report setting forth the results of such examination must be submitted to the assigning official and/or Assessment Board and made part of the student's permanent record.

4. If state law or local school district policies require that parental permission be obtained before the testing of the student, a full understanding of the significance of granting permission and the implications of the process which may follow must be communicated to the parents in person and in the language of the home to permit full communication, understanding and free discussion. If permission to test also implies permission to place the student in a special education class, this must be clearly communicated to the parents.

5. Before a student may be given any individually administered intelligence test as part of the evaluation/assignment process, the student must be familiarized with all aspects of the testing procedure and the testing situation must be made compatible with the student's incentive-motivational style (i.e. it must make him feel at ease).

6. A school district which assigns students to special education classes for the mentally retarded must be prepared to assure that cultural factors unique to the particular race or national origin of the student(s) being evaluated which may affect the results of testing or findings with regard to adaptive behavior are adequately accounted for.

To carry this out, the guidelines urge the use of assessment boards, including parents. It should be broadly representative of the ethnic and cultural make-up of the district. Description of the recommended make up of assessments boards is described.

A comparative analysis of these six major OCR/HEW criteria for Civil Rights compliance with the 1970 California EMR legislation, shows interesting commonality. Both, on the other hand, pointedly address the major EMR issues raised in each of the three California EMR law suits and those issues concluded in the Soledad and San Diego court judgments.

As a matter of further interest in the demonstration of educational change occasioned by the EMR legal challenges of this study, it is important to report that under the authority of the May 25th Memo-
A number of OCR/HEW reviews were conducted in the Dallas (Region VII) and Chicago (Region V) regions. A position of this study that the disproportionate and misplacement of the linguistically and culturally different children in EMR classes is a national rather than just a local issue was further supported when it was found that in the twenty-one reviews in the Dallas region alone (covering Texas and New Mexico), "almost always it was found that minority children were over-represented from as low as five percent to a high of fifty-three percent above their community population representation."

As this study has identified major educational developments which resulted from the three EMR legal challenges--Santa Ana, Soledad and San Diego--it wishes to further identify two other significant events which follow in a historical relationship, the effects of which will not fully be seen immediately but assuredly will contribute toward EMR improvement. These are two major conferences—one state-wide in California and the other national in Washington, D.C.

**The BABEL Testing and Assessment Workshop**

The BABEL Workshop was held on January 27-28, 1972 in Berkeley, California. Approximately one hundred and fifty bilingual psychologists, evaluators and educators working in some capacity in bilingual

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54 Dorothy Stuck, Focus Interview, Dallas, Texas, January 29, 1973 (Regional OCR/HEW Director).

55 BABEL stands for Bay Area Bilingual Education League.
programs from throughout California and Texas attended. It is estimated that this is the first conference of its calibre and extensiveness called by and conducted under the aegis of Chicano educators specifically dealing with the issues surrounding I.Q. testing and assessment. The conference had three specific objectives:

1. To examine closely eight instruments and attempt to harmful or inappropriate facets which penalize the bilingual/bicultural child. The tests evaluated were:
   (a) WISC (Weschler Intelligence Scale for Children)
   (b) CTBS (Comprehensive Tests of Basic Skills)
   (c) Cooperative Primary
   (d) Large - Thorndike
   (e) Inter-American Series - General Ability
   (f) Culture - Fair Intelligence Test
   (g) Michigan Oral Production Test
   (h) Peabody Picture Vocabulary Test

2. To look at the Criterion Referenced Models as a realistic alternative to traditional assessment.

3. To formulate and adopt a resolution(s) for consideration in Sacramento, California and elsewhere in the country.

Basically, the workshop was divided into four major areas of consideration:

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57 Ibid.
1. The first section presented the rationale for the justification and urgency of the workshop. In this section, an analysis of each of the above mentioned tests was presented.

2. The second section concentrated on a "critical review of the New Inter-American Series." This review was prepared by Dr. Barbara Havassy, Consultant for the Multi-lingual Assessment Program, Title VII Project in Stockton, California. Although, at first glance, one might wonder why a conference of this type would concentrate on one particular work. The importance of the review rests in the fact that this series is used in twenty-four major projects in the United States where pilot bilingual education programs have been designed and implemented. The greater percentage of the participants are Spanish-speaking. These projects are located in the following communities:

Compton, California  
Healdsburg, California  
Olivehurst, California  
Redwood City, California  
Salinas, California  
Denver, Colorado  
Naples, Florida  
Chicago, Illinois  
Boston, Massachusetts  
Springfield, Massachusetts  
Albuquerque, New Mexico  
Los Cruces, New Mexico  
New York City, New York  
Rochester, New York  
Abernathy, Texas  
Austin, Texas  
Del Rio, Texas  
Houston, Texas  
La Joya, Texas  
Laredo, Texas
An underlying theme found to be running through this study is the awareness that current practices of I.Q. testing and assessment are invalid in their use amongst culturally and linguistically different children. Here an attempt is seen to take into consideration the unique cultural and language needs of this large population of American public schools. Although the attempt of the series is a noble one, the BABEL Workshop points out a danger which has bearing on the issues of the three law suits. Specifically, the workshop has this to say:

"The question concerns the accuracy of the series as a measuring device"  "...the series has some very serious deficiencies." "The investigation of its technical properties; and does not impart the feeling that the series is either reliable or valid. This feeling is borne out by ratings received by the series from the CSE evaluators.

Besides the "technical deficiencies," serious questioning of the "practical aspects of the test" in the areas of language and content, visual presentation and timing were made by BABEL.

3. Section three dealt with the presentation of an abstract developed as a result of basic dissatisfaction with standardized testing and no apparent fall-back on testing alternatives.
The title of this work was "A System for Criterion-Referenced Assessment of a Bilingual Curriculum" by Eduardo A. Apodaca.

4. The fourth section consisted of a major presentation by the renowned Dr. Edward A. DiAvila. His positions were substantiated from the many experiences and findings of the Multi-lingual Assessment Program of Stockton, California where he is the Chief Psychologist. One of the major contributions of Dr. DiAvila had to deal with his "cautionary notes surrounding attempts to adapt I.Q. tests to be used on the linguistically and culturally different child. After presenting them, he proceeded to give the background for his three cautions:

(a) Translating existing intelligence tests for non-English speaking children.

(b) Adjusting norms for ethnic sub-groups.

(c) Attempting to construct culture-free tests.

Finally, the BABEL Workshop made four major resolutions which reflect not only the issues of the three EMR law suits of this study, but provide further indication that the EMR issues went far beyond the border of the state of California, a point already developed in Chapter II.

1. Testing of children whose language is other than standard English with instruments that were developed for the user of standard English violates the norms and standardization of those instruments and therefore raises serious questions
as to the results obtained. We, therefore, take the position that use of these instruments with children whose language is other than standard English is invalid.

2. Sufficient evidence now exists to direct us to the development of Criterion Referenced Assessment systems as a means of improving educational programs accountability for learning activities. It is imperative that these evaluation processes be correlated with local performance objectives.

3. The development of valid test instruments for bilingual and/or bicultural children must be directed by bilingual and/or bi-cultural qualified personnel in the education field or similar fields; otherwise the test instruments will not reflect the particular values, skills, etc. of the ethnic or cultural group being tested.

4. Whereas currently used standardized tests do not measure the potential and ability of California bilingual or bicultural children, and whereas these tests are being used if they do so measure, and they are relied upon to counsel, place and track these children, this body hereby resolves that such use of standardized tests should be immediately discontinued.

Tests and the Use of Tests: Violations of Human and Civil Rights: NEA National Conference

This national conference has direct bearing on this study since it follows not only as a historical sequel to the EMR issues,

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58 Tenth National Conference of the Center for Human Relations of the National Education Association.
circumstances, challenges, events, legal decisions, personalities and educational implications of this study, but also it follows by a month, the BABEL Conference. The leadership of the BABEL Conference was a vital force in the culmination of the final resolution identified at the end of this section.

The annual conference of the Human Relations Center of NEA is generally guided by a theme which is a current educational goal or issue. As this specific theme of "testing and violation of human rights" was that theme in 1972, it falls into that time span of activity generated directly or indirectly by the EMR law suits. Already in 1969, this investigator challenged this same body of national educators to take a position on the EMR question when he was a major speaker treating the topic, "The Melting Pot, The Mold and The Resultant Rejects." In this address mention was made that the Santa Ana EMR law suit had already been initiated and other suits were to come. Although it was three years later that the same group was to take a formal position, it is important that the whole conference was dedicated to this topic and that the largest teacher education association in the United States considered and took a position on I.Q. testing.

Two of the many active participants in the conference were the keynote speaker, Dr. Jane Mercer, Sociologist from the University of California, Riverside, whose major research findings under federal government support, laid the ground-work not only for each of the three law suits of this study but subsequent suits as well as the
President's Council on Mental Retardation. The other was Dr. Jose Cardenas, Superintendent of Edgewood School District in San Antonio, Texas. He is one of the top education administrators in the Chicano community. As a member of the aforementioned, OCR/HEW May 25th Memorandum Task Force, he was instrumental in designing an educational strategy for the El Paso Texas School District which incorporated the most current thinking surrounding education of the linguistically and culturally different child. The El Paso plan provides that education programs which not only take into consideration the precise needs, but also places them within the applied concept of quality and equal education as fundamental rights of each child—the theme of the conference.

Since this conference spent considerable energy on the impact of the I.Q. issues on the Black community, it substantiates more dramatically the gravity and extensiveness of the EMR issues raised in Chapter II. The design of the conference was: (The key note address by Dr. Jane Mercer.)


This forum attempted to answer the following questions:

1. To what extent are tests biased in reflecting the potential of all children?

2. How many children suffer discrimination as a result of the use of tests?

3. To what extent do standardized tests accurately predict future performance?

4. What efforts are underway to develop "culture free" tests? Are they effective?
5. Have testing companies responded to the needs of minority group children? How?

6. Do standardized tests accurately measure a teacher's effectiveness or a supervisor's potential? What is the value of these tests?

7. What changes can be made in tests and the testing process to meet more adequate the needs of students, teachers and supervisors?

Forum B: The Use of Tests: Educational Administration.

This considered:

1. What are the common uses of standardized tests, and what are the misuses that violate the human and civil rights of students and teachers?

2. What alternative methods can administrators use to place pupils, and evaluate their progress?

3. What administrative policies and procedures might be used in school systems to promote multi-culture values?

4. What procedures would reduce the misuse of tests in educational administration?

Forum C: Employment and Counseling.

Points of consideration:

1. To what extent are tests used to select qualified persons for higher education and employment opportunities?

2. How do counseling programs perpetuate a system in which only "qualified" persons are selected for higher education and employment, and minority group people and women are not selected?

3. How are sex role stereotypes in employment perpetuated by the use of standardized tests?

4. What evaluation techniques are being developed and used to eliminate the bias of standard testing procedures?

1. To what extent do tests contribute to the feeling of worth of the culturally different learner?

2. What effect do test scores have upon the attitudes of teachers, administrators and parents?

3. What testing guidelines should be developed into safeguard the integrity of the culturally different learner?

After two and a half days of deliberations, the general session passed a unanimous resolution calling for a moratorium of all standardized tests. The Human Relations Conference then committed itself to present their position to the NEA National Assembly for endorsement. This assembly met in Atlantic City (1972). Acting upon the moratorium resolution called by the Human Relations Conference, the following resolutions were passed:

"Resolution #13: The NEA notes that the first report of the national assessment of educational programs in writing, citizenship and science, has been issued.

The association will continue to resist any attempt to transform assessment results into a national testing program that would seek to measure all student or school systems by a single standard and thereby impose upon them a single program rather than providing opportunities for multiple programs and objectives.

Resolution #44: The NEA strongly encourages the elimination of group standardized intelligence, aptitude, and achievement tests to assess student potential or achievement revision of current testing programs."  

The National Assembly not only supported the moratorium of standardized testing but went further to establish a task force, with funding and


60 Ibid.
staff, to study the whole testing issue and to report its findings back to the Representative Assembly in 1975.

From Santa Ana to Atlanta there have been many educational changes which have come about. Certainly with the action of NEA many more will come before and after 1975.
CHAPTER V

Summary - Conclusions - Implications - and Recommendations

The Chicano community, as other communities in the United States, was effected by the great national surge of the 60's for equality and human rights. The public schools were a major focus for education reform since they had such an influence on the socio-cultural status of the Mexican American community. The youth movement had a significant role in this challenge of public education. They walked out, boycotted and protested against the schools as a challenge that they had failed in their societal responsibility in education of the Chicano youth. This position was supported by a number of educators, Armando Rodriguez, attorney Mario Obledo, former U.S. Commissioner of Education, Harrold Howe, Alfredo Castaneda, George I. Sanchez, Phil Montez and Jane Mercer. Solection for, I.Q. testing and EMR education was recognized as one of the many and earliest, most damaging educational strategies which had such a destructive effect on the Chicano not only as a person, but likewise on the whole community as well. This was found to be true for other linguistically and culturally different children.

In order to bring about educational changes in I.Q. testing and EMR education, the Chicano community went into state and federal courts with three different, but connected law suits. This was unprecedented action, not only for the Mexican American community, but for American public education as well. The three EMR law suits were

Santa Ana law suit was filed in the state court of California June of 1968. It was the first legal challenge of I.Q. testing and EMR education in the U.S. A key objective was to challenge the I.Q. tests as valid instruments for testing the Mexican American and the linguistically and culturally different child. At major issue was the right of a child and his parents to a public hearing before placement into EMR classes. This hearing was to provide the opportunity for a child and parent to challenge administrative decision for placement of a child into an EMR class when a child was not truly mentally retarded. A design of Santa Ana was to effect state legislative and policy changes. Although Santa Ana, as of this writing is still in the courts, this study has identified the legislative and state EMR education policy changes which took place.

Soledad was filed in northern California in January of 1970. It was the first EMR case in a federal court. Most of the plaintiff children were Mexican American rural and/or migrant workers. At principle issue was the use of a psychological instrument normed on a particular population of people to measure the mental capacity of another population whose language, culture and experience was not reflected in the tests. Yet on the basis of these tests children were placed in EMR classes.
San Diego was filed in April of 1970. Again in the Federal Court. The preparation and background of the case was the result of the Urban Project of the Western Field Office of the U.S. Commission on Civil Rights unique to San Diego was the inclusion of black children along with Chicano children in the challenge of disproportionate and misplacement of linguistically and culturally different children into EMR classes. A major thrust of this suit was to establish the right of parents to information provided in such a way by the school district to be able to make valid and more informed consent. Another unprecedented extremely important thrust was to establish the right of parents to money damage for misplacement of their children into EMR classes.

Since the question of failure of the public schools was raised by so many educators, this study probed to find out exactly in what areas did the schools fail. In this light the study examined five measurable areas of failure in which the public schools of California were found actually to be failing the Mexican American child. These five areas were: a) the low holding power of the California schools; b) the low reading levels of the Chicano children in the California schools; c) the high grade repetition of Chicano children, especially in the first and second grades. This was found to be regular practice in some schools as a way to meet the needs of children whose primary language was not English; d) the high overageness of Chicano children in the elementary grades which was seen to be connected with the regular practice of grade repetition; e) the low percentage of students who actually graduated from high school.
The criticism had been lodged against the public schools by Munoz that they "rendered a people powerless", this study examined the criticism that the schools had rendered a people powerless" and saw that the Mexican American was in fact powerless in five decision-making areas which effect his life in California. These were a) the political powerlessness of the Chicano; b) the judicial powerlessness of the Chicano; c) economic powerlessness of the Chicano; and d) the educational decision-making powerlessness of the Chicano in the Southwest in general.

This study looked at the role of public education in the preparation of its constituency for decision-making roles in society. Since the Chicano was a major clientel of the public schools, his powerlessness in decision-making even in major decisions effecting his daily life was seen as reflective of the failure of the schools in the socialization process of a major people.

A specific area where schools have failed, of the many, was in the selection for, I.Q. testing of and EMR education of the linguistically and culturally different child. The EMR educational strategies were but one of many processes and practices which had a serious negative effect on the Chicano child.

Some forty five distinct, identifiable complaints in the three cases of Santa Ana, Soledad and San Diego were synthesized into 12 major issues:

1. It was found that state policies and guidelines of the California State Department of Education regarding EMR
education existed, but were not adhered to by administrators of school districts or the schools themselves.

2. Mexican American and Black children who were not mentally retarded were in fact misplaced in mentally retarded classes.

3. Mexican American and Black children were placed in EMR classes disproportionately to their respective student population in the given school districts.

4. Determination and placement of the linguistically and culturally different children was made on the basis of I.Q. tests alone, which tests were not normed to include them nor provided for language and cultural differences.

5. The I.Q. tests used were culturally biased in favor of the Anglo middle class Midwestern child to the detriment of the linguistically and culturally different child.

6. The I.Q. tests used by these school systems measured more a child's English language competency rather than the Mexican American and Black child's mental ability.

7. The children wrongfully placed in EMR classes were not provided with a quality curriculum sufficient to educationally challenge them to allow for mental growth with any hope to progress out of the EMR classes.

8. The consent of the parents whose children were wrongfully placed, which consent was provided for by law, was not an informed, true or valid consent.

9. The Mexican American and Black children misplaced in these EMR classes were stigmatized for life. This misplaced was tantamount to a life sentence of illiteracy, public dependency and lack of real opportunities.

10. The privacy of the misplaced children was violated since the EMR status was permanently on the children's record, available to teachers throughout one's school life and to employers throughout one's work life.

11. Serious psychological, economic, educational, social damage resulted from misplacement of children into the EMR classes.

12. The fundamental educational rights of these Chicano and Black children were violated.
These twelve issues remained as a constant through each of the three EMR law suits indicating the commonality, extensiveness and seriousness of this educational problem.

The notion of disproportionate representation was examined along with some of the contributing factors which caused it. Some of these factors were:

1. Failure on the part of the school administrations to understand and utilize the unique cultural backgrounds of minority children. (Erickson)

2. A conscious or subconscious effort to retain minority groups in subordinate status. (Erickson and Mercer)

3. The I.Q. cut off used by educational institutions in defining mental retardation significantly varied from school district to school district. (Mercer)

4. I.Q. tests were used alone for assessment and placement by most school psychologists in these communities. (Santa Ana - Soledad - San Diego)

5. The use of culturally biased I.Q. tests which are Anglocentric. (Mercer)

6. The refusal of school systems in the Southwest to become aware of, sensitive to and accommodating to the cognitive, incentive, motivational and learning styles unique to the Chicano and linguistically and culturally different child. (Castaneda - Ramirez)

7. The increased money to schools educating EMR children was a financial incentive. (Neeper)

8. School administrators did not know what to do.

It was found that the State Department of Education for California considered the incidence of mental retardation in excess of two percent of any criterion population spurious. Under this percentage designation or even under the 15 percent over and beyond the given
population, a position included in the court settlement of Soledad, it was seen there were many school districts which had EMR minority population far in excess of these percentages. As such therefore these lawsuits could have been filed in any number of school districts.

The speed of EMR student population growth in California was identified as moving from 7,541 in 1948-49 to 54,051 in 1969-70. A higher percentage growth than the percentage population growth for the state.

A random survey, taken at the Second Annual Bilingual Conference, to determine the extensiveness of the EMR issue showed that the problem existed not only in other parts of the state but likewise in other states of the Southwest and throughout the United States where Spanish speaking populations went to school.

A review of the movement toward the EMR law suits found school administrators unresponsive to the attempts by the Chicano community to communicate their concern over the EMR issues in Santa Ana. This unresponsive attitude on the part of school administrators was found to exist in other schools and districts where this EMR education was an issue. In one school district the administrators were accused of holding an intransigent position. In another the chief school administrator reversed his decision to initiate reform, a decision which went against the community, thus becoming a reason for the lawsuit (Santa Ana).

The State hearings which came about as a result of a California Assembly Resolution found that not only parents but educators, school
psychologists and their associations, supported the need to reform I.Q. testing and EMR education in California.

Serious and frequent confusion was found to exist between the interchangeable and unclear use of the terms Special Education and Educable Mentally Retarded or EMR classes. To many of the parents in each of the three cases, the words Special Education and EMR meant exactly what the words say they mean. On the other hand, the use of the term Special Education as meaning the EMR class by some school administrators was seen as a critical area which gave cause to the controversy.

The study addressed itself to the economic implications of EMR students not finishing high school or college by showing that a male who has less than 8 years of elementary schooling has a life time earning average of $196,000 compared to a high school graduate make of a life time average of $586,000. For women the disparity was seen to be even greater.

The psychological testing for each of the EMR lawsuits were reviewed along with a study of the EMR status in California, commissioned by the California State Department of Education. Both reviews substantiated the positions of the legal complaints with these conclusions:

1. There are indications that many of the Mexican American children were placed in the EMR classes solely on the basis of performance on an invalid I.Q. test.

2. The test is termed invalid because this particular sub-population of pupils lacks a facility and understanding
of the English language; therefore, when tested in English, they cannot perform well.

3. When these same pupils are given the opportunity to perform in the language with which they are most familiar and comfortable—usually Spanish—this performance in many cases is above the cut-off level of the educable mentally retarded category (approximate I.Q. of seventy-five).

Since it is the position of this investigator that there was an interrelation between each of the lawsuits, as well as commonality of issues, it was seen to be important that each of the issues of the respective lawsuits be identified as raised by each of the legal complaints. Further, using the data provided by the principals in the schools of the involved schools districts during the survey by the U.S. Commission on Civil Right's Mexican American Education Study, the study provided a current background of the school districts. It was found that the administrators of the schools reporting were inconsistent in their notation of the numbers of children in their EMR classes and identification of those children who had I.Q.'s below 75. This raised the question as to the true and valid mental retardation characterization of the children in the EMR classes.

The major issues identified in Chapter II were comparatively analysed in each of the three legal briefs in order to show how each of the issues were treated by the respective community. Thus the study described the interest and treatment of the following issues by each of the cases: Recognition of the legal jurisdiction; the defendants in each of the lawsuits; the tests involved in each case, principally the Stanford Binet and the Weschler, since they were
mentioned in each of the three suits; the notion of disproportionate representation; the retesting of children and discovery of misplacement in each case was examined; the damage which the misplaced children underwent; the notion of Due Process and the right to a hearing; parental consent, when and how, it was received as well as the calibre of consent; the curriculum received by the EMR children; stigma; fear on the part of preschoolers was identified as real, since some of the plaintiff children had brothers and sisters in EMR classes; and finally the issue of the intractable position of school administrators was found to be especially true in San Diego.

The court settlements in the two cases of Soledad and San Diego* were examined from a view point of showing the validity of the issues raised by the Chicano and Black communities. Basically the court ordered:

In Soledad:

1. I.Q. tests were to be given in the primary language of the child as well as in English.

2. Linguistically and culturally different children may be tested only with tests or sections of tests which do not depend on such as vocabulary and other unfair verbal questions.

3. Mexican American and Chinese children in EMR classes were to be retested in their primary language. Achievement reevaluation must be made by non-verbal tests.

*Santa Ana as of this writing was still in the courts. However the attorneys in the case indicate that most of the major issues have been agreed upon or have been rendered moot because of the legislation.
4. School districts were to submit a summary of retesting and re-evaluation as well as a plan for individual training for children in EMR classes.

5. State psychologists were to work on norming a new or renewed I.Q. test to reflect Mexican American culture.

6. School districts with significant disparity must submit explanations setting out reasons to the State Department of Education.

In San Diego:

1. All children carried over from June 1970 into the 1971 EMR classes were to be retested.

2. No new child would be assigned to EMR class without appropriate tests and evaluation.

3. Parents will be notified when their children are determined to need EMR classes, in such a way as they will understand the nature of the EMR program.

4. Written consent by parents in their primary language must be had by the school district.

5. Re-evaluation must be made after a year in EMR class. The results of this must be communicated to the parents.

6. The returning EMR children into regular classes must have available bridging programs furnished by the school district.

7. Curriculum in EMR classes must be such to bring children to level of achievement appropriate to their age, grade level and educational development.

8. A misplaced child in EMR classes must have notation of this placement removed from his permanent records.

9. The school district shall pay to plaintiff children and those children of class action the sum of one dollar as a compromise to claim to an award of damages.*

*It was the opinion of the lawyers in the San Diego case that if agreement to settle for the $1.00 out of court would not have been agreed upon, the case would have lingered for years in the courts. It was essential to them that the unprecedented legal point be made to assure the rights of the children and parents. This being the case, the long range benefits were the objective of this decision.
Finally, the Court ordered that a citizens advisory committee be established and that an annual report of EMR education be submitted to this committee for three years. Regular evaluations of program was to be made, on the basis of which, recommendations were to be presented to the school district. If a school psychologist's findings are at variance with those of a private psychologist, such must be communicated with the parents.

One of the significant thrusts of this study was to identify some of the more significant activities which took place in educational policy and practice as a result of the EMR lawsuits. It was agreed that these major changes would not have come about had not the EMR lawsuits been filed. The changes which in fact occurred effected not only the three communities of Santa Ana, Soledad and San Diego, but California, the Southwest and the nation as well.

Specifically it was seen that as for as the EMR plaintiff children in the lawsuits were concerned, not only were they effected by transfer out of EMR programs, but 4,000 other young children were removed from EMR classes in a five month period. By 1971, 9,284 children were transferred out of EMR classes in California, the most dramatic drop in Special Education classes, an admission by the State Department of Education's own records. In San Diego, California, 2,566 children received the nominal fee of $1.00 for misplacement in EMR classes.

Parents and community were effected by these EMR lawsuits. They became more aware of the EMR issue as it related to their own children
and realized the problem was greater than the confines of their own family. They took a more active role in the education of their own and other children. They were more hopeful and confident to see something actually done about this serious problem. A number of parents were formally included on the EMR advisory committee which was mandated by the courts. This built-in parental involvement is a significant and historic development.

The interest generated by the EMR lawsuits helped bring about the passage of two State Legislative Resolutions HR 444 (1969) and HR 262 (1970). These resolutions called for:

1. Involvement of parents in the placement of their children in EMR classes.
2. The State Board of Education to bring about changes in Special Education.
3. Whatever suggestions the State Board of Education could make which would effect legislative change.

The State Department conducted three major hearings as a result of HR 444. These were held in San Diego, Los Angeles and San Jose, California. The hearings sought information about seven major issues:

1. The label "mental retardation".
2. The segregated nature of EMR classes.
3. The lack of flexibility in EMR classes.
4. The standardization of test instruments.
5. The lack of effective communication between the examiner and the pupil.
6. The interpretation and use of test scores for the designation of mental retardation.
7. The lack of communication between parents and test interpreters.

House Resolution 262 (August 20, 1970) went further in calling for a survey of the pupils in EMR classes to determine the current status of EMR education in California.

It was the report from this survey which showed there were 55,519 children in EMR classes, 48,000 of whom were reevaluated and between 1968 and 1971, 9,284 children were dropped from EMR classes in California.

On September 20, 1970 two California Senate Bills and one Assembly Bill legislating EMR education reforms were signed into law. The Senate Bills called for:

1. Individual I.Q. tests before placement into EMR classes.

2. Tests to be verbal and non-verbal, and in the preferred home language of the child.

3. Higher than two points below standard norm would prohibit entrance into EMR class.

4. I.Q. tests to be used were to be designated by the State Board of Education.

5. School psychologists must take into consideration, beyond the score of the I.Q. tests, such matters as:
   a) developmental history
   b) cultural background
   c) school achievement
   d) informed parental consent in writing must be had.

Senate Bill 1625 strengthened SB 1317 by adding the following:

1. All EMR children were to be retested before the end of 1970.

2. Misplaced children can be placed in accelerated classes with consultation of parents.
3. Significant disproportionate ethnic and racial variance must be reported annually to the State Department of Education.

4. Additions to the State Education Code to accommodate these legislative changes were to be made.

Because of continued interest and pressure on May 18, 1971, Senate Bill 33 was signed by the Governor into law. It was a more complete and all encompassing law which went into further detail than the former bills:

1. It made a restatement of the position of equal educational opportunity for all children applied to EMR children.

2. It took a position on disproportionate representation in EMR classes.

3. It spoke to the verbal I.Q. tests underestimating the academic ability of some children.

4. The home language of the former bill was upheld.

5. It upheld the former position of two standard deviation points.

6. It supported complete psychological examination with a first mention of adaptive behavior.

7. It made provision for the fact that adaptive behavior tests had not been normed.

8. It stipulated that parents were to be informed of evaluation results and their consent was necessary in writing before placement.

9. Parents must receive a complete explanation of Special Education programs.

10. Permission for evaluation and placement must be in English and in the language of the parents.

11. All official interaction with the parents must be in their language, conferences, notices, committee conclusions, explanations.
12. The Bill required even more detailed reporting than that required formerly.

13. Variance of 15 points by any minority group in EMR classes was to be reported to the State Department of Education.

After each new legislation the State Department of Education developed appropriate state education policy changes. They are contained in a number of Memorandum, chief of which are those dated September 30, 1969 and August 31, 1971. A considerable section of the study is dedicated to the identification of major changes and developments between both of these two policy position memorandum. In order to demonstrate the extent of influence of these three EMR lawsuits two specific and extremely important national developments stemming from the EMR challenges in Santa Ana, Soledad and San Diego were presented—the effect on the Federal Government and the effect on two education organizations.

The Office of Civil Rights of the Department of Health, Education and Welfare began to consider enforcement of the national enforcement of the Civil Rights Act of 1964 for the linguistically and culturally different child. This led to the development of the official OCR/HEW position of the May 25th Memorandum.

The OCR/HEW position outlined the responsibility of school districts in providing access to equal educational opportunity for the linguistically and culturally different children, especially those "deficient in the English language".

The EMR challenge influenced two major organizations and their respective conferences, one State, the other National:
BABEL: (Bay Area Bilingual Education League of Berkeley, California)

This conference took three basic positions:

1. Tests given in one language to children who spoke another were invalid.

2. It supported "Criteria Referenced Assessment Systems and urged their correlation with local performance objectives.

3. It urged the use of qualified bilingual bicultural educators in the development of valid test instruments for the bilingual and bicultural child.

NEA (The National Education Association) Human Relations Conference of 1972

This conference dedicated a whole conference theme to I.Q. testing. After two days it passed unanimous resolution calling for the ban of all standardized testing on minorities in the United States.

This chapter essentially identified the activities and educational changes which resulted from the challenges begun in the communities of Santa Ana, Soledad and San Diego, California. These challenges began as community and parental complaints surrounding the selection, the I.Q. testing of and placement in, of children in EMR classes in California.

Conclusions

This study has examined the developments of the three California EMR lawsuits, their background, causes circumstances and concomitant results. It has examined related literature, studies, reports, legislation and research. After following these legal challenges
from complaints to educational change a number of findings can be presented.

1. Chicanos and other linguistically and culturally different children were disproportionately placed in EMR classes, not only in the three communities of the EMR lawsuits, Santa Ana, Soledad and San Diego, but many other California communities as well, which demonstrated an extremely serious educational neglect by school administrators and education decision makers.

2. This disproportionate representation of Chicanos and other linguistically and culturally different children in the EMR classes of California was recognized even by the established standards and data of the California State Department of Education two years before the initiation of the first lawsuits.

3. The community challenge of selection for, I.Q. testing of, placement and EMR education subsequently developed into legal challenges in three specific lawsuits. These generated and brought about significant identifiable EMR educational reforms not only in the three respective communities, but in the state of California, the Southwest and North America as well.

4. The I.Q. tests as intended instruments to predict mental ability of the Chicano and other linguistically and culturally different children, in reality measured more their capacity to speak the English language and on this basis these children were placed in EMR classes.
5. The I.Q. tests in these three cases specifically and throughout California in general were seriously lacking in cultural compatibility with the Chicano and other linguistically and culturally different children, as such were ineffective measuring instruments.

6. This study has found that the issues of selection, I.Q. testing and EMR education raised in the three communities of Santa Ana, Soledad and San Diego, as grave as they were in themselves, were as serious, if not more so, in other communities.

7. The educational rights of children were abused in the I.Q. testing, the placement and the curriculum received in EMR classes.

8. Children in the EMR classes were not provided a curriculum which would effectively aid a child to develop to his full potential and ultimately be transferred from these EMR classes.

9. State Department of Education policy did exist to provide for EMR education, however, these policies were not enforced nor adhered to by school administrators, specifically in the three communities of this study and in general in other communities which demonstrated a high Chicano and/or minority disproportionate student population in EMR classes.

10. The complaints of parents and community leadership, educators, psychologists were not only ignored, but in general were thwarted. Should the administrators have listened to the parents, these lawsuits could have been avoided.
11. School administrators were found to be insensitive to the complaints and fundamental rights of Chicano and other minority parents and children.

12. School administrators were found to be uninformed and oblivious of the educational needs of the linguistically and culturally different child.

13. The manner of reporting data in State Department of Education surveys and reports was inconsistent, complicated and confusing so as to make it most difficult to determine the exact status of the EMR issue.

14. School administrators were inconsistent in reporting of information rendering it practically impossible to determine the actual EMR facts in given school districts. As a particular example, the U.S. Commission on Civil Rights Survey for Mexican American Education, found that in schools of the three school districts of this study, children were reported to be in EMR classes, but not one administrator reported any child as having an I.Q. below that which would have qualified him for the EMR class.

15. The parents of children placed in EMR classes were not provided information in such a manner as to be able to given true, valid and informed consent.

16. The push for educational reform particularly in the area of EMR education was not made by professional California educators, not by school administrators charged with the educational responsi-
bility of educational leadership, but by Chicano and other interested parents, and leadership.

17. Serious confusion existed and still exists in the use of the terms "Special Education" and EMR, which resulted in and continues to cause serious problems. Too often when administrators used the term Special Education, they meant EMR classes.

18. Psychometrists and school psychologists were unable to speak the primary language of many of the children to whom they were giving the I.Q. tests, which contributed to their inability to effectively and accurately communicate with the respective linguistically and culturally different children tested. However, decisions for placement into EMR classes were made on this inability.

19. EMR lawsuits could have occurred in other communities other than Santa Ana, Soledad and San Diego, California.

20. Without the EMR lawsuits, it can be reasonably concluded that the major EMR educational changes in policy and practice would not have come about.

Implications of the Study

The findings of this study have very serious implications on public education, testing and the role of administrators in public schooling. A few of these implications are:

1. Given the findings of this study, a significant implication of this study is that American public education, as presently functioning, cannot accommodate the educational needs of the Mexican American and other linguistically and culturally different children.
2. The evidence presented outside the three communities of Santa Ana, Soledad and San Diego, namely, other parts of California, the communities in New Mexico and Texas found to have disproportionate representation in EMR classes by OCR/HEW; the EMR lawsuits in Boston, Massachusetts; Pennsylvania; Guadalupe, Arizona; are sufficient to be convinced that the EMR issue is a national problem.

3. I.Q. testing and EMR education in the U.S. for the linguistically and culturally different children needs to be completely re-evaluated.

4. The misplacement and the resultant effect of disproportionate representation in EMR classes by the Mexican American and other linguistically and culturally different children must stand as one of the greatest travesties in man's relationship to children—all under the guise of education.

5. The data provided in this study is strong evidence that education strategies founded on the Melting Pot philosophy need to be reexamined as effective strategies for educating the linguistically and culturally different child.

6. If over 7,000 children were removed from EMR classes in California over a nine month period, it implies that thousands of children who had been in EMR classes since 1948-49 were misplaced in them.

7. Since laws and policy existed for the EMR education and were neither enforced or adhered to, the probability exists that
without strong enforcement similar conditions as those of the study will take place.

8. The lawsuits and court decision can bring about major education reform, however, they are extremely costly and time consuming.

9. Educational changes resulting by lawsuits and court actions such as those of this study, could be brought about through greater administrator's sensitivity to the needs of the respective communities and being more responsive to them.

10. School administrators were either unknowledgeable, incapable or unwilling to provide the educational leadership necessary to have rectified the serious educational issues surround the EMR issues.

11. Administrators intransigent position in unwilling to rectify the situations in their schools suggest they were confused as to their role as administrators in responsiveness to the educational needs of children and their parents.

12. Confusion surrounding the use of the terms Special Education and EMR was sufficient as to suggest that these terms can no longer be used effectively to say what they intend to mean.

13. Administrators, psychiatrists and psychometrists, although professionally trained and credentialed in one part of the country may not be able to competently function in another part of the country without learning the unique social dynamics of the people and area in which they wish to function.
14. This data raises the serious question if administrators in the schools can in reality be the leaders to initiate education reform on the local level.

15. This study raises serious question as to the validity of all standardized testing since it is clear from this information that in these cases the test could not accomplish what they were intended to accomplish. Testing effects a student not only for the duration of his scholastic career, but his very future in work life as well.

16. If the I.Q. tests of this study were found to be incapable of achieving their objective, then serious questioning must be made of tracking procedures used by some school districts which depend on the I.Q. test.

Recommendations of the Study

Writing this study has not been easy, certainly from an emotional point of view. The writer is reminded of the thousands of innocent children who have been seriously damaged under the guise of education. Notwithstanding, this investigator feels compelled to share from his experience and offer to administrators the following recommendations in the hope that they can contribute toward improving public education, the arena which determines the psychological and intellectual health or destruction of our children and ultimately that of society.

1. Although sufficient data exists to speak to the failure of public education of the Mexican American, Spanish-speaking and other linguistically and culturally different children, administrators
should take this reality as an opportunity and a challenge to develop the unique cultural and linguistic potential of so many children, whose characteristics, up to this point, have been regarded and treated negatively by the school systems.

2. When such strong data exists pointing to an area of educational need or problem, either on a statewide or local basis, administrators should make every effort to find solutions for these needs rather than allow community and parental pressures to force a solution outside the educational system. Administrators therefore must be more sensitive to parental and community needs and complaints. Parents must be assured that they are an important part, not only in the education of their children but the workings of the school as well, as such, their feelings, recommendations and criticisms, especially when supported by such preponderance of evidence, as in this study, must be considered and dealt with.

3. With the great reassessment of I.Q. and standardized testing instruments which is urged, the cautions of Dr. Ed Di Avila must be noted. Testing companies cannot merely translate, adapt tests or lower their norm. School administrators must insist that instruments be developed for the linguistically and culturally different child and that these be compatible to the unique educational needs of the given language and culture group.

4. As with I.Q. instruments, so too the curriculum of public education must be one which maximizes a child's ability to learn,
utilizing the cognitive, insentive-motivational learning style of the children that curriculum is intended to serve. This can be applied to children in EMR or regular classes. This study recommends the curriculum be culturally democratic and pluralistic.

5. This study found that state laws and policies existed before and during these EMR lawsuits. Notwithstanding the lawsuits of 1968 and 1969 which led to the statewide activity, ultimately causing state education policy change in law and practice, some school districts still had serious disproportionate minority representation in their EMR classes as evidenced by the June 1972 Larry P. vs. Wilson Riles EMR lawsuit in San Francisco. It is imperative that given the traditional slowness of school systems to change, or reform, the State Department of Education must strengthen its enforcement of the guidelines it has established for the implementation of the state EMR legislation.

6. Administrators must be aware and sensitive to the reality that the impact of the 60's on minority groups is such that the right of children and parents are more vocally guarded. As such, listening to and resolving issues raised by community leaders and parents will require greater patience, skills and sensitivity.

7. Graduate Schools of Leadership and Administration must prepare future administrators to more effectively be able to function and work with the linguistically and culturally different child and his parents, to effectively exercise this needed patience, skills and sensitivity.
8. As parents and communities are becoming more greatly involved in the decisions and accountability of programs in schools, it is essential that records, reports and information be accurately reported by the administrators whether on the level of the local school, school district level or the level of the State Department of Education.

9. Since use of the term Special Education and EMR has caused the confusion indicated in this study, it is strongly recommended that the term Special Education be clarified or even changed to another name. It is the opinion of this investigator that it has such built-in connotations that it requires a new name.

10. School districts must hire psychologists and psychometrists who not only can communicate with the various populations they serve but who have been trained to understand and effectively relate to the Mexican American and other linguistically and culturally different children. It can no longer be presumed that a psychologist or psychometrist trained in Amherst, Massachusetts can effectively function in a school district in Soledad, California. This need is sufficiently grave enough that if a school district does not have, in our case Mexican American psychologists or psychometrists, then it should establish a training program with the local university or college.

11. Since this study concludes that the major educational changes could not have taken place, even in the light of the preponderance of evidence, without the lawsuits, that school systems
reevaluate their role and function in U.S. society, especially as they relate to the linguistically and culturally different child.

12. The information pointed out by this study stands as a clear case in point of the failure of public education's melting pot philosophy. The nation is making preparations to celebrate its 200th birth date. This investigator recommends that the schools commit themselves to the educational philosophy of cultural pluralism and its growth through bilingual bicultural education. In summary, "toward a multilingual multicultural society, through bilingual bicultural schooling".

13. If school systems are serious about major change for culturally pluralistic education, it is recommended that the administrators participate in in-service tri-ethnic tri-cultural workshops. A model of this can be found at Dade County Public Schools - Region 4, Miami, Florida.

14. This study sees the important role of the Office of Civil Rights of the Department of Health, Education and Welfare in the development of the May 25th Memorandum. It recommends that OCR/HEW continue to inform school systems and communities of its nature and implications for the linguistically and culturally different child.

15. It is further recommended that OCR/HEW continue in its compliance reviews of school districts from which complaints come, in regards to disproportionate EMR minority representation. These reviews should be expanded into other regions in the Midwest and the East.
AGREEMENT

THE PARTIES AGREE AS FOLLOWS:

1. The State Department of Education will mail, with the new regulations 3401, et seq., Exhibit "A", a letter to every school district within the State of California, which includes the paragraphs attached in Exhibit "B". Both exhibits are incorporated fully by reference herein as part of this agreement.

2. The State Department of Education in implementing Section 2011(b) of Title 5 of the California Administrative Code shall require districts to get statistics sufficient to enable a determination to be made of the numbers and percentages of the various racial and ethnic groups in each Educable Mentally Retarded class in the district. In the event that the State Department of Education determines that there is a significant variance in racial or ethnic makeup between its EMR classes and the total enrollment of students in the district, the district shall submit an explanation of the variance.

3. The Department of Education will make available for inspection all reports received pursuant to paragraphs 1 and 2.

4. The State Department of Education is undertaking to arrange norming procedures for an individual intelligence test wherein the population will be comprised of Mexican-Americans who live in California. Such undertaking is contingent upon the State Department of Education receiving funds for said work and the approval of the publisher of such test. The state will make the test available to plaintiff's attorneys after standardization and item analysis.
Plaintiff's attorneys will provide to defendants in writing, a signed statement setting forth the names of all consultants who will review the test. All such consultants shall be competent psychologists holding credentials issued by the State Board of Education authorizing the giving of individual examinations under Education Code Section 6908. Such psychologists may also consult with State Department of Education employees, at a time convenient to such psychologists and the State Department of Education, prior to the actual norming of such test. At said time the State Department of Education will make its work to date available to said psychologists for their review. Such review is contingent on approval of the publisher of the test. The State Department of Education will exert every effort to obtain the publisher's approval. Said psychologists shall not publicly comment on the State Department of Education's work or efforts in connection with the test prior to the actual norming of the test.

5. The plaintiffs agree that upon approval and adoption of this agreement by the Court as its Order and upon implementation thereof, including resolution of contingencies in Paragraph 4 of this agreement in a manner which results in development of an individual intelligence test as provided in that paragraph and in review of the test prior to standardization by plaintiffs, this action will be terminated.

Dated: 2/3/70

ATTOREYS FOR PLAINTIFFS

ATTOREYS FOR DEFENDANTS

/Copied from the original/
SETTLEMENT AGREEMENT

It is hereby stipulated and agreed by the parties hereto as follows:

I

The School District represents that all students who were enrolled at the end of the regular school term during June, 1970, in "Learning Assistant Classes, Type A" hereinafter referred to as "EMR Classes," in the School District and who continued as students in EMR classes of the School District during the 1970-71 school year, including the Claimants, if in EMR classes have been retested and re-evaluated as required by law to determine the desirability of their continued placement in EMR classes prior to the conclusion of the 1970 calendar year pursuant to CHAPTER 1543, STATUTES 1970.

II

The School District represents that it conducted the program of retesting and re-evaluating referred to above in a manner consistent with the standards prescribed by Section 6902.06 of the California Education Code, as added by CHAPTER 1543, STATUTES 1970, including having administered all verbal and nonverbal individual intelligence tests in the primary home language in which the child is most fluent and has the best speaking ability and capacity to understand, and Section 3401, et seq., of the California Administrative Code.
III

The School District represents that, in its program of retesting and re-evaluation specified above, it utilized tests selected from a list provide and approved by the California State Department of Education which, in the discretion of the School District, best eliminated any racial, cultural, environmental, or linguistic bias. Bilingual testers were utilized in the cases of Spanish-speaking children. Testing of black children utilized testers with appropriate capability and experience as determined by the School District.

In addition to the program of retesting and re-evaluation of those students enrolled in EMR classes in the School District as specified above, the School District has not assigned and will not assign, any new student to any EMR class without having first conducted the appropriate tests and evaluations as set forth above.

IV

The School District represents that, based on the results of the retesting and re-evaluation process described above, when the School District determines that certain students of the Negro race or of Mexican-American descent should be placed in EMR classes, it is the policy of the School District to communicate the test results and its recommendation regarding placement in EMR programs to the parents of those students in such manner to maximize the possibility that the parents contacted in fact fully understand and appreciate the basis of the School District's recommendation and that the
parents in fact understand fully and appreciate the nature of the program to which their children are to be assigned. Toward that end, the School District explains to such parents in detail the curriculum and educational goals of the EMR program.

V

No student shall be assigned to EMR class except upon written consent by the parents in the primary language of the parent of said student or their legal guardian, and said written consent shall be obtained only after the School District shall have complied strictly with the requirements set forth above and the provisions of Sections 6902.5 and 6909 of the California Education Code and CHAPTER 1569, STATUTES 1970, which adds Section 6902.07 to the California Education Code.

VI

A Citizens Committee on the EMR Program Advisory to the Superintendent of Schools of the School District shall be established. It shall be composed of at least five members, including not more than one member selected by M.A.L.D.E.F., one member selected by NAACP, Legal Defense Fund, two members selected by the Superintendent of School District from the School District's professional staff and an attorney or other professional who shall be selected by majority vote of the committee. The Citizens Committee shall review the assignment of any Mexican-American or black student to EMR classes whose parent or guardian has requested and given written authorization for such review pursuant to Section 10751 of the California Education Code.
The Citizens Committee may consult with experts of its selection but at no cost to the school district and make recommendations to the School District about whether in the Citizens Committee's opinion, an assignment to EMR classes is in the best interest of the individual student and is consistent with the announced goals of the School District in maintaining its EMR program. Further, the Citizens Committee may at least once each school semester review the operation of the EMR program primarily to determine whether or not the program is being administered pursuant to law in such a manner as to eliminate or minimize racial or cultural bias or imbalance. To make such review it shall have the right to see appropriate school records subject to the restrictions of Section 10751 of the California Education Code. Further, the Citizens Committee shall be available for consultation with parents of children recommended for assignment to EMR classes upon written request of such parents to discuss the desirability of such assignment with the parents and to hear presentations by the parents in the process of evaluating the desirability of assignment to EMR classes. The School District shall effectively inform said parents of their right to discuss with, and make presentations before, the Citizens Committee.

VII

The School District shall cause to be made on an annual basis for a period of three years from the date of this agreement, a full
and complete report to the Citizens Committee on the EMR Program describing in detail the manner of testing and evaluation screening and placement being implemented within the School District for the assignment of students to EMR classes or integrated programs of instruction pursuant to Section 6902.1 of the California Education Code. This annual report shall include statistics showing the total number of black and total number of Mexican-American students enrolled during the preceding school term in EMR classes, or programs for integrated instruction, and shall indicate the total number of students enrolled in such classes within the School District and compute the percentage of enrollment represented by blacks and Mexican-American; the report shall specify with regard to each black or Mexican-American student enrolled in said classes whether or not the assignment to said classes was with the express written consent of the parents and upon the recommendation of the local admissions committee and specify the recommendation made by the Citizens Committee on the EMR Program, if any; and the report shall show with respect to each black and Mexican-American student the number of school semesters or fractions thereof that each such student has been enrolled in special EMR classes.

VIII

Where the results of the School District's testing, evaluation, retesting or re-evaluation of any student proposed for, or assigned to, its EMR classes is at variance with the results gathered by the independent work of a private psychologist retained by or for such
student, school psychologists of the School District shall discuss such variance with the private psychologist upon request of the student's parents and compliance by the latter with Section 10751 of the California Education Code. At the option of the private psychologist, his report shall be submitted along with the School District evaluation to the local admission committee and the Citizens Committee for their consideration.

IX

After each year's enrollment in an EMR class, each student so enrolled shall be re-evaluated and the results of such re-evaluation shall be reported to the parents of said pupils and such students shall not be continued in said EMR classes except on recommendation by the local admission committee and parental consent anew. The minimum standards prescribed in Section 6902.4 of the California Education Code shall be applicable. The Citizens Committee may review such re-evaluations after compliance with Section 10751 of the California Education Code.

The School District shall establish integrated programs of instruction to bridge the gap between EMR and regular classes as set forth in Section 6902.1 of the California Education Code and Section 3413 of the California Administrative Code for all students who through the course of evaluation and testing are determined to be only marginally EMR, or to have progressed after one or more semester's enrollment in special day EMR classes to such a level that it is determined they
might beneficially return to regular classroom instruction. Placement in integrated programs of instruction pursuant to Section 6902.1 of the California Education Code will be for the purpose of aiding students who have previously been enrolled in EMR classes, or other marginally EMR students to make the transition from the special program of instruction to the regular curriculum of the school appropriate for their age and grade level and educational development. Assignment of students to integrated programs of instruction pursuant to Section 6902.1 of the California Education Code shall follow the same procedures as prescribed above for assignment to special day EMR classes. The Citizens Committee may, as it considers appropriate, review the operation of such integrated programs.

X

In all cases of students assigned to EMR or integrated programs of instruction, the School District shall endeavor to provide for such students sufficient intensive, supplemental training in language skills, mathematics and other areas of school curricula in an effort to bring said students up to the level of achievement appropriate for their age and grade level and educational development consistent with the funding capabilities specified in CHAPTER 1543 and CHAPTER 1562, STATUTES 1970. The Citizens Committee on the EMR Program may request periodic testing to develop evidence of educational progress of such students.
XI

The School District shall eliminate any notation on all permanent school records which indicates that he is mentally retarded or has been placed in EMR classes of any student originally assigned to EMR classes pursuant to Education Code Section 6902.07 but later removed because of failure to observe such statute through error or irregularity of assignment. Nothing in this paragraph shall be interpreted to prohibit the School District from maintaining lists of names of students assigned to EMR classes for purposes of financial reporting and auditing and internal school administration.

XII

The Superintendent of Schools of the School District will continue to work toward the constant improvement of the School District's EMR program. Toward that end, he shall cause to be made regular evaluation of the EMR program, and, based upon such evaluations, he shall make recommendations to the BOARD OF EDUCATION for the betterment of the School District's EMR program consistent with state law and the capacity of the School District to operate its EMR program.

XIII

The School District, through its insurance carrier, ________ shall pay to each plaintiff in the above-entitled action and to each of those members of the class similarly situated who enter and participate in this action the sum of $1.00 in compromise
of his claim to an award of damages for the injuries which each said
plaintiff claims to have sustained as set forth in the complaint on
file herein.

XIV

Any violations of the Order of the Court regarding placement of
children in EMR classes are remediable by contempt in the following
manner: If a party hereto, or any member of the class purported to
be represented herein, concludes that the School District is acting
in violation of this Agreement and such Order, such complainant shall
notify the School District by letter addressed to the Superintendent
of Schools of the School District of the complainant's belief that
the School District is acting in violation of this Agreement and he
shall provide therein such particulars as he has concerning such
belief to enable the School District to take action, if it so chooses,
to conform its practices to the demands of the complainant. If, after
ten days from the date the complainant filed his letter with the
Superintendent of Schools of the School District, he concludes that
the complaint made in his letter has not been resolved to his satis-
faction, he may apply for a Supplementary Order of the Court which,
after hearing duly held, may direct the School District to do, or
refrain from doing, some act in connection with its placement of
children in EMR classes. Wilful violation of such Supplementary
Order of the Court shall constitute contempt.
The content and form of all notices required by law to perfect the settlement and compromise of this lawsuit through this Agreement shall be mutually agreed upon by the parties hereto. In the event such mutual agreement is not attained concerning any specific notice, the disagreement shall be finally resolved by the Court.

DATED:

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/Copied from the original/
TO: County and District Superintendents of Schools

FROM: Joseph P. Rice, Chief,
Bureau for Mentally Exceptional Children

SUBJECT: Policies and Procedures for the Assessment and Assignment of Minors to Special Education Programs for the Mentally Retarded Incorporating the Provisions of AB 606 and CAC Title 5 Regulations

AB 606 (Chapter 784, Statutes of 1969) has direct and immediate implications for special education programs for the mentally retarded. In addition, the California State Board of Education has adopted new regulations at their July 1969 meeting designed to clarify the operation of the special education programs for the mentally retarded. The attached procedures for the assessment and assignment of minors to special education programs for the mentally retarded incorporate these legal and regulatory provisions.

There is growing concern throughout the State of California regarding the disproportionate placement of minority group pupils into programs for the mentally retarded. Since February 1968, the Department of Education has been focusing special attention on this matter. Meetings have been called involving representatives from professional organizations, school districts, minority groups, and other professional and lay persons concerned with the problem. The attached regulations, policies, and procedures have been developed to assure that each minor receives a complete and individual evaluation and that proper educational placement be made for that minor.

In addition, the attached policies and procedures include minimum standards for programs for mentally retarded minors developed by the State Department of Education as authorized in Education Code Section 6906. The policies, procedures, and standards included in this document concern the assessment and assignment of minors only. Policies, procedures, and standards related to instructional programs, personnel, or other program elements are handled elsewhere. For example, Programs for the Educable Mentally Retarded in California Public Schools, bulletin of the California State Department of Education, Vol. XXXIV, No. 1, March 1965, contains material relevant for a broad array of program provisions.

Approved:

Charles W. Watson
Associate Superintendent
PROCEDURES FOR THE ASSESSMENT AND ASSIGNMENT OF MINORS TO SPECIAL EDUCATION PROGRAMS FOR THE MENTALLY RETARDED

Mental retardation is a complex syndrome of behavioral characteristics. The term "mental retardation" is a description of an individual's current status in terms of his intellectual, academic, social, and emotional functioning.

For educational purposes, the California Education Code defines mentally retarded minors as: "all minors, who, because of retarded intellectual development, are incapable of being educated efficiently and profitably through ordinary classroom instruction (Education Code Section 6901.)" Many children may show behavioral patterns seemingly typical of mental retardation, although such behavior is actually caused or aggravated by some other handicap. Pupils with true retarded intellectual development should be differentiated from those minors having other kinds of handicaps. The social backgrounds, physical conditions, developmental history, and the influence of environmental deprivation must be studied in addition to the minor's intellectual functioning before a definitive determination of mental retardation is made. An I0 score alone cannot be used as a single criterion for determining mental retardation. Rather, the determination of mental retardation for educational purposes must be based upon a thorough case study covering all aspects of the development of the minor.

Each minor placed in special education programs for the mentally retarded must have an individual evaluation and the careful consideration of a local admissions committee (Education Code 6902.05). This committee shall be composed of the following:

1. The pupil's teacher
2. A school nurse or social worker
3. The school psychologist who has individually examined the minor
4. A school principal or supervisor designated by the head of the school district as his representative
5. A school physician
6. Other persons as the head of the school district may deem appropriate

SCREENING AND REFERRAL

Each county superintendent of schools and each local school district charged with the responsibility of establishing and maintaining special education programs for mentally retarded minors should maintain an active screening and referral process. Referrals for additional screening and possible individual evaluation might be made by:

1. The minor's parent and/or guardian
2. Any teacher having instructional responsibilities for the minor
3. A principal, vice-principal, counselor
4. The school nurse or social worker
5. Other persons designated by the administrator for such responsibilities

Results obtained from group tests may be used for screening and referral purposes only. Group test results cannot be used as a basis for determining
mental retardation. The following types of pupils should be routinely referred to the school psychologist and the Local Admissions Committee for study:

1. Pupils more than two years behind normal grade placement with reference to their chronological age.
2. Pupils who are two or more years behind in academic achievement and who have been receiving near failing marks in the basic academic subjects. Referral for psychological services should be made before the minor's problems become severe.
3. Pupils who have failed basic skill subjects for two or more consecutive years.
4. Pupils falling below the 5th percentile on standardized achievement tests.
5. Pupils attaining an IQ of 75 or less on standardized group mental ability tests.

The approved list of group intelligence tests which can be used for screening and referral is as follows:

1. California Test of Mental Maturity, 1963 Edition
2. The Chicano Non-Verbal Examination
3. Culture Fair Intelligence Test
5. Kuhlman-Anderson Intelligence Tests, Seventh Edition
6. Lorne Thorndike Intelligence Tests
7. Otis-Lennon Mental Ability Tests
8. Pintner General Abilities Tests
9. SRA (Primary Mental Ability)
10. SRA (Tests of Educational Ability)
11. SRA (Tests of General Ability)

INDIVIDUAL CASE STUDY

All placements made in special education programs for the mentally retarded must be justified on the available objective data collected during an individual case study. Certification of eligibility for special program placement requires careful analysis of the following information:

1. Educational History

   A. Specific statements from the minor's teacher regarding the strengths and weaknesses of the minor as demonstrated by observed behavior.
   B. Records of academic achievement including scores on group standardized tests.
   C. Teachers' reports on academic achievement in the classroom.
   D. Teachers' reports on observations of success and failure and the situation in which these occurred. This report should include the effect of success and failure upon classroom behavior and pupil achievement as observed by the teacher.

2. Psychological Evaluation

-2-
A. The psychological evaluation should include sufficient individually administered psychological tests necessary to establish a valid estimate of the level of intellectual functioning of the minor under consideration. One or more of the following approved individual Intelligence tests must be administered:

1. Leiter International Performance Scale
2. Stanford Binet (L-M)
3. WAIS (Wechsler Adult Intelligence Scale)*
4. WISC (Wechsler Intelligence Scale for Children)*
5. WPPSI (Wechsler Pre-school and Primary Scale of Intelligence)

*Authorized Spanish version of these tests should be used as appropriate.

One or more of the following supplemental tests may be used:

1. Arthur Point Scale of Performance Tests, Revised Form II
2. Cattell Infant Intelligence Scale
3. Columbia Mental Maturity Scale, Revised Edition
4. Draw-a-Person (Goodenough)
5. Full Range Picture Vocabulary
6. Gesell Developmental Schedules
7. Goodenough-Harris Drawing Test
8. Merrill-Palmer Pre-School Performance
9. Peabody Picture Vocabulary Test
10. Raven Progressive Matrices
11. Slosson Intelligence Test
12. Van Alstyne Picture Vocabulary

B. The program expectancies and academic standards being placed on the minor at the present time must be identified and evaluated.

C. Evidence of prior experience or achievement on group tests and individual tests.

3. Social, Economic, and Cultural Background

A. Information on the family background should be gathered. This information should be obtained through conferences with the parents and/or guardian using the language which is fully understandable to the parents and/or guardian. This information should include:

1. Language used in the home
2. Family mobility
3. Occupational history and status of parent
4. Sibling relationships

B. Evidence of deprivation:

1. Isolation of home, family, and child within the environment.
2. Developmental materials present in the home such as educational toys, books or reading materials, etc.; and
(3) Observations of the home and environment reflecting factors which could be influential upon the educational process.

4. Development History

A developmental history of each minor should be gathered during conferences with the parent and/or guardian. In order to establish mental retardation, the developmental records should reveal significant delays and/or retarded development in such behaviors as walking, talking, appropriate affective responses, assumption of responsibility, obedience within the family structure, play activities, and peer relationships within the home and in the community.

5. Peer Relationships

A study of the minor's present peer, classroom and home relationships to determine if there are such inadequacies as: inability to maintain social roles, lack of friendships with age peers, inability to comprehend and respond to ordinary school and social demands, lack of lasting social involvement in the school and the home.

6. Health History

A report on the health and physical condition of the minor should include the results of any recent physical examinations and visual and auditory tests administered by the district. Any impairment in sensory and motor functioning should be noted, together with recommendations for educational and physical habilitation.

7. Other pertinent information that would contribute to the recommendations by the Admissions Committee.

LOCAL ADMISSIONS COMMITTEE

The following functions shall be performed by the Local Admissions Committee:

1. Careful consideration and analysis of the complete case study of each minor being recommended for placement in a special education program for the mentally retarded.

2. Recommendations for appropriate educational placement shall be made after a full review of all the information available on the minor, and specific efforts shall be made by members of the committee to identify the best possible educational placement for the minor available within the district. Final recommendations of the Committee may include one of the following:

   A. Ineligible for placement in special education programs for mentally retarded minors—remain in regular instructional program.

   B. Referral for consideration for other special education programs—meanwhile, remain in regular instructional programs.

   C. Placement in special education programs for the mentally retarded minors under Education Code 6902:
(1) Special day class
(2) Integrated program of instruction

D. Placement in special education program for mentally retarded minors under Education Code 6903.
E. Trial placement in special education program with specific period of time established for re-consideration.
F. Request for additional study and psychological evaluation upon which to base a recommendation.
G. Other professional recommendations as may be indicated by individual cases.

3. Assignment to the appropriate program shall be recommended by a majority of the Local Admissions Committee, the school psychologist concurring. Where unanimous agreement is lacking, assignment shall be recommended on a trial basis with a date established for re-evaluation of the minor's progress.

4. A written report of the conference meeting of the Local Admissions Committee shall be prepared which shall include all of the following:

A. The committee's findings regarding the type and extent of the pupil's handicap and the relationship of this handicap to the educational needs of the pupil.
B. The committee's findings regarding the ability of the pupil to profit from participation in one of the programs described in Education Code 6902 or 6903 for mentally retarded minors, and any specific recommendation regarding particular methods or service from which the minor might be reasonably expected to profit.
C. The committee's decision regarding eligibility and recommendations with respect to placement of the pupil in the most appropriate special education program.
D. The names and titles of the committee members present at the meeting at which the recommendations were made.

5. Any members of the Local Admissions Committee dissenting from the final committee recommendation shall attach to the final recommendation a statement of reasons for such objection. (Education Code 6902.05)

**CONFERENCE WITH PARENT**

A conference shall be held with the parent or guardian of each minor being recommended for placement in the special education program for the mentally retarded. This conference shall be conducted by a member of the Local Admissions Committee. A discussion will be held regarding the findings of the Local Admissions Committee recommending special class placement and the total program discussed with the parent. Each conference shall be conducted in the language understandable to the parent and/or guardian, and if necessary, an interpreter provided to make sure that the parent understands the special educational placement. Every effort should be made to secure parental approval for the special education placement for the minor.
The parent, when feasible, should have the opportunity of visiting the special class program in which the minor was recommended for placement. A report on this conference with the parent shall be made a part of the case study files of the minor.

**PLACEMENT**

It is recommended that the school undertake a transitional program to help the minor make the transition from a regular class placement to a special education placement. The benefits of the assignment should be explained to the pupil and the parent and an opportunity to meet the special class teacher and to visit the special class should be arranged. If indicated, the pupil might attend the special educational program only part of the first few days.

Before attempting to work with the pupil, the special class teacher should be provided with a complete summary of the case study together with all the specific recommendations of the members of the Local Admissions Committee. The school psychologist should provide the special class teacher with information concerning the pupil that will assist in developing appropriate learning activities for the minor. If the committee finds that a trial placement is indicated, a specific date should be set for reconsideration of the case, and all persons participating in the minor's special education program should be alerted to this plan. Records of progress and adjustment should be kept during the trial placement. At the end of the trial placement, the pupil's case should be placed on the agenda of the Local Admissions Committee for re-evaluation.

**ANNUAL REVIEW AND COMPLETE RE-EVALUATION**

The Local Admissions Committee shall conduct an annual review of all minors enrolled in special education programs for the mentally retarded. Continuance of the minor in the special education program shall be based on a recommendation of the Local Admissions Committee that such placement is appropriate for the minor (Education Code Section 6902.4). The annual review shall consist of a study of data prepared and submitted from the following sources:

1. Report from the minor's special class teacher containing:
   A. General adjustment of the minor to the school situation.
   B. Scholastic achievement based upon ability of the minor.
      If possible, the academic level of achievement should be reflected.
   C. Brief summary of the minor's progress.
   D. Brief summary of the conferences held with the minor's parents and/or guardian.

2. Reports from other instructional staff members regarding the performance of the minor.

3. Reports from other professional staff members involved in the educational program of the minor that would relate to chances
in the minor's physical, social, or psychological condition. Where doubt exists as to the appropriateness of the placement, the Local Admissions Committee may request a complete re-evaluation.

A complete re-evaluation of each minor placed in special education programs for the mentally retarded shall be made at least every three years. In addition, a complete re-evaluation shall be made available at any time the Local Admissions Committee, the special class teacher, or other staff members involved in the educational program for the minor feel that this process is indicated due to a change in behavioral patterns. This complete re-evaluation shall follow the pattern set forth for the initial individual case study. The person(s) requesting the complete re-evaluation shall set forth the reasons for such request on forms provided by the district for this purpose.

The complete re-evaluation should be a joint endeavor of the Local Admissions Committee and other staff involved in the educational program of the minor. It should also include a conference with the parent and/or guardian and such testing as is indicated by the adjustment pattern of the minor concerned.

The results of the re-evaluation process should indicate:

1. Continuation in the special education program with no major changes, or
2. Suggestions for needed additional services and/or program adjustments, or
3. Transfer to another special education program, or
4. Withdrawal from the special education program and returned to the regular instructional program, or
5. Only after careful and complete evaluation and exploring all available alternates should a recommendation be made to the administrative head of the district that the minor be withdrawn from the school program.

TRANSFER TO REGULAR INSTRUCTION PROGRAM

A minor should be transferred from the special education program for mentally retarded minors when the Local Admissions Committee finds that his needs can be best met in the regular instructional program. In arriving at this decision, the committee must give special consideration to the readiness of the pupil for placement in the less sheltered environment of a regular class especially when he has been enrolled in the special education program for a period of years. The procedure of withdrawing a pupil from the special class is similar to that of assigning him to the special class. A reassignment procedure should be planned and implemented by the Local Admissions Committee and it should include steps that guarantee to the minor a smooth transition from the special class placement to the regular class placement.
PERTINENT SECTIONS FROM CALIFORNIA ADMINISTRATIVE CODE, EDUCATION,  
TITLE 5 FROM CHAPTER 3. MENTALLY RETARDED MINORS.

3401. Eligibility of Pupils. The eligibility of a minor for placement in a special training school or class for mentally retarded minors shall be determined as provided in Education Code Sections 6908 and 6909 and after the minor has been given verbal or nonverbal individual intelligence tests and after other pertinent information has been collected and considered. Group intelligence tests may be used as screening devices. All individual and all group intelligence tests administered pursuant to this section shall be selected from a list approved by the State Department of Education.

3402. Assignment. The responsibility for the assignment of a minor to any such school or class rests with the administrative head of the school district or an employee of the district whom he designates. The assignment shall be made only after a group conference of the psychologist, the school principal, a teacher, the school physician or nurse, if any, and any other person designated by the person responsible for making the assignment (hereinafter called the admissions committee). In a case where doubt exists, a minor may be given a trial placement.

3403. Information collected as a Basis for Determining Retarded Intellectual Development. All interviews with the minor and his family shall be conducted in their familiar language where feasible. As a part of the individual examination described in Section 3401, the psychologist shall consider the following documents or written resume thereof and convey them to the admissions committee:

(a) The minor's school history to date, if any, as contained in the minor's cumulative record.

(b) A written report of the results of a medical examination of the minor by a physician and surgeon licensed to practice in California, whenever the admissions committee deems it necessary.

(c) A history of the minor's social and emotional development including related socioeconomic factors.

(d) Written reports from such other areas as the admissions committee may deem necessary.

-8-
PERTINENT SECTIONS FROM EDUCATION CODE:

6901. "Mentally retarded minors" means all minors who because of retarded intellectual development as determined by individual psychological examination are incapable of being educated efficiently and profitably through ordinary classroom instruction.

6902. The education of mentally retarded minors who are of compulsory school age and who may be expected to benefit from special educational facilities designed to make them economically useful and socially adjusted shall be provided for in the manner set forth in Sections 6901 to 6913, inclusive, and in Sections 8951 to 8956, inclusive. Such special education may be provided mentally retarded minors below compulsory school age who are between five years nine months and eight years of age and those above compulsory school age and less than 21 years of age.

6902.05 Admission of a minor to a special educational program for the mentally retarded established under the provisions of Section 6901 to 6913, inclusive, and in Sections 8951 to 8956, inclusive, shall be made only on the basis of an individual evaluation according to standards established by the State Board of Education and upon individual recommendation of a local admission committee which shall include a teacher, a school nurse or social worker, a school psychologist or other pupil personnel worker authorized to serve as a school psychologist who has individually examined the minor, a principal or supervisor, and a licensed physician. Such recommendation shall include a statement that in the professional judgment of the members of the local admission committee the minor recommended for placement in any program for the mentally retarded can reasonably be expected to benefit from such placement. Any members of the local admission committee dissenting from the final committee recommendation shall attach to the final recommendation a statement of reasons for such objection.

6902.4 Continuance of minors in special education programs for the mentally retarded authorized under Section 6902 shall be the subject of annual review and recommendation by the local admission committee to determine whether continued placement in the special educational program is appropriate.

6902.5 No minor shall be required to participate in a program for mentally retarded minors unless the local admission committee or a member of the local admission committee appointed by such committee has personally consulted with the parent or guardian of the minor regarding the retarded intellectual development of the minor.

6903. The education of mentally retarded minors who do not come within the provisions of Section 6902, who are 6 or more, and less than 18 years of age and who may be expected to benefit from special educational facilities designed to educate and train them to further their individual acceptance, social adjustment, and economic usefulness in their homes and within a sheltered environment, shall be provided for in the manner set forth in Sections 6901 to 6913, inclusive, and in Sections 895 to 895.10, inclusive. The education of such mentally retarded minors who are five or more and less than six years of age may be provided for in the manner set forth in Sections 6901 to 6913, inclusive, and in Sections 895 to 895.10, inclusive.

Any such minor who becomes 18 years of age while in attendance upon a special training school or class shall be permitted to continue to attend thereon for the remainder of the time such school or class is maintained during the then current school year.
Notwithstanding other provisions of this section any such minor who is participating regularly in an approved occupational training program in the manner set forth in Sections 6931 and 6932 may be permitted by the governing board of the district or county superintendent of schools, as the case may be, maintaining such training program to continue thereon until his 21st birthday.

6908. Before any child is placed in a school or class for mentally retarded children, he shall be given a careful individual examination by a competent psychologist holding a credential for that purpose issued by the State Board of Education, or by a person serving under the supervision of such a psychologist and holding a credential for that purpose issued by the State Board of Education, and a consultation with his parents or guardian held. A psychiatrist may be consulted in any specific case when the governing board of the district deems it necessary.
February 6, 1970

TO: County Superintendents of Schools
    District Superintendents of Schools
    Administrators of Special Education Programs

FROM: Charles W. Watson
      Chief,
      Division of Special Education

SUBJECT: Amended Regulations Relating to the Education of Mentally Retarded Minors

Enclosed are amended regulations commencing with Section 3401 of Title 5, California Administrative Code, relating to standards for the individual evaluation of mentally retarded minors, adopted by the State Board of Education on January 11, 1970 and which became effective February 1, 1970 which should be implemented forthwith.

It is to be noted that it is the intent of the State Board of Education that all children who came from homes in which the primary spoken language is other than English shall be interviewed, and examined, both in English and in the primary language used in his home. The examiner should take cognizance of the child's differential language facility. Any assessment of the child's intellectual functioning should be made on the basis of the spoken language most familiar to the child. In determining the intellectual functioning of a child whose primary language is other than English, it is recommended that the examiner utilize more than one instrument and include, tests with performance scales.

As a part of the annual review and recommendation by the admission committee pursuant to Education Code Section 6902.4, continuance of minors now enrolled in programs for the mentally retarded authorized under Education Code Section 6902 should be recommended only on the basis of evaluation standards, including any necessary retesting, as described in Title 5, California Administrative Code, Section 3401. A report of such evaluations, including any testing, the results thereof and the program recommended for the children identified for return to regular classes should be made to the Superintendent of Public Instruction upon completion of retesting and reevaluating. It is anticipated that retesting, where necessary, shall be a permanent feature of annual review; however, the report to be submitted to the Superintendent of Public Instruction should be made only for 1969-70 school year and should be submitted to the Superintendent of Public Instruction by August 31, 1970.

In compliance with Section 3401(c) of Title 5, California Administrative Code, when an interpreter is needed, the school psychologist shall select an
interpreter from the following in order of preference:

1. A psychologist trainee or intern currently enrolled in a professional training program and leading toward eventual certification as a school psychologist or other person qualified to serve as a school psychologist and competent in both languages.

2. Certificated employees of the district competent in both languages.

3. Classified employees of the school district competent in both languages.

4. Recognized persons from the business and professional communities competent in both languages. Whenever a person other than credentialed school personnel are used as an interpreter, written parental approval should be obtained.

Before any interpreter is used he should be thoroughly briefed on the vital importance of his role in obtaining accurate translations for use in case study information. Interpreters should also be cautioned that they are merely to translate and not evaluate. Any person acting as an interpreter shall provide the school district with written affirmation that he will respect the confidentiality of any communication which may transpire as a part of his role as Interpreter. When an interpreter is used, his name should become a part of the testing record.

Pupils making transition from classes for the Educable Mentally Retarded (pursuant to Education Code Section 6902) to grades in the regular public school should be placed in an educational program, with children of comparable age, based upon the developmental, social, physical and educational needs of the individual pupil, utilizing the persons who are most familiar with the needs of such pupils.

For pupils making the transition from classes for the Educable Mentally Retarded to the regular grades of the public school, the regular program supplementation should include as much individual, small group, or other special attention as possible.

Districts and county superintendents are urged to take early steps to implement changes contained in the enclosed regulations and the instructions in this memorandum. Of course, note should be taken of the fact that the regulations also cover (a) integrated programs and (b) experimental programs for the mentally retarded.

If there are questions, please write.

Attachment

APPROVED:

E. Gonzalez
Acting Deputy Superintendent for Programs and Legislation
A resolution by the State Board of Education to repeal Sections 3404, 3411, 3443, and 3448 of, to amend Sections 3401, 3407, 3411, 3442 of, to add Section 3413 to, and to add Article " (commencing with Section " ) to Chapter 3 of Division 3 of Part I of, Title 5 of the California Administrative Code, relating to mentally retarded minors.

Be it resolved by the State Board of Education, acting under the authority of, and implementing, interpreting or making specific Education Code Sections 152, 6904.3 and 6906, and pursuant to the Administrative Procedure Act, that:

Section 1. Sections 3404, 3411, 3443 and 3448 of Title 5 of the California Administrative Code are repealed.

Sec. 2. Section 3401 of said title is amended to read:

3401. Standards for Individual Evaluation Required for Admission. The individual evaluation required by Education Code Section 6902.05 for admission of a minor to any special educational program for mentally retarded minors shall be made in accordance with the following standards:

(a) The minor shall be given verbal or nonverbal individual intelligence tests selected from a list approved by the State Board of Education. If the primary language used in the home of the minor is a language other than English, the minor shall be tested by a school psychologist or other qualified person as provided in (c), and in no case shall the minor be placed in a class for the mentally retarded if his scores on a nonverbal test, or on the nonverbal portion of a test including both verbal and nonverbal portions, higher than the maximum score used as a ceiling by the school district in determining mental retardation. Such minor shall be tested in both English and the primary language used in his home and shall be permitted to respond in either language during the testing session.

(b) Other pertinent information, including a report of the psychologist's examination made under Section 6908, shall be collected and considered by the local admission committee. This shall include, but not be limited to, a study of the cultural background, home environment and learning opportunities of the minor as well as the report of the examination of the psychologist. In no case shall placement in a class for the mentally retarded be based on a low score achieved on an intelligence test without an evaluation of that score in light of the facts learned in the aforementioned studies.

(c) The school psychologist or other qualified person giving a test as specified in (a) of this section to a minor coming from a home in which the primary language used is other than English shall be competent in speaking and reading the language used by the minor in his speaking and cognitive activity. In the event a school psychologist or other qualified person having competency in such language is not
available either as an employee or through contract with another school district or county superintendent of schools, an interpreter qualified in the language used by the minor shall be provided to assure effective communication between the minor and the person administering tests specified in (a) of this section.

NOTE: Authority cited for Section 3401: Section 6902.05, Education Cod.
(1) Receive, as a part of his annual case review, a report on his adjustment and achievement in the integrated program of instruction.

(5) Be referred to the local admission committee for its reconsideration of his placement in the integrated program of instruction in case of his repeated failure to adjust and succeed.

(d) A pupil at the secondary level (comparable in chronological age to pupils enrolled in grades seven through twelve of the regular class program) participating in the program shall:

(1) Receive a minimum of two class periods of forty minutes each under the immediate supervision of the special class teacher, with the remainder of the program day under the general supervision of the special class teacher.

(2) Have the benefit of the provisions of subsections (a)(2) through (a)(5).

Sec. 5. Section 3441 of said title is amended to read:

3441. Standards for Individual Evaluation Required for Admission. The standards for individual evaluation set forth in Section 3401 shall be met. In addition, the affirmative recommendation of the local admission committee shall include a determination that the minor comes within the following criteria hereby required to be met.

(a) General. The minor does not come within the provisions of Education Code Section 6902.

(b) Physical Condition. The minor is:

(1) Ambulatory to the extent and in such physical condition that no undue risk to himself or hazard to others is involved in his daily work and play activities;

(2) Trained in toilet habits, so that he has control over his body functions to the extent that it is feasible to keep him in school.

(c) Mental, Emotional, and Social Development. The minor is:

(1) Able to communicate to the extent that he can make his wants known and to understand simple directions;

(2) Developed socially to the extent that his behavior does not endanger himself and the physical well being of other members of the group;
(3) Emotionally stable to the extent that group stimulation will not intensify his problems unduly, that he can react to learning situations, and that his presence is not inimical to the welfare of other children.

NOTE: Authority cited for Section 3441: Section 6902.05, Education Code.

Sec. 6. Section 3442 of said title is amended to read:

3442. Assignment. The responsibility for assignment of a minor to any special school or class, or experimental program rests with the administrative head of the school or employee of the school district whom he designates. He shall not make the assignment until he has received the local admission committee recommendation and its certification that the parent or guardian has been consulted as required by Education Code Section 6902.5. Upon the recommendation of the local admission committee he may assign a minor a trial placement, with designated dates for assessment of the minor's adjustment and for additional recommendations.

Sec. 7. Article 7 (commencing with Section 3500) is added to Chapter 3 of Division 3 of Part I of said title to read:

Article 7. Experimental Programs for Mentally Retarded Minors

3500. Experimental Programs; Basis of Approval. An experimental program for mentally retarded minors authorized by Education Code Section 6904.3 shall be designed to develop, test, and demonstrate new instructional methods, program organizations, differential placement of minors into programs, new curriculums, or other innovative designs.

An experimental program is not limited to the special class program of instruction or the integrated program of instruction. An experimental program design may deviate from any provision of this chapter.

NOTE: Specific authority cited for Article 6: Section 6904.3, Education Code

1501. Application for Approval of Programs. An application for prior approval to conduct an experimental program shall meet the following requirements:

(a) It shall be submitted to the Department of Education, on application forms provided by the Department of Education, at least 30 days before the date of the program's initiation.

(b) It shall contain a complete statement of the behavioral objectives of the program and a description of the specific methods of measurement and evaluation procedures designed to ascertain the degree of attainment of these objectives.
(c) It shall identify the professional staff, classroom space, materials of instruction, and other requirements necessary to insure proper operation of the experimental program.

(d) It shall include a timetable for definitive testing of any experimental program designs.

3502. Duration of Program. (a) An experimental program may be terminated by the Superintendent of Public Instruction at any time he finds that the program is not meeting the stated behavioral objectives or that the participating minors are being adversely affected.

(b) Except as provided in (a), an experimental program may be conducted for the length of time required to accomplish the objectives stated in the application as approved by the Department of Education.

3503. Waiver of Maximum Class Size Standards. If the purpose or one of the purposes of a proposed experimental program is to conduct experimental studies to determine the proper maximum special day class size standards, the application for prior approval shall include a request for a waiver of maximum class size standards set forth in Education Code Section 6902.3, or Section 6903.2, or both as appropriate.
Placement of Pupils in Classes for the Mentally Retarded

A Report to the California Legislature as Required by House Resolution 262
The House Resolution Requiring the Submission of this Report

By Assemblyman Wadie P. Deddeh:  August 20, 1970

HOUSE RESOLUTION NO. 262
Relative to mentally retarded minors

WHEREAS, House Resolution No. 444 of the 1969 Regular Session of the Legislature directed the State Board of Education and other interested organizations to study the structure of special education categories with special attention to determining whether a disproportionate number of children from ethnic minority groups were present in classes for the mentally retarded; and

WHEREAS, The Report submitted by the Department of Education in compliance with House Resolution No. 444 concluded that there does exist a disproportionate enrollment of Spanish surname and Negro pupils in classes for the educable mentally retarded in California; and

WHEREAS, The State Board of Education on January 11, 1970, adopted new standards for individual evaluation required for admission to classes for the mentally retarded which emphasize the use of the primary home language of children in testing the child's intellectual capacity; and

WHEREAS, The State Department of Education requested by memo on February 6, 1970, that these new standards be utilized as part of the annual review required by law to continue minors in classes for the mentally retarded; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF CALIFORNIA, That the Department of Education be requested to prepare a report on the subject of the misplacement of minors in classes for the mentally retarded to include, but not be limited to, an assessment of the following:

A) The number of districts which have complied with required reevaluation of children presently placed in classes for the mentally retarded;

B) The number of children that have been transferred from classes for the mentally retarded to the normal classroom;

C) The availability of learning assistance or other remedial programs to facilitate the transfer of children formerly classified as mentally retarded to the normal classroom; and

D) The current status of ethnic enrollment in special classes for the mentally retarded; and be it further

RESOLVED, That the findings and recommendations of this report be transmitted to the Legislature on or before the fifth calendar day of the 1971 Regular Session; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the State Board of Education and to the Superintendent of Public Instruction.
House Resolution No. 444, as Amended

by Assemblyman Wadip P. Deddeh

WHEREAS, The Members of the Assembly have learned of mounting criticism from representatives of certain minority groups, most particularly culturally bilingual groups, to the effect that a disproportionate number of children from such groups are assigned to classes for the mentally retarded; and

WHEREAS, The California Association of School Psychologists and Psychometrists, in a memorandum dated June, 1969, has taken note of the problems in this area; and

WHEREAS, The association believes that school districts should undertake careful reevaluation of all students in classes for the Educable Mentally Retarded starting in September, 1969; and

WHEREAS, The association further recommends that parents of such assigned students be involved in the placement of their children; and

WHEREAS, The association, together with organizations of Mexican-American parents, has formulated a plan for correcting such problems, to be presented to the State Board of Education for its consideration; now, therefore, be it

Resolved by the Assembly of the State of California, That the Members (1) welcome the cooperation between the California Association of School Psychologists and Psychometrists and the aforementioned Mexican-American organizations, (2) strongly urge the State Board of Education to give attention and aid to proposals for changes in the structure of special education categories, and (3) request suggestions from the State Board of Education for legislation on the subject of this resolution during the 1970 Regular Session of the Legislature, if any legislation is considered necessary; and

be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the State Board of Education, the Superintendent of Public Instruction, the President of the California Association of School Psychologists and Psychometrists, and to the presiding officers of the Association of Mexican-American Educators, the League of United Latin American Clubs, the Mexican-American Youth Association, the Mexican-American Political Association, the United Mexican-American Students, the American G.I. Forum, and the California Rural Legal Defense Association.

Resolution, as amended, ordered to the Consent Calendar.
Report to the Legislature on the Placement of Pupils in Classes for the Mentally Retarded

House Resolution 262, introduced by Assemblyman Wadie P. Deddeh on August 20, 1970, is a follow-up to House Resolution 444, which he had introduced in the 1969 legislative session. House Resolution 444 had requested plans for correcting the purported "disproportionate number" of children from "certain minority groups, most particularly culturally bilingual groups," who were enrolled in classes for educable mentally retarded minors. Subsequent to the adoption of House Resolution 444 and in response to the provisions of that resolution, the Department of Education and the State Board of Education submitted the report entitled "Placement of Underachieving Minority Group Children in Special Classes for the Educable Mentally Retarded" to the 1970 Legislature. Specific recommendations contained therein were incorporated in Assembly Bill 1205, which failed to emerge from subcommittee hearings.

On January 11, 1970, the State Board of Education revised the regulations that determine the eligibility of pupils assigned to classes for educable mentally retarded minors. The revised regulations require the use of specific tests approved by the State Board of Education and the administration of these tests in the language best understood by the child. (See the California Administrative Code, Title 5, Education, Section 3401. See also Education Code sections 6902.06 and 6902.08, which contain similar provisions; they are included in Appendix A.)

Reevaluation of Pupils

The Department of Education requested school districts and county superintendents of schools to report, as of October, 1969, the ethnic composition of educable mentally retarded pupils enrolled in special classes who had been (a) reevaluated; (b) transferred to regular class enrollment; or (c) transferred to another type of specialized program. Reports were received from each of the 463 school districts and 43 offices of county superintendents of schools maintaining programs for educable mentally retarded minors. The data constructed from these reports, which are valid as of August 31, 1970, are contained in Tables 4 through 10. A summary of the data is contained in Table 1.

**TABLE 1**

Number and Percent Distribution of Educable Mentally Retarded Pupils Reevaluated During the 1969-70 School Year, by Ethnic Group

<table>
<thead>
<tr>
<th>Ethnic group</th>
<th>Number enrolled (October, 1969)</th>
<th>Number reevaluated</th>
<th>Percent reevaluated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish surname</td>
<td>15,657</td>
<td>14,844</td>
<td>94.81</td>
</tr>
<tr>
<td>Other white</td>
<td>23,947</td>
<td>19,851</td>
<td>82.90</td>
</tr>
<tr>
<td>Negro</td>
<td>15,022</td>
<td>12,634</td>
<td>84.10</td>
</tr>
<tr>
<td>Oriental</td>
<td>326</td>
<td>280</td>
<td>85.89</td>
</tr>
<tr>
<td>American Indian</td>
<td>244</td>
<td>228</td>
<td>93.44</td>
</tr>
<tr>
<td>Other nonwhite</td>
<td>323</td>
<td>243</td>
<td>75.23</td>
</tr>
<tr>
<td>Total</td>
<td>55,519</td>
<td>48,080</td>
<td>86.60</td>
</tr>
</tbody>
</table>
Transfer of Pupils to Regular Classes

Reports to the State Department of Education by school districts and county superintendents of schools maintaining classes for educable mentally retarded minors show that 5,651 pupils were transferred from these classes to regular classes during the 1969-70 school year. The transfer of pupils since 1968-69 is reflected in the reduction in enrollment in special classes for educable mentally retarded minors for the last three school years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968-69</td>
<td>57,148</td>
</tr>
<tr>
<td>1969-70</td>
<td>54,078</td>
</tr>
<tr>
<td>1970-71</td>
<td>47,864</td>
</tr>
</tbody>
</table>

Availability of Supplementary Educational Programs

Education Code sections 6902.09, 6902.11, and 18102.11 (in Appendix A) authorize school districts and the offices of county superintendents of schools to provide compensatory education programs and similar supplementary educational programs to pupils formerly enrolled in classes for the educable mentally retarded. The purpose of these programs is to facilitate the transfer of these students to regular classes. The supplementary educational programs provided for these pupils in addition to their regular classes are listed in Table 2. It should be noted that many of these pupils were enrolled in two or more of these programs, and each district may have maintained several types of programs.

### Table 2

<table>
<thead>
<tr>
<th>Type of program</th>
<th>School districts</th>
<th>Pupils enrolled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensatory education</td>
<td>79</td>
<td>642</td>
</tr>
<tr>
<td>English as a second language</td>
<td>68</td>
<td>479</td>
</tr>
<tr>
<td>Tutoring</td>
<td>86</td>
<td>1,151</td>
</tr>
<tr>
<td>Remedial reading</td>
<td>165</td>
<td>1,817</td>
</tr>
<tr>
<td>Speech therapy</td>
<td>83</td>
<td>546</td>
</tr>
<tr>
<td>Regular classes with reduced pupil/teacher ratios</td>
<td>52</td>
<td>920</td>
</tr>
<tr>
<td>Other</td>
<td>106</td>
<td>917</td>
</tr>
</tbody>
</table>

Other pertinent data include the following:

- Number of school districts that transferred pupils to regular classes and maintained supplementary educational programs -- 322
- Number of school districts that transferred pupils to regular classes but maintained no supplementary educational programs -- 57
- Number of school districts that transferred no pupils to regular classes -- 84
- Number of offices of county superintendents of schools that transferred pupils to regular classes but maintained no supplementary educational programs -- 57
**Number and Percent Distribution of Pupils Enrolled in Classes for Educable Mentally Retarded Minors in 1969 and 1970, by Ethnic Group**

<table>
<thead>
<tr>
<th>Ethnic group</th>
<th>Enrollment (October, 1969)</th>
<th>Percent of total EMR enrollment</th>
<th>Enrollment (August, 1970)</th>
<th>Percent of total EMR enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish surname</td>
<td>15,657</td>
<td>28.20</td>
<td>12,276</td>
<td>25.79</td>
</tr>
<tr>
<td>Other white</td>
<td>23,947</td>
<td>43.13</td>
<td>22,125</td>
<td>46.48</td>
</tr>
<tr>
<td>Negro</td>
<td>15,022</td>
<td>27.06</td>
<td>12,253</td>
<td>25.73</td>
</tr>
<tr>
<td>Oriental</td>
<td>326</td>
<td>.59</td>
<td>359</td>
<td>.75</td>
</tr>
<tr>
<td>American Indian</td>
<td>244</td>
<td>.44</td>
<td>261</td>
<td>.55</td>
</tr>
<tr>
<td>Other nonwhite</td>
<td>323</td>
<td>.58</td>
<td>331</td>
<td>.70</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>55,519</strong></td>
<td></td>
<td><strong>47,605</strong></td>
<td></td>
</tr>
</tbody>
</table>

The reports made to the Department of Education by school districts and offices of county superintendents of schools have been collated by hand. There may be overlapping of data reported by districts and some inconsistency with previously gathered statistics. This report does, however, present a good sample of the number of pupils formerly enrolled and presently enrolled in classes for educable mentally retarded minors for comparative purposes.
### TABLE 4
Reevaluation and Transfer During School Year 1969-70 of Pupils Enrolled in Classes for Educable Mentally Retarded Minors, by County

<table>
<thead>
<tr>
<th>County</th>
<th>Enrollment (October, 1969)</th>
<th>Number reevaluated</th>
<th>Number of reevaluated pupils transferred to regular classes</th>
<th>Percent of number of reevaluated pupils transferred to regular classes</th>
<th>Number of reevaluated pupils transferred to other special education classes</th>
<th>Pupils transferred to regular classes</th>
<th>Total number of reevaluated pupils transferred</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alameda</td>
<td>2,744</td>
<td>1,592</td>
<td>174</td>
<td>9.38</td>
<td>68</td>
<td>209</td>
<td></td>
</tr>
<tr>
<td>Amador</td>
<td>33</td>
<td>35</td>
<td>-</td>
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(continued)
### TABLE 4 (Continued)

Reevaluation and Transfer During School Year 1969-70 of Pupils Enrolled in Classes for Educable Mentally Retarded Minors, by County

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<th>Number of reevaluated pupils transferred to other special education classes</th>
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Reevaluation and Transfer During School Year 1969-70 of Spanish-Surnamed Pupils Enrolled in Classes for Educable Mentally Retarded Minors, by County

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Appendix A
Education Code and California Administrative Code Sections Referred to in the Report

EDUCATION CODE

Senate Bill No. 529

CHAPTER 1562

An act to add Sections 18102.11 and 18102.12 to the Education Code, relating to special education allowances and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1970. Filed with Secretary of State September 20, 1970.]

The people of the State of California do enact as follows:

Section 1. Section 18102.11 is added to the Education Code, to read:

18102.11. In lieu of the allowances provided under Sections 18102 to 18102.9, inclusive, for mentally retarded minors and severely mentally retarded minors, with respect to such pupils reevaluated and reexamined and determined to have the mental capacity for regular school enrollment, but in addition to allowances provided for foundation program support, the Superintendent of Public Instruction shall grant, from the moneys allocated by subdivision (c) of Section 17303.5, an allowance to school districts and county superintendents of schools providing supplemental education programs to facilitate the return to the regular school program of mentally retarded minors and severely mentally retarded minors who have been in special day classes, but who, upon being reevaluated or reexamined, are determined to have the mental capacity for regular school enrollment.

The allowance shall be an amount equal to the allowance computed pursuant to Section 18102.2, and Section 18102.8, if applicable. The allowance shall be granted for not more than the two next succeeding fiscal years, following the retesting under the direction of the Department of Education.

The allowance shall be granted for each of the two next succeeding fiscal years, following the reevaluation or reexamination.

Whenever a school district or county superintendent of schools or the Superintendent of Public Instruction determines that an eligible student has made satisfactory academic progress so that he may be integrated into the regular school program, the district shall be ineligible for further support for such student pursuant to this article and the district’s apportionment shall be likewise reduced.

This section shall not be operative on or after July 1, 1972.

Section 2. Section 18102.12 is added to the Education Code, to read:

18102.12. Beginning with the 1970-1971 fiscal year, for each special educational program for which an allowance is provided under Section 18102.11, each school district and each county superintendent of schools maintaining such program shall report annually to the Superintendent of Public Instruction, on forms he shall provide, all expenditures and income related to each such program.
If the Superintendent of Public Instruction, in consultation with the Director of Special Education, determines that the current expense of operating a special program does not equal or exceed the total of basic state aid and state equalization aid provided for support of the regular foundation program per unit of average daily attendance and the allowance provided under Section 18102.11, and any amount of local tax funds contributed toward the support of the foundation programs for each pupil in average daily attendance in the special program, then the amount of such deficiency shall be withheld from state apportionments to the school district or the county superintendent of schools, as the case may be, in the succeeding fiscal year in accordance with the procedure prescribed in Section 17414.

This section shall not be operative on or after July 1, 1972.

Sec. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that pupils who have been incorrectly placed in classes for mentally retarded and severely mentally retarded may be placed in the regular school program as quickly as possible, it is necessary that this act take effect immediately.

Assembly Bill No. 1825

CHAPTER 1543

An act to add Sections 6902.06, 6902.08, 6902.09, 6902.10, 18102.11, and 18102.12 to the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1970. Filed with Secretary of State September 20, 1970.]

The people of the State of California do enact as follows:

SECTION 1. Section 6902.06 is added to the Education Code, to read:

6902.06. Before any minor is admitted to a special education program for mentally retarded minors established pursuant to this chapter, the minor shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the minor is most fluent and has the best speaking ability and capacity to understand. Such tests shall be selected from a list approved by the State Board of Education.

Sec. 2. Section 6902.08 is added to the Education Code, to read:

6902.08. All minors presently participating in special education programs for the mentally retarded under the provisions of Sections 6901 to 6913, inclusive, and in Sections 895 to 895.10, inclusive, shall be retested according to the provisions of Section 6902.06 prior to the conclusion of the 1970 calendar year.

Sec. 3. Section 6902.09 is added to the Education Code, to read:

6902.09. Any minor who is determined to be misclassified in a special education program for the mentally retarded pur-
to Section 6902.08 shall be withdrawn from such a program upon consultation with his parents or guardian. Such a minor may be placed in a compensatory education program or any similar supplementary educational program conducted by the district with the goal of accelerating his educational attainment so that he may participate in the regular instruction of the district.

Sec. 4. Section 6902.10 is added to the Education Code, to read:

6902.10. The Superintendent of Public Instruction shall annually report to the State Board of Education on those districts in which there is a significant variance in racial and ethnic composition between special education classes for mentally retarded minors established pursuant to Sections 6901 to 6913 and the regular enrollment of the district.

Sec. 5. Section 18102.11 is added to the Education Code, to read:

18102.11. In lieu of the allowances provided under Sections 18102 to 18102.9, inclusive, for mentally retarded minors and severely mentally retarded minors, with respect to such pupils reevaluated and reexamined and determined to have the mental capacity for regular school enrollment, but in addition to allowances provided for foundation program support, the Superintendent of Public Instruction shall grant, from the moneys allocated by subdivision (c) of Section 17303.5, an allowance to school districts and county superintendents of schools providing supplemental education programs to facilitate the return to the regular school program of mentally retarded minors and severely mentally retarded minors who have been in special day classes, but who, upon being reevaluated or reexamined, are determined to have the mental capacity for regular school enrollment.

The allowance shall be an amount equal to the allowance computed pursuant to Section 18102.2, and Section 18102.3, if applicable. The allowance shall be granted for not more than the two next succeeding fiscal years, following the retesting under the direction of the Department of Education.

The allowance shall be granted for each of the two next succeeding fiscal years, following the reevaluation or reexamination.

Whenever a school district or the Superintendent of Public Instruction determines that an eligible student has made satisfactory academic progress so that he may be integrated into the regular school program, the district shall be ineligible for further support for such student pursuant to this article and the district’s apportionment shall be likewise reduced.

This section shall not be operative on or after July 1, 1972.

Sec. 6. Section 18102.12 is added to the Education Code, to read:

18102.12. Beginning with the 1970-1971 fiscal year, for each special educational program for which an allowance is provided under Section 18102.11, each school district and each county superintendent of schools maintaining such program shall report annually to the Superintendent of Public Instruction, on forms he shall provide, all expenditures and income related to each such program.

If the Superintendent of Public Instruction, in consultation with the Director of Special Education, determines that the current expense of operating a special program does not equal or exceed the total of basic state aid and state equalization aid provided for support of the regular foundation program per unit of average daily attendance and the allowance provided under Section 18102.11, and any amount of local tax funds
contributed toward the support of the foundation programs for each pupil in average daily attendance in the special program, then the amount of such deficiency shall be withheld from state apportionments to the school district or the county superintendent of schools, as the case may be, in the succeeding fiscal year in accordance with the procedure prescribed in Section 17414.

This section shall not be operative on or after July 1, 1972.

Sec. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that pupils who have been incorrectly placed in classes for mentally retarded and severely mentally retarded may be placed in the regular school program as quickly as possible, it is necessary that this act take effect immediately.
CALIFORNIA ADMINISTRATIVE CODE,
TITLE 5, EDUCATION

3401. Standards for Individual Evaluation Required for Admission. The individual evaluation required by Education Code Section 6902.05 for admission of a minor to any special educational program for mentally retarded minors shall be made in accordance with the following standards:

(a) The minor shall be given verbal or nonverbal individual intelligence tests selected from a list approved by the State Board of Education. If the primary language used in the home of the minor is a language other than English, the minor shall be tested by a school psychologist or other qualified person as provided in (c), and in no case shall the minor be placed in a class for the mentally retarded if he scores on a nonverbal test, or on the nonverbal portion of a test including both verbal and nonverbal portions, higher than the maximum score used as a ceiling by the school district in determining mental retardation. Such minor shall be tested in both English and the primary language used in his home and shall be permitted to respond in either language during the testing session.

(b) Other pertinent information, including a report of the psychologist's examination made under Section 6908, shall be collected and considered by the local admission committee. This shall include, but not be limited to, a study of the cultural background, home environment and learning opportunities of the minor as well as the report of the examination of the psychologist. In no case shall placement in a class for the mentally retarded be based on a low score achieved on an intelligence test without an evaluation of that score in light of the facts learned in the aforementioned studies.

(c) The school psychologist or other qualified person giving a test as specified in (a) of this section to a minor coming from a home in which the primary language used is other than English shall be competent in speaking and reading the language used by the minor in his speaking and cognitive activity. In the event a school psychologist or other qualified person having competency in such language is not available either as an employee or through contract with another school district or county superintendent of schools, an interpreter qualified in the language used by the minor shall be provided to assure effective communication between the minor and the person administering tests specified in (a) of this section.

Note: Specific authority cited: Section 6902.05, Education Code.

History: 1. Amendment filed 1-10-70; effective thirtieth day thereafter. (Reg. later 70, No. 8).
## Appendix B

### Form Used for the Collection of Data with Total Figures

REPORT ON THE REEVALUATION OF PUPILS ENROLLED IN CLASSES FOR EDUCABLE MENTALLY RETARDED (EMR) PURSUANT TO CALIFORNIA ADMINISTRATIVE CODE TITLE 5 SECTION 3401 AND MEMORANDUM DATED FEBRUARY 6, 1970 SIGNED BY CHARLES H. WATSON

**NOTE:** The instructions for filling in Column 1 and Column 2 have been placed on the back of this form.

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<th>Other White</th>
<th>Negro</th>
<th>Oriental</th>
<th>American Indian</th>
<th>Other Non White</th>
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TOTS - ALL COUNTIES

**(Name of School District or County Office)**

**(Date)**

**(Superintendent)**

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*December 1, 1970 - Includes Late Reports*
Report on pupils enrolled in classes for EMR who come from homes in which the primary spoken language is other than English and who have been interviewed and examined both in English and in the primary language used in the home.

Report on pupils enrolled in classes for EMR who have gone through the annual review and reevaluation including any testing required. Recognizing that the annual review will be ongoing throughout the year, it is suggested that following the reevaluation of pupils described in Column 1, you proceed to review pupils in this order: (1) Negro pupils, (2) pupils of borderline intelligence irrespective of ethnic origin, (3) pupils from disadvantaged backgrounds, (4) others.

This report should cover only the school year 1969-70 and one copy of this report should be submitted by August 31, 1970 to the Superintendent of Public Instruction, Bureau for Mentally Exceptional Children, California State Department of Education, 721 Capitol Mall, Sacramento, California 95814.
Senate Bill No. 1317

CHAPTER 1569

An act to add Sections 6902.06 and 6902.07 to the Education Code, relating to education of mentally retarded minors.

[Approved by Governor September 20, 1970. Filed with Secretary of State September 20, 1970.]

The people of the State of California do enact as follows:

Section 1. Section 6902.06 is added to the Education Code, to read:

6902.06. Before any minor is admitted to a special education program for mentally retarded minors established pursuant to this chapter or Article 10 (commencing with Section 895) of Chapter 4 of Division 3, the minor shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the minor is most fluent and has the best speaking ability and capacity to understand. Such tests shall be selected from a list approved by the State Board of Education.

Sec. 2. Section 6902.07 is added to the Education Code, to read:

6902.07. No minor shall be placed in a special education class for the mentally retarded if he scores higher than two standard deviations below the norm, considering the standard measurement of error, on an individual intelligence test selected from a list approved by the State Board of Education. No minor shall be placed in a special education program for the mentally retarded when he is being tested in a language other than English if he scores higher than two standard deviations below the norm, considering the standard measurement of error, on the nonverbal intelligence test or on the nonverbal portion of an individual intelligence test which includes both verbal and nonverbal portions.

A minor may be placed in a special education program for the mentally retarded if he scores two standard deviations, or more, below the norm on an individual intelligence test selected from a list approved by the State Board of Education, providing that a complete psychological examination by a credentialed school psychologist investigating such factors as developmental history, cultural background, and school achievement substantiates the retarded intellectual development indicated by the achieved test scores.
No minor shall be placed in a special education class for the mentally retarded without the written consent of the parent or guardian of the child after a complete explanation of the special education program.

Sec. 3. The Department of Education shall, following each school year during which this act was in effect, submit a report to the Legislature on the results of testing and placement of minors in special education programs for mentally retarded minors.

Sec. 4. Sections 6902.06 and 6902.07, as added to the Education Code by this act, shall be operative commencing on October 1, 1971, and shall remain operative only until September 30, 1973.
Senate Bill No. 33

CHAPTER 78

An act to amend Section 4 of Chapter 1569 of the Statutes of 1970, to amend and renumber Section 6902.06 of the Education Code as added by Chapter 1569 of the Statutes of 1970, to amend and renumber Section 6902.07 of the Education Code, to add Sections 6902.06 and 6902.095 to the Education Code, and to repeal Section 6902.06 of the Education Code as added by Chapter 1543 of the Statutes of 1970, relating to the education of mentally retarded minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 18, 1971. Filed with Secretary of State May 18, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 6902.06 of the Education Code as added by Chapter 1543 of the Statutes of 1970 is repealed.

Sec. 2. Section 6902.06 is added to the Education Code, to read:

6902.06. The Legislature finds and declares that the people of California have a primary interest in providing equal educational opportunity to children of all ethnic, socioeconomic, and cultural groups and that pupils should not be assigned to special classes or other special programs for the mentally retarded if they can be served in regular classes.

The Legislature hereby finds and declares that there should not be disproportionate enrollment of any socioeconomic, minority, or ethnic group pupils in classes for the mentally retarded and that the verbal portion of the intelligence tests which are utilized by some schools for such placement tends to underestimate the academic ability of such pupils.

Sec. 3. Section 6902.06 of the Education Code as added by Chapter 1569 of the Statutes of 1970 is amended and renumbered to read:

6902.07. Before any minor is admitted to a special education program for mentally retarded minors established pursuant to this chapter or Article 10 (commencing with Section 895) of Chapter 4 of Division 3, the minor shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the minor is most fluent and has the best speaking ability and capacity to understand. Such tests shall be selected from a list approved by the State Board of Education.
SEC. 4. Section 6902.07 of the Education Code is amended and renumbered to read:

6902.085. No minor shall be placed in a special education class for the mentally retarded if he scores higher than two standard deviations below the norm, considering the standard error of measurement, on an individual intelligence test selected from a list approved by the State Board of Education except as provided in Section 6902.095.

No minor shall be placed in a special education program for the mentally retarded when he is being tested in a language other than English if he scores higher than two standard deviations below the norm, considering the standard error of measurement, on the nonverbal intelligence test or on the nonverbal portion of an individual intelligence test which includes both verbal and nonverbal portions except as provided in Section 6902.095.

No minor may be placed in a special education program for the mentally retarded unless a complete psychological examination by a credentialed school psychologist investigating such factors as developmental history, cultural background, and school achievement substantiates the retarded intellectual development indicated by the individual test scores. This examination shall include estimates of adaptive behavior. Until adaptive behavior scales are normed and approved by the State Board of Education, such adaptability testing shall include, but is not limited to, a visit, with the consent of the parent or guardian, to the minor’s home by the school psychologist or a person designated by the chief administrator of the district, upon the recommendation of the school psychologist, and interviews of members of the minor’s family at their home. If the language spoken in the home is other than English, such interviews shall be conducted in the language of the home.

After a student has been screened and referred, written permission for the individual psychological evaluation shall be secured in a conference with a school official and the parent or guardian or his authorized representative. After the individual psychological evaluation is completed, the psychologist shall confer with the parent or guardian or his authorized representative regarding the recommendation to the admission committee. Following the admission committee meeting, a committee member shall meet with the parent or guardian or his authorized representative to discuss the committee conclusion and to obtain written permission for placement.

No minor shall be placed in a special education class for the mentally retarded without the written consent of the parent or guardian of the child after a complete explanation of the
special education program. Permission documents for individual psychological evaluation and placements, shall be written in English and in the language of the parent or guardian. Conferences and notices to inform the parent or guardian of the nature of the placement process, the committee conclusion, and the special education program shall be in the home language of the parent or guardian.

Sec. 5. Section 6902.095 is added to the Education Code, to read:

6902.095. In exceptional circumstances, after an examination of all pertinent information, including relevant cultural and adaptive behavior data, the admission committee may by unanimous vote agree to place a minor in a special education class for the mentally retarded in spite of an individual test score higher than two standard deviations below the norm considering the standard error of measurement. The committee shall take notice of and be guided by the legislative intent expressed in Section 6902.06. Upon such unanimous agreement, a written report indicating the decision of the committee, and the reasons therefor, shall be sent to the parent or guardian of the minor.

Beginning in the 1971-1972 school year, each school district shall report annually to the Department of Education:

(a) The ethnic breakdown of the children placed in special education classes for the mentally retarded in the district.

(b) The ethnic breakdown of the children newly placed in such classes:

(1) By the standard admissions procedure, and

(2) By the exceptional unanimous consent procedure described in this section.

If the percentage of children from any minority ethnic group in such classes varies by 15 percent or more from the percentage of such children in the district as a whole, an explanation for such variation shall be attached to the report to the Department of Education.

Sec. 6. Section 4 of Chapter 1569 of the Statutes of 1970 is amended to read:

Sec. 4. Section 6902.06 and 6902.07, as added to the Education Code by this act, shall be operative commencing on October 1, 1971.

Sec. 7. Sections 1 to 6, inclusive, of this act shall become operative on October 1, 1971.

Sec. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall
go into immediate effect. The facts constituting such necessity are:

In order to avoid interruption of appropriate educational planning for pupils needing specialized assistance, and to facilitate coordination with previous legislation, it is necessary that this act take effect at the earliest possible time.
Special Education Memorandum

Date: August 31, 1971

TO: County and District Superintendents of Schools

FROM: Joseph P. Rice, Chief
Bureau for Mentally Exceptional Children
(916) 445-9420

SUBJECT: Policies and Procedures for the Identification, Assessment, and Placement of Minors to Special Education Programs for the Educable Mentally Retarded, Pursuant to Education Code Section 6902, Incorporating the Provisions of SB 33 and CAC, Title 5, Regulations.

SB 33 (Chapter 78, Statutes of 1971) has direct and immediate implications for special education programs for the mentally retarded. The attached policies and procedures include minimum standards for the identification, assessment, and placement of EMR minors. These have been developed by the State Department of Education as authorized in Education Code 6906. The legal provisions of CAC, Title 5, have also been incorporated. Children of all ethnic, socio-economic, and cultural groups shall be provided with equal education opportunities and shall not be placed in classes or other special programs for the educable mentally retarded if they can be served in regular classes. The attached have been developed to assure that each minor receives a complete and individual evaluation and that proper educational placement is made for that minor. These guidelines apply to children presently in EMR programs who have not had a complete evaluation in accordance with these guidelines.

It is recognized that implementation of these policies and procedures may be difficult. The professional staff of the Division of Special Education should be contacted to work directly with school districts and county offices whenever these policies and procedures cannot be immediately implemented.

APPROVED:

Leslie Brinegar
Associate Superintendent
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SCREENING AND REFERRAL

Each county superintendent of schools and each local school district charged with the responsibility of establishing and maintaining special education programs for mentally retarded minors should maintain an active screening and referral process. Referrals for additional screening and possible individual evaluation might be made by:

1. The minor's parent, guardian, or his authorized representative.
2. Any teacher having instructional responsibilities for the minor.
3. A principal, vice-principal, counselor.
4. The school nurse or social worker.
5. The minor's physician.
6. Other persons designated by the administrator for such responsibilities.

Pupils should be referred to the school psychologist and the Local Admission Committee for study who demonstrate a general pattern of low academic achievement, mal-adaptive or immature behavior, poor social relationships and consistently low standardized test scores.

WRITTEN PERMISSION FOR PSYCHOLOGICAL EVALUATION

"After a student has been screened and referred, written permission for the individual psychological evaluation shall be secured in a conference with a school official and the parent or guardian or his authorized representative.... Permission documents for individual psychological evaluation, and placements, shall be written in English and in the language of the parent or guardian. Conferences and notices to inform the parent or guardian of the nature of the placement process, the committee conclusion, and the special education program shall be in the home language of the parent or guardian." [SB 33: Education Code Section 6902.085.]

The parent or guardian should be given the following information during this conference:

1. A complete explanation as to the reasons for the initial referral.
2. An explanation as to the nature of a psychological evaluation and the possible types of tests to be administered.
3. A complete explanation as to the use of confidential information, such as who will have access to the psychological evaluation and test results. See Education Code Sections 10751, 10757, 11801, 11802, 11804, and 11805.
INDIVIDUAL CASE STUDY

"No minor may be placed in a special education program for the mentally retarded unless a complete psychological examination by a credentialed school psychologist investigating such factors as developmental history, cultural background, and school achievement substantiates the retarded intellectual development indicated by the individual test scores. This examination shall include estimates of adaptive behavior." [SB 33: Education Code Section 6902.085.]

The case study which includes all data collected shall be thorough. All placements made in special education programs for the mentally retarded must be justified on the available objective data collected. The report on the case study should reflect this and draw from a careful analysis of the following information:

I. Educational History and School Achievement

A. Statements from the minor's teacher that specify work habits, academic achievements, learning strengths and weaknesses, situations in which the child has experienced success and failure, and teaching techniques that have been successful or unsuccessful. This report should include a description, in behavioral terms, of the effects of success and failure in the child's school environment, including any interpersonal relationships the pupil has formed.

B. Records of academic achievement including scores on group standardized tests.

C. Records of communication skills including language development, verbal expression abilities, and written language skills as needed for school success: This should include an investigation of the child's home language skills.

D. Reports of any special help programs the pupil may have been in (i.e., remedial P.E., speech therapy, Miller-Unruh, Title III, etc.), previous referrals, retentions, and number of schools attended.

II. Psychometric Assessment

A. "Before any minor is admitted to a special education program for mentally retarded minors... the minor shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the minor is most fluent and has the best speaking ability and capacity to understand. Such tests shall be selected from a list approved by the State Board of Education." [SB 33: Education Code Section 6902.07.] Interpreters may be used only when it is impossible to locate a credentialed psychologist to directly interview the child in his primary home language. Whenever persons other than credentialed school personnel are used as interpreters, written parental approval should be obtained. When an interpreter is needed, the school psychologist shall select an interpreter from the following:
1. A psychologist trainee or intern currently enrolled in a professional training program and leading toward eventual certification as a school psychologist or other person qualified to serve as a school psychologist and competent in both languages.

2. Certificated employees of the district competent in both languages.

3. Classified employees of the school district competent in both languages.

4. Persons from the business and professional communities competent in both languages.

5. Persons nominated by the parent in writing.

Before any interpreter is used he should be thoroughly briefed on the vital importance of his role in obtaining accurate translations for use in case study information. Interpreters should also be cautioned that they are merely to translate and not evaluate. Any person acting as an interpreter shall provide the school district with written affirmation that he will respect the confidentiality of any communication which may transpire as a part of his role as interpreter. When an interpreter is used, his name should become a part of the lasting record. A non-English speaking child shall be given a verbal and nonverbal intelligence test.

One or more of the following approved individual intelligence tests shall be administered.

1. Leiter International Performance Scale
2. Stanford Binet (L-M)
3. WAIS (Wechsler Adult Intelligence Scale)
4. WISC (Wechsler Intelligence Scale for Children)
5. WPPSI (Wechsler Pre-school and Primary Scale of Intelligence)

Authorized Spanish version of these tests should be used as appropriate.

The following verbal and nonverbal intelligence tests may be used as a supplement to, but not in place of, a test from the above list.

1. Arthur Point Scale of Performance Tests, Revised Form II
2. Cattell Infant Intelligence Scale
3. Columbia Mental Maturity Scale, Revised Edition
4. Draw-a-person (Goodenough)
5. Full Range Picture Vocabulary
6. Gesell Developmental Schedules
7. Goodenough-Harris Drawing Test
8. Merrill-Palmer Pre-School Performance
9. Peabody Picture Vocabulary Test
10. Raven Progressive Matrices
11. Slosson Intelligence Test
12. Van Alstyne Picture Vocabulary.
The program expectations and academic standards being placed on the minor at the present time must be identified and evaluated.

C. The psychologist should use such instruments as the Bender Gestalt, Frostig Developmental Test of Visual Perception, and the Illinois Test of Psycholinguistic Abilities whenever necessary to properly assess the pupil or identify specific learning disabilities.

D. Results of prior group or individual tests given to the minor.

III. Social, Economic, and Cultural Background

This case study "shall include estimates of adaptive behavior. Until adaptive behavior scales are normed and approved by the State Board of Education, such adaptability testing shall include, but is not limited to, a visit, with the consent of the parent or guardian, to the minor's home by the school psychologist or a person designated by the chief administrator of the district, views of members of the minor's family at their home. If the language spoken in the home is other than English, such interviews shall be conducted in the language of the home." [SB 33: Education Code Section 6902.085.]

Definition of Adaptive Behavior

Adaptive behavior refers to an individual's ability to perform successfully in the social roles considered appropriate for his age and sex.

A. Additional information on the family background should be gathered. This information should include:

1. Language used in the home
2. Family mobility
3. Occupational history and status of parent
4. Sibling relationships
5. Isolation of home, family, and child within the environment
6. Developmental materials present in the home such as educational toys, books, or reading materials, etc.
7. Observations of the home and environment reflecting factors which could be influential upon the educational process.

IV. Developmental History

A developmental history of each minor should be gathered during conferences with parent and/or guardian. In order to establish mental retardation, the developmental records should reveal significant delays and/or retarded development in such behavior as walking, talking, appropriate affective responses, assumption of responsibility, obedience within the family structure, play activities, and peer relationships within the home and in the community.

In collecting the developmental history, standardized instruments such as the Vineland Social Maturity Scale and Gesell's Developmental Schedules should be used.
V. Peer Relationships

A study of the minor's present peer, classroom and home relationships to determine if there are such inadequacies as: inability to maintain social roles, lack of friendships with age peers, inability to comprehend and respond to ordinary school and social demands, lack of lasting social involvement in the school and the home.

VI. Health History

A report on the health and physical condition of the minor should include the results of any recent physical examinations. Appropriate recommendations should be made for the remediation of other related health problems.

It is important to rule out the possibility that a physical condition is the primary handicap.

The results of visual and auditory tests shall be included and shall have been administered within the preceding twelve month period. Any impairment in sensory and motor functioning should be noted, together with recommendations for educational and physical rehabilitation.

VII. Psychological Adjustment

The minor's overall adjustment and his feelings about himself should be examined by the use of structured observations, checklists, or other instruments. Pertinent information regarding the minor's self concept, his level of awareness, his level of aspiration, and preference patterns should be included.

VIII. Other pertinent information that would contribute to the recommendations by the Admission Committee.

When differential diagnostic problems arise which are out of the area of expertise of a school psychologist, the parent or guardian shall be notified according to Education Code Section 11803.

After the individual psychological evaluation is completed the psychologist shall confer with the parent or guardian or his authorized representative regarding the recommendation to the admission committee. [SB 33: Education Code Section 6902.08]

The committee should consider for EMR placement pupils whose psychological examination substantiates retarded intellectual development.

LOCAL ADMISSION COMMITTEE

The following functions shall be performed by the Local Admission Committee:

1. Careful consideration and analysis of the complete case study of each minor being recommended for placement in a special education program for the mentally retarded.

2. Recommendations for appropriate educational placement shall be made after a full review of all the information available on the minor, and specific efforts shall be made to identify the best
within the district.

Final recommendations of the committee may include one of the following:

A. Ineligible for placement in special education programs for mentally retarded minors -- remain in regular instructional program.

B. Referral for consideration for other special education programs -- meanwhile, remain in regular instructional programs.

C. Placement in special education programs for the educable mentally retarded minors under Education Code Section 6902:
   1. Integrated program of instruction
   2. Special day class
   3. Minimum day work study
   4. Experimental program

D. Placement in special education program for mentally retarded minors under Education Code Section 6903.

E. Request for additional study and psychological evaluation upon which to base a recommendation.

F. Other professional recommendations as may be indicated by individual cases.

3. Recommendations for particular educational approaches, methods, or services most appropriate to meet the individual pupil's needs. This could include recommendations for such additional services as remedial P.E., speech therapy, or counseling.

Whenever feasible, maximum integration into regular classes should be the preferred program.

Especially in initial placement, no placement or assignment should be considered permanent. Each pupil should continually be re-evaluated and his placement reviewed on a planned schedule.

"No minor shall be placed in a special education class for the mentally retarded if he scores higher than two standard deviations below the norm, considering the standard error of measurement, on an individual intelligence test selected from a list approved by the State Board of Education except as provided in Section 6902.095." [SB 33: Education Code Section 6902.085.]

No minor shall be placed in a special education class for the mentally retarded if he scores higher than one standard deviation below the norm considering the standard error of measurement on an individual intelligence test selected from a list approved by the State Board of Education.

No minor shall be placed in a special education program for the mentally retarded when he is being tested in a language other than English if he scores higher than two standard deviations
below the norm, considering the standard error of measurement, on the nonverbal portion of an individual intelligence test which includes both verbal and nonverbal portions except as provided in Education Code Section 6902.095.

4. A written report of the conference meeting of the Local Admission Committee shall be prepared which shall include all of the following:

A. The committee's findings regarding the type and extent of the pupil's assets and handicaps and the relationship of these assets and handicaps to the educational needs of the pupil.

B. The committee's findings regarding the ability of the pupil to profit from participation in a program for EMR minors and any specific recommendation regarding particular methods or service from which the minor might be reasonably expected to profit.

C. The committee's decision regarding eligibility and recommendations with respect to placement of the pupil in the most appropriate special education program.

D. The names and titles of the committee members present at the meeting at which the recommendations were made.

E. The specific program recommendations made by the committee including recommendations for any needed additional services, i.e., remedial P.E., speech therapy, counseling, ESL.

5. Eligibility for placement in the program for the educable mentally retarded shall be recommended by a majority of the Local Admission Committee, the school psychologist concurring. Recommendations resulting from split decisions shall be reviewed bi-annually.

Program options, i.e., integrated program of instruction, work study, special day classes, experimental program shall be determined by the majority vote of the committee. A concurring vote from the psychologist is not necessary.

Assignment into a specific class or with a particular teacher is an administrative responsibility and is not the function of the Admission Committee.

6. Any members of the Local Admission Committee dissenting from the final committee recommendation shall attach to the final recommendation a statement of reasons for such objection and their alternative recommendations.

CONFERENCE WITH PARENT

"Following the admission committee meeting, a committee member shall meet with the parent or guardian or his authorized representative to discuss the committee conclusion..." [SB 33: Education Code Section 6902.085.] The parent or guardian must be given an exact description of the special education program. It must also be explained that this program is for pupils who have retarded intellectual development.
Conferences and notices to inform the parent or guardian of the nature of the placement process, the committee conclusion, and the special education program shall be in the home language of the parent or guardian. [SB 33: Education Code Section 6902.085.]

The parent should have the opportunity of visiting the special class program in which the minor was recommended for placement. A report of this conference with the parent shall be made a part of the case study files of the minor.

**WRITTEN CONSENT**

"No minor shall be placed in a special education class for the mentally retarded without the written consent of the parent or guardian of the child. Permission documents for individual psychological evaluation, and placements, shall be written in English and in the language of the parent or guardian." [SB 33: Education Code Section 6902.085.]

**ASSIGNMENT TO AN EMR PROGRAM**

It is recommended that the school establish procedures to assist the minor in his new special education placement. The benefits of the assignment should be explained to the pupil and the parent and an opportunity to meet the special education personnel and to visit the special classes or other program settings should be arranged.

Before attempting to work with the pupil, the special class teacher should be provided with a complete summary of the case study together with all the specific program recommendations of the members of the Local Admission Committee. The school psychologist should provide the specially assigned teachers with the information concerning the pupil that will assist in developing appropriate learning activities for the minor. The initial placement should be considered flexible. The pupil should be frequently evaluated as to his progress and adjustment to the special education program. If the placement is considered inappropriate the pupil should be transferred to a more appropriate program such as EH, Transition, Remedial Reading, etc.

**PLACEMENT IN EXCEPTIONAL CIRCUMSTANCES**

"In exceptional circumstances, after an examination of all pertinent information, including relevant cultural and adaptive behavior data, the admission committee may by unanimous vote agree to place a minor in a special education class for the mentally retarded in spite of an individual test score higher than two standard deviations below the norm considering the standard error of measurement. The committee shall take notice of and be guided by the legislative intent expressed in Section 6902.06. Upon such unanimous agreement, a written report indicating the decision of the committee, and the reasons therefore, shall be sent to the parent or guardian of the minor." [SB 33: Education Code Section 6902.095.]

It is recommended that pupils placed in an EMR program in exceptional circumstances be integrated into the regular program whenever possible.

**ANNUAL REPORT TO DEPARTMENT OF EDUCATION**

Schools must be aware of the following legislative intent:

"The Legislature finds and declares that the people of California have a primary interest in providing equal educational opportunity to children of all ethnic, socioeconomic, and cultural groups and that pupils should not be assigned to special classes or other
special programs for the mentally retarded if they can be served in regular classes.

The Legislature hereby finds and declares that there should not be a disproportionate enrollment of any socioeconomic, minority, or ethnic group pupils in classes for the mentally retarded and that the verbal portion of the intelligence tests which are utilized by some schools for such placement tends to underestimate the academic ability of such pupils." [SB 33: Education Code Section 6902.06.]

"Beginning in the 1971-72 school year, each school district shall report annually to the Department of Education:

(A) The ethnic breakdown of the children placed in special education classes for the mentally retarded in the district.

(B) The ethnic breakdown of the children newly placed in such classes:

(1) By the standard admissions procedure, and
(2) By the exceptional unanimous consent procedure, described in this section.

If the percentage of children from any minority ethnic group in such classes varies by 15 percent or more from the percentage of such children in the district as a whole, an explanation for such variation shall be attached to the report to the Department of Education." [SB 33: Education Code Section 6902.095.] Example: A district is 50% Spanish surname. A report and explanation will be required if the makeup of the total district EMR classes is 65% or more Spanish surname.

This report will be analyzed by the State Department of Education and further investigation may follow. This report to the Department of Education shall be included with the annual ethnic survey conducted by the Bureau of Inter-Group Relations.

The ethnic groups to be reported in this annual report are the groups to be considered for the reporting in Education Code Section 6902.095.

**SUMMARY OF PARENT-SCHOOL CONTACTS**

In the summary, the following parent contacts shall be made by school officials:

1. Written permission must be obtained for psychological testing. This is to be done by a school official.

2. A visit must be made to the minor's home to estimate adaptive behavior and interview members of the minor's family. This must be done with prior parental consent. This is to be done by the school psychologist or a person designated by the chief administrator of the district upon the recommendation of the school psychologist.

3. The school psychologist's recommendations to the admission committee must be discussed with the parent by the school psychologist after completing the individual psychological evaluation.
4. The parent must be given a complete explanation of the special education program and then, if recommended, permission requested for the minor's placement in an EMR program. A member of the admission committee must meet with the parent or guardian to discuss the committee conclusions.

5. Subsequent to the identification procedures outlined above, a written report indicating the decision of the committee and the reasons therefore shall be sent to the parent or guardian of the minor when the said minor has been recommended for placement under the exceptional circumstances specified in Education Code Section 6902.095.

**ANNUAL REVIEW AND COMPLETE RE-EVALUATION**

The Local Admission Committee shall conduct an annual review of all minors enrolled in special education programs for the mentally retarded. The annual review shall consist of a study of data prepared and submitted from the following sources:

1. Report from the minor's special class teacher containing:
   
   A. General adjustment of the minor to the school situation.

   B. The academic progress and level of achievement should be reflected.

   C. The teacher shall indicate if the pupil is achieving the previously established program objectives. If not, an explanation as to why and recommendations for the pupil's future program shall also be included.

   D. Summary of the conference held with the minor's parents and/or guardians.

2. Reports from other instructional staff members regarding the performance of the minor.

3. Reports from other professional staff members involved in the educational program of the minor that would relate to changes in the minor's physical, social, or psychological condition. When doubt exists as to the appropriateness of the placement, the Local Admission Committee may request additional evaluation of any component.

A complete re-evaluation of each minor placed in special education programs for the educable mentally retarded shall be made at least every three years. This re-evaluation shall cover all areas of the original case study. In addition,
a complete re-evaluation shall be made available at any time the Local Admission Committee, the special class teacher, or other staff members involved in the educational program for the minor feel that this process is indicated due to a change in behavioral patterns. The person(s) requesting the re-evaluation shall set forth the reasons for such request on forms provided by the district for this purpose. This complete re-evaluation should be a joint endeavor of the Local Admission Committee and other staff involved in the educational program of the minor.
MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
        Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portuguese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

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

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.
School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.
### Appendix I

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**A.** Reading more than three years below grade level?

**B.** Reading more than two but not more than three years below grade level?

**C.** Reading more than six months but not more than two years below grade level?

**D.** Reading not more than six months below but not more than six months above grade level?

**E.** Reading more than six months but not more than two years above grade level?

**F.** Reading more than two years above grade level?

**G.** Total number of pupils in this grade, (the sum of lines A through F should equal the total number of pupils in this grade by ethnic group.)

2 0 104 1

**H.** Two years or more above for this grade?

0 0 0 0

**I.** Classified as having an IQ below 70?

**J.** (Secondary schools only) Repeating one or more subjects this year?

**K.** (Elementary schools only) Repeating the grade this year?

0 0 0 0

**L.** Transferred to juvenile authorities this school year (prior to March 31, 1969) for causes related to the pupil's behavior?

**M.** Suspended two or more times this school year (prior to March 31, 1969)?

**N.** (Secondary schools only) Enrolled primarily in classes designed to prepare them for higher education?

---

**LEGEND:** Unknown = UNK; Estimate = EST.; Not Applicable = NA.; Not Available = N; None = 0

---

18. (Elementary schools only) As of March 31, 1969 by ethnic group, how many pupils were:

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<td>Number Other</td>
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</table>

A. Repeating the first grade this year? 4
B. In the first grade, but two years or more overage for the first grade? 4

14. Give the number of pupils in membership in the following classes and grades as of March 31, 1969 by ethnic group. If data are unavailable for this date, refer to General Instructions, item B, page 2. Do not include kindergarten, prekindergarten or Head Start as the lowest grade. Start with grade 1.

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A. Lowest grade in this school (specify.) 1 95 3 1 91 0
B. Highest grade in this school (specify.) 6 96 3 0 42 1
C. Classes for the mentally retarded

Total enrollment 692 21 1 655 5

The Principal's Information Form
Mexican American Education Study Project
U.S. Commission on Civil Rights
### Appendix

<table>
<thead>
<tr>
<th>Grade 4 or specify</th>
<th>Grade 9</th>
<th>Grade 12</th>
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<tbody>
<tr>
<td></td>
<td>Number Spanish Surnamed American</td>
<td>Number Negro</td>
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<tr>
<td>A. Reading more than three years below grade level?</td>
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<tr>
<td>B. Reading more than two but not more than three years below grade level?</td>
<td></td>
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<tr>
<td>C. Reading more than six months but not more than two years below grade level?</td>
<td>1</td>
<td>45</td>
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<tr>
<td>D. Reading not more than six months below but not more than six months above grade level?</td>
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<tr>
<td>E. Reading more than six months but not more than two years above grade level?</td>
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<tr>
<td>F. Reading more than two years above grade level?</td>
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<tr>
<td>G. Total number of pupils in this grade, (the sum of lines A through F should equal the total number of pupils in this grade by ethnic group.)</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>H. Two years or more overdue for this grade?</td>
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<tr>
<td>I. Classified as having an IQ below 70?</td>
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<tr>
<td>J. (Secondary schools only) Repeating one or more subjects this year?</td>
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<tr>
<td>K. (Elementary schools only) Repeating the grade this year?</td>
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<tr>
<td>L. Transferred to juvenile authorities this school year (prior to March 31, 1969) for causes related to the pupil's behavior?</td>
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<tr>
<td>M. Suspected two or more times this school year (prior to March 31, 1969)?</td>
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<tr>
<td>N. (Secondary schools only) Enrolled primarily in classes designed to prepare them for higher education?</td>
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**Legend:**
- Unknown - UNK
- Estimate - EST
- Not Applicable - NA
- Not Available - NA
- None - 0

---

The Principal's Information Form/M

Appendix

SCHOOL HOLDING POWER RATES FOR EACH ETHNIC GROUP

ANGLO

GRADE **
1 8 12 Enter Complete College College

100.0 100.0* 86.0 49.3 23.8

MEXICAN AMERICAN

100.0 91.1 60.3 22.5 5.4

BLACK

100.0 98.6 66.8 28.8 8.3

Enter Complete College College

* Holding power rates are approximate estimates based on questionnaire data modified by information from U.S. Bureau of the Census and HEW. Consequently, rates are not to be interpreted as representing exact percentage of students retained. In this instance, a rate of 100 percent holding power for Anglos at grade 8 does not mean that no Anglo student whatsoever has left school between grades 1 and 8, but rather that nearly all students remain through that grade. (See Appendix C for detailed explanation of methodology used to estimate holding power rates).

** The figures for each grade represent the percent of students remaining after 7 months of the school year; therefore, they are an approximation of those who complete that school year. For the 12th grade enrollment, estimates suggest that less than 1 percent of those enrolled on March 31st would fail to graduate from high school.

Focus Interview Questionnaire Used as the Basis of Personal Interviews

1. What were the foremost issues in the three California EMR lawsuits, namely, Santa Ana, Soledad and San Diego?

2. What were some of the educational changes anticipated by you or by others through the filing of any one, several or all three of the EMR lawsuits?

3. What were some of the identifiable changes which can be associated with these EMR lawsuits?
   - Changes in the Chicano and larger community
   - Changes in the local school district
   - Changes in the state
   - Changes in the nation

4. What was the importance of the EMR lawsuits as you saw them? Any one, or all three?

5. What were some of the administrative reactions resulting from the EMR lawsuits?

6. What were some of the parent reactions resulting from the EMR lawsuits?

7. Do you think that the changes which came about could have occurred without the lawsuits?

8. Why do you think the EMR issues existed in the three Communities of Santa Ana, San Diego, Soledad?

9. Can you identify the key persons who played major roles either to begin or to continue the EMR lawsuit in Santa Ana, Soledad and/or San Diego?

10. What were some of the key differences between each of the three EMR lawsuits?

11. What is the current status of the respective lawsuits?

12. What are some of your recommendations for teacher training or the training of administrators?

13. What importance do you see these lawsuits having on testing?

14. What material do you have available which can help in the research of these lawsuits?
Through preliminary investigation this researcher identified key persons who had major roles in the developments surrounding the EMR lawsuits in California.

Having identified these persons, a series of 14 questions were developed as an instrument to be used for personal focus interviewing these key persons. The objective of these questions was to obtain information, motives, impressions, goals and objectives by those persons who were immediately involved. Since very little has been written in this area it was important to go to these first sources for this kind of information.

Twenty persons were identified and interviewed personally by this investigator. These persons are:

1. Walley Davis, Esq.  
   Attorney  
   Santa Ana, California

   Attorney  
   San Diego, California

3. Charles Erickson  
   Director - Urban Project  
   U.S. Commission on Civil Rights  
   Sacramento, California

4. Alen Exelrod, Esq.  
   Attorney  
   Mexican American Legal Defense and Educational Fund  
   San Francisco, California

5. Leonard Frieros  
   School Administrator  
   San Diego, California

   Special Assistant  
   Director of Civil Rights/HEW  
   Washington, D.C.

7. Joe Gonzalez  
   Junior College President  
   El Paso, Texas

8. Mary Hammond  
   Staff - Project Star in  
   San Diego, California  
   Los Angeles, California

9. Salley James  
   Consultant - USCCR  
   Los Angeles, California
10. Miquel Mendez, Esq.  
   Attorney - California Rural Legal Assistance  
   San Francisco, California

11. Alfredo Merino  
   School Administrator  
   San Bernadino, California

12. Phil Montez  
   Chief, Western Field Office USCCR  
   Los Angeles, California

13. Dr. Julian Nava  
   President  
   Los Angeles Board of Education  
   Los Angeles, California

   Lead Attorney  
   San Diego, California

15. Joe Ortega, Esq.  
   Staff Attorney  
   The Mexican American Legal Defense and Educational Fund  
   Los Angeles, California

16. Dr. Uvaldo Polomares  
   Psychologist  
   San Diego, California

17. Manuel Ramirez  
   Psychologist - University of California, Riverside  
   Riverside, California

18. Henry Santiestevan  
   Director  
   Southwest Council of La Raza  
   Washington, D. C.

19. Jack Shearer  
   Psychologist  
   University of California  
   Los Angeles, California

20. Herman Sillas, Esq.  
   Lead Attorney  
   Los Angeles, California

The responses of each of the interviewees were taped in those cases of actual personal interviews. Notes were taken from those interviews conducted by phone or letter.
Selected Bibliography


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Nalven, F. and Bierbryer, B. "Predicting Elementary School Children's Classroom Comprehension from Their WISC Results", Journal of Clinical Psychology, No. 25 (1), (1969), pp. 75-76.


Rieber, M. and Wmack, M. "The Intelligence of Pre-School Children as Related to Ethnic and Demographic Variables", Exceptional Children, No. 34 (8), (1968), pp. 609-614.


Talley, K. Effects of a Program of Special Language Instruction on the Reading and Intellectual Levels of Bilingual Children, Dissertation Abstracts, (1965), 5796.


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