DOCUMENT RESUME

ED 207 335 FL 012 525

AUTHOR Valdes, Gabriel M.
TITLE A Historical Approach to Legal Aspects of Bilingual Education.
PUB DATE May 81
NOTE 31p.; Paper presented at the Annual International Bilingual Bicultural Education Conference (10th, Boston, MA, May 23-30, 1981).

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Bilingual Education; *Court Doctrine; Court Litigation; *Desegregation Litigation; Educational Discrimination; Elementary Secondary Education; History

ABSTRACT

Court decisions relating to bilingual education in the United States are synthesized and analyzed. In addition to cases relating specifically to language of instruction, those dealing with desegregation and racial or ethnic discrimination are reviewed. In decisions involving the teaching of foreign languages in elementary school, during the period 1923-1947, the trend was to invalidate state statutes prohibiting the teaching of foreign languages below the eighth grade. From 1950 on, court decisions have been consistent in trying to eliminate discrimination against black Americans in public schools. The period 1970-1973 saw Mexican American children identified as a minority group entitled to the protections announced in segregation cases. With Lau vs. Nichols, a decision ordering relief in the form of special programs for limited English speaking students without specifying the form of relief opened an era of mandatory bilingual education that continues today if only because the Supreme Court has been silent on the subject since then. Since 1975, courts have directed school districts to accommodate the limited English speakers wherever substantial numbers of those speakers desired accommodation. The methodology of bilingual education has found its way into many cases. Finally, the few decisions dealing with the rights of illegal alien children have been divided. (JB)

A HISTORICAL APPROACH TO LEGAL ASPECTS OF BILINGUAL EDUCATION

Gabriel M. Valdes

TABLE OF CONTENTS

INTRODUCTION

Bilingual education can be defined as a program of instruction that uses the native languages of students to teach them basic subjects, while at the same time the regular language of instruction is being taught. Usually this method is used with inmigrants, to teach them the language of their new homeland, and at the same time to allow them to progress through the regular plan of studies. In the United States of America this definition becomes: the study of "English as a Second Language" as the main thrust, and the study of basic subjects in the native languages of limited English proficiency students, until they are ready to be transfered into the regular program, taught exclusively in English. So far, this definition seems to be geared toward curriculum, methodology, and programatic issues. Unfortunately, because of reasons rooted in socio-ethno-psychological problems beyond the scope of this paper, bilingual education has become one of the most political and legalistic issues in education in our Nation nowadays.

Most of the school districts that offer bilingual education are doing it under pressure exerted by the Office of Civil Rights. Their programs are based on the Lau Remedies[1],

---

[1] Office of Civil Rights, Department of HEW, Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled under Lau v. Nichols, Summer of 1975.

popular name of a document made public by HEW in the Summer of 1975. This document has helped the school districts to take the steps necessary to develop programs suited for students whose English is limited. This document was never published in the Federal Register, and did not have force of law. At the moment of this writing, the Office of Civil Rights is proposing to issue rules to substitute the original Lau Remedies, for the purpose of implementing the provisions of Title VI of the Civil Rights Act of 1964 prohibiting discrimination in, exclusion from, or denial of participation in programs or activities receiving Federal financial assistance on the ground or race, color, or national origin. It is expected that, as soon as these rules are published in the Federal Register, the court cases related to bilingual education will increase.

The purpose of this paper is to study objectively court cases involoving bilingual education, and some cases involving racial discrimination, to try to find trends, if any, in court decisions at all levels. The cases to be studied can be found in the West National Report System.

NEEDS ASSESSMENT

There are about 28 million people in the United States of America, including about five million school age children, who live in homes where a language other than English is used. Approximately two-third of these people, and more than four-fifth of the school age children in this group, were born in the U.S.A.[2] Another source states that one of every 18 persons in the United States in 1978 was of Spanish origin or descend. About 12 million persons reported their origin or descend as either Mexican, Puerto Rican, Cuban, Central or South American, or some other Spanish origin. This Spanish origin population included a heavy concentration of young persons: about 42 percent were under 18 years old, and only four percent were over 65 years old.[3] Although the most important ccurt case related to bilingual education involved students of Chinese origin, a great majority of cases involves this Spanish origin population.

---

[2]Dorothy Waggoner, "Geographic Distribution, Nativity and Age Distribution of Language Minorities in the United States: Spring, 1976," National Center for Educational Statistics Bulletin, (Washington, D.C.: U.S. Government Printing Office, August 22, 1978), p. 1.

[3]Edward Fernandez and Arthur Cresce, "Persons of Spanish Origin in the United States: March, 1978," U.S. Department of Commerce, Bureau of the Census Bulletin, Series P-20, No. 339, (Washington, D.C.: U.S. Government Printing Office, June, 1979), p. 1.

Although the drop-out rate for Hispanic students in the State of Florida is higher than for people from other groups,[4] there have been no cases reported in Florida involving discrimination of Mexican Americans, Puerto Ricans, other Latinos, Native Americans, and/or Asians.[5]

---

[4]State of Florida Department of Education, Division of Public Schools, MIS Statistical Report, Series 80-15 (Tallahassee, Florida: Management Information Services, March 1980), p. 22. 3.42% of Hispanics, grades K-12, dropped out in school year 1978-79, compared to 2.69% of whites, and 2.89% of blacks.

[5]Michael B. Wise, Desegregation in Education: A Directory of Reported Federal Decisions, (Indiana: Center for Civil Rights of the University of Notre Dame, 1977). This directory covers reported decisions of the period from just prior to the Supreme Court's 1954 decision in Brown v. Board of Education to the Fall of 1976. It includes decisions reported in volumes 118 through 418 of the Federal Supplement, volumes 209 through 541 of the Federal Reporter 2nd, volumes 347 through 423 of the United States Reporter, and cases listed in the Supreme Court Reporter up to 1977.

PLAN OF THE STUDY

Most of the literature about court decisions related to bilingual education tends to the defense of this educational field.[6] The present study will try to be impartial in its presentation, analysis, and synthesis of the court decisions.

The first step of the study will be to make a chronologycal presentation of the court cases found in the West National Reporter System. To be objective the summary of each case will be copied exactly as it appears in the Reporter. If the same case has been seen by several courts, it will be presented following its own chronology. After this initial presentation, all court decisions will be analyzed. Categories for analysis will be devolep according to general areas covered by the decisions. Finally, the cases will be synthesized to try to discover whether there are or there are not observable general trends in court decisions dealing with bilingual education.

---

[6]See as example: Hannah N. Geffert et al, The Current Status of U.S. Bilingual Education Legislation, Papers in Applied Linguistics, Bilingual Education Series No. 4, (Arlington, Virginia: Center for Applied Linguistics, 1975); Steven R. Applewhite, "The Legal Dialect of Bilingual Education," in Bilingual Education and Public Policy in the United States, ed. by Ramon Padilla, Ethnoperspectives in Bilingual Education Research Series, Vol. I, (Ypsilanti, Michigan: Department of Foreign Languages and Bilingual Studies, Eastern Michigan University, 1979); and Tony Baez et al, Desegregation and Hispanic Students: A Community Perspective (Arlington, Virginia: National Clearinghouse for Bilingual Education, 1980).

CHRONOLOGICAL PRESENTATION OF COURT CASES

MEYER v. STATE OF NEBRASKA, 262 U.S. 390. Error to the Supreme Court of the State of Nebraska. No. 325. Argued February 23, 1923 - Decided June 4, 1923.

A state law forbbiding under penalty, the teaching in any private, denominational, parochial or public school, of any modern language, other than English, to any child who has not attained and successfully passed the eight grade, invades the liberty guarantee by the Fourteenth Amendment and exceeds the power of the State. So held where the statute was applied in punishment of an instructor who taught reading in German, to a child of ten years, in a parochial school. 107 Neb. 657, reversed.

FARRINGTON, GOVERNOR OF HAWAII, ET AL. v TOKUSHIGE ET AL. Certiorari to the Circuit Court of Appeals for the Ninth Circuit. No.465. Argued January 21, 1927 - Decided February 21, 1927. 273 U.S. 284.

1. Acts of the Legislature of Hawaii "relating to foreign language schools and the teachers thereof," and regulations adopted thereunder by the Department of Public Instruction, taken as a whole appear to infringe rights, under the Fifth Amendment, of owners of private Japanese schools, and the parents of children attending them; and in granting an interlocutory injunction against enforcement of the Acts and regulations the United States District Court of Hawaii did not abuse its discretion. 2. Upon the present record and argument, the Court cannot undertake to consider the constitutional validity of the provisions separately. 3. The due process clause of the Fifth Amendment affords the same protection to fundamental rights of private school owners, parents and children against invasion by the Federal Government and its agencies (such as territorial legislature) as it has been held the Fourteenth Amendment affords against action by a State. 11 F. (2d) 710, affirmed.

MO HOCK KE LOK PO ET AL. v. STAINBACK ET AL. 74 F. Supp. 852. Civ. A. No. 765, District Court, Hawaii, Oct. 22, 1947.

Action by Mo Hock Ke Lok Po, an eleemosynary corporation, and others against Ingram M. Stainback and others, for a judgment declaring unconstitutional a statute regulating the teaching of foreign languages to children, and to enjoin enforcement of the statute. Complaint dismissed as to individual plaintiffs unless within twenty days complaint should be amended to contain allegations of required jurisdictional amounts in controversy. Injunction granted.

SWEATT v. PAINTER ET AL. 339 U.S. 629. CErtiorari to the Supreme Court of Texas. No. 44. Argued April 4, 1950 - Decided June 5, 1950.

Petioner was denied admission to the state-supported University of Texas Law School, solely because he is a Negro and state law forbids the admission of Negroes to the Law School. He was offered, but he refused, enrollment in a separate law school newly established by the State for Negroes. The University of Texas Law School has 16 full-time and three part-time professors, 850 students, a library of 65,000 volumes, a law review, moot court facilities, scholarship funds, an Order of the Coif affiliation, many distinguished alumni, and much tradition and prestige. The separate law school for Negroes has five full-time professors, 23 students, a library of 16,500 volumes, a practice court, a legal aid association and one alumnus admitted to the Texas Bar; but it excludes from its student body members of racial groups which number 85% of the population of the State and which include most of the lawyers, witnesses, jurors, judges, and other officials with whom petioner would deal as a member of the Texas Bar. Held: The legal education offered petioner is not substantially equal to that which he would receive if admitted to the University of Texas Law School; and the Equal Protection Clause of the Fourteenth Amendment requires that he be admitted to the University of Texas Law School. Reversed.

BROWN ET AL. V. BOARD OF EDUCATION OF TOPEKA ET AL. 347 U.S. 483. No. 1. Appeal from the United States District Court for the District of Kansas. Argued December 9, 1952 - Reargued December 8, 1953 - Decided May 17, 1954.

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment - even though the physical facilities and other tangible factors of white and Negro schools may be equal. (a) The history

of the Fourteenth Amendment is inconclusive as to its intended effect in public education. (b) The question presented in these cases must be determined, not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. (c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. (d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. (e) The "separte but equal" doctrine adopted in Plessy v. Ferguson, 163 U.S. 537, has no place in the field of public education.

JOSE CISNEROS ET AL., v. CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT ET AL. 324 F. Supp. 599. Civ. A. No. 68-C-95. United States District Court, S. D. Texas, Houston Division. June 4, 1970.

School desegregation case. The District Court, Seals, J., held that where Mexican-Americans in school district were identifiable ethnic-minority group and for that reason had been segregated and discriminated against in the schools, they, as well as Negroes, were entitled to all the protection announced in United States Supreme Court decision holding unconstitutionsl segregation in the public schools. Judgment accordingly.

_____. 467 F. 2d. 142. No. 71-2397. United States Court of Appeals, Fifth Circuit. Aug. 2, 1972.

Desegregation class action against school district and its board of trustees. The United States District Court for the Southern District of Texas, at Corpus Christi, Woodrow B. Seals, J., 324 F. Supp. 599, 330 F. Supp. 1377, entered judgments from which defendants appealed. The Court of Appeals, Dyer, Circuit Judge, held that segregation of Mexican-American children who are not victims of statutorily mandated segregation is constitutionally impermissible. The Court further held that whenever the court must exercise its power to pair or cluster schools located in noncontigouos zones, it must minimize student transportation requirements in such plan as is devised to pair or cluster schools located in noncontigouos zones. Affirmed in part, modified in part, and remanded.

_____. 413 U.S. 920. (1973).

Certiorari denied.

UNITED STATES OF AMERICA v. STATE OF TEXAS, TEXAS EDUCATION AGENCY, DR. J. W. EDGAR, COMMISSIONER OF EDUCATION, CASON INDEPENDENT SCHOOL DISTRIC, ET AL. 321 F. Supp. 1043. Civ. A. No. 1424. United States District Court, E. D. Texas, Marshall Division. Nov. 24, 1970.

School desegregation suit. The District Court, Justice, J., held that where, under color of state law, students had been permitted to transfer freely from school districts and effect thereof was to create and maintain all black school districts, and where segregation was entrenched due to previous situating of school district lines around racially homogeneous residential areas, primary responsability would be allocated to state education agency for reevaluation of its program in view of its affirmative duty to insure that no student be excluded from equal educational opportunities based on race and that dual school system be eliminated, and agency would be required to submit plan developed in light of such duties. Ordered accordingly.

_____. 350 F. Supp. 235. Civ. A. No. 5281. United States District Court, E. D. Texas, Tyler Division. May 11, 1971.

School desegregation suit. The District Court entered judgment, 321 F. Supp. 1043. In a supplemental opinion, the District Court, Justice, J., held that each of all black school districts involved in school desegregation case should be annexed to or consolidated with a nearby unit with biracial enrollment in order to achieve meaningful desegregation and to create, at the same time, a stable, administratively and educationally sound school district. Judgment accordingly. Judgment of Nov. 24, 1970 affirmed, judgment of May 11, 1971 modified and affirmed, 5 Cir., 447 F 2d 441.

_____. 342 F. Supp. 24. Civ. A. No. 5281. United States District Court, E. D. Texas, Tyler Division, Dec. 6, 1971.

School desegregation case. The District Court, Justice, J., held that with goal in mind of true integration, as opposed to mere desegregation, court would issue an order in relation to an educational plan for the San Felipe del Rio Consolidated Independent School

District which would give special educational consideration to the Mexican American students, who should be recognized as a separate group, so as to assist them in adjusting to those parts of their new school enviroment which would present a cultural and linguistic shock. Order accordingly.

_____. 466 F. 2d 519. No. 72-1046. United States Court of Appeals, Fifth Circuit. Aug. 29, 1972.

School desegregation case. The United States District Court for the Eastern District of Texas, at Tyler, Justice, J., 342 F. Supp. 24, entered desegregation order and school district appealed. The Court of Appeals affirmed the judgment of the District Court as to implementation of the desegregation plan and also held that where District Court in charge of the case sat in the Eastern District of Texas at Tyler, school district in question was situated 500 miles away in the Western District of Texas, school district has previously moved for a change of venue to the Western District, and desegregation plan had been approved, there was no compelling necessity for attempting to supervise the case from Tyler and, accordingly, the District Court would be directed to transfer the case to the Western District of Texas. Order in accordance with opinion.

_____. 404 U.S. 1016 (1972)

Certiorari denied.

JUDY SERNA ET AL., PLAINTIFFS, v. PORTALES MUNICIPAL SCHOOL ET AL, DEFENDANTS. 351 F. Supp. 1279. Civ. No. 8994, United States District Court, D. New Mexico. Nov. 14, 1972.

Action was brought for declaratory and injunctive relief against school district. The District Court, Mechem, J., held that in view of evidence disclosing among other things that I. Q. test scores of children in the only one of the four elementary schools in district having a large preponderance of Spanish surnamed children were lower than those of children in the other three schools notwithstanding fact that such school had substantially equivalent program and was the only one having a bilingual-bicultural program, Spanish surnamed children did not in fact have the equal education opportunity and their constitutional rights to equal protection were being violated, and it was incumbent upon school district to reassess program for specialized needs of Spanish surnamed students at all schools. Judgment in accordance with opinion and jurisdiction retained.

_____. 490 F. 2d 1147. No. 73-1737. United States Court of Appeals, Tenth Circuit. Argued March 20, 1974. Decided July 17, 1974.

Action for declaratory and injunctive relief against school district which allegedly discriminated against Spanish surnamed students. The District Court, Edwin L. Mechem, J., 351 F. Supp. 1279, found that there was discrimination and created program for its elimination, and school district appealed. The Court of Appeals, Hill, Circuit Judge, held that plaintiffs had standing to mantain action as class action, that record established violation of Civil Rights Act prohibition prohibiting exclusion from participation in, denials of benefits of, and discrimination under federally assisted programs on grounds of race, color, or national origin, and that court could properly establish program for elimination of discrimination. Affirmed.

KINNEY KIMMON LAU, A MINOR BY AND THROUGH MRS. KAM WAI LAU, HIS GUARDIAN AD LITEM ET AL., PLAINTIFFS-APPELLANTS, v. ALAN H. NICHOLS, PRESIDENT ET AL., DEFENDANTS-APPELLES. 483 F. 2d 791. No. 26155. United Court of Appeals, Ninth Circuit. Jan. 8, 1973. Rehearing En Banc Denied June 18, 1973.

Class action was brought to compel school district to provide all non-English speaking Chinese students with bilingual compensatory education in the English language. The United States District Court for the Northern District of California, Lloyd H. Burke, J., denied relief, and plaintiffs appeled. The Court of Appeals, Trask, Circuit Judge, held that failure of school district to provide all non-English speaking Chinese students with bilingual compensatory education in the English language did not constitute unconstitutional discrimination where English had been uniformily used as language of instruction in all district schools and where there was no showing that Chinese students' lingual deficiencies were related to any past discrimination against them as members of an identifiable racial minority. Affirmed.

_____. 414 U.S. 563. Certiorari to the United States Court of Appeals for the Ninth Circuit. No. 72-6520. Argued December 10, 1973 - Decided Jan. 21, 1974.

The failure of the San Francisco school sysyem to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program

and thus violates &601 of the Civil Rights Act of 1964, which bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance," and the implementing regulations of the Department of Health, Education and Welfare. 483 F. 2d 791, reversed and remanded.

KEYES ET AL. v. SCHOOL DISTRICT NO. 1, DENVER, COLORADO, ET AL. 413 U.S. 189. Certiorari to the United States Court of Appeals for the Tenth Circuit. No. 71-507. Argued Oct. 12, 1972 - Decided June 21, 1973.

Petioners sought desegregation of the Park Hill area schools in Denver and, upon securing an order of the District Court directing that relief, expanded their suit to secure desegregation of the remaining schools of the Denver school district, particularly those in the core city area. The District Court denied the further relief, holding that the deliberate racial segregation of the Park Hill schools did not prove a like segregation policy addressed specifically to the core city schools and requiring petitioners to prove de jure segregation for each area that they sought to have desegregated. That court nevertheless found that the segregated core city schools were educationally inferior to "white" schools elsewhere in the district and, relying on Plessy v. Ferguson, 163 U.S. 537, ordered the respondents to provide substantially equal facilities for those schools. This latter relief was reversed by the Court of Appeals, which affirmed the Park Hill ruling and agreed that the Park Hil segregation, even though deliberate, proved nothing regarding an overall policy of segregation. Held: 1. The District Court, for purposes of defining a "segregated" core city school, erred in not placing Negroes and Hispanos in the same category since both groups suffer the same educational inequities compared with the treatment afforded Anglo students. 2. The courts below did not apply the correct legal standard in dealing with petitioners' content that respondent School Board had the policy of deliberately segregating the core city schools. (a) Proof that the school authorities have pursued an intentional segregative policy in a substantial portion of the school district will support a finding by the trial court of the existence of a dual system, absent a showing that the district is divided into clearly unrelated units. (b) On remand the District Court should decide initially whether respondent School Board's deliberately segregative policy respecting the Park Hill schools constitutes the whole Denver school district a dual school system. (c) Where, as in this case, a policy of intentional segregation has been proved with respect to a significant portion of the school system, the burden is on the school

authorities (regardless of claims that their "neighborhood school policy" was racially neutral) to prove that their actions as to other segregated schools in the system were not likewise motivated by a segregative intent. 445 F. 2d 990, modified and remanded.

_____. Civ. A. No. C-1499. 380 F. Supp. 673. United States District Court, D. Colorado. April 8, 1974. Order April 24, 1974.

School desegregation case. The District Court, William E. Doyle, Circuit Judge, held that neither of two desegregation plans proposed by the parties was acceptable, and that, where the board of education had not shown a willingness to formulate a desegregation plan and refused to do so and probably would refuse to do so in the future, the court would itself fashion a plan to carry out the desegregation mandate of the Supreme Court. Plan adopted.

_____. 521 F. 2d 465. Nos. 74-1349, 74-1350, and 74-1351. United States Court of Appeals, Tenth Circuit. Submitted Feb. 10, 1075. Decided Aug. 11, 1975. Rehearing Denied Sept. 16, 1975. Certiorari Denied Jan. 12, 1976. See 96 S.Ct. 806.

Parents of public school students brought suit for relief from alleged segregation in school system. On remand from the Supreme Court, 413 U.S. 189, 93 S. Ct. 2686, 37 L.Ed.2d 548, the United States District Court for the District of Colorado, William E. Doyle, J., 368 F.Supp. 207, held that evidence established that school system was a dual system. The District Court subsequently adopted a desegregation plan, 380 F. Supp. 673, and appeals were taken. The Court of Appeals, Lewis, Chief Judge, held that the district court properly employed Anglo-minority enrollment percentages as guideline in shaping its remedy even though the constitutional violation before the district court was premised upon segregative acts in a single corner of the school district; that court's part-time pairing plan was not constitutionally adequate as to schools which had projected enrollments of less than 10% Anglo pupils; that reassignment plan did not impermissibly burden minority students; and that court transgressed limits of its power to fashion a desegregation remedy in ordering school authorities to implement a plan for the bicultural-bilingual education of minority children. Affirmed in part and reversed in part and remanded.

_____. 423 U.S. 1066 (1976)

Certiorari denied.

ASPIRA OF NEW YORK, INC. ET AL., PLAINTIFFS, v. BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL, DEFENDANTS. 394 F. Supp. 1161. No. 72 Civ. 4002. United States District Court, S. D. New York. May 28, 1975.

After school district had been ordered to establish bilingual program for Hispanic students who were not effectively participating in the educational process in English and who would assertedly do better if instructed in Spanish, the District Court, Frankel, J., held that students to be included in the bilingual program were those students who, on English version of language assessment battery test, fell below the 20th percentile in reference to a norm established by sample population of English-speaking students and who, on the Spanish version of the language assessment battery test, scored in a higher percentile, in reference to norm of randomly selected Spanish-speaking students, than they did on the English test; and that school district would be required to give the Spanish test only to those who fell below the 20th percentile on the English test. Order accordingly.

STEPHANIE OTERO ET AL, PLAINTIFFS, v. MESA COUNTRY VALLEY SCHOOL DISTRICT. 408 F. Supp. 162. No. 74-W-279. United States District Court, D. Colorado. Dec. 30, 1975.

A class action was brought on behalf of Chicano students against school district, and others, seeking injunctive relief requiring the district to provide a type of bilingual/bicultural education acceptable to plaintiffs and their counsel, and, collateral to relief, an injunction conforming the district's employment practices to plaintiffs' views. The District Court, Winner, J., held that there is no constitutional right to bilingual/bicultural education; that the record disclosed no failure on the part of the school district to comply with any federal statute or regulation, and plaintiffs proved no case under the "Lau-Serna" doctrine which, unlike the instant case, dealt with large number of students who could not learn English and with school boards that were making no real effort to meet the problem; and that plaintiffs had no standing to challenge the district's hiring policies. Judgment for defendants.

CRAIG AMOS ET AL, PLAINTIFFS, v. BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE ET AL, DEFENDANTS. 408 F. Supp. 765. Civ. A. No. 65-C-173. United States District Court, E. D. Wisconsin. Jan. 19, 1976.

Action was brought to rectify alleged racial discrimination in the Milwaukee, Wisconsin public school system. The District Court, Reynolds, Chief Judge, held that action could be maintained as a class action on behalf of two classes, the first to consist of all black pupils presently enrolled and those who would enroll in the future and the second to consist of all nonblack pupils presently enrolled and those to enroll in the future, that separate counsel would be appointed to represent absent class members, that segregation existed in the Milwaukee public schools, that such segregation was intentionally caused and maintained by the defendants and that a special master would be appointed to assist in formulating a decree. Injunction issued.

CARLOS HERNANDEZ ET AL, APPELLANTS, v. HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL, APPELLEES. 558 S.W. 2d 121. Court of Civil Appeals of Texas, Austin. No. 12650. Nov. 16, 1977. Rehearing denied Dec. 7, 1977.

Appeal was taken from order of the 126th District Court, Travis County, James R. Meyers, J., which granted summary judgment affirming an order of the State Board of Education rejecting a suit brought by illegal alien children challenging the constitutionality of the statute providing for tuition-free public school education for citizens or legally admitted aliens. The Court of Civil Appeals, Shannon, J., held that: (1) since denial of the free education is not denial of a "fundamental right," the statute would not be subjected to 'strict judicial scrutiny"; (2) the statute bears a rational relationship to a legitimate state purpose; (3) the fact that the state has provided tuition-free education for citizens and legally admitted aliens does not require the state to provide free schooling to illegal aliens. Affirmed.

ELIS CINTRON ET AL, PLAINTIFFS, v. BRENTWOOD UNION FREE SCHOOL DISTRICT. 455 F. Supp. 57. No. 77-C-1370. United States District Court, E. D. New York, Jan. 10, 1978.

Puerto Rican and other Hispanic children with deficiencies in the English language brought action for injunctive and declaratory relief with respect to announced intention of school district to restructure its bilingual program. The District Court, Mishler,

Chief Justice, held that: (1) appropiate plan must contain specific methods for identifying children deficient in English language and monitoring their progress, should have training program for bilingual teachers and aides, must be both bilingual and bicultural, must provide method for transferring students out of the program when necessary level of English proficiency is reached, and should encourage contact between non-English and English-speaking students in all but subject matter instruction; (2) original program violated the Equal Educational Opportunity Act of 1974 and HEW guidelines in keeping Spanish speaking students separated from English speaking students in music and art and failing to provide mechanism for transfer out of program of students who had reached level of proficiency inEnglish sufficient to understand regular English instruction, and (3) proposed plan was deficient in providing no assurance that language deficient children in upper grades would be identified or that there would be sufficient remedial assistance. Judgment accordingly.

J. and R. DOE as guardian ad litem for I. Doe, J. D. Doe, E. Doe, D. Doe and E. Roe as guardian ad litem for O. Roe, F. Roe, and N. Roe, F. Boe as guardian ad litem for Z. Boe, S. Boe, And X. Boe, H. and J. Loe, as guardian ad litem for A. Loe, L. Loe, M. Loe, G. Loe, and R, Loe, on behalf of themselves and others similarly situated, v. JAMES PLYLER, Superintendent of the Tyler Independent School District, in his official capacity, Lewis Lampkin, Charles Childers, Carl Ross, Martin Edwards, Vernon Gross, Michael Breedlove, and Robert Randall, in their official capacity as Members of the Board of Trustees of the Tyler Independent School District. 458 F. Supp. 569. Civ. A. No. TY-77-261-CA. United States District Court, E. D. Texas, Tyler Division. Sept. 14, 1978.

Mexican children who had entered the United States illegally and resided in Texas sought injunctive and declaratory relief against exclusion from public schools pursuant to Texas statute and school district policy. The District Court, Justice, J., held that: (1) classification under the statute was irrational, in violation of the equal protection clause, and (2) the statute defeated clear implications of federal laws covering both illegal aliens and education of disadvantage children. Defendants permanently enjoined.

GUADALUPE ORGANIZATION INC., A NON-PROFIT ARIZONA CORPORATION, ON BEHALF OF ITS MEMBERS AND THE COMMUNITY OF GUADALUPE, ET AL., PLAINTIFFS-APPELLANTS, v. TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3 ET AL., DEFENDANTS-APPELLEES. 587 F. 2d 1022. No. 76-2029. United States Court of

Appeals, Ninth Circuit, Dec. 18, 1978.

Elementary school children of Mexican-American or Yaqui Indian origin brought civil right action against elementary school district to compel district to provide non-English speaking students with bilingual-bicultural education. The United States District Court for the District of Arizona, Walter Early Craig, Chief Judge, entered judgment for school district, and plaintiffs appealed. The Court of Appeals, Sneed, Circuit Judge, Held that: (1) elementary school district fulfilled its equal protection duty to children of Mexican-American or Yaqui Indian origin when it adopted measures to cure existing language deficiencies of non-English speaking students; equal protection clause imposed no duty upon district to provide bilingual-bicultural education to non-English speaking students; (2) school district was not required under Title VI of the Civil Rights Act of 1964 to provide non-English speaking students with a bilingual-bicultural education program staffed with bilingual instructors, and (3) where school district adopted measures to cure existing language deficiencies of non-English speaking students, Equal Educational Opportunity Act of 1974 did not require district to provide non-English speaking students with bilingual-bicultural education programs staffed with bilingual instructors. Affirmed.

ANALYSIS OF COURT CASES

To analyze the court cases presented above, six categories will be used. These categories correspond broadly with periods of time. They are:

1. Cases involving the teaching of foreign languages in elementary schools. 1923-1947.
2. Cases involving discrimination against blacks in public schools. 1950-1954.
3. Cases involving segregation of Mexican-American children in public schools. 1070-1973.
4. Cases involving bilingual education per se. 1973-1975.
5. Cases involving bilingual education methodology. 1975 up to the present.
6. Cases involving illegal aliens rights to public education. 1977 up to the present.

This categorical division of cases does not mean that beyond the dates stated no other cases in the same category would be heard. Any time in the future, cases covered in any of the broad categories could be heard by any of the courts in the United States of America.

The first category covers cases involving the teaching of foreign languages in elementary school. In Meyer v. State of Nebraska, 262 U.S. 390, the Supreme Court invalidated prohibition against all pre-eight grade foreign language instruction. In Farrington v. Tokushige, 273 U.S. 284, the Supreme

Court also invalidated a Hawaii statute with a provision restricting foreign language instruction to one hour per day, six day per week, 38 weeks per year. In Mo Hock Ke Lok Pa v. Stainback, 74 F. Supp. 852, the District Court of Hawaii held that the parents' rights to have their offspring taught a foreign language is one of the fundamental rights guaranteed by the due process clause of the Fifth and Fourteenth Amendments.

Within the second period and category - cases involving discrimination against blacks in public schools (1950-1954) - two cases are discussed in this paper. In Sweatt v. Painter, 339 U.S. 629, the Supreme Court, in ruling unconstitutional segregation in Texas' law schools, stated: "Few students and no one who has practice law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views..." One of the most important cases involving segregation in public schools, usually cited as the landmark case in this area is Brown v. Board of Education, 347 U.S. 483. In this case the Supreme Court ruled that segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other tangible factors may be equal.

The period that followed the Brown case saw the enactment of the Civil Rights Act of 1964. It was later that the Mexican-American children were identified as an ethno-minority

group. The next category covers a series of cases involving segregation of Mexican-American children in public schools from 1970 to 1973. Three cases are very important during this period. In Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599, and 467 F. 2d 142, the United States District Court, S.D. Texas, Houston Div. ruled that Mexican-American children were entitled, as well as black children, to all the protection announced in Supreme Court decisions holding unsconstitutional segregation in the public schools. The U.S. Fifth Circuit Court of Appeals affirmed this ruling. United States of America v. State of Texas, 321 F. Supp. 1043, 350 F. Supp. 235, 342 F. Supp. 24, 466 F. 2d 519, and 404 U.S. 1016, is a case that has been around since 1970. It started as a black segregation case. It evolved in the next two years to accommodate special educational considerations to Mexican-American students. Ruling in this case stated that Hispanics represent an identifiable ethnic minority group, and that English as a second language was not sufficient for younger children. The Supreme Court denied certiorari in this case. The State of Texas is waiting for a court ruling later this summer (1980) that could lay down a sweeping mandate for bilingual education in the state. Judge Wayne Justice of the Eastern District of Texas received final briefs in May in this case.[7] The final case in this group is Serna v. Portales Municipal

---

[7] "Texas Waits for a Court Decision on Bilingual Education," Educational Times, (Monday, June 23, 1980), pp.6-7.

School, 351 F. Supp. 1279, and 490 F. 2d 1147. In this case the District Court of New Mexico ruled that Spanish surnamed children did not have the equal education opportunity, and ordered to reassess program for their specialized needs. The Tenth Circuit Court of Appeals affirmed the violation of the Civil Rights Act of 1964, and the ordering of a program for elimination of discrimination.

Two cases involving bilingual education per se are studied in the next category (1973-1975). The landmark case in bilingual education is Lau v. Nichols, 483 F 2d 791, and 414 U.S. 563. The U.S. District Court for the Northern District of California denied relief when approximately 3,000 limited English speaking Chinese students enrolled in the San Francisco public schools sought bilingual compensatory education in the English language. The Court of Appeals affirmed this ruling. The Supreme Court held that the failure of the school system to provide English instruction to these children, or to provide them with other instructional procedures violated the Civil Rights Act of 1964. The Supreme Court order did not prescribe the steps which school district had to take to accommodate the needs of students with limited English abilities. In Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 380 F. Supp. 673, 521 F. 2d 465, and 423 U.S. 1066, demand for bilingual education was denied, but the courts held, among other things, that: (a) Hispanics, like Black Americans, represent an identifiable minority ethnic group, (b) the maintenance of segregated schools in the name of bilingual education is not

justified, and (c) the concentration of bilingual students in a school district that is otherwise integrated, does not represent a segregated dual system.

The fifth category involves cases dealing with bilingual education methodology, from 1975 up to the present. In Aspira v. Board of Education of the City of New York, 394 F. Supp. 1161, the District Court ruled an entry criteria for students in an already established bilingual education program. In Otero v. Mesa, 408 F. Supp. 162, injunctive relief requiring the district to provide a type of bilingual-bicultural education was denied because just a few isolated individuals within the school district were in need of this type of education. In Amos v. Board of School Directors of the City of Milwaukee, 408 F. Supp. 765, after the Board of School Directors was found guilty of intentionally operate a segregated school system in violation of the U.S. Constitution, Hispanic joined forces with black Americans to create curriculum to meet their needs.[8] In Cintron v. Brentwood Union Free School District, 455 F. Supp. 57, the District Court ruled entry-exit criteria, follow-up, bilingual teacher training program, and mainstreaming in all but subject matter instruction for students in a bilingual education program. In Guadalupe v. Tempe Elementary School District No. 3, 587 F. 2d 1022, the Court of Appeals denied demand for bilingual education program staffed with bilin-

[8]Tony Baez et al., op. cit.

gual instructors at all grades, for all students, because the defendant had adequately accommodated to the needs of limited English speaking students.

The sixth and final category is related to bilingual education because it involves cases dealing with illegal aliens, Mexicans, and their rights to public education. It covers a contemporary issue, 1977 up to the present. In Hernandez v. Houston Independent School District, 558 S.W. 2d 121, the Court of Civil Appeals of Texas ruled that the school district could lawfully exclude from public schools illegal alien children. In Doe v. Plyler, 458 F. Supp. 569, the District Court of Texas ruled that a statute of the State of Texas requiring a tuition fee of $1,000 per year to undocumented children was irrational, in violation of the equal protection clauses, and defeated clear implications of federal laws covering both illegal aliens and education of disadvantage children.

SYNTHESIS OF COURT CASES

To synthesized the court cases under study in order to try to discover general trends in court decisions dealing with bilingual education, the same categories developed to analyze the cases will be used.

In decisions involving the teaching of foreign languages in elementary school, during the period 1923-1947, it seems that the judicial trend was to invalidate states' statutes prohibiting the teaching of foreign languages below the eight grade. From 1950 on, the court decisions have been consistent in trying to eliminate discrimination against black Americans in public schools. In the next period (1970-1973), the judicial trend seems to be the identification of Mexican-American children as an identifiable ethno-minority group entitled to all the protection announced in the cases against segregation in public schools.

The Supreme Court opened a new period with the Lau v. Nichols decision ordering relief in the form of special programs for limited English speaking ability students, but it did not specify what type of program. After this decision the Supreme Court has not been willing to hear any other case dealing with bilingual education. Therefore, it seems rea-

sonable to think that the trend established in Lau by the Supreme Court continues nowadays.

Since 1975 up to the present, it seems that the judicial trend is to ask school districts to accommodate to the educational needs of limited English speaking ability students whenever there is a need expressed by a large number of students, and whenever the demand implies a transitional program designed to help the students to enter into the mainstream of regular schooling, taught in English. The courts have been increasingly dealing with the methodology of bilingual education.

The few court decisions dealing with the rights of illegal alien children to public education have been divided, and there is not enough evidence to try to discover any trend in these decisions.

CONCLUSION

Court decisions dealing specifically with bilingual education started in 1972. Therefore, this field is too new to enable us to identify definite trends in these court decisions. Nevertheless, key cases permit to identify a pattern of judicial intervention. Keyes (1973) stipulated ethnic identificability of limited English ability students; Lau (1974) determined the need for affirmative steps to meet the needs of these students, but it did not identify these steps; Serna (1974) ordered bilingual programs to meet their needs; and Aspira (1975) and Cintron (1978) defined methodologies for such programs.

It is too early to anticipate any development in bilingual education. It is also too early to predict any general trend in court decisions involving bilingual education.

BIBLIOGRAPHY

BOOKS

Applewite, Steven R. "The Legal Dialect of Bilingual Education," in Bilingual Education and Public Policy in the United States, Ramón V. Padilla, ed. Ethnoperspectives in Bilingual Education Research Series, Vol. I. Ypsilanti, Michigan: Department of Foreign Languages and Bilingual Studies, Eastern Michigan University, 1979.

Baez, Tony, et al. Desegregation and Hispanic Students: A Community Perspective. Arlington, Virginia: National Clearinghouse for Bilingual Education, 1980.

Fernandez, Edward, and Arthur Cresce. "Persons of Spanish Origin in the United States: March 1978." U.S. Department of Commerce, Bureau of Census Bulletin. Series P-20, No. 339. Washington D.C.: U.S. Government Printing Office, June, 1979.

Geffert, Hannah, et al. The Current Status of U.S. BIlingual Education Legislation. Papers in Applied Linguistics, Bilingual Education Series, No. 4. Arlington, Virginia: Center for Applied Linguistics, 1975.

State of Florida Department of Education, Division of Public Schools. MIS Statistical Report, Series 80-15. Tallahassee, Fl.: Management Information Services, March 1980.

Waggoner, Dorothy. "Geographic Distribution, Nativity and Age Distribution of Language Minorities in the United States: Spring, 1976." National Center for Educational Statistics Bulletin. Washington D.C.: U.S. Government Printing Office, Aug., 1978.

Wise, Michael B. Desegregation in Education: A Directory of Reported Federal Decisions. Indiana: Center for Civil Rights of the University of Notre Dame, 1977.

COURT CASES

Amos v. Board of School Directors of the City of Milwaukee, 408 F. Supp. 765 (1976).

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

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

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

Cisneros v. Corpus Christi Independent School District, 324 F. Supp. 599 (S.D. Texas, 1970), 467 F. 2d 142 (5th Circ., 1972), 413 U.S. 920 (1973).

Doe v. Plyler, 458 F. Supp. 569 (E.S. Texas, 1978).

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

Guadalupe Org. Inc. v. Tempe Elem. School District No. 3, 587 F 2d 1022 (9th Circ., 1978).

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

Keyes v. School District No. 1, Denver, Col., 413 U.S. 189 (1973), 380 F. Supp. 673 (U.S. Dist. Ct. D. Colorado, 1974), 521 F. 2d 465 (10th Court of App., 1975), 423 U.S. 1066 (1976).

Lau v. Nichols, 483 F. 2d 791 (9th. Ct. of App., 1973), 414 U.S. 563 (1974).

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

Mo Hock Ke Lock Po v. Stainback, 74 F. Supp. 852 (Dist. Ct. Hawaii, 1947).

Otero v. Mesa County Valley School Dist. No. 51, 408 F. Supp. 162 (U.S. Dist. Ct. D. Colorado, 1975).

Serna v. Portales Municipal Schools, 351 F. Supp. 1979 (U.S. Dist. Ct. D. New Mexico, 1972), 499 F. 2d 1147 (10th. Ct. of App., 1974).

Sweatt v. Painter, 339 U.S. 629 (1950).

United States v. State of Texas, 321 F. Supp. 1043 (Dist. Ct. E.D. Texas, 1970), 330 F. Supp. 235 (Dist. Ct. E. D. Texas, 1971), 342 F.Supp. 24 (Dist. Ct. E.D. Texas, 1971), 466 F. 2d 519 (5th. Ct. of App. 1972), 404 U.S. 1016 (1972.