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Defining equal access to educational opportunity for Mexican American children : a study of three civil rights actions affecting Mexican American students and the development of a conceptual framework for effecting institutional responsiveness to the educational needs of Mexican American children.

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DEFINING EQUAL ACCESS TO EDUCATIONAL OPPORTUNITY
FOR MEXICAN AMERICAN CHILDREN

A STUDY OF THREE CIVIL RIGHTS ACTIONS AFFECTING
MEXICAN AMERICAN STUDENTS AND THE DEVELOPMENT
OF A CONCEPTUAL FRAMEWORK FOR EFFECTING INSTITUTIONAL
RESPONSIVENESS TO THE EDUCATIONAL NEEDS OF
MEXICAN AMERICAN CHILDREN.

A Dissertation Presented

By

Blandina Cárdenas

Submitted to the Graduate School of the
University of Massachusetts
in partial fulfillment of the requirements
for the degree of

DOCTOR OF EDUCATION

May 1974

Major Area: Leadership and Administration



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DEFINING EQUAL ACCESS TO EDUCATIONAL OPPORTUNITY
FOR MEXICAN AMERICAN CHILDREN

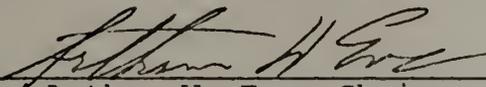
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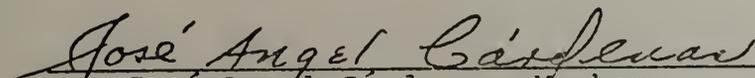
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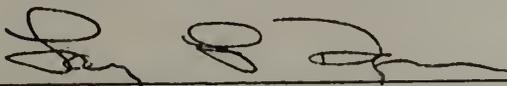
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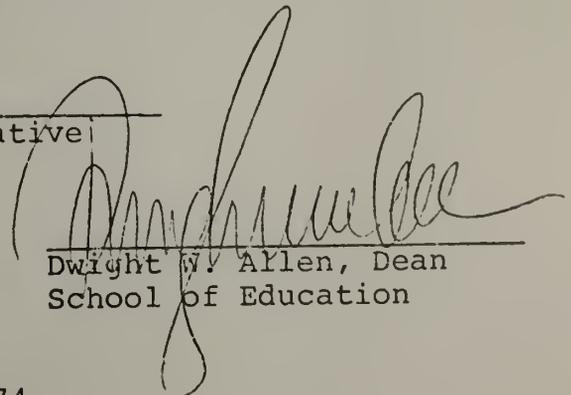

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Dwight W. Allen, Dean
School of Education

May 1974

For My Parents
Rudolfo Gonzales Cárdenas
and Amelia Blythe Cárdenas
Whose Courage, Dignity and Love
Are Truly a Model for the World

y tambien
para
José Angel Cárdenas

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A C K N O W L E D G M E N T S

This study has reviewed two and one-half years of work by numerous individuals dedicated to the improvement of educational opportunity for all children in this country and particularly for Mexican American children. For the deep friendships, respect, and support which developed during that period, for the collaboration in reconciling difficult issues, and for the continued professional assistance and support on the part of many who made this study possible, the author is extremely grateful.

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A B S T R A C T

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MEXICAN AMERICAN CHILDREN

Blandina Cárdenas, B.J., University of Texas
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The purpose of this study was to define equal access to educational opportunity for Mexican American children. The study described three actions of the Federal Government seeking to protect the right of Mexican American children to an education free from discrimination on the basis of race, color or national origin. The three actions were: (1) the issuance of the Memorandum of May 25 by the HEW Office of Civil Rights; (2) the San Felipe-Del Rio School District consolidation case, and (3) the El Paso Independent School District May 25th Memorandum compliance case. Additionally, the study described a conceptual framework for effecting institutional responsiveness to the educational needs of Mexican American children.

The study revealed that pressure from community sources led to the issuance of the May 25th Memorandum, which focused specifically on the interaction between the specific language problems of ethnic minority children and: (a) unequal access to effective participation in the educational program offered by a school district, (b) segregation through tracking, ability grouping, and assignment to classes for the mentally retarded, and (c) exclusion of parents from the processes by which the district provides information.

The development of (1) procedures for completing comprehensive school district reviews which would meet legal requirements of future administrative proceedings as well as withstand political pressures that might be forthcoming; (2) policies, particularly with reference to special education issues, designed to further clarify the provisions of the Memorandum; and (3) an educational assistance capability within the Office of Civil Rights was reviewed.

The study reviewed the San Felipe-Del Rio School District consolidation case in which the Office of Civil Rights, with leading Mexican American educators, developed and submitted to the court a Comprehensive Educational Plan that prescribed broad remedies including bilingual/bicultural early childhood education, and English as a

second language - Spanish as a second language program that would enable the school district to provide bilingual/bicultural education for all students in a way that presented both languages and both cultures as being of equal value.

The El Paso Independent School District May 25th Memorandum case was reviewed as the third step in the development of a comprehensive definition of "equal access" to educational opportunity for Mexican American children. The study found that the Comprehensive Educational Plan reflected the concepts contained in the Beeville-San Felipe-Del Rio Plans. An exemplary feature of the plan was the establishment of a five year goal of racial and ethnic balance among staff at all levels, bilingual/bicultural education for all Mexican American, Anglo and Black children and early childhood education.

Finally, the study reviewed the conceptual framework which provided the rationale for the plans. The conceptual framework is based on the assumption that Mexican American children attend a school designed for and by white, Anglo Saxon, English-speaking, middle-class oriented school populations and other populations assimilating into reasonable facsimilies of that mold. Five interrelated and interdependent areas of incompatibility between the typical school program and general characteristics of the Mexican American population were identified.

These included poverty, culture, language, mobility and societal perceptions. Twelve interrelated and interdependent areas of school district processes were identified as requiring modification in order to be responsive to the needs and characteristics of Mexican American children.

The study concludes that to require a school district to develop a comprehensive plan is administratively, legally, and pedagogically substantiated, and that within the scope of current research and thought, the conceptual framework provides an operational definition of equal access to educational opportunity for Mexican American children in this country.

Recommendations for further research and for action on the part of government, education and the community were developed from the study.

C H A P T E R I

INTRODUCTION

Statement of the Problem

Current efforts to submit to scientific study the interrelationship among race, education and equality in this country¹ are characterized by an unwillingness on the part of social policy researchers to examine "not only attitudes and values, but the internal life of schools."² Out of this delimited perspective on the quality of schools there has emerged a significantly vocal body of thought that proposes that the quality of schools makes no significant difference to children's level of achievement, and by extension, that continued spending to overcome inequality in educational opportunity amounts to pouring good money after bad.

Although the alternative social policy thrust suggested by Jencks may appear to hold greater promise for achieving equality in this country than did the strategies of the Great Society, it does not appear, in the absence of

¹James S. Coleman, et al., Equality of Educational Opportunity, Washington, D.C.: U.S. Government Printing Office, 1966; Frederick Mosteller and Daniel P. Moynihan, eds., On Equality of Educational Opportunity, New York: Random House, 1972; C. Jenks, et al., Inequality: A Reassessment of the Effect of Family and Schooling in America, New York: Harper and Row, 1972.

²Jencks, op. cit., p. 13.

powerful revolutionary forces, likely to be implemented soon. If alternative approaches to reducing poverty, notably "community action" fell apart when they ran into political opposition during the Great Society years,³ it is highly unlikely that the 1970s will bring with them the establishment of "political control over the economic institutions that shape our society"⁴ -- even in pursuit of equality for all men.

What is far more likely is that there will continue to be enormous effort devoted to equalizing opportunity. More specifically, and most assuredly, the effort will attempt to eliminate inequalities between people on the basis of skin color, sex and economic background.

The decision to continue educational reform efforts is not as naive as the Coleman and Jencks reports would make it seem. It is invalid to conclude from the Coleman data that the quality of schools can have little influence on student achievement on two counts. In the first place the Coleman study did not assess "educational" practices and secondly the study assessed schools as they are, not as they might be if a comprehensive commitment to improving the quality of education for minority students were a reality.

³Godfrey Hodgson, "Do Schools Make a Difference?" The Atlantic Monthly, 1973.

⁴Jencks, op. cit., p. 265.

The experience of educators working with Mexican American children in the Southwest⁵ as well as the findings of the U. S. Civil Rights Commission's Mexican American Study⁶ suggest that studies which measure quality education for Mexican Americans strictly in material terms have little relevance to the on-going quest for equality of educational opportunity for Mexican American children. The Coleman decision to respond to the legislative mandate to conduct a survey "concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion or national origin" by tapping such variables as the amount of money spent per pupil, or the number of books in the library, or physical facilities such as gymnasiums or cafeterias or laboratories, or even

⁵Blandina Cárdenas and José A. Cárdenas, "The Theory of Incompatibilities," invited address presented at the Issues of Leadership for Mexican American School Board Members Conference, San Antonio, 1973; Thomas Carter, Mexican Americans in School: A History of Educational Neglect, College Entrance Examination, 1970; Tomás Arciniega, "Public Education's Response to the Mexican American," El Paso, Texas: Innovative Resources, 1971; Manuel Ramírez, III and A. Castañeda, Cultural Democracy in Education and Mexican American Children, Seminar Press, 1973, in press.

⁶U. S. Commission on Civil Rights, Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest, April, 1971, Report II: The Unfinished Education-- Educational Practices Affecting Mexican Americans in the Southwest, May, 1972, Report V: Teachers and Students-- Differences in Teacher Interaction with Mexican American and Anglo Students, March, 1973, Report VI: Toward Quality Education for Mexican American Children, January, 1974, Washington, D.C.: U. S. Government Printing Office.

differences in curricular offerings appears overwhelmingly naive when contrasted with the U.S. Commission on Civil Rights decision to tap differences in teacher interaction with Mexican American and Anglo students.⁷

Mexican Americans have long sought the full benefits of the educational system for their children.⁸ As early as 1930, Mexican American parents in Del Rio, Texas sought to eliminate the segregation of their children in the schools by filing the Salvatierra case.⁹ In 1946, a full eight years before Brown,¹⁰ a federal district court, in language strikingly similar to that which would appear in the landmark school segregation case, ruled that equal protection of the laws pertaining to the public school system in California was not met by providing "separate schools (with) the same technical facilities."¹¹ Since the Brown decision,

⁷U.S. Commission on Civil Rights, Report V, op. cit.

⁸Carlos M. Alcalá and Jorge C. Rangel, "Project Report: De Jure Segregation of Chicanos in Texas Schools," Harvard Civil Rights-Civil Liberties Law Review, 7:2, 307, March, 1972.

⁹Independent School District v. Salvatierra, 33 S. W. 2d 790 (Tex. Civ. App. 4th Dt. 1930), cert. denied, 284 U.S. 580 (1931). The court struck down only the practice of segregating Chicanos regardless of their English language proficiencies, while sanctioning separate schools where language barriers precluded a uniform curriculum.

¹⁰Brown v. Board of Education, 347 U.S. 483, 495 (1954).

¹¹Méndez v. Westminster School District, 64F, Supp. 544 (S.D., Cal., 1946), aff'd, 161 F. 2d 744 (9th Cir., 1947).

litigation on behalf of Mexican Americans has attempted to eliminate the practice of segregating Mexican Americans, as whites, with Blacks, and calling it integration.¹² The practice of placing Chicano children in classes for the mentally retarded on the basis of culturally and linguistically unfair standardized tests has also been attacked in the courts and elsewhere.¹³

More recently the Chicano quest for equal educational opportunity has taken other forms. Chicano students have walked out of their schools demanding instructional programs which are more culturally relevant and which are more likely to afford them success in higher education. The passage of the Bilingual Education Act of 1967-68 constituted the first major national educational reform effort directed specifically to the needs of the Spanish-speaking in the country.¹⁴

¹²Guadalupe Salinas, "Mexican Americans and the Desegregation of Schools in the Southwest," The Houston Law Review, 8:929, 1971.

¹³Luis M. Laosa and Thomas D. Oakland, Social Control and Mental Health: Psychological Assessment and the Schools, Paper presented at the 51st Annual Meeting of the American Orthopsychiatric Association, San Francisco, April, 1974. Henry J. Casso, "A Descriptive Study of Three Legal Challenges for Placing Mexican American and Other Linguistically and Culturally Different Children Into Educably Mentally Retarded Classes," unpublished Doctoral Dissertation, University of Massachusetts, Amherst, 1973.

¹⁴Gilbert Sanchez, "An Analysis of the Bilingual Education Act, 1967-68," unpublished Doctoral Dissertation, University of Massachusetts, Amherst, 1973.

Hearings before the Special Subcommittee on Bilingual Education¹⁵ as well as the NEA - Tucson Survey Team Report¹⁶ which preceded the hearings gave impetus to the concept that equality of educational opportunity for Mexican American children would require more than an integrationist approach.

In spite of judicial, legislative and programmatic strides made by the Mexican American educational movement, Chicanos continue to be ill-served by the educational system. Regardless of the reference used, it is difficult to assess more than minimal success on the part of schools with the Mexican American communities of the Southwest. Evidence continues to force the conclusion that the schools have failed to train Mexican Americans for their life's work, and they have failed in their role as transmitters of culture on two measures: the schools in most instances have neither transmitted the dynamic culture represented by their heterogeneous population nor assimilated Mexican Americans into the mainstream culture they erroneously purport to transmit.

¹⁵U. S. Congress, Senate Committee on Labor and Public Welfare, Bilingual Education, Hearings, before a Special Subcommittee on Bilingual Education of the Committee on Labor and Public Welfare, U. S. Senate, on S.428, to amend the ESEA of 1965, 90th Cong., 1st Sess., 1967, Vol. 1, p. 52.

¹⁶The National Education Association, The Invisible Minority...Pero No Vencibles. Commonly referred to as the NEA-Tucson Survey Team Report. Washington, D.C., 1966.

The U. S. Commission on Civil Rights projects that Mexican American parents complying with legal requirements that their children attend school can anticipate that:

- a. Two out of every five of their children will never complete secondary school;
- b. Their children will be illiterate in their own language, and they will know little of their own history and culture;
- c. Teachers will generally treat their children less favorably than Anglos;
- d. Only one of every four of their children who graduate will read at grade level;
- e. Their children are more likely than the children of Anglo parents to be mistested and misplaced in classes for the mentally retarded, and left there.¹⁷

Purpose of the Study

The purpose of this study was to define equal access to educational opportunity for Mexican American children. The investigator reviewed literature pertinent to the identification of needs and learner characteristics of Mexican American children and the areas of potential mismatch between school district characteristics (policies, practices, and processes) and the characteristics of the Mexican American population.

¹⁷U. S. Commission on Civil Rights Reports I, II, III, V, op. cit.

Three significant civil rights actions have been introduced as closely linked to the development of the Theory of Incompatibilities.¹⁸ These actions, if exploited with enlightenment and humanity can begin to reverse the history of Mexican American education and perhaps of American education as a whole.

They are: (1) the development of the HEW Memorandum of May 25th regarding the Identification of Discrimination and Denial of Services on the Basis of National Origin;¹⁹ (2) the Educational Plan submitted by the Department of Justice in the San Felipe-Del Rio consolidation case;²⁰ and (3) the May 25th compliance case in the El Paso Independent School District.²¹

The prime objective of this study was to identify the major educational issues raised by the three actions, the alternatives suggested by the Cárdenas-Cárdenas Theory of Incompatibilities, significant programmatic changes

¹⁸Blandina Cárdenas and José A. Cárdenas, op. cit.

¹⁹U. S. Department of Health, Education and Welfare, Memorandum from J. Stanley Pottinger to School Districts with more than Five Per Cent National Origin Minority Group Children (May 25, 1970) (hereinafter cited as Memorandum of May 25th).

²⁰Intervention of Del Rio Independent School District in United States v. Texas, 321 F. Supp. 1043 (E.D. Tex., 1970).

²¹U. S. Department of Health Education and Welfare Reports on the El Paso Independent School District, on file at the Office of Civil Rights, Dallas Regional Office, Dallas, Texas.

resulting from these and the implications for American education as a whole and Mexican American education in particular. To realize this objective the study:

1. Reviewed related literature to determine the educational issues relating to the failure of Mexican American education.
2. Reviewed current research and literature to isolate the major issues raised by the three actions.
3. Reviewed the three actions to trace the refinement of common and discrete issues in each action.
4. Analyzed legal and quasi-legal mandates to identify immediate results of the actions.

Although much of the study is concerned with the activities of the Department of HEW's Office of Civil Rights, it is not within the scope of the study to evaluate the activities of that Office.

Definition of Terms

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

Anglo -- as commonly used in the Southwest to refer to white persons who are not Mexican American or members of other Spanish surnamed groups.

Barrio -- a neighborhood of Mexican American or other Spanish-Speaking people.

Chicano -- a variation of the term Mexican American, a symbolic term used by Mexican Americans

who are active participants in the Mexican American civil rights movements to refer to all Mexican Americans.

Field Dependent Learner -- The field dependent child does better on verbal tests and learns better when the material involved has human content and is characterized by fantasy and humor. This child performs better when authority figures express confidence in his ability, and conversely, performs poorly and is depressed when authority figures express doubt in him.

Field Independent Learner -- The field independent child does better on visual-motor tasks-- i.e., putting parts together to make a whole or extracting parts from a whole. This child learns better when material is abstract and impersonal; his performance is not significantly affected by the opinions of authority figures.

May 25th Memorandum -- used regularly to refer to a memorandum released by the Director, Office for Civil Rights, Department of Health, Education, and Welfare, on May 25th, 1970,

regarding the identification of discrimination and denial of services on the basis of national origin.

Mexican American -- referring 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, Indian, or Mexican forebearers who resided within Spanish or Mexican territory that is now part of the Southwestern United States.²²

Southwest -- referring to the five states of Arizona, California, Colorado, New Mexico, and Texas.

ASSUMPTIONS OF THE STUDY

1. The civil rights actions dealt with here are based on contemporary educational theories.
2. The educational performance data gathered by the appropriate agencies in the implementation of the three civil rights actions was substantially accurate.

²²U.S. Commission on Civil Rights Report I, op. cit.

3. The educational performance data supplied by appropriate agencies subsequent to the actions is substantially correct.
4. The data on Mexican American education available from the current studies is substantially correct.
5. The actions in the three cases are based on sound legal judgment and reversal by a higher court will not occur.

THE DESIGN OF THE STUDY

The method utilized in this study will consist primarily of gathering, reviewing and analyzing data from current materials such as:

1. Hearings before the Senate Committee on Equal Educational Opportunity of the United States Senate, 91st Congress, 2nd Session, pt. 4, Mexican American Education (1970).
2. The related preparatory investigations for each of the three civil rights actions.
3. The legal and quasi-legal documentation involved in the three civil rights actions including the legal briefs filed in the San Felipe-Del Rio case.
4. The six year research by the Mexican American Education Project Study of the U. S. Commission on Civil Rights.
5. Other sources which will demonstrate the correlation between each of the civil rights actions and the administrative local, state and national changes which occurred.

Important psychological research and studies have been developed pertinent to the civil rights actions involved. This study will identify and utilize the current information, especially that from:

- a. the position papers of the Advisory Committee on Implementation of the May 25th Memorandum of the Office of Civil Rights Department of Health, Education, and Welfare;
- b. the studies of the First American-Hispanic Task Force of the National Education Association;
- c. The development of the Experimental Schools Project in the Edgewood Independent School District, San Antonio, Texas;
- d. pupil performance data gathered in conjunction with program development efforts of the Southwest Educational Development Laboratory.

IMPORTANCE OF THE STUDY

With the issuance of the May 25th Memorandum, the Office for Civil Rights of the Department of HEW took two important first steps in fulfilling in a comprehensive manner its 1964 mandate. First, it focused on the "other" minorities in this country" Chicanos, Puertorriqueños, Indians, Eskimos, Asians and other "others." Secondly, it focused on those invidious elements of institutional racism obscured by the awesome impact of Little Rock, Selma and Watts.

A little more than a year after the Memorandum, a federal district court judge in Tyler, Texas ordered the Comprehensive Educational Plan for the San Felipe-Del Rio Independent School District. The plan called for comprehensive

institutional change including the use of both the Spanish and English language as the medium of instruction for all children in the school district, the implementation of an early childhood education project for children who suffered the constraints which poverty places on educational development, the review and subsequent revision of all governances and policies of the school district to eliminate the culture conflict resulting from the ethnocentric intensity of the past.

San Felipe-Del Rio, obscured by the bussing boycotts capturing national attention at the time, wrote enough new and far-reaching law to significantly change the institution of American education from an ethnocentric institution which has systematically "melted" away most semblances of cultural diversity and strength of America's immigrants to one which recognizes, accepts, and propogates the right to cultural alternatives.

In 1972, the approximately 65,000 student population El Paso Independent School District submitted a Comprehensive Educational Plan designed to bring the district into compliance with the May 25th Memorandum. The El Paso Plan closely mirrored the Cárdenas-Cárdenas Theory of Incompatibilities and prescribed far-reaching strategies for institution-wide change.

This study will be the first attempting to identify the issues in each of the three civil rights actions and the first analysis of the Cardenas-Cardenas Theory of Incompatibilities which so affected them. Because the decision of the Supreme Court in *Lau v. Nichols*²³ was basically an endorsement of the procedures implemented via the Memorandum under the 1964 Civil Rights Act, the importance of these activities is magnified.

The study may also be helpful to those communities in the Southwest which as a result of the increased political participation of the Mexican American are attempting to make their schools responsive to their bicultural communities and to the bicultural societies which will predominate in the future.

Finally, the study can show that responding to the educational needs of culturally and linguistically different children is no longer an option; it is a legal imperative. It can show that the Mexican American has the right to a wide range of cultural options without overt institutional imposition. In these ways it can show that reversing institutional racism is as much a legal imperative as it is a human imperative.

²³Lau, et al. v. Nichols, et al. Slip. Op., No. 72-6520, January 21, 1974.

ORGANIZATION OF DISSERTATION

Chapter I of this dissertation presents a description of the area of concern, its significance, a statement of the problem, definition of terms, assumptions, limitations and organization of the dissertation. Chapter II presents a review of current research and literature developing the major concerns of Mexican American education.

The development of the May 25th Memorandum and the equal education assessment process developed for its implementation are presented in Chapter III.

The San Felipe-Del Rio case is covered in Chapter IV. Appropriate demographic and pupil performance data are presented. The proceedings and determination of the Court are reviewed.

Chapter V reviews the El Paso ISD compliance case. Appropriate demographic data and pupil performance data are reviewed. The follow-up of the school district and the Department of HEW is analyzed.

Chapter VI presents the Cárdenas-Cárdenas Theory of Incompatibilities as a major element of all three actions. Finally, Chapter VII summarizes findings and identifies implications for American education as indicated by the study, culminating in recommendations for future programmatic efforts.

C H A P T E R I I

REVIEW OF RELATED RESEARCH AND RELATED LITERATURE

This chapter presents a brief historical overview of the Mexican American in the U.S. The literature and research reviewed here focuses first on demographic and general characteristics of the group and secondly on the failure of the educational institutions to respond to the characteristics and needs of Mexican American children.

A Historical Perspective on the Mexican American

Some twenty years before the beginning of this century, Mexicanos in San Antonio, Texas organized into La Sociedad de le Unión, a fraternal, general assistance organization which functions to this date.¹

In the mid 1930s La Fraternal Asociación Por el Mexico Americano (FAMA) created in Del Rio, Texas had chapters in most of the cities in the area and requests for chapters from as far away as Globe, Arizona.² The

¹The Charter for La Sociedad de La Unión is on display at the organizational headquarters on West Commerce Street in San Antonio, Texas.

²The files of FAMA are in the possession of Col. Alfredo Villegas, Sr., founder of FAMA and Rudolpho G. Cárdenas, Del Rio, Texas.

files of the association reflect that la FAMA sponsored Spanish language summer schools in order to meet objectives strikingly similar to those of today's Chicano activists.⁴

Because neither the Sociedad story nor the FAMA story nor their counterparts in Spanish-speaking communities throughout the Southwest have been recognized in historical or anthropological perspectives on the Mexican American, it is difficult to record accurately and completely the development of the complex separate identity held by Mexican Americans in this country.⁴ A brief historical perspective may be helpful, however, in understanding the isolation of Chicanos from American institutions.

Meier and Rivera broadly divide the history of the Mexican American in this country into five time periods:

the Indo-Hispanic period, the Mexican period, a period of cultural conflict during the last half of the nineteenth century, a period of resurgence in the first four decades of the twentieth century, and a period of regeneration from World War II to the present.⁵

³Letter numbered 89, Alfredo Villegas and José M. Camarillo to Los Comisionados de Educación en el Distrito de San Felipe, dated August 7, 1936 at Del Rio, Texas.

⁴Until World War II, most major communities along the Texas-Mexico border had a Spanish-language newspaper. Anglo oriented libraries, however, seldom saw the need to preserve these. Records of the newspapers, if available, are in private family collections. Their early retrieval and documentation is imperative if stereotypical perspectives on the Chicano are to be replaced by historically accurate ones.

⁵Matt S. Meier and Feliciano Rivera, The Chicanos: A History of Mexican Americans (New York: Hill and Wang, 1972), p. xiv.

Julian Nava differentiates the period since World War II:

Young Mexican Americans today are changing the groups self-image. They reject the accommodation achieved by their parents. They are asserting their differences as a badge of honor. Unlike the G.I. Generation, as I call mine, the Chicano generation, is not unanimous in wanting to assimilate. The more drastic reformers argue for cultural pluralism or outright separatism. Many want to be both Americans and Mexican culturally and demand respect for their bicultural identity. Others want to recreate Aztlan (the Northwest provinces of the Aztec empire). Although not territorial (like Mormon control of Utah, for example), Aztlan would include all those of Mexican heritage who would identify as such and feel a bond of brotherhood.⁶

The Mexican American is the product of the fusing of Hispanic and Mexican Indian cultures; to a greater or lesser degree, he is racially a mixture of Indian and European. After their conquest of Mexico during the first half of the sixteenth century, the Spanish introduced great changes in religion, government, and technology. They also found that many elements of Mexican society were well-founded and they assimilated those compatible with their own. Moreover Spaniards of widely diverse backgrounds combined with

⁶Julian Nava, Forward in Chicanos: Social and Psychological Perspectives, edited by Nathaniel N. Wagner and Marsha J. Haug, (Saint Louis: The C.V. Mosby Company, 1971), p. xxviii.

Indians of varying cultures to produce a new culture and a new man, the mestizo. In Mexico today and in the Mexican American culture, this "mestizaje" process is of major importance.⁷ From this Meztizo perspective, Chicanos today view the benefits of life in the Southwestern U.S. as an irrevocable birthright.

Spanish exploration and development of the Southwestern United States occurred between 1530 and 1800. Throughout this time the Mextizaje continued throughout Mexico adding to the heterogeneity of what was eventually to be called the Chicano population of the U.S.

After the 13 colonies gained their independence, and with the encouragement of the newly-independent Mexican government, English-speaking Americans began to immigrate to the Southwest. By 1835 there were 25,000 to 35,000 American farmers, planters and traders in Texas and more were on the way. By then Mexico was anxious to check the immigration. Irked by the cancellation of land grants and the centering of state government in the Mexican State of Coahuila, the Texans revolted. The wars which resulted culminated in the loss to Mexico of New Mexico, Texas, California, Arizona, Nevada, and Utah and parts of Colorado and Wyoming. The Treaty of Guadalupe-Hidalgo which terminated

⁷Meier and Rivera, op. cit., p. xvi and 11.

hostilities between the two countries was signed just nine days after gold had been discovered in California. The Treaty guaranteed to the nearly 75,000 Spanish-speaking people in the Southwest their language, religion, and culture and the United States theoretically recognized the claim of inhabitants to all the land rights which could be substantiated by Spanish grant.⁸

The Treaty was unsuccessful, however, in terminating hostilities between the Mexican and Anglo inhabitants of the Southwest. Anglo settlers in Texas had indicted all Mexican people in their Declaration of Independence, adopted March 2, 1836.

. . . These and other grievances were patiently borne by the people of Texas, until they reacted to that point at which forbearance ceases to be a virtue. We then took up arms in defense of the National Constitution. We appealed to our Mexican brethren for assistance. Our appeal has been made in vain: though months have elapsed, no sympathetic response has yet been heard from the interior. We are therefore forced to the melancholy conclusion that the Mexican people have acquiesced in the destruction of their liberty and the substitution therefore of a military despotism; that they are unfit to be free, and incapable of self-government. . .⁹

⁸Charles B. Brussell, Disadvantaged Mexican American Children and Early Educational Experience, Austin, Texas: Southwest Educational Development Laboratory, 1968, p. 10.

⁹Joe J. Bernal, "Where You've Been is Where You're Going; Pero Pà Dónde Vas?", Commission for Mexican American Affairs Archdiocese of San Antonio, Texas, 1973, p. 5.

The 1845 Texas Constitutional Convention debating the question of whether Mexicans would be permitted to vote heard the following case for retaining "white" as a voting qualification from a Harris County representative:

Strike the work 'white' and what will be the result? Hordes of Mexican Indians may come in here from the West and may be more formidable than the enemy you have vanquished. Silently they will come moving in; they will come back in thousands to Bexar and thousands to Goliad, perhaps to Nacogdoches, and what will be the consequences? Ten, twenty, thirty, forty, fifty thousand may come in here and vanquish you at the ballot though you are invincible in arms. . .talk not to me of democracy which brings the mean, grovelling yellow race of Mexico, I say the Indian race of Mexicans, upon an equality of rights and privileges.¹⁰

Armed skirmishes between Mexican and Anglo continued along the border states through the last half of the nineteenth century. Although until recently, most historians presented Mexicans participating in these as bandits and the Texas Rangers and other Anglo participants as guardians of law and order, more recent and thorough accounts of these events have begun to analyze these as struggles of people alienated from the civil rights process as well as a conflict of cultures.

¹⁰Bernal, op. cit., p. 6.

The Mexican revolution during the early part of this century resulted in massive immigration of Mexicans into the U.S. The Mexicans seeking refuge from a violent revolution were a highly heterogenous group. Accompanying the large numbers of minimally educated, agriculture-oriented Mexicans were many lawyers, doctors, and journalists. Thus, the Mexican societies developing in this country during the early twentieth century were not at all the "sleeping giant" popularly portrayed today. Many communities had their own Spanish language newspaper, social and political organizations, both Catholic and Protestant Spanish language churches, a Mexican-American Chamber of Commerce, and a cemetery.

Mexican Americans were not served, however, by the institutions in the area. Few served on juries;¹¹ few attended the segregated Mexican schools; few could obtain bank loans (much less bank stock); few were ever hired for any but the most menial jobs and in most areas, only minimal health care was available. Alcalá's assessment is perhaps the most accurate:

While there are many causes of Mexican American unemployment and resulting poverty, discrimination is the root. It is embodied in many forms, both explicit and subtle, ranging from

¹¹Hernandez v. Texas, 347 U.S. (1954), found exclusion of Chicanos from juries in Jackson County, Texas, unlawful. See also U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (Washington: U.S. Government Printing Office, 1970).

irrelevant test requirements to unnecessary height and weight specifications. Such discriminatory practices pervade all institutions with which Mexican Americans must contend.¹²

Mexican Americans have not been the passive mass often described in historical or anthropological perspectives on their present status. Resistance to discrimination and organization for mutual support has been on-going since the time of the Texas revolution. A U.S. Commission on Civil Rights Report has cited at least one of the deterrants to effective organization: "Law enforcement officers in the Southwest have blatantly interfered with Mexican American organizational efforts to improve the conditions of their lives."¹³

Two organizations continue to play major roles in the Mexican American Civil Rights struggle. Both grew out of Mexican American participation in the World Wars and discrimination experienced by returning veterans in the country they had risked their lives for. They are the League of United Latin American Citizens organized in 1927 and the American G.I. Forum, organized in 1948 after a

¹²Alcalá, op. cit., 309.

¹³U.S. Commission on Civil Rights Mexican Americans and the Administration of Justice in the Southwest, op. cit., p. 5.

Mexican American war hero was denied burial in the Three Rivers, Texas, cemetery.¹⁴ More recently organizations like MAYO (Mexican American Youth Organization); La Raza Unida Party of the United States, a political party; the Southwest Council of La Raza, a non-profit service and development oriented corporation; RASSA, a national lobbying organization, and others have done much to accelerate the Chicano Civil Rights movement.

Education has always been a major focus of Mexican American aspirations. Evidence indicates that Mexican Americans first entered the schools in Texas in the early 1890s, a full twenty years after public schools were founded in the state.¹⁵ When allowed to attend schools, Mexican Americans went to the "Mexican" schools.¹⁶ Explicit segregation of Chicano students was limited to the elementary grades because local policy often limited Chicano children to an elementary education.¹⁷ The retention of Chicano students two years each in classes called "low first" and

¹⁴Salinas, op. cit., p. 932. The deceased Mexican American veteran, Felix Longoria, was buried with honors in Arlington National Cemetery.

¹⁵Paul Taylor, An American Mexican Frontier-Nueces County, Texas (New York: Russell and Russell, 1971).

¹⁶President Lyndon B. Johnson taught in the one-room Mexican school in Cotulla, Texas. While President, he returned to the school where he signed major legislation. The school was still in operation.

¹⁷Alcalá, op. cit., p. 314.

"high second," etc., ensured that they would be so severely over-aged when they completed third grade, that there would be no need for a "Mexican" high school.

The Salvatierra case of 1930 held that only "rational" segregation based on educational (primarily linguistic) needs of Mexican American students was permissible. Mexican Americans continue to be isolated today, however, and they continue to receive less of the educational benefits provided to Anglo children.¹⁸

The two cases most directly affecting school finance reform efforts in this country have emerged out of the Chicano's quest for equal educational opportunity. Parents in the Edgewood School District in San Antonio, Texas filed suit in federal court in *Rodriguez v. San Antonio Independent School District*.¹⁹ The Supreme Court's decision recognized that school finance reform was needed, but left it to the political process at the state level to correct the

¹⁸No account of the Mexican American equal education movement is complete without recognition of the leadership of Dr. George I. Sánchez who since the early 1930s called for reform of testing practices and a form of bilingual education. With attorneys like Gus García, Carlos Cadena and Cristobal P. Aldrete, Dr. Sanchez pursued through litigation and administrative challenge the reforms needed by the Chicano.

¹⁹*Demetrio P. Rodríguez, et al., v. San Antonio Independent School District, et al.*, 337 F. Supp. 280 (1971) - Ed.

inequities. In California, Serrano v. Priest resulted in school finance reform in that state and focused national attention on the issue.²⁰

Demographic Characteristics

According to official census figures, Spanish-speakers in this country total over ten and one-half million.²¹ Of these, approximately 6.3 million are Chicano or Mexican American, 1.5 million are Boricuas or Puerto Rican, 0.7 a million are Cuban and another 2 million are from other Spanish-speaking countries. Knowledgeable observers, however, estimate the total is more than 12 million.²²

Urbanization, dispersal to virtually every area of the United States and an accelerated growth rate characterize the Spanish-speaking population in this country.²³

The majority of Mexican Americans live in the Southwestern United States. They generally have a lower

²⁰Serrano v. Priest, 96 Cal. Rptr. 601 (1971)-Ed.

²¹U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P. 20, No. 259. "Persons of Spanish Origin in the United States: March, 1973" (Washington, D.C.: U.S. Government Printing Office, 1974), p. 1.

²²A lawsuit is presently pending against the U.S. Census Bureau for an alleged miscount of Spanish-surnamed persons. This suit charge that the Census Bureau has failed to count as many as 5 million Spanish-surnamed Americans due to its exclusive reliance on a mailed, 164-question, English only questionnaire.

²³Josué M. González, A Developmental and Sociological Rationale for Culture-Based Curricula and Cultural Context Teaching in the Early Instruction of Mexican American Children, Unpublished Ed.D. Dissertation, University of Massachusetts, 1974.

level of educational attainment than the general population. Twenty-five per cent of the population between the age of twenty-five and thirty-four have an average of eighth grade education, with the median school years completed for this age group being 10.8.²⁴ The Mexican American population in the Southwest is a predominantly urban one. Discrimination in housing as segregated patterns of residence tend to result in the concentration of Chicanos in neighborhoods, commonly referred to as "barrios."²⁵

Population figures of the last two decades indicate that the Spanish-surname population is a young population, and includes many more young people than does the total white population. The median age of the Spanish-surname population of the Southwest is slightly over 18.6 years. The median age in the five states of the Southwest of the total white population, which includes the Spanish-speaking, is slightly more than twenty-eight years.²⁶ Mexican Americans in the Southwest generally have families with larger numbers of children than those of the general population.

²⁴U.S. Department of Commerce, Bureau of the Census, *Persons of Spanish Origin in the United States*, November, 1969, Population Characteristics, Series P-20, No. 213, February, 1971, Table 14.

²⁵Moore and Mittleback, Residential Segregation in the Urban Southwest, Mexican American Study Project, Advance Report No. 4, U.C.L.A., 1966.

²⁶U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-20, No. 224: "Selected Characteristics of Families of Mexican, Puerto Rican, and Government Printing Office, 1971), p. 4.

The Mexican American population is augmented yearly by massive immigration from Mexico.²⁷ Immigration is recent; legal, illegal, contract labor, and commuting workers; is intense and occurring over an unusually long border.²⁸

The impact of Mexican Americans and other Spanish speakers in the United States is reaching major proportions. Today, the U.S. is the fifth largest Spanish-speaking country in the world.²⁹ The reality of their emerging political and economic strength is manifested in subtle but increasing responsiveness from various sectors of society. It is becoming increasingly common to see advertisements for "bilingual watches," Spanish language loan counselors, "su amigo -- car salesman, furniture and appliance salesmen -- and politicians." Public buildings throughout the Southwest are adopting the flour tortilla taco over the ham and cheese sandwich as snack bar fare, and pan de dulce and reposteria replace the donuts at public meeting coffee breaks.

²⁷Josué M. González, "Growth Pains in Bilingual Education Since Tucson '66," Keynote Address presented at the ReLook at Tucson and Beyond Conference on Bilingual Bicultural Education, Albuquerque, New Mexico, Dec., 1973.

²⁸Brussell, op. cit., p. 17.

²⁹González, op. cit.

The response takes on more substantial dimensions: a gubernatorial candidate campaigns on a platform including bilingual education and wins; a college President pledges a bilingual university and International Telephone and Telegraph, which previously discouraged the accurate pronunciation of Spanish names and words, actively recruits persons with bilingual competencies.

General Characteristics of the Mexican American Population

Sociological, anthropological, and psychological discussions about the Mexican American have been seriously influenced by a wide range of stereotypes relative to being a Mexican American. For the most part, every time social scientists have studied Mexican Americans they have ended up describing poor Mexican Americans.³⁰ Likewise popular journalistic portrayals of Mexican Americans tend to stress the "quaintness" of the Chicano. Many Mexican Americans do live in poverty particularly, and outside the mainstream of American life generally. Therefore, many Chicanos exhibit the characteristics of poor people. The negative

³⁰Edward Casavantes, "Pride and Prejudice: A Mexican American Dilemma," Chicanos: Social and Psychological Perspectives, edited by Nathaniel N. Wagner and Marsha J. Haug, St. Louis: C.V. Mosby, 1969, pp.46.

aspects of studies by social scientists purporting to be scientific lies in (1) their generalization about attributes of Mexican Americans at one socio-economic level or in one geographical location to all Mexican Americans everywhere and (2) their assignation of characteristics correlatable with poverty as the unique possession of one ethnic group--the Mexican American.

Casavantes identifies eight qualities which have been invalidly attributed to Mexican Americans as part of their ethnicity.

The first item states that in general, Mexican Americans spend a larger proportion of their socialization time with relatives and with other people living nearby than do individuals from the middle class. And indeed Mexican Americans do possess this attribute. Two, Mexican Americans are said not to generally join voluntary associations, which include educational, fraternal, church, and political associations. (Fortunately, though, the Mexican American is increasingly learning to join political organizations.)

Three, Mexican Americans are said to prefer the old and the familiar. They are reluctant to engage in new situations or to form new social relationships. They appear to be especially hesitant to initiate social interactions with strangers. Four suggests that they generally demonstrate an anti-intellectual attitude and have little admiration for writers, intellectuals, artists, college professors, and the like. Thus Mexican Americans are seen as demonstrating a lack of behavioral support for the school activities of their children.

Six, the male of the species is said to demonstrate manliness, "machismo." Machismo comes from the word "macho" which simply means "male." The average Mexican American male is supposed to demonstrate a great deal of "machismo" instead of, for instance, intellectualism or interest in the arts. Men who show "machismo" are alleged to brag a great deal about their male conquests, and to regularly refuse to do womanly things such as dishwashing, cooking, diaper-changing, or minding the children.

Six, Mexican Americans are often said to use physical force to settle arguments or to punish disobedient children.

Seven, Mexican Americans have been described as being unable to postpone gratification. Most are said to live on a day-to-day basis and few make plans or provisions for long-range activities.

Lastly, the Mexican American is said to be very fatalistic in his view of the world, feeling that he has very little control over nature, over institutions, over people, or over events.

Casavantes identifies true attributes of most Mexican Americans: they have come from Mexico, or perhaps from Spain via Mexico; they speak Spanish; they are Catholic; and many have dark skin and hair. He points out, however, that you don't have to be a Catholic to be a Chicano; even less so, have a darker skin, because dark skin is not a criterion for being Mexican, although many Mexicans have it. More essence comes from the first two characteristics: that

their ancestors came -- with their many customs and traditions -- from Mexico and Spain and that they spoke Spanish.³¹

Rosaura Sanchez has examined the complexity of language considerations relative to the Mexican American in this country. She states that the Mexican American is bilingual because he possesses two linguistic systems -- that of English and that of Spanish -- which he used interchangeably and which he often mixes:

El mexico-americano es bilingue
 porque poseé dos sistemas linguisticos
 --el de ingles y el del espanol
 --que usa alternativamente y que
 a veces mescla.³²

Laosa has tied the linguistic considerations to the bilingual child's unique developmental pattern:

The bilingual/bicultural child's development may be conceptualized as possessing two overlapping language-cognitive-personality domains: (a) the Spanish plus particular ethnic background cultural characteristic of his conceptual-linguistic-personality structure and (b) the English plus dominant culture value system domain...

Thus, it follows that any assessment procedure must tap both areas of his intellectual and socioemotional development as well as the overlap area.³³

³¹Ibid., p. 47.

³²Rosaura Sanchez, "Nuestra Circunstancia Linguistica in Voices: Readings from El Grito, edited by Octavio Ignacio Romano - V. (Berkeley, California: Quinto Sol Publications, Inc., 1973), p. 424.

³³Luis M. Laosa, "Some Considerations in Bilingual Assessment and Evaluation," Consultation Summary Report to the Southwest Educational Development Laboratory, June, 1973.

Gonzalez has addressed the many aspects of the culture of the Mexican American with a specificity which is particularly useful for educational decision-making. He identifies Mexican American culture as including six general categories:

The "formal" culture -- "products of artistic endeavor, achievements of intellectual and artistic genius, deeds of heroic valor and concepts of lofty spirit. . .modes of significant thought. . .racial or ethnic vigor. . ."

The "deep" culture -- "the thoughts and actions, the concerns and hopes and worries, the personal values, the minor vanities and the half-serious superstitions, the subtle gradations of interpersonal relationships as expressed in actions and words, the day-to-day details of life as it is lived" by the group today or as it was lived in previous generations.

Situational culture -- the life struggles, successes and failures of the person's ethnic group as they seek human fulfillment in dynamic interaction with members of other cultural groups with whom they coinhabit the land.

Language and communications -- the communicative legacies of ancestral group(s) both for information and recreational purposes. Also, the idiosyncrasies of speech and nonverbal communications, which may differ from those of other groups enough to cause mis-communications, embarrassment or disapproval.

Humanistic values -- subtle differences in which values similar to those of white America may be expressed as a consequence of Spanish, mestizo, creole, or contemporary ethnic group influences.

Miscellaneous historical and heritage areas -- The men and women of yesterday; their ideas, actions, aspirations and accomplishments and how these bear

on the present-day life of members of the same ethnic group(s) and those with whom they interact.³⁴

The Educational System's Response

to the Mexican American

The most comprehensive analysis of the educational system's response to the Mexican American in the Southwest is covered in the recently complete Mexican American Education Study of the U.S. Commission on Civil Rights.³⁵ The study was designed to 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?³⁶

The Commission published its findings in six reports. In its first report, the commission reported that:

- a. Mexican American students are severely isolated at the elementary level with more than half the Mexican American students attending predominantly

³⁴Gonzalez, op. cit., Chapter V.

³⁵U.S. Commission on Civil Rights, Reports I, II, III, IV, V, VI, op. cit.

³⁶U.S. Commission on Civil Rights, Report I, op. cit.

Mexican American schools. Thirty six per cent of Mexican Americans in secondary schools are similarly isolated.

- b. Geographic considerations are not always responsible for the isolation that exists.
- c. In the Southwest, only 4 per cent of the teachers and 3 per cent of the Principals are Mexican American.
- d. Mexican Americans are under-represented in Boards of Education.³⁷

The basic finding of Report II: The Unfinished Education, was that Mexican American students in the Southwest do not obtain the benefits of education at a rate equal to that of their Anglo classmates. Measures of school achievement used included student achievement, school holding power, reading achievement, grade repetition, over-agedness, and participation in extracurricular activities. Without exception, the Commission found that minority students enjoyed less of the benefits of schooling than their Anglo counterparts.³⁸

Report III: The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest

³⁷Ibid.

³⁸U.S. Commission on Civil Rights, Report II, op. cit.

reported on the extent to which the schools have adopted policies, programs, and practices that take into consideration the distinct linguistic and cultural characteristics of Mexican Americans, the extent to which schools in the Southwest have omitted Mexican American history, heritage, and folklore from the classrooms of the Southwest, and the extent to which the Mexican American community was excluded from the schools. Again, on all measures examined, the schools were found to be grossly lacking in responsiveness.³⁹

Report IV examined public school financing in Texas and found that the Texas school finance system results in discrimination against Mexican American school children. The amount of money spent for the education of many Chicano students is three-fifths that spent for Anglos.⁴⁰

Teachers and Students, Report V, analyzed differences in teacher interaction with Mexican American and Anglo students and found marked disparity in the treatment of students by teachers of both Mexican American and Anglo origin. Table I illustrates.

³⁹U.S. Commission on Civil Rights, Report III, op. cit.

⁴⁰U.S. Commission on Civil Rights, Report IV, op. cit.

Figure 2⁴¹

Average Measures of Per Pupil Interaction for
Individual Mexican American and Anglo Students

	Average Mexican American	Average Anglo	Disparity	Percent Increase in Anglo over M.A.
TEACHER BEHAVIOR				
1. Acceptance of student's feelings	.004	.008	+.004	100.0%
*2. PRAISING OR ENCOURAGING	.137	.186	+.049	35.8
*3. ACCEPTANCE OR USE OF STUDENT IDEAS	.156	.219	+.063	40.4
*4. QUESTIONING	.525	.636	+.111	21.1
5. Lecturing	.584	.710	+.126	21.6
6. Giving Directions	.146	.141	-.005	-3.4
7. Criticizing or Justifying Authority	.055	.052	-.003	-5.5
STUDENT BEHAVIOR				
8. Student Talk - Response	.771	.948	+.177	23.0
9. Student Talk - Initiation	.796	1.034	+.238	29.9
COMPOSITE MEASURES OF BEHAVIOR				
*POSITIVE TEACHER RESPONSE (1-3)	.296	.413	+.117	39.5
*ALL NONCRITICIZING TEACHER TALK (1-6)	1.551	1.901	+.350	22.6
*ALL STUDENT SPEAKING (8+9)	1.567	1.982	+.415	26.5

⁴¹Ibid.

Report VI addressed issues of Curriculum and Language, Student Placement, and Title VI enforcement by the Department of Health Education and Welfare. In each of these areas, the Commission found that one of three conditions existed:

- a. too little was being done;
- b. nothing was being done; or
- c. the wrong thing was being done.⁴²

The Commission study confirmed empirically what many Mexican American educators (and a few Anglo educators) had been saying for some time. As early as 1934, Dr. George I. Sanchez published his concern for the misapplication of intelligence tests used with children of differing cultural and linguistic backgrounds.⁴³ The U.C.L.A. studies of 1965 and 1967 and the publications of the National Education Association just prior to the move to pass the Bilingual Education Act documented the schools' failure with Mexican Americans and their failure to reflect the Mexican American culture and language.⁴⁴

⁴²U.S. Commission on Civil Rights, Report VI, op. cit.

⁴³George I Sanchez, "Bilingualism and mental measures: A Word of Caution" in Chicanos: Social and Psychological edited by Nathaniel N. Wagner and Marsha J. Haug, (Saint Rouis: The C.V. Mosby Company, 1971), p. 232.

⁴⁴The Mexican American Study Project, Advance Reports 1, Education and Income of Mexican Americans in the Southwest, and 7, The Schooling Gap: Signs of Progress, a Ford Foundation-sponsored Research Project (Los Angeles: University of California, 1965 and 1967).

The Hearings before the U.S. Senate Special Subcommittee on Bilingual Education of the Committee on Labor and Public Welfare called similar attention to the schools' failure and the need for Bilingual Education. Dr. Jose A. Cardenas also outlined then the need for programs to respond to the non-instructional needs of children.⁴⁵

While support, research and literature on bilingual education increases daily, most educators working with Mexican American children agree that Bilingual Education in and of itself will not be the panacea for the educational problems of Mexican Americans.

Ramírez and Castañeda have cited the need to go beyond the development of culturally and linguistically responsive materials (the focus of present bilingual efforts) in their call for a culturally democratic learning environment, one that complements each child's preferred learning-motivational-relational style and mode of communication. Focusing on cognitive style with an adaptation of Witkin's concept of field dependence-field independence. Ramírez and Castañeda "Hypothesize that the primary reason educational institutions have failed the majority of Mexican

⁴⁵U.S. Senate, Committee on Labor and Public Welfare, Bilingual Education, Hearings, before A Special Sub-committee on Bilingual Education, U.S. Senate on S. 428, to amend the ESEA of 1965, 90th Cong.) 1st Session, 1967, Vol. 1, p. 329.

Americans, as well as other members of ethnic groups in this country and some Anglos as well, is the insensitivity of school personnel to their cognitive styles. Many Chicanos come to schools with learning and incentive-motivational styles which are ignored by these institutions, with the resulting school experience ending in failure and frustration." Ramírez and Castañeda have detailed teaching strategies which are complementary both to field sensitive (dependent) and field independent learning styles and consonant with culturally democratic learning environments.⁴⁶

Cárdenas and Cárdenas endorse Ramírez and Castañeda's approach while expanding the notion of incompatibility between the characteristics of the learner and the non-dominant ethnic group of which he is a part, on the one hand, and the characteristics of the educational institution. They list five broad characteristics of the Mexican American population -- poverty, culture, language, mobility, and societal perceptions -- to which the school much respond if educational goals are to be met.

Cárdenas and Cárdenas state that the schools have been designed to serve children who are white, Anglo Saxon, English speaking, and middle-class oriented and those

⁴⁶Manuel Ramírez, op. cit.

capable of assimilating into reasonable facsimiles of this mold. They contend that while the traditional school program may (or may not) be serving the needs of these students, the nation's schools have typically become ethnocentric institutions which do not and cannot serve children who are atypical due to race or ethnicity. If Chicano students and the ethnic population they represent are to be effectively educated, then a fundamental institutional accommodation to both their needs and characteristics must be effected.⁴⁷

⁴⁷Blandina Cárdenas, op. cit.

C H A P T E R I I I

THE MEMORANDUM OF MAY 25¹

There are two major legal channels through which the Federal Government seeks to protect the right of all children to an education free from discrimination on the basis of race, color, or national origin: the administrative proceedings of the Department of Health, Education and Welfare and the equity powers of the Federal courts.² This chapter shall be concerned with describing the development of the Memorandum of May 25, 1970, issued by the Director of the Office of Civil Rights, H.E.W., regarding the identification of discrimination and denial of services on the basis of national origin. Additionally, OCR procedures for conducting Equal Educational Services Compliance Reviews and their implementation in the first May 25th school district, Beeville, Texas, will be reviewed.

Until Lau v. Nichols,³ the Supreme Court of the United States had dealt with issues of discrimination in the schools primarily from the perspective of eliminating the

¹The Memorandum is included here as Appendix A.

²Martin H. Gerry, "Cultural Freedom in the Schools: The Right of Mexican American Children to Succeed" in Mexican American and Educational Change, Edited by Alfredo Castaneda, Manual Ramirez II, Carlos E. Cortés, and Mario Barrera, University of California, Riverside, (May 21-22, 1971), p. 226.

³Lau v. Nichols, op. cit.

dual-school system utilized to segregate black and white children. Although in its Brown vs. Board of Education⁴ decision the court had talked about the detrimental effects of segregation:

To separate them (black children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone,⁵

it had not addressed invidious discriminatory practices utilized by school districts in the operation of educational programs within schools -- practices no less detrimental than segregation. Issues related to the treatment of children within desegregated schools including those related to in-school segregation (through tracking, for example) and equal access to the full benefits of public education were not examined by the court.⁶

Title VI of the 1964 Civil Rights Act requires that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."⁷

⁴Brown vs. Board of Education, 347 U.S. 483 (1954).

⁵347 U.S. 485.

⁶Gerry, op. cit., p. 228.

⁷Sec. 601, Civil Rights Act of 1964, 78 Stat. 252 (1964); 42 U.S.C. 2000d (1965).

Each Federal department and agency is responsible for making sure that discrimination does not exist in the programs and activities it assists through grants, loans, or contracts and other arrangements. The Department of HEW as administrator of three of the largest Federal grant programs -- public assistance (welfare), aid to education, and public health research and services has a major role in the enforcement of Title VI.⁸

Until 1970, the Office of Civil Rights of HEW largely ignored violations of the civil rights of Oriental, Mexican American, Puerto Rican, Indian and other national origin minority group children.⁹ Like the courts, HEW-OCR had looked at discrimination largely in terms of pupil and teacher assignment and almost totally from a Black-white perspective. In attempting to meet civil rights objectives in Texas, the OCR (and Justice Department) myopia had a curious effect: the desegregation plans accepted provided for the "integration" of Blacks and Mexican Americans, with whites permitted to maintain their all-white schools.¹⁰

The December, 1968, U.S. Commission on Civil Rights Hearings held in San Antonio, Texas served to focus national

⁸U.S. Department of Health, Education, and Welfare, Office of Civil Rights, HEW and Civil Rights, DHEW Publication No. (OCR) 73-1 available from Office of Civil Rights, Washington, D.C., (1973).

⁹Alcalá, op. cit., p. 369.

¹⁰Alcalá, op. cit., 368.
Gerry, op. cit., 229.

attention on the invidious discriminatory practices utilized by most social institutions against Mexican Americans in the implementation of their programs. Citing education as a major area of concern, the Commission called on HEW to take "prompt action" to eliminate the disparities between Anglos and Chicanos across the Southwest.¹¹

Pressure from community sources appears to have had the major impact in creating a new era of HEW sensitivity to Chicano problems. Alcalá cites two sources for the newly-found administrative interest. Progress in the rest of the South left more resources available for work in Texas and rising Chicano militancy, characterized by school boycotts, created pressure for action.¹²

The early preoccupation of May 25th activities with issues relevant to the segregation of minority group students in classes for the mentally retarded suggests that an additional force leading to the issuance of the May 25th memorandum was that brought to bear by three court actions relevant to the placement of Chicano students in California in classes for the mentally retarded on the basis of the invalid tests.¹³

Gerry ties the activities of OCR to pressure from community groups as well as to a review which resulted in

¹¹Alcalá, op. cit., p. 367.

¹²Ibid., p. 369.

¹³Henry J. Casso, op. cit.

(1) massive evidence of the systematic lower achievement of minority group children and (2) the existence of large numbers of segregated homogenous ability grouping and special education classes. The review led to the conclusion that Mexican American children, as a group, were being excluded in many school districts from full and effective participation in, and the full benefits offered by the educational programs operated by such districts.¹⁴

A report by the Texas Advisory Committee to the U.S. Commission on Civil Rights concluded similarly:

In the field of education the Texas State Advisory Committee has found that the meaning of "equal educational opportunity" has not been fully understood by those people in a position to bring about truly equal educational opportunity. For such opportunity encompasses more than the mere elimination of tangible differences -- differences in buildings, books, and teachers. It is the feeling of this Committee that the basic premise of our system of free public education rests on each man's right to an education which will allow him to develop his capabilities to his full potential. If an educational system is so designed that, in general, only white Anglo middle-class students can achieve their maximum potential, such a system violates the Constitution of the United States.

We can no longer remain under the illusion that a system designed to teach a young Anglo student from Boston or Dallas will work equally well for a

¹⁴Gerry, op. cit., p. 239.

Puerto Rican youth in East Harlem, a Mexican American in San Antonio, or a Black student in Houston. The school system must begin to take into account that background and the special needs of their students and alter teaching methods and educational concepts accordingly. In fact, our schools should take advantage of the prevailing differences in culture and language to enrich their intellectual content. In a world as small as ours it makes no sense to teach thousands of students only in English. It is wrong and shortsighted to teach American and Texas history without the inclusion of contributions made by Blacks and Mexican Americans.¹⁵

As issued on May 25, 1970, the memorandum addressed four major areas of concern relating to compliance with Title VI in the provision of educational services to national origin minority group children:

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.

¹⁵A Report of the Texas Advisory Committee to the U.S. Commission on Civil Rights (1970).

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.¹⁶

The issuance of the Memorandum constituted a major landmark both in the civil rights history of the country and in the educational reform and cultural pluralism movements. Its greater significance, however, lies in the way it was implemented. The Office of Civil Rights projected that at least three tasks would have to be completed before the memorandum could become fully operational:

1. the development of a technique for investigating and a format for proving noncompliance with the various sections of the Memorandum which would meet legal requirements and which could be presented to the field staff for implementation,
2. the development of an educational assistance capability in the department to assist the office in negotiating compliance with the provisions of the Memorandum, particularly with regard to new educational programs which might be available to school districts seeking to come into compliance, and
3. the development of additional policies to particularize those discriminatory practices in each area of the memorandum which resulted in noncompliance.¹⁷

¹⁶Memorandum from J. Stanley Pottinger, op. cit.

¹⁷Gerry, op. cit., p. 235.

To complete the tasks, the Office of Civil Rights took what is perhaps its most significant action, the development of a series of mechanisms by which highly competent professionals and community leaders representative of the community of interest would be involved in the planning, development, and implementation of procedures related to the implementation of the May 25th Memorandum.

Involvement of Community

Immediately after the release of the Memorandum, a departmental task group with a substantial majority of the task group composed of Mexican American and Puerto Rican educators, psychologists and community and civil rights leaders was created to assist in its implementation and to develop additional policies setting forth possible programs of remedial action pursuant to each area of the Memorandum.

In a Denver, Colorado meeting, the task group set as its first policy and development priority, that section of the memorandum relating to the discriminatory assignment of minority group children to special education classes for the mentally retarded. A largely California-based working committee including Dr. Dlfredo Castañeda, University of California, Riverside; Dr. Edward DeAvila, Stockton Multilingual Assessment Project; Dr. Uvaldo Palomares, Institute for Personal Effectiveness in Children; Dr. Manuel Ramírez, University of California, Riverside; Mr. Felipe Montez,

U.S. Civil Rights Commission, Los Angeles; Mr. Henry Casso, Mexican American Legal Defense and Education Fund; Mr. Martin Gerry, Assistant Director, HEW-OCR; and Mrs. Dorothy D. Stuck, OCR-Dallas, Texas was appointed to assess the needs for further policy development.¹⁸

The committee concluded that further action by OCR was needed to: (a) adequately identify (and thus to put school districts on notice of) the various discriminatory aspects of the assignment process, and (b) to identify a non-discriminatory system of assignment for use by school districts found to be in non-compliance.¹⁹

Special Education Provisions

In the period since its formation the Committee has developed a set of procedures which it views as acceptable minimum assurance of non-discriminatory evaluation and assignment of racial or national origin minority students to special education classes for the mentally retarded. The procedures (included here as Appendix B) address the following major areas.

1. Before a student may be assigned to a special education class for the mentally retarded, the school district should gather, analyze, and evaluate adaptive behavior data and socio-cultural background information relating to the non-school environment of the student being reviewed for assignment.

¹⁸Martin H. Gerry, "Cultural Myopia: The Need for a Corrective Lens."

¹⁹Ibid., p. 10.

2. Prior to individualized testing, the teacher (if making the referral) or school psychologist should submit a written report on the child's observable school behavior, academic performance, socio-cultural background information and adaptive behavior data and including an indication of what testing or evaluation instruments will be employed, together with a description of the behavior which the proposed tests or other evaluations will attempt to measure.
3. A thorough medical examination should precede psychological testing and evaluation.
4. Full communication with parents about both testing and placement should be effected in a language and setting to permit full understanding and free discussion.
5. Testing should occur only after the student has been familiarized (and made comfortable with the testing situation and only by culturally and linguistically competent test administrators.
6. Placement procedures should be responsive to cultural factors, reviewed by and advisory board, and provide for reassignment to regular classes when appropriate.
7. Students currently assigned to classes for the mentally retarded should be reevaluated in accordance with the recommended procedures and reevaluation of students at least yearly should be provided.¹⁹

¹⁹Ibid., pp. 24-27.

Equal Educational Services Review Procedures

As the task group attended to the further specifications of policy guidelines related to section 2 of the Memorandum, OCR proceeded to develop a rigorous technique for investigating and a format for proving noncompliance with the various sections of the Memorandum which would meet legal requirements and which could be presented to field staff for implementation. The task was an awesome one as illustrated by the Mexican American study of the U.S. Commission on Civil Rights. Analyzing the status of equal educational opportunity for Mexican American children was begun by the U.S. Commission on Civil Rights in 1968 and the first of six reports of the Commission was not released until April, 1971. The Office of Civil Rights studies would have to stand up under more than scientific research criteria; they would be subject to both legal and political scrutiny. Furthermore, Office of Civil Rights was entering into a new area of discrimination -- one that had no less devastating effects than those recognized by the Supreme Court in the Brown decision, but one much less tangible than the segregation of students.

The procedures developed by OCR have resulted in evidence which probes and proves the depth and breadth of invidious discriminatory practices utilized by school districts in the operation of school programs. The thoroughness

of the OCR procedures developed and implemented with the equal participation of both lawyers and educators point up the weakness of previous cases developed exclusively by lawyers largely ignorant of both pedagogy and the way schools operate in actuality.²⁰ Some criticism²¹ of OCR based on the excessive amount of time taken to develop the procedures appears to be justified and will probably continue because the investigative procedure is lengthy. To take action, as in the filing of numerous suits, without the necessary understandings of the evidence needed to prove more than de facto segregation, without the necessary procedures for gathering the evidence where understandings exist, and without the manpower with the necessary expertise for implementing the procedures if these exist and are understood, inevitably results in bad decisions, irrevocable ones, and a betrayal of the people who stake so much of their community and personal lives on the legal system.

In developing the procedures for investigating non-compliance with the various sections of the memorandum, the program development staff of OCR decided to conduct a series of pilot reviews.

²⁰The author has participated and testified in a number of school desegregation cases. In most instances, it has not been possible to project comprehensive remedies for those invidiously discriminatory practices because comprehensive evidence has not been forthcoming from plaintiff's attorneys.

²¹Alcalá, op. cit.

U.S. Commission on Civil Rights, Report VI: Toward Quality Education For Mexican American Children.

From a legal standpoint, the following propositions needed to be proven in order to demonstrate non-compliance with Section I:

- a. National origin-minority students in the district enter the schools with different linguistic and cultural backgrounds which directly affect their ability to speak and understand the English language.
- b. National origin-minority students are excluded from effective participation in and the full benefits of the educational program (including success as measured by the district) of the district on a basis related to English language skills.
- c. The district has failed to take effective affirmative action to equalize access of national origin-minority students to the full benefits of the educational program.²²

To investigate proposition a in the pilot district, OCR collected and analyzed data related to the home language and culture of the national-origin-minority group children at the time they entered the system and data related to the English language skills of the national-origin-minority group children at the time of entry.

Propositions a and b were investigated in the pilot district by reviewing and analyzing data on the educational performance of all students at grade level. Discussions with school district officials indicated that no action to equalize access of Mexican American students to the educational

²²Gerry, "Cultural Freedom," op. cit., pp. 235-236.

program had been taken by the district during the school year and that none was planned for the foreseeable future.²³

Section II of the Memorandum was investigated by reviewing permanent record folders of students assigned to such classes; it was noted that both the standardized tests and the teacher evaluations used as the primary criteria for assignment were heavily biased toward the evaluation of English language skills. Discrimination in the operation of the assignment process was proven by a technique with primary attention to: "(1) the overinclusion of minority group students; (2) the underinclusion of Anglos, and (3) the use of a different standard of effort and thoroughness in the evaluation of students based on their race, color, or national origin."²⁴

Section III of the Memorandum (related to ability grouping or tracking), was expanded to require school districts to provide a comprehensive rationale for the grouping or tracking scheme including a clear statement of success criteria (related to upward movement), a detailed analysis of the reasons for the separation of students, an outline of the instructional methodology to be employed in each grouping and the system's method of evaluating the methodologies.

²³Ibid.

²⁴Gerry, "Cultural Freedom," op. cit., p. 241.

Section IV was investigated by (1) reviewing the written records of the school district as regards notification of parents, (2) interviewing community and school district personnel to ascertain the language or languages in which meetings and activities are conducted, and (3) surveying the home language of parents of students.²⁵

The investigative procedures developed through the pilot efforts are included in an OCR manual for field staff. It is obvious from reviewing the manual and more current reviews, that the procedures have been expanded and refined as OCR has reviewed additional school districts.²⁶

Generally, a review involves two sets of investigative procedures. Upon receipt of a complaint regarding discriminatory practices in a school district, Office of Civil Rights undertakes an extensive pre-visit investigation and data collection task with the objective of developing familiarity with the characteristics of the districts under review. Information collected and documented includes:

1. Physical locations of schools on map.
2. Make-up of schools/student enrollment by schools, grade and race.
3. Percentage breakdown of students in system by school, by race, by grade level.
4. Staff assignment by school, position, race.

²⁵Ibid., p. 241-243.

²⁶The procedures described here are contained in the Manual for Field Staff of OCR-HEW, Dallas Regional Office.

5. Capacity, age, location, and adequacy of all school facilities.
6. Demography and geography of the community.
7. Distances between schools and population centers.
8. The school districts' standardized testing program including lists of all tests used, schools, and grade levels in which tests are administered and availability and form of test data.
9. Names of local community organizations.
10. School district policy as regards student transfers from school to school.
11. Bussing policy, program, routes, etc.
12. Proposed construction information with pupil locator maps, community residence maps, school site maps, and transportation maps.
13. Reports from school board minutes as they relate to decisions regarding schools with minority children, including Board minutes related to discussions of educational programs which the school district may or may not have sought.
14. Review of all federally funded programs with amount funded.
15. Secure any dissertations, studies, or reports made relating to any aspect of the school district.
16. Information, reports, or estimates relating to the numbers of children who are of school age, but not enrolled in school.

Additionally, the following information is secured from non-school district sources:

1. State laws and regulations of appropriate agency regarding Special Education Classes-Minimally Brain Injured (MBI), Educably Mentally Retarded (EMR), and Trainably Mentally Retarded (TMR).

2. Reports, complaints, or surveys of the state civil rights authority.
3. Information from state or local officials or organizations which have (1) filed complaints and/or court actions and (2) conducted studies and/or surveys relevant to the district or its locale.

The second set of procedures are relevant to the on-site review of the school district. Office of Civil Rights customarily requests as much of the information as possible by letter. Information not available by mail is requested in interviews with the objective of documenting

and acquiring evidence relative to quality and delivery of educational services in the context of LEA's administrative policies and procedures, and to determine whether there is a violation of Title VI, Section 601, 602, and 603, and the May 25th Memorandum, Parts 1, 2, 3, and 4.

OCR has developed a series of ten to twenty areas relevant to the issues in the Memorandum to be investigated in in-depth interviews with the following school staff members:

1. Superintendent
2. Curriculum Director
3. Personnel Director
4. Federal Programs Officer or Coordinator
5. Special Education Director
6. School Psychologist and Psychometrist
7. School Social Worker
8. Special Ed. Review Committee
9. Principals
10. Teachers
11. Counselors
12. Director of Transportation
13. Director of Food Services
14. School Nurse.

Additionally, data is collected and analyzed in the area of language, standardized testing, ability grouping/tracking, special education and curriculum. Records related to the school district's practices in notifying parents are also examined.

More recent reviews by OCR-Dallas reveal increased sophistication in assessing equality of educational services. In a South Texas school district which had "always been at least 70% Mexican American," a review of 6,000 graduates from 1954-55 through 1970-71 revealed that 2,777 or 46% were Spanish surnamed compared to 3,233 or 54% non-Spanish surnamed. During that same time period only one of sixty-one students chosen as honor graduates was Spanish surnamed. Senior class officers for the same time period revealed a similar inequity. Of 69 officers selected through the years, 6 or 9% were Spanish surnamed compared to 63 or 91% non-Spanish surnamed.²⁷

In the same school district, a study of participation by ethnic groups in co-curricular activities was made for the years 1961 through 1971. Participation by ethnic groups in a total of 16 major activities or honors was studied for the twelve year period. Overall participation in all activities was 84% Anglo compared to 16% Mexican American. Of a total of 176 students working on the yearbook staff

²⁷OCR review of Harlingen Independent School District, Harlingen, Texas. On file at the OCR-HEW-Dallas Regional Office.

during the twelve year period, 19 or 11% were Mexican American compared to 157 or 89% Anglos. The newspaper staff reflected a similar situation. There, 54 or 15% of the total were Mexican American compared to 297 or 85% Anglos.²⁸

Clearly student under-achievement and assignment to classes for the mentally retarded reveal that Mexican American children in the Southwest do not have equal access to the full benefits of the instructional program. What the comprehensive probing of the OCR investigative procedures is able to reveal is the specific manifestation of the invidious discriminatory practices which result in the unequal educational services.

Development of a Response²⁹

As the task group proceeded in the development of the EMR policies and OCR developed its procedures for investigating school districts, the pressing need to address the task of developing an educational assistance capability in the Department to assist the office in negotiating compliance with the provisions of the Memorandum, particularly

²⁸Ibid.

²⁹Much of the discussion contained in this section is original history, reported as a result of the author's direct involvement in this phase of the development of the May 25th strategy.

with regard to new educational programs which might be available to school districts seeking to come into compliance became obvious.

In the early Spring of 1971, the Committee working on specification of the special education policies met in San Antonio, Texas. During their meeting, the Committee was invited to alter their agenda and spend a morning visiting the Edgewood Independent School District.

Edgewood, the fourth poorest school district in the State of Texas is located in West San Antonio and serves a ninety-six per cent minority student population. The school district had undergone somewhat by an educational revolution in the previous two years. José A. Cárdenas had been invited to be the Superintendent of a reform oriented school board in June, 1969, and had succeeded in attracting a highly competent management team as well as large numbers of young, innovative classroom teachers.³⁰ In an aggressive campaign to improve the District's financial position, Cárdenas and his team had managed to almost double the School District's budget and to introduce a broad spectrum of innovative programs in early childhood and bilingual education, parent and community involvement, staff development, staff differentiation and teacher aide development, special education,

³⁰The Edgewood management team for innovative programs included the author, Ms. Gloria Zamora, Ms. Teresa Dent, Ms. Gloria Gámez, Mr. Mauro Reyna, Mr. Juventino Guerra, and Mr. Rubén López.

peer-tutoring, ethnic studies and other areas. The Edgewood programs operated on a rationale based on the Cárdenas-Cárdenas Theory of Incompatibilities, a conceptual framework developed by the Superintendent and the author who functioned as Special Assistant and Director of the Career Opportunities Program.

The Edgewood programs provided tangible visible evidence that remedies could be implemented, furthermore they were tied to a comprehensive analysis of how school district processes impact children as well as the innovative programs designed to respond to them. The OCR team visiting Edgewood was highly encouraged. Later that Spring, HEW Secretary Elliott Richardson visited Edgewood, as the site of many HEW-funded programs, and had the opportunity to view the same programs seen by the Committee.

Entering one classroom, Richardson saw a teacher, a teacher aide, a volunteer parent and a youth tutor working in one classroom with approximately twenty-five children. Going to one group of children under the supervision of José Bernal, a community resident participant in the Career Opportunities Program, Richardson asked one of the children, in English, to show him his left hand. The child looked at Richardson with confidence, but without understanding.

Bernal rose to the occasion quickly. Without pressuring the child, he posed the question in Spanish. The child turned to Richardson with a smile and extending his left hand exclaimed ;Esta!

Bernal turned to the Secretary and explained, "You see Sir, the child understood the concept, he just couldn't understand your language." The impact of the Edgewood experience on departmental support for the policies pursued under May 25th was increasing.

The formulation of an educational assistance capability in the May 25th negotiations was also influenced by the work of other national leaders in Mexican American education.

The Follow Through project implemented under the direction of Dr. Manuel Ramírez in Cucamonga, California³¹ had also influenced thinking on programmatic responses to non-compliance under May 25th. The concept of field dependence-independence was clearly evident in the work of the committee working on special education issues. The Esperanza Model for staff development created by Dr. Tomás Arciniega and implemented with a team of New Mexico educators headed by Dr. Juan Aragón, Director of the Cultural Awareness Center of the University of New Mexico and including Mr. Joe Ulibarri, Dr. Mari-Luci Jaramillo, and Dr. Jim Miller provided some of the early rationale for staff development-focused responses to the Memorandum. Many of the

³¹Manuel Ramírez III, "Bilingual Education as a Vehicle for Institutional Change" in Mexican Americans and Educational Change edited by Alfredo Castañeda, University of California at Riverside, May, 1971.

concepts of culture developed by the Aragón team were also to play a major role in the development of a rationale for programmatic responses to the Memorandum.³²

In April, 1971, the Office of Education established an Intra-Departmental Advisory Committee to develop strategies for, and supervise the rendering of educational program assistance to school districts found to be in non-compliance.³³ On April 28-30, a group of approximately seventy-five outstanding Mexican American, Puerto Rican, and Native American educators, psychologists and community leaders met in San Diego to review bilingual-bicultural programmatic responses to the Memorandum.

The San Diego conference included presentations by Mrs. Dolores Earles, presenting a discussion of the bilingual-bicultural in operation at the Laredo-United Consolidated Independent School District in Laredo, Texas; Juan Aragón presenting the rationale for the Cultural Awareness Center, University of New Mexico; Manuel Ramírez presenting the Follow Through Model in Cucomonga, California and José A. Cárdenas, Gloria Zamora, Teresa Dent and Blandina Cárdenas presenting the Edgewood Model.

³²Juan Aragón, "The Challenge to Biculturalism: Culturally Deficient Educators Teaching Culturally Different Children" in Mexican Americans and Educational Change edited by Alfredo Castañeda, University of California at Riverside, May, 1971.

³³The Committee included: Juan Aragon, Manuel Carillo, Henry Casso, Gilbert Chavez, Martin Gerry, Armando Rodriquez, and the author.

In late May, the Intra-Departmental Advisory Committee met in Long Beach, California for the purpose of developing specific recommendations, based on the consensus of the April meeting in San Diego, regarding school district response to the Memorandum. The Committee concluded that there was a need to develop specific recommendations which could be used by the Office of Civil Rights during negotiations to provide substantive assistance to school districts in developing responses to the discriminatory practices which resulted in non-compliance. The recommendations should focus on the development of a comprehensive educational plan rather than the development of supplementary programs. A follow-up meeting of a subcommittee of the Committee was set for mid-June in Boston, Massachusetts. While in Boston, the subcommittee was requested to visit a bilingual program in the Roxbury section of Boston. The subcommittee visited the bilingual classes being held under the most oppressive of physical and educational conditions. It was obvious to the subcommittee that the discriminatory practices in the Southwest were at least mirrored in the Northeast.

Implementation in Beeville, Texas

August 9, 1971, an OCR-Education Assistance Team visited the Beeville Independent School District for final negotiation of the school district's voluntary compliance.

In addition to the OCR team composed of Martin Gerry, Mrs. Dorothy D. Stuck, James M. Littlejohn, Cass Welsch, and Lucy Thompson, OCR had requested the educational assistance of Ms. Patricia J. Nakano, Dr. Ed DeAvila and the author.

The OCR review of the Beeville Independent School District had revealed clear non-compliance with the May 25th Memorandum. The letter of non-compliance mailed to the school district by the Department of HEW indicated that:

1. A substantial number of Mexican American students enter first grade classes in the district with serious deficiencies in English language skills.
2. The district had not taken significant and effective affirmative steps to offer Mexican American children equal access to and effective participation in the district's educational program.
3. That subsequent performance of Mexican American students on tests utilized by the school district to evaluate English language skills reveals a progressive decline in the educational performance of Mexican American students (and, thus, an increasing exclusion from effective participation) which becomes more significant year by year as compared with both national norms and the performance of other children in the district.
4. A consequence of the district's failure to meet the educational needs of the minority pupil is an undue concentration of such pupils placed in Special Education classes for the mentally retarded on the basis of tests which essentially measure and evaluate English language skills.
5. Mexican American children appear to have been denied access to college preparatory courses on a basis directly related to the system's failure to inculcate English language skills.

The decline previously noted . . . carries through to high school where although Mexican Americans constitute about 50% of the students, they comprise only about 10% of the advanced group and between 80% and 90% of the lower high school grouping of students not receiving college preparatory work.

6. The effective involvement of the parents of Mexican American students should receive special attention.
7. A pattern of assignment to sections of various courses exists which is inconsistent with a random distribution of students on the basis of race, color, or national origin which the school district maintains is the method for assignment.
8. One school, poorly maintained and providing less adequate facilities than the predominantly Anglo schools in the district, is an ethnically identifiable facility.
9. Only eight of the 226 members of the professional staff were Mexican American.³⁴

The letter serves to more clearly define the scope of the Memorandum:

Our May 25, 1970 Memorandum is specifically directed to this interaction between the specific language problems of ethnic minority children and segregation. It prohibits action or inaction responsible for the discriminatory denial of basic rights to an education.

The letter of non-compliance requested that the school district indicate to HEW within 30 days the steps that would be taken by the district to develop a plan which

³⁴Letter from Dr. John A. Bell, Chief, Dallas Education Branch, Office of Civil Rights to Supt. A. A. Roberts, Beeville Independent School District.

would be implemented by the beginning of the first semester of the 1971-72 school year. The letter also offered to make available to the district, upon request, an Educational Program Team to assist in the development of the plan.

On April 22-23, 1971, an HEW Educational Program Team coordinated by Dr. Sam Miguel and Mr. James M. Littlejohn visited the Beeville schools. The Report of the Team presents some of the basic principals which would govern enforcement of the Memorandum. The introductory observations contained in the report state:

- that the cultural and linguistic pluralism of the Beeville student body necessitates the utilization of instructional approaches (in addition to those now used) which reflect the learning styles, background and behavior of all segments of the student community; modification of curriculum design and the development of new instructional skills and materials are part of the development of pluralistic instructional approaches;
- that the educational program of the district incorporate, affirmatively recognize and value the cultural environment and language background of all of its children, so that the development of positive self-concepts in all children of the district can proceed apace;
- that language programs be implemented that introduce and develop language skills in a secondary language (English for many Mexican American students; Spanish for Anglo students), while at the same time, reinforcing and developing language skills in the primary language so that neither English nor Spanish is presented as a more valued language.

- A final introductory observation is that the psychological and hence, educational attitude on the part of school personnel can aid in the positive self-image development which will lead to greater achievement of Mexican American students. This must also extend beyond a "lip service" commitment to manifest itself in the very core of the educational program.³⁵

The Comprehensive Educational Plan negotiated by the Beeville School District with the OCR focused on seven objectives:³⁶

Implement an educational plan which will utilize all available resources to equalize the educational access of all children in order to eliminate significant differences in educational performance attributable to membership in any racial or ethnic group.

To meet the first objective the District would:

(a) initiate for children aged 3-4 years a Bilingual Early Childhood Education Program, (b) expand the district's existing home and neighborhood educational programs for 3-4 year olds, (c) continue and expand a program for first grade students displaying moderate to severe perceptual problems, (d) initiate a comprehensive staff development plan including intensive efforts in the recruitment and

³⁵Report of the HEW Educational program Team to the Beeville Independent School District submitted by Sam Miguel and James M. Littlejohn, April, 1973.

³⁶Letter from Mrs. Dorothy Stuck to Superintendent A. A. Roberts, Beeville Independent School District, August 12, 1971.

hiring of minority group staff at the professional, para-professional and non-professional level and the initiation of a comprehensive staff training program; (e) initiate small group instructional strategies, with the utilization of bilingual bicultural teachers and aides; and (f) expand the oral language program.

The second objective focused on the district's Special Education program:

Implement an educational plan to assure non-discriminatory assignment procedures and operation of educationally sound Special Education classes for the mentally retarded.

To meet the objective, the school district would:

- a. Initiate procedures to insure that Special Education teacher recruiting and assignment takes into consideration the student racial/ethnic distribution.
- b. Restructure the Admission, Review and Dismissal Committee for Special Education to always include at least one Mexican American staff member or community person.
- c. Modify the screening process for Special Education directly related to the home and family. To accomplish this, the school district will:
 1. Print the form used to secure parental permission in both Spanish and English.
 2. Develop a pamphlet in Spanish and English, to help parents understand the goals and activities of the Special Education classes.
 3. Encourage parents to visit the class and teacher under consideration, with

at least two weeks allowed to intervene between first contact with parents concerning need for assignment and parents returning a signed consent form.

4. Provide that school personnel visiting non-English-speaking parents be bilingual.
- d. Establish a full-time position for an individual who reflects the majority ethnic enrollment of Special Education classes. This person will serve on the screening committee and will work with parents for orientation and approval of assignment. This person will also spend a significant amount of time coordinating the entire Special Education program from the classroom to the home.
 - e. Initiate an affirmative effort to improve communication of the purposes and activities of the Special Education program to teachers and principals who are not directly associated with Special Education. To accomplish this, the school district will:
 1. Optimize the role of Special Education within the entire school system through the regular use of minority consultants having specific background and experience in Special Education.
 2. Reserve time on Board, faculty, and administrative meeting agendas specifically to communicate the goals and activities of Special Education programs.
 3. Schedule monthly meetings of the Special Education teachers and administrators to reconcile the curriculum objectives of Special Education with specific activities required of children.

The third objective focused on counseling:

Undertake a reevaluation of counseling processes at the secondary level in order to insure: (a) that all students will have equal access to all phases of the secondary curriculum, and (b) that ethnic isolation resulting from course selection and assignment will be minimized so as to approximate random assignment on the basis of ethnicity.

The fourth, fifth, and sixth objectives addressed student and teacher assignment:

Eliminate the ethnic identifiability of the Jackson Elementary School by:

- a. Assigning those students now attending grades 1-4 in that school to other elementary schools in the district.
- b. Assigning all sixth grade students in the district to Jackson Elementary School.
- c. Making the student assignments described in (a) above in such a manner as to assure that no more than 65% of the enrollment of any school in the district is of any one ethnic group.

Assign professional and non-professional staff to the schools of the district so as to approximate in each school the ethnic composition of the professional and non-professional staff of the district.

Insure that all school construction, school consolidation, and site selection (including location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

The last objective addressed the area of extra-curricular activities:

Insure that all non-academic activities, including but not limited to athletics, clubs, band, and cheerleading and including also the appointment or election of officers for any such extracurricular groups or activities, as well as election of class officers, shall be made available to all students in the district without regard to race, color, or national origin and without regard to their previous school of attendance.

Summary

Prior to 1970, the federal agencies concerned with enforcing the decisions of the U.S. Supreme Court and the 1964 Civil Rights Act largely ignored both segregation and invidious discriminatory practices denying Mexican Americans, Puerto Ricans, Orientals, Native Americans, and other national origin minority group children equal access to the full benefits of the educational system. The Memorandum of May 25, 1970, focused national attention on the civil rights of national origin minority group children in the Nation's schools. The Memorandum focused specifically on the interaction between the specific language problems of ethnic minority children and: (a) unequal access to effective participation in the educational program offered by a school district, (b) segregation through tracking, ability grouping, and assignment to classes for the mentally retarded and (c) the exclusion of their parents from the processes by which the district provides information.

The implementation of the Memorandum was significantly strengthened through the involvement of a significant group of outstanding professional leaders representative of the community of interest in both (a) the development of policies designed to further clarify the provisions of the Memorandum and (b) the development of an educational assistance capability within the Office of Civil Rights.

The development of procedures for completing comprehensive reviews of the school districts resulted in a capability for meeting the legal requirements of future administrative proceedings as well as withstanding political pressures that might be forthcoming.

By the completion of review and negotiations in the first May 25th case, Beeville, Texas, HEW-OCR had developed a broadened and deeper perspective on those invidious practices correlatable with the school's failure to respond to the language difference of most minority group children which resulted in the denial of equal educational services. These comprehensive perspectives were contained in the comprehensive educational plan negotiated by OCR and the Beeville Independent School District.

C H A P T E R I V

SAN FELIPE - DEL RIO

The development of the strategies relevant to the implementation of the May 25th Memorandum was significantly accelerated by the work done by the Office of Civil Rights and a team of Mexican American professionals in the disposition of the San Felipe-Del Rio school district consolidation case.¹ This chapter will review the development and resolution of the case, the Comprehensive Educational Plan developed by the HEW Educational Program Team and ordered by Judge William Wayne Justice for the consolidated school district, and implications of the plan.

San Felipe-Del Rio, Texas

Few communities offer a more clearly defined manifestation of the division existing between Mexican American and Anglo in South Texas than that offered by the small city of Del Rio, Texas.² Advertised by the local Chamber of Commerce as both the Queen City of the Rio Grande and the Wool and Mohair Capitol of the World, the community originally

¹Order of August 13, 1971, in Del Rio ISD Intervention in United States v. Texas, 321 F Supp. 1043 (E.D. Tex., 1970), modified, Civil No. 5281 (E.O. Texas, July 16, 1971).

²The author's objectivity in describing the city is undoubtedly limited by the fact that she was born, attended schools, and taught in Del Rio. Most of her extended family still resides there.

known as San Felipe-Del Rio is divided by the lovely, clear, San Felipe Creek which crosses the city and empties into the Rio Grande some three miles west of Del Rio. There is a thriving and growing Mexican border town on the "other side" of the Rio Grande where on most Saturday nights Mexicanos and Anglos enjoy food, drinks, dancing and entertainment for considerably less money than comparable services would cost in the U.S.

On the far east side of the city sits Laughlin Air Force Base, once the home of the U-2 Spy planes, but now the one-year home of hundreds of student pilots from throughout the United States and the base's support personnel and their families. The far west side of the area is the site of Amistad Dam, a large reservoir built jointly by the United States and the Republic of Mexico which also serves as an international boundary. Although the dam is bringing some additional tourism to the area, the economy of the city is largely dependent on the civil service jobs, real estate revenues, and retail business generated by "the base."

Until August, 1971, Del Rio had two independent school districts, the San Felipe Independent School District encompassing all of the area east of San Felipe Creek and the Del Rio Independent School District-west of the creek. The City was also served by a number of parochial schools. Much of the division in the city focused on the existence of the

two school districts. A San Felipe Lions Club, for example, was created because the Mexican American Lions wanted to focus their service in the San Felipe area of the city. The result was a city with two Lions Clubs, one predominantly Anglo and the other predominantly Mexican American.³

That the decision on the part of Mexicanos in Del Rio to support their own social institutions was often their own did not obscure the fact that it was most often born out of the realization that their access to anglo-dominated social institutions would be very limited. Until the late fifties, only a handful of Mexicanos were ever called for jury duty; only the same handful was able to acquire meager loans from banks;⁴ none were allowed to purchase bank stock and only two Mexicano families had significant land holdings. The local Country Club, built on land leased from the city for one dollar per year for one hundred years had no Mexicano members. Mexicanos swam in the San Felipe Creek and at the Pig Pen rather than at the municipal swimming pool.⁵ Most of the city and county boards included only token if any

³The most recent information available to the author indicates that there are now three Lions Clubs in this city of 25,000.

⁴Hearing - Held in San Antonio, Texas before the United States Commission on Civil Rights, December 9-14, 1968. U.S. Government Printing Office, Washington, D.C., Testimony of Mr. Homero Sigala and Fermín Calderón, M.D., p. 296.

⁵Integration of the municipal swimming pool occurred without incident during the mid-fifties.

Mexicano membership. All of the churches, except the Sacred Heart Catholic Church after the 1960's, were clearly identifiable as either Mexican American or Anglo. The differences between Anglo and Mexican American institutions, including the schools, was clear: Mexican Americans almost always lacked the financial resources to accomplish their goals.⁶

In spite of large-scale invidious discriminatory practices which were the rule in Del Rio, many Mexicanos experienced some degree of success in enjoying the benefits of American society. This success is related to a number of factors including a strong family and group-oriented support system. Additionally, three critical factors impacting the success of Mexicanos in Del Rio were: (1) the opportunity for completing graduation requirements at San Felipe High School, (2) the opportunity to acquire a higher education as a result of veterans benefits and other opportunities opening up for Mexican Americans as a result of their participation in World War II and the Korean War,⁷ and (3) the increased economic opportunities (such as real estate and civil service jobs) generated by the reactivation of Laughlin Air Force Base in 1955. Like many South Texas communities,

⁶Hearing - Held in San Antonio, Texas, op. cit., p. 303.

⁷The San Felipe Independent School District also facilitated higher educational opportunities for many of its own graduates by providing employment opportunities whenever possible.

however, (and perhaps more than other rural areas) Del Rio's pattern of discrimination took its toll in the large numbers of its highly prepared Mexican Americans who left in search of less limited professional and socio-political opportunities.

The Conflict

The history of conflict between Del Rio and San Felipe stems from the early 1900's. At that time the two school districts encompassed Common School District Number 5. The Common School District had a Negro School as early as 1894⁸ and a Mexican School prior to 1911. A high drop-out rate resulted in less than five Mexican American high school graduates between 1915 to 1929.⁹ One witness before the San Antonio Hearings of the U.S. Commission on Civil Rights reported that upon reaching high school, Mexican Americans were discouraged from continuing their high school education by physical beatings.¹⁰ The Mexican American students in

⁸On-site Review of San Felipe Independent School District on December 14-17, 1970. On file at the office of Civil Rights, Department of Health, Education and Welfare, Dallas, Texas.

⁹Ibid.

¹⁰Testimony of Dr. Fermín Calderón at the San Antonio Hearings, U.S. Commission on Civil Rights, U.S. Government Printing Office, Washington, D.C., 1968, p. 303.

the Common School District were segregated in the West End schools in what is now the Del Rio Independent School District and in two elementary schools in what became San Felipe.¹¹

The filing of the Salvatierra Case in 1929 served to heighten Mexican American concern about the education of their children. Its failure to achieve the desired integration resulted in a decision by Mexican American citizens to seek deannexation from the Del Rio district and to establish an independent school district in order to prevent discrimination against their school-age children.¹² The San Felipe Creek was designated as the boundary between the two school districts. The result was a predominantly Mexican American school district with an extremely low tax base. All of the city's major businesses were located on Main Street which was in the Del Rio district. San Felipe thus found itself in a state of chronic financial impotence.

The overwhelming majority of San Felipe's residents were very poor. Nonetheless, the community was determined to keep the District alive. The football stadium built in the late '40's was constructed after the community had a brick buying campaign. Individuals and families purchased

¹¹On-site Review of San Felipe, op. cit.

¹²Ibid.

as many bricks at 10¢ per brick as their weekly money surplus allowed.¹³ In 1951, the District was very close to bankruptcy. The community raised enough money through a series of Contests to earn the District an economic reprieve. The badly worn curtain in the high school auditorium was replaced in 1953 by parent-organized and manned weekly tamale sales.

In 1949, following the decision enjoining segregation of pupils of Mexican descent in the Delgado case,¹⁴ a complaint against the Del Rio Independent School District was filed with the Texas Education Agency. The Del Rio District's accreditation was withdrawn by TEA because:

1. The children were segregated to separate the two groups.
2. Latin-American teachers were confined to the Chicano school.
3. Freedom of choice did not solve the segregation problem because only Chicano children were given a choice and schools that had been all Chicano remained so.

The loss of accreditation decision by Superintendent of Public Instruction L.A. Woods was reversed when in emergency legislation the Texas legislature transferred the

¹³Three years after the abolishment of the San Felipe Independent School District, voters in the San Felipe area of the city staged a massive turnout to shift the balance of power on the School Board of the consolidated School District. The major issue in the election, according to an April 8, 1974, Del Rio News Herald newstory was the intention on the part of the consolidated school district to tear down the football stadium.

¹⁴Delgado v. Bastrop Ind. School Dist., Civil No. 388 (W.D. Texas, June 15, 1948).

powers of the State Superintendent of Public Instruction, an elected official to the newly created position of Commissioner of Education.¹⁵

The problems between Del Rio and San Felipe which led to the 1971 court order began in 1955 with the construction at Laughlin Air Force Base of Capehart Housing units for the families of base personnel. At that time, apparently on the rationale that San Felipe lacked the necessary facilities, San Felipe and Del Rio officials entered into an agreement whereby San Felipe waived "its claim now and in the future on the children residing in the housing units on Laughlin Air Force Base who attend the Del Rio schools and look to Del Rio to furnish such educational needs and transportation."¹⁶ With the agreement San Felipe also waived its right to Public Law 815 and 874 monies. Del Rio built numerous school facilities, acquired a fleet of seventeen buses, and upgraded its instructional services largely on the financial relief offered because of the transfer of almost 700 federally connected students.

Protest over the agreement began in 1960 when a man named Floyd Payne, owner and operator of a trailer park

¹⁵Alcala, op. cit., p. 339

¹⁶Exhibit No. 19, Hearings - Held in San Antonio, op. cit., p. 912.

outside the gates of Laughlin was refused bus service by the Del Rio District for the predominantly white lower income students who transferred out of the San Felipe District. Payne retaliated by protesting the millions of dollars "stolen" from Mexican American students in San Felipe. The publicity was highly damaging to the San Felipe administration, but the agreement, apparently provided for under P. L. 815 guidelines,¹⁷ and approved by the Texas Education Agency, appeared unchangeable. The daily deprivations which the San Felipe community had always surmounted with a touch of humor and a lot of pride became daily reminders of what the community perceived as the Anglos unflinching control and manipulation of the system.

By 1967, a new administration in San Felipe appeared to be determined to reverse the situation. The injustice was brought to the attention of HEW with little result. The 1968 San Antonio Hearings of the U.S. Commission on Civil Rights appear to have focused enough attention on the issue to warrant an Office of Civil Rights review of the controversy. A. Glickstein, Acting Staff Director of the Civil Rights Commission wrote Secretary of Defense Melvin R. Laird about the matter in March of 1969. There is evidence that

¹⁷Memorandum to Dr. Loyd R. Henderson, Education Branch Chief, from José Uranga, Jr., dated October 9, 1970, on file at the Office of Civil Rights, Department of Health Education and Welfare, Dallas, Texas.

HEW studied the situation as a result of the Civil Rights Commission and other pressures. In response to an inquiry from the office of General Council (Civil Rights Division) concerning the legality of the San Felipe-Del Rio Agreement, the Assistant General Counsel for Education, in a December 12, 1969, memorandum stated:

The Office of Education does not, under P.L. 81-874, or P.L. 81-815, attempt to control the assignment of federally connected children. Indeed, Section 301(a) of P.L. 81-874 and Section 12(a) of P.L. 81-815 disclaims any OE authority arising out of those two laws to force the two school districts or the Texas Education Agency to rectify any objectionable arrangements. . . . This is estimated to bring into the Del Rio I.S. D. \$326,306 under P.L. 874 and \$46,028 under P.L. 815. This money while a small portion of the Del Rio I.S.D.'s 2.8 million budget, represented more than 11 times the total amount the San Felipe I.S.D. hoped to obtain from all local sources.¹⁸

The controversy continued with San Felipe exerting ever more pressure. On October 16, 1970, HEW Office of General Council requested Dallas-Office of Civil Rights to gather specific information from the two school districts. The early 1971 reviews do not provide the kind of data required for a May 25th review. At best, they appear to support a student assignment investigation. Among other disparities, the reports indicate a student to teacher ratio of 21:2 in San Felipe and 15:8 in Del Rio, one bus

¹⁸Ibid.

for San Felipe and seventeen for Del Rio, every San Felipe building was found to be significantly inadequate and course offerings at San Felipe High School were less than half those of Del Rio High School.¹⁹

San Felipe's position was significantly strengthened in March of 1971, when Judge William Wayne Justice, in an East Texas case involving the segregation of Black students, ordered that where a student transfer from one district to another had the net effect of increasing segregation, the transfer was illegal.²⁰ It appeared that white students at Laughlin Air Force Base would be forced to attend the San Felipe Schools. Del Rio had just finished construction of a new high school which threatened to be empty and unpaid for.

The events which followed included harassment of San Felipe Board Members, a job-loss by one, harassment of Mexican American employees at Laughlin Air Force Base, threats that the base would close, a refusal to facilitate loans to the San Felipe District and numerous other attempts to intimidate the San Felipe District. The attempt was to

¹⁹Del Rio Independent School District, Texas-Compliance Review, January 12-15, 1971, on file at the Office of Civil Rights, Department of Health, Education and Welfare, Dallas, Texas.

²⁰United States v. Texas, 321 F. Supp. 1043 (E.D. Tex., 1970), modified, Civil No. 5281 (E.D. Tex., July 16, 1971).

create a move towards voluntary consolidation of the two school districts so that the intra-district ruling by Judge Justice would not apply.

When voluntary consolidation was not forthcoming the Del Rio Independent School District moved to consolidate the school districts under U.S. v. Texas. The case was heard in U.S. District Court, Eastern District of Texas, Judge William Wayne Justice presiding. The parties in the intervention suit included the United States (the Justice Department) the State of Texas (the Attorney General) the Del Rio Independent School District (represented by a private law firm) and the San Felipe Independent School District (represented by Warren Burnett and J. B. Ochoa of the Mexican American Legal Defense and Educational Fund).

San Felipe had an enviable record of success in the education of its students. In its forty-year history the small school district had produced a half dozen medical doctors, an equal number of Ph.D.s, a number of lawyers, and literally hundreds of teachers, nurses, and white collar personnel. A cost benefit analysis of the SFISD might well have reversed the position that San Felipe was the lesser district.

No one other than San Felipe was terribly interested in maintaining the San Felipe District, however. The Government had experienced a tremendous amount of pressure from

all sides and was anxious to put the matter to rest. Consolidation seemed the most feasible solution.

Consolidation and the Comprehensive Plan

Judge Justice ordered the consolidation of the two districts on the rationale that his earlier decision in U.S. v. Texas allowed no alternative. He made it perfectly clear, however, that he was fully aware of the injustice that had existed and ordered the two school districts to work with the Department of Health, Education and Welfare to "develop and submit to the Court by August 19, 1971, a comprehensive educational plan containing sufficient educational safeguards to insure that all students in the consolidated district will be offered equal educational opportunities." By order of the Court, "safeguards shall include, but shall not necessarily be limited to, bilingual and bicultural design and content."²¹ In the event the school districts and HEW could not concur on a plan, each was to submit a separate plan.

An Educational Program Team under the direction of the Commissioner of Education's Intra-Departmental Advisory Committee on Bicultural Education and including representatives of the Texas Education Agency as well as Texas based

²¹Order of Aug. 13, 1971, in Del Rio ISD intervention in United States v. Texas, op. cit.

educational experts visited the consolidated school district on August 14-17, 1971. The team included Dr. José Angel Cárdenas, Dr. Tomás Arciniega and the author as outside educational experts. Oscar Cárdenas, Gil Chavez, and Homero Acevedo, of the Office of Education, Gil Connolly and Joe Prince, Frank Contreras of the Texas Education Agency, and Juan Ybarra, Jim Littlejohn and Cass Welsh of the Office of Civil Rights. Martin H. Gerry and Dorothy D. Stuck directed the team.

Unable to meet with either Del Rio or San Felipe, the HEW Team proceeded to write the plan. The plan, included here as Appendix C, was based on the equal educational services concepts developed under the May 25th Memorandum. The plan reviewed educational performance data and concluded that:

On the basis of this review and analysis it is evident that a substantial number of Mexican American students have been excluded from effective participation in the educational program offered by the school district because of their national origin and their resulting inability to speak and understand the English language.²²

The Office of Civil Rights data also revealed discrimination in the assignment of students to: (a) segregated classes,

²²A Comprehensive Educational Plan for the San Felipe Del Rio Independent School District, submitted by the HEW Educational Program Team to the United States District Court, Eastern District of Texas, August 16, 1971. On file at the Office of Civil Rights, Dallas, Texas, p. 2.

(b) classes for the mentally retarded, and (c) concentration of minority students in vocational tracks.²³

In addition to recommending seven basic principles binding the new consolidated school district in the treatment and assignment of staff, the Educational Program Team made lengthy recommendations in the areas of:

- a. Curriculum Design and Content and Instructional Methodology
- b. Student Assignment and Classroom Organization
- c. Staff Development
- d. Parent and Community Involvement
- e. Special Education
- f. Non-Instructional Support
- g. Evaluation.²⁴

Curriculum Design and Content and Instructional Methodology were to be based on the three basic principals underlying the Beeville Plan. These were to be adhered to by providing:

- a. An early childhood bilingual bicultural education program similar to (or the same as) the one developed by the Southwest Educational Development Laboratory.
- b. Curriculum development as well as the design of alternative instructional organizational patterns (i.e., team teaching) to offer all children bilingual-bicultural education.
- c. Implementation of a two phase development plan by which all students in grades 5-6 and 7-8 would be full participants after two years in bilingual-bicultural instructional program. During the first year English as a second language would be implemented with all students;

²³Ibid, pp. 4-5.

²⁴Ibid.

during the second year students would be involved in bilingual-bicultural education with continued development of both Spanish and English language skills.

- d. Additionally in the 7th and 8th grades there would be implemented: (1) a comprehensive counseling program using bilingual-bicultural personnel and aimed at decreasing the drop-out rate and increasing the availability and receptivity to academic options for students as they prepare to enter high school and (2) an inter-cultural awareness and understanding program utilizing group guidance and other appropriate strategies.
- e. In grades 9, 10, 11, and 12, the San Felipe-Del Rio Independent School District would implement, in the fall of 1971, a program which focuses on: (1) the immediate implementation of instructional and non-instructional activities which respond to the pluralistic characteristics of the student population, provide sequence and continuity to the instructional activities conducted at the motivational styles and socio-economic constraints of students from differing socio-economic and cultural backgrounds; and (2) the immediate implementation of efforts toward development of an instructional program including course offerings, instructional materials, and methodologies which respond to and capitalize on the needs and capabilities of students who have been involved in bilingual-bicultural education. This would be accomplished by implementation of at least the following:
- Assignment of bilingual-bicultural diagnostic testing and evaluation personnel;
 - Assignment of bilingual-bicultural personnel to the guidance and counseling program of the school;
 - Assignment of one bilingual-bicultural teacher to implement English as a second language instruction on a prescriptive basis;
 - Development of an intensive program to identify scholarships and financial assistance for disadvantaged students; assist disadvantaged students in enrolling in college;

- Development of literature and social studies curriculum to reflect the pluralistic characteristics of the students population; provide cultural reinforcement; and historical, anthropological, and sociological accuracy;
- Development of a home economics curriculum to respond to the life styles, family structures, and needs of children in all cultures represented in the student body;
- Assignment of bilingual-bicultural personnel to coordinate development and implementation of literature, social studies, and home economics programs;
- Continuation and expansion of Spanish as a foreign language course;
- Initiation of ethnic studies courses;
- Evaluation of vocational education program in terms of: (1) relevance of offerings to current community needs and projected needs and (2) the maintenance of student-centered decision-making as to vocational education or other options;
- Implementation of an inter-cultural awareness and understanding program utilizing group guidance and other appropriate strategies;
- Assignment of a bilingual-bicultural High School Curriculum Development Director whose duty shall be to develop an instructional program, including course offerings, instructional materials and methodologies which respond to and capitalize on the needs and capabilities of students who have been involved in bilingual-bicultural education.

The San Felipe-Del Rio Independent School District would develop programs beyond the regular instructional programs which effectively continue to extend the services extended to children in the districts prior to consolidation. Summer pre-school and elementary programs, neighborhood youth corps programs, and other enrichment programs shall be offered. The new school district shall continue the practice of providing

summer job opportunities for disadvantaged college students in the summer programs.²⁵

In the area of student assignment, the plan specifically addressed the assignment of migrants to heterogeneous classes, the heterogeneity of all classes and other instructional environments, and the access of all students to classes having as a prerequisite courses not offered in the school previously attended.²⁶

Staff development provisions of the plan closely mirrored the staff development plan accepted in the Beeville case:

1. The San Felipe-Del Rio School District will develop and implement a comprehensive staff development plan which will increase the capabilities of the district's staff (administrative, instructional, counseling, and para-professional) to respond to the needs of the minority group students.
2. The District will submit this staff development plan to a court appointed Multi-Ethnic Advisory Committee for review, comment, and suggestion no later than thirty days from the beginning of the 1971-72 school year. The approved plan is to be ready for initiation within sixty days from the date the School Board receives the report of the Multi-Ethnic Advisory Committee.
3. The Comprehensive Staff Development Plan will include as a minimum the following components:
 - a. Direct involvement of community representatives of all ethnic groups on an equal basis in planning, implementation, monitoring, and evaluation.

²⁵Ibid., pp. 5-14.

²⁶Ibid., p. 19.

- b. Involvement of school personnel from all levels on an equal basis in planning, implementation, monitoring, and evaluation.
- c. Appointment, within thirty days of approval of the staff development plan, of a full-time staff development plan Coordinator. The Multi-Ethnic Advisory Committee is to be consulted on recommendations for the Coordinator and is to work with the Superintendent in developing the job description for the position.
- d. Immediate initiation of systematic and intensive efforts to recruit minority group staff at the professional, para-professional, and non-professional level. To insure that this component is effective, assistance will be solicited from the Multi-Ethnic Advisory Committee in the form of suggestions and recommendations.
- e. Immediate development of a management plan to implement the staff development plan and to insure continued minority community involvement in all phases.
- f. Initiation of a Special Career Development Program. This program will provide and support the identification, multi-level entry and placement of Mexican American and other minority group members into all levels of the school system (i.e., administrative, supervisory, pupil personnel services, guidance and counseling, teaching, and other supportive staff).

To insure effective implementation of this component, the Multi-Ethnic Advisory Committee shall designate a 3-person subcommittee from its membership to monitor this aspect of the plan. The Special Career Development Program will include as a minimum:

1. Specific selection criteria which reflects the need in this system to increase the number of bicultural personnel in supervisory, administrative, and teaching positions.

2. A time schedule designed to bring total system minority employment to an equitable level at the administrative, supervisory, and teaching levels.
 3. A plan for disseminating information on specific selection criteria to all levels of the system and the community.
 4. Provisions to insure upward mobility of minority personnel into supervisory and administrative positions at all levels.
- g. Initiation of a system-wide staff training program developed through joint staff and community effort which would include at least the following components:
1. Cultural awareness training that would include School Board members, key community leaders, administrative staff, teaching personnel, counseling and guidance personnel, and parents;
 2. Bicultural curriculum development;
 3. Pupil diagnosis, prescriptive teaching, and behavior modification strategies;
 4. Bilingual, oral language assessment, and ESL training;
 5. Team teaching and differentiated staffing;
 6. Tests and Measurements techniques for measuring bicultural student performance.

Such a staff training program would be implemented with technical assistance support provided by resources both external and internal to the district. All of the above training activities will be initiated on a continuing basis during the 1971-72 school year.

- h. Initiation within 30 days of staff development plan approval of a cooperative agreement between the San Felipe-Del Rio Independent School District and appropriate teacher training institution(s) leading to credentialing of training activities outlined in paragraph (g) above.²⁷

²⁷Ibid., pp. 14-16.

In the area of parental involvement, the plan provided for a nine-member school community council to be established for each school in the district.²⁸

The special education provisions of the plan included:

1. recruitment and selection of special education teachers who can teach in both Spanish and English, and who have an understanding of the cultural background of the Mexican American child;
2. the development and implementation of adequate screening, appraisal and assignment techniques that have as an integral part the assessment of the child's behavior at home, at school, and among his peers, and that in no way penalizes those students whose home language is Spanish.
3. the development of curricula and individualized teaching strategies that reflect the particular needs of the bilingual/bicultural child;
4. an intensive effort to maintain a communication bridge between the parent and the school in such a way that parents not only have a knowledge of the entire special education program and its effect on their child, but also are assisted by the school to provide considerable input into the functioning of the program;
5. inclusion of special education staff in the staff training program to develop an awareness of the cultural and linguistic factors that the Mexican American child brings to school.²⁹

The non-instructional services provided by the school district were also a concern of the plan:

1. Co-curricular activities refers to all school-related activities that can be classified as non-academic.

²⁸Ibid., p. 17.

²⁹Ibid., p. 19.

2. The consolidation of the former Del Rio and San Felipe School Districts requires complete reorganization and development of a co-curricular activity program for the new San Felipe-Del Rio School District. The new co-curricular program will include but not be limited to school councils, honors organizations and programs; clubs; bands; parent organizations; booster clubs; school mascots, songs, chants, and cheers; fraternities and sororities; school publications; dramatic activities; social activities such as dances, proms, and banquets.

A reorganization and development of the new co-curricular program shall proceed on the basis that all previously existing school mascots, songs, chants, newspaper and yearbook names, and school club or organization names are now null and void. The new student body in each school will, by general election, select and name all of the above-named items.

3. Consistent with the consolidation of the previous school district, all organizations, clubs, and activities must consolidate by holding new elections for officers of organization and clubs and reorganizing social and athletic activities. Elections and appointments in connection with such activities for the 1971-72 school year, as well as election for class officers, shall be held in the combined district on a school-by-school basis before the expiration of the first six weeks of the 1971-72 school year.
4. Special consideration will be given to the naming of honors students in the 1971-72 school year by the San Felipe-Del Rio School System. The 1972 graduating class shall have co-valedictorians and co-salutatorians. One valedictorian and one salutatorian will be named from the 1970-71 eleventh grade class at the former Del Rio High, and one valedictorian and one salutatorian will be named from the former San Felipe High.
5. In implementing the required reorganization of the co-curricular program, particular attention must be given to insure that lack of economic

status will not deprive any minority group student, parent, or citizen from full participation in any activity or organization. The special circumstances involved in consolidation require active effort on the part of all concerned to provoke involvement and participation of the entire San Felipe-Del Rio community.

6. Food services - Cafeteria Managers and/or Dieticians for all schools of the consolidated districts for the scholastic year, 1971-72 and thereafter, should be fully cognizant of the bicultural composition of the consolidated school district.³⁰

The plan also provided that the school district would develop a comprehensive evaluation plan for all programs hereinbefore described. This evaluation process would include a component for determining the effectiveness of all programs with respect to individual students as well as students as part of a racial or ethnic group.

To insure a more comprehensive evaluation process, an educational consultant team from the Department of Health, Education and Welfare would visit the district at least once each year working with administrators, teachers, and parents in an effort to provide educational expertise in resolving any problems confronted in the implementation of the comprehensive plan. On-going evaluation should provide the basis for refinement and expansion of instructional activities found to be beneficial.³¹

³⁰Ibid., p. 20-21.

³¹Ibid., p. 21.

Court Proceedings

The HEW Plan was to be submitted to the court by Jack Conroy, attorney for the U.S. Department of Justice. Justice had demonstrated little understanding of the issues affecting Mexican American education in previous court actions³² and Conroy did not appear significantly more enlightened or concerned. It was known that sources close to both Senator John Tower, then a close Nixon friend and Congressman O. C. Fisher, Second Ranking Member of the Armed Forces Committee had expressed concern about the case and neither their sympathies nor their interests lay with San Felipe. Nonetheless Conroy was aware that Judge Justice was likely to be as adamant about failure to deal justly with San Felipe at the August 19th hearing as he had been at the August 13th one. It would be necessary to secure an expert witness who could speak to the HEW Plan as thoroughly and comprehensively as possible.

The educational program team suggested that Dr. José A. Cárdenas, a team member, Chicano, School Superintendent, former Chairman of the Education Department at St. Mary's University and a nationally recognized leader in Mexican American education, would be the ideal witness. Conroy appeared unconvinced, but agreed to the suggestion.

³²Alcalá, op. cit., p. 372.

He made arrangements to visit Dr. Cárdenas at the Edgewood Independent School District in San Antonio, Texas where he would prepare Dr. Cárdenas for his role as witness for the government. After spending two days at the Edgewood School District, Conroy appeared to have been prepared for his role as attorney for the Government. Cárdenas provided him with a crash course on the problems in the education of the Mexican American including the Cárdenas-Cárdenas Theory of Incompatibilities, familiarization with current research and thought in the area, and a review of programs in operation. By the time Conroy finished in San Antonio, he had decided that his case could be best presented if he simply let Cárdenas tell the court the things he had told him.

In three hours of testimony, Cárdenas presented the rationale for the plan based largely on the Cárdenas-Cárdenas Theory. He presented a rationale for the early childhood education program, and he detailed how through differentiated staffing patterns the District could implement the bilingual education programs.³³

The Justice Memorandum Opinion

Judge Justice ordered the Comprehensive Educational Plan submitted by the Office of Civil Rights of HEW. A

³³Transcript of the Testimony of Dr. José A. Cárdenas in Del Rio ISD Intervention in U.S. v. Texas 321 F. Supp. 1043 (E.D. Tex., 1970), modified, Civil No. 5281 (E.D. Tex., July 16, 1971).

memorandum opinion accompanying the order provided significant support for the principles underlying the May 25th procedures.³⁴ Based on case law to date and on the official state and federal documents available and on the record in the matter at bar, Judge Justice determined that "Mexican American students in the State of Texas are a cognizable ethnic group and, hence, may avail themselves of the protection afforded under the Fourteenth Amendment and under Title VI"³⁵ of the Civil Rights Act, and considered it advisable, "in light of the relative novelty of the issue in current case law"³⁶ to comment on his determination. He cited support for the de jure nature of the case.

In other words, had it not been for the substantial contribution of the State under the terms of the Texas Minimum Foundation Program and under various additional arrangements, neither the former San Felipe nor the former Del Rio school district could have continued in operation. Hence, since the State and its agencies knew, or should have known of the segregated educational system being operated, largely at

³⁴Memorandum Opinion regarding the San Felipe-Del Rio Consolidated Independent School District filed by William Wayne Justice, United States District Judge in the United States District Court for the Eastern District of Texas, Tyler Division in U.S. v. Texas, Civil Action No. 5281, December 6, 1971.

³⁵Ibid., p. 1.

³⁶Ibid., p. 2.

state expense, in the Del Rio area, and in light of this court's previous findings of fact and conclusions of law concerning the State of Texas and the Texas Education Agency in this case (See Findings and Conclusions dated November 21, 1970), this Court believes that the segregated system described above existed as the result of state action.³⁷

Judge Justice stated that the Court had been particularly impressed with the testimony of Dr. José Cárdenas.

This testimony demonstrated that Mexican American students exhibit numerous characteristics which have a causal connection with their general inability to benefit from an educational program designed primarily to meet the needs of so-called Anglo-Americans.

. . . It would appear, therefore, from Dr. Cárdenas' testimony that it is largely these ethnically-linked traits--albeit combined with other factors such as poverty, malnutrition and the effects of past educational deprivation--which account for the identifiability of Mexican American students as a group and which have, as a consequence, elicited from many school boards throughout the Southwestern United States, the different and often discriminatory treatment shown on the record in this case.³⁸

Elaborating on the identifiability issue, Judge Justice stated:

This position may be justified solely on the grounds that these

³⁷Ibid., p. 2.

³⁸Ibid., pp. 4-5.

students react to or are affected by a given stimulus--the Anglo-oriented educational program such as that maintained in the former Del Rio Independent School District --in a similar and predictable manner and, in the opinion of a recognized expert, this reaction is based almost entirely on common characteristics which, incidentally, may be traced to their common and distinct ancestry.³⁹

Having determined that Mexican-American students constitute a cognizable ethnic group, Judge Justice was of the opinion that the relief in the case should be fundamentally similar to that formed in school desegregation suits before this Court based on discriminatory treatment of Black students.

The mandate as directed by the Supreme Court, is to "eliminate discrimination root and branch," Green v. New Kent County Board of Education 391 U.S. 430 (1968), and to create a unitary school system "with no Black [Mexican] schools and no white schools but just schools."⁴⁰

Justice examined the Supreme Court's exploration of a unitary system and found little beyond the specification that in such a system, no child "will be effectively denied

³⁹ Ibid.

⁴⁰ Ibid.

equal educational opportunities."⁴¹ and that the system shall exhibit the "greatest amount of actual desegregation possible."⁴²

Although these phrases are general and were made in the context of black/white desegregation, this Court finds them to be useful guidelines in this case. Under the circumstances here, as elucidated by Dr. Thomas and Dr. Cardinas, both experts in the problems of Mexican American students in traditionally Anglo-American school environments, little could be more clear to the Court than the need in the newly consolidated school district created as a result of this Court's earlier order for special educational consideration to be given to the Mexican American students in assisting them in adjusting to those parts of their new school environment which present a cultural and linguistic shock. Equally clear, however, is the need to avoid the creation of a stigma of inferiority akin to the "badges and indicia of slavery" spoken of in United States v. Jefferson County Board of Education, 372 F2d 836 (1966), cert. denied sub nom. United States v. Caddo Parish Board of Education, 389 U.S. 840 (1967). To avoid this result the Anglo American students too must be called upon to adjust to their Mexican American classmates, and to learn to understand and appreciate their different linguistic and cultural attributes. The process by which all student participate in a joint learning and adjustment process will not only constitute an educational enrichment but, also, will

⁴¹Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

⁴²Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).

bring the school system as a whole closer to that goal or state-of-being referred to by the Supreme Court as a "unitary system." It is with this goal in mind, therefore, -- that of true integration as opposed to mere desegregation or, as Texas news media are wont to term it, "racial mixing" -- that the Court issued its major order in the case of the San Felipe-Del Rio Consolidated Independent School District.⁴³

Subsequent Court Action

In subsequent court actions the consolidated school district has succeeded in modifying the Plan, although they were unable to remove the requirement that Anglo children too were required to participate in bilingual education. They did not attempt to eliminate early childhood education and staff development plans. On appeal to the Fifth Circuit, the Plan was upheld, but the case was taken out of Judge Justice's Court and assigned to the Federal District Court for the Western District of Texas. There, in the Fall of 1973, the District Court released the consolidated school district from the Court order. The Justice Department has filed a motion to reinstate the order.⁴⁴

⁴³Memorandum Opinion of Judge William Wayne Justice, op. cit.

⁴⁴Interview with Mr. James M. Littlejohn, Office of Civil Rights-Dallas, Texas, April 10, 1974.

Implications of the Plan

The Comprehensive Educational Plan ordered by Judge Justice in San Felipe-Del Rio provided a number of significantly supportive principles regarding the provision of equal educational opportunities for Mexican American (and perhaps other national origin-minority group) children. In the first place, although busing which would not concentrate the burden of integration on any one group of children was ordered, the Court fully recognized that additional changes in the practices of a school district would have to be made in order to "insure that all students (are) . . . offered equality of educational opportunity." Furthermore, the Court, in its order requesting the development of the plan, recognized that bilingual and bicultural education and faculty recruitment and training would of necessity be components in the plan, but that these two elements of educational reform could not accomplish the desired goal in and of themselves.

In accepting the HEW developed plan, Judge Justice accepted the rationale under which May 25th Memorandum cases would be processed. The basic principles underlying the plan had been included in the Beeville Plan and were included in the San Felipe-Del Rio Plan.

The Comprehensive Educational Plan furthermore responded to the interaction between poverty and differences in language, culture, mobility and the minority status of the target group. In this regard the plan extended the timing and extent of the service provided by the school district. The Plan ordered early childhood education, summer enrichment and non-instructional assistance programs, and the provision of summer employment opportunities for disadvantaged college students.

The Comprehensive Educational Plan addressed issues of governance and the participation of parents in subgovernance activities. Furthermore, the Plan provided for the participation of students in the planning and evaluation of programmatic activities.

The Plan recognized the impact of traditions, organizations, and other extra curricular activities on the educational progress of students.

Finally, the Plan ordered that monolingual/monocultural students be educated in a way that would allow them to function in a school environment that responded to the cultural and linguistic difference of the national origin minority group students. The Court reasoned that the self-concept development of the national origin minority group student required that the school present both languages and both cultures as being of equal value.

For the development of the concepts underlying the full implementation of the May 25th Memorandum, the Plan was particularly significant. First, because it caused the early development of a comprehensive response to the issues that would be identified in May 25th Memorandum proceedings and, secondly, because it put these to a legal test which they survived.

Summary

The development of an educational response to issues identified through May 25th Memorandum procedures were significantly accelerated by the work done by the Office of Civil Rights and a team of Mexican American educators on the comprehensive educational plan ordered in the San Felipe-Del Rio school district consolidation case. The plan provided for responsiveness to the characteristics of Mexican American children in (a) curriculum design and content and instructional methodology, (b) student assignment and classroom organization, (c) staff development, (d) parent and community development, (e) special education, (f) non-instructional support, and (g) evaluation. The plan was ordered with a memorandum of opinion by Judge William Wayne Justice, U.S. District Court which provided significant support for the concepts underlying May 25th Memorandum negotiations.

C H A P T E R V

THE EL PASO PLAN

On August 15, 1972, the Office of Civil Rights accepted a Comprehensive Educational Plan developed by the El Paso Independent School District and designed to correct areas of non-compliance with Title VI of the 1964 Civil Rights Act relative to the provision of equal educational services to Mexican American students in the district. The El Paso case provides the best model to date of (a) Office of Civil Right's thoroughness in implementing the equal educational services review procedures, providing substantial program assistance to the school district, and negotiating a plan, (b) a school district's response to both the inequalities identified through the May 25th review process and the challenge of correcting these and (c) the implementation of monitoring procedures on the part of the Office of Civil Rights. This chapter will review (a) the development of the May 25th case in El Paso, (b) the role played by the educational program team in the development of the Comprehensive Educational Plan, (c) the Comprehensive Educational Plan developed by the District and (d) recent monitoring activities of the Office of Civil Rights. Additionally, the chapter will review other, more recent and significant developments affecting the May 25th Memorandum.

Development of the Case

Following the issuance of the May 25th Memorandum and the development of investigative and other procedures necessary to its full implementation, the Dallas Regional Office of Civil Rights proceeded to investigate the compliance status of a number of Texas school districts against which complaints had been filed. One of these, the El Paso Independent School District had been reviewed in early 1970.¹ The 1970 review, however, focused primarily on student assignment and had not been acted on while the May 25th developmental efforts were under way.² In the absence of HEW follow-up after the early 1970 review, the Mexican American Legal Defense and Education Fund filed a student assignment case in the federal courts.³

Two events significantly influenced the implementation of the May 25th process in El Paso. Following the order in San Felipe-Del Rio, the Intra-Departmental Advisory Committee on Bicultural Education convened a number of the leading Mexican American educators in the country at the

¹Alcalá, op. cit., p. 368.

The El Paso Independent School District was also the focus of testimony at the San Antonio Hearings of the U.S. Commission on Civil Rights, Hearings, op. cit., p. 152.

²Interview with Mr. James Littlejohn, Dallas Regional Office - HEW Office of Civil Rights, April 1, 1974.

³Alvarado v. El Paso Ind. School Dist., 445 F. 2nd 1011 (5th Cir., 1971). The case has not gone to trial.

Asilomar Conference Center in Monterrey, California. The Asilomar Conference was designed as a work session in which the educators would analyze the comprehensive Educational Plan developed in San Felipe-Del Rio and consolidate the plan with additional current research and thought to develop a coherent educational remedies thrust in future May 25th negotiations.

The Asilomar Group included Homero Acevedo, Juan Aragón, Tomás Arciniega, Blandina Cárdenas, José A. Cárdenas, Oscar M. Cárdenas, Henry J. Casso, Alfredo Castañeda, Gilbert Chávez, Ed DeAvila, Martin Gerry, Josué M. González, Mari-Luci Jaramillo, Jim Littlejohn, Don Morales, Patricia Nakano, Manuel Ramírez, III, Armando Rodríguez, Dorothy D. Stuck, Joe Ulibarri, and Cass Welsch.

The group developed more specific foci for each of the areas addressed in the San Felipe-Del Rio Plan. A major area of concern explored by the group rejected the view that Chicano children ought to be served by a school program geared to their "deficits." The group was also concerned that cultural issues receive significant attention. While at the conference, the author produced the following statement reflective of the concerns expressed:

Responsiveness to the characteristic of poverty is a prerequisite to providing minority group children equal access to the full benefits of the educational program. It is incumbent upon the school district to remove the constraints which poverty places on the educational success of children and to

compensate for deprivations correlatable with poverty. There is a fine distinction, however, between the effects of poverty and the effects of culture, and while it is the school district's responsibility to eradicate the negative effects of poverty, it is not its prerogative to reverse the effects of culture. Mexican American and Black children are culturally different children who may be deprived because they are poor. Cultural difference becomes cultural deprivation only after culturally-biased institutions succeed in damaging the fabric of culture through acts which range from omission to consistent and heavily armed attack.⁴

The second event was a week-long training session for the Office of Civil Right's field staff held in Dallas, Texas, in early January, 1972. The training was accomplished with the use of educators who participated in the Asilomar Conference. These included José A. Cárdenas and the author, Joe Ulibarri, Ed DeAvila, John Aragón, and Tomás Arciniega.

The Review

The Office of Civil Rights reviewed the El Paso Independent School District January 23 through February 3, 1972. The Review Team filed a 142 page (single-spaced) equality of educational opportunity report designed to answer three basic questions:

1. How many students come to school with a language and/or culture different from that for which the school curriculum is designed?

⁴B. Cárdenas and J. A. Cárdenas, op. cit.

2. What efforts have been made by the school district to provide an equal educational opportunity for these students?
3. What success (in terms of the way the school district measures success) has been achieved in providing equal educational opportunities for those students whose language/culture is different from other students for whom the school curriculum is designed.⁵

The review reflects the influence of the Asilomar Session and of the Dallas training session. "Language and/or culture different from that for which the school curriculum is designed," is terminology found in the work of Cárdenad and Cárdenas and reflects acceptance of the concept that is necessary to design a curriculum compatible with the language and culture (and other characteristics) of the atypical child.

At the time of the review, the El Paso Independent School District served 61, 328 scholastics; 35, 215 or 57.4 per cent were Mexican American; 1,915 or 3.1 per cent were Black; and 24, 198 or 39.5 per cent were Anglo. There were forty-eight elementary or elementary-intermediate schools and nine high schools in the district. The district was characterized by a high degree of ethnic isolation. Spanish-

⁵ All of the School District Data reported here is on file as the Review of the El Paso Independent School District, January 23-February 3, 1972, at the Dallas Regional Office-Office of Civil Rights, Department of HEW.

surnamed professional staff comprised only 21.4 per cent of the total.⁶

The Office of Civil Rights report states that historically the El Paso Independent School District failed significantly to provide equal educational opportunities for the Spanish speaking student. This was manifested not only in the isolation of Mexican American students into certain schools and the lack of an adequate curriculum, but also in the discriminatory administration of the educational services offered. Discriminatory practices included the automatic retention of Mexican American students in the first grade and the use, until 1964, of different elementary readers in the predominantly Mexican American schools.

Affirmative, if inadequate, steps to respond to Spanish-speaking students were made in 1953 when English as a second language classes were established to teach English to recent arrivals from Mexico. In the early 1960's a state-funded program to teach non-English-speaking students English during the summer preceding their entry into the first grade was implemented in the District.

The acquisition of Federal ESEA and Headstart funds in 1964 facilitated the establishment of remedial strategies such as remedial reading, "second chance" and English as a second language classes.⁷

⁶Ibid., p. 6.

⁷Ibid., p. 22.

The size of the El Paso District dictated the need to develop data gathering techniques other than the interview. The Office of Civil Rights had determined by reviewing a Master's thesis on the language characteristics of children in the District, that a significant number of students entered the first grade each year with few or no English language skills.⁸ To supplement these data, the Office of Civil Rights developed and administered a survey.

The survey form administered to each principal in the District represented an attempt to determine to what extent there were non-English-speaking students in the total student population of each school, and to obtain the principal's concept of programs available to each school to assist these students. Information collected via the form included: (1) the number of students in each school who entered the current school year with few or no English language skills; (2) special programs in each school for the non-English-speaking, and (3) the names of all bilingual persons in each school.

The principals were instructed to list all programs in their school designed to meet the needs of students with few or no English language skills. They were provided additional instructions by Mr. Charles Whitaker, Assistant Superintendent, to use a guide published by the school entitled

⁸ Karen Ramirex, "Bilingualism and Bilingual Programs in El Paso: Kindergarten and First Grade," (Unpublished M.A. Thesis, Univ. of Texas at El Paso, 1971).

Summary of Programs Oriented Toward the Mexican American Child. Some principals listed such courses as Elementary Spanish and Speech Therapy, while other principals whose schools offered these courses, ignored them completely. Many principals failed to list the kindergarten as a program for the non-English-speaking. A few principals whose schools had high numbers of non-English-speaking students indicated that there were no programs in the school for these students.⁹

The Office of Civil Rights examined the District's on-going innovative or special programs. These included: (a) Summer Oral English; (b) Kindergarten; (c) Reading Readiness for the Spanish-Speaking Child; (d) Grade 1 Social Studies; (e) Listen and Do; (f) Texas-Latin American History; (g) Pacer Aides; (h) Individualized Instruction; (i) Bilingual Education; (j) Headstart; (k) Intensive Language Development Classes; (l) Title I Remedial Reading; and (m) Staff Training.

The programs operative in the El Paso District appeared to conform to the "band-aid" approach to program development prevalent in school districts with large numbers of "disadvantaged" children. Few of the programs had been

⁹Review of the El Paso Independent School District, op. cit., p. 23.

evaluated in any but the most subjective manner. The Office of Civil Rights team learned that expansion of any or all of these programs rested solely on the availability of federal funds, rather than whether or not the programs worked.¹⁰

A number of the schools' staff members were excited about a new federal project which had promise of positively affecting existing conditions. El Paso was one of five school districts in the nation receiving a project TREND grand. TREND - Targeting Resources on the Educational Needs of the Disadvantaged was described by the School District as follows:

Locally, it's an eight-month planning project, designed to bring together, in a more resourceful and efficient manner, all funded programs targeting on the educational needs of disadvantaged children and youth. Nationally, TREND is an operation of the U.S. Office of Education. Five school districts in the country have been funded for the purpose of engaging in planning activities designed to demonstrate a local school district's ability to develop a single proposal application for its Federally-funded compensatory education program. . . .¹¹

¹⁰Ibid., pp. 23-26.

¹¹Ibid., p. 31.

For several months prior to the Office of Civil Rights review, El Paso's Division of Mexican American Studies had been conducting a comprehensive needs assessment in twenty-one schools, five of which were Title I schools. The needs assessment covering cognitive development, affective development, personal physical development and environmental support had resulted in two major priorities for El Paso -- bilingual/bicultural programs and improved reading needs. According to Mr. Carlos Rivera, Assistant Superintendent for Mexican American education, the Project TREND survey had revealed that students in those schools receiving Federal monies over several years still had the poorest educational performance in the district.¹²

In order to document as completely as possible the success of the district's current affirmative efforts, the Office of Civil Rights collected a mass of data comparing the achievement of Spanish-surnamed and non-Spanish surnamed students. Data was collected from a representative sample of schools in the District. Much of the data was collected from primary sources such as student folders and printouts of standardized tests. Other student achievement data available in the school district, primarily as a result of Project TREND's needs assessment, were also analyzed.

¹²Ibid., p. 31.

The Spanish-surnamed children in all the schools reviewed averaged at a lower grade equivalency than that averaged by their non-Spanish-surnamed counterparts. The data on student achievement at the eight grade level is illustrative:

The Summary Sheet which reviews the individual studies of the eight schools demonstrates that at the 8th grade level on the ITBS Reading sub-test battery 79% or 866 Spanish-surnamed children scored below the 50th percentile as compared to 45% for Non-Spanish-surnamed students, while 26% Spanish-surnamed students scored above the 50th percentile as compared to 55% of the Non-Spanish-surnamed students. On the Total Language sub-test battery of the ITBS, 65% of the Spanish-surnamed children scored below the 50th percentile as compared to 40% of the Non-Spanish-surnamed children, while 35% of the Spanish-surnamed children scored above the 50% percentile as compared to 59% of the Non-Spanish-surnamed children.

The eighth grade children when tested at the 5th grade level on the CAT Reading battery distributed themselves as follows:

Below 50th percentile =	55% SS	21% NSS
Above 50th percentile =	45% SS	79% NSS

On the Mechanics of English sub-test battery:

Below 50th percentile =	36% SS	42% NSS
Above 50th percentile =	64% SS	58% NSS

The indication is that Spanish-surnamed children not only group in lower percentiles than the Non-Spanish-surnamed children at the fifth grade level on the CAT Reading sub-test battery, but that by the time those children were tested at the eighth grade level on the ITBS Reading sub-test battery, 79% of the Spanish-surnamed children (as opposed to 55% in 1968) were scoring below

the 50th percentile. While 21% of the Non-Spanish-surnamed children were scoring on the CAT Reading test below the 50th percentile, by the eighth grade there were 45% of Non-Spanish-surnamed students scoring in the lower 50th percentile.

On the CAT Mechanics of English sub-test battery, 36% of the Spanish-surnamed students scored below the 50th percentile and by the eighth grade the ITBS total Language sub-test battery included 65% of the Spanish-surnamed children scoring below the 50th percentile (an increase of 29%). The Non-Spanish-surnamed students grouped at 42% below the 50th percentile at fifth grade level on the Mechanics of English sub-test battery, but 40% at the eighth grade level below the 50th percentile on the ITBS Language Battery (actually a decrease of Non-Spanish-surnamed students below the 50th percentile).

The distribution of students with percentiles and changing distributions between the fifth and eighth grade levels reflect two major concerns:

1. That the educational services provided Non-Spanish-surnamed and Spanish-surnamed students at the eighth grade level were not meeting the needs of both groups of children equally, and
2. That the services provided were by the eighth grade not attempting to meet the needs of the Spanish-surnamed children and were in fact allowing those children to significantly drop in their educational performances.¹³

In addition to student achievement data, the Office of Civil Rights reviewed drop-out data and student suspension

¹³Ibid., pp. 40-41.

and expulsion data. A check of suspension records revealed an over-inclusion of minority group students in the districts suspension activities. In one school, Black children, comprising only 3 per cent of the student body accounted for 13.3 per cent of the suspensions. At El Paso High School, with an 81 per cent minority enrollment, the minorities accounted for 100 per cent of the suspensions.

Data supplied by the El Paso Independent School District revealed that 567 out of 850 (66.7%) dropouts occurred when students were in the 9-11 grades. Yet, the same data failed to reflect any dropouts due to disciplinary reasons among the educationally disadvantaged population. Rather, the reasons listed in the report are: physical, economic, marriage/pregnancy and lack of communications skills.

Data on expulsions weighed heavily against minority groups. It was revealed that 65.8% of all expulsions during 1971-72 school year were directed toward Blacks and Mexican Americans. The Austin School expelled 22 Blacks and Mexican Americans as compared with only 6 whites. The reasons for expulsions, as supplied by the records, were as follows: smoking, insubordination, poor grades, profanity, disruption, drinking, poor behavior, disrespect, unrelating, tardy and fighting. Three expulsions did not reflect any reasons.¹⁴

¹⁴Ibid., p. 92.

The review concluded:

There is disparity in the dispensation of punishment for relatively minor infractions of school policies. The disparity exists at the educational detriment of the Blacks and Mexican American students, thus denying them equal educational opportunities which will impair their futures, economically and socially. Furthermore, the perpetuation of these disparities tends to frustrate educational growth, encourage animosity toward other races and people, and stigmatize the offenders to the point of racial and ethnic exclusion. The data presented support this conclusion.¹⁵

The extensive review of El Paso's Psychological and Special Education Services provided a clear indictment of the school district on a number of points. The hiring and assignment practices of the district were reported in conflict with both State Law and the interests of the students. The following excerpts from the Review Report are characteristic:

The district then hired twelve diagnosticians, five of whom cannot get state certification due to credential deficiencies and none of whom have met a college program for certification. Six do not speak Spanish. . . .

Another diagnostician (name withheld) was interviewed. He was hired this year, has a degree in Bible, and has never taught a day in his life. He has no teacher's certificate in anything. He said he can't get the state to certify him. He wasn't sure of the number of children he had

¹⁵Ibid., p. 95.

tested, but he has placed everyone of them in Special Education. He also speaks no Spanish.

. . . Examples were found of children who had been in Special Education for five years without retesting.¹⁶

The report concludes that the school district is in the position of having diagnosticians who aren't certified, performing duties of psychologists still without certification by administering tests they aren't certified to administer and which are themselves not applicable to the clientele.¹⁷

The Office of Civil Rights surveyed resource room teachers to secure (1) the names of all Black children receiving help in the resource room at that time; (2) the names and native language spoken of all children receiving help in the resource room who would have difficulty in communicating and understanding if the instructions were given entirely in English, i.e., are there children who cannot communicate in English and yet who are receiving help in the resource room; (3) a list of the names of all resource teachers and resource teacher's aides, any language which they can speak outside of English, and whether the language spoken has been acquired through the home environment or through formal course work in school.

¹⁶Ibid., pp. 99-100.

¹⁷Ibid., p. 101.

Fifty-five schools responded to the questionnaire. Responses indicated 85 Black and 951 Mexican American students in Special Education. Of the Mexican Americans, 251 either spoke no English or had difficulty speaking it. The data showed an overinclusion of Mexican Americans (66%) and an underinclusion of Anglos (28%) in Special Education classes.¹⁸

A final area of focus for the Office of Civil Rights review was that having to do with personnel policies in the school district. During the 1971-72 school term the El Paso Independent School District employed 2628 full-time classroom teachers. Of these, 8 were Indian (.3%), 81 were Negro (3%), 10 were oriental (.4%), 562 were Mexican American (21.5%), and 1967 were Anglo (74.8%). The ratio of Anglo teachers to Anglo students was 1 to 12, while the ratio of Mexican American teachers to Mexican American students was 1 to 64, and the ratio of Negro teachers to Negro students was 1 to 24.

The review team's report indicates that the district had made some progress in hiring minority teachers since the 1970 review. During the two years following the first Office of Civil Rights review, one out of three Mexican American applicants had been hired and 26% of all Negro

¹⁸Ibid., p. 101.

applicants were hired while only 11% of the Anglo applicants were hired.¹⁹

The data on employment of administrative personnel showed great disparities in the assignment of minority personnel. The District assigned staff to Central Administrative staff for 1971-72 as follows:

	Negro	M/A	Anglo	Total
Superintendent	0	0	1	1
Deputy and Assistant Superintendent	0	1	3	4
Division of Administration	0	1	5	6
Division of Instruction	0	15	68	83
Division of Mexican American Education	0	7	2	9
Division of Finance	0	4	21	25
	0	28 (22%)	100 (78%)	128
Directors and Coordinators (or otherwise heads of Divisions and Sections)	0	1 (6%)	16 (94%)	17 ²⁰

Non-certified Mexican American and Black staff fared no better than the certified staff:

	Negro	M/A	Anglo	Total
Division of Administration	0	11 (29%)	27 (71%)	38
Division of Support Services				
Bus Drivers	0	17 (47%)	18	35
Secretaries and Clerks	0	0	1	1

¹⁹Ibid., p. 128.

²⁰Ibid., p. 129.

	Negro	M/A	Anglo	Total
Division of Instruction				
Secretary	0	24	45	69
M.F. Teacher's Aide	0	2	7	9
Field Study Aide	0	3	2	5
Division of Mexican American Education	0	3	0	3
Division of Finance				
Accounting	0	2	8	10
Auditing	0	1	3	4
Athletics	0	0	2	2
Construction	0	0	2	
Data Processing	0	3	6	9
Lunch Room	0	3	9	12
Maintenance	0	5	5	10
Print Shop	0	18	1	19
Purchasing	0	2	5	7
Textbooks	0	5	6	11
Mailroom	1	1	0	2
	1	100 (40%)	147 (60%)	248 ²¹

Of the persons in administrative capacities at the individual school level, only 15.3 per cent of the principals, 34 per cent of the assistant principals and 17.3 per cent of the counselors were Mexican American. Data on promotions over the two-year span preceeding the review indicated some improvement, although only 30 Mexican Americans compared to a total of 41 Anglos received major promotions during the same period. At the time of the review, there were 35 Mexican Americans assigned as either principals, assistant principals

²¹Ibid., p. 130.

and counselors; twenty-two of these assumed their positions after the 1970 Office of Civil Rights review.²²

A check of substitute records in the personnel office indicated that minority persons on the substitute teachers list totaled 12 per cent. A further check showed no evidence of substitute teachers being assigned to schools on the basis of race, color, or national origin.²³

On June 13, 1972, the Dallas Regional Office of HEW sent the El Paso Independent School District a letter setting forth a summary of conclusions based on the review completed by the Office of Civil Rights.²⁴ The El Paso Independent School District was found to be out of compliance with the first and second provisions of the May 25th Memorandum. Additionally, the District was found to be in violation of a January 14, 1971, Office of Civil Rights Memorandum explaining Title VI requirements in Elementary and Secondary School Staffing Practices (included here as Appendix C).²⁵ The assignment of students to schools was also addressed in the letter. As in the Beeville Case, the Office of Civil Rights offered to make available to the district,

²²Ibid., p. 132.

²³Ibid., p. 131.

²⁴Letter from Dorothy D. Stuck, Regional Director, Office of Civil Rights to Dr. H. E. Charles, Superintendent El Paso Independent School District, dated June 13, 1973.

²⁵Memorandum of J. Stanley Pottinger, Director Office of Civil Rights, HEW to Chief State School Officers and School Superintendents Regarding Nondiscrimination in Elementary and Secondary School Staffing Practices, January 14, 1971.

upon request, an education compliance team to work with the school district in detailing the evidence and basis of the Office of Civil Right's conclusions, and in developing a plan designed to correct any deficiencies which existed.

Provision of Educational Assistance

To provide assistance to the El Paso Independent School District in the development of a Comprehensive Educational Plan, the Office of Civil Rights requested the assistance of Dr. Ed DeAvila and Dr. José A. Cárdenas and the author. With Mr. James M. Littlejohn, the three Mexican-American educators visited the District on July 14, 1972. Dr. DeAvila and the author had participated in the Beeville negotiations and Dr. Cárdenas and the author had worked on the development of the San Felipe-Del Rio Plan. All three had been at the Asilomar Conference and had assisted with the training session in Dallas. Jim Littlejohn had played a major role in all of the May 25th activities. All of the members of the educational assistance team had formed rather solid convictions about the advisability of having the comprehensive educational plan developed with the maximum participation of the local school district personnel.

Dr. DeAvila met with members of the Psychological and Special Education Staff while Dr. Cárdenas, Mr. Littlejohn and the author met with Dr. Charles, the Superintendent and

other members of the Central office staff. The El Paso decision-making pattern appeared significantly similar to patterns existing in a number of other Districts.²⁷ Dr. Charles who held the position of Superintendent was near retirement and while he appeared to be fully capable of exerting strong leadership on occasion, the day-to-day influence and power appeared to rest with an Assistant Superintendent. The Assistant Superintendent for the Division of Mexican-American Education appeared to have little authority or control over any but the programs which he was able to generate with outside financial assistance, although neither competence nor energy appeared to be lacking. His influence over program was further delimited by his lack of authority over staff in the schools hosting innovative programs under his responsibility. Nonetheless, the El Paso staff, particularly a number of highly intelligent recent Mexican American additions to the Central Office, appeared to have the capability for developing and implementing an innovative comprehensive educational plan.

In the early morning meeting with the Superintendent, Dr. Cárdenas defined the educational assistance team's role

²⁷In providing technical assistance to numerous small to medium-sized school districts throughout the Southwest, the author has invariably encountered a similar decision-making pattern.

as that of a resource rather than either evaluator, monitor, or enforcer. Dr. Charles was positive, but explained that he would be unable to attend the meeting between the team and the District's program personnel that afternoon. During the rest of the morning, Cárdenas and Cárdenas were pleasantly ushered around from office to office and Dr. DeAvila met with Special Education personnel.

The afternoon session with staff of the Divisions of Instruction and Mexican-American Education included Dr. Charles who explained that he had, after all, been able to disengage himself from prior commitments. The El Paso staff present at the meeting included equal numbers of Mexican Americans and Anglos. Mr. Whitaker, the Assistant Superintendent for the Division of Instruction, and Mr. Carlos Rivera, Assistant Superintendent for the Division of Mexican American education attended.

Cárdenas and Cárdenas met with El Paso staff for two half-day sessions. During the first session, the consultants presented a rationale for comprehensive educational planning for Mexican American children based on the developing Cárdenas-Cárdenas Theory of Incompatibilities. The explanation of the incompatible relationship between five inter-related and inter-dependent characteristics of the Mexican American population in general, and the instructional program traditionally designed for a white, Anglo Saxon, English-speaking, middle-class oriented population and those

assimilating into reasonable facsimiles thereof, was supplemented by an explanation of the ways in which at least nine interrelated areas of school district activities influence the incompatibility. The major emphasis of the Cárdenas-Cárdenas presentation was that there was a need for comprehensive redesign of the school program and that perpetuation of the "band-aid" approach not only had little promise of success, but placed an unrealistic burden on the district's resources by focusing large parts of these on obsolete, dysfunctional, or damaging practices. A major concern expressed by Cárdenas and Cárdenas was that the development of a Comprehensive Educational Plan was not dependent on the availability of additional federal funds. From their knowledge of state and federal funding patterns, they were able to provide the El Paso staff with numerous suggestions for redirecting funds which might be supporting dysfunctional practices. Finally, Cárdenas and Cárdenas emphasized that while the needed comprehensive change could not be effected immediately, the only way to achieve it was to design a plan characterized by realistic but comprehensive goals and strategies based on current research and thought, and specific objectives with reasonable timelines for their accomplishment.

The technical assistance sessions were concluded amicably but with little indication that the District would

develop a "comprehensive and perhaps daring" plan as had been suggested by the team. Although it appeared that the El Paso staff grasped and was in agreement with most of what had been discussed, the absence of enthusiasm appeared to be linked to a hesitancy on the part of upper, mid-management staff to speak until the leadership role was determined between the Superintendent, the Assistant Superintendent for Mexican-American Education, and other Assistant Superintendents.

In a debriefing session following the sessions, the Educational Assistance Team concluded that the possibility of comprehensive change was remote. OCR probably had a difficult negotiation ahead of it. A major emphasis of those negotiations would have to be a strong staff development provision.

Jim Littlejohn prepared a Report of the HEW Educational Program Team that complemented the Team's on-site roles most adequately.²¹ Where the Team had been unobtrusive in making its recommendations, Littlejohn was specific and direct.

Introduction

It is evident from information furnished by and available to the El Paso Independent School District that minority group children in the district are

²¹Report of the HEW Educational Program Team, July 14, 1972, On file at the Dallas Regional Office, Office of Civil Rights, Department of HEW.

not receiving an adequate instructional program. We also know that massive, comprehensive and daring changes must be made in the instructional program and in all supporting elements in order to provide equality of educational opportunity. Existing problems cannot and will not be resolved through band-aid remedies. For example, attempting to correct learning difficulties of Mexican American children at fourth grade level through Title I remedial reading does very little to eliminate the basic incompatibilities the students had with the total school curriculum during the early elementary years. District activities purporting to respond to existent problems are often dysfunctional and, at best, constitute a waste of money and other resources. At worse, they further aggravate existing problems.

For these reasons, we have developed recommendations in the following three sections of this report that respond to the requirements of Title VI of the Civil Rights Act of 1964 within a framework of providing quality education for all students in the district.

Instructional Program

During our visit in the El Paso Independent School District, we were quite impressed with the concerned interest of administrative personnel to begin working towards the solution of some very difficult educational problems. In our discussion with representatives from the Division of Instruction and the Division of Mexican American Studies, we attempted to communicate to them some of our ideas that we felt would be important in developing a comprehensive educational plan for the El Paso Independent School District. There is little need to reiterate here the many concepts and procedures verbalized in our meetings with the staff representatives. The attached chart is an excellent summary of a format that can be used in changing an educational system to provide equal educational opportunity for Mexican American students and, in fact, for all students. As will be noted, the squares of the matrix have not been filled. This, of course, is the task of the El Paso Independent School District staff.

In our discussions we did attempt to show specifically the way in which existing programs and existing fund sources can be redirected to respond to the various areas of the matrix. It was our impression that the staff present at the meetings grasped this concept and were in general agreement as to the direction to take in developing a comprehensive educational plan.

It is our belief that a maximum effort can be made by the school district this year to implement responses to the problems identified by the Office of Civil Rights.

All responses not feasible to implement this school year (because of time, money, etc.) should be identified as part of the comprehensive educational plan with a definite timetable for implementation; that is, the scope and sequence of the comprehensive educational plan should respond first to the problem identified (equality of educational opportunity for minority students) and secondly, to the limitations, real or imagined. In our opinion, the scope of the educational plan should extend from early childhood education through grade 12.

Littlejohn also submitted an adaptation of the staff Development requirements designed by the Office of Civil Rights and Educational Assistance Personnel during the Beeville and Del Rio cases:

Equal access to the full benefits of the educational program in the El Paso Independent School District for minority students is dependent upon the human and professional resources available to understand and respond to the special needs of these children. School staff serving Mexican American communities and children should have the capabilities needed to plan, administer, implement, and evaluate programmatic activities responsive to the bilingual and bicultural characteristics of the target children. Personnel at all levels of program implementation should reflect such capabilities.

In order to develop the excellent human resources already available in the El Paso Independent School District and to add to those resources in response

to the demands for equality of educational opportunity for all students, the following recommendations are offered as minimal steps for the district to take:

1. It is necessary for the district to implement a program for the recruitment, identification, selection, training, assignment, and upward mobility for Mexican Americans in the school district.
2. Certain specific commitments should be made in order to facilitate the improvement of staffing patterns. These commitments should include:
 - a) Policies to facilitate the training and credentialing process for all staff through utilization of such incentives as release time and financial assistance.
 - b) Initiation of a Special Career Development Program. This program will provide and support the identification, multiple-level entry and placement of Mexican American and other minority group members into all levels of the school system (i.e., administrative, supervisory, pupil personnel services, guidance and counseling, teaching, and other supportive staff).

The Special Career Development Program should include as a minimum:

- 1) Specific selection criteria which reflects the need in this system to increase the number of bicultural personnel in supervisory, administrative, and teaching positions.
- 2) A time schedule designed to bring total system minority employment to an equitable level at the administrative, supervisory, and teaching levels.
- 3) A plan for disseminating information on specific selection criteria to all levels of the system and the community.
- 4) Provisions to insure upward mobility of minority personnel into supervisory and administrative positions at all levels.

3. An extensive staff training program should be implemented for all professional personnel. This program should prepare personnel to plan, develop, implement, support, and evaluate drastically different educational practices. Elements of this staff training should include:
- a) Individualized instruction
 - b) Multi-cultural awareness training (that would include School Board members, key community leaders, administrative staff, teaching personnel, counseling and guidance personnel, and parents)
 - c) Teacher attitudes
 - d) Bilingual education (including bicultural curricula development, tests and measurement techniques for measuring bicultural student performance)
 - e) English as a second language
 - f) Language Learning Disabilities
 - g) Team teaching
 - h) Staff differentiation
 - i) Varying learning styles
 - j) Cognitive Development
 - k) Classroom management-utilization of time and space
 - l) Language Development
 - m) Educational psychology of the Mexican American

In addition to this, all staff should understand the rationale, objectives and strategies employed in all types of instructional programs including Title I, Title VII, Migrant, Head Start, Intensive Language Development, Special Education, and Individualized Instruction.²²

²²Ibid.

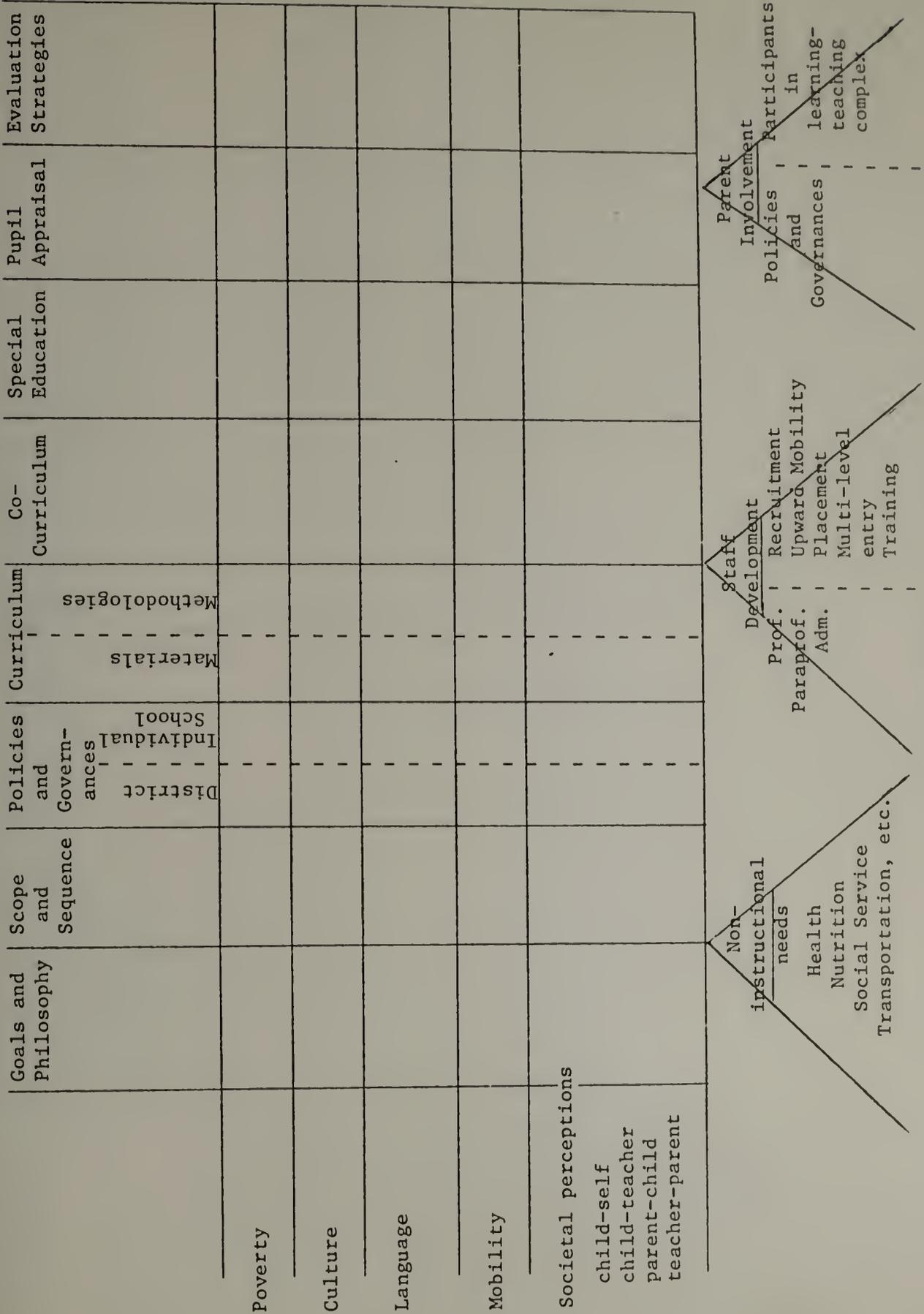


Figure 1

Special Education recommendations by Dr. DeAvila were contained in an extensive discussion of evaluation and assignment procedures, the establishment and role of an advisory committee, the overall operation of the Special Education program, and in-service training of Special Education professional and para-professional personnel.

The Comprehensive Educational Plan

On August 15, 1972, the Office of Civil Rights, HEW accepted a Comprehensive Educational Plan developed by the El Paso Independent School District.³³ The comprehensiveness of the plan is illustrated by the statement of educational philosophy which prefaces the specific goals and strategies to which the District made a commitment:

The El Paso Independent School District, as a creation of the State of Texas and of the El Paso community, views its role as an extension and enhancement of the home of each child it serves. In this role, we, the Board of Education and the professional ancillary personnel, commit ourselves to providing an environment that promotes and ensures the personal dignity of each child and encourages him to develop his physical, emotional and mental abilities to their fullest potential. To carry out this role, we recognize the incompatibilities that exist in this district and are dedicated to the specific philosophies as enumerated in this document. In

³³Letter of Dorothy D. Stuck, Regional Director, Office of Civil Rights-HEW to Dr. H. E. Charles, Superintendent, August 15, 1972.

the realization of this philosophy we also recognize a commitment to fiscal and organizational efficiency and accountability.

I. POVERTY

We recognize that varying degrees of poverty exist within the district, which must, through the total educational program, be considered in the implementation of a comprehensive child development program.

II. CULTURE

We recognize that culture is the totality of group learned behavior and we value many varieties of human behavior. The schools will reflect our multi-cultural society in the school's environment.

III. LANGUAGE

We recognize the need for bilingual education in our schools, especially the need to begin instruction in the language native to the child and to help him develop maximum facility in the other dominant language of our bilingual city as early as possible, while continuing the development of his native language.

IV. MOBILITY

We recognize that due to mobility patterns the district must provide process-oriented alternatives through flexibility in programming.

V. SOCIETAL PERCEPTIONS

We recognize that societal perceptions based on cultural and socio-economic differences affect a child's education. The schools will make every effort to (1) develop a positive self-concept in every child; (2) develop in all persons the ability to value differences in others; and (3) develop positive concepts of self in all persons in the child's total environment.

VI. SCOPE AND SEQUENCE

We recognize that the scope and sequence of the prescribed curriculum must be so designed as to allow each child entry into the flexibility within the curriculum.

VII. POLICIES AND GOVERNANCES

We recognize that policies and governance should be established centrally and on individual campuses in such a manner that: (1) they are reflective of the needs and desires of the majority of the community and respect the rights of all minorities; (2) they will be conveyed to the community through effective bilingual dissemination channels; (3) they will establish clear channels of communication authority and responsibility within the district's organization; and (4) they will be minimal.

VIII. CURRICULUM

We recognize it is the responsibility of the district to: (1) provide for continuous local development of new educational programs and curriculum materials consistent with the goals of this statement of philosophy; and (2) provide continuous coordinated staff training programs in methodologies essential to the implementation of these goals.

IX. PUPIL APPRAISAL

We recognize that a comprehensive pupil appraisal system, based on specific objectives, must measure: (1) instructional and non-instructional needs; (2) success in meeting instructional needs consistent with the child's way of learning; and (3) success in meeting non-instructional needs.

X. SPECIAL EDUCATION

We recognize the need for a comprehensive and flexible special education program designed to meet the needs of each exceptional child with safeguards to insure the appropriate placement of students.

XI. CO-CURRICULAR

We recognize that co-curricular activities are essential in the educational development of each child and that continuous review must be provided to ensure that each child has equal access to all activities.

XII. PLANNING AND EVALUATION

We recognize that appropriate development and implementation of comprehensive programs for children require a central planning effort relating all organizational components of the district and that evaluation is an integral part of this process.

XIII. STAFF DEVELOPMENT

We recognize that staff development for all levels and categories of personnel is the responsibility of the district in order to provide high quality services for children, accessibility to the curriculum for all and responsiveness to change.

XIV. NON-INSTRUCTIONAL NEEDS

We recognize the need for close coordination in the working relationships between instructional and non-instructional personnel in order to provide a comprehensive support program for child development.

XV. PARENT-COMMUNITY INVOLVEMENT

We recognize the need for direct involvement of parents in an educational supportive role in each individual school in order that parents assume active role as members of the educational team and a need for community involvement in an area and/or system-wide supportive manner.

XVI. PUBLIC RELATIONS

We recognize the need for direct and open bilingual communication of intent and purpose with the community through all available media.

XVII. GOALS AND PRIORITIES

We recognize the importance of setting realistic goals and priorities that are reflective of the philosophy of the district.²⁴

In many of its specific provisions, the Plan closely resembled provisions in the Beeville and San Felipe-Del Rio plans. A major difference was the specification by the El Paso District of more measureable objectives tied to target dates.

The District immediately put into effect a decentralization plan which included provisions for consolidation of resources in certain strategic areas. The decentralization was supposed to meet several objectives related to providing equal access to the curriculum for all children: (a) school administration would move closer to the people and become more responsive to their desires, (b) alternative approaches in educational programs would become more feasible for the district, and (c) supervision would become oriented toward staff development. The District's sixty-two schools were divided into three geographic areas, each headed by an assistant superintendent working with a citizen's advisory committee. Budgetary decision-making was also decentralized. The plan states the amount of money spent per child would be on a per capita basis, but

²⁴Ibid., pp. 2-7.

expenditures would be made according to differentiated learning needs as identified by the area staff and citizen's advisory committee. Special federal funds would be applied according to guidelines to this basic support level.

A new department of staff and curriculum development was organized at the district level. This department would work with the area superintendents to help them develop new curricula and new staff training programs addressed to the priorities suggested by the HEW technical assistance team. Staff placement, and promotion would be the responsibility of the area Superintendent. The twenty-one elementary and secondary consultants previously serving on a system-wide basis were assigned on an area basis. Their roles were redefined to focus on staff development. Special education staff was also decentralized.

Development of an instructional program which would essentially meet the objectives projected in the San Felipe-Del Rio Plan was organized to work at the District level.²⁵

The Curriculum and Staff Development Division would initiate the review of all curricular offerings through the use of broad based curriculum review task forces beginning in September, 1972. Curriculum review would determine needs

²⁵Ibid., pp. 4-5.

for culturally relevant materials, linguistically appropriate materials, and teaching methodologies that allow for different ways of learning.

All of the District's innovative and developmental programs would be integrated into an ESL-SSL, (English as a Second Language-Spanish as a Second Language) education program K-12. The Plan defined the program thusly:

1. The Spanish-speaking child will begin in his native Spanish language and continue to improve his skills in Spanish throughout the curriculum, the end result being greater ability in Spanish. The second part of the program for the Spanish-speaking child is that early in his education he will begin to study English as a second language, the end result being adequacy in a second language.
2. The English-speaking child will begin in his native English language and continue to improve his skills in English throughout the curriculum, the end result being greater ability in English. The second part of the program for the English-speaking child is that early in his education he will begin to study Spanish as a second language, the end result being adequacy in a second language.²⁶

The District would implement an early childhood education that met the specifications of the early childhood education program ordered in San Felipe-Del Rio.

Fifteen schools per year would be added to the ESL-SSL program so that all schools would be included by

²⁶Ibid., p. 9.

August, 1976. Precursors to implementation of the ESL-SSL program would include:

Grades K-3

The Curriculum and Staff Development Department and the area consultant staffs shall develop and implement a K-3 program which offers all children the opportunity for ESL-SSL instruction that uses the child's native language system(s) as the medium of instruction while proficiency in one or more additional language systems is developed. This shall be accomplished by the implementation of the following:

1. Grouping of instructional units to include students to be served by teachers and other personnel competent to develop and implement ESL-SSL, bicultural programs;
2. Team teaching techniques and small group methodologies will be utilized so that a bilingual, bicultural professional staff member will be readily available to every student in the program;
3. Development of curricular materials and methodologies to reflect cultural characteristics of all students;
4. Evaluation of all instructional and cultural presentations;
5. Implementation of both ESL-SSL components as part of the instructional program.
6. Inclusion of bilingual, bicultural pupil personnel specialists on the staffs of the area superintendents to assist in diagnostic roles for the development of prescriptive teaching.
7. Initiation of comprehensive staff development activities responsive to the implementation of this program.

This program will be initiated in 15 schools in K-1 in 1972-73, utilizing skills acquired through in-service training. Simultaneously, materials will be developed for complete implementation. In 1973-74, the program in these schools will be extended to Grades 2 and 3 and initiated in K-1 in 15 additional schools. This pattern will be repeated every school year extending it to all schools. The current Title VII Bilingual Education Program will continue in three schools during 1972-73 and will set the pace for ESL-SSL in the city.

Grades 4-8

The Curriculum and Staff Development Department and the area consultant staff shall develop and implement a program which will enable all students to participate in an ESL-SSL instructional program. This shall be accomplished by the implementation of the following in the 1972-73 school year:

1. Grouping of instructional units to make available bilingual, bicultural professional staff and other personnel;
2. Initiation of ESL for students diagnosed to need additional English language development;
3. Initiation of SSL or improvement of Spanish as a first language;
4. Team teaching techniques and small group methodologies;
5. Implementation of individualized, individually prescribed and small group instruction;
6. Development of culturally relevant instructional materials;
7. Inclusion of bilingual, bicultural pupil personnel specialists on the staffs of the area superintendents to serve in diagnostic roles for the development of prescriptive teaching;

8. Continued expansion of a comprehensive counseling program using bilingual, bicultural personnel focusing on drop-out prevention and increasing the availability of academic options;
9. Evaluation of all instructional and cultural presentations by area superintendents and their staffs.

Grades 9-12

The Curriculum and Staff Development Department and the area consultant staffs shall develop and implement an instructional program including course offerings, instructional materials, and the methodologies which capitalize on the capabilities of students who have been involved in an ESL-SSL program. This shall be accomplished by implementation of the following:

1. Continued employment of bilingual, bicultural personnel in the guidance and counseling program of the school as vacancies become available. The goal is to reach a point where a counseling staff is reflective of the racial and ethnic composition of the student body in the school it serves.
2. Continued employment of bilingual, bicultural personnel to coordinate planning, development, and implementation of all curriculum improvements;
3. Continued employment of bilingual, bicultural personnel to implement English as a second language and Spanish as a second language instruction on a prescriptive basis;
4. Continuation of courses which develop an understanding of the child's cultural heritage and that of others;
5. Continuation of an inter-cultural awareness and understanding program using group dynamics techniques and other appropriate strategies;

6. Evaluation of all instructional and cultural presentations;
7. Evaluation of vocational education and home economics programs in terms of relevance to community present and projected needs and maintenance of student-centered decision making as to options within and without vocational education;
8. Development of an intensive program to identify scholarships and financial assistance for disadvantaged and all other students, and evaluation of that program's results at the conclusion of the 1972-73 school year.²⁷

The Staff Development provisions of the Plan provided for staff training in:

1. Individualized instruction
2. Multi-cultural awareness training (that would include School Board members, key community leaders, administrative staff, teaching personnel, counseling and guidance personnel, and parents)
3. Teacher attitudes
4. English as a second language
5. Team teaching
6. Varying learning styles
7. Cognitive Development
8. Language Development²⁸

²⁷Ibid., pp. 10-12.

²⁸Ibid., p. 13.

Additionally development objectives were specified in: (a) prevention of reading disabilities, (b) bilingual education-intensive language development and ESL-SSL, (c) individualized instruction, and (d) human relations.

Special education provisions of the Plan provided for the decentralization of services and the integration of the Texas Education Agency's Plan "A" for Special Education.

Plan "A" contains many possible instructional arrangements. The El Paso Public Schools have developed one or more resource rooms on each campus to aid those students who are having educational or behavioral difficulties. Although the focus is on educational needs, state reporting requires categorization of these children. Any resource room may contain a variety of handicapping conditions -- e.g., educable mentally retarded, minimally brain-injured, orthopedically handicapped, language and/or learning disabilities, emotionally disturbed, blind, auditorially handicapped. Educable mentally retarded are not segregated as was the case prior to August of 1970.

Those students with severe handicapping conditions who cannot be served in a regular resource room are considered for placement in a self-contained setting. Some examples are: trainable mentally retarded, Highland School; orthopedically handicapped, Rehabilitation Center; orthopedically handicapped, Rehabilitation Center, Bonham Elementary, Hillside Elementary, MacArthur Elementary-Intermediate, Ross Junior High, Burges High; Deaf, County-Wide Day School for the Deaf, Hillside Elementary and Austin High School.

This new organization should allow for maximum use of both personnel and facilities. Plan "A" will function as a supportive service

to the regular instructional program to supplement the educational process. The resource room will be primarily an extension of the regular classroom rather than a replacement for instruction that could be, or should be, offered in the regular classroom.²⁹

Other Special Education provisions of the Plan closely reflected the procedures developed by HEW's Advisory Committee.

Perhaps the most significant goal of the El Paso Plan was the commitment to reach a racial balance in the teachingstaff within five years:

It is the goal of the Personnel Department of the El Paso Independent School District to reach a racial balance in the teaching staff within the next five years, which would be September, 1977. To create this racial balance, there is the need for approximately 800 additional teachers of minority background. Based on this goal, the expected annual increase is 160 new hires over the five year period. Recognizing the variables in recruitment of new staff, such as attrition, availability and resources, it is anticipated a 5-10 per cent plus or minus variance in the goals of 160 new hires per year.

Each year there are approximately 300 new teachers employed, with 35%, or 125, being members of minority groups. At the same time, resignations include a proportional share of minority teachers so that the annual increase in minority hirings is significantly smaller than the number employed.

Between February, 1971 and June, 1972 the percentage of minority teachers has, through recruitment practices, been increased from 22% to 29%. These practices include regular visits to the University of Texas at El Paso and assistance from placement offices at

²⁹Ibid., p. 22.

Sul Ross State University at Alpine, New Mexico State University at Las Cruces, Texas Tech at Lubbock, West Texas State University at Canyon, University of Texas at Austin, North Texas State University and Texas Woman's University at Denton, and the University of New Mexico at Albuquerque.

The following is this system's plan to attempt to reach this goal: recruitment by personal interviews on the campuses of the University of Texas at El Paso, Sul Ross State University at Alpine, and New Mexico State University at Las Cruces; constant communication by telephone and by mail in the form of brochures containing information about the El Paso school system, the salary schedule, and advancement policies; listings of El Paso's needs from the standpoint of vacancies in the various categories of the instructional program.

A survey will be made of the colleges and universities in Arizona and California to determine those schools which have significant numbers of minority groups enrolled. On the basis of this survey, brochures and application forms will be sent to those locales. Listings of openings in the various categories of El Paso's instructional program will also be sent. Salary schedules, information about fringe benefits, opportunities for advancement, and information that might make the El Paso Independent School District an attractive place for consideration by minority groups will also be sent.

At the present time, the salary schedule of the El Paso Independent School District compares favorably with all major cities in the state of Texas.³⁰

³⁰Ibid., p. 28.

The Plan further provided that by Fall, 1977, the School District would reach an equitable level in terms of the minority student population and minority employment in administrative, supervisory, and teaching levels. Additionally, information about all positions and selection criteria for these would be distributed to all levels of the system and the community.

The Plan adopted policies to facilitate the training and credentialing process for all staff:

We recognize that it is the responsibility of the El Paso Public School to facilitate the improvement of staffing patterns in our school district in light of the programmatic efforts being made to improve the quality of instruction for our bilingual bicultural children.

- a. We, therefore, commit ourselves to implement a long-range plan which will address itself to the training and credentialing process for all staff.
- b. We commit ourselves to actively seek funding from private, state, federal, or other sources for all or part of programs such as released time for teacher training.³¹

A Special Career Development Plan which adhered to the rationale underlying the staff development provisions of the Beevile and San Felipe-Del Rio Plans was a major provision of the Plan:

We recognize the need for a Special Career development Program which will provide and support the identification, multi-level

³¹Ibid., p. 30.

entry and placement of Mexican Americans and other minority group members into all levels of the school system. Therefore:

- A. We commit ourselves to implement a long-range plan which will insure the staffing in all school campuses which have bilingual, bicultural programs with an adequate bilingual, bicultural staff. As a minimum this year, the district will: (1) Identify personnel skills, competencies, degrees, etc., during the 1972-73 school year; (2) Establish a skill bank to be used as a basis for training teacher aides; (3) Initiate action to develop a college credential program that will provide greater opportunity for paraprofessional staff.
- B. We commit ourselves to a plan which will train teacher aides in content areas with the possibility of some release time for this training. We will continue to cooperate with the Regional Service Center's Career Opportunity Program for the purpose of training teacher aides to become certificated teachers.
- C. We commit ourselves to the development of a long-range plan which will offer an equal opportunity to all qualified staff for advancement into all levels of the school system. Such a plan might include the following:
 1. The area superintendents will initiate recommendations to the Superintendent to fill all vacancies in administrative and supervisory positions that may exist in their area.
 2. On the basis of objective criteria established by the Superintendent's Office, the area superintendents will continuously identify individuals who have completed exceptional ability within their area and who have completed certification requirements for

administrative and supervisory positions. They will submit a list of these individuals to the superintendent who will make this information available to all other area superintendents.

3. Final approval of the selection will be the responsibility of the School Board.³²

Staff assignment practices would aim at reducing the concentration of minority staff members in specific schools. The only exception to the policy of maintaining uniform proportions of minority teachers throughout the school district would be cases in which the principal had justified, in writing, the need to keep certain minority teachers for special programs which might cause certain campuses to exceed the district ratio.

Monitoring Procedures of the Office of Civil Rights

The specificity of both process and product objectives in the El Paso Comprehensive Educational Plan and their tie to a specific target date has provided for the Office of Civil Rights the opportunity to develop and implement feasible monitoring activities. Previous monitoring of comprehensive educational plans had been minimal, general and vague. In terms of the earlier plans it is likely that

³²Ibid., p. 31.

this will lead to further negotiations. The El Paso Plan included its own guidance system; it is easy for both the school district and the Office for Civil Rights to know the current degree of success on the part of the School District in complying with the provisions of the plan.

Correspondence between the El Paso Independent School District and the Office for Civil Rights indicates that the District has informed the Office for Civil Rights of any deviations it is forced to make from the Plan. Implementation of the bilingual program in fourteen schools was begun as planned in the Fall of 1973. The Office for Civil Rights has been supportive but unwaivering in pursuing fulfillment of the original commitments:

Although we feel that the teacher assignments for this school year reflect your best efforts, we urge you to consider the need for more bilingual teachers in these schools as additional teacher assignments become necessary.³³

In December, 1972, the Office for Civil Rights approved El Paso's participation in a consortium for early childhood education. El Paso had pursued a number of avenues for funding on early childhood education program to comply with the plan and had found available funding only

³³Letter from John A. Bell, Chief, Education Branch, Region VI Office for Civil Rights to Dr. H. E. Charles, Superintendent, El Paso I.S.D. dated October 18, 1972.

on a multiple agency arrangement. The Office for Civil Rights approval of the early childhood education strategy was on the basis that:

1. The El Paso Independent School District will be directly involved in the formation and implementation of the program;
2. Consultants from the district will assist in developing components of the appropriate programs consistent with those described in the comprehensive educational plan approved by the Office for Civil Rights;
3. The El Paso Independent School District will seek assurances from each of the agencies or organizations involved of non-discriminatory policies and practices in all phases of operation; and
4. The district will provide the Office for Civil Rights with a copy of the final proposal for funds for early childhood education prior to its submission.³⁴

The Office for Civil Rights conducted on-site reviews of the El Paso Independent School in February and November of 1973. Both the February and November reviews generally gave the El Paso District much credit for both effort and accomplishment in meeting the commitments made under the plan. The November review conducted by Rosario Cardenas and James Littlejohn concluded that both the Early Childhood Education and Citizen's Advisory Committee Components of the Plan had been implemented as scheduled.

³⁴Letter from John A. Bell, Chief, Education Branch, Region VI Office for Civil Rights to Mr. J. M. Whittaker, Deputy Superintendent, El Paso I.S.D. dated December 1, 1972.

Modifications in the timeline for the instructional program to allow additional time for teacher training and curriculum development were approved by the Office for Civil Rights.

The Office for Civil Rights cited five areas requiring additional attention by the School District if the commitments of the Plan were to be met:

1. A major problem that exists in the instructional area is that the district does not have adequate personnel to provide the technical assistance needed to implement the bilingual program in 29 schools for the 1974-75 school year. Only one area consultant staff of the three such staffs in the district has a K-3 consultant with expertise in methodologies, teaching techniques and the development of relevant instructional materials in the area of bilingual/bicultural education. To avoid any delay in the implementation of this component of the Plan, it is suggested that the district consider increasing area consultant staff to enhance the implementation of the dual language program. Particular consideration should be given to bilingual personnel who have expertise in bilingual/bicultural education.
2. The commitment made at grade levels (4-8) to develop culturally relevant instructional materials, and to provide opportunities for bilingual/bicultural education instead of a foreign language program, has been delayed. It should be noted, that personnel in the district are cognizant of this concern and expressed a willingness to make this concern a priority item. We would advise early action on this matter.

3. A comprehensive and relevant staff development program has been implemented by the El Paso Public Schools, for the instructional staff. However, the Plan states that program activities were to increase the capabilities of the total district staff (administrative, instructional, counseling, and paraprofessional) to deliver an educational program which responds to the needs of all students. Staff activities were slated to include community awareness training in which school board members, key community personnel, administrative staff, teaching personnel, counseling and guidance personnel, and parents would be participants. Documentation made available to the review team did not indicate that staff other than teaching personnel participated in the staff development activities. Action should be taken to meet the district's Plan commitment in this area.
4. During the visits made to schools implementing the bilingual/bicultural component of the Comprehensive Educational Plan, the review team found some principals indifferent and unaware of the commitment to implement the program. It is suggested that more activities in human relations training and orientation to the district's commitment be scheduled not only to include teachers but especially principals and others who need to be cognizant of the values of the instructional programs proposed. Administrative personnel responsible for the success of the implementation of the Comprehensive Educational Plan need to receive indepth study of the plan and sensitivity training activities to make them more cognizant of the needs of all the students.
5. An indepth review of the Special Education program was not conducted during the review in November. In our letter of April 11, 1973, to the district, we noted that several schools with disproportionate numbers of minority students in classes for the

mentally retarded were not following adequate assignment procedures. We understand that principals were requested to take appropriate corrective action. To update our file in this area, we request, by February 1, 1974, those reports detailing the corrective actions that have been taken. We also request the latest report showing assignment of students by racial/ethnic composition to the various Special Education programs in each of the schools.³⁵

The School District appeared to be making good progress toward meeting the personnel commitments of the Plan. The recruitment and employment of minority personnel had increased the district's percentage of minority personnel to 32 per cent for the 1973-74 scholastic year. Of the fifty-three promotions in the district, 30 (57%) of the positions went to Mexican Americans, 2 (4%) to Blacks, and 21 (39%) to Anglos. The Office for Civil Rights indicated that continued progress in this area would be necessary to achieve the goals set forth in the Plan.³⁶

Analysis

Generally speaking it appeared that the El Paso Independent School District was making significant progress in implementing the plan. It was obvious that the Office for Civil Rights intervention in the El Paso Independent

³⁵Letter from John A. Bell, Chief, Education Branch, Region VI Office for Civil Rights to Mr. J. M. Whittaker, Superintendent, El Paso Public Schools dated December 21, 1973.

³⁶Ibid.

School District had significantly affected the availability of an equal access to educational opportunity for Mexican American children in that school district. A review of the events leads to the conclusion that a number of positive factors impacted the civil rights actions. These included:

- a. The early 1970 review of the School District had resulted in the appointment of a number of Mexican American staff members to the central office staff. The presence of these and other members of the staff provided a sufficient pool of expertise in the administrative staff to affect positively the Office for Civil Rights intervention.
- b. The Office for Civil Rights review of the School District was sufficiently thorough and specific to allow the clear identification of invidiously discriminatory practices. The comprehensive analysis of the school district led to the clear mandate for a comprehensive remedy.
- c. Educational Assistance provided the District by the Office for Civil Rights provided a comprehensive perspective on the needs for fundamental institutional change in the School District. The school district-based experience of the Educational Assistance Team enabled them to provide real suggestions for the redirection of resources and priorities which would lead to the facilitation of change.
- d. The Office of Civil Rights was direct and specific in requiring a plan that would bring about comprehensive change by committing the school district to its own specific goals and objectives tied to its own timeline projections.
- e. The School District was given the opportunity and technical assistance to develop its own plan.

- f. The School District rose to the challenge admirably.
- g. The specific goals and timeline objectives in the Plan allowed for feasible monitoring by the Office of Civil Rights, the School District and the Community.
- h. The Office of Civil Rights established early a pattern of interaction with the School District (including frequent monitoring) which would promote their adherence to the Plan.

Recent Developments

Since the successful implementation of the Memorandum of May 25th procedures in the El Paso Independent School Districts, there has been a number of significant civil rights actions which hold promise of adding significantly to its effectiveness. These are discussed briefly below.

1. The issuance of the Stokes Memorandum by the Dallas Regional Office of Civil Rights has significantly expanded the Office of Civil Right's ability to intervene into School Districts. The memorandum states that a school district can enter into voluntary compliance by negotiating a Comprehensive Educational Plan under the May 25th Memorandum guidelines. A school district that has negotiated a Comprehensive Educational Plan is eligible to apply for funds for the ESAA program.³⁷

2. In Natonabah v. Gallup-McKinley County School District, the Federal District Court requested the OCR-HEW to provide assistance to the Court and to the School District in developing a plan to comply with the Court order. In providing the assistance, James M. Littlejohn and the author developed an operational plan which provides clear and specific requirements for the formulation of objectives, strategies and timeline requirements.³⁸
3. In the Keyes case in Federal District Court in Denver, Colorado, Dr. Jose A. Cárdenas has outlined recommendations for the development of a comprehensive educational plan which encompasses the concepts reviewed in this study.³⁹

On April 8, 1974, Judge William E. Doyle issued a Memorandum Opinion and Order in the case which describes the Cárdenas Plan as a sensible method and orders it implemented in the Denver schools. In the language of the Court:

The Court feels that a prompt start should be made in a pilot program

³⁸Letter from James M. Littlejohn, Co-Coordinator HEW Task Force to M. A. C. Woburn, Superintendent Gallup-McKinley County School District, December 13, 1973.

³⁹José A. Cárdenas, An Education Plan for the Denver Public Schools, National Education Task Force de La Raza, San Antonio, Texas, January 21, 1974.

for implementation and utilization of the Cárdenas Plan.

The Cárdenas or bilingual/bicultural approach to the education of this minority group is a very sensible method and to the extent that it can be useful to building bridges between the Spanish and Anglo cultures it is to be fully utilized.⁴⁰

4. In early 1974, the U.S. Supreme Court in Lau v. Nichols ordered the San Francisco School District to provide bilingual education to Chinese American students in that city. The decision based not on the Fourteenth Amendment but on the 1964 Civil Rights Act was based on the U.S. Department of Justice presentation of the provisions and procedures implemented under the Memorandum of May 25th. The Lau decision effectively upholds the Memorandum.

Summary

In 1972, the Office of Civil Rights-HEW reviewed the equal educational opportunities available to Mexican

⁴⁰Memorandum Opinion and Order by Judge William E. Doyle U.S. District Court, District of Colorado, Civil Action C-1499, Keyes v. School District No. 1, Denver, Colorado, April 8, 1974.

American children in the El Paso Independent School District. The review, the educational assistance provided the District, and the instructions of the Office of Civil Rights to the District were specific and thorough. To come into compliance with the May 25th Memorandum, the District developed an exemplary Comprehensive Educational Plan. The plan has been monitored by the Office of Civil Rights and the District has been found to be making progress in meeting its commitment. Thus, the procedures for making the Memorandum of May 25th fully operational showed promise of bringing about effective change in school districts failing to provide equal access to educational opportunity for Mexican American children. Recent civil rights actions have served to strengthen the May 25th Memorandum procedures.

CHAPTER VI

A CONCEPTUAL FRAMEWORK FOR EFFECTING INSTITUTIONAL RESPONSIVENESS TO THE EDUCATIONAL NEEDS OF MEXICAN-AMERICAN CHILDREN

In the development of the civil rights actions described in this study, governmental, school district, and community representatives have been concerned with the need for feasible alternatives to the discriminatory practices which result in unequal access to educational opportunity for Mexican-American children. This chapter will describe a conceptual framework for effecting institutional responsiveness to the educational needs of Mexican-American children.

Development of the Theory of Incompatibilities

In June, 1969, a reform oriented school board in San Antonio, Texas, invited Dr. Jose Angel Cárdenas to accept the Superintendency of the Edgewood Independent School District. The 25,000 student School District was poor in financial and other resources, but rich in commitment to educational reform. Members of the community had filed the celebrated Rodriguez school finance reform

case. Many had taken strong stands in a number of forums with the goal of securing an equal educational opportunity for their children.

Dr. Cárdenas invited the author to join the Edgewood staff and with a number of additional program development oriented staff members, set about the task of reversing the Districts' history of educational failure.

The challenge for developing an educational response to the needs of the ninety per cent Mexican American, six per cent black and four per cent white students in the District was unique in the Mexican American quest for equal educational opportunity. The Civil Rights battles of the sixties had significantly raised the expectations of the Mexican American Community. Edgewood provided the opportunity for self-determination in responding to educational inequities.

Efforts to explain the lack of success in the education of Mexican-American children had traditionally stated the problem in terms of negative attributes in the Mexican American population. Early explanations cited the "genetic inferiority" of Mexican Americans. The Americanization movement of the 1920s and 1930s projected that it was the "Mexicanness" of Mexican Americans that was the root of the problem. Although the civil rights battles of

the 1960s were generally exposing the racism and discrimination prevalent in American institutions, education managed to evade indictment for racism by indicting the minority populations for "cultural deprivation" and "cultural disadvantage."

A few Mexican-American educators achieving national leadership roles were taking a different view of the problem. The U.S. Commission on Civil Rights' then embryonic study of Mexican-American education was based on a similar rationale:

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 familiar characteristics of the child. A cursory review of the research literature on the educational problems of Chicano students uncovers copious master's and doctoral dissertations on the child, his socioeconomic status, his motivation, his "language handicaps," his parental influence, ad infinitum. This tendency to look at the child, his home, and his parents too frequently has led educators to place culpability at the door of the agents least capable of intervening in behalf of their own self-determination and amelioration.

Rarely, however, does one find educators turning their glances inward and assessing the effects of their own educational conditions, practices, and policies are having on the child. It is the firm conviction of the United States 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.¹

Thomas P. Carter challenged the perspective of most educators that persistent low academic and social achievement of the Mexican American is primarily attributable to the cultural characteristics of the group itself, not to the socio-economic system and institutions of the majority society. Educators assuming this "rationale" perceive the school's role as remodeling, retooling, and reorienting Chicano children into the very model of the middle class. According to Carter,

Even creative programs involving the use of Spanish-Hispanic culture and community involvement are perceived as steps to compensate for group perpetuated cultural deficiencies and as efforts toward "Americanization." The "cultural deprivation" theory and its dependent "compensatory education" programs remain the only well-developed fully conceptualized approach. The fact that no other comprehensive models are

¹Henry M. Ramirez, "Research for Change--For a Change" in Mexican Americans and Educational Change edited by Alfredo Castañeda, et al., Symposium at the University of California, Riverside, May 21-22, 1971, p. 189.

available deters other change -- to promote institutional modification educators must develop other well conceptualized rationales and programs.²

Accepting neither genetic inferiority nor cultural deficit models, Cárdenas and Cárdenas developed a perspective on the schools failure to educate the Mexican American.³ The Theory of Incompatibilities held that the failure was largely due to the institutional ethnocentrism prevalent in the schools. The schools designed and operated to serve a white Anglo Saxon, English-speaking, middle-class-oriented school population and population groups and individuals who have melted into reasonable facsimilies thereof are not and cannot be adequate for a non-white, non-Anglo Saxon, non-English speaking, or non-middle-class population.

The school's failure in the education of Mexican American children was attributed to the incompatibility which exists between the traditional school program designed to serve the general (supposedly homogeneous) population and the general characteristics of the Mexican American population. To reverse the school's failure it would be

²Thomas P. Carter, "The Persistence of a Perspective" in Mexican Americans and Educational Change, edited by Alfredo Castaneda, et al., Symposium at the University of California Riverside, May 21-22, 1971, p. 268.

³B. Cardenas and J. A. Cardenas, op. cit.

necessary to design and implement an instructional program compatible with and responsive to the characteristics of the population.⁴

In implementing programs in the Edgewood Independent School District, in providing technical assistance to the Office of Civil Rights in the three civil rights actions which are the subject of this study and subsequent civil rights actions and through an analysis of the civil rights actions which are the subjects of this study, the author and Dr. Jose Angel Cardenas have expanded the Theory of Incompatibilities to develop a conceptual framework for institutional responsiveness to the educational needs of Mexican-American children.

Conceptual Framework

The Theory of Incompatibilities isolates five areas of incompatibility to which the institution must be sensitive in order to realize any educational goal. These areas of incompatibility are substantiated by a Southwest Educational Development Laboratory study of educational opportunities available to migrant students at the secondary

⁴B. Cardenas, et al., Proposal for an Experimental Schools Project for the Edgewood Independent School District, Edgewood Independent School District, San Antonio, Texas, October, 1971.

level, and, at least three have been independently verified by a whole series of reports on Mexican-American education by the U.S. Commission on Civil Rights.⁵

POVERTY

Much has been written about the effects of poverty on the development of the individual. Little institutional compatibility responsive to those effects has been implemented. The typical American instructional program fails to take into account the effects of large child-to-adult ratios, the absence of typical adults in a family, the dissipation of adult energies in meeting the basic necessities of life, the relative absence of success models, the absence of intellect-developing toys and activities, and the deprivational effects of inadequate housing, malnutrition, and poor health. Likewise, it fails to take into account or value the skills and strengths which, though different, may be nurtured in a poverty environment.

Evidence of environmental deprivation resulting from poverty has led educators to an erroneous conclusion, namely the development of a deficit philosophy which attributes the poor school performance of poverty children to a deficient environment. The deficit philosophy equates the

⁵Southwest Educational Development Laboratory, Alternative Strategies for Migrant Secondary Education, Austin, Texas, S.E.D.L., 1969.

U.S. Commission on Civil Rights, Reports I, II, III, IV, V, VI, op. cit.

deprivation of poverty with deprivation of culture and assumes therefore that it is necessary to eradicate the effects of both in order to bring the Mexican-American (or other minority) child up to the norm. It looks to current intelligence testing data to conclude that poor children are intellectually retarded. DeAvila has utilized neo-Piagetian techniques to show that the intellectual development of Mexican-American children, regardless of socio-economic level, is not retarded.⁶

Though poor children may often manifest a pattern of intellectual development that is different from that manifested by the middle-class child and may indeed have not developed specific cognitive skills which the child in a more enriched environment has developed, it is erroneous to conclude that the child's developmental level must inevitably lead to educational retardation.

The educational retardation of children from poverty homes has been and is caused not by the child's background, but by the school's failure to provide an early educational experience which utilizes the early

⁶Edward A. DeAvila, "The Application of Piagetian Techniques in Cognitive Assessment of Mexican American Children," Paper presented at the Annual Conference of the American Educational Research Association, Chicago, Illinois, April, 1974.

developmental strengths of poor children as it develops those cognitive and affective skills which will maximize the child's particular intellectual development. In the case of poor children who are culturally distinct, it is necessary to provide an early educational environment which is sufficiently intellectually enriched to allow for early frequent intellectual success and growth as it positively and comprehensively affirms and reinforces the cultural wealth which the child brings to the educational setting.

In older children, poverty often creates daily conflict in choosing between the immediate personal fulfillment of peer groups, social, or familial needs and/or responsibilities and the fulfillment of long-range needs through education. In the Edgewood School District, administrators learned of a practice common among poor twelfth graders of dropping out of school during the last six weeks of the senior year only to return during the summer to graduate. The poor student devised this way of coping with the financial demands of a junior-senior prom, the rental of a cap and gown, the purchase of a senior ring, the purchase of graduation announcements, etc. An estimate of such expenses totaled well over \$200.00, a major portion of the yearly income of families living in

poverty. In many cases, students simply drop-out of school to improve the family's financial position.

Schools often tend to make value judgments about students' attempts to create their own responses to poverty. The judgments are almost always based on the middle-class perspective that long-range goals are achievable and therefore worthwhile, a perspective which often has no justification in a poverty environment in the affluent world of the late Twentieth Century.

The Cardenas-Cardenas view is that the school responsive to the constraints and needs created by the characteristic of poverty would be designed to reduce the conflict created by poverty and to facilitate educationally enriching alternatives to enable students to cope with the pressures of poverty.

CULTURE

Traditional instructional programs are lacking in cultural relevance. For example, the typical stories and accompanying pictures in basal readers developed for typical middle-class Americans are often meaningless to Mexican-American and Black children. In many instances, the instructional materials are more than irrelevant -- they are insulting, degrading and traumatizing.

The detrimental effects of a culturally incompatible instructional program are supplemented by school regulations and policies which further alienate minority group children by producing role and value conflicts. The conflict is illustrated by a large group of counselors, visiting teachers, and attendance officers in a predominantly Mexican American school district who recently indicated concern over unexcused absences among Mexican American secondary school-age students. Many of these student absences are due to the fact that teenagers sometimes have to take their mothers to the doctor, go to the food stamp distribution center, or baby-sit younger siblings while parents attend to pressing family business.

The essence of the meeting on this question was to brainstorm and formulate action that would enhance the importance of school and eliminate absences due to family-related activities, clearly an incompatible response on the part of the school to a cultural phenomenon.

It is interesting to note two statements concerning this situation:

1. Anthropologists have repeatedly emphasized that the Mexican American's role as a member of a family is perhaps his most important and most significant role in terms of assessment of self-worth. Madsen feels that Mexican Americans differ from some other cultural

groups in their close-knit family relations, with responsibilities for the welfare of the family vested in all of its members, particularly the older ones, not just the father and mother.⁷

2. Smith, in Fundamentals of Curriculum Development states that, in the opinion of social scientists, most of the social problems in this country today may be attributed to the dissolution of the family as a social unit.⁸

It is paradoxical that American schools foster activities designed to weaken or destroy what is perhaps one of the last vestiges of the American family in working with one of the few ethnic groups still adhering to the concept of the family as a strong social unit.

Cultural incompatibilities between disadvantaged minority group children and the traditional school can be summarized in three generalizations:

1. School personnel are usually unaware of the cultural characteristics of the minority school population;
2. School personnel aware of the cultural characteristics of minority groups invariably do nothing about them; and

⁷William Madsen, The Mexican Americans of South Texas, New York: Holt, Rinehart and Winston, 1964.

⁸B. O. Smith, et al., Fundamentals of Curriculum Development, rev. ed., New York: Harcourt, Brace, Janovich, 1969.

3. When the school attempts to do something concerning cultural characteristics of minority groups, it almost invariably does the wrong thing.

Within the cultural incompatibility it is possible to specify an area of particular concern, the differential cognitive skills and processes of Mexican American children. Ramirez has documented the incompatibility between the field sensitive cognitive style of these students and the field independent style which underlies most English curricula.⁹ Bernal has documented the differential readiness across the three major ethnic groups in the United States to adjust to standard concept learning tasks and has criticized current psychometric practices for failing to take these differences into account when designing tests or using tests for educational decision-making and evaluation.¹⁰ These differences in cognitive skills and processes have behavioral concomitants which extend beyond curriculum and testing considerations, however; they are integral parts of a people's whole way of perceiving interacting, participating, valuing, etc. In short, it

⁹Ramirez, op. cit.

¹⁰E. M. Bernal, Jr., "Comparing Concept Learning Among Anglo, Black and Mexican American Children Using Standard and Facilitation Conditions of Task Administration," in E. Cassavantes, Effects of Cultural Variables on Mexican Americans, Symposium presented at the American Psychological Association, Washington, D.C., September, 1971.

is a part of the culture which must be specifically addressed by the schools if they are to be responsive to the behaviors of the Chicano students and to the characteristics of the Mexican American community served.

The reader is warned concerning the responsibility of the school in differentiating between the "culture of poverty" and "cultural poverty."

Responsiveness to the characteristic of poverty is a prerequisite to providing minority group children equal access to the full benefits of the educational program. It is incumbent upon the school to remove the constraints which poverty places on the educational success of children and to compensate for deprivations correlatable with poverty. There is a fine distinction, however, between the effects of poverty and the effects of culture, and while it is the school district's responsibility to eradicate the negative effects of poverty, it is not its prerogative to reverse the effects of culture. Mexican American and Black children are culturally different children who may be deprived because they are poor. Cultural difference becomes cultural deprivation only after culturally-biased institutions succeed in damaging the fabric of culture through arts which range from omission to consistent and heavily armed attack.

LANGUAGE

Language, a third incompatibility, is an element of culture so significant in its role as a learning impediment that it must be listed separately. Over 90% of the Mexican American children in the Southwest enrolling in school for the first time have fluency in the Spanish language. It is readily apparent that an incompatibility exists when a Spanish-speaking child is placed in an English-language instructional program. Past attempts to eliminate this incompatibility through the traditional "cold turkey" English as-a-second Language (ESL) strategy have resulted in academic retardation. The ESL approach has required the child to master a new language system under chaotic environmental and internal conditions in which unrealistic levels of achievement namely, the acquisition of basic skills in the new language system, plus mastery of the first grade content material are expected to occur at the same time.

MOBILITY

To a large extent, the instructional program for typical children is one which is designed for a stable population. The sequence and continuity in the instructional activities assumes that the child participating in them was also a participant in the acquisition of previous and

often prerequisite learnings and that the same child will be a participant in subsequent and often dependent learning activities. This is a dangerous and false assumption to make even in urban Mexican barrios since the school population is involved in migrant agricultural labor and, by necessity, must move from community to community in search of family work opportunities. The urban population in the school district may be no less mobile. Many of the problems of poverty result in displacement of families, non-payment of rent, and condemnation of homes. Urban renewal projects, job layoffs and other factors result in the relocation of families in different school attendance areas.

The education of these mobile children suffers from program discontinuity. The sequence and continuity of the instructional program, which is frequently determined at the local school district level, may not be present for a mobile child.

SOCIETAL PERCEPTIONS

A fifth area of incompatibility has to do with the area of societal perceptions. Societal perceptions refer to the perceptions that groups and individuals have of themselves, of others and of themselves in relation to others. For minority groups in this country, the dominant group's attitudes and behavior, particularly the institutional

behavior, have had devastating effects. If the institution of education is to develop responses to the educational needs of minority group children, it must recognize and develop positive strategies for responding to the history of exclusion which is reality for minorities and to the whole set of dysfunctional behaviors of both dominant and minority group members.

The perceptions that people in a child's educational environment have of the child, as well as the child's own perceptions of himself, maximally effect the level of success or failure enjoyed by the child in an educational program. As demonstrated by Rosenthal and Jacobson in Pygmalion in the Classroom, the teachers' expectations for disadvantaged minority-group children tend to become self-fulfilling prophecies.¹¹ Teacher attitudes and resultant teacher behavior may substantially alienate the child from the instructional program.

Disadvantaged minority-group children often come to school with negative feelings about self. Initial entry into the school tends to reinforce negative feelings where they already exist and nurture the creation of new ones. Consistently poor performance in an instructional

¹¹Robert Rosenthal and Lenore Jacobson, Pygmalion in the Classroom: Teacher Expectation and Pupil's Intellectual Ability, New York: Holt, Rinehart, and Winston, Inc., 1967.

program which is incompatible with his cultural and learning characteristics further enhances the negative perceptions that the child has of himself. Thus, the Spanish-speaking child may be caught in a maelstrom involving negative feelings which lead to failure, further reinforcing negative feelings and perpetuating poor performance. Instructional materials developed for middle-class children ensure failure by disadvantaged children because they lack elements that: (1) foster success in initial learning situations, and (2) provide sufficient immediate and strong positive reinforcement of successful behavior. Increments of excessive difficulty, combined with the lack of prerequisite skills, inevitably lead to inadequate performance.

Societal perceptions creating an incompatibility between the school and the population served also include the perception that the group may have of themselves in relation to the dominant group, in relation to the school as well as the perceptions that the school may have of the group. It becomes important to analyze the perceptions that parents may have of themselves in relation to their children's education, in relation to the schools, to teachers, and to the administration. Likewise, the perceptions that the school, teachers, administrators and governance have of parents of the children are determinants of equality of education afforded the children.

Interrelatedness and Interdependence of Incompatibilities

The five categories of incompatibilities listed above do not operate independently of each other. On the contrary, there is an interrelatedness and interdependence among the five characteristics. For example, program discontinuity resulting from mobility is not necessarily a corollary of failure. It has been observed that children from middle and upper class families who have high mobility not only overcome program discontinuity problems, but frequently transform their mobility into an asset.

Families of military-connected personnel and high-level chain store executives tend to perform well in spite of, or because of, their mobility. Therefore, it is obvious that mobility in itself is not necessarily disabling.

It is mobility coupled with poverty, culture, language or perceptual characteristics (the other four incompatibilities listed above), or combination of two, three, and even four of the incompatibilities, which produce the disastrous educational results we find so characteristic of Mexican American children.

The language and cultural incompatibilities, even in tandem, may not be disabling. Educators in the Southwestern states immediately adjacent to Mexico have long been acquainted with the temporary problems of immigrating

Mexican children. Though the children frequently enroll in American schools unable to speak any English and possessing strong Mexican cultural orientations, they can in a matter of weeks overcome their incompatibilities and subsequently out-perform native-born Mexican American children in the same classrooms. Further research into this phenomenon would probably reveal marked differences in the school's perceptions and the self-perceptions operative in relation to immigrant children and native children.

Based on this information, it is predicted that a programmatic effort aimed at reducing or eliminating only one of the incompatibilities will have little, if any, effect on the improvement of educational performance on the part of Mexican American children.

The problem of dealing with incompatibilities in our educational system is analogous to the medical treatment of a sick man. If he is suffering from a brain tumor, a clogged aorta, non-functioning kidneys, a collapsed lung, a ruptured appendix, and a diseased pancreas, the best surgical operation to remove the tumor by the finest surgeons without responding to the other five problems will inevitably result in tragedy. The brain tumor operation may be very successful, but the patient will die.

Though it is tempting to concentrate on a single variable such as the language incompatibility and respond to these problems with a specific programmatic activity such as bilingual education, it is felt that the problems associated with incompatibilities of poverty, culture, mobility, and perceptions will prove so overwhelming that bilingual education activities alone are dysfunctional responses to the interrelated set of incompatibilities, thereby dooming the bilingual education effort to failure. It is necessary, therefore, that rational modifications of the educational program be responsive to most or all of the incompatibilities.

Cárdenas and Cárdenas contend that the school includes a series of interrelated and interdependent processes which must be made compatible with and responsive to the characteristics of the population. They present the relationship as a matrix of interdependent and interrelated variables. The characteristics of the population constitute the vertical axis and have implications for the processes, on the horizontal axis. See Figure 2.

SCHOOL CHARACTERISTICS AND PROCESSES

Philosophy

The school district operates under a philosophy or a set of attitudes, traditions and values about such areas

as the function of the school in society, its role in relation to culture, its view of itself, the group, the individual, the community, the nation, and the world. Its philosophy makes assumptions about how, what, when, where, and why children learn or grow. The school either values differences, or it destroys them, whether by transitional strategies or regressive strategies. It is an inclusive institution or an exclusive one. The philosophy of a school district can be formal or not. If it has been locally developed after conscientious participation by significant elements of the community, it is generally broadly accepted and understood. On the contrary, it is often haphazard, implied and misapplied, so that even when a school responds appropriately it does so adventitiously and is apt to reverse itself.

Governance

A school district is a system for decision-making at many levels. Its formal decision-making body is usually a Board of Trustees who derive their power from the laws of the State and the people of the community served by the school district. The decision-making dynamic may include a number of formal and informal aggregates of persons who have an interest in the school. These may include the Chamber of Commerce, the Kiwanis Club, the churches in a

community, the country club, the School District PTA, etc. The school district may also institute a number of sub-governance strategies such as advisory committees, special task forces, parents committees, etc.

Governance also implies the decisions made about how a school program will be governed or controlled (i.e., its rules and regulations, its response to infractions thereof, etc.). These affect children, staff, parents, and the community as a whole. For example, there have been instances when Mexican American boys were suspended because of over-long hair. This could have been a reflection of a principal's esthetic evaluation that black hair over brown faces looked "pachuco."¹² Although current attitudes about hair have reduced this practice, they have not recognized that long hair among Chicano youths was as much a response to conditions of poverty as an expression of rebellion.

Goals and Objectives

A school district makes decisions or assumes decisions made by state education agencies about its goals and objectives.

¹²pachuco - A term referring to members of gangs emulating the dress, language and mannerisms of the zoot suiter gangs of the 1940s.

Scope and Sequence of Services

The timing and area or extent of services that the school district will provide usually result from decisions made by state or federal agencies. The advent of ESEA greatly expanded the school's scope and made some impact on its timing. The need for early childhood education, response to non-instructional needs such as nutrition, family counseling, and transportation and problems arising from mobility as well as problems associated with increased technical and social complexity require a re-examination of the schools' scope and sequence of service.

Staff System

The schools' mechanism for identifying, recruiting, training, promoting, and otherwise providing rewards, and punishment to staff at all levels is a complex dynamic with what is perhaps the most significant impact on change efforts.

Curriculum

The school district makes a decision about the formal instructional packages it will present to its user population, the methodologies it will use in implementing it and the sanctions it will invoke to perpetrate it.

Extracurricular Activities

The school district devises a set of activities designed to complete its educational package and to meet

specific objectives, usually focusing on the personal growth of students, such as cooperativeness, competitiveness, loyalty, etc. In small Southwestern towns, where school activities constitute a major focus of community life, these tend to reinforce predominant community attitudes and feelings of both the dominant social group and the minority.

Pupil Services

This includes such areas as the school's counseling and guidance program, its special education program, and truant officers. Its implications for atypical population groups are illustrated by two examples. In San Antonio, Texas, John F. Kennedy High School in an effort to respond to the characteristic of poverty among its population focused its guidance program on facilitating financial aid for students. In 1972, it was able to facilitate \$500,000 in scholarships and financial aid. Conversely, school districts so often are so insensitive to cultural issues in the implementation of special education programs, that several civil suits on the matter have been waged and won by culturally and linguistically different groups.

Community Participation

In addition to participation in the governance processes of the school district, the community may participate in the implementation and evaluation of the school program either on a volunteer or paid basis.

Accountability and Evaluation

A school district's mechanism for assessing its success or failure with the student population as well as its system for making itself accountable for its program may focus on state or federal agencies or on the community.

The Cardenas-Cardenas Theory of Incompatibilities hypothesizes that current limitations in the success of bilingual education programs exist because current bilingual education efforts focus primarily on cell 2.6, with limited attention being given to cells 2.5, 3.5, and 3.6. Although it is possible to document some positive changes in other cells, because of a catalytic effect of bilingual education programs, these are unplanned, too few, and too haphazard to overcome the negative effects of highly entrenched institutional attitudes, values, and practices which work against the success of bilingual education programs and Mexican American children in general.

Curriculum changes have little promise of success, even when responding to all five areas of incompatibility, when they are not accompanied by fundamental complimentary changes in philosophy, governance, staffing and other areas of school district activities. Particularly in smaller southwestern cities, it is a betrayal of Mexican American children to tell them via books and stories that

it is great to be a Chicano, but to have them understand perfectly that teachers seldom look or talk or act like Chicanos, that Principals and Superintendents and diagnosticians and other "important" people are always Anglo. Their motivation to stay in school may be influenced as much by whether they can see that they can expect to become cheerleaders, football players and other school leaders as it is influenced by the methodologies of their teachers.

Cardenas and Cardenas propose the continued articulation of the matrix and the development, implementation, and evaluation of school district-based plans for replacing the existing institutional ethnocentrism with cultural democracy.

In providing technical assistance to the Department of Health, Education and Welfare and the Winslow Independent School District, the author and Dr. Luis M. Laosa developed recommendations for responding to the incompatibilities identified by Cárdenas and Cárdenas.¹³

¹³Memorandum from Luis M. Laosa and Blandina Cardenas to Patricia J. Nakano, Office of Civil Rights-HEW, Consultation Report Toward a Comprehensive Educational Plan for the Winslow Independent School District, Winslow, Arizona, January 5, 1973.

C H A P T E R V I I

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to define equal access to educational opportunity for Mexican American children. This chapter shall provide a summary of the findings of the study, the conclusions drawn from the findings and recommendations for : (a) further research and study and (b) immediate and long-range responses to the issues raised on the part of government, education and the community.

Summary

This study has described three actions of the Federal Government seeking to protect the right of Mexican American children to an education free from discrimination on the basis of race, color or national origin. The three actions reviewed were: (1) the issuance of the Memorandum of May 25 by the HEW Office of Civil Rights; (2) the San Felipe-Del Rio School District consolidation case, and (3) the El Paso Independent School District May 25th Memorandum compliance case. Additionally, the study described a conceptual framework for effecting institutional responsiveness to the educational needs of Mexican American children developed by the

author and Dr. José A. Cárdenas while developing programs at the Edgewood Independent School District in San Antonio, Texas, and in providing major technical assistance to the Office of Civil Rights in the development of the three actions.

In describing the development of the May 25th Memorandum, the failure of the Federal Government to address both segregation and invidious discriminatory practices experienced by national origin minority group school children in general and Mexican American children in particular was reviewed. Pressure from community sources was identified as the major factor creating awareness leading to action on the part of the Office of Civil Rights. The activities of the U.S. Commission on Civil Rights were also found to be of major importance. Attention on the part of the Federal Government to the civil rights of national origin minority group children in the Nations' schools was found to have resulted in the issuance of the May 25th Memorandum which focused specifically on the interaction between the specific language problems of ethnic minority children and: (a) unequal access to effective participation in the educational program offered by a school district, (b) segregation through tracking, ability grouping, and assignment to classes for the mentally retarded and (c) the exclusion of their parents from the processes by which the district provides information.

The study reviewed three major tasks undertaken by the Office of Civil Rights in making the Memorandum fully operational as well as the participation of significant numbers of professionals representative of the community of interest. By the completion of review and negotiations in the first May 25th case, Beeville, Texas, HEW-Office of Civil Rights had: (1) developed procedures for completing comprehensive school district reviews which would meet legal requirements of future administrative proceedings as well as withstand political pressures that might be forthcoming; (2) developed policies, particularly with reference to special education issues, designed to further clarify the provisions of the Memorandum, and (3) developed an educational assistance capability within the Office of Civil Rights.

The completion of the three tasks as described above resulted in a broadened and deeper perspective on those invidious practices correlatable with the school's failure to respond to the language difference of most minority group children which resulted in the denial of equal educational services. These comprehensive perspectives were contained in the comprehensive educational plan negotiated by the Office of Civil Rights and the Beeville Independent School District.

A review of the historical development of the San Felipe-Del Rio case revealed that in the early 1930's

Mexican Americans in that Texas city created their own school district as a response to gross discrimination limiting the educational opportunities available to their children.

Federally dependent children at Laughlin Air Force Base in the predominantly Chicano San Felipe Independent School District were transferred to the wealthier, predominantly Anglo Del Rio Independent School District. When the U.S. v. Texas ruling forbidding the inter-district transfer of students that had the net effect of increasing segregation threatened to require the white students at Laughlin to attend the San Felipe District and to divert large amounts of P.L. 815 and P.L. 874 federal impact funds to the poorer District, the Del Rio Independent School District intervened with a request that the two school districts be consolidated under the spirit of the U.S. v. Texas ruling.

The order to consolidate included a request that Office of Civil Rights-HEW develop with the two school districts a comprehensive educational plan containing sufficient educational safeguards to insure that all students in the San Felipe-Del Rio Consolidated Independent School District would be offered equal educational opportunities. By order of the Court, these safeguards were to include but not necessarily be limited to bilingual and bicultural programs, faculty recruitment and training and curriculum design and content.

The Office of Civil Rights with assistance of leading Mexican American educators developed and submitted to the court a Comprehensive Educational Plan that prescribed broad remedies including bilingual bicultural early childhood education, and an English as a second language - Spanish as a second language program that would enable the school district to provide bilingual bicultural education for all students in a way that presented both languages and both cultures as being of equal value. Additionally, the Plan provided for a comprehensive staff development and community involvement effort, curriculum review and adaptation in a number of areas in the secondary schools, bilingual bicultural counseling and group guidance, and attention to noninstructional needs such as food services, extracurricular activities, etc. The Court ordered the Comprehensive Educational Plan following a presentation of the rationale for the plan by Dr. José Angel Cárdenas who explained the Cárdenas-Cárdenas Theory of Incompatibilities. The Plan was upheld by the Fifth Circuit Court of Appeals.

In ordering the Plan, Judge William Wayne Justice issued a Memorandum in which he affirmed the need to present both languages and both cultures as being of equal value and to avoid the creation of a stigma of inferiority. In the language of the Court, "the Anglo-American students

too must be called upon to adjust to their Mexican American classmates, and to learn to understand and appreciate their different linguistic and cultural attributes." The Plan provided a significant advance in the development of the strategies which would make the May 25th Memorandum maximally effective.

The El Paso Independent School District May 25th Memorandum case was reviewed in the study as the third step in the development of a comprehensive definition of "equal access" to educational opportunity for Mexican American children.

The El Paso case provided the best model to date of (a) the Office of Civil Rights thoroughness in implementing the equal educational services review procedures, providing substantial program assistance to the school district, and negotiating a plan, (b) a school district's response to both the inequalities identified through the May 25th review process and the challenge of correcting these and (c) the implementation of monitoring procedures on the part of the Office of Civil Rights.

The Comprehensive Educational Plan developed by the El Paso Independent School District largely reflected the concepts contained in the Beeville Plan and in the San Felipe-Del Rio Plan. A major exemplary feature of the plan was the establishment of a five year goal of racial

and ethnic balance among staff at all levels, bilingual bicultural education for all Mexican American, Anglo and Black children in the District, and early childhood education for disadvantaged three, four and five year old children. This plan too was based on a philosophy which closely adheres to the conceptual framework for institutional responsiveness to the educational needs of Mexican American children developed by the author and Dr. Jose Angel Cárdenas in providing technical assistance to the Office of Civil Rights-HEW.

Finally, the study reviewed the conceptual framework which provided the rationale for the remedies embodied in the three actions. This undergirding is based on the assumption that Mexican American children attend a school designed for and by white, Anglo Saxon, English-speaking, middle-class oriented school populations and other populations assimilating into reasonable facsimilies of that mold. Five interrelated and interdependent areas of incompatibility between the typical school program and general characteristics of the Mexican American population were identified. These included poverty, culture, language, mobility and societal perceptions. Twelve interrelated and interdependent areas of school district processes were identified as requiring modification in order to be responsive to the needs and characteristics of Mexican American

children. The conceptual framework proposed comprehensive institutional change in order to provide Mexican American children equal access to educational opportunity.

Conclusions

Mexican Americans have long sought their civil rights in a country which became theirs through a process significantly different from that experienced by most of this country's immigrant groups. The concept of civil rights, however, is a dynamic one and while it is likely that Mexican Americans in the Southwest of a century ago were primarily concerned with protection of life and family, the study has shown that since World War I, Mexican Americans have developed an emerging definition of their own civil rights characterized by the assimilationist goals of the post World War II era and the culturally pluralistic ones of today's young Chicano generation. It has been shown that education has been a major concern of Mexican American civil rights struggles. If one applies the Toeffler thesis¹ to the Mexican American civil rights struggle, and it appears appropriate to do so, one must conclude that Mexican American concepts of equality of educational opportunity have manifested a

¹Alvin Toeffler, Future Shock, New York: Bantam Books, 1971.

consistent pattern of change since the Salvatierra case, that the rate of change has accelerated in the last decade, and that the accelerated rate of change is irreversible.

This study has reviewed a two and one-fourth year time period in which concepts regarding equality of educational opportunity for Mexican American children appear to have taken a quantum jump.

On the basis of the study it is possible to conclude at least the following:

1. The issuance of the Memorandum of May 25, precipitated by rising Chicano militancy and the weight of U.S. Commission on Civil Rights attention, served as a catalyst for a period of heightened interaction between government and Chicano educational leadership to produce a comprehensive perspective on the relationships among race, equality and education as regards Mexican American children in the country's schools.
2. Comprehensive investigative procedures of the Office of Civil Rights provide a substantial basis for identifying invidious discriminatory practices in the schools which fall within the scope of the May 25th Memorandum and which show promise of providing a model for developing comprehensive evidence in future community and government initiated court actions focusing on

equality of educational opportunity for Mexican American children.

3. The identification of those invidious practices denying Mexican American children equal access to educational opportunity requires the development of remedies which comprehensively modify those areas of school district process which can be shown to directly or indirectly affect action or inaction on the part of the school district which results in the discrimination.
4. The requirements that a school district develop a comprehensive educational plan responsive to the needs of culturally and linguistically heterogeneous school populations is administratively, legally, and pedagogically substantiated.
5. A comprehensive educational plan responsive to the needs of culturally and linguistically heterogeneous school populations should provide a statement of the school district's plan to remedy existing inequalities in educational outcomes between groups of children as it systematically pursues the improvement of educational outcomes for all children in a way that is compatible with the general and

culture - specific goals and aspirations of groups and individuals within the community. At a minimum, the Comprehensive Educational Plan is devoid of those practices which current research and thought indicate have promise of inflicting physical or psychological harm on groups or individuals within the population. At its most progressive, it embodies innovative approaches to solving chronic problems and the systematic study of these innovations for the purpose of determining their effectiveness with the populations of interest.

6. The conceptual framework for effecting institutional responsiveness to the educational needs and characteristics of Mexican American children provides a rationale for developing a comprehensive educational plan for a culturally and linguistically heterogeneous population which has been substantiated in administrative proceedings of the Department of Health, Education, and Welfare and the Federal Courts and which has been accepted as a feasible rationale for school district based institutional change.

7. Within the scope of current research and thought, the conceptual framework provides an operational definition of equal access to educational opportunity for Mexican American children in this country.
8. While the framework focuses on the school district and does not directly address corollary issues of responsiveness on the part of institutions of higher education, the state departments of higher education, text-book companies, testing and assessment development organizations and other educationally related agencies, the conceptual framework provides a promising preliminary design for institutional change.

Recommendations

The study suggests a number of areas of additional research and study as well as for immediate and long-range response to the issues raised on the part of government, education and the community.

The scope of the issues raised in the study as well as the recognition that research on the education of the culturally and linguistically different learner in general and the Mexican American in particular is inadequate, suggest a wide range of research needs. Focusing on institutional

responsiveness, however, three distinct areas of research are suggested. These are presented here without a suggestion of priority or recommended chronology.

First, it is clear that current programmatic responses to the educational needs of Mexican Americans appear to have limited promise of success because they are based on research that has concentrated on the supposed deficiencies in the population which resulted in limited educational, economic, and sociopolitical success. The study suggests that the deficiencies which exist in the educational system as it related to the population of interest are all-encompassing and overwhelming.

Guba and Stufflebeam have suggested a model for program development which requires context, input, process, and product evaluation. Evaluation is defined as the acquisition of relevant, timely, and useful information for decision making. Context evaluation is concerned with researching the nature of the problem, and it is a renewed context evaluation of the education of Mexican American children in particular and of culturally and linguistically different children in general that is suggested. Such an effort would reject the myopic view that the solutions to the failure to educate what amounts to almost an entire subpopulation group in this country, could possibly be found by investigating the group rather than the institution mandated to serve it.

The conceptual framework identified in the study provides a promising preliminary conceptual design for a comprehensive context evaluation regarding the education of the Mexican American. It recognizes differences in the population and identifies potential areas of mismatch between characteristics of the population and current educational practices.

A second area of research suggested by the study has to do with examining the process by which institutional change can occur in the nation's schools most quickly and with the best possible results. Such a research effort would examine alternative governance constructs, alternative staff utilization and development approaches, alternative curricula, alternative sequencing of services, and other areas. This would provide suggestions for the second kind of evaluation information posited by the Guba-Stufflebeam model, input evaluation or evaluation that suggests alternative strategies or responses.

A third area of research suggested by the study has to do with the identification of goals or success criteria for the provision of educational services to culturally and linguistically heterogenous communities. The goals should be investigated to reflect compatibility with the general and culture-specific goals and aspirations of groups with the community.

This study has been concerned with the investigation of activities on the part of government, education and the community in responding to the educational needs of Mexican American children. A number of additional areas for immediate and long-range responses are suggested.

First, the study has revealed that each of the three actions came about because Chicanos in this country were willing to take strong stands about issues of critical importance to them and their children. Whether in the form of school boycotts or bureaucratic confrontation, such militancy has been productive and it must continue with strategic maturity on all fronts.

The study also revealed that activities of the U.S. Commission on Civil Rights served to focus national attention on each of the areas studied. The continued support of such civil rights ombudsman activities emerges as a prerequisite to progress in this important area. It is suggested that government at all levels should expand their support of the Commission in particular, and of such activities in general. Professional organizations focusing on education and other human services areas should also develop the organizational mechanisms for identifying areas of injustice of concern to their membership. The ombudsman commission mechanism may also be useful for universities and other institutions attempting to reverse institutional racism or ethnocentrism.

Although the study did not attempt to evaluate the success of the Federal Government in complying with the Title VI mandate of the 1964 Civil Rights Act, it is obvious from the study that complying with the mandate is a task demanding massive resources. The allocation of those resources appears clearly justifiable in the light of alternative human loss and the damage suffered by our national fiber when justice is compromised.²

Current governmental support of educational reform has come under substantial criticism because of meager returns. The study suggests that this may be due to a lack of understanding of the nature of the inequalities which exists in the education of minority group children. The study suggests further that issues of comprehensive institutional incompatibility in the schools may be mirrored in other social service institutions. To investigate the staffing practices of the United States Office of Education may be an appropriate first in analyzing the failure of past educational reform efforts. With these preliminary observations, it is suggested that the Federal government should renew, not reject, the educational reform emphasis of the last decade. The education community too must reassess its approach to educational reform.

²For a cogent analysis of miseducation in the U.S. see Henry Levin, "The Cost to the Nation of Inadequate Education" in The Effects of Dropping Out, a special report of the U.S. Senate Select Committee on Equal Educational Opportunity, 91st Cong., (Washington: U.S. Govt. Printing Office, August, 1972.

The perserverance of two perspectives has been particularly damaging to the Mexican American and should be reversed. The first of these is the cultural deficit perspective. The second is the obsessive view that educational reform can occur if one hits upon the right workbook for children or the right behavior modification technique or even the right classroom arrangement. If educational reform is to occur it must be based on a macro-cosmic view of the educational system and the society whose interests it promotes and transmits.

The study suggests also that professionals representative of the community of interest make a major contribution to the identification of alternative solutions to particular educational problems. Both education and government must accept the notion that attempting to respond to the educational needs of Mexican American children without the major participation of Mexican American educators is extremely dangerous.

Finally, the study suggests recommendations for continued community action. For Mexican Americans the study suggests that they can proceed with concentrated effort to require that the schools which purport to serve their children do so with respect for their right to succeed, to cultural and linguistic options, and to the full participation of their own community in governance, staffing, and other

areas of school district process. For culturally and linguistically heterogeneous communities throughout this country and particularly for those bicultural communities serving people who provide this country's most stable tie to its hemispheric neighbors, there is the suggestion that there exists as much of a legal imperative as a humanistic imperative to re-create our educational system in a way that will remove forever the pressure cookers that attempted to strip Americans of their rich diversity and succeeded instead in stripping away the enriched humanity that would have made our country an even better nation. In the bicultural communities of the Southeast, Northeast, Midwest and Southwest, it is possible to build schools which teach Americans of all races, cultures and orientations to enjoy, respect, and value the cultures and people with whom they share the promise of the future.

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A P P E N D I C E S

A P P E N D I X A

MEMORANDUM OF MAY 25th

Identification of Discrimination and Denial
of Services on the Basis of National Origin



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent
National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights *JSP*

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 Portugese.

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

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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.

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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.

A P P E N D I X B

RECOMMENDED PROCEDURES REGARDING
ELIMINATION OF DISCRIMINATION IN THE ASSIGNMENT
OF CHILDREN TO SPECIAL EDUCATION CLASSES
FOR THE MENTALLY RETARDED

TO: State and Local Education Agencies

FROM: Director, Office for Civil Rights

SUBJECT: Elimination of Discrimination in the Assignment of Children to Special Education Classes for the Mentally Retarded

During the past few years it has come to our attention that in many local educational agencies a substantially higher percentage of minority children have been assigned to special education classes for the mentally retarded than the minority student population of the district would normally indicate.

Our reviews of many local educational agencies lead us to believe that in many instances the racial and ethnic isolation of 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. In addition to creating an overrepresentation 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.

Our reviews have in several instances, therefore, disclosed violations of Title VI of the Civil Rights Act of 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder which require that there be no discrimination on the basis of race, color, or national origin in the operation of any federally-assisted program.

Pursuant to the aforementioned Regulation, as clarified by subpart B of the March 1968 Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964, all school systems receiving federal financial assistance

from this Department 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.

In order to evaluate both the current procedures used by various school districts for evaluation and assignment of racial and ethnic minority group children to classes for the mentally retarded and the sufficiency of voluntary compliance plans submitted by school districts found to be in non-compliance with Title VI of the Civil Rights Act with specific regard to current evaluation and assignment practices, the Office for Civil Rights has consulted a number of recognized experts. A Task Group of qualified psychologists and educators serving as consultants to the Office for Civil Rights have, in order to assist the Office to perform both of these functions, identified and outlined for the Office a set of minimum procedures (described below).

Citing the position taken by the American Association for Mental Deficiency (AAMD) that in order for an individual to be classified as mentally retarded, he must be found to be subnormal both in intelligence, as determined by valid psychological testing, and in adaptive behavior, the Task Group concurs that with specific attention to the evaluation of children from cultural environments different from those upon which most intelligence tests are predicated, a thorough evaluation of the adaptive behavior of a child can significantly improve the reliability of the evaluation of minority children for assignment to special education classes for the mentally retarded. Adaptive behavior is defined by the AAMD as follows:

The dimension of adaptive behavior refers primarily to the effectiveness with which the individual copes with the natural and social demands of his environment. It has 2 major facets: 1) the degree to which the individual is able to function and maintain independently,

and 2) the degree to which he meets satisfactorily the culturally imposed demands of personal and social responsibility.

Minimum Procedures

On the basis of the recommendation of the Task Group and after extensive consultation with other responsible and knowledgeable governmental agencies, university centers and the like, the Office has concluded that a school district found to be in non-compliance with Title VI regarding the evaluation and assignment of children to special education classes for the mentally retarded must as part of any acceptable voluntary compliance plan be required to predicate the assignment of any racial or national origin minority student to a special education class for the mentally retarded upon a careful review of the information developed by (1) psychometric indicators interpreted with medical and socio-cultural background data, and the teacher's report, and (2) adaptive behavior data. If it can be reasonably concluded on the basis of the information developed by either category that the assignment may be inappropriate then such assignment must not be made.

More specifically, the Office will require that the following procedures (or other procedures which the District can demonstrate will be equally effective) if not already completely incorporated in the district's evaluation and assignment procedure, must be so incorporated in order to constitute an acceptable minimum assurance of non-discriminatory evaluation and assignment of racial or national origin minority students to special education classes for the mentally retarded.

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, as defined below, relating to the non-school environment of the student being reviewed for assignment. The

concept of adaptive behavior as used herein means:

The degree with which the student is able to function and participate effectively as a responsible member of his family and community.

Information pertaining to the incentive-motivational and learning styles unique to the student should be collected. The incentive-motivational style of a child means those attributes of the child which characterize the manner in which he is most likely to be motivated to learn. The learning style of a child characterizes the type of learning activity (e.g., physical contact, memorization etc.) most likely to bring about the acquisition of new information or new or better skills to process information. In addition, information related to the child's language skills and preferences, inter-personal skills, and behavioral patterns established between the child and his parents, other adult family members, siblings, neighborhood peers, and fellow students should be solicited.

In addition, the socio-cultural background information gathered should include data related to family socialization practices (e.g., the types of social relationships within the extended family pattern characteristic of Chicano families) which may assist in the formulation of new teaching strategies and approaches which are compatible with the incentive-motivational and learning styles (defined above) of the child.

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., a school social worker) must, in addition to observing school behavior and assessing academic

performance, gather and analyze, with the assistance and advice of the school psychologist (or other certified test administrator appointed by the school district), socio-cultural background information and adaptive behavior data (as defined and described in subsection 1).

If it is determined that it is appropriate to refer the student for individualized testing, a narrative report (in writing) must be prepared and submitted to the persons, committee, etc. responsible for making the assignment. The report must include a summary of the observable school behavior, academic performance, socio-cultural background information and adaptive behavior data and must indicate what testing or evaluation instruments will be employed and must contain a description of the behavior which the proposed tests or other evaluations will attempt to measure.

If a referral or recommendation for testing and evaluation is made by any other person, the teacher and school psychologist must communicate in writing to the appropriate school official a similar report, based on observation of the behavior and environment of the child.

3. Before the testing and evaluation of a student may be approved, the school district must ensure that the student has been 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 maintained by the School District 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. If parental permission is not required by State law or local school district policies, a full understanding of the implications of the assignment process must be communicated to the parents in person and in the language of the home to permit full communication, understanding, and free discussion.

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. Furthermore, the school district must utilize test administrators who possess language skills and sufficient awareness of cultural differences to permit such administrators to effectively communicate instructions to and understand the responses (verbal and non-verbal) of the student to be tested.

6. Implementation of Non-Discriminatory Procedures - Assessment Boards

A. 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. A school district which forms and utilizes a board composed, in part, of parents of children attending the schools of the district, which is broadly representative of the ethnic and cultural makeup of the student body and which performs the following functions will be deemed to have provided an adequate assurance of consideration. In order to assist school districts seeking to comply with the criteria of this subsection, a model for the establishment and operation of an Assessment Board which has been developed for the Office for Civil Rights and which meets the criteria of this subsection is attached in an Appendix.

B. For each child being reviewed for possible assignment to a special education class for the mentally retarded the School District must make adequate provision that there has been a careful review in light of the cultural and linguistic environment of the child of any recommendation for pre-assignment testing and evaluation and any decision to assign students to special education classes for the mentally retarded. More specifically,

(i) a written report and recommendation for testing (which must be maintained in the permanent records of the District), including a description of the techniques used to familiarize the child with the testing situation, and a report as to the adaptive behavior data and socio-cultural background information which has been gathered must form the basis of any action by the District to further evaluate the child for assignment to a special education class for the mentally retarded (or any surrogate established by the school district);

(ii) a recommended educational strategy (in writing) must be prepared by the School District which sets forth the specific curriculum and instructional methodology, diagnostic evaluation instruments, etc. which will be employed to meet the educational needs of the student whether assigned to a special education class for the mentally retarded or returned to the regular school program.

C. If based on the foregoing data collection and analysis procedures, it can be reasonably concluded that on the basis of either (1) the psychometric indicators interpreted with medical and socio-cultural background data, or (2) the adaptive behavior data, that the assignment of the student to a special education class for the mentally retarded is inappropriate, the proposed assignment process must be terminated.

D. If it is concluded at any stage of the process that a student should not be assigned to a class for the mentally retarded, he must be returned or assigned to the regular school program in at least the same class level from which the student was initially referred.

7. All minority students in special education classes for the mentally retarded whose assignment was not made in accordance with the minimum procedures set forth above must be reevaluated as soon as possible according to the non-discriminatory procedures outlined herein. Students must be retested with an individually administered test instrument. Medical examinations must be readministered if previous examinations were inadequate. The parents of each student must be interviewed in order to obtain socio-cultural background information and adaptive behavior data. If based on the data collection and analysis required by the reevaluation procedure it can be reasonably concluded on the basis of either (1) the psychometric indicators interpreted with medical and socio-cultural background data, or (2) the adaptive behavior data, that the current assignment of a student to a special education class for the mentally retarded is inappropriate, then the student should be reassigned to the regular school program. The reassignment must be made in such a way so as to prevent any appreciable change in the racial composition of any classroom or classrooms. The school system must provide, in order to overcome the educational effects (including lowered achievement levels and negative self-concept development) of previous discriminatory practices, supplementary transitional educational programs designed to equalize the educational opportunity of reassigned students. Such programs may necessitate the use of intensive individual tutoring, especially in language related skills.

Students assigned to special education classes for the mentally retarded pursuant to the non-discriminatory assignment or reevaluation procedures set forth above, must be carefully reevaluated at least once each year.

Equal Educational Services

In addition to matters set forth above regarding the elimination of discrimination on the basis of race, color, or national origin in the evaluation and assignment of students to special education classes for the mentally retarded, students assigned

to special education classes for the mentally retarded may not be denied educational opportunities on the basis of race, color, or national origin nor be subjected to educational practices on the basis of race, color, or national origin which are less favorable for educational advancement than the practices at classes attended primarily by students of any other race, color, or national origin. Additionally, the provisions of the Memorandum to School Districts, dated May 25, 1970 Regarding the Identification and Elimination of Discrimination and Denial of Services on the Basis of National Origin (with particular attention to points 1 and 4 of the Memorandum) are directly applicable to special education programs.

"Special education classes for the mentally retarded"

As used herein the term "special education classes for the mentally retarded" refers to any class or instructional program to which students are assigned after an evaluation of a student's intelligence or aptitude which purports to reveal a sub-standard level of intelligence or educational potential, including, but not limited to classes designated as educably mentally retarded (EMR), educably mentally handicapped (EMH) minimally brain injured (MBI), and trainably mentally retarded (TMR).

Creation and Maintenance of Written Records

Pursuant to Section 80.6 (b) of the HEW Title VI Regulation (45 CFR, Part 80), each local educational agency which conducts special education classes for the mentally retarded shall maintain in a central file, a chronological record of the disposition of each child who has been referred, assigned, or reassigned to a special education class for the mentally retarded. Such a chronological record shall contain a complete statement of the factors upon which assignment to such class was made including, but not limited to, all individually administered IQ test scores (including test administrators item by item scoring), all group achievement or aptitude test scores both prior

and subsequent to assignment, all relevant medical evaluation data, reports prepared by teachers, school psychologist(s), principal(s), etc., related in any way to (1) a referral for psychometric and/or psychological evaluation or (2) an ultimate decision to assign.

Availability of Technical Assistance

School districts should examine their current practices related to the assignment of students to classes for the mentally retarded in order to assess compliance with the matters set forth in this memorandum. A school district which determines that a compliance problem currently exists in that district should immediately communicate in writing to the regional office of the Office for Civil Rights. Further information and technical assistance related to the implementation of the procedures described above is available from the Department upon request.

The effective date of the policies set forth in this memorandum shall be the date of its publication in the Federal Register.

APPENDIX - MODEL OF AN ASSESSMENT BOARD

I. Composition

Membership on the Assessment Board must be drawn from persons broadly representative of the community. In LEAs with less than 5,000 students in average daily membership, the Assessment Board must consist of representatives of five to eight community organizations selected by the school board. In addition, the Assessment Board will appoint to full voting membership at least one outside psychologist, social worker, and teacher. The community organizations selected by the school board must be broadly representative of the minority and non-minority communities to be served. The community memberships of the Assessment Board, as a whole, should be composed of persons at least 50% of whom are members of minority groups. If the minority population of the school district exceeds 50%, the membership of the Assessment Board should approximate the ethnic breakdown of the school population. In addition, two parents, at least one of whom is a minority group member, should be appointed from the local parent-school organizations. Three non-voting memberships on the board should be reserved for the principal, teacher, and paraprofessional, if

any, working with each student whose assignment is being reviewed. In districts of 5,000 or more students in average daily membership, the board may include up to twenty community members (from five to twenty organizations broadly representative of the minority and non-minority communities to be served) selected in the manner outlined above. If administratively necessary, the Assessment Board may decide to divide into panels or subcommittees, each of which is responsible for reviewing the assignment of students in attendance at individual schools or groups of schools. Such subcommittees or panels should reflect the minority composition of the Assessment Board.

II. Operation

A. Community Coordinator

Each Assessment Board (panel or subcommittee) will designate one or more community coordinators. Officials of each elementary or secondary school within the LEA would be responsible for giving notice to the community coordinator of the recommendation or referral for testing by the appropriate school official.

Because of the confidential nature of much of the information to be gathered and reported by the community coordinator, his selection must be given careful attention by the Assessment Board.

The Assessment Board may provide financial support in the form of salary or professional fee to the medical doctor, community coordinator, outside psychologist, and social worker.

If State law requires that parental permission be obtained before the testing of the student, the community coordinator must designate one member of the Assessment Board of similar ethnic background to communicate, in person, to the parents involved a full understanding of the significance of granting permission and the implications of the assignment process which may follow. Where State law does not require that parental permission be obtained before testing and/or the placement of the student, parents must be given a full understanding of the significance and the implication of the process.

During the interview with the parents in the home, adaptive behavior data and socio-cultural background information (as previously defined and discussed) should be obtained by the community coordinator. If this information is not obtained

during an interview between a board member and the parents regarding parental permission to test, then the community coordinator must conduct an interview to gather such information.

B. Review of Report and Recommendation for Testing

After receiving from the appropriate school official the report and recommendation for testing (referred to in subsection 1), and from the community coordinator a report as to the adaptive behavior data and socio-cultural background information which has been gathered, the Assessment Board may (1) suspend approval or disapproval of the recommendation pending a report by one or more members of the board as to additional socio-cultural background information, medical considerations, or adaptive behavior data, or (2) request that the teacher and school psychologist gather, analyze, and present additional information regarding the student or his home environment including a medical examination, or (3) approve the recommendation for testing by granting school officials specific written permission to test after the child has been given a medical examination, or (4) disapprove the recommendation for testing. The name of the child being reviewed will routinely be excluded

from the data being considered by the Assessment Board. If the Assessment Board pursuant to option (4) disapproves the recommendation for testing, the student must remain in the same class level from which he was initially referred but may be reassigned to another classroom. The Assessment Board may in its discretion utilize outside testing and evaluation resources and personnel.

C. Review of Results of Measurement and Evaluation

If the Assessment Board approves a recommendation for testing, then the school officials responsible for the measurement and evaluation of the child must report to the Assessment Board the results of such measurement and evaluation as soon as it is concluded. If as a result of this report, taken together with earlier reports, the Assessment Board concludes on the basis of either (1) the psychometric indicators interpreted with medical and socio-cultural background data, or (2) the adaptive behavior data, that the assignment of the student to a special education class for the mentally retarded is inappropriate, the Assessment Board may terminate the proposed assignment.

When a student has been referred for assessment or evaluation which may lead to possible assignment to a special

education class for the mentally retarded and the assignment process has for any reason been terminated, the teacher and/or school psychologist must, in concert with the Assessment Board, set forth in writing a recommended educational strategy to meet the educational needs of the student.

D. Miscellaneous Provisions

In large LEA's where a subcommittee is handling the evaluation and decision process, the student's parents may appeal to the whole board for reconsideration if they feel that the process has been discriminatory and inadequate. The Assessment Board would, in like manner, oversee the reevaluation and reclassification of students currently assigned to special education classes for the mentally retarded and would have to approve any assignment of a student so reclassified to any class to which students are not assigned at random.

A P P E N D I X C

POTTINGER MEMORANDUM REGARDING
NONDISCRIMINATION IN ELEMENTARY AND SECONDARY
SCHOOL STAFFING PRACTICES



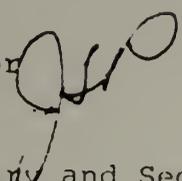
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

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January 14, 1971

MEMORANDUM

TO: Chief State School Officers and
School Superintendents

FROM: J. Stanley Pottinger, Director
Office for Civil Rights 

SUBJECT: Nondiscrimination in Elementary and Secondary
School Staffing Practices

Title VI of the Civil Rights Act of 1964 requires that students in a school district receiving Federal financial assistance be afforded educational services free from discrimination on the ground of race, color or national origin. Since the Bradley and Rogers decisions of the Supreme Court in 1965 it has been clear that this provision precludes the assignment of teachers to public schools within the school system on a racially segregated basis. From more recent decisions of the courts of appeal, it has become equally clear that Title VI also precludes discrimination in the hiring, promotion, demotion, dismissal or other treatment of faculty or staff serving the students. This memorandum describes HEW policies reflecting more recent court decisions in each of these two areas.

The goal of HEW in rendering assistance to educational programs is to help school officials to achieve the highest possible quality of education for everyone. The elimination of discrimination in these programs is not only required by the law, but is consistent with this goal. Indeed, racial or ethnic discrimination in staffing actually deters the achievement of high quality educational opportunities.

School districts have for the past several years reported to HEW's Office for Civil Rights on the racial and ethnic composition of their staffs. It will now be HEW's policy to make further inquiry into staffing practices whenever it appears from this or other information either that a school district may be making its assignment of teachers or staff to particular schools on a basis that tends to segregate, or that the racial or ethnic composition of its staff throughout the system may be affected by discriminatory hiring, firing, promotion, dismissal or other employee practices.

Assignment of Staff to Schools

School districts that have in the past had a dual school system are required by current law to assign staff so that the ratio of minority group to majority group teachers in each school is substantially the same as the ratio throughout the school district. This is the so-called Singleton rule, enunciated by the Court of Appeals for the Fifth Circuit in January, 1970. The same rule applies to non-teaching staff who work with children.

Even though a school district has not in the past operated an official dual system of schools, its statistical reports may nonetheless indicate a pattern of assigning staff of a particular race or ethnic group to particular schools. Where this appears to be true, the Office for Civil Rights will seek more detailed information regarding assignment policies and practices. If it is determined that assignments have been discriminatory, the school district will be requested to assign teachers so as to correct the discriminatory pattern.

Hiring, Promotion, Demotion, Dismissal and
Other Treatment of Staff

The reports presently being submitted to the Office for Civil Rights by local educational agencies reflect not only the assignment by race of teachers and other staff to particular schools but also reflect the total composition by race of the staff throughout the reporting school system and the hiring of teachers by race each year. With respect to the employment practices of each district it will be HEW's policy to make further inquiry into such matters when it appears (1) that there has been an abrupt and significant change in the racial or ethnic composition of the teaching or any other category of staff serving a particular school district, or (2) that the presence of members of racial or ethnic groups among newly employed staff members in any category differs significantly from their presence among qualified persons reasonably available for employment by the school district. HEW's Office for Civil Rights will ask school districts so identified to furnish more specific information concerning these practices in the following categories of staff:

1. Principals
2. Assistant Superintendents and other central office professional staff
3. Deputy, associate and assistant principals
4. Classroom teachers
5. Other professional staff for whom certification is generally expected, such as counsellors, librarians, and special education teachers
6. Other staff who work with children, such as teacher-aides and bus drivers

In each of these categories we will request information as to the identity of staff members who have been released or demoted, the reasons for release or demotion, the criteria used in selecting teachers for employment, promotion, release or demotion, and the comparative professional, educational and personal qualifications of the applicants and staff members involved.

This information will be analyzed, and, where necessary, additional investigation conducted to determine whether discrimination has been practiced. It is, of course, not possible to catalog all forms which such discrimination might take. Several of the more obvious methods of discrimination are:

1. Hiring--A school district which focuses its recruitment efforts on teacher training institutions attended predominantly by members of one race while ignoring institutions attended predominantly by members of another race is discriminating in its hiring practices. Similarly, the imposition of different hiring procedures, such as the requirement of additional personal interviews for members of one race as contrasted with others, is discriminatory. Discrimination in other features of the employment process may also be found in salaries offered, working conditions promised, training provided and tests or other qualifications imposed.

2. Promotions--The selection of teachers or other staff for promotion may be subject to racial discrimination just as the selection of teachers for employment. Any form of such discrimination would be a violation of law.

3. Demotions--The demotion of a staff member, whether involving a cut in pay or simply a change in duty, is discriminatory if it reflects a racial decision by the school administrators. Thus, if the consolidation of two schools necessarily results in the demotion of some staff members, such as department heads, counsellors and coaches, the selection of the staff members to be demoted may not be based upon race. The courts have also held that persons demoted as an incident to the desegregation process are to be given preference in future promotions.

4. Dismissals--Dismissal of a teacher for failure to meet certain standards or qualifications would, of course, be racially discriminatory if the same standards or qualifications were not applied to teachers of another race. A teacher who has been assigned to a particular school for racial reasons may not thereafter be dismissed if a reduction of force results in the closing of that school unless his qualifications for teaching are compared with all other teachers throughout the system and he has been found, under reasonable and objective criteria, to be less qualified than all teachers retained in the system.

If it is determined from the information furnished by the school district and from any other investigation that discrimination has been practiced, the school district will be requested to develop a plan for prompt corrective action. The types of corrective action required will depend upon the nature and results of the discrimination that has been practiced.

A discriminatory dismissal and its effect may be adequately corrected by reinstatement of the dismissed staff member together with the payment of any lost pay. Discriminatory hiring practices may be sufficiently corrected by adopting objective criteria and standards for future recruitment and hiring and by promptly offering positions to qualified persons who have been rejected or overlooked. In each case, however, the school district will be asked to develop and submit a specific plan for correcting the effects of the discriminatory practice and assuring against the repetition of such discrimination.

When it is clear that the effect of the discrimination cannot otherwise be corrected and the discrimination has in fact resulted in a significant distortion in the racial or ethnic composition of the staff, the school district may be asked to develop a plan designed to achieve a racial and ethnic composition of its total staff which will correct the distortion. In determining what that composition should be, consideration will be given to the past composition of the staff in each category and to information bearing on the reasonable availability of qualified teachers and other categories of staff from racial and ethnic minorities.

I have been assured by the Office of Education that it will give priority attention to requests for consultation and assistance in the development of realistic and educationally sound plans.

We in the Office for Civil Rights will be pleased to do everything possible to assist school officials to meet their Title VI responsibilities.

