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THE WHITE HOUSE
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February 24, 2000

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MEMORANDUM FOR THE PRESIDENT

FROM: Maria Echaveste
Bruce Reed

SUBJECT: NATIONAL MEETING ON HISPANIC EDUCATION ISSUES

As you know Hispanic students face substantial educational challenges. Some of these issues are common to other minorities and some are unique to Hispanic Americans. Your administration has taken steps to address some of these issues and improve educational opportunities for Hispanic students; however, more must be done. Hispanic students are the fastest growing cohort of American students, but are less likely to participate in effective pre-school programs, have successful K through 12 experiences, and graduate from college than non-Hispanic white students. The Hispanic high school drop out rate is more than twice the rate of white and black students and there is a substantial gap in scores on standardized tests between Hispanic students and non-Hispanic white students. This memo proposes that the White House hold a national meeting to focus on educational issues confronting Hispanic Americans, to commit the country to quantifiable goals to improve educational opportunities for Hispanic Americans, and to commit the public, private, and non-profit sectors in a national effort to reach these goals.

Background

In August of 1999, the First Lady hosted a White House Convening on Hispanic Children and Youth. The convening identified challenges, showcased successful programs, and addressed the question of how to replicate "best-practices". In her concluding remarks at the meeting, the First Lady said that the Convening should serve as a catalyst for a more significant focus on educational achievement for Hispanics and called for a follow-up national meeting to take place in 2000.

As a result, a small group of foundation and private sector participants in the Convening began to meet with members of the President's Advisory Commission on Educational Excellence for Hispanic Americans and White House staff, to discuss a follow-up meeting. A number of foundation and business leaders have expressed a willingness to support this event. The First Lady's office, the Vice President's office, the Chief of Staff's office, and the Domestic Policy Council, are involved in these efforts. The First Lady and the Vice President have expressed an interest in attending this follow-up meeting.

Proposed Meeting

While discussions are ongoing as to the exact structure and format of the proposed meeting, we are proceeding with some working assumptions. First, the proposed national meeting should relate to the First Lady's Convening and be seen as a follow up to that meeting. Second, the meeting's substantive focus should be on measurable goals that could serve to focus governmental, private and non-profit resources to ensure real progress over the long term and hold policymakers accountable for progress. The Domestic Policy Council is developing 10-year policy goals in the following areas:

- Access to quality early childhood education;
- Closing the achievement gap on state standards-based assessments;
- English-language acquisition for limited-English proficient students;
- Reducing the dropout rate for Hispanic students; and
- Access to higher education and college completion.

Third, the meeting should seek to portray these issues not as "constituency issues" or as favors to an important constituency in an election year. Rather, the meeting should approach the issue through a lens of, "there is no Hispanic agenda, it is an American agenda" and should highlight the fact that what Hispanic parents want for their children, a good education and an opportunity to enjoy the "American Dream", is no different than what other parents want for their children.

Last, while this meeting will highlight your accomplishments on this issue and the substantial work you have done to help address these issues it will also acknowledge that these issues and the goals we are committing to cannot be realized by government action alone. The meeting will highlight community-based activities, private sector activities, and foundation supported activities that are helping to address these issues and call attention to the necessity of this involvement.

Recommendation

We believe that a national meeting that meets the framework described above would further your efforts to improve education for Hispanics as required by your Executive Order 12900 regarding Educational Excellence for Hispanic Americans. It would also commit the nation to making progress on this issue and focus attention on the challenges faced by Hispanic students. Before proceeding with further planning we need to know whether you agree, do not think we should do this at this time, or would like to discuss it further.

Agree



Disagree

Discuss Further

Yzaguirre Mr
9/1/94
cleared by Echaveste, (Barra,
Chow (for Lew/one)
Belmont/NEC
Brian Kane/NEC

Copied
Echaveste
Reed
Podesta
Ibarra

THE WHITE HOUSE
WASHINGTON

(Signature)

Mr. Raul Yzaguirre
President
National Council of La Raza
Suite 1000
1111 19th Street, N.W.
Washington, D.C. 20036

SDUC -
Hispanic Council

Dear Raul:

Thank you for your letter about the Hispanic Education Action Plan (HEAP) and the White House Initiative on Educational Excellence for Hispanic Americans. Your letter raises serious questions, and I have asked Secretary Riley and OMB Director Jack Lew to address them.

The White House Initiative and HEAP are important components of our work to strengthen education for Hispanic children, and I firmly believe that these efforts will have a significant and lasting impact on our nation if we work together to ensure their success. I want to assure you that my Administration is deeply committed to providing a world-class education to every child in our nation and that improving opportunities for Hispanic children remains an important part of this endeavor.

Thanks, again, for your candid assessment. I have directed Maria Echaveste, my Deputy Chief of Staff, to work with you and keep me apprised of our progress. Best wishes.

Sincerely,

(Signature)

*your letter raised some
disturbing questions
& I'll get on it.*

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

September 21, 1999
(Delivered by hand)

Hon. Bill Clinton
President of the United States
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Mr. President:

I write to you on an urgent matter that demands your immediate attention. You have noted the Administration's success in conceiving and then winning increased funding from Congress for the Hispanic Education Action Plan (HEAP), and deservedly so. NCLR has supported HEAP vigorously, both in its planning stages within the Administration and in our lobbying efforts with the Congress. In addition, we have given the Administration substantial credit for this first-ever, major programmatic federal education initiative targeted to the Hispanic community. We recognize that, on symbolic grounds alone, the HEAP is an important, precedent-setting, groundbreaking initiative, and we very much appreciate the personal attention you and the Vice President have given to its conception and implementation.

Having said that, we are obligated to call to your attention several serious and long-standing problems which threaten to turn the HEAP into a complete sham. Permit me to give you some background. Latinos have long been under-served by federal education programs (see attachment 1). The theory behind HEAP – to provide major increases in funding to programs for which Latinos students are disproportionately *eligible* – makes sense as a strategy only to the extent that Hispanic children are *actually served* by such programs. Thus, HEAP makes sense only if the problem of underrepresentation is addressed. The Executive Order signed by President Bush in 1990 and that you re-issued designed in part to address the underrepresentation issue. It established a structural mechanism to monitor and encourage progress toward improving the responsiveness of federal education programs to the Hispanic community.

Thus, our support for the HEAP was conditioned on "off-budget" improvements in program implementation that would make such programs, as well as other important programs like Head Start, more responsive to our community. We believed, inaccurately as it turns out, that the combination of the White House Initiative overseeing the Executive Order and a special inter-departmental team overseeing HEAP implementation together would produce the kinds of programmatic and policy changes needed to increase Hispanic access to HEAP and related programs.



Program Offices: Phoenix, Arizona • San Antonio, Texas • Los Angeles, California • Chicago, Illinois

LA RAZA: The Hispanic People of the New World

National Office

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Mania E. Brown
we need to get on
the -
COPY

1 We have participated in numerous discussions with, and have provided specific recommendations to Administration officials to address the chronic denial of access of Hispanic students from federal education programs (see attachment 2). We had confidence in the commitment and competence of the very able public servants involved in these efforts, and expected by now to see some real, substantive changes.

Unfortunately, two related sets of documents have led us to conclude that, in the absence of your immediate personal intervention, these efforts will result in failure. First, we have reviewed an initial draft of the Department of Education's HEAP implementation plan. While the plan lists numerous ongoing actions that relate to Hispanics, it does not include a single, substantive program or policy change that will materially improve Latino access to and participation in the Department's programs. While we have not seen a counterpart document related to Head Start, we have reason to believe that no important developments have taken place with respect to that program either.

Second, we have reviewed a preliminary draft of the FY 1998 Annual Performance Report on Implementing Executive Order #12900. As the draft report states, in pertinent part:

The majority of the reporting agencies have not adequately monitored and addressed Hispanic participation in educational and employment related programs since 1995... Agency reports show a gross underrepresentation of Hispanic American participation in programs. This deficiency is increased because most reports do not provide either specific strategies to gauge Hispanic participation or design plans that address program effectiveness.

I would add that many of the agency reports seemed designed deliberately to obfuscate rather than enlighten.

We believe that three major problems underlie the failure of both the Bush and Clinton Administrations to reverse the chronic, gross underrepresentation of Latinos in federal education programs. First, all of us have underestimated the intransigence of the federal bureaucracy, a few political appointees, and other entrenched interests who have resisted change consistently and energetically. Second, the existing Executive Order has failed to be the kind of effective accountability mechanism that we had hoped it would be, in part because too many people involved, including the White House, simply have never made a serious commitment to making it work.

Third, however, I must take some personal responsibility for failing to bring greater public attention to the scope and persistence of this problem. I had hoped that by working quietly with the many able Administration officials of good will, together we would be able to reverse this situation. It is now clear to me that this has not worked.

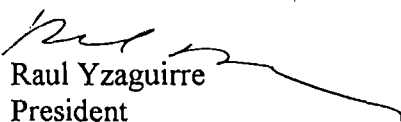
1 Unless we are able to come up with a solution very quickly, I must say that I face some difficult questions. As it now stands, HEAP borders on fraud. It purports to target

resources to Hispanics, but in fact many of the programs it funds actually under-serve Latino children. How can I, in good conscience, continue to ask public officials and leaders in my own community to continue to support increased appropriations for programs which deny equal opportunity to Hispanics? With respect to the Executive Order, since my resignation as Commission Chair in 1996, I have kept my commitment to the you, Secretary Riley, and other members of the Commission to refrain from publicly criticizing the initiative, and I have instructed my staff to cooperate fully with its work. In light of recent developments, don't I have an obligation to declare the effort a failure and call for its abolition?

I request immediate personal intervention by you and/or the Vice President to see if we might be able to develop an effective response to the problem, and ask for a meeting with you and/or the Vice President within the next 10 days to discuss the issue. Please have your staff contact me or my scheduling assistant Helen Coronado at (202) 776-1739 to arrange a mutually convenient time to meet.

Thank you for your personal attention to this issue.

Sincerely,


Raul Yzaguirre
President

cc: Vice President Al Gore



HISPANIC PARTICIPATION IN FEDERAL TRIO PROGRAMS ISSUE BRIEF

April 1998

Contact: Raul González
(202) 776-1734

Overview

The Hispanic population is rapidly growing; it is projected to be one-fourth of the total U.S. population by the year 2050. Even though Hispanics constitute more than 40% of net, new labor force entrants, our education system is not meeting the challenge of adequately preparing Latinos for the 21st century workplace. Hispanics continue to face some of the most daunting challenges to completing high school and going on to college. For example:

- **Latino children have a higher poverty rate than any group of children.** Between 1993 and 1995, the number of Latino children living at the poverty level nearly doubled from 21% to 40%. Today, Hispanics constitute 10% of the total U.S. population, but nearly 30% of low-income children, according to Census data.
- **Latino students are more likely to be retained in grade.** According to the *U.S. Census Current Population Survey (CPS)*, among 15- to 17-year-olds, 39.9% of Latinos were retained in grade, compared to only 29.6% of White students.
- **The Latino dropout rate of 30% exceeds that of all other groups.** The CPS data also show that students who are retained in grade are at higher risk of dropping out of school. Of the 13.3% of 16- to 24-year-olds who repeated one or more grades by 1995, approximately one-quarter had dropped out by 1995. Thus, Latinos are doubly disadvantaged.

Hispanic Participation in TRIO Programs

Given that in 1997 Hispanics constituted approximately 30% of poor children in the United States, Hispanics should constitute about 30% of children served by federal education programs. Unfortunately, despite the alarming statistics cited above, Hispanic students are under served by federal education programs designed to serve the neediest of our children, including the so-called "TRIO" programs. TRIO programs were created to serve disadvantaged children and youth by providing intervention services, such as outreach to school dropouts, to increase secondary school completion rates. In addition, support services, including financial and personal counseling, are provided to help disadvantaged students complete postsecondary education. The most important of these programs for Latinos are Talent Search and Upward Bound. Unfortunately, Latino youth are underrepresented in these programs, as the data below clearly show.



- While Latinos constitute approximately 30% of all poor children. In 1997, *only 16% of students participating in TRIO programs were Hispanic.*
- The percentage of Latinos served by TRIO has decreased over time. In 1977, for example, 18% of students participating in TRIO programs were Latino, compared to 16% in 1997 (see chart A below). This decrease occurred during a period in which the Hispanic population increased from nearly 15 million of the total population in the 1980 Census to more than 29 million in 1997 (see chart B below).

Chart A - Latino Participation Rate Has Decreased

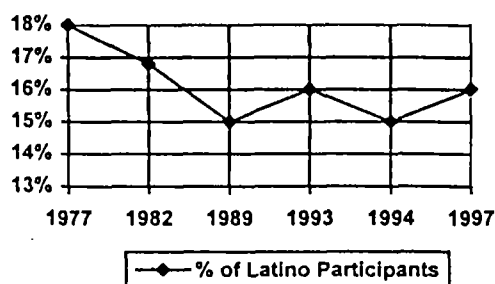
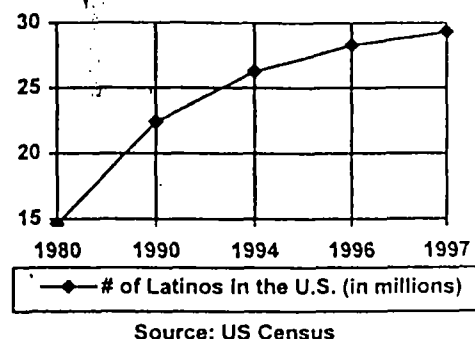


Chart B - While Population Has Increased



Misleading Participation Data

Because some published data includes Puerto Rican participants, but excludes Puerto Rico poverty statistics, it may appear that TRIO programs are reaching disadvantaged children from all backgrounds proportionately. Some have inaccurately claimed that about 20% of TRIO participants are Latino. This percentage is based on U.S. Department of Education data which include students from Puerto Rico participating in TRIO programs. *However, these numbers are measured against population eligibility data that do not include Puerto Rico.*

In order to achieve “apples to apples” comparisons, one must either delete Puerto Ricans from the participant category, or add Puerto Rican poverty statistics to the eligibility category.

- If Puerto Rican participants are eliminated from the participant category, the percentage of Hispanics served by TRIO drops from 20% to 16% in 1997.
- If Puerto Rico poverty statistics are added to the eligibility category, then the proportion of Hispanics within all persons eligible for TRIO increases from 28% to approximately 33%.
- By either standard, Hispanics are under-served by 12 to 13 percentage points.

If Latinos were equitably served by TRIO, which according to the U.S. Department of Education included approximately 671,102 participants in the 1996-97 program year, by either method of comparison, Hispanic TRIO program participation would be dramatically higher.

- In the 1996-97 program year, there were about 107,376 Hispanic participants (16% of 671,102).
- If, in 1996-97, Hispanics were equitably served, then Latino participation would have been approximately 187,909 (28% of 671,102).

Thus, more than 80,000 eligible Latinos should be, but are not, served by TRIO programs. Moreover, these data understate the degree of underrepresentation in TRIO. In addition to poverty status, TRIO eligibility is based on first-generation college attendance. Since Hispanics have the lowest rates of college attendance of any major population group, the actual proportion of Latinos within the total pool of TRIO-eligible students is higher than the 28% (excluding Puerto Rico data) or 33% (including Puerto Rico data) figures cited above.

Latino Participation in Selected TRIO Programs

Talent Search

Talent Search programs reach students in grades six through 12 to identify, encourage, and assist students from disadvantaged backgrounds in completing high school and entering college. Additionally, the program serves high school dropouts by encouraging them to complete their education. Program services include counseling, information on college admissions, financial aid and scholarships, and trips to college campuses.

- | | |
|--|---------|
| • Total number of students served in FY 1993: | 300,981 |
| • Percentage of Latino students who are eligible: | 28% |
| • Number of Latino students served: | 49,248 |
| • Percentage of all participants who are Latino: | 16% |
| • Number of eligible Latino students who would be served if equitably represented: | 84,275 |

Upward Bound

Through special instruction, Upward Bound programs provide participants ages 13 to 19 with skills to succeed in postsecondary education. In addition to instruction in basic skills, participants receive academic and financial counseling to enhance their chances of completing high school and entering and graduating from college.

- | | |
|--|--------|
| • Total number of students served in FY 1993: | 44,684 |
| • Percentage of Latino students who are eligible: | 28% |
| • Number of Latino students served: | 7,062 |
| • Percentage of all participants who are Latino: | 15% |
| • Number of eligible Latino students who would be served if equitably represented: | 12,512 |

Policy Recommendations

Representative Ruben Hinojosa (D-TX) and Senator Jeff Bingaman (D-NM) have introduced legislation to the "Higher Education Amendments Act of 1998" (H.R. 6) that would give new applicants a chance to compete for TRIO funds. Some who oppose their efforts have argued incorrectly that Representative Hinojosa and Senator Bingaman are attempting to alter the scope of the program to focus solely on dropout prevention, and that they are making participation in the program "race based." *Their legislation would not change the way existing or new programs operate, nor would it grant preferential treatment to applicants proposing to serve specific racial or ethnic groups.* Representative Hinojosa and Senator Bingaman are attempting to create a "level playing field" for all applicants, while ensuring that current programs can continue providing services.

The amendment authored by Representative Hinojosa and Senator Bingaman would be triggered *only if the amount of funds appropriated for TRIO exceeds the fiscal year 1998 amount, \$530 million.* If future allocations exceed this figure, the excess funds would be distributed in a way that provides *equal* preference points for programs with "prior experience" and applicants serving eligible populations in geographic areas which have been underserved by TRIO, and the degree to which these applicants serve schools with high dropout rates.

Sources

"Dropout Rates in the United States: 1995," National Center for Education Statistics, July 1997.

"Federal TRIO Programs," Office of Postsecondary Education, United States Department of Education, Spring 1998.

"Digest of Education Statistics, 1997," National Center of Education Statistics, December 1997.

"Historical Poverty Tables," United States Bureau of the Census Website.

ATTACHMENT #2



Raul Yzaguirre, President

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 776-1792

MEMORANDUM

TO: Barbara Chow, Associate Director, Office of Management and Budget
Janet Murguia, Deputy Director for White House Legislative Affairs
Sarita Brown, Executive Director, White House Initiative on Educational
Excellence for Hispanic Americans

FROM: Charles Kamasaki, Senior Vice-President, NCLR
Cecilia Muñoz, Vice-President, NCLR
Roberto Rodríguez, School Reform Coordinator, NCLR

DATE: March 4, 1999

CC: Maria Echaveste, Deputy White House Chief of Staff
Jonathan Schnur, Associate Director for Domestic Policy, Office of the
Vice- President
Mo Vela, Chief Financial Officer, Office of the Vice-President

SUBJ: Recommendations for Implementation of Hispanic Education Action Plan

BACKGROUND

Thank you for your recent meeting to discuss the implementation of the Hispanic Education Action Plan (HEAP). NCLR appreciates the seriousness of your commitment to addressing our concerns. Per your request, we have developed a substantial list of recommendations designed to improve the responsiveness of certain federal education programs to Hispanics.

Before listing specific recommendations, we would make several observations. First, reversing the long-term neglect of Latinos in federal education programs will require a major and sustained effort. Given this reality, we recognize and appreciate the significance of your leadership. Second, we believe that reversing the situation will require affirmative steps, not just passive outreach efforts. We acknowledge some of the steps taken with respect to GEAR UP— i.e. holding outreach meetings in predominantly Hispanic communities and disseminating flyers to Latino organizations. However, as experience to date has shown, outreach is not enough. This holds true given past instances of inertia, reluctance by some elements of the bureaucracy to accept new policies, and in this case, the wording of the regulations themselves, which do not explicitly clarify a *major* role for community-based organizations.



Program Offices: Phoenix, Arizona • San Antonio, Texas • Los Angeles, California • Chicago, Illinois

LA RAZA: The Hispanic People of the New World

Finally, we would note that, in many other contexts, the federal government exercises discretion to “de-target” funds. One example of such discretion is evident in the competitive grant process and funding of the 21st Century Community Learning Centers Program. Although the statute explicitly targets funding to *inner city* and *rural* schools, the Department of Education has permitted all school districts to apply for this competitive grants program. This raises an issue concerning why it appears to be so difficult to do the reverse, that is, to target funds to deserving populations.

NCLR offers its recommendations below in three categories. The first notes recommendations that are applicable to a broad range of competitive programs, such as Head Start, TRIO, and GEAR UP. Following these recommendations appear sub-recommendations in italics, particularly applicable to a single program. Specific programs are identified in the context of these recommendations. The second category outlines recommendations for the implementation of Title I— a formula-driven program that warrants separate and particular attention. The third and final category lists recommendations for other programs included in the broader scope of the Hispanic Education Action Plan.

RECOMMENDATIONS

A. COMPETITIVE PROGRAMS

1. **PROCEDURAL IMPROVEMENTS:** These include actions that might improve the process through which policies are designed, grantees are selected, and programs are implemented. The value of such changes lies in the potential to improve the basic “infrastructure” of the program; the downside is that it is likely to be many years before any tangible changes result from these “process” improvements.
 - Increase staff expertise on education of Latino and language minority children (both career and political appointees).
 - Increase number of proposal reviewers who have expertise in serving Hispanic and language minority children, such that each set of proposal review teams includes persons with such expertise.
 - Enhance the capacity of the agencies to serve Latino and language minority children through hiring of qualified Latino staff, retaining a pool of consultants who specialize in these issues, conducting relevant staff development and training sessions, and other means.
2. **IMPROVE TARGETING OF EXISTING FUNDING:** These include actions to help immediately shift program resources to more effectively and equitably serve Hispanic and language minority children. The value of such changes lies in the potential to realign significant dollars to Latinos and other underserved communities in the short term, and to build an “infrastructure” within Hispanic and other underserved communities which will

maximize their capacity to effectively compete for funds; the downside includes likely resistance from the bureaucracy and presumably grantees.

- Revise specific Notice of Funding Alerts (NOFAs) and proposal scoring systems to require/encourage improved targeting, based on special population groups or geographic areas. For example, at least one set of NOFAs released by the Department of Housing and Urban Development in the early 1990s explicitly established priorities for serving communities in the Southwest, based on research demonstrating a shortage of community development corporations in this region. Similarly, a recent HUD NOFA for homeownership programs established priorities for applicants serving new immigrants, based on research demonstrating the importance of this population group as prospective homeowners.
 - In the Head Start/TRIO context, NOFAs could be written to target funding to rapidly-growing population groups such as new immigrants, language minorities, and/or children of high school dropouts (all of which are somewhat effective proxies for Latinos); or geographic areas such as broad regions— i.e. California, the Southwest, the Northeast, and Washington, DC— that might be underserved; and/or specific neighborhoods experiencing significant Latino population growth.
 - *This should be easier to accomplish with GEAR UP, inasmuch as it is a new program. One important NOFA/regulation issue here is that community-based organizations should be explicitly authorized to play a “lead role” or “significant role” in partnerships permitted under the program. Given that the initial funding round for GEAR UP is imminent, some thought might be given to reserving a portion of this funding for a more targeted NOFA to be issued in the near future.*
 - A variant of this “proxy targeting” approach that might meet less resistance may be to take some portion of “new” money— i.e. funding available due to new authority, or increases in appropriations— for such special targeting.
 - *One particularly interesting opportunity involves the potential new funding in the Head Start reauthorization’s Family Literacy Services provisions, which provide for 100 Head Start agencies to engage in collaborative partnerships with other entities. This would appear to be an ideal opportunity to draft a NOFA which targets a substantial portion of such funding to collaborations that serve Latino and language minority populations.*
3. **AGGRESSIVE TARGETING OF DISCRETIONARY FUNDING:** These include measures to maximize the use of discretionary funding to alleviate underrepresentation of Latino children, and improve the quality of services available to them. One advantage of this approach is that we might reasonably expect quick results, such as implementation in a single funding cycle; the downside is that gains could be transitory and the resource levels affected are relatively small.

- Conduct pilot and demonstration programs assessing the efficacy of various approaches to serving language minorities, new immigrants, and/or children of high school dropouts. One way to make this happen would be to use existing research and/or evaluation dollars to fund programs that serve Latinos to test various innovative approaches. In effect, the existing set of grantees would serve as the "control" group against which the innovations would be compared. This also has the effect of expanding and adding program flexibility by "transferring" research funds to programs. Such efforts also have the virtue of being able to modestly improve both the quantity and quality of services to Latinos simultaneously.
 - *One particularly attractive approach, given the Administration's literacy initiative, might be programs consistent with the National Research Council's recent report designed to provide early intervention to children to encourage phonological awareness and literacy development.*
 - *Similarly, various "family reading" programs (such as the Family Literacy program mentioned above, to the extent the program includes any discretionary funding) to encourage greater parental involvement, or tutoring programs that use volunteers, should aggressively target Latino organizations and communities.*
- In this connection, there may be opportunities to conduct joint "research and demonstration" programs between Head Start, TRIO, and GEAR UP and various divisions in the Department of Education, particularly with the Office of Bilingual Education and Minority Language Affairs (OBEMLA), various Adult Education Act programs, the National Center for Education Statistics (NCES) and/or the Office of Educational Research and Improvement (OERI).
- Establish a clearinghouse or center to evaluate, identify, and disseminate "best practices" for serving the target populations. One center (modeled after the Title VII bilingual education clearinghouse) or a group of centers (modeled after the regional Title I or desegregation assistance centers) could encourage existing mainstream providers to serve greater numbers of Latino and language minority kids by helping them to establish and implement special initiatives responsive to their needs.
 - *One specific application may include establishing a Head Start clearinghouse devoted principally or exclusively to identifying and disseminating early childhood development "best practices" with respect to Latino/language minority children.*
 - *A similar approach would involve a TRIO/GEAR UP clearinghouse devoted to identifying and promoting exemplary and innovative practices involving Hispanic and language minority children. We note*

parenthetically that we believe that unfounded but understandable fears and misperceptions of the college residential component of Upward Bound may deter Latino participation, particularly among immigrants. One way of addressing this might be through partnerships with trusted community groups; another angle might be to experiment with innovative, non-residential programs.

4. OUTREACH, TRAINING AND TECHNICAL ASSISTANCE:

- These and other changes should be accompanied by improved outreach and technical assistance to prospective grantees— either for those replacing de-funded providers, for new competitions as service areas are re-defined, or for new programs. This could be done as part of existing Training and Technical Assistance (T&TA) Cooperative agreements, or through discretionary funding, such as purchase orders or unsolicited proposals. Specific actions should be considered that would:
 - *Assure that training and technical assistance resources are targeted to providers with a commitment to and expertise in serving the target populations, a description that most observers would agree does not include the existing T&TA Head Start or TRIO providers. One variant of this idea could involve encouraging – or requiring if necessary – the principal T&TA providers to establish partnerships with organizations with greater expertise in serving Latinos and other language minority populations. A related idea would be to separately bid out T&TA contracts targeted exclusively to organizations demonstrating commitment to and expertise in serving Latino and language minority populations.*
 - *Assure that, for new programs such as GEAR UP – and for special subsets of existing programs, i.e., prospective new applicants for Head Start or TRIO – T&TA is available to help new applicants submit competitive proposals. Thus, outreach and training need not be carried out by existing T&TA providers or by Department staff (who, as we note above, may be part of the problem). Instead, an “alternative T&TA network” dedicated to reversing the historic underrepresentation of Hispanics could be established relatively quickly through purchase orders, task orders, and the funding of unsolicited proposals.*

B. TITLE I

For FY 1999, the Clinton Administration was successful in securing over \$300 million in “new” Title I funding targeted to Hispanic students. Unlike other programs that serve specific students directly, Title I dollars are more broadly disbursed to schools to serve students within a general district. Moreover, until the 1994 ESEA reauthorization, an historical statutory ambiguity led many school districts to exclude language minority students from most or all of Title I-funded services. It is also likely that some form of “Ed-Flex” will be enacted this year, further

HISPANIC PARTICIPATION IN SELECTED FEDERAL ANTI-POVERTY PROGRAMS ISSUE BRIEF

July 1997

Contact: Eric Rodriguez

Overview

The Hispanic population is currently 10.7% of the entire U.S. population and is projected to become the nation's largest ethnic minority group within the next decade. In fact, Hispanics are projected to constitute one-quarter of the U.S. labor force by 2050, and have now surpassed African Americans as the poorest U.S. population (with 30.3% and 29.3% poverty rates respectively). Most troubling about these data is that many young Latinos, who represent a large proportion of the future U.S. labor force, are now growing up poor; two out of every five Hispanic children today live below the poverty line (40%). Despite this situation federal policies have failed to focus on, or even recognize, Hispanic poverty as a growing and important national problem. Moreover, federal programs designed to address and alleviate poverty and open up opportunities for all disadvantaged Americans continue to underserve and neglect Hispanics.

Representation

Given that Hispanics in 1995 constituted more than 22% of poor American families and about 28% of American children who are poor, Hispanics should constitute at least 22% of families and 28% of children served by the major federal anti-poverty programs. Most programs listed below are means-tested, i.e., weigh individual and household income and poverty status as the most important criteria in determining eligibility for programs.

Children and Youth

Head Start. In 1993, Latinos constituted slightly more than one in six (15%) non-migrant, Head Start participants on the U.S. mainland, while almost two-fifths (36%) of enrollees were Black, and one-third (33%) were White.

Job Training Partnership Act (JTPA) Youth Programs. In 1994, Latino youth accounted for one in five (19%) young persons served by JTPA title III employment and training programs for disadvantaged youth (which include Summer Youth employment services). In comparison, in 1994, Black and White youth accounted for more than one-third (35%) and more than two-fifths (41%), respectively, of participants served by JTPA youth programs.

Job Corps Youth Programs. In program year 1995, Job Corps, the nation's largest residential education and training program for disadvantaged youth, served more than 68,000 youth. Of those served Latinos constituted fewer than one in six (15.8%) Job Corps participants, while more than one-quarter were White (28.7%) and half were Black (49.4%).

TRIO Higher Education Programs. In the 1993-94 school year, Hispanics accounted for slightly more than one in seven (15%) of those served in TRIO higher educational opportunity programs (which include programs like Upward Bound, Talent Search, and Ronald E. McNair Postbaccalaureate Achievement awards), a decrease from almost one-quarter of participants served by TRIO in 1978.

Medicaid. In 1995, more than three in five (61.8%) children receiving Medicaid were classified as White (including Hispanics), while fewer than one in three (31.7%) children receiving Medicaid were Black. When data are disaggregated, fewer than one-quarter (23.3%) of all poor children receiving Medicaid benefits in 1995 were Hispanic.

Apprenticeship/School-to-Work. In 1994, just one in fifteen (6.6%) newly registered apprentices in the U.S. were Hispanic, while one in ten (10.7%) were Black, and nearly four out of five (79.2%) were White.

Families and Adults

Job Training Partnership Act Adult Programs. In 1994, Latinos comprised slightly more than one in eight (13%) participants of Title II-A adult JTPA employment and training programs. In contrast, White participants constituted half (50.8%), while Black participants made up fewer than one-third (30.6%) of all JTPA adult participants.

Medicaid. In 1995, Latinos constituted slightly more than one in six (17.4%) of all Medicaid recipients, compared to White and Black participants, who constituted more than four in nine (45.5%) and one-quarter (24.8%), respectively, of all Medicaid recipients.

Food Stamps. In 1995, while fewer than one in five participant households (19%) receiving Food Stamps were Latino, more than two in five (41%) participant households receiving Food Stamp were White and one-third (33%) were Black.

Job Opportunities and Basic Skills Training program (JOBS). In 1992, Hispanics constituted slightly more than one in eight (12.8%) participants in JOBS -- the employment and training program for welfare recipients -- while they accounted for about one in six (17%) welfare recipients that year. In comparison, White and Black participants were 47.2 percent 32.4 percent, respectively, of JOBS participants, while they constituted 38.9 and 37.2 percent, respectively, of AFDC recipients in 1992.¹

¹ Under the Personal Responsibility and Work Opportunity Act of 1996 (welfare reform act of 1996) the JOBS program was abolished and funding for work programs was consolidated into the Temporary Assistance for Needy Families (TANF) Block Grant.

Housing Assistance. Latinos constitute about 12% of households receiving federal housing assistance (which includes Public Housing, Section 8, and Housing Voucher programs), even though they account for nearly 20% of poor households and 18% of households with "worst case" needs.

Civil Rights

Federal Civil Rights Monitoring and Enforcement. The Equal Employment Opportunity Commission (EEOC) continues to fail to serve Hispanics adequately; for example, in 1996, Hispanic charges alleging discrimination based on national origin accounted for only 8.6% of the EEOC's combined charge caseload, while charges alleging discrimination based on race (Black), gender (female), and age, made up 33.8%, 30.6% , and 20.1%, respectively, of the total charge caseload. In addition, cases involving Latinos typically constitute almost 10% of the caseload of HUD's Fair Housing and Equal Opportunity division's caseload of housing discrimination complaints.

Employment

Federal Employment. Hispanics constitute 6% of federal employees, although they were more than 9.5% of the civilian labor force in 1996. Moreover, data suggest that Hispanics are even more severely under-represented at the state-local level. As a result, one traditional "career ladder" for minorities to escape poverty has been effectively blocked for Latinos.

Conclusions

It is difficult to avoid the conclusion that Latinos are severely underrepresented by federal programs and services. Overall, these data show that, literally from "cradle to grave," poor and near-poor Hispanics are denied access to programs designed to alleviate poverty and improve economic opportunity. NCLR is far less concerned about underrepresentation in, say, Temporary Assistance to Needy Families (TANF) programs (welfare), which some have argued persuasively does not effectively promote opportunity. However, given the growing importance of Latinos to the nation's future economic well-being, all Americans should share NCLR's concern that Hispanics are denied fair access to education (Head Start, TRIO), job training (JTPA, School-to-Work), and similar programs designed specifically to improve long-term economic opportunities for disadvantaged Americans.

It has become fashionable in some quarters to suggest that federal government involvement decreases opportunity and worsens poverty. Whether or not this is true for other populations, it simply does not apply to Hispanic Americans, who have the dubious distinction of having the highest poverty rates of any major population group, despite having been ignored or neglected by federal anti-poverty initiatives for decades. In fact, the absence of fair treatment of Hispanics in the distribution of government benefits and services -- particularly those that build human capital

skills and support or encourage work -- appears to be a more persuasive explanation of the high and growing incidence of Latino poverty.

NCLR will provide citations for the data used in this Issue Brief. For more information contact Eric Rodriguez at (202) 776-1786.

Sources

Published and unpublished data were provided by the following agencies: Health Care Financing Administration (Medicaid); the Administration for Children and Families, Department of Health and Human Services; the Department of Labor (JTPA, Apprenticeships); the Department of Agriculture (Food Stamps); the Department of Education (Head Start, Bilingual Education, TRIO); and the Equal Employment Opportunity Commission (civil rights data). The following publications were used as source material: *Poverty in the United States: 1995*, U.S. Bureau of the Census, October 1996 (poverty data); "Underrepresentation in Housing Assistance Programs", National Council of La Raza, 1997; and an Annual Report to Congress, Federal Equal Opportunity Recruitment Program, 1996 (federal employment data).

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Hyman King
Editor

Linking education, economy

Lowering Hispanic dropout rates would lift revenue, study finds

The United States jeopardizes its economy by neglecting to expand opportunities for higher education for Hispanics, the nation's fastest-growing minority group, a report says.

"Our future as a nation will depend on how well we educate Hispanics," says Antonio Flores, president of the Hispanic Association of Colleges and Universities, which co-sponsored the report with the Educational Testing Service, maker of the SAT. Both are nonprofit groups.

The report, called *Education = Success* and released Wednesday, urges policymakers and educators to work to close the gap between college-going rates of Hispanics ages 18 to 24 and those of other groups. Only 22% of Hispanic youths go to college; 32% of all youths go.

If that gap were closed, the report estimates, it would add \$130 billion to the U.S. economy annually and \$46 billion to annual tax revenues. It also would halve the number of Hispanic families with incomes below \$23,000, who depend on public support programs.

The report "helps us make the case that this needs to be a priority," says Sen. Jeff Bingaman, D-N.M., who plans to introduce legislation to battle school dropout rates. The Senate this week approved an increase in appropriation to institutions that serve Hispanics — to \$42 million, from \$28 million. But the House has not approved an increase.

Critiquing laser drills

New laser drills appear to relieve heart patients' chest pain, but a critique in today's *New England Jour-*

Briefs

nal of Medicine questions whether the benefits are an illusion.

The technique, called transmyocardial laser revascularization, became available in large medical centers earlier this year as the latest approach to treating excruciating chest pain caused by bad hearts.

The Food and Drug Administration approved heart lasers developed by PLC Medical Systems of Franklin, Mass., and Eclipse Surgical Technologies of Sunnyvale, Calif.

The approval was based on data in studies being published in the *Journal*.

The technique uses a laser to drill 10 to 50 holes in the heart. Two studies, using the competing laser instruments, found that three-quarters of severely impaired patients improved significantly.

However, the editorial in the same journal — written by cardiologists from the University of Texas Southwestern Medical Center in Dallas — raises the possibility that the benefits were imaginary, or a placebo effect.

In the studies, half the patients got laser treatment, while the rest received standard medicines.

Among the Texas doctors' concerns was that patients knew they had gotten the laser, so they may have expected their chest pain to ease.

Keith Allen of St. Vincent Hospital in Indianapolis, who directed one of the studies, responded, "There is more than a placebo effect." He said benefits lasted more than a year, and that a placebo effect would almost certainly have worn off by then.

By Mary Beth Marklein
and The Associated Press

Federal scrutiny for gene therapy

Death prompts investigation of side effects

By Tim Friend
USA TODAY

The first death of a person undergoing gene therapy has triggered a government review of side effects associated with the gene delivery system used in the experiment, officials said Wednesday.

Jesse Gelsinger, 18, of Tucson, Ariz., was participating with 17 others in a gene therapy study of a rare metabolic disorder at the University of Pennsylvania. He died Sept. 17 after progressive organ failure, which began in the liver. The others were not affected.

The goal of gene therapy is to replace missing or defective genes with healthy ones. Since 1990, more than 4,000 people have received gene therapy, most with the same gene delivery method. Mild immune system responses are the most common side effects.

The delivery vehicle, or vector, used on Gelsinger is an adenovirus, which is a cold virus modified to carry genes into cells. The modified virus does

not cause a cold, but it retains the machinery for getting itself inside cells. Patients tend to react to proteins on the virus' shell.

The review of studies using adenovirus vectors is intended to reveal side effects that may have been unreported or overlooked, if they exist, says Amy Patterson, director of the Office of Recombinant DNA Activities at the National Institutes of Health. Results will be discussed at a December meeting of NIH's Recombinant DNA Advisory Committee, RAC.

"This is prompting a very careful review by the scientists involved in the study, federal investigators and others in the field. That is the first step," Patterson says.

Additional oversight of gene therapy trials does appear necessary for now, she added. Human gene therapy studies are approved by internal review boards at institutions where studies are done and by the Food and Drug Administration. The RAC may hold public hearings on novel studies, but it does not have authority to approve or reject a study.

"It is truly a very sad and unfortunate incident," says Savio Woo, president of the American Society of Human Gene Therapy. "The trial was well designed and properly reviewed by all regulatory agencies. There was nothing wrong with it, but it reflects the fact that, indeed, gene therapy is an experimental therapy."

James Wilson, director of the Human Gene Therapy Institute at Penn, says the study team is trying to determine what happened in Gelsinger at the cellular level. The results will be presented to other scientists and published when available.

FTC looks at deals by drugmakers

Patent-related pacts may thwart cheaper generics

By Jayne O'Donnell
USA TODAY

Federal antitrust enforcers are investigating at least four deals they think may be stealing some of the promise of cheap, widely available generic drugs.

Along with Hoechst's agreement with generic drugmaker Andrx (story, 1B), the Federal Trade Commission is investigating two other patent-related deals between brand-name and generic drugmakers that involve popular medications, including the antidepressant Prozac.

The Justice Department also has been investigating a settlement involving a leading breast cancer drug, tamoxifen.

Government officials are concerned that some brand-name companies are paying off generic companies after suing them for patent infringement. "It's like getting run over by a car, suing the guy that hit you and then paying him and saying you settled the lawsuit," says antitrust lawyer George Cary of Cleary Gottlieb Steen & Hamilton in Washington.

Viren Mehta, a pharmaceutical industry analyst and adviser, says some of the deals are questionable: "There should be certain

limits to a business' right to do everything legally possible to protect its franchise."

But others say the government is going too far in challenging settlements.

Former FTC lawyer Marc Schildkraut says it is asking too much to suggest drugmakers can't settle under these circumstances. Companies, he says, can't be expected to pay for lengthy trials to "vindicate the rights of all citizens."

Under investigation:

► Zeneca Pharmaceuticals' deal with Barr Laboratories involving the generic

equivalent of the breast cancer drug tamoxifen. Zeneca settled a 1993 patent-infringement lawsuit against Barr by paying Barr \$21 million and giving it a nonexclusive deal to distribute a generic form of tamoxifen manufactured by Zeneca. Barr now makes about \$30 million a year from the deal. The Justice Department is not expected to bring a case, but the probe remains open.

► Abbott Laboratories' deals with generic firms Ivax and Geneva Pharmaceuticals involving the blood pressure medication Hytrin.

To settle patent litigation, Abbott agreed to pay \$24 million a year to Ivax and an undisclosed sum to Geneva until the first generic went to market.

► Eli Lilly's agreement with Sepracor involving an antidepressant similar to Lilly's Prozac.

Eli Lilly gave Sepracor a \$20 million contract and up to \$70 million in cash to develop a purified form of Prozac patented by Sepracor.

Critics say the deal lets Eli Lilly extend its patent, which runs out in 2004, for 15 years. But Eli Lilly says R-flooxetine is different chemically.

FTC targets deal to keep generic off shelf

Drugmakers may face antitrust action for \$100M pact

By Jayne O'Donnell
USA TODAY

Federal antitrust enforcers plan to recommend an antitrust lawsuit against brand-name drugmaker Hoechst Marion Roussel and a generic firm because of a multimillion-dollar deal that may have kept a cheaper version of a popular heart drug off the market.

The Federal Trade Commission's expected lawsuit would far-

get an agreement under which Andrx was to get \$100 million a year from Hoechst not to sell a generic version of Cardizem CD. A generic drug can be sold before a brand-name drug's 20-year patent expires only if the generic firm can prove that the patent is invalid or that its drug doesn't violate the terms.

If a generic firm tries to sell a drug before a patent expires, the brand-name firm usually files a patent-infringement lawsuit. Such lawsuits are often settled with the brand-name company allowing the generic firm to go to market if it agrees to pay royalties. However, after six months, any other company can sell the

Andrx, then agreed to the payment while the lawsuit dragged through court. Eventually, Hoechst dropped the lawsuit when Andrx reformulated its drug, which now sells for \$5 to \$10 less a month than Cardizem CD.

Antitrust experts expected the FTC to close the investigation when Hoechst dropped its case. But lawyers involved in the probe say that the FTC wants to alert firms those deals violate antitrust law.

"You have potential or actual competitors buying each other off," says George Cary, a former top FTC litigator who represents Biovail, a generic firm suing

Hoechst over the deal. "It's always profitable to share monopoly profits."

Spokesman Charles Rouse says Hoechst expected the investigation would be closed when it dropped its case. "There are other competitors in that arena now," he says. "We certainly don't believe there is any wrongdoing involved." Hoechst recently refused to sign an FTC consent decree admitting to antitrust violations.

The FTC's Bureau of Competition is expected to recommend suing Hoechst and Andrx within weeks. The four FTC commissioners will have to approve the lawsuit before it is filed.

Inside on 3B

► Antitrust investigators have other drug company deals in their sights.

But if the brand-name company can keep the first generic out of the market until the patent expires, it locks all others out, too. Thus, the benefit of paying the generic firm to keep its drug off the market.

Hoechst had filed a patent-infringement lawsuit against

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

September 21, 1999
(Delivered by hand)

National Office
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Education
Hispanic
Community

COPY

Hon. Bill Clinton
President of the United States
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Mr. President:

I write to you on an urgent matter that demands your immediate attention. You have noted the Administration's success in conceiving and then winning increased funding from Congress for the Hispanic Education Action Plan (HEAP), and deservedly so. NCLR has supported HEAP vigorously, both in its planning stages within the Administration and in our lobbying efforts with the Congress. In addition, we have given the Administration substantial credit for this first-ever, major programmatic federal education initiative targeted to the Hispanic community. We recognize that, on symbolic grounds alone, the HEAP is an important, precedent-setting, groundbreaking initiative, and we very much appreciate the personal attention you and the Vice President have given to its conception and implementation.

Having said that, we are obligated to call to your attention several serious and long-standing problems which threaten to turn the HEAP into a complete sham. Permit me to give you some background. Latinos have long been under-served by federal education programs (see attachment 1). The theory behind HEAP – to provide major increases in funding to programs for which Latinos students are disproportionately *eligible* – makes sense as a strategy only to the extent that Hispanic children are *actually served* by such programs. Thus, HEAP makes sense only if the problem of underrepresentation is addressed. The Executive Order signed by President Bush in 1990 and that you re-issued designed in part to address the underrepresentation issue. It established a structural mechanism to monitor and encourage progress toward improving the responsiveness of federal education programs to the Hispanic community.

Thus, our support for the HEAP was conditioned on "off-budget" improvements in program implementation that would make such programs, as well as other important programs like Head Start, more responsive to our community. We believed, inaccurately as it turns out, that the combination of the White House Initiative overseeing the Executive Order and a special inter-departmental team overseeing HEAP implementation together would produce the kinds of programmatic and policy changes needed to increase Hispanic access to HEAP and related programs.



We have participated in numerous discussions with, and have provided specific recommendations to Administration officials to address the chronic denial of access of Hispanic students from federal education programs (see attachment 2). We had confidence in the commitment and competence of the very able public servants involved in these efforts, and expected by now to see some real, substantive changes.

Unfortunately, two related sets of documents have led us to conclude that, in the absence of your immediate personal intervention, these efforts will result in failure. First, we have reviewed an initial draft of the Department of Education's HEAP implementation plan. While the plan lists numerous ongoing actions that relate to Hispanics, it does not include a single, substantive program or policy change that will materially improve Latino access to and participation in the Department's programs. While we have not seen a counterpart document related to Head Start, we have reason to believe that no important developments have taken place with respect to that program either.

Second, we have reviewed a preliminary draft of the FY 1998 Annual Performance Report on Implementing Executive Order #12900. As the draft report states, in pertinent part:

The majority of the reporting agencies have not adequately monitored and addressed Hispanic participation in educational and employment related programs since 1995.... Agency reports show a gross underrepresentation of Hispanic American participation in programs. This deficiency is increased because most reports do not provide either specific strategies to gauge Hispanic participation or design plans that address program effectiveness.

I would add that many of the agency reports seemed designed deliberately to obfuscate rather than enlighten.

We believe that three major problems underlie the failure of both the Bush and Clinton Administrations to reverse the chronic, gross underrepresentation of Latinos in federal education programs. First, all of us have underestimated the intransigence of the federal bureaucracy, a few political appointees, and other entrenched interests who have resisted change consistently and energetically. Second, the existing Executive Order has failed to be the kind of effective accountability mechanism that we had hoped it would be, in part because too many people involved, including the White House, simply have never made a serious commitment to making it work.

Third, however, I must take some personal responsibility for failing to bring greater public attention to the scope and persistence of this problem. I had hoped that by working quietly with the many able Administration officials of good will, together we would be able to reverse this situation. It is now clear to me that this has not worked.

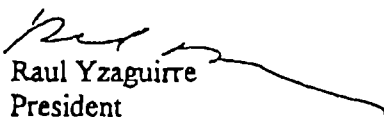
Unless we are able to come up with a solution very quickly, I must say that I face some difficult questions. As it now stands, HEAP borders on fraud. It purports to target

resources to Hispanics, but in fact many of the programs it funds actually under-serve Latino children. How can I, in good conscience, continue to ask public officials and leaders in my own community to continue to support increased appropriations for programs which deny equal opportunity to Hispanics? With respect to the Executive Order, since my resignation as Commission Chair in 1996, I have kept my commitment to the you, Secretary Riley, and other members of the Commission to refrain from publicly criticizing the initiative, and I have instructed my staff to cooperate fully with its work. In light of recent developments, don't I have an obligation to declare the effort a failure and call for its abolition?

I request immediate personal intervention by you and/or the Vice President to see if we might be able to develop an effective response to the problem, and ask for a meeting with you and/or the Vice President within the next 10 days to discuss the issue. Please have your staff contact me or my scheduling assistant Helen Coronado at (202) 776-1739 to arrange a mutually convenient time to meet.

Thank you for your personal attention to this issue.

Sincerely,


Raul Yzaguirre
President

cc: Vice President Al Gore



DRAFT

**WHITE HOUSE INITIATIVE ON
EDUCATIONAL EXCELLENCE FOR HISPANIC AMERICANS**

**Educational
Standards,
Assessment, and
Accountability:
A New Civil Rights
Frontier**

Summary of a policy seminar series

The policy seminar series was held in cooperation with the Office for Civil Rights, U.S. Department of Education.

Educational Standards, Assessment, and Accountability:

A New Civil Rights Frontier

The education of Hispanic students is an increasing challenge for schools in the United States. Because of the large percentage of Latino women in their childbearing years, the Hispanic population, which grew by 50 percent during the 1980s, is expected to continue to increase dramatically in the next decade. By the year 2010 Hispanics will comprise the largest minority in the United States and a majority in four states.

But as the Hispanic population continues to expand faster than other subgroups of the nation's population, the educational attainment of this community has persistently lagged well behind the national average. In the early grades, research indicates that the reading and writing skills of students still learning the English language are 50 percent behind students for whom English is their native language. When it comes to learning to read, students learning English have to run the 150-yard dash, while native speakers of English have only to run 100 yards. Many Hispanic students never even complete the race. Today, Hispanic high school students drop out at double the rate of non-Hispanics. Half of the Latino community's adult population is functionally illiterate.

The gap in achievement between Hispanic students and their peers is not just a matter of poverty. The cultural and language backgrounds of students still learning English have a profound impact on student learning. Even among students from wealthy backgrounds, Latinos who have limited facility in speaking and writing English are twice as likely to drop out of school as African-American or white students, according to the National Center for Education Statistics.

What can the nation do to ensure that all Latino students graduate from high school, graduate from college, and secure high-skill, high-wage jobs in the next century?

For the past several years, the nation has been in the midst of movement to set standards for what students should know and be able to do that poses great opportunity for Latino students.

The standards movement is an attempt to refocus schools on their core academic mission, to bolster student skills and knowledge, and establish a powerful way of holding students and adults accountable for student learning to high standards. By setting standards, states and school districts can identify what students are able to do at discrete points during their education. Educators, policymakers, and the public can use standards to determine whether students and schools are reaching desired expectations and the progress schools and individual teachers are making in helping students achieve the desired standards.

Leaders of the Hispanic community are concerned that standards-based tests being developed and implemented to determine which students will advance from grade to grade or graduate are still a relatively new tool in the apparatus of school reform. They have yet to be "stress tested" with this most vulnerable population. Many Latino

educators and policymakers are particularly concerned about how tests will be implemented and interpreted, particularly for students still learning the English language.

To understand more about the effects of standards, accountability and assessment on Latino students, the White House Initiative on Educational Excellence for Hispanic Americans in 1999 launched a series of four policy briefings to identify the challenges posed by testing to this important population, assess the risks, and guide states and school districts on best practices. (See sidebar on Page 4.)

The White House Initiative recognizes the importance and value of standards-based reform but is also deeply concerned about the potential abuse of testing by states and school districts. The Initiative believes that accountability measures for schools, teachers and students—linked to an expectation that all students can achieve to high standards—hold significant promise for our nation’s youth, particularly Hispanic youth.”

But despite its fervent belief in the promise for meaningful reforms that can benefit all of our children, we are increasingly concerned—indeed, at times, alarmed—with the way in which some of the reforms are implemented. In particular, the rush to establish a statewide test as a single measure of mastery of coursework is of great concern in the many cases where students to be held accountable have not had the kind of instruction and support that they should have had to allow them to succeed. This problem is particularly notable (and unacceptable) in cases where other students held to the same standard—often, not minority—have access to exemplary curricula, well-trained teachers, and the kind of learning environment that fosters success.

This paper summarizes many of the observations and concerns raised in the seminars as a means to better inform state and local discussions and influence policies that advance accountability efforts that are fair and equitable and can lead to educational excellence for all students, particularly those with limited English proficiency.

The National Context: Avoiding Inevitable Backlash to Assessments

The issue of whether we can fairly assess the performance of students whose native language is not English is particularly timely and important as the nation’s governors prepare to re-examine the effectiveness of the standards movement over the past few years. Later this month, governors, education leaders, and business leaders will get together in a national summit to discuss what can be done to make standards more effective and to address problems likely to arise as states hold more students accountable for what they should know. Education leaders are worried about the backlash to standards when large numbers of students, not just minority students, fail the state testing programs.

In New York, for example, fewer than half of the state’s 4th graders met competency standards on the reading and writing test, 96- / part of an effort to raise standards across the board. In New York City, which enrolls more than a third of the state’s public school students, two thirds of the 75,000 test takers did not meet minimum standards.

In Virginia, officials have raised the stakes for students with new accountability measures. Starting in 2004, students will need to pass an exam in order to graduate and by 2007, low performing schools will lose accreditation if 70 percent of the students fail to pass the exit exam. But in January 1999, the state department announced that 97 percent of public schools failed the new state tests. In the first round of high-stakes student-achievement tests, given in spring 1998, only 39 of the state's 1,800 schools—or 2.2 percent—met the performance goals on exams linked to the state's Standards of Learning.

With rigorous assessments being introduced across the nation, many more students—not just those from poor and disadvantaged backgrounds—will fail, and states and districts will have to address what to do about these high-stakes results.

But if we expect a great train wreck for the passengers, who until now have been riding in the Club Car, what is the likely effect of these tests on students who have had to struggle to stay on board?

Only a few states, such as Texas and North Carolina, stand out in making progress in closing the gap in performance of minority and disadvantaged students on state-wide exams. In Texas, for example, the passing rate for Hispanics on TAAS rose from 41 percent to 62 percent from 1994 to 1997. Texas students also made the most dramatic gains among the 39 states that participated in the 4th grade math portion of the 1996 National Assessment of Educational Progress. The state's black and white students had the highest average scores of any state, while its Hispanic students ranked sixth. The state's 11-point overall improvement was the largest of any states.

Some observers note that progress in raising achievement for minority students is a key part of the state's accountability system.

Efforts to introduce high-stakes testing without paying attention to minority and low-income populations could have the result of forcing Latino and other students to ensure that continued progress in closing the achievement gap will be possible.

National Policy Discussion

To explore some of these questions and understand more about the potential effects of the standards movement and high-stakes testing on Latino students and the nation as a whole, the White House Initiative convened a series of four seminars. The seminars were initiated in conjunction with the Assessment Committee of the President's Advisory Commission on Educational Excellence for Hispanic Americans to begin examining the impact of standards-based reform on all students, particularly on Hispanic students.

The Assessment Committee, co-chaired by Commissioner Erlinda Archuleta from the Colorado Department of Education and Sonia Hernandez, Deputy Superintendent of the California Department of Education, met with the executive Board of the Commission in

January to discuss the impact of educational standards and assessments on Hispanic students.

The series and collected testimony from state and local education leaders, legal scholars, and education experts from around the country. Seminars included:

- ***Educational Standards, Assessment, and Accountability: A New Civil Rights Frontier***, held April 7, laid the groundwork for subsequent discussions on the standards movement and its impact on the educational attainment of Hispanic students.
- ***Assessment as a Learning Tool: From Hope to Reality***, held May 5, addressed the potential of assessments as a learning tool and included a discussion of testing practices and accountability systems that promote educational excellence.
- ***Current Policies and Practices in Assessing English Language Learners***, held June 10, further addressed the chronic controversy that continues to surround the issue of language in America. Speakers discussed the impact of current national and state policies as well as the effective practices of educators that promote educational excellence for all students.
- ***A Look at Current State Practices***, held July 20, focused on states and local policymakers. The panelists addressed the challenges they face as states progress toward full implementation of educational reform. They also described the specific work and strategies they are currently implementing to provide all students in their system, and specifically Hispanic students, equal and equitable access to rigorous academic standards and instruction. (A list of speakers at each seminar is included at the end of this document, and their comments are included throughout.)

The Promise of Standards-Based Reform

In the language of the standards movement, **content standards** are locally developed statements about what students must know and be able to do in various disciplines such as English language arts, mathematics, science, and social studies. **Performance standards**, set by states and local school districts, measure how well students should be expected to demonstrate their knowledge and skills in reaching those content standards. For standards to be effective, states and local school districts must invest appropriate resources to ensure that all students are provided with equitable opportunity to meet rigorous and challenging standards in all content areas.

One of the most promising features of the standards movement is that it holds schools and students accountable for how well they can demonstrate increases in academic achievement. States and school districts are in the midst of an evolution in how they manage and motivate institutions and educators to get better results for a broader range of students. Accountability measures are helping to examine progress being made in

schools, by individual students, and by groups of students, including low-income and minority student populations. Accountability systems help identify what is working and not working, informs teaching and learning, who should be rewarded, what targeted interventions might be made when progress toward the standards is lagging, and the kinds of steps that should be taken if schools continue to chronically fail.

States and school districts are increasingly moving to measure progress toward achieving high standards assessing students on the knowledge and skills they are expected to know. They are developing and implementing a variety of approaches to measure performance, including standardized tests, performance assessments, portfolios and other forms of assessment activities that require students to not only to choose the best answer, but also to explain the reasoning behind the answer or solve a problem. These performance assessments allow for teachers, parents and students to demonstrate or accurately describe what students know. As the tool of accountability, assessment systems have a number of invaluable uses – they help determine how resources should be spent; they also provide a diagnostic evaluation of where students need extra help and tutoring and where teachers need to focus more attention or need more professional development. They are a tool to inform both teaching and learning. Increasingly, assessments are being used by states and school districts to make high-stakes decisions about whether a student should move from grade to grade or graduate from high school.

“If you don’t have high standards and aligned assessments you don’t have school reform. Raising expectations for all students is essential.” –*Sonia Hernandez, Deputy Superintendent, California Department of Education, and Member, President’s Advisory Commission.*

One of the major challenges confronting the standards movement is keeping politics out, and relying on what works to guide decisionmaking. Assessment should be used on an ongoing basis to drive the process of educational decision making and identify the appropriate interventions, teaching strategies, supports, and other factors that inform the process, improve the system, and increase student achievement.

“California’s standards movement became an ideological battleground. Decision on content standards was based on ideology. The standards advisory group to the Governor worked on two sets of standards—one for reading/language arts and one for math. The first ended up promulgating phonics rather than a mix of phonics and whole-word, because of pressure from conservatives. Math became “drill-and-kills.” In the domain of science, the majority recommendations were dropped in favor of a set advocated by one of the governor’s appointees. The advisory group was disbanded before it even considered such enormous issues as LEP testing and the opportunity to learn standards.”—*Raymund Paredes, Vice Chancellor, University of California, Los Angeles.*

The effort to set high standards for all students is to publicly recognize and affirm that all students can achieve to high levels. Standards and accountability are powerful vehicles that can help close the performance gap between white and minority students and between rich and poor school districts. Assessment and accountability tools help paint the

picture of how far and how fast we need to go to improve student achievement so that no student is left behind. They tell us what the most important deficiencies are to be remedied and help evaluate and understand the effects of various interventions that can lead to ongoing, continuous improvement.

Standards can form the basis for extending a civil rights perspective to the instruction of all children, including youth from low-income and language minority families. That is because standards-based instruction makes it clear that all children need to be brought to observably high levels of performance. The approach to school reform highlights disparities among groups of students and the schools' ability to support them and provide a legal – as well as educational – way to address fundamental fairness that focuses on results and not inputs.

“Accountability is biggest hope for parents to push for their children, giving them information to ask how their children are doing and why.”—*Delia Pompa, Director, of the National Association of Bilingual Education.*

Under a standards approach, schools must respond to the needs of individual students, lest they become in danger of falling behind. Standards also allow parents to pose the following four questions to those managing their children's schools:

- ◆ If you test my child against standards, can you assure me that the teachers actually taught the material and the test measures it?
- ◆ Can you assure me that teachers are able to teach the content captured by the standards—that they have been properly trained and placed.
- ◆ If my child is in danger of not meeting the standards and there will be consequences, will you be able to warn me early enough so that we can intervene?
- ◆ What support and extra help does the district plan to provide when you tell me that my child is in danger of falling behind.

The implementation of assessments, especially for Latino children, is cause for a great deal of alarm in terms of how tests are being used and the quality of the tests that are being implemented. Several factors must be considered:

- **The quality of tests being used:** When you look at quality, you need to examine validity and reliability. Many states are not taking a close enough look at these issues.
- **The purpose of the tests:** Test publishers are not necessarily developing tests that are not appropriate for the uses that states are selecting. For example, making promotion decisions.
- **The type of tests:** The extent to which tests are language-laden, not based on standards is a problem. There is little information that these tests provide that can help guide instruction for a teacher.

- **The abuse or misuse of tests by states:** Many states are implementing policies that do not appropriately use these tests

Sonia Hernandez, Deputy Superintendent, California Department of Education, and Member, President's Advisory Commission.

What Needs to Be in Place for Standards to Work for Latino Students?

If high standards are to work, we need to ensure that there are three basic supports available to all young people. These include:

- 1) **Adequate resources, teaching, and curriculum** that enable students to achieve high standards;
- 2) **Fair and accurate performance measures** to ascertain whether students are achieving desired results; and
- 3) **Effective interventions and educational strategies** to ensure students who are not meeting high standards can succeed.

1. Necessary Inputs: Adequate Resources, Teaching, and Curriculum

The percentage of Hispanics living in poverty is three times greater than that of whites. Hispanic students attend schools where there are likely to be large classes, inadequate learning materials, underprepared teachers, and limited access to rigorous courses in core academic subjects.

Ensuring that all students have access to qualified teachers is particularly difficult. In the words of one speaker, Ana Maria Schuhmann, Dean, College of Education, Kean University, New Jersey: "Teachers are the most important variable that influences student achievement....[M]ost teachers are not prepared or supported to ensure that students achieve the new higher standards. This is compounded by the fact that the least qualified teachers are in our poorest schools. Teachers are also less qualified to work with students who speak another language at home, despite the fact that such students represent one out of five children."

"The least qualified teachers are in our poorest schools," Ana Maria Schuhmann, Dean, College of Education, Kean University, New Jersey.

Over the next several years, the nation will have to hire more than two million teachers to replace those in the profession who are leaving through retirement or attrition and to meet the needs of an expanding student population. That is the equivalent of hiring every doctor in the United States two and a half times over. At the same time, the nation faces severe shortages in math and science fields, special education, and in geographic locations. Poor urban and rural districts face a dramatic shortage of qualified people. In addition to having qualified teachers in key academic subject areas, students also need access to teachers who can use the students' native language and introduce aspects of their culture into the learning program.

Meanwhile, the nation must also raise the skills and knowledge of the 3 million teachers currently in the classroom. A recent survey of more than 4,000 teachers by the U.S. Department of Education reveals that most teachers have limited preparation in the content we want our young people to know. Only 20 percent of teachers surveyed said they were confident in using new technologies or working with students from diverse backgrounds, with limited proficiency in English or with disabilities. The study indicates that only 38 percent have an undergraduate or graduate major in an academic field and just 22 percent of elementary school teachers have a degree in an academic field. Efforts to improve the quality of teaching have focused on creating incentives to bring more talented people into the profession; strengthen initial licensure into the field by raising testing requirements; and providing more opportunities for teachers to learn from experts and each other at the school site.

Good teaching will have limited influence on students if they are not taking challenging courses. In the past 20 years, buoyed by the National Commission on Excellence in Education, there has been a dramatic increase in the number of students taking core academic courses. From 1984 to 1994, the proportion of high school graduates enrolled in core academic courses, and studied advanced mathematics and science courses increased dramatically.

A new study by the Department of Education found that the completion of a solid academic core in high school is correlated more strongly with college degree completion—especially for African-American and Latino students—than high school test scores, grade point averages, and class rank. According to the study, finishing a course beyond the level of Algebra 2 (for example, trigonometry and precalculus) more than doubles the odds that a student who enters postsecondary education will achieve a bachelor's degree.

Unfortunately, minority and economically disadvantaged students are still far less likely to have access to Advancement Placement courses and rigorous mathematics courses that are considered gatekeepers to success in college. A recent law suit filed by the Southern California chapter of the American Civil Liberties Union, for example, charges that high schools with predominantly minority student populations offer fewer opportunities than schools with mostly white students to enroll in AP courses, making it more difficult for blacks and Hispanics to achieve success in college. The AP program allows high school students to earn college credit by taking yearlong courses in certain subjects and passing standardized tests in them. The College Board, the New York City organization that sponsors the SAT, offers the program.

In California, the program is especially important, the ACLU argues, because the University of California system gives extra weight to grades in AP classes when making admission decisions.

2. Fair and Accurate Performance Measures

The push for higher standards has brought considerable attention to the issue of testing and its effect on the 3.4 million Latino students still learning the English language. The issue does not just affect the five states—California, Texas, New York, Florida and

Illinois—that have the largest Latino population; it has national repercussions. The population of English-language learners is expected to grow rapidly in the next few decades and to have an increasing affect on education's data driven decision-making in a growing number of States. English language learners are present in almost half of our nation's school districts. In ten states, (Alabama, Alaska, Florida, Idaho, Nebraska, Nevada, North Carolina, Oregon, South Carolina and Tennessee), the population of students still acquiring English more than doubled between school years 1992-93 and 1996-97.

Standards-based tests being developed and implemented to determine which students will advance from grade to grade or graduate are still a relatively new tool in the apparatus of school reform. They have yet to be “stress tested” with young people still learning English, 70 percent of whom are Hispanics. “The implementation of assessments, especially for Latino children, is a cause for a great deal of alarm,” warns commissioner Sonia Hernandez, California’s assistant superintendent of public instruction. “We need to know more about how tests are being used and the quality of the tests being implemented... We need to know that tests are valid and reliable and are used for the purposes for which they were designed. We must be sure the tests have been fully and are appropriate for the new uses states are considering.”

Tests are tools that are bad or good depending on how they are used. The tools we use to make potentially life-changing decisions about an individual’s future must be legally defensible and educationally sound.

“All tests are not created equal: You cannot begin to evaluate the soundness of any test without first understanding how the results will be used. For example, a test of Limited English Proficient students in English may be appropriate for diagnostic purposes or informing instruction, but not appropriate for making a promotion decision based upon a determination about their math skills.”—Art Coleman, Deputy Assistant Secretary, Office for Civil Rights.

Over the past decades, accountability tools have been misused to exclude students from access to rich course content or to make decisions about students’ futures for which the tests were not designed. The misuse of tests is a particularly sensitive topic for students still learning the English language.

How can we be sure that Latino young people and others are tested fairly and that the results of those tests are interpreted accurately and used appropriately?

States and school districts need to be sure that the tests are implemented and interpreted fairly. That means that students have multiple-test taking opportunities and time to master standards before they are measured on what they know. There must be alignment between what is taught and tested, and testing strategies must take into account the language that the student learned the material, a highly relevant factor in determining the language in which the student should be assessed. There also should be provisions, such as adequate time, made to ensure that English language learners can demonstrate what

they know on the tests. (See sidebar on Standards for Testing.) In addition, tests must be validated for the purposes for which they are used and high-stakes decision should not only be based on one test but on other factors, such as multiple test scores, grades and evaluations. Commissioners note that one cannot begin to evaluate the soundness of any test without first understanding how the results will be used. A test of LEP students in English may be appropriate for diagnostic purposes, informing instruction, or as placement and exit criteria for instructional programs (such as gifted and talent, Title I or bilingual education), but not appropriate for making a promotion decision.

3. Effective interventions

A growing body of research identifies the characteristics of schools that are effective with minority and disadvantaged students and English language learners. A 1999 report by the Education Trust, *Dispelling the Myth: High Poverty Schools Exceeding Expectations*, identifies the characteristics of top-performing high-poverty schools. Analyzing survey data from 366 elementary and secondary schools in 21 states, the study found six important characteristics of these schools.

- Extensive use of state/local standards to design curriculum and instruction, assess student work and evaluate teachers.
- Increased instructional time for reading and mathematics;
- Substantial investment in professional development for teachers that focused on instructional practices to help students meet academic standards;
- Comprehensive systems to monitor individual student performance and provide help to struggling students before they fall behind;
- Parental involvement in efforts to get students to meet standards; and,
- Accountability programs with real consequences for adults in the school.

Observers note that all of these factors taken together are far more important than any single factor in raising performance. In the rush to set high standards, Latino students—like other students—need comprehensive help beyond language acquisition.

To that end, in addition to developing standards-based accountability efforts, a growing number of states and school districts are funding summer school programs and special tutoring in combination with efforts to raise standards and eliminate social promotion.

“We need to design instructional systems that neither stigmatize children who cannot be promoted nor subject them to the same instructional experience twice. Given the academic content standards are being held constant, the way they are met and the time it takes to meet them must be allowed to vary.”—Robert Schwartz, President, Achieve, Inc.

Lessons from Research and Experience

Many of the challenges to Hispanic young people face on standardized state assessments have largely to do with how they learn language and become literate. There is growing agreement about this process that should have a profound importance in setting testing policies.

How Do Students with Limited English Gain Literacy Skills? School-age children with limited English learn to understand and speak English before learning to read it. Therefore, the National Research Council (NRC) suggests that initial reading instruction is most effective in a student's first language and teachers should speak and use books and other materials in the student's first language. The NRC concludes that children who can read in any language are readers and there is no reason to repeat the entire process of reading instruction if a child simply needs to learn English. To facilitate and understanding of English, teachers must assess the student's reading skill and abilities in the primary language and help transfer those reading abilities to English.

Researchers say that when the curriculum is well-taught, content presented in the primary language can be easily transferred to English as the students language skills develop. But the process takes time. Reading, writing and listening skills don't really emerge in *any* student until after the fifth grade.

According to researchers, the ability of limited English proficient students to listen in English is about 80 percent of native-English speakers. Their reading and writing skills in English are still less than 50 percent of their English-speaking counterparts.

When Should English Language Learners Be Tested? According to experts in the field, most students cannot be validly tested until they have had at least three years of exposure to English, and even in those cases research indicates that they will need additional time, repeating of directions, oral reading of questions, and other accommodations until they have been determined to have truly acquired language proficiency.

In What Language Should Students Be Tested? There is a general consensus that states and districts should take into account the language of instruction in determining the language of testing. In addition, testing in Spanish or another language should not exempt students from opportunities to participate in tests administered in English. The system must be accountable to provide students with assessments that provide valid and reliable results that accurately describe what students know and are able to do in the core content areas.

Researchers note that if states are to test all students, they should develop benchmarks for English language acquisition which take into account the education strategies used to teach non-English speaking students as well as opportunities for students to learn the materials on which they will be tested.

Can students be tested in some subjects more fairly in Spanish than other subjects? Experts say there is no systematic research that indicates that some subjects are best tested in Spanish than others, although it is accepted as truth that subjects such as social studies are more dependent on language than other subjects such as mathematics. But even in mathematics, there are many "word problems" that could pose trouble to students who are not native to the language of the test. In general there is no answer or "one-size-fits-all" approach that will work in every case, and the use of multiple indicators will most likely yield the best description of a students true abilities.

Can Standardized Reading Tests Be Used to Determine English Language Proficiency? Researchers contend that measuring reading ability and English language proficiency are two separate issues. Standardized reading tests in English are not appropriate for measuring student progress in language development because they are tests for native language speakers.

"It is very important to distinguish between tests which measure English Literacy (often called English language proficiency tests) and those which measure English language arts (ELA). It is true that in the early grades, much of ELA and especially reading tests are devoted to decoding etc., which are basic aspects of English literacy proficiency. However, beginning in about 4th grade and becoming increasingly so in the later grades, ELA is less about decoding or basic literacy assessment and more about literature and other aspects of language arts and advanced comprehension. For example, first, a 9th grade ELA test may very well evaluate what a student knows about Shakespeare. This is **not** the same as evaluating literacy for 9th graders.

ELA test do have some literacy evaluation components. However, especially for older students, this evaluation is often of a more advanced type of literacy assessment than the evaluation of basic literacy acquisition. For instance, most ELA tests for older students (grades 5 and up) assume a certain floor level of literacy. The types of reading or other literacy components being measured in these tests, then, identifies nuances in reading or literacy which are typically acquired by older students who have been reading for some time and for whom English is their first language. Evaluation of the acquisition of these nuances and skills is not the same as measuring the acquisition of basic literacy skills. A student getting a 0 on this type of ELA test may or may not have mastered basic literacy." (Kopriva, 1999.)

Confusion between assessments of language arts and assessment of literacy can also lead to unnecessary prohibition of accommodations. If basic literacy is the focus, tests should be expected to evaluate basic literacy, regardless of grade level. If ELA is the focus, some accommodations might make sense, and it should be clear that lack of mastery of advanced literacy does not mean students do not have basic literacy.

Is Gaining Reading Proficiency More Important than Keeping at Grade Level in Other Subjects? For LEP students, it is important that they master English and stay on grade level with course content. If these are both not explicitly encouraged then it is often implicitly understood that one is more valuable than the other. This is the cycle that often leads former LEP students into lower tracked academic classes in high school, and eventual higher drop out rates. So, while English acquisition is very important, so is staying on grade level in core academic subjects.

Currently most states are stressing this more than in the past but we have a long way to go and in fact most educators talk only about the ELA content area. They should also

stress the other content areas, or staying on track in the other content areas may not be seen as an equally important priority.

Any accountability system should underscore the importance of the Title I language about inclusion of broad groups of students in the regular mainstream tests across content areas. States or districts should constantly reemphasize the importance of including students in the same assessments and encourage the most accurate data collection for all students, which also entails using accommodations for students still learning English. It is important to note that institutional accountability for English language learners goes beyond just providing accommodations. Educators have the responsibility to address inclusion in the broadest sense beginning with the development phase of the assessment system through administration, scoring, and reporting.

Testing Standards for Bilingual Americans: "An Unknown Degree of Error"

This fall, testing experts will release the fourth edition of *Standards for Educational and Psychological Testing* that provide regulations and policies on the development and use of tests in the United States.

The 1985 edition, published by the American Education Research Association, American Psychological Association, and the National Council of Measurement, includes a profound acknowledgement. "For a non-native English speaker or for a speaker of some dialects of English, every test given in English becomes, in part, a language or literacy test of English." Basically, this means that for bilinguals who have been exposed to another language, every test, except a test of English language proficiency, contains an unknown, though systematic, degree of error. Such tests, in effect, are biased because they may not be measuring accurately whatever is being measured. Accordingly, the Standards call for "special attention" to these issues on the part of test development, test use, and test interpretation. It is also recognized that bilingual individuals vary extensively in their functional, academic and literate use of each language separately or simultaneously. Also, cognitive processing in the weaker language is more fragile and can be slower. Language background, in effect, is an important consideration in all aspects of testing and test validity.

With respect to using tests that are in the primary language of bilingual individuals, the *Standards* make several key pronouncements.

- Translating a test does not guarantee that the test items will have the same degree of difficulty in the other language. For example, a straight translation of a second grade test of reading ability will not necessarily yield a second-grade reading test in the other language.
- Tests for gauging English language proficiency are vitally important for making educational placement decisions. However, these tests must assess multiple dimensions of language ability.
- Testing agents must make a distinction between "naturalistic" uses of language and more formal, cognitively demanding uses. Because of these "special difficulties"

attendant on the use of tests with persons who have not had adequate exposure to the language of the test, the Standards suggest that more testing and observations be done with them.

The 1999 edition reaffirms the principles of the 1985 standards. Precautions regarding processing speed factors are also raised. The new standards suggest that accommodations should be undertaken with English language learners and notes that cultural factors can also affect test scores and attention also should be paid to these factors. But the new standards break new ground along several dimensions. The new standards describe several types of modifications that may be necessary for English language learners: using only sections of the test that match the linguistic proficiency of the test-taker, changing the test and response formats, administering the test in a different context, and allowing more time for taking the test. Most of these modifications are currently under study.

A new directive in these Standards calls for taking into account both a determination of language dominance and language proficiency. Consideration should be given to the possibility that bilinguals may have domain-specific competencies in one or both languages. It is recommended that an individual's degree and type of bilingualism be understood in order to use test results properly.

Extensive attention is given to the process of administering tests and to the possible impact of test-giver variables (culture, bilingualism, gender, time limits and use of interpreters. A crucial principle is recommended for testing English-language learners: give them enough time to finish the test and to show what they know and can do.

Of the 11 standards in the new chapter on "Testing Individuals of Differing Linguistic backgrounds, five are new:

- When there is empirically based doubt about a test, validity studies should be conducted with the relevant linguistic groups;
- The test should be given in the most proficient language of the test-taker (when such tests are available in both languages;
- Tests in another language should have evidence of validity and reliability before making inferences about scores;
- Equivalence across dual language versions of the same test should be supported by psychometric evidence of such equivalence (e.g., construct, reliability, validity);
- Interpreters should be competent in both languages, be competent in interpretation, and be competent in testing and assessment procedures.

From: *Testing Hispanic Students in the United States: Technical and Policy Issues*, President's Advisory Commission on Educational Excellence for Hispanic Americans, September 1999, by Richard A. Figueroa, Sonia Hernandez.

Model Practices

Several states and school districts are sensitive to these concerns and have developed useful policies and thoughtful assessment programs that propel achievement rather than punish students.

In 1991, **Oregon** enacted one of the most comprehensive standards-based reform laws in the country, requiring, among other things, valid and reliable assessments of its 500,000 students. Known as the Oregon Educational Act for the 21st Century, the initiative led to the development of curriculum goals, content standards, performance standards and indicators aligned with the new performance-based assessments. The system offers assessments in English and Spanish to accommodate those limited English proficient students among the state's 4,000 Hispanic students. The tests are given in grades 3, 5, 8, and 10 so that school officials know early on what students can and can't do. Students who achieve the grade 10 performance standards in academic content areas will receive a Certificate of Initial Mastery. Students who achieve grade 12 performance standards in academic content areas and achieve career-related learning standards will receive a Certificate of Advanced Mastery.

To ensure the validity and reliability of the assessments, the state created a Spanish-language test with questions that matched the psychometric properties of the English version rather than translating the English test into Spanish. Questions that could not be matched have been dropped from both tests. Teachers are allowed to decide on a case-by-case basis, which students will take the Spanish version of the test and students who are not literate do not take the test. The test is designed to measure student progress and diagnose areas where more help is needed.

The **Texas** Education Agency is using one of the most stable yet flexible assessment programs to monitor the progress of three million students served in 1,042 districts served. The school accountability system, established in 1992, addresses the state's concern over twin issues of equity and excellence for all students while also ensuring that what gets tested is what gets taught. Student performance is measured through the state's assessment system as well as information collected from teachers.

"[Texas] is committed to equity and excellence for all. In 1992, the state established a school accountability system. The system actually pulled together components that had been established earlier. Components include student assessments as well as information collected from teachers. The accountability system was designed to (a) help improve student performance, (b) help districts plan, and (c) permit flexibility in the ways districts teach the state curriculum. The 1992 system has remained stable across both Democratic and Republican administrations.—Linda Mora, Assistant Commissioner for Accountability and Assessment, Texas Department of Education

Testing begins in 3rd grade but students are given multiple opportunities to pass a high-stakes test," said Linda Mora. "Schools are required to offer special assistance to students

who initially do not pass. Thus, intervention will be early." The high school test, she said, does have consequences—a student cannot enter college without passing.

The accountability system was designed to help improve student performance, help districts plan their school improvement strategies, while permitting districts greater flexibility in teaching state-mandated curriculum. Individual school results on student performance are publicly reported along with attendance figures and the drop out rates.

What is particularly unique about the Texas system is that, to be considered successful, a school or district must not only succeed in reaching high standards for its students as a whole but for distinct subgroups of students by race, ethnicity and socio-economic status.

Taking advantage of the state system's flexibility, **Houston's** school district has opted to maintain its own accountability system. Under the district system, low-performing schools are required to work with Targeted Assistance Teams dispatched from the district to help the school develop a plan of action for improving student test scores. This direct assistance is triggered automatically and is designed to provide schools with the kind of technical assistance they need to align staff development with content and performance standards and while holding local officials responsible for their students' academic success.

The system enables district officials monitor each school's progress over time and actively intervene to improve the schools when needed. The accountability system and the targeted assistance teams have, together, enabled schools to determine the kinds of resources and staff development activities that would make the biggest difference in student learning.

In **Minnesota**, the absence of a statewide curriculum left state officials in the dark when it came to knowing what was going on in school districts. To remedy the problem, the state implemented a new statewide assessment system, prompting district officials to reexamine the scope and sequence of their curriculum. The state is currently developing performance level benchmarks.

The new statewide accountability system factors in programs for economically disadvantaged students and those with limited English proficiency. A new English language skills test will be used to determine when LEP students are ready to participate in the statewide assessments, which are administered in English.

Worrisome Policies

Observers note that while model practices are being developed, there also are some policies and practices that are particularly worrisome. These include requiring English only tests for high stakes decisions; providing no support for students to achieve new standards and requirements; and using tests that are not aligned to what is taught and learned in school.

Typically poor policies for English language learners solely focus on making up for deficit in English language proficiency at same time sacrificing progress in content areas. In some cases, schools attempt to give students a full dosage of English as a Second Language and nothing else so that students do not get the content they need in academic courses. Also, there have been instances of school districts using completion of English oral proficiency as a prerequisite for important courses. Schools must not use lack of proficiency as a way to deny access to courses that meet graduation requirements.

Basic Questions for Educational Decisonmakers

During the seminars, observers noted some simple questions to use to determine how well or poorly tests work. Educational leaders should be able to answer the following questions:

- Are students being afforded or denied educational opportunities based on test scores?
- Even if not used for such high stakes purposes, are all students included in assessment systems that influence decisions about allocation of resources, interventions designed to promote better learning, and guidance provided to parents about their children's progress.
- Are there inequities in treatment of students or disparity in performance of particular groups of students? What are the explanations for those disparities?
- Is the test used with other information to make high-stakes decisions or is it the sole criterion?
- Are there educationally—and psychometrically—sound foundations for the judgments made about students when those decisions are based upon test scores.

Emerging Questions

There are several fundamental areas where policymakers disagree among themselves and where practice and researchers are at odds.

Who Should Be Tested? While many observers argue that all students count and must be counted, a new report by the Council of Chief State School Officers indicates that of the 49 states with student assessments, 29 states exempt limited-English proficient students from all assessments, and 11 states exempts them from some assessments. Only four states do not allow exemptions for students with limited English abilities, according to the Chiefs.

For example, Maryland allows a one- year only exemption from its assessment program and Kentucky exempts students with limited English proficiency if they have been in the schools less than two years. Texas permits school districts to exempt Spanish speaking students up to three times before requiring the assessment.

If we let states decide whether or not these students should be tested, state education agencies shy away from including all students. Must be combination of states and local agencies to create an assessment that makes pedagogical and academic sense.

How High Should We Set the Bar? Some states, such as New York, have introduced standards that are benchmarked to the most rigorous in the world, while others, such as Texas, have developed a means to gradually raise the rigor of their assessments.

How Should Test Scores Be Used In High Stakes Decisions? Today, 20 states have established high-stakes assessments for students. While state policymakers appear intent on using test scores alone to determine who moves along in the educational system, many observers argue that decisions about whether to pass a student from grade to grade should not be made on a single set of test scores as the sole criterion. Tests should be one instrument among many. There are multiple indicators that can be used to assure if student knows what he or she has to know, including teacher judgments and evaluations, grades, other tests.

The White House Initiative's Standards and Assessment Agenda

Over the next nine months, the White House Initiative on Educational Excellence for Hispanic Americans will continue to build upon, inform, and contribute to the many efforts designed to promote high standards for all students, including Latinos.

In its role as an advisor to the Clinton Administration, the Initiative will further explore the effects of standards on students learning English and the impact of federal programs, such as Title 1, on the achievement of Latino students. The Initiative also will work closely with the U.S. Department of Education's Office of Civil Rights to help ensure that ELL students are afforded educational opportunities guaranteed under federal law and that the use of tests to make high-stakes decisions are fair and accurate.

Our work is guided by the National Research Council's Board on Testing and Assessment, which has established a Forum on Educational Excellence and Testing Equity, that brings together experts and stakeholders to identify the issues, problems and promising practices that should be promoted to ensure that tests designed to measure student progress toward achieving high standards are used appropriately.

Beyond these efforts, the White House Initiative sees three key areas of work that need to be addressed:

- **Further examination, research and dissemination of promising practices** concerning the administration, interpretation, and use of tests for English language learners. We particularly need to know more about what accommodations are most effective and what are the best practices that can help ensure valid decisions about placement, promotion, and graduation. A new tool kit for school districts seeking to better meet the needs of English Language Learners is now being developed by the Council of Chief State School Officers that can help make best practice everyday practice in schools.

- **Better public awareness** about the complexities of standards-based reform initiatives and issues surrounding the use of high-stakes tests for students with limited facility in English. A new resource guide on high-stakes testing being developed by the U.S. Department of Education's Office of Civil Rights will be a foundation for continuing dialogue and understanding.
- **Stronger engagement with state and local leaders** about the importance of using tests in ways that are valid and reliable and about the need for more equitable opportunities for Hispanic students to achieve desired results.

Researchers, educators, and leaders of the Latino community must compel state and local leaders and the public to face reality about the growing percentage of students who are still learning the language and what can be done to ensure that they not only master English but succeed in core academic courses necessary for careers and further education.

Policy Series on Educational Standards, Assessment, and Accountability: A New Civil Rights Frontier

1. *Educational Standards, Assessment, and Accountability: A New Civil Rights Frontier*, Wednesday, April 7, 1999.

- Norma Cantú, Assistant Secretary, Office for Civil Rights, U.S. Department of Education;
- Robert Schwartz, President, Achieve, Inc.; and
- Raymund Paredes, Vice Chancellor, UCLA.

2. *Assessment as a Learning Tool: From Hope to Reality*, May 5, 1999.

- Sonia Hernandez, Deputy Superintendent, California Department of Education, and member, President's Advisory Commission;
- Ana Maria Schuhmann, Dean, College of Education, Kean University, New Jersey; and
- Arthur L. Coleman, Deputy Assistant Secretary, U.S. Department of Education's Office for Civil Rights.

3. *Current Policies and Practices in Assessing English Language Learners*, June 10, 1999.

- Delia Pompa, Director, Office of Bilingual Education and Minority Languages Affairs; and
- Mary Ramirez, Director of Language Equity Issues, School District of Philadelphia, Pennsylvania.

4. *A Look at Current State Practices*, Tuesday, July 20, 1999.

- Norma Cantú, Assistant Secretary, Office for Civil Rights, U.S. Department of Education;
- Joyce Benjamin, Associate Superintendent, Oregon Department of Education;
- Jessie Montañó, Assistant Commissioner, Office of Teaching, Minnesota Department of Children, Families, and Learning;
- Linda Mora, Assistant Commissioner for Accountability and Assessment, Texas Department of Education; and
- Susan Scalifoni, Chief of Staff for Educational Services, Houston Independent School District, Texas.

DRAFT

**Our Nation on
the Fault Line:**

**HISPANIC
AMERICAN
EDUCATION**

**A REPORT TO THE NATION:
POLICIES AND ISSUES ON
TESTING HISPANIC STUDENTS
IN THE UNITED STATES**

**President's Advisory
Commission on Educational
Excellence for Hispanic Americans**

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FORWARD

There is no more promising reform in public education today than the standards-based movement. It is the most widely accepted school change process which offers the greatest probability for leveling the playing field for all children by clearly stating expectations for instruction, assessing the progress of each child toward achieving the standards, and holding schools accountable for student learning. Where these three core elements of a standards-based system are in place, all students begin to experience success as never before. This is especially true for the growing Hispanic student population in America which has been traditionally excluded from access to rigorous mainstream instruction. But in the current rush to implement world class standards supported by systems of accountability in the nation's public schools, state education leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate testing information. Hundreds of thousands of Hispanic students, many lacking functional fluency in English, are assessed with a myriad of tests entirely in English and, oftentimes, only in English. The resulting test data gleaned from the administration of these tests is used for student promotion or retention, for high school graduation, generally for high stakes decisions -- but rarely for the purposes of true accountability. When it comes to holding schools accountable for the academic achievement of our students, states allow Hispanic youngsters to become transparent inside the very system charged with educating them.

State policies often require that Hispanic students be assessed in English with tests they may not even understand or with alternative but less rigorous tests in Spanish whether or not they are receiving instruction in that language. Neither approach produces accurate information about student learning. Nevertheless, the resulting data is often used to hold students accountable for their own success, rather than the educators or the systems of public schooling. **Who should be responsible for what Hispanic students learn in school?** The answer is simple: students, educators, and parents all must share the responsibility. **But what kinds of assessments should be**

used to provide accurate information about what students have been taught? Regrettably, the answer to this question is not as simple.

For now, only the students themselves bear the weight of academic success or failure, with few exceptions. Hispanics disappear from the accountability reports which trigger both positive and negative consequences for the responsible adults in the system. Thus more than two million Hispanic students in the US are underrepresented or absent from the rolls of students who are counted and who, therefore, count.

As America enters the new millennium, deliberate action by policymakers at every level must be taken to include the country's fastest growing and soon-to-be largest minority within the bounds of systems of accountability using accurate information for decisionmaking.

The purpose of this report is twofold: (1) to bring attention to the growing crisis of the invisible Hispanic students in public education to the nation's leaders and (2) to provide guidance to the nation and the states on taking the necessary steps to rectify the conditions which allow Hispanic students to be wrongly measured and unaccounted for in their own schools. It is our intent to help the nation get it right for the sake of the children.

The Commission Assessment Committee
The President's Advisory Commission on Educational Excellence For
Hispanic Americans

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A REPORT TO THE NATION: POLICIES AND ISSUES ON TESTING HISPANIC STUDENTS IN THE UNITED STATES

CHAPTER 1: INTRODUCTION

All forms of human mental measurement are fragile and problematic (Gould, 1983). At their best, for example, psychometric tests account for a modest 25-35% of the variance of what they predict (Neiser, Boodoo, Bouchard, Boykin, Brody, Ceci, Halpern, Loehlin, Perloff, Sternberg, & Urbina, 1996; Cleary, Humphreys, Kendrick, & Wesman, 1975). This is a technical ceiling that test-makers have not succeeded in breaking for nearly a century. A fundamental assumption of all testing is that the normative framework (psychometric, criterion, or rubrics-based) on which the test scores are based assumes a high degree of experiential homogeneity, cultural/linguistic similarity and equity in learning opportunities among test takers (Colvin, 1921; Woodrow, 1921; Heller, Holtzman, & Messick, 1982). Under these conditions, a test score becomes a measure that belongs pre-eminently to the individual and his or her talents, achievements, traits and predispositions. In a real sense, tests work best in a perfect democracy of monolingual and monocultural citizens.

Hispanic Americans present a massive challenge to the assumptions of tests. The vast majority has varying levels of exposure to and proficiency in Spanish, though many also come from other linguistic backgrounds (e.g., Portuguese, Catalan, Basque, etc.). Their cultural ancestries include Mexico, Central and South America, Puerto Rico, Cuba, the Caribbean, Spain and Portugal.

Their cultural experiences in the United States are multigenerational and reflect a broad range of acculturation levels, socioeconomic differences, and political power. So vast is their heterogeneity, that the assumptions of tests about homogeneity may well be untenable. Yet, Hispanic students and Hispanic citizens are tested every day and are compared to middle class America in a unique reification of democracy and assimilation that tests impose. But the history of testing Hispanics in the United States has never been typified by equanimity.

There are few issues in American Psychology or Education that are as complex or as misunderstood as the testing of Hispanic students. Two fundamental questions have challenged and continue to perplex test-makers, test-givers and test-users: Does Spanish in the home or as the primary language affect test scores? and, Do any aspects of Hispanic culture in the United States attenuate or change test outcomes?

In the 1930's, the great Mexican American psychologist, George Sanchez, addressed both issues.

"The relative responsibility of the school and of the child in the achievement of desirable goals must be examined. Is the fact that a child makes an inferior score on an intelligence test *prima facie* evidence that he is dull? Or is it the function of the test to reflect the inferior or different training and development with which the child was furnished by his home, his language, the culture of his people, and by his school? When the child fails in promotion is it *his* failure or has the school failed to use the proper whetstone in bringing out the true temper and quality of his steel?

The school has the responsibility of supplying those experiences to the child which will make the experiences sampled by standard measures as common to him as they were to those on whom the norms of the measures were based. When the school has met the language, cultural, disciplinary, and informational lacks of the child and the child has reached a saturation point of his capacity in the assimilation of fundamental experiences and activities - then failure on his part to respond to tests of such experiences and activities may be

considered his failure. As long as the tests do not at least sample in equal degree a state of saturation that is equal for the "norm children" and the particular bilingual child it cannot be assumed that the test is a valid one for the child."

(Sanchez, 1934, pgs. 770-771)

Presently, the impact of cultural differences on test scores remains understudied. Most of what is known about cultural effects comes from the use of U.S.-made tests on foreign populations. Anthropologists were early consumers who believed that the scientific nature of tests made them appropriate for universal use. Very little is known about cross-cultural differences in testing, in fact, precisely because monocultural tests when translated into the local language yielded predominantly lower scores and Anglocentric interpretations. There are, however, some notable exceptions in this regard.

Holtzman, Diaz-Guerrero, & Schwartz (1975) conducted a longitudinal study comparing approximately 400 middle-class Mexican children with 400 middle class White children from northern Texas. One of the unique aspects of this investigation was that a comprehensive attempt was made to make all the sociological, psychological and educational tests and scoring protocols appropriate for Mexican students and their families. The result was a compelling description of cultural differences as well as the production of knowledge about how psychometric tests need to undergo a radical overhaul for cross-cultural use and how cultural bias can subtly affect scores. Regrettably, this type of investigation has never been replicated with Hispanic children and their families living in the United States.

By and large, the study of cultural differences in testing has always operated from a "black box" design. Culture has resided in the "Puerto Rican", "Mexican," or "Cuban American" samples used (Valdes & Figueroa, 1994). The only cultural affect on U.S. normed, English-language tests has been lower scores. Interestingly, these types of "black box" studies have seldom found evidence of lower test reliabilities or validity because of cultural differences (Cleary, Humphreys, Kendrick, & Wesman, 1975; Geisinger, 1992; Sandoval, Frisby, Geisinger, Scheuneman, & Grenier, 1998).

The same has not been true for the one cultural variable that has left its mark on virtually every investigation using tests with Hispanic populations. Linguistic exposure to Spanish has affected every type of psychometric test and test score given in the United States (Valdes & Figueroa, 1994). It is the one variable for which there is evidence of psychometric bias (Figueroa & Garcia, 1995). It is the one variable that finally has drawn the attention of the scientific community as a complex disrupter of established testing policies and practices (Pellegrino, Jones, & Mitchell, 1999).

CHAPTER 2 : THE HISTORICAL CONTEXT

In 1922, Charles Brigham published "The Study of American Intelligence," an analysis of government data from testing conducted on World War I recruits. A subset of the large sample included 11,300 "foreign born" recruits who were tested with the Army Alpha (a verbal test of intelligence) and the Army Beta (a nonverbal test of intelligence). Approximately 32% of them had been in the United States between 0-5 years, 38% between 6-10 years, 17% between 11-15 years, 7% between 16-20 years, and 6% over 20 years. Because of its high verbal content, the Army Alpha was a good measure of English language proficiency. In spite of Brigham's tortured defense of the integrity of this sample of "foreign born" recruits, there is a strong indication that after 10 years the sample reflected a different type of immigrant, the ones who did not return to their native countries and who in all likelihood had adapted culturally and linguistically. Taking this into account, the increase in Army Alpha scores for the first two, 5-year groups was a meager .11 of a point. This is one of the first, major empirical findings that on psychometric tests proficiency in a language besides English systematically produces lower verbal scores possibly for a very, very long time.

The 1920's and 1930's produced a great amount of research on ethnic minorities in the United States. Much of it came under the title of "Race Psychology" and reflected a naive use of test scores to support genetic arguments about lower intellectual potential in non-Nordic groups. A considerable amount of this published work included Hispanic test subjects whose linguistic backgrounds can generally be described as "bilingual." That is, they came from homes where Spanish was spoken and with varying and unknown degrees of proficiency in Spanish. Most of these studies were conducted on Mexican American children.

Several conclusions can be extracted from this early research on bilingual test-takers. First, the test results of bilingual individuals compared to those of monolinguals, for all age groups, consistently

produced a profile of lower (English) test scores regardless of the test being used. This was most pronounced in tests of verbal intelligence, although a similar profile appeared in tests of academic achievement (Brown, 1922; Cebollero, 1936; Koch & Simmons, 1926; Johnson, 1938; Manuel, 1935; Pratt, 1929). There, English-dependent skills such as vocabulary, comprehension, sentence completion skills, analogies, essay composition, etc. were markedly low in bilingual test-takers in comparison to their arithmetic and memory skills. In effect, differences in exposure to English appeared to be unerasable (Saer, 1923), or as the Brigham study showed, virtually unerasable. This phenomenon became widely known as the "language handicap" of all immigrant test-takers. In many research publications, this provided a rationale for denigrating or eradicating bilingualism and instruction in the primary language.

Second, the psychometric properties of tests showed a curious profile. Bilingualism had no effect on the internal consistency and stability of tests, particularly indices of reliability (Figueroa, 1990). But on the critical external indices of validity, particularly predictive validity, bilingualism appeared to attenuate the power of tests (Altus, 1945; Davenport, 1932; Feingold, 1924; Garth, 1928; Paschal & Sullivan, 1925; Pintner & Keller, 1922; Wheeler, 1932; Wood, 1929; Yoder, 1928).

Third, some anomalous data appeared. Bilingual individuals from middle or upper-middle class homes occasionally either outperformed monolingual, English speakers or did as well in test scores (Darcy, 1946; Feingold, 1924; Manuel, 1935; Pintner & Arsenian 1937). The "bilingual handicap" in effect was cured by advantaged or enriched environments and backgrounds. Clearly, however, in the early part of the 20th century, foreign born individuals with such cultural capital were relatively rare. Also, individuals with two under-developed languages did worse on tests than individuals with a single, educationally-developed foreign language (Altus, 1949; Arsenian, 1945; Smith, 1949, 1957). Another finding that to this day remains present and unexplained is the ability of bilingual individuals to do better than English speakers on recalling digits backward (a staple of IQ tests since their inception) (Manuel, 1935; Luh & Wy, 1931; Darsie, 1926; Hung-Hsia, 1929; Jensen & Inouye, 1980). Finally, on school grades the "bilingual handicap" did not materialize

to the same degree or persistence as on tests (Bell, 1935; Smith, 1942).

Fourth, the psychometric, scientific community began the unfortunate procedural tradition of dealing with cultural groups as monolithic entities (e.g., Garth, 1920). The "Mexican" sample operationalized "Mexican culture". Socioeconomic and other intervening variables were often ignored. English language proficiency in test subjects remained as an uncontrolled source of error. Background factors such as educational backgrounds or the segregated nature of public schooling for bilingual students were overlooked. The methodological flaws in the design of studies with bilingual persons, in effect, were substantial and virtually precluded reasonable inferences or attributions. Many of these design flaws continue (e.g., Sandoval, 1979; MacMillan, Gresham, & Bocian, 1998).

For test users, however, the "language handicap" produced several innovations or, in the current lexicon, a series of accommodations. The testing community came to believe that nonverbal tests of mental ability were free of linguistic factors and were culturally neutral (Brigham, 1922). To this day, they are seen as culture fair measures of intelligence, mental aptitudes or personality. Tests were often simply translated without conducting norming studies (Lester, 1929; Mitchell, 1937; Paschal & Sullivan, 1925). These translations were used for research purposes and for conducting actual assessments. Ethnic norms were occasionally produced for some bilingual groups (Luh & Wy, 1931; Ammons & Aguero, 1950). Many caveats and precautions on the use of tests with bilingual subjects were voiced. For example, Charles Brigham, the father of the modern SAT (Scholastic Aptitude Test) and the principal investigator in "The Study of American Intelligence," also concluded that:

"For purposes of comparing individuals or groups, it is apparent that tests in the vernacular [English] must be used only with individuals having equal opportunity to acquire the vernacular of the test. This requirement precludes the use of such tests in making comparative

studies of individuals brought up in homes in which the vernacular of the test is not used, or in which two vernaculars are used. The last condition is frequently violated here in studies of children born in this country whose parents speak another tongue. It is important as the effects of bilingualism are not entirely known."

(Brigham, 1930, pg. 165)

Some 70 years later, "the effects of bilingualism [still] are not entirely known." What has changed is that there are more caveats about testing bilinguals.

CHAPTER 3: TESTING STANDARDS AND FEDERAL NON-DISCRIMINATION PRINCIPLES

The most important and potentially powerful set of regulations and policies on the development and use of tests in the United States is the Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, National Council on Measurement in Education, 1999). They are the "standard of the industry" and constitute somewhat of an ultimate arbiter on all matters related to test development and usage. The importance of these standards for addressing the problems associated with testing Hispanic students cannot be overstated.

What is singularly unique is that the current standards have outdistanced current test technology and testing practices with "Individuals of Differing Linguistic Backgrounds." The gulf between what the standards promulgate and what test developers and test users actually do is very large. Given the directives proposed by the Office for Civil Rights in their "Nondiscrimination in High-Stakes Testing: A Resource Guide" (U.S. Department of Education, In press), this gulf may well constitute denial of substantive due process with Hispanic students and citizens. The following is a historical look at how the current standards evolved with respect to testing bilingual individuals. A review of the OCR Guidelines then follows.

THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING

The first set of these standards appeared in 1966, even though both the American Educational Research Association and the American Psychological Association had addressed the issues

attendant to achievement and psychological/diagnostic testing in two prior, separate documents respectively in the mid 1950's.

The 1966 Standards for Educational and Psychological Tests and Manuals (American Psychological Association, American Educational Research Association, National Council on Measurement in Education, 1966) had one overriding goal: "the essential principle underlying this document is that a test manual should carry information sufficient to enable any qualified user to make sound judgments regarding the usefulness and interpretation of the test" (pg. 2). Behind this "essential principle" was the recognition "that tests are used in arriving at decisions which may have great influence on the ultimate welfare of the persons tested, on educational points of view and practices, and on development and utilization of human resources" (pg. 1). Interestingly, in the entire thirty-six pages of text, there are only occasional references to general demographic variables that should be addressed by test manuals. There are only two instances when these references vaguely touch on linguistic and cultural diversity. In both instances they are not prescribed as ESSENTIAL:

"C5.5. If the validity of the test is likely to be different for subsamples that can be identified when the test is given, the manual should report the results for each subsample separately or should report that no differences were found. VERY DESIRABLE"

(pg. 20)

"D.2.21. [concerning the psychometric index of reliability] Demographic information, such as distributions of the subjects with respect to age, sex, socioeconomic level, intellectual level, employment status or history, and minority group membership should be given in the test manual. DESIRABLE"

(pg. 28)

In 1974, the new edition of the Standards for Educational and Psychological Tests (American Psychological Association, American Educational Research Association, National Council on Measurement in Education, 1974) paid more attention to the issues of cultural and linguistic diversity. There was recognition that the validity of a test

could be attenuated for certain groups and under certain conditions. This acknowledgement was due, in great part, to the impact of federal court cases alleging diagnostic bias in tests. In many school districts, tests produced inflated incidence rates of mental disabilities among Latino and African American student populations. Typically, the following appeared with greater frequency than in the past.

“B1.3. The manual should call attention to marked influences on test scores known to be associated with region, socioeconomic status, race, creed, color, national origin, or sex. Essential

[Comment: Social or cultural factors known to affect performance on the test differentially, administrator errors that are frequently repeated, examiner-examinee differences, and other factors that may result in spurious or unfair test scores should, for example, be clearly and prominently identified in the manual.]”

(pg. 14)

Of even greater importance, two warnings appeared about the possible impact of tests and testing practices on English-language learners. Standard G2 directed test users to know the research literature on tests and testing particularly with respect to the problems associated with testing individuals with "limited or restricted cultural exposure." Standard G2 suggested that the overrepresentation of African American and Spanish-speaking children "with limited cultural exposure" was caused by test users' lack of knowledge about the limitations of tests when cultural differences existed.

Standards J5, J.5.3, and J.5.3.1. went even further. They recommended that when there were great cultural differences between the test taker and the test's norming sample, the tester should not test ("Essential"). They also set forth an accommodation that has become exceedingly popular: when there are no appropriate tests for a given person or population, the tester should use "a broad-based approach to assessment using as many methods as are available to him. Very Desirable" (pg. 71). In other words, do more assessments with more tests. The Comment for this Standard elaborated on this.

[Comment: The standard is to do the best one can. This perhaps includes the use of a test, even though no appropriate normative data are available, simply as a means of finding out how the individual approaches the task of the test. It might include references, extensive interviews, or perhaps some *ad hoc* situational tasks. Efforts to help solve educational or psychological problems should not be abandoned simply because of the absence of an appropriate standardized instrument.]
(pg. 71)

When a test or tests are not appropriate, giving more tests simply to see how an individual handles the testing situation is questionable. Data exist showing that in some high-stakes testing situations, giving more tests helps neither the tester (Mehan, Hertweck, & Meihls, 1986) nor the child (Taylor, 1991). When a test is not appropriate, it should not be given if it may hurt an individual or lead to serious negative consequences for the individual. The use of an inappropriate test can only be justified if it has little or no consequences for the individual and if it helps assess system effects on similar individuals. For Hispanic students, the use of inappropriate tests is a national problem with a long history of abuse. As the "Comment" cited above underscores, there are alternative ways to help solve psychological and educational problems. With Hispanic children, these must be linguistically and culturally appropriate.

In 1985, the Third Edition of the Standards was published (American Educational Research Association, American Psychological Association, National Council on Measurement in Education, 1985). The challenges posed by the multiple aspects of diversity (culture, language, disability, gender, socioeconomic status, etc.) appear throughout the entire document. But the most significant evolution of the Standards is Chapter 13, "Testing Linguistic Minorities." In many ways, Chapter 13 was revolutionary.

The text that introduced the seven Standards for this chapter began with the most profound acknowledgment. "For a non-native English speaker or for a speaker of some dialects of English, every test given in English becomes, in part, a language or literacy test" (pg. 73) of English. Basically, this means that for bilinguals who have

been exposed to another language, every test, except a test of English language proficiency, contains an unknown, systematic degree of error. Such tests, in effect, are biased because they may not be measuring accurately whatever is being measured. Accordingly, the Standards called for "special attention" to these issues on the part of test development, test use, and test interpretation. It was also recognized that bilingual individuals vary extensively in their functional, academic and literate use of each language separately or simultaneously. Also, cognitive processing in the weaker language is more fragile and can be slower. Language background, in effect, is an important consideration in all aspects of testing and test validity.

With respect to using tests that are in the primary language of bilingual individuals, the Standards made several, key pronouncements. Translating a test does not guarantee that the test items will have the same degree of difficulty in the other language. The latter must be empirically established. For example, a straight translation of a second grade test of reading ability will not necessarily yield a second-grade reading test in the other language. Tests for determining English language proficiency are vitally important for making educational placement decisions. However, these tests must assess multiple dimensions of linguistic ability. Chapter 13 also made a distinction between naturalistic uses of language and more formal, cognitively-demanding uses. Because of these special difficulties attendant on the use of tests with persons who have not had adequate exposure to the language of the test, it was suggested that more testing and observations be done with them. As previously noted, more testing was and is a questionable policy.

Chapter 13 also acknowledged the possible influence of culturally mediated ways of responding to test questions. Elaborated speech may not be congruent with cultural-specific ways of speaking to adults. When these factors are ignored the validity of interpretations and recommendations may be questionable and harmful.

Chapter 13 of the 1985 standards was vitally important for the educational and psychological testing of English-language learners in

the United States. There were, however, several problems. First, it was not known how well the testing industry and professions would abide by them. Throughout the 1980's and 1990's, the manuals of most tests showed that Chapter 13 of Standards was routinely ignored. Also, these Standards ignored several, historical practices and problems. They did not address one of the most widely used techniques for testing English-language learners, the use of interpreters who translate the test into the primary language either on the spot or who help administer a test that has already been translated. They were silent on the apparent inability of tests and test users to differentiate among cultural factors, language proficiency levels, and mental/emotional disabilities. They endorsed a historical solution on what to do when there are no tests (test more) in spite of the fact that there was no evidence that this worked. In fact, there was evidence to the contrary.

In August of 1999, a new edition of the Standards was approved. Chapter 9 is on Testing Individuals of Differing Linguistic Backgrounds. Just as in the 1985 standards, the narrative introducing this chapter cautions that with individuals from diverse linguistic backgrounds tests that are in English become tests of English ability to a degree that is generally more pronounced than with monolingual English speakers. With individuals of varying levels of bilingualism, tests may fail to measure what they intend to measure. Accordingly, norms developed with monolingual English-speaking populations should either not be used or should be interpreted with the understanding that English language proficiency is a contaminating factor. Precautions regarding processing speed factors are also raised. The chapter suggests that accommodations should be undertaken with English-language learners. It is also noted that cultural factors can affect test scores and that attention should be paid to these factors. The problem with this part of the narrative in Chapter 9 is that in spite of acknowledging the complexities associated with testing bilingual students, the precautions are tenuous and weak.

Chapter 9 repeats many historical caveats about translating tests without conducting norming studies. Back translations are specifically mentioned as being inadequate by themselves. A similar point was made in the 1985 Standards. Yet, publications describing

and endorsing this process continue to appear (Geisinger, 1994a,b). A translated test is an inappropriate test. The practice should be abandoned nationally.

The 1999 standards break new ground along several dimensions. They note that several issues raised in Chapter 9 apply to persons with disabilities that affect communication such as deafness and visual impairments. This connection appears to be part of a general trend in addressing the issues related to linguistic diversity. It also appears in a new, important text commissioned by the American Psychological Association (Sandoval, Frisby, Geisinger, Scheuneman, & Grenier, 1998). But, historically, bilingualism all too often has been equated with a handicap. Linking the test accommodations appropriate for bilingual learners with those appropriate for students with disabilities is exceeding problematic for bilingual children. Accommodations may seem similar, but their use and outcomes may be different for bilingual children (Thurlow, Liu, Erickson, Spicuzza, & El Sawaf, 1996). This is a matter for serious consideration.

The new 1999 standards discuss several types of test accommodations that may have to be used with English-language learners: using only sections of the test that match the linguistic proficiency of the test-taker, changing the test and response formats, administering the test in a different context, and allowing more time for taking the test. Most of these modifications are currently under study. It is difficult to see, however, how these will overcome the well-documented, historical impact of bilingualism on tests. It is difficult to see how testing a student in the wrong language, or testing for content that has not been taught, or testing for cultural material that is not in a Hispanic child's repertoire will be made fair by the changes suggested in these accommodations.

The issue of equivalence receives a great deal of attention in the new standards. This refers to several aspects of test-development, use and interpretation, for example: the degree of confidence that a test-user can exercise in determining whether a test score means the same for someone who is unlike the norming population, the equivalence across translated and renormed versions

of the same test, and equivalence in psychometric characteristics. As versions of the same test appear in both English and Spanish, this will become a major topic for research and examination. However, some have asserted that the conceptual basis for testing bilingual children in the United States using monolingual norms in both Spanish and English may be flawed (Grosjean, 1989; Valdes & Figueroa, 1994). It is argued that a bilingual child cannot validly be compared against norms from children whose linguistic experience and development is with only one language. Bilingual children need norms derived from bilingual norming samples, controlling for differential levels of linguistic proficiencies. This is an issue that urgently needs empirical studies and that calls for an immediate analysis.

A new directive in these Standards calls for taking into account both a determination of language dominance and language proficiency. Consideration should be given to the possibility that bilinguals may have domain-specific competencies in one or both languages. It is recommended that an individual's degree and type of bilingualism be understood in order to use test results properly. This directive has particular relevance for state-wide testing programs. Clearly, if achievement measures are interpreted without the degree of linguistic information suggested by the new Standards, test results may not be correctly analyzed or understood.

Extensive attention is given to the process of administering tests and to the possible impact of test-giver variables (culture, bilingualism, gender, time limits, and the use of interpreters). A crucial principle is recommended for testing English-language learners: give them enough time to finish the test and to show what they know and what they can do. This principle should also be applied in state-wide testing programs across the United States.

One of the most surprising parts of these new Standards is the attention given to the use of interpreters. Not only are there multiple precautions, there is also a veritable map for how to train and use interpreters. The unfortunate part of this section of the Standards is that there is no empirical evidence that even remotely validates any of the procedures for using interpreters. In fact, the opposite type of

conclusions are being reached in several, new doctoral dissertations (e.g., Sanchez-Boyce, 1999).

There are actually eleven standards in this new chapter on "Testing Individuals of Differing Linguistic Backgrounds." Most are similar to the ones promulgated in the 1985 edition. Because of their vital importance for the testing of Hispanic children, each is reviewed and critiqued here. In Appendix A, they are reproduced in their entirety.

There are several issues in these new standards that are very important. Test users are charged with the responsibility of determining when a test may be inappropriate with linguistic minorities because they do not know "the language of the test" (Comment for Standard 9.1). Similarly, test developers are held responsible, plausibly under "legal or regulatory requirements," for collecting evidence of test validity when there is research indicating differential meaning for test scores for a linguistic group. In a break with historical practices, the use of representative norming samples for these validity studies is proscribed. Separate norming studies specific to a linguistic group are called for (Comment for Standard 9.2).

Test users are also required to use professional judgement in order to determine language proficiencies prior to testing. Then they are to test in either the most proficient language or using both languages in order to assure construct validity (Comment for Standard 9.3). This is a highly ambitious directive that rests on some exceedingly tenuous assumptions: as it applies to Hispanic students, it is assumed that there are equivalent language proficiency tests in Spanish and English, that such equivalent tests can measure the complexity of linguistic proficiency in both languages, that such tests would have universal application among Hispanic Americans in the United States, that variation in linguistic proficiencies can be used to interpret an individual's test score (how does one interpret a score in a language that is 70% proficient and another score in a language that is 55% proficient?), and that bilingualism is the sum of two languages (in which case language proficiency testing makes some sense) rather than a linguistic unit (in which case linguistic proficiency testing may be of limited use).

Standard 9.4 seems to tacitly accept the validity of linguistic modifications of tests that are in English. These may involve changing the test to the test taker's primary language or altering the test given in English. There are no justifications for this standard (9.4) and the historical, empirical literature reviewed in this document argues against modifications such as translations. The standards (Comment on 9.4) place the responsibility for justifying these modifications on test developers. The current research on test modifications for English learners is not sufficient to warrant the existence of this Standard.

Standard 9.5 addresses the issue of flagging a test score when linguistic modifications were provided during the testing. The Standard basically suggests that such flagging may be unfair, and not useful if the score from the modified administration is comparable to the score on the nonmodified administration and if there is "no reasonable basis" for thinking that such modification affects score comparability. This is a very problematic Standard because of its lack of specificity. Are tests to be administered to linguistic minority individuals with and without modifications to see if there is comparability? What is a reasonable basis for determining comparability among scores? More than anything, the problem with this Standard comes from the unknowns related to linguistic modifications, or what in the literature is known as test accommodations for English language learners.

The current, available literature on such accommodations (e.g., Adebi, 1999a,b,c; Thurlow, Liu, Erickson, Spicuzza, & Sawaf, 1996) makes several points. The use of accommodations varies greatly across and within states that provide such test adaptations. The question of who gets accommodations also varies greatly within and across these states. The most popular accommodations in statewide testing programs are: allowing for extra time, using of a bilingual dictionary, being tested in a separate room, receiving oral translations of directions, offering multiple testing sessions, answering questions, providing written and oral translations, having words defined, and allowing for students to mark the test booklets (Thurlow, Liu, Erickson, Spicuzza, & Sawaf, 1996). As noted by these researchers in 1996: Few accommodations are universally allowed, and further

research on the appropriateness and technical adequacy of different types of accommodations would be beneficial (pg. 13).

Actual, empirical studies of accommodations (Adebi, 1999a,b,c) have produced modest results in improved test scores of bilingual children. This applies to achievement tests that are among the easiest to accommodate, math tests. In fact, one could argue that the study of accommodations has made its greatest contribution to children who do not need accommodations. Researchers have found that tests often include test language that is needlessly obtuse and immaterial to the construct being measured. Cleaning up such language improves the performance of all test takers.

Research on test accommodations is currently insufficient to support Standard 9.5. Testing bilingual, Hispanic children on an English test with accommodations may not be adequate to remove the high level of distortion or the construct-irrelevant error (Kopriva, 1999) implicated in the assessment of bilingual learners since the 1920s. Accommodations, in effect, may prove to be a subterfuge procedure for testing in the wrong language. Data already exist showing that some of the most popular accommodations, translating and interpreting, simply do not work.

Standard 9.6 requires test developers and users to explicitly address the questions related to test use and interpretation with non-native speakers. This Standard seems to exclude simultaneous bilinguals from such consideration. It is, regrettably, an example of the 1999 standards lack of precision about the complexity of bilingualism.

Standard 9.7 establishes a rule for using translated tests. The methods of translating have to be described and so does the evidence for establishing validity and reliability across language groups. This basically asserts, once and for all, the need to go beyond translations before interpreting or using test scores. But this Standard is problematic. Properly translating a test and then establishing its reliability and validity within different Hispanic cultural groups is really only a first step. There is also a need to establish the validity and reliability of the test within different levels of linguistic proficiencies within different Hispanic cultural groups.

This is another example of how the standards are fundamentally naive about the linguistic nature of Hispanic populations in the United States. A well-translated, well-normed test will be confronted not by Spanish speakers of one level of proficiency, but by the typical bilingual Spanish-speaking population of this country: culturally diverse and bilingually diverse.

Standard 9.8 speaks to the need for concurrence between what a test measures and what a credential or an occupation demand in terms of actual performance on the job. Particular attention is given in this Standard to the equivalence that should exist in the linguistic demands of the test and those on the job.

Standard 9.9 requires that tests that are available in two languages must provide evidence that each linguistic version is comparable to the other in terms of reliability, validity (particularly construct validity) and other data. Once again, however, this Standard does not address the existential reality of bilinguals in the United States. Tests that are available in two languages have to demonstrate equivalence across a wide spectrum of linguistic abilities.

Standard 9.10 is critical to this chapter as well as to all testing of Hispanic individuals. The measurement of linguistic proficiency should be done across "a range of language features" (pg. 154) and in more than one testing format (e.g., multiple choice). Language proficiency is a crucial covariant or control measure in much of what Chapter 9 of the new Standards proposes as solutions to testing bilingual individuals. Here, the requirement is that language proficiency must be measured in multiple ways. This is an important directive, a critically necessary albeit insufficient step in testing bilingual populations. What remains unaddressed is how such multiple measures of linguistic proficiency are to be used for the interpretation of test scores in both the primary and the secondary language and across the language proficiency profiles that exist in Hispanic and other bilingual populations.

Standard 9.11 is on interpreters. It touches on what is probably the most common historical accommodation in the testing of Hispanics. Unfortunately, it is the most problematic standard in this

chapter. As mentioned, there are no data to substantiate the assumption that it is possible to use an interpreter without severely and negatively affecting the standardization requisites, psychometric properties and the interpretation of test scores. It seems to sanction the translation of tests by the interpreter. It requires that the tester assume responsibility for the competence of the interpreter when there is no empirically validated model for training interpreters. Also, in most real-life situations, it is the school district or the clinic that is responsible for selecting, training, and assigning interpreters to testing situations. This is a Standard that urgently needs more deliberation and research.

One interesting omission in the new standards is the historical accommodation that when there are no appropriate tests available there should be more testing. This is a welcomed change. However, this change should be broadly publicized in order to stop the practice of "more testing."

FEDERAL NON-DISCRIMINATION PRINCIPLES AND GUIDELINES

The issue of nondiscriminatory testing took on a unique significance in the federal courts in the early 1970's because of the overrepresentation of minority students in classes for pupils with disabilities. The most current and extensive analysis of nondiscriminatory assessment has been done by the U.S. Office of Civil Rights (U.S. Department of Education, In press). Their Resource Guide, however, does not just address nondiscriminatory assessment from the perspective of special education diagnosis. It extends the application of nondiscriminatory assessment beyond special education to all high stakes testing and all assessment methods (norm-referenced, criterion referenced, and alternative testing methods). An important point highlighted by this Resource Guide is that nondiscriminatory assessment must be seen as part of the high-standards movement in American education. It must include, *a priori*, equity in the provision of opportunities to learn for all students.

In educational contexts, tests function as measures of system accountability and as measures of current status or prediction for the

student. Unlike employment testing, however, the guide underlines a critical distinction made by the courts:

If tests predict that a person is going to be a poor employee, the employer can legitimately deny the person the job, but if tests suggest that a young child is probably going to be a poor student, a school cannot on that basis alone deny that child the opportunity to improve and develop the academic skills necessary to success in our society.

(Larry P. v. Riles, 1984; cited in U.S. Department of Education, In press, pg. ii)

The OCR Resource Guide is fundamentally an exposition of the "testing and assessment principles that lie at the core of Title VI of the Civil Rights Act of 1964 (Title VI) and Title IX of the Education Amendments of 1972 (Title IX)" (U.S. Department of Education, In press, pg. i). Two legal theories of test discrimination are presented: disparate impact and disparate treatment.

The analysis of disparate impact concentrates on whether test practices and policies, regardless of neutrality of application, produce adverse consequences (pg. iv) with specific racial, gender, or national origin groups. The negative consequences described include granting or denial of benefits or opportunities (pg. iv). Educational necessity is the only exception in this regard. This means that tests must be reliable and valid for their intended educational purpose. Further, tests may not be used under this analysis if they are not the least discriminatory practical alternative that can serve the educational institutions educational purpose (pg. iv). There are three criteria that define "disparate impact." First, a test yields disparate results based on race, national origin, or gender. Second, the test has no educational utility. Third, there are no other practical, valid, or reliable alternatives to assess the students.

For Hispanic students, ample evidence exists showing that tests do cause disparate outcomes in high-stakes decisions: high special education representation rates for LEP students in certain categories of disabilities (United States Department of Education, 1993), low representation rates in programs for the Gifted and Talented

(Callahan, Hunsaker, Adams, Moore, & Blend, 1995), low representation rates in higher education (President's Advisory Commission on Educational Excellence for Hispanic Americans, 1996).

For all students, the question of a test's educational usefulness can often be answered in the negative with respect to curricular, remedial, or pedagogical decisions about an individual. For example, the most test-driven educational document, the special education Individualized Education Program (IEP), has not produced educational benefits to children with disabilities (Skrtic, 1991). A clear distinction needs to be made here that educational usefulness is both an individual as well as a system consideration. It may work for the latter but not the former, particularly when a test score for a bilingual Hispanic child contains systematic error (American Educational Research Association, et al., 1985, Chapter 13; 1999, Chapter 9). The educational usefulness of tests with Hispanic students is an issue that needs serious, empirical consideration. The possible attenuation of tests' predictive validity with Hispanic, bilingual populations augurs badly for any form of instructional validity or educational utility.

Invalid inferences are highly probable when tests are used on Hispanic children with varying degrees of exposure to a language other than English. The tests measure something other than what they intend to measure. Predictive validity studies that control for language background strongly indicate that psychometric bias is a real possibility in the testing of students from diverse linguistic backgrounds (Figueroa, 1990; Figueroa & Garcia, 1995). There is a great need for large, longitudinal studies on the predictive validity of tests used in educational contexts holding linguistic background and proficiencies as controls. If this type of predictive bias is further substantiated, the legal theory of disparate impact with Hispanic students would be significantly strengthened.

As to the question of practical alternatives, these exist: grades, portfolios, student work products keyed to rubrics, etc. The requirement that they be reliable, in a psychometric sense, however, is somewhat problematic. For example, criterion referenced tests, when they work, should be unreliable. Also, the history of testing Hispanic students clearly shows that reliability indices are insensitive

to linguistic or cultural differences. Also, the validity requirements for educationally useful alternatives to tests should focus on face, instructional and consequential indices of validity since criterion indices of validity with Hispanic students are currently suspect (Figueroa, 1990; Figueroa & Garcia, 1995).

On the matter of cut-off scores, the OCR Resource Guide relies on the principle that the method and rationale for setting the cut score, including the technical analyses, should be presented in a manual or in a report (American Educational Research Association, et al., 1985, Standard 6.9). The most prevalent use of such scores occurs in colleges and universities with respect to admissions. Yet, institutions of higher learning typically do not provide any technical analyses that would justify a particular cut-off score on educational grounds. More often than not, universities set up cut-off scores without any empirical consideration as to what score differentiates between those who can learn in university settings and those who cannot. Cut scores ignore the systematic under-education of Hispanic students. Whereas institutions of higher learning may see them as indices of merit, for most Hispanic students they are also measures of unequal opportunities to learn at the K-12 level. Cut scores are largely responsible for their underrepresentation in institutions of higher learning. Further, as the National Council of La Raza reports, California's Proposition 209 banning affirmative action programs in colleges and universities may re-established the prominence of using cut scores in the SAT and GRE exams for admission purposes. The impact of this would only exacerbate an already inequitable situation. Between 1987 and 1997, Hispanic students' SAT scores decreased in relation to White students' (National Council of La Raza, 1998).

The analysis of disparate treatment focuses on whether testing policies or practices are done differently for individuals or groups with distinct racial, national origin, or gender characteristics. Examples of differential treatments would include being tested under different conditions (pg. iv) or whether students with the same test scores are..treated differently by an educational institution (pg. iv). The OCR Resource Guide fails to consider the possibility that for a Hispanic student from a linguistically or culturally different background, tests administered in English are tests given under different conditions (pg. iv) than those for a monolingual, monocultural student. Clearly, given

the evidence reviewed here and acknowledged by the Standards for Educational and Psychological Testing (American Educational Research Association, et al., 1985; 1999) this is an issue that should be addressed by the U.S. Office for Civil Rights.

The Resource Guide's section on Equal Opportunity for Limited-English Proficient Students (pg. 9) is quite inadequate in this respect. Some of its suggested accommodations lack any empirical justification (e.g., bilingual dictionaries) and may actually attenuate psychometric properties. Similarly, the suggested "remedies" are problematic for Hispanic children and youth: test more, revise the test, substitute the test.

Presently, a strong argument can be made that tests produce disparate impacts and that they do constitute a disparate treatment with Hispanic students from diverse linguistic backgrounds. The viability of such arguments should be debated. It should be done on two levels: the legal/policy level and the psychometric/professional level (with respect to consequential validity).

CHAPTER 4: BIAS

In the early part of the 20th century, the discussion of bias in tests and testing focused on two areas: the impact of the "language handicap" experienced by bilingual individuals and the possible misinterpretation of test data to assert genetic differences among groups, particularly with regards to intelligence. But it was not until the 1960's that the problem of test bias became prominent. Tests were linked with tracking and segregation policies in school districts in several court cases. Most notably in Hobsen v. Hansen (1967), the pivotal use of academic aptitude tests for tracking African American children in vocational, high school programs was outlawed by the court. The court found that the tests were biased because they could not really measure student learning potential and because they produced the sort of segregation proscribed by Brown v. Board of Education.

In Hobsen v. Hansen (1967) and subsequent litigation that involved testing practices (Diana v. California Board of Education, 1970; Larry v. Riles, 1979), test bias became linked with the civil rights meaning of bias, discrimination, and prejudice. One of the consequences of this linkage was a vigorous response from the testing community in the form of extensive research on the empirical documentation of bias. Studies conducted on racial/ethnic groups across the full spectrum of available tests were fairly unanimous: test bias could not be found (Cleary, Humphreys, Kendrick, & Wesman, 1975) in the multiple indices of reliability (items, factors, alternate forms, retest) and all the various forms of validity (content, criterion, concurrent, construct).

However, a careful examination and interpretation of the research data on Hispanics since the 1920's suggests that there is evidence of bias. Table 1 presents the sources of test bias and the degree empirical evidence available.

TABLE 1
SOURCES OF TEST BIAS WITH HISPANIC
TEST-TAKERS

**1) SIGNIFICANT EXPOSURE TO A LANGUAGE
OTHER-THAN ENGLISH**

Extensive documentation

**2) PROCESSING SPEED IN THE WEAKER
LANGUAGE**

Extensive documentation

4) USING TRANSLATIONS OF TESTS

Extensive documentation

6) DIMINISHED OPPORTUNITY TO LEARN

Extensive documentation

5) DECISION-MAKING BASED ON TESTS

Emerging documentation

3) USING INTERPRETERS DURING TESTING

Emerging documentation

The following is an extended explanation of each source of bias presented in Table 1.

1) Since the 1920's, Hispanic children and adults have consistently demonstrated a classic test profile on tests of mental ability and academic achievement: low [English] verbal scores and high non-verbal/math test scores. The depressed verbal scores are directly related to the degree of exposure to Spanish in the home and the community. Tests in English, since they are generally normed on monolingual English speaking populations, inherently tap a developmental sequence of English proficiency and English literacy. When exposure to English varies in degree across chronological ages (as with simultaneous bilinguals), or in the time of onset (as with sequential bilinguals), or both, tests register this as a subtrahend. Item analysis studies (Sandoval, 1979; Figueroa, 1983) clearly show this as a generalized impact throughout the test items rather than as a discrete phenomenon affecting some items and not others. This explains why studies of test bias in test item structures have not found such bias (Cotter & Burke, 1981). It also explains why internal indices of test reliability and stability have also not found bias with Hispanic children and adults (Valdes & Figueroa, 1994). Item difficulty levels are not changed. The total scores are lower, but the test items perform the same way regardless of English proficiency.

The most powerful of impact from exposure to Spanish is manifested in one of the most critical functions of tests: prediction. Though empirical data have suggested this from the beginnings of psychometrics, more recent studies have clearly documented that the greater the degree of exposure to Spanish the lower the predictive validity of [English] tests (Gandara, Keogh, Yashioka-Maxwell, 1980; Pilkington, Piersel, & Ponterotto, 1988; Emerling, 1990; Kaufman & Wang, 1992; Stone, 1992; Valdez & Valdez, 1983; Valencia, 1982; Valencia & Rankin, 1988; Figueroa, 1990; Figueroa & Garcia, 1995; Pennock-Roman, 1990).

The clearest example of this comes from the validity study of the System of Multicultural Pluralistic Assessment (Mercer, 1979). Mercer developed a battery of tests that purported to operationalize the federal requirement of nondiscriminatory testing in special education diagnoses. She normed the tests in 1972 on what is in all likelihood the most random and representative sample of Hispanic children (N=700) in California. A critical aspect of this study was that the children were all judged to be English proficient by the school staff

and by those who individually administered the tests. However, the children came from three types of linguistic environments: homes where only Spanish was spoken, where Spanish and English were spoken, and where only English was spoken. In 1982, a predictive validity study of the tests was undertaken (Figueroa & Sassenrath, 1989) on approximately half of the original norming sample. It was found that on the WISC-R IQ's the predictive validity coefficients for the Hispanic children varied in direct proportion to their exposure to Spanish. Figure 1 presents these data.

See Figure 1

Figure 1 shows how the more Spanish there was in the home in 1972, the less that IQ predicted Reading and Math achievement in 1982. Ironically, the nonverbal IQ, the historically used solution for measuring mental abilities and aptitudes in bilinguals, proved to be the most hypersensitive to Spanish in the home. Other studies show similar results (Figueroa & Garcia, 1995). However, a definitive predictive validity study using multiple measures of the Hispanic subjects' English proficiency as a control urgently needs to be done. Systematic differences in predictive validity are one of the key signatures of bias in tests.

2) Differences in cognitive processing speed between monolinguals and bilinguals is dramatically demonstrated in the work of Dornic (1979, 1978a, 1978b; 1977) in Europe. Basically, he found that processing information in the weaker language produced consistently slower functioning. Further, the entire process of mentation became progressively more and more vulnerable (to the point of shutting down) when the material was too complex, when the testing situation was too noisy, or when stress levels increased. The importance of these findings for testing that is done under timed, noisy or stressful conditions with Hispanic children merits further research. It should be noted, however, that accommodations providing more time for English learners are already routinely recommended.

These are critical findings whose relevance may extend beyond issues of test fairness or bias. Processing speed and automaticity are crucial requisites for certain academic skills. Currently, for example,

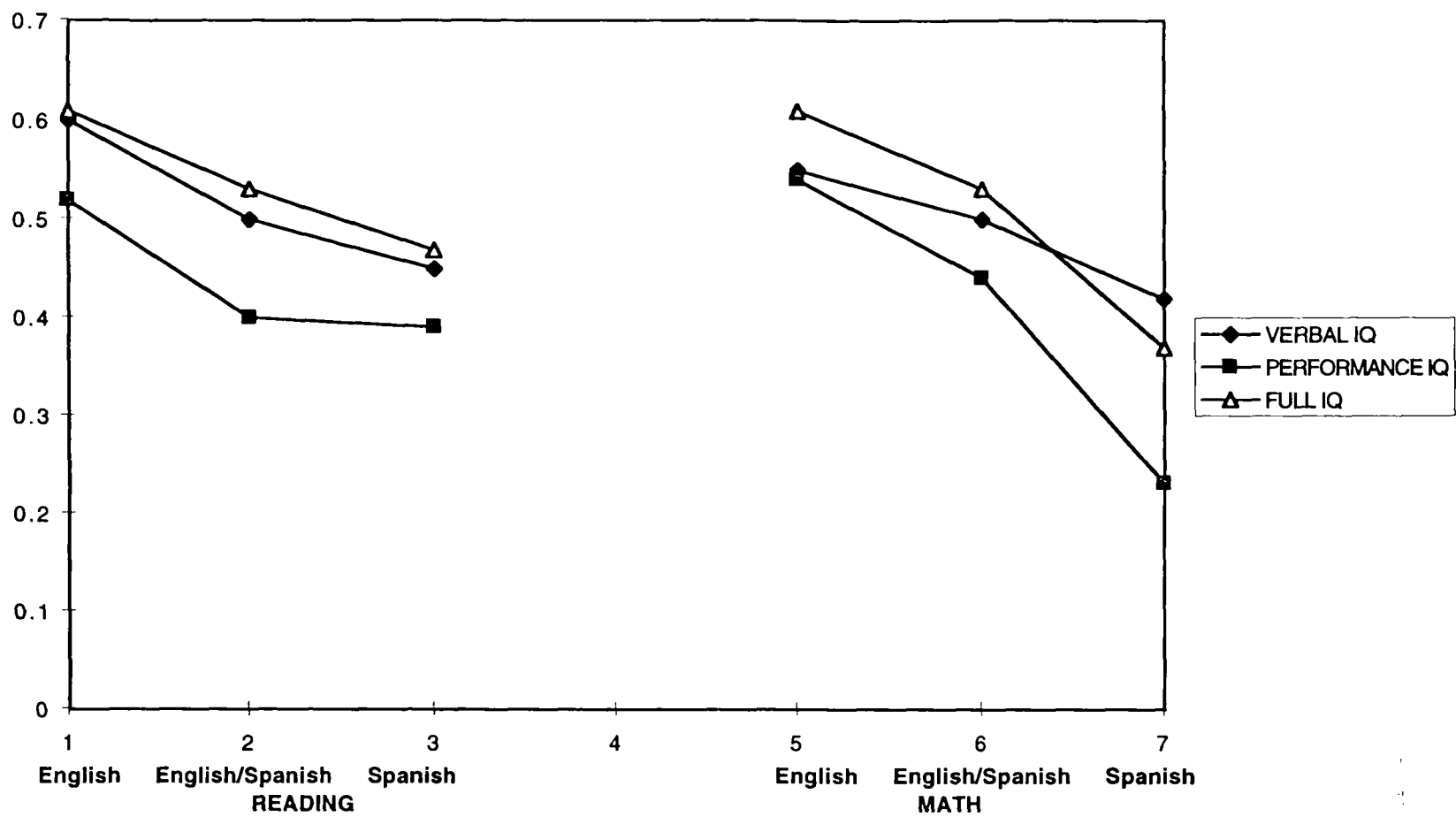


Figure 1: Evidence of psychometric bias in the predictive validity of 1972 IQ's relative to 1982 standardized measures of reading and math achievement for Hispanic children's home language background.

the great emphasis being given to fluency in reading as a major indicator of reading proficiency may well be biased or invalid when applied to Hispanic English-language learners.

Research has also continued to document how Hispanic and Japanese bilingual children are better at naming digits backward than monolingual children (Jensen & Inouye, 1980; Figueroa, 1987). Though the typical explanation attributes this to bilingualism, a more precise explanation may be slower processing in English in children from Spanish-speaking homes. Slower processing may actually be favorable for naming digits backward. Just as likely, slower processing may come from translating material into Spanish and then back into English. In conditions where "slow" is not an impediment, there may be better remembering and possibly better learning (Malakoff & Hakuta, 1991).

3) The 1985 and 1999 standards place all manner of caveats on translating tests without any re-norming on the target populations for which the translation was developed. The rationale for this is quite clear. When a test is normed, the item difficulty levels and the actual norms flow from the responses of the norming sample. Translating a test, no matter how well done, no matter if the translation is then back-translated to English, does not necessarily produce either an equivalent or a useful instrument. But are the caveats in the 1985 and 1999 standards about translating tests devoid of any empirical proof? Can psychometricians really proceed with elaborate directives on how to translate tests (Geisinger, 1994b) without having to actually re-norm the new, translated test?

In 1982, the Mexican government undertook a renorming of the WISC-R intelligence test in Mexico City (Gomez-Palacio, Escamilla, & Roll, 1983). They began with a straight translation of the verbal test items as well as all the instructions. They also added extra items to most of the verbal subtests in order to make these more aligned to Mexican children's opportunities-to-learn in both their public schools and their communities. When the norming was finished, approximately 80% of the items that were translated from the English survived. The critical questions in this discussion are: What happened to the test items? Did they remain in the same location as when they were in the translation and in the English version? Figure 2 answers

these questions. The item sequence in the Vocabulary subtest of WISC-R and the Mexican WISC-R are presented.

See Figure 2

Not only do the item sequences, or the degree of difficulty that the children experienced with each word, change; they did so in a most unusual manner. In the first half of the Vocabulary subtest, the items were generally easier for Mexican children. In the second half, there were more items that were harder. Overall, Figure 1 clearly shows that equivalence of tests merely through translation does not work. This refutes the practices associated with just translating a test. The new translated test, in all likelihood, will not be equivalent to the first. The Mexico City data indicate that translating a test, no matter how well done, is a biased procedure. It produces an instrument with unknown psychometric characteristics. It precludes any useful decisions based on the scores.

4) Tests are based on a set of critical assumptions. It is assumed that the individual being tested has had similar experiences as the individuals who generate the test norms. It is concomitantly assumed that there is general equivalence in the opportunities that individuals have had to learn the content in the test, the linguistic genre of the test, and the demands of tests. Intelligence and achievement tests are particularly dependent on meeting these assumptions since without them the attributions to intellectual or academic abilities cannot be reasonably made.

In the case of achievement testing, however, it is possible to determine from multiple research sources when the opportunity to learn for a population is not even or not fair (Orfield & Yun, 1999; Moreno, 1999). In this case, the test scores may reflect or even assess opportunity-to-learn. They become measures of system accountability. Such scores, however, may not reflect the learning ability of the individual nor his/her potential for learning. In effect, any high-stakes decisions based on scores that do not meet the assumptions of some equivalence in opportunity-to-learn can be unfair and invalid. Such may be the case in statewide testing programs when the tests are administered in English to English-language learners. The scores themselves become in unknown

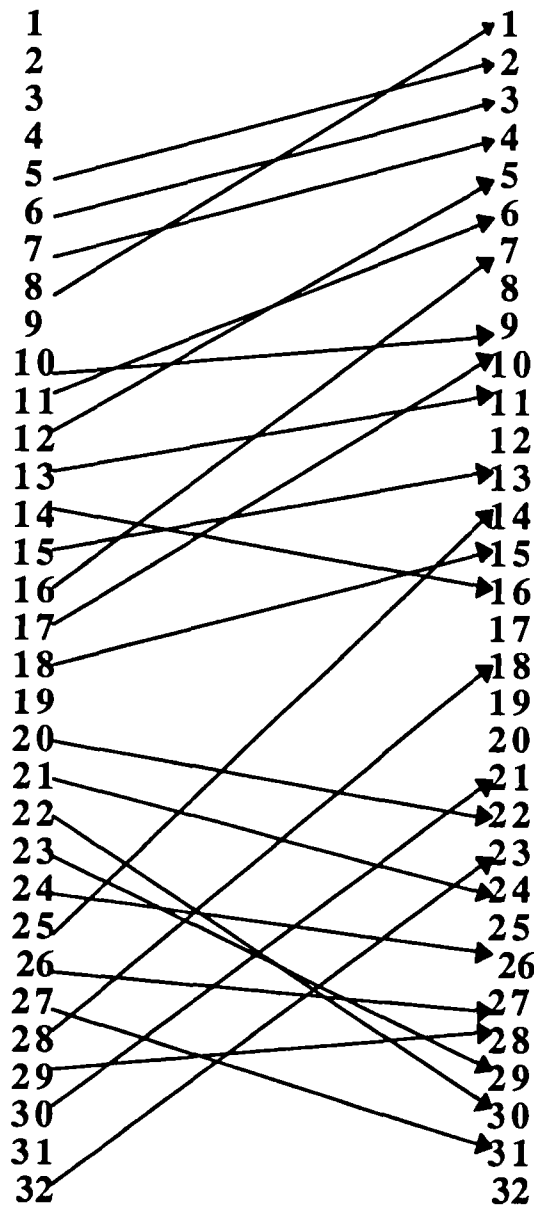


Figure 2: Changes in the item difficulty levels of WISC-R Vocabulary items and the translated Vocabulary Items in the Mexican WISC-R as a function of the Mexico City norming study.

degrees measures of opportunity-to-learn (and English language proficiency) not of individual achievement and certainly not of future academic achievement.

In 1982, the National Academy of Sciences broke tradition with American psychology (Heller, Holzman, & Messick, 1982). It suggested that individual differences in academic achievement may not be the primary source of score differences. It recommended that before a child is tested for special education diagnosis, his or her present instructional setting be evaluated for its validity, effectiveness, and delivery. Similar considerations should be taken into account when testing Hispanic children from diverse cultural, linguistic and schooling communities in the United States.

5) The 1985 Standards for Educational and Psychological Testing were criticized (Valdes & Figueroa, 1994) for not addressing one of the most commonly used practices in the testing of bilingual individuals, i.e., the use of interpreters. The 1999 standards finally discuss this practice. But they also endorse it and set about describing the who, how and what for using an interpreter during testing. The unfortunate aspect of this is that there is no empirical evidence in the testing literature that can attest to the procedural equivalence of this process to doing testing in one language or to any scientific documentation that the process actually works reasonably well.

In fact, the few doctoral studies that have recently been done investigating the use of interpreters conclude the opposite (DuFon, 1991; Sanchez-Boyce, 1999). Sanchez-Boyce's dissertation (1999) describes the actual process of using an interpreter during individualized testing sessions for special education placement of Hispanic students as chaotic, erratic, and fairly devoid of any standardization procedures. She documents how the conclusions reached from such testing sessions are really socially constructed and have no bearing to what the child can or cannot actually do. Research is urgently needed in this widespread practice to either refute or validate these investigations. If the latter turns out to be the case, the 1999 standards should be revised relative to their endorsement of the use of interpreters and it should be done before the next comprehensive draft appears around 2010.

6) The actual process of making decisions on the basis of test scores administered in either English or Spanish has never received much attention. Recently, however, Sandoval (1998) has heuristically taken findings from the research literature on decision-making theory and attempted to apply them to the testing situation where the subject is from a different cultural and linguistic background. Table 2 presents the multiple set of considerations that a test-user must engage or consider when testing a Hispanic subject.

TABLE 2**FACTORS TO CONSIDER IN MAKING
DIAGNOSTIC DECISIONS WHERE ISSUES
OF LINGUISTIC AND CULTURAL DIVERSITY APPLY****I. REPRESENTATIVE BIAS**

- IGNORING THE PREVALENCE OF A BEHAVIOR IN A GIVEN POPULATION
- REACHING DECISIONS ON THE BASIS OF A LIMITED SAMPLE OF OBSERVATIONS
- FAILING TO TAKE INTO ACCOUNT THE FACT THAT SOME SCORES WILL BE OFF BY CHANCE
- MAKING PREMATURE CAUSAL INFERENCES ON THE BASIS OF CORRELATIONS THAT ARE NOT GENERALIZEABLE, COHERENT, CONSISTENT, ROBUST, OR REVERSIBLE

II. CONFIRMATORY BIAS FROM WHAT IS EXPECTED OR WHAT IS STEREOTYPIC**III. AVAILABILITY BIAS OR BIAS THAT COMES FROM VIVID, RECENT DATA****IV. BIAS DUE TO INTELLECTUAL LIMITATIONS OR COGNITIVE OVERLOAD DUE TO HIGH DEGREES OF COMPLEXITY (E.G., INTERACTIONS AMONG CULTURAL, LINGUISTIC, AND OPPORTUNITY-TO-LEARN VARIABLES)**

Assuming that even half of these considerations are robust in doing testing and diagnostic work with Hispanic populations, two implications arise: Can anyone with cultural and linguistic backgrounds that are different from the student being tested actually do the task? And, Is it possible to train individuals to effectively use these parameters in making test/diagnostic decisions? As noted earlier, decision-making has never been adequately studied with multilingual and multicultural populations. The distinct possibility exists that this has been and continues to be an inadequately studied source of test bias with Hispanic populations.

The content of this chapter provides empirical evidence that tests used with Hispanic students show evidence of bias. Comprehensive, longitudinal investigations on this question should be commissioned. The impact of Hispanic culture and Spanish language proficiency levels on the predictive, consequential, and/or instructional validity indices of tests should be determined.

CHAPTER 5. EDUCATIONAL ACCOUNTABILITY

For all Hispanic Americans, achievement tests are one of the most important sources of information affecting their lives and communities. The emphasis on higher academic standards for American schools has brought with it an unparalleled degree concern about system and student accountability. Achievement tests supposedly fulfill this goal better than any other indicator. The precarious aspect of this is that achievement tests are among the most difficult measurement instruments to develop and interpret particularly when they are given in group situations in order to compare academic gains across states, school districts and schools (Cronbach, Linn, Brennan, & Haertel, 1998). These are fragile instruments that suffer from low reliabilities and that all too often assess not just what has been learned but also degrees of English-language proficiency, cultural differences, socioeconomic status in the home and community, quality of past and present pedagogy, and the economic advantage or disadvantage of school districts.

Historically, achievement tests have nearly always described a chronic pattern of underachievement for Hispanic students of all ages. Reynolds (1933) called attention to the one to two-standard deviation differences in achievement test scores between Anglo and Hispanic American populations in the Southwest. In the Coleman Report (Coleman et al, 1966), the academic levels of Mexican American and Puerto Rican children continued to show a one to two-standard deviation deficit compared to White children. In the 1970's the U.S. Commission on Civil Rights (1971a, 1971b, 1972, 1973, 1974) documented a similar level of underachievement for Mexican American children. These reports also found that the education of Mexican American children differed significantly from that of White children: fewer questions from their teachers, less reinforcement for their classroom responses, poorer schools, no reflection of their ethnic/cultural background in the curricula, and no Mexican American models in the teaching, administrative, or counseling staffs. Other data in the 1980's and 1990's also continued to show evidence of comprehensive, national levels of underachievement among Hispanic

children and youth (National Commission on Secondary Education for Hispanics, 1984a,b; Arias, 1986; Valencia, 1991; President's Advisory Commission on Educational Excellence for Hispanic Americans, 1996; National Council of La Raza, 1998; Laosa, 1998; Moreno, 1999).

Recently, the National Council of La Raza (1998) updated the data on the status of Latino students' education. Although there are some modest gains between the NAEP achievement scores of Hispanic students across the country between 1988 and 1994, particularly in math and science, the overall picture is one of decline. The achievement gap between White and Hispanic students continues to increase. Key indicators (lower enrollment in preschool programs than White students, higher Hispanic enrollment below modal grade, underrepresentation in gifted and talented programs, increased enrollment in segregated schools, a 103% increase in suspension rates, a growing digital divide, an increase in the drop-out rates between White and Hispanic students, etc.) show that Hispanic students continue to have different educational experiences than their White counterparts in the public schools of the United States.

Yet achievement tests have always operated under the belief that the public schools provide similar educational experiences and opportunities for all students. In 1975, this belief was explicitly noted in a report from the American Psychological Association (Cleary, Humphreys, Kendrick, & Wesman, 1975):

It is recognized that three assumptions are basic to this report. The first assumption is acceptance of a single society, heterogeneous though it may be, rather than a divided one. The second assumption is that few radical changes are expected in curriculum content or methodology of instruction in our educational establishment.....The third assumption accepts the importance of evaluation in education.

The assumption of homogeneity of "opportunity to learn" in the public schools of the United States is never really mentioned, but it is implied. With all achievement testing, this is a necessary condition that must be met prior to any interpretation about a student's or a group's level of academic achievement. Recently, Orfield & Yun (1999) have documented a national trend towards more segregation

of Hispanic students in the public schools of the United States. As has always been the case, segregated schools typically have fewer financial resources, the most inexperienced teachers, and the lowest academic achievement levels. In effect, the Hispanic student does not receive the same curricula or pedagogy or resources as do those students in affluent or middle-income school districts. The issue of differential "opportunities to learn" for Hispanic children in the public schools of the United States during the last 100 years is incontrovertible.

According to the legal analysis on "Nondiscrimination in High Stakes Testing" authored by the U.S. Office for Civil Rights, this condition establishes a claim of substantive due process violation related to achievement testing because "the students were not taught the material on which the tests were based" (U.S. Department of Education, 1999, pg. 2). This is a national claim and one that needs to be addressed, particularly in the current climate of setting progressively higher and higher academic standards without a concomitant resolve to equalize opportunities to learn.

NEW INITIATIVES

The 1990's produced an unprecedented degree of attention about the measurement of academic achievement in Hispanic students. For example, considerable legislative work was focused on including English language learners in all large scale achievement testing programs (Goals 2000, Educate America Act, P.L. 103-227; the Perkins Act, P.L. 98-524; Improving America's Schools Act, P.L. 103-328). Three initiatives, however, are particularly noteworthy because of their potential impact on national policy and discussion on this matter: the new Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, National Council on Measurement in Education, 1999), the report of the National Research Council on Improving Schooling for Language-Minority Children (August & Hakuta, 1997), and Grading the Nation's Report Card, by the National Research Council. Each of these addresses the challenges involved in testing the academic achievement of English language learners.

In the new Standards for Educational and Psychological Testing (American Educational Research Association, et al., 1999), there is a particularly powerful caveat noted with respect to achievement tests: it is not known how much they become measures of English language proficiency when they are used with individuals whose primary language is not just English. ["..among non-native speakers of the language of the test, one may not know whether a test designed to measure primarily academic achievement becomes in whole or in part a measure of proficiency in the language of the test" (pg. 9-4)]. Across the United States, however, the test scores of English-language learners are never described in these terms nor is the possible degree of test bias or error recognized.

Statewide testing programs of academic achievement should include statewide standardized measure of English language proficiency capable of measuring multiple dimensions of this competence. As the 1999 testing standards suggest, a determination should be made first about which language is dominant. Then, the degree of proficiency in the dominant language should be measured along dimensions such as reading, writing, comprehension, grammar, pronunciation, and communicative competence. There should be a clear understanding, however, that even with this type of comprehensive language proficiency assessment, knowledge in certain domains may be missed by achievement tests. The new Standards therefore recommend doing academic testing in both languages even when proficiency in English is established.

In 1997, the National Research Council through its Committee on Developing a Research Agenda on the Education of Limited-English-Proficient and Bilingual Students ostensibly summarized the current knowledge base on testing English-language learners in its report on Improving Schooling for Language-Minority Children (August & Hakuta, 1997). Four contemporary concerns are addressed: the measurement and use of students' L1 and L2 linguistic proficiencies in school districts across the United States, the use of tests with bilingual students for entrance and exit criteria from educational programs (including Title I and special education), the impact of L1 on the validity and reliability of tests, and the

measurement of academic achievement particularly in standards-driven educational contexts.

The report sets forth the following research agenda for the assessment of second language learners (August & Hakuta, 1997, pgs. 113-134):

1) Given that current tests tend to measure only discrete linguistic features, the assessment of linguistic proficiencies in L1 and L2 needs to be aligned with current research on how language acquisition occurs in children in bilingual communities.

2) Because different dimensions of English are required by different academic subjects and in different grades, it is necessary to determine how to use multifaceted measurements of English proficiency to validly predict success in English-only classrooms.

3) Research is needed on how to measure knowledge in academic subjects. Specifically: Does testing in English underestimate academic knowledge if English proficiency is limited? Does lack of familiarity with "test language" affect academic test scores even when the tests are given in the primary language? Is it better to test in English or in the primary language when subject matter has been given only in English? What is the impact on test scores from varying levels of native language proficiency, years of schooling in English, and difficulty of academic content?

4) Studies need to be done on how English learners take tests. Specifically, how test demands, test format and test language (e.g., instructions) affect scores. Also, when can an English learner validly and reliably take a test in English and when does an English learner need test modifications or accommodations? Further, what is the impact of such modifications on test reliability and validity?

5) How can rater or scorer error be reduced in "open-ended or performance-based" (pg. 130) assessments

when the test-taker's English proficiency can influence scoring decisions?

6) The standards and accountability reform movements in education call for content, performance and opportunity-to-learn benchmarks (McLaughlin & Shepard, 1995) throughout schools, school districts and federal programs. Research is needed on how to operationalize these for English-language learners. Specifically: Can indicators of subject matter competence, and English proficiency development be produced for English language learners? How can the progress of English-language learners (ELLs) be gauged within school district standards and on indices of academic achievement? If nonstandard assessments are used with ELLs, how can these be included within state and district accountability measures? What is the operational meaning of "yearly progress" for ELLs given the possibility that ELLs "may take more time to meet ...standards" (pg. 127)? Finally, given the fact that there are few data on effective pedagogical, curricular, or contextual conditions for the schooling of ELLs, how can opportunity-to-learn standards be operationalized for them?

There is one area missing in this research agenda. In spite of the fact that there is text (pgs. 124-125) in the report on meeting the assessment needs of English-language learners referred for special education testing, the report fails to heed its own voice. Because there are no assessment instruments that can differentiate between linguistic/cultural differences and disabilities, research is needed on how to operationalize the "nondiscriminatory assessment" provisions of federal special education laws, as these apply to Hispanic, English-language learners.

By and large, the research agenda proposed by the National Research Council should be endorsed and funded. Its importance is twofold. First, it points to work that is vitally needed now. Second, it highlights the elementary stage that the country is in with respect to measuring the academic achievement levels of English language learners.

The National Research Council has also evaluated the efforts of the National Assessment of Educational Progress (NAEP) in measuring the academic achievement of all students in the United States (Pellegrino, Jones, & Mitchell, 1999). The National Assessment for Educational Progress (NAEP) is one of the more problematic test-developers and test-users with respect to the academic achievement testing of Hispanic students. Up to the 1990s, the NAEP, for example, did not even have reliable procedures for identifying the ethnic background of Hispanic students (Rivera, 1986; Rivera & Pennock-Roman, 1987; Baratz-Snowden, Pollack, & Rock, 1988). The manner in which the students were chosen for inclusion in NAEP testing was not random and systematically excluded English language learners. Even when the NAEP attempted to address the complexities associated with testing Hispanic children, their efforts were so flawed that they precluded any meaningful interpretation of test scores (e.g., Baratz-Snowden, Rock, Pollack, & Wilder, 1988).

In the most recent report on the NAEP, the National Research Council (Pellegrino, Jones, & Mitchell, 1999) pays particular attention to the assessment of English language learners. Asserting that the NAEP and other assessment programs have made many efforts to accommodate the special needs of English language learners (Olson & Goldstein, 1997), this report highlights the efforts of the Puerto Rico Assessment of Educational Progress, a unique Spanish language translation and accommodation of NAEP mathematics tests. After its administration in Puerto Rico, several key findings about the complexities associated with transporting American tests across languages were found: translations often fail (Anderson & Olson, 1996), and item response theory analyses yield noncomparable scales for English and Spanish versions of the test (Olson & Goldstein, 1997). In another study (Anderson, Jenkins, & Miller, 1996), similar conclusions were reached with respect to the translation of other NAEP tests: "the translated versions of the assessment are not parallel in measurement properties to the English version and that scores are not comparable" (pg. 31).

In 1995, a field test of the NAEP mathematics test included more English language learners than ever before. In fact, where previously the NAEP instructed schools across the nation on which

ELL students to exclude, in this field test the instructions were on how to include ELL students whom the school staff thought could actually take the test. Also, the following accommodations were included: more time, more testing sessions, different testing sessions (group and individual), using an interpreter to elaborate on instructions, and test booklets in Spanish. There is some evidence that accommodations do enhance participation, but it remains to be seen what the effect of such accommodations on test scores will be. Recent research from UCLA suggests that the benefits may be marginal (Abedi, 1999a,b,c). Problems also remain with respect to the test technology used to identify and classify ELL students nationally and with respect to the wide variation across states and school districts in the criteria that they use for these purposes (August & Lara, 1996; Valdes & Figueroa, 1994). As the National Research Council acknowledges:

To date, the dilemmas described ... have not been resolved. Children potentially in need of native language support are still being assessed at entry level using one of several instruments that many scholars have questioned, and some years later they are tested again using another of such instruments that is in no way comparable to the first. The field is no closer to developing means for assessing whether a child can or cannot function satisfactorily in an all-English program or participate in all-English large-scale assessments ñ than it was in 1964.

(Pellegrino, Jones, & Mitchell, 1999, pg. 105)

Table 3 presents the research agenda suggested by the National Research Council in order to help the NAEP cope with the inclusion of English language learners as part of the Nation's Report Card. As will be noted, some of these (e.g., using translations) are questionable given the historical and scientific experience of the country with such procedures.

TABLE 3**THE NATIONAL RESEARCH COUNCIL'S RESEARCH AGENDA
FOR INCLUDING ENGLISH LANGUAGE LEARNERS IN THE
NATIONAL ASSESSMENT FOR EDUCATIONAL PROGRESS**

What types of demands do different assessments make on English language learners and how do different types of accommodations help different types of students?

How do accommodations affect the construct validity of the tests?

Is it useful and cost effective to try accommodations such as translations?

Do scores from accommodated administrations have the same scaling properties and can they be reported in the same fashion as for all other students in the NAEP?

Do English language learners have the same opportunity to learn and curricula as non-ELL students?

What are possible, alternative assessment methods for ELLs?

(Pellegrino, Jones, & Mitchell, 1999, pg. 110-111)

Table 4 presents the major conclusions and recommendations of the National Research Council for the NAEP's testing of English language learners.

TABLE 4

**THE NATIONAL RESEARCH COUNCIL'S MAJOR CONCLUSIONS
AND RECOMMENDATIONS FOR TESTING ENGLISH LANGUAGE
LEARNERS ON THE NATIONAL ASSESSMENT FOR
EDUCATIONAL PROGRESS (NAEP)**

"CONCLUSIONS

Conclusion 3A. The participation and accommodation of English-language learners are necessary if NAEP results are to be representative of the nation's students. There is currently a paucity of interpretable achievement data and accompanying contextual data on the performance and educational needs of these populations.

Conclusion 3B. Enhanced participation of English language learners in NAEP depends on (1) the consistent application of well-defined criteria to identify these students and (2) accurate collection and reporting of information about them.

Recommendations

Recommendation 3A. NAEP should include sufficient numbers of English language learners in the large-scale assessment so that the results are representative of the nation and reliable subgroup information can be reported.

Recommendation 3B. Criteria for identifying English language learners for inclusion in the large-scale survey need to be more clearly defined and consistently applied.

Recommendation 3C. For students who cannot participate in NAEP's standard large-scale surveys, appropriate, alternative

methods should be devised for the ongoing collection of data on their achievement, educational opportunities, and instructional experiences.

Recommendation 3D. In order to accomplish the committee's recommendations, the NAEP program should investigate the following:

- XI. Methods for appropriately assessing, providing accommodations, and reporting on the achievements of. English language learners, and**
- XII. Effects of changes in inclusion criteria and accommodation trends in achievement results."**

(Pellegrino, Jones, & Mitchell, 1999, pg. 112-113)

Tables 3 and 4 present an exceedingly modest set of recommendations for English language learners and for Hispanic

children. Some of these recommendations go back nearly 80 years (Sanchez, 1934; Reynolds, 1933). It is time for a comprehensive set of action plans to make large-scale, educational accountability systems, such as the NAEP, relevant and useful for the educational present and future of Hispanic children. The points made in Tables 3 and 4 are good starting points. But there are other, more complex issues that need to be asked and answered. For example, assuming that it is possible to measure students' multidimensional levels of proficiency in both languages, the challenge remains as to what to do with language proficiency scores. Should they be used to generate expectancy scores? Should they be used to adjust achievement scores to compensate for error? Should they alter cut-off for eligibility, detention or promotion purposes? Research is needed to establish the function of such scores for interpreting the academic achievement of Hispanic, bilingual individuals with varying levels of acculturation and from the multiple ethnic and cultural backgrounds of Hispanic Americans.

CHAPTER 6. DIAGNOSTIC TESTING FOR SPECIAL EDUCATION

Linguistic minority children, for nearly a century, have tended to overpopulate classes for students with mental disabilities. No other area of education is as linked to issues of genetic differences in intelligence as special education. The fundamental question that has plagued this area of American education is why there are too many minority children with low IQ's. Race psychologists in the 20's and 30's attributed this to genetic inferiority. Apostles of the same doctrine have asserted the same in the 1960's and continue to do so even now.

"On the other hand you look at a lot of kids in the inner cities who have not seen a book by the time they come to kindergarten, and you give them one and they hold it upside down and the wrong way." The language interactions that they've had at home are nil. They have never even heard these sound systems. Are they lousy readers? A lot of them are. Are they genetically predisposed? Some of them are making that combination a tough one to treat."

(Reid Lyon, quoted in
Taylor, 1998, pg. 192)

In the 1960's, the federal courts entered this debate. The questions posed then were: Why are there too many minority children in classrooms for the mentally retarded? And, Are the tests used to diagnose mental disabilities biased against them? Many of these court cases focused on the possible linguistic bias of IQ tests and on the denial of equal educational opportunities to Hispanic students placed in special education (Diana v. California Board of Education, 1970; Jose P. v. Ambach, 1979; Arreola v. Board of Education, 1968; Guadalupe Organization v. Tempe School District, 1978; Ruiz v. State Board of Education, 1971; Covarrubias v. San Diego Unified School District, 1972; Lora v. Board of Education of the City of New York, 1984). For the most part, the courts ruled in the direction of using non-verbal tests of intelligence, establishing monitoring systems for determining when Hispanic children were overrepresented in classes for students with mental disabilities, and overseeing training

programs for staff in order to do nondiscriminatory assessments. This last provision became part of the federal law for special education in 1975 and was repeated in the mandates for the 1997 Individuals with Disabilities Education Act. However, nondiscriminatory assessment remains either an enigma or serious problem for the American Psychological Association. In its latest, major document on testing individuals from diverse backgrounds (Sandoval et al, 1998), nondiscriminatory assessment does not exist.

The sort of testing that is done in order to determine whether a child has disabilities is unique in education. It is really an analog of what a medical doctor does when an individual has serious symptoms. Most children who are tested for special education placement go to the school psychologist with one predominant symptom, poor reading. After the administration of a few or many, many tests, the psychologist does a diagnosis and at an Individualize Education Program meeting recommends either special or general education placement. At that time he/she also prescribes a treatment to cure the symptom. But the similarities between a medical doctor and a school psychologist are illusory. The tests that the school psychologist uses have no real power to diagnose and the educational treatments are usually ineffective (Skrtic, 1991).

Most children who are tested for special education have no clear, biological reasons that triggered the testing. Most children are sent to special education testing between the 2nd and 5th grades. Again, the predominant reason for being sent is poor reading. There are four categories of disabilities (Learning Disabilities, mild Mental Retardation, Behavioral Disorders, Speech and Language Problems) that are unique in this entire enterprise because they are suspect. Many researchers have argued that the diagnostic tests used in special education are incapable of differentiating among these four disabilities (Keogh 1990; Lyon, 1996). Also, for many children, particularly from culturally and linguistically diverse backgrounds, these categories may be socially constructed. That is to say, these students could have a disability or their symptoms could be due to socioeconomic, cultural, linguistic or poor opportunity-to-learn factors (Rueda & Forness, 1994; Trueba, 1987; Heller, Holtzman, & Messick, 1982). The tests, however, cannot diagnose the difference.

For Hispanic children, the Handicapped Minority Research Institutes in Texas and California (Rueda, Figueroa, Mercado, & Cardoza, 1984; Rueda, Cardoza, Mercer, & Carpenter, 1984; Garcia, 1985; Ortiz, 1986; Ortiz & Maldonado-Colon, 1986; Ortiz & Polyzoi, 1986, 1987; Ortiz & Yates, 1987; Swedo, 1987; Wilikinson & Ortiz, 1986; Willig & Swedo, 1987) documented the unique problems faced by Hispanic children and their families when confronted by the testing/diagnostic process in special education. Language proficiency levels of the students were often not considered. Most testing was done in English. The linguistic challenges experienced by English learners were often diagnosed as a disability. Depending on the tests given, a Hispanic child could easily qualify for the Learning Disability or the Communication Handicapped categories. When retested after being in special education, the Hispanic children's IQs decreased. Limited English Proficient students were more likely to be categorized with another disability. Tests developed and normed for Spanish-speaking children were just as problematic as tests normed on English speakers. If the parents were born outside the U.S., there was a greater likelihood that their child would end up in special education. Finally, it was found that diagnostic tests were capricious in their diagnoses: when the tests were given to an entire class of Hispanic children in general education, 53% were found eligible for the Learning Disability program. When mentally retarded Hispanic children were tested, 43% of them were diagnosed as learning disabled. It should be noted that many researchers in the area of special education see no problem in the use of psychometric tests with Hispanic or African American children. For them, the issue of nondiscriminatory assessment simply does not apply. Neither do linguistic and cultural factors described in the 1985 or 1999 Testing Standards (e.g., MacMillan, Gresham, & Bocian, 1998).

Special education testing with Hispanic students has very little empirical, research data to support many of its extant practices. The development of diagnostic tests normed on Spanish-speaking populations abroad provides one of the most widespread uses of diagnostic instruments with Hispanic children. But as some have argued:

"The bilingual is NOT the sum of two complete or incomplete monolinguals: rather he or she has a unique and specific linguistic configuration. The coexistence and constant

interaction of two languages in the bilingual has produced a different but complete linguistic entity."

(Grosjean, 1989, pg.6)

"When a bilingual individual confronts a monolingual test, developed by monolingual individuals, and standardized and normed on a monolingual population, both the test taker and the test are asked to do something that they cannot. The bilingual test taker cannot perform like the monolingual. The monolingual test cannot measure in the other language.

Ironically, single-language tests deceptively measure the monolingual part of the bilingual (one or the other of the bilingual's two languages), irrespective of proficiency in that language, and they do so reliably. But these tests fail insofar as they may exclude mental content that is available to the bilingual in the other language, and mental processes and abilities that are the product of bilingualism (Hakuta & Garcia, 1989; Hakuta, Ferdman, & Diaz, 1986)."

(Valdes & Figueroa, 1994, pg. 87)

There is an urgent need to determine the diagnostic validity of Spanish language tests normed on monolingual populations and used for diagnostic purposes with U.S. bilingual populations.

Another current practice in special education testing of Hispanic children is to test repeatedly until the right diagnostic profile appears or to conduct elaborate decision-making procedures in order to get to the real disability. Data exist, independent of issues of cultural and language differences, indicating that the more testing that is done the less likely the real disability will appear (Mehan, Hertweck, & Meihls, 1986; Taylor, 1991).

The use of interpreters is widespread in special education testing (Langdon, 1994). As already mentioned, emerging, empirical data on this practice suggest that it should be proscribed. Another common practice in special education testing is the use of translated tests. This practice should also be stopped.

Though most of this chapter has focused on diagnostic testing, other forms of assessments are routinely done in special education

(curriculum-based assessments, functional assessments, ecological assessments, dynamic assessments, etc.), the same general principles that have been discussed with respect linguistic/cultural differences, bias, validity and reliability apply. For the population of Hispanic children and their families, all of these testing practices also need to be considered in light of several questions: Does placement in special education provide any educational benefits for the student? Does any testing really help to promote educational achievement in special education? Many researchers (Skrtic, 1995; Figueroa & Artiles, 1999; Mehan, Hertweck, & Meihls, 1986) would answer both in the negative.

Finally, there is the question of testing for placement in the gifted and talented programs across the United States. The search of a measure of Hispanic intelligence that would give Hispanic students a fair chance at being equitably represented in such programs has been extensive (Bernal & Reyna, 1975; Chambers, Barron, & Sprecher, 1980; Zappia, 1989; Perrine, 1989; Bermudez & Rakow, 1990; Marquez, Bermudez & Rakow, 1992; Johnsen, Ryser, & Dougherty, 1993; Sawyer & Marquez, 1993; Garcia, 1994; Maker, 1994; Maker, Nielson, & Rogers, 1996). By and large, however, none of these have succeeded in establishing a national procedure for identifying gifted Hispanic students. Hispanic pupils, accordingly, are very underrepresented in these programs. They will continue to be absent as long as tests and eligibility criteria for gifted and talented programs fail to realize that the opportunity-to-learn experiences of Hispanic children in America's public schools are very different and that tests respond to these differences in the form of lower scores. Cultural factors may also complicate this form of assessment. Data suggest that the typical family contexts in Hispanic homes of high academically gifted students varies significantly from Anglo, middle class homes. There, family values take precedence over individualism and bilingualism is prized over monolingualism (Soto, 1988; Fernandez & Nielsen, 1986; Hine, 1993).

For the emerging Hispanic community in the United States, there is an overarching question to be asked about the education of their intelligent children: Is it a good idea to isolate the "smartest" and to give only them an enriched, gifted education? or, Is it a better idea to offer this to all students, including those with disabilities? Some

research on programs for the gifted in close-knit communities and in schools suggests that the social impact of these programs can be quite negative for all children, their parents and their communities (Margolin, 1994; Sapon-Shevin, 1994).

CHAPTER 7 : OTHER TYPES OF TESTING

Two other broad types of tests are often given to Hispanic students in educational settings. These are personality and vocational tests. Both are used in counseling settings, though the former is also used for special education diagnoses of emotional disturbance or personality disorders. Both, in varying degrees, are affected by the same issues extant in all other forms of assessments with Hispanic students: cultural differences and linguistic backgrounds.

PERSONALITY TESTING

The empirical and professional literature on personality tests, by and large, has never really attended to the issues of cultural differences or bilingualism in the Hispanic community (Malgaby, Constantino, & Rogler, 1987; Olmedo, 1981; Bernal, & Castro, 1994). The official guidelines for providers of psychological services to ethnic, linguistic, and culturally diverse populations (American Psychological Association, 1993) acknowledges that there are problems associated with tests that have not been validated for use with minority populations. But there are no serious limitations placed on their use. Similarly, cultural factors in mental health testing and diagnosis receive very little attention in the "Diagnostic and Statistical Manual of Mental Disorders IV" (Dana, 1995).

As a consequence, some psychological providers recommend that tests be used with interpreters, with norms from other countries (e.g., Spain), or as a spontaneous translation (e.g., Nieves-Grafals, 1995; Dana, 1995). Yet, there is evidence that Hispanic test-takers can give different meanings to the connotative, emotive vocabulary that is often used in such tests (Brizuela, 1975; Diaz-Guerrero, 1988; Gonzalez-Reigoza, 1976). Similarly, there is research on how they express affective material in ways that are quite different in Spanish than in English (Gonzalez, 1978; Ruiz, 1975). Also, data exist on how Hispanic clients are rated differently on personality variables when they are evaluated in English versus when they are evaluated

in Spanish (Grand, Marcos, Freedman, & Barroso, 1977; Westermeyer, 1987; Edgerton & Karno, 1971).

A contemporary approach to personality testing involves the parallel use of tests of acculturation. Research on one such test, the "Acculturation Rating Scale for Mexican Americans" (ARSMA I & II) (Cuellar, Harris, & Jasso, 1980; Cuellar, Arnold, & Maldonado, 1995) has proven to be of some importance both in terms of heuristics and improvements in the personality testing of Hispanics (Velasquez & Callahan, 1992). It has been demonstrated, for example, that on the most widely used test of personality, the MMPI, Hispanic Americans whose cultural orientation is traditional show more pathology. These outcomes are basically the result of differential (cultural) treatment. The ARSMA studies show this (Dana, 1995) in a particularly way, though other research similarly confirms that differential cultural impacts persist even in the MMPI-2 (Whitworth & McBlaine, 1993; Whitworth & Unterbrink, 1994).

The use of acculturation scales, such as the ARSMA I and II, is usually limited to one group of Hispanics. Currently, acculturation scales are more abundant for Cuban American and Mexican American populations (Marin, 1992). Their use, therefore, is limited. Also the use of such scales remains optional. No attempt is being made to psychometrically incorporate such measures into tests such as the MMPI. Admittedly, however, using measures of acculturation or sociocultural variation to correct score bias has not fared well in the past. The Sociocultural Scales of the System of Multicultural Pluralistic Assessment (SOMPA) (Mercer, 1979), for example, do produce a new IQ-estimate based on the degree of distance that a Hispanic child's family exhibits from middle class, White families. But the new IQ proved to be neither a better predictor nor a better "corrector" (Figueroa & Sassenrath, 1989; Valdes & Figueroa, 1994).

There is formal resistance to norming a test such as the MMPI within Hispanic populations. This is a reluctance that cuts across all types of tests currently in use. As Dana (1995) has suggested, the press for group-specific norms may have to come from studies showing the error or mistake rates that mono-normative tests produce in personality diagnoses with Hispanics. In many ways these data are

already available in all other areas of testing. Most tests do produce negative, differential impacts with Hispanic students.

The present state of testing Hispanics on personality tests relies on a series of questionable practices: making testers "culturally competent," making "corrections" on the tests, promoting ideographic, tester interpretations based on measures of acculturation. There is very little, actual research on how to do diagnostic personality work with Hispanic children and youth (Cervantes & Arroyo, 1994). As a consequence, recommendations to clinicians, even when they are very well crafted (e.g, Cervantes & Arroyo, 1994), remain anecdotal and of unknown generalizability, utility and validity. As is the case with most tests used in the United States, new tests specifically made appropriate for the Hispanic populations' bilingual, multicultural status are needed. Preliminary efforts in this regard (Costantino, Malgady, Rogler, & Tsui, 1988) have been fruitful and deserve more research and development. A sea change in attitude about testing distinctly bilingual/multicultural populations is needed within the testing community in the United States. Dana (1995) notes:

"The [current] repertoire of standard tests emerged in an era when a melting pot conception of acculturation was in vogue and new immigrants were expected to assume a relatively homogeneous identity after three generations in this country. This expectation did not occur uniformly even for descendents of European immigrants. Now that diversity instead of homogenization has become the hallmark of American society, professional acts and technologies must reflect this societal change."

(Dana, 1995, pg. 314)

OCCUPATIONAL INTEREST TESTS

Helping a student choose a career and plan a requisite program of academic preparation are critical counseling functions. Often, this process begins with the administration of interest inventories as early as elementary school. A fundamental assumption behind these tests is that students in society have somewhat equivalent levels of cultural

capital. That is, they have a relatively realistic notion about how societal systems function and what it takes to negotiate entrance into such systems. In terms of careers and jobs, cultural capital means knowing what defines a particular area of occupational interest and what levels are possible within a chosen occupation. Cultural capital in this context also means knowing how to negotiate entrance into systems that help produce the requisite competencies and the desired job or career. For Hispanic students, recent research (Stanton-Salazar, 1997; Stanton-Salazar & Dornbusch, 1995) suggests that, in fact, cultural capital is not easily accessed by them.

Research on the use and impact of occupational interest tests with Hispanic students is neither elaborate nor elegant. There are not many studies and those that do exist do not control for either bilingualism or acculturation in terms of cultural capital.

On the other hand, the related area of employment testing is uniquely optimistic about its fairness, validity and virtual universality (e.g., Ramos, 1992) for use with Hispanic adults. Some of this comes from predictive validity studies that show that there are no differences in the way tests function with Hispanic job applicants. The problem here, however, is that these tests are very poor predictors for everybody and that the effects of bilingualism on predictive validity remains unknown. Also, a central element discovered in the employment testing of Hispanics is that so much of the success in the tests and in the jobs depends on educational background.

CHAPTER 8 - SUMMARY AND RECOMMENDATIONS

The testing of Hispanic children has not made much progress in the 20th century. The areas where there has been quite a bit of progress is in the empirical documentation of the impact of bilingualism on test scores and on the development of policies and caveats associated with the testing of Hispanic individuals. However, there has not been much progress in test development and technology in any area of testing with respect to these students.

On the basis of what has been reviewed, six options appear to exist concerning the measurement of Hispanic students' abilities, achievements, personality, and occupational interests: 1) tests can be administered in English using what are basically monocultural norms, 2) testers can be given "cultural training" so that they can interpret the tests in ways that appear to be more valid, 3) accommodations in the tests and the testing situation can be provided, 4) a testing moratorium on the use of individual scores for any high-stakes assessment can be put in place until research sorts out the complex issues associated with testing Hispanic students, 5) tests can be used for holding systems legally and politically accountable for the educational decisions that adversely impact Hispanic students as manifested in differential, negative outcomes, 6) Hispanic-specific local norms can be developed in order to compare students against students with similar cultural, linguistic, and scholastic experiences, and 7) school systems and opportunities-to-learn are made equitable for Hispanic children across the United States thereby meeting the crucial assumption of tests about experiential homogeneity. At present, only the first three are viable and in use. None of these three, however, can demonstrate that they are free of significant degrees of bias, unfairness, or denial of substantive due process.

The fourth option has been suggested (Valdes & Figueroa, 1994) but has received virtually no support. The fifth option has not really been tried in the last decade, but it remains a plausible response to political attacks, such as California's propositions 227 and 209, that are already inflicting harm and damage to Hispanic

children and that can be documented by the tests' ability to measure contextual effects. In Kern county in California, for example, the school board has decreed that Hispanic children must learn English in three months and then receive their education in English. The impact of this decision will become manifest in the tests administered in English.

The sixth option may well be the most immediately relevant for both test developers and the Hispanic communities in the United States. But there is a great deal of opposition from both political and professional interests. Ethnic/linguistic norms will provide comparisons among children with generally homogeneous experiences and background in local communities. But, they arouse suspicions about a "divided" society. They may also be seen as sources of reverse discrimination. In employment testing, the courts and Congress have refused to accept group-specific norming precisely because of issues related to reverse discrimination (Sireci & Geisinger, 1998). Ironically, the intellectual community has not been so reluctant. The National Academy of Sciences recommended this as a solution to the bias that employment tests affect among job applicants with differential opportunities-to-learn (Hartigan & Wigdor, 1989). Education, however, has always occupied a different status with the courts. This may also apply with regards to testing in educational contexts. The issue of group norms in all aspects of schooling should be studied and debated. Certainly, the 1999 Standards for Educational and Psychological Testing may already have sided with this option. There are clear mandates there that validity needs to be grounded within linguistic groups when research indicates that test scores are affected by language background (Comment for Standard 9.2)

The seventh is the best option; but if history is any indicator, it is the one most likely to take multi-generations to accomplish. It is also the option that best explains why tests are such a failure for Hispanic communities. The primary problem with tests is not the tests. It is the educational context in which they are developed, used, and studied. The historical and contemporary data have clearly documented that in the United States public education has not worked for Hispanic children. Tests help and perpetuate much of the dysfunction that Hispanic children get in schools.

The one positive conclusion that can be drawn from the review presented in this document is that the testing community is finally beginning to realize that the problems with testing Hispanic students are far more complex than ever imagined and that they are potentially irremediable in the *status quo* (Heller, Holzman, & Messick, 1982; American Educational Research Association, et al., 1985, 1999; Pellegrino, Jones, & Mitchell, 1999; August & Hakuta, 1997; Sandoval et al., 1998; Heubert & Hauser, 1999). The solution to the problems engendered and embodied in tests resides in changing the educational experiences of Hispanic children.

A compelling example of what this may entail was described by Garcia and Otheguy (1995). They set out to answer four research questions in an ethnographic study of "seven private, but low-tuition, non-elite schools in Dade County, Florida." They were "run by and for Cubans." The parents of the children were predominantly from working-class and middle class income levels. They were, in effect, similar to families of Hispanic children in urban school districts. The four research questions were typically those that preoccupy educational researchers about bilingual children in U.S. public schools: Should Spanish be used? How is language dominance measured and used? When do you use English? In which language is reading taught? They were unable to answer these research questions. The following are the reasons for this failure.

"When majority educators look at the education of Hispanic children in the United States, they focus on their linguistic deficits." Discussions about the education of these children begin and end with the issue of the English language, or how they lack it, and how best to give it to them...However, when Hispanic parents and educators in control of the education of their own children think about the educational process, they ask different questions. They ask questions about the way to educate their children, about pedagogy, instructional strategies and teaching methods, about curriculum and materials. We asked them about language, they told us about education... Spanish naturally belongs in ethnic schools that are controlled, staffed and run by the Hispanic community, so there is no need to question its role in public education...

Those of us in public education need to learn from these educators that substantive high expectations do matter; that bilingualism and biliteracy are obtainable. If one holds both children and teachers unequivocally responsible for obtaining them; that initial literacy in two languages is possible and doesn't have to be limited to Spanish; that advanced literacy in two languages is possible and doesn't have to be limited to English; that in US society all children acquire English naturally and that therefore English acquisition should not be the main focus of education; that parents and community do matter for education; that when they are in control...the results are ultimately superior; that the context of a child's home culture is essential.; and that continuity with the intellectual and social climate of the home is of paramount importance if the school is to help children develop and foster their intellectual and social growth."

Garcia and Otheguy, 1995, pg. 99-100)

The public education of Hispanic children needs to focus on education. It needs to be reformed pre-eminently in terms of local control. Until such time as when the U.S. educational system is locally and proportionally controlled by Hispanic communities and until it achieves a modicum of equity in how it distributes resources, cultural capital, and the application of high standards across all school districts; tests and test scores will continue to show massive technical problems of bias, differential treatments and differential outcomes. They will continue to impede the future of Hispanic communities. Tests will work when the public education of Hispanic children becomes democratic and effective.

RECOMMENDATIONS

- I. The U.S. Office for Civil Rights should undertake a legal analysis of test-usage with Hispanic students and individuals, focusing on the dysjuncture that exists between what the Standards for Educational and Psychological Testing prescribe and what test users (individual testers, school district testing programs, state testing programs) actually do. Particular attention should be focused on the testing of bilingual individuals.
- II. The U.S. Office for Civil Rights needs to consider whether the "disparate treatment" legal analysis under Title VI and Title IX statutes applies to the historical experience of many, if not most, Hispanic students with tests and testing. A compelling, empirical argument can be made that they are tested under different conditions: They are tested with monolingual norms when most of them have varying levels of bilingual status, all of which have left and indelible, if not unerasable, mark on all tests that use English as the main vehicle for eliciting responses; Their scores show evidence of attenuated predictive validity related directly to their varying levels of exposure to Spanish; and, There is evidence of bias in construct validity in tests of intellectual ability with respect to the Freedom from Distractibility factor.
- III. There is a widespread belief that with students for whom current testing technology may not be appropriate, the thing to do is to test them more. There is no evidence to support this belief. There are, however, data suggesting that excessive testing does not improve diagnostic decisions (Mehan, Hertweck, & Meihls, 1986), but, rather, that it may negatively affect children (Taylor, 1991). This practice should be discouraged.
- IV. The U.S. Office for Civil Rights needs to consider whether the "disparate impact" legal analysis under Title VI and Title IX statutes applies to the comprehensive, and chronic pattern of Hispanic students' underrepresentation in Gifted

and Talented programs, their overrepresentation in programs for students with disabilities, and their miniscule presence in institutions of higher learning in the United States. There is, in effect, a clear pattern of a disparate impact from testing practices across a wide array of tests used in multiple educational contexts. There is also compelling evidence that there is bias in prediction and that this differentially constricts tests' educational purposes when used with most Hispanic students.

- V. Translated test should not be used. There is very little likelihood that the new, translated test will have the same technical properties as the original, and there is a substantial likelihood that the translated test will not work. The practice of translating tests and of using their scores for making decisions about individuals should stop.
- VI. Recent publications on diversity and test accommodations are linking the issues relevant to English language learners with those that are meaningful for students with disabilities. One of the great historical mistakes in American Education has been the tendency to perceive bilingualism as a handicap. A clear distinction, if not separation, needs to be drawn between the issues that are significant in meeting the challenges of a disability with those involved in the education of children with two linguistic systems. For example, special education is dedicated to diminishing the impact of a disability. The education of English learners should not be guided by the diminution of an asset such as bilingualism.
- VII. Tests that purport to have equivalent test versions in English and Spanish need to show empirical evidence that, in fact, there equivalence. Similarly, research is urgently needed on whether bilingual, Hispanic children in the United States can be validly and fairly compared on Spanish/English tests that relied on monolingual samples to generate monolingual norms in English and Spanish.

- VIII. As currently envisioned in the 1999 pre-publication version of the Standards for Educational and Psychological Testing, interpreters can be trained and used in testing situations. New data on this practice, however, suggest that the use of interpreters may somewhat comprehensively destroy standardization. Further, in special education, the use of interpreters may lead to invalid inferences and conclusions. The use of interpreters should be discouraged, if not, proscribed. Interpreters are basically poor substitutes for what should be provided to Hispanic students: culturally knowledgeable, linguistically competent testers from their own communities. The failure to recruit, train and graduate Hispanics in the testing professions cannot be ameliorated by the use of interpreters. This is a practice that may really be a malpractice.
- IX. The 1999 Standards for Educational and Psychological Testing are also problematic in the areas of language proficiency testing and the use of testing accommodations with bilingual subjects. It is recommended that the Standards in Chapter 9 for "Testing Individuals of Diverse Linguistic Backgrounds" be analyzed by experts in second-language acquisition, language proficiency testing, and bilingual assessment in order to examine the ambiguities and the assumptions of that chapter.
- X. There is empirical evidence that tests used with Hispanic students show evidence of bias. Comprehensive, longitudinal investigations on this question should be commissioned. The impact of Hispanic culture and Spanish language proficiency levels on the predictive, consequential, and/or instructional validity indices of tests should be determined.
- XI. The U. S. Office for Civil Rights should conduct an analysis of testing practices with Hispanic students throughout the states and by the National Assessment for Educational Progress to determine whether some or all of these do not

meet the legal criteria of discrimination under Title VI and Title IX.

- XII.** The research agenda on assessment proposed by the National Research Council's Committee on Developing a Research Agenda on the Education of Limited-English-Proficient and Bilingual Students in its report on Improving Schooling for Language-Minority Children (August, & Hakuta, 1997) should be endorsed and funded.
- XIII.** It is time for a comprehensive set of action plans to make large-scale, educational accountability systems, such as the NAEP, relevant and useful for the educational present and future of Hispanic children. The Recommendations of the National Research Council on testing English language learners on the NAEP (Tables 4 and 5) should be adopted, funded and applied. They should also be broadened to include Hispanic children from all the major ethnic cultural backgrounds. The issues related to cultural factors in achievement testing (acculturation, the measurement of acculturation, the use of acculturation levels, etc.) should be investigated.
- XIV.** There is an urgent need to determine the diagnostic validity of Spanish language tests normed on monolingual populations and used for diagnostic purposes with U.S. bilingual populations. Diagnostic tests should not be administered to Hispanic students or they should be relegated to a lower status in the decision-making process for special education, or gifted and talented education. Alternatives to the typical battery of diagnostic tests exist, all the way from placing a child in an enriched treatment situation to diagnosing their work products.
- XV.** There is very little, actual research on how to do diagnostic personality work with Hispanic children and youth. As is the case with most tests used in the United States, new personality tests specifically made appropriate for the

Hispanic populations' bilingual, multicultural status are needed.

- XVI. Given the widespread use of occupational interest tests with elementary and high school students, as well as their possible role in tracking students in academic programs, the lack of research on the use and impact of these measurement instruments on Hispanic children and youth is a major knowledge-gap. It is recommended that research in this area of testing be significantly and quickly increased.
- XVII. Student scores should be interpreted within a school district's normative framework. That is to say, the national or statewide comparisons that are used to determine an individual's eligibility for promotion, graduation, or admissions to higher education should no longer be made. For example, if a state university system accepts only the top 10% of the students in any given state, those should come from the top 10% within each school district. This does not preclude the use of tests to measure the performance of school systems (schools, districts) to determine how well or how poorly they are working. Clearly, however, in those school districts where there is *de facto* segregation and where resources are differentially allocated, local norming will not work. There, school-based norming may be the solution.
- XVIII. The starting point for the reform of unfair testing with Hispanic students is not the tests. It is the instructional context. Until there is some semblance in equity of standards, curricula, pedagogy and resources throughout schools, school districts and states, tests will continue to reify the inequality of educational opportunities in the country. Tests will continue to blame the Hispanic student for low scores and will continue to deny him or her promotion, eligibility and opportunity.

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APPENDIX A

The 1999 Standards for "Testing Individuals of Diverse Linguistic Backgrounds" (Chapter 9)

Standard 9.1 Testing practice should be designed to reduce threats to the reliability and validity of test score inferences that may arise from language differences.

Comment: Some tests are inappropriate for use with individuals whose knowledge of the language of the test is questionable. Assessment methods together with careful professional judgment are required to determine when language differences are relevant. Test users can judge how best to address this standard in a particular testing situation.

Standard 9.2 When credible research evidence reports that test scores differ in meaning across subgroups of linguistically diverse test takers, then to the extent feasible, test developers should collect for each linguistic subgroup studied the same form of validity evidence collected for the examinee population as a whole.

Comment: Linguistic subgroups may be found to differ with respect to appropriateness of test content, the internal structure of their test responses, the relation of their test scores to other variables, or the response processes employed by individual examinees. Any such findings need to receive due consideration in the interpretation and use of scores as well as in test revisions. There may also be legal or regulatory requirements to collect subgroup validity evidence. Not all forms of evidence can be examined separately for members of all linguistic groups. The validity argument may rely on existing research literature, for example, and such literature may not be available for some populations. For some kinds of evidence, separate linguistic subgroup analyses may not be feasible due to the limited number of cases available. Data may sometimes be accumulated so that these analyses can be performed after

the test has been in use for a period of time. It is important to note that this standard calls for more than representativeness in the selection of samples used for validation or norming studies. Rather, it calls for separate, parallel analyses of data for members of different linguistic groups, sample sizes permitting. If a test is being used while such data are being collected, then cautionary statements are in order regarding the limitations of interpretations based on test scores.

Standard 9.3 When testing an examinee proficient in two or more languages for which the test is available, the examinee's relative language proficiencies should be determined. The test generally should be administered in the test taker's most proficient language, unless proficiency in the less proficient language is part of the assessment.

Comment: Unless the purpose of the testing is to determine proficiency in a particular language or the level of language proficiency required for the test is a work requirement, test users need to take into account the linguistic characteristics of examinees who are bilingual or use multiple languages. This may require the sole use of one language or use of multiple languages in order to minimize the introduction of construct-irrelevant components to the measurement process. For example, in educational settings, testing in both the language used in school and the native language of the examinee may be necessary in order to determine the optimal kind of instruction required by the examinee. Professional judgement needs to be used to determine the most appropriate procedures for establishing relative language proficiencies. Such procedures may range from self identification by examinees through formal proficiency testing.

Standard 9.4 Linguistic modifications recommended by test publishers, as well as the rationale for the modifications, should be described in detail in the test manual.

Comment: Linguistic modifications may be recommended for the original test in the primary language or for an adapted version in a secondary language, or both. In any case, the test manual should provide appropriate information regarding the recommended modifications, their rationales, and the appropriate use of scores obtained using these linguistic modifications.

Standard 9.5 When there is credible evidence of score comparability across regular and modified tests or administrations, no flag should be attached to a score. When such evidence is lacking, specific information about the nature of the modifications should be provided, if permitted by law, to assist test users properly to interpret and act on test scores.

Comment: The inclusion of a flag on a test score where a linguistic modification was provided may conflict with legal and social policy goals promoting fairness in the treatment of individuals of diverse linguistic backgrounds. If a score from a modified administration is comparable to a score from a nonmodified administration, there is no need for a flag. Similarly, if a modification is provided for which there is no reasonable basis for believing that the modification would affect score comparability, there is no need for a flag. Further, reporting practices that use asterisks or other non-specific symbols to indicate that a test's administration has been modified provide little useful information to test users.

Standard 9.6 When a test is recommended for use with linguistically diverse test takers, test developers and publishers should provide the information necessary for appropriate test use and interpretation.

Comment: Test developers should include in test manuals and in instructions for score interpretation explicit statements about the applicability of the test with individuals who are not native speakers of the original language of the test. However, it should be recognized that test developers and publishers seldom will

find it feasible to conduct studies specific to the large number of linguistic groups found in certain countries.

Standard 9.7 When a test is translated from one language to another, the methods used in establishing the adequacy of the translation should be described, and empirical and logical evidence should be provided for score reliability and the validity of the translated test's score inferences for the uses intended in the linguistic groups to be tested.

Comment: For example, if a test is translated into Spanish for use with Mexican, Puerto Rican, Cuban, Central American and Spanish populations, score reliability and the validity of test score inferences should be established with members of each of these groups separately where feasible. In addition, the test translation methods used need to be described in detail.

Standard 9.8 In employment and credentialing testing, the proficiency level required in the language of the test should not exceed that appropriate to the relevant occupation or profession.

Comment: Many occupations and professions require a suitable facility in the language of the test. In such cases, a test that is used as a part of selection, advancement, or credentialing may appropriately reflect that aspect of performance. However, the level of language proficiency required on the test should be no greater than the level needed to meet work requirements. Similarly, the modality in which language proficiency is assessed should be comparable to that on the job. For example, if the job requires only that employees understand verbal instructions in the language used on the job, it would be inappropriate for a selection test to require proficiency in reading and writing that particular language.

Standard 9.9 When multiple versions of a test are intended to be comparable, test developers should report evidence of test comparability.

Comment: Evidence of test comparability may include but is not limited to evidence that the different language versions measure equivalent or similar constructs, and that score reliability and validity of inferences from scores from the two versions are comparable.

Standard 9.10 Inferences about test takers' general language proficiency should be based on tests that measure a range of language features, and not a single linguistic skill.

Comment: For example, a multiple-choice, pencil-and-paper test of vocabulary does not indicate how well a person understands the language when spoken nor how well the person speaks the language. However, the test score might be helpful in determining how well a person understands some aspects of the written language. In making educational placement decisions, a more complete range of communicative abilities (e.g., word knowledge, syntax) will typically need to be assessed.

Standard 9.11 When an interpreter is used in testing, the interpreter should be fluent in both the language of the test and the examinee's native language, should have expertise in translating, and should have a basic understanding of the assessment process.

Comment: Although individuals with limited proficiency in the language of the test should ideally be tested by professionally trained bilingual examiners, the use of an interpreter may be necessary in some situations. If an interpreter is required, the professional examiner is responsible for insuring that the interpreter has the appropriate qualifications, experience, and preparation to assist appropriately in the administration of the test. It is necessary for the interpreter to understand the importance of following standardized procedures, how testing is conducted typically, the importance of accurately conveying to the examiner an examinee's actual responses, and the role and responsibilities of the interpreter in testing.

**Our Nation on
the Fault Line:
HISPANIC AMERICAN EDUCATION**

**A REPORT TO THE NATION:
TESTING HISPANIC STUDENTS
IN THE UNITED STATES**

**The President's Advisory Commission on Educational
Excellence for Hispanic Americans**

September, 1999

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FORWARD

There is no more promising reform in public education today than the standards -based movement. It is the most widely accepted school change process which offers the greatest probability for leveling the playing field for all children by clearly stating expectations for instruction, assessing the progress of each child toward achieving the standards, and holding schools accountable for student learning. Where these three core elements of a standards-based system are in place, all students begin to experience success as never before. This is especially true for the growing Hispanic student population in America which has been traditionally excluded from access to rigorous mainstream instruction.

But in the current rush to implement world class standards supported by systems of accountability in the nation's public schools, state education leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate testing information. Hundreds of thousands of Hispanic students, many lacking functional fluency in English, are assessed with a myriad of tests entirely in English and, oftentimes, only in English. The resulting test data gleaned from the administration of these tests is used for student promotion or retention, for high school graduation, generally for high stakes decisions --but rarely for the purposes of true accountability. When it comes to holding schools accountable for the academic achievement of our students, states allow Hispanic youngsters to become transparent inside the very system charged with educating them.

State policies often require that Hispanic students be assessed in English with tests they may not even understand or with alternative but less rigorous tests in Spanish whether or not they are receiving instruction in that language. Neither approach produces accurate information about student learning. Nevertheless, the resulting data is often used to hold students accountable for their own success, rather than the educators or the systems of public schooling. **Who should be responsible for what Hispanic students learn in school?** The answer is simple: students, educators, and parents all must share the responsibility. **But what kinds of**

assessments should be used to provide accurate information about what students have have been taught? Regrettably, the answer to this question is not as simple. It will be explored in this document.

For now, students bear the weight of academic success or failure, with few exceptions, on the basis of one or possibly two test scores. Where exemptions from testing exist, Hispanics disappear from the accountability reports which trigger both positive and negative consequences for the responsible adults in the system. Thus more than two million Hispanic students in the US are underrepresented or absent from the rolls of students who are counted and who, therefore, count.

As America enters the new millennium, deliberate action by policymakers at every level must be taken to include the country's fastest growing and soon-to-be largest minority within the bounds of systems of accountability using accurate information for decisionmaking. It is our belief that Hispanic students, whether they are English dominant or English Language Learners, should be tested with appropriate test instruments in order to be included at all times in the states' accountability systems. If this does not occur, Hispanic children will not benefit from the powerful and promising standards movement.

The purpose of this report is twofold: (1) to bring attention to the growing crisis of the invisible Hispanic students in public education to the nation's leaders and (2) to provide guidance to the nation and the states on taking the necessary steps to rectify the conditions which allow Hispanic students to be wrongly measured and unaccounted for in their own schools. It is our intent to help education leaders in this country choose wisely for the sake of the children.

The Commission Assessment Committee
The President's Advisory Commission on Educational Excellence For
Hispanic Americans

Washington, D.C.
September 15, 1999

EXECUTIVE SUMMARY

The testing of Hispanic children has made some progress in the 20th century. The areas where there has been significant progress is in the empirical documentation of the impact of *bilingualism* on test scores and on the development of policies and precautions associated with the testing of bilingual students. However, there has not been much progress in actual test development and technology in any area of testing with respect to these students. This is true to some extent because the demand by schools, districts, or states for the development of such testing technology has not materialized.

On the basis of current practice, policy, and available research, six options appear to exist for states, districts, and schools concerning the measurement of Hispanic English Language Learners:

- 1) tests can be administered in English which have been normed on student populations unlike the students who are given the tests,
- 2) testers can be given "cultural training" so that they can interpret the tests in ways that appear to be more valid,
- 3) accommodations in the tests and the testing environments can be provided without regard for possible negative impact on student scores,
- 4) a moratorium on the use of individual scores for any high-stakes assessment can be put in place until research sorts out the complex issues associated with testing Hispanic students,
- 5) tests can be used for holding systems legally and politically accountable for the educational decisions that adversely impact Hispanic students as demonstrated in differential, negative outcomes,

6) local norms can be developed in order to compare students against students with similar cultural, linguistic, and scholastic experiences, and/or

7) school systems can be supported to provide equitable opportunities-to-learn for Hispanic children across the United States thereby meeting the crucial assumption of tests that all students receive similar educational experiences.

At present, only the first three options are in use. None of these, however, can demonstrate that they are free of significant degrees of bias, unfairness, or denial of substantive due process. The fourth option has been suggested but has received virtually no support or even discussion.

The fifth option has not really been tried in the last decade, but it remains a plausible response to political attacks, such as California's Propositions 227 and 209, that are already inflicting harm and damage to Hispanic children. In Kern county in California, for example, the school board has decreed that Hispanic children must learn English in three months and then receive their education in English. The impact of this decision will be evident in the tests administered in English.

The sixth option may well be the most immediately relevant for both test developers and Hispanic communities in the United States. But there is a great deal of opposition from both political and professional interests. Legitimate norms will provide comparisons among children with generally similar educational experiences and backgrounds in local communities. They may be seen as sources of reverse discrimination. In employment testing, the courts have refused to accept group specific norming because of issues related to reverse discrimination. Ironically, the intellectual community has not been so reluctant. The National Council on Measurement recommended this as a solution to the bias that employment tests affect job applicants with differential opportunities-to-learn. Education, however, has always occupied a different status with the courts with regards to testing. The issue of group norms in all aspects of schooling should be studied and debated.

The seventh is the best option, although in some cases, it may take several generations to accomplish. It is the option that best

explains why tests have become such an obstacle for Hispanic communities. The primary problem with tests is not necessarily the tests alone. It is the educational context in which they are developed, used, and studied. Historical and contemporary data have clearly documented that in the United States public education has not worked very well for Hispanic children. Tests only perpetuate many of the barriers that Hispanic children face in schools.

One important and positive observation that can be made from the review presented in this document is that the testing community is beginning to realize the problems associated with testing Hispanic students are far more complex than ever imagined. While much research and development is needed to resolve the issues related to the availability and use of valid and reliable test instruments, one significant solution to the problems engendered and embodied in current test programs resides in changing the educational experiences of Hispanic children. As greater emphasis is placed on opportunities-to-learn, more Hispanic families will accept the challenge to help their children excel academically.

A compelling example of what this may entail was described by Garcia and Otheguy in 1987. They set out to answer four research questions in a study of "seven private, but low-tuition, non-elite schools in Dade County, Florida." They were "run by and for Cubans." The parents of the children were predominantly from working-class and middle class income levels. They were, in effect, similar to families of Hispanic children in urban school districts. The four research questions were typically those that preoccupy educational researchers about bilingual children in US public schools: Should Spanish be used? How is language dominance measured and used? When do you use English? In which language is reading taught? They were unable to answer these research questions. The following are the reasons for their failure.

"When majority educators look at the education of Hispanic children in the United States, they focus on their linguistic deficits. Discussions about the education of these children begin and end with the issue of the English language, or how they lack it, and how best to give it to them ...However, when Hispanic parents and educators in control of the education of their own children think about the educational process, they ask different questions. They ask questions about the way to educate their children, about pedagogy, instructional

strategies and teaching methods, about curriculum and materials. We asked them about language, they told us about education.. Spanish naturally belongs in ethnic schools that are controlled, staffed and run by the Hispanic community, so there is no need to question its role in public education..

Those of us in public education need to learn from these educators that substantive high expectations do matter; that bilingualism and biliteracy are obtainable if one holds both children and teachers unequivocally responsible for obtaining them; that initial literacy in two languages is possible and doesn't have to be limited to Spanish; that advanced literacy in two languages is possible and doesn't have to be limited to English; that in US society all children acquire English naturally and that therefore English acquisition should not be the main focus of education; that parents and community do matter for education; that when they are in control...the results are ultimately superior; that the context of a child's home culture is essential.; and that continuity with the intellectual and social climate of the home is of paramount importance if the school is to help children develop and foster their intellectual and social growth."

(pg. 99-100)

Until such time as the US educational system achieves a modicum of equity in how it distributes resources, cultural capital, and the application of high standards across all school districts, tests and test scores will continue to show massive technical problems. They will continue to impede the progress of Hispanic communities. Tests will work when the public education of Hispanic children becomes equitable, democratic, and effective.

RECOMMENDATIONS FOR IMMEDIATE ACTION

I. The starting point for the reform of unfair testing of Hispanic students is not the tests alone. It is the instructional context. Until there is equity of standards, curricula and resources throughout schools, districts, and states, tests will be used to continue to promote inequitable educational opportunities in this country. Tests will continue to be used to blame Hispanic students for low test scores and will be used to deny them equal opportunities.

II. The US Department of Education should take a leadership role in supporting research that will provide more than surveys of existing practices. It should seek to find answers to questions that are barriers to the accurate and appropriate assessment of Hispanic students. Such research should include:

(a) research to determine whether Hispanic English Language Learners can be validly and fairly assessed with tests normed on monolingual students,

(b) comprehensive longitudinal research to investigate evidence of bias in tests used on Hispanic students, and

(c) the research agenda by the National Research Council found in its report, "Improving Schooling for Language-Minority Children."

III. The US Office of Civil Rights should investigate the use of tests with Hispanic students, especially English Language Learners. OCR should determine whether the "disparate treatment" legal analysis under Titles VI and IX applies to Hispanic students with tests and testing and, further, it should investigate the testing practices of the states and the National Assessment of Educational Progress as they affect Hispanic students.

IV. Schools, districts, and states should avoid the following:

(a) using translated versions of tests; there is little evidence that the translated versions of tests have the same technical properties of the original,

- (b) using interpreters in the administration of tests to Hispanic students who are English Language Learners; this practice destroys standardization and may lead to invalid inferences and conclusions;
- (c) depending on excessive testing in attempting to determine the profile of students where current testing technology is inappropriate and insufficient; and
- (d) using diagnostic tests administered to Hispanic students to make high stakes decisions, including high school graduation, promotion, or retention.

V. The NAEP should be modified to make it relevant and useful for Hispanic students, and issues related to cultural factors in achievement testing should be investigated and applied to the NAEP and other large scale testing systems.

VI. Test developers and publishers should be required to provide empirical evidence to support claims of equivalence between English and Spanish versions of tests.

VII. Research should be funded to determine the impact and use of diagnostic personality tests and occupational interest tests on Hispanic students.

VIII. Test scores of Hispanic students should be normed at the school or district level rather than the state or national level in order to ensure relevant interpretations and comparisons.

DRAFT

**OUR NATION ON THE FAULT LINE:
HISPANIC AMERICAN EDUCATION**

**TESTING OF HISPANIC
STUDENTS IN THE UNITED
STATES:
AN ACTION AGENDA**

**The President's Advisory Commission on Educational
Excellence for Hispanic Americans**

September, 1999

Prepared by: Sonia Hernandez

**The President's Advisory Commission on Educational Excellence for
Hispanic Americans**

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Americans**

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Acknowledgements

Art Coleman, US Office of Civil Rights, Washington D.C.

Richard A. Figueroa, University of California at Davis

FORWARD

There is no more promising reform in public education today than the standards-based movement. It is the most widely accepted school change process which offers the greatest probability for leveling the playing field for all children by clearly stating expectations for instruction, assessing the progress of each child toward achieving the standards, and holding schools accountable for student learning. Where these three core elements of a standards-based system are in place, all students begin to experience success as never before. This is especially true for the growing Hispanic student population in America which has been traditionally excluded from access to rigorous mainstream instruction.

But in the current rush to implement world class standards supported by systems of accountability in the nation's public schools, state education leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate testing information. Hundreds of thousands of Hispanic students, many lacking functional fluency in English, are assessed with a myriad of tests entirely in English and, oftentimes, only in English. The resulting test data gleaned from the administration of these tests is used for student promotion or retention, for high school graduation, generally for high stakes decisions --but rarely for the purposes of true accountability. When it comes to holding schools accountable for the academic achievement of our students, states allow Hispanic youngsters to become transparent inside the very system charged with educating them.

State policies often require that Hispanic students be assessed in English with tests they may not even understand or with alternative but less rigorous tests in Spanish whether or not they are receiving instruction in that language. Neither approach produces accurate information about student learning. Nevertheless, the resulting data is often used to hold students accountable for their own success, rather than the educators or the systems of public schooling. **Who should be responsible for what Hispanic students learn in school?** The answer is simple: students,

educators, and parents all must share the responsibility. **But what kinds of assessments should be used to provide accurate information about what students have have been taught?** Regrettably, the answer to this question is not as simple. It will be explored in this document.

For now, students bear the weight of academic success or failure, with few exceptions, on the basis of one or possibly two test scores. Where exemptions from testing exist, Hispanics disappear from the accountability reports which trigger both positive and negative consequences for the responsible adults in the system. Thus more than two million Hispanic students in the US are underrepresented or absent from the rolls of students who are counted and who, therefore, count.

As America enters the new millennium, deliberate action by policymakers at every level must be taken to include the country's fastest growing and soon-to-be largest minority within the bounds of systems of accountability using accurate information for decisionmaking. It is our belief that Hispanic students, whether they are English dominant or English Language Learners, should be tested with appropriate test instruments in order to be included at all times in the states' accountability systems. If this does not occur, Hispanic children will not benefit from the powerful and promising standards movement.

The purpose of this series of reports is twofold: (1) to bring attention to the growing crisis of the invisible Hispanic students in public education to the nation's leaders and (2) to provide guidance to the nation and the states on taking the necessary steps to rectify the conditions which allow Hispanic students to be wrongly measured and unaccounted for in their own schools. It is our intent to help education leaders in this country choose wisely for the sake of the children.

The Commission Assessment Committee
The President's Advisory Commission on Educational Excellence For
Hispanic Americans

Washington, D.C.
September 15, 1999

INTRODUCTION

In a report on the testing of Hispanic students prepared for the President's Advisory Commission on Educational Excellence for Hispanic Americans in the Fall of 1999, several important issues were raised which called into question the testing policies and practices of states and districts. Some issues in the report clearly require a commitment to in-depth research; others require changes in state level practices; and still others require serious national conversations to create a consensus around a common testing framework to achieve fair and accurate assessment of Hispanic students. All require immediate action.

This document is a response in part to the problems raised in the report by Figueroa and Hernandez and an opportunity to outline our own action agenda on the testing of Hispanic students in the nations' public schools.

TESTING OF HISPANIC STUDENTS IN THE UNITED STATES: AN ACTION AGENDA

In initiating its work on the policies and practices of testing Hispanic students in this country, the President's Advisory Commission on Educational Excellence for Hispanic Americans has identified three goals which form the foundation for its current and future work in this area. These guiding principles are:

- (a) all Hispanic students must be tested with assessment instruments which are fair and accurate in order to be accounted for within accountability systems,**
- (b) all Hispanic students must be included in state systems of accountability at all times, and**
- (c) Hispanic students must be full participants in national assessments and projects which gauge the progress of states in achieving educational excellence for all students.**

To attain these goals, the commission has organized its action agenda to focus on a set of priorities. These priorities include engaging national and state policymakers and education leaders in reviewing their current practices. At the same time, the commission will continue its own data-gathering processes to determine the depth and breadth of corrective action necessary on a state-by-state basis.

I. THE NATIONAL PRIORITY

The starting point for the reform of unfair testing of Hispanic students is not simply a matter of "the tests;" it is the instructional context of schooling in too many of America's public schools, especially those serving minority students.

States and districts must ensure equity of standards, curricula and resources for all schools. To achieve equity, federal support is needed to provide guidance and incentives to change rather than to reinforce the status quo.

Access to accomplished teachers with the necessary knowledge and skills to help Hispanic children achieve to standards is a critical component of reform. Yet many states, both large and small, are beginning to experience a significant shortfall in recruiting and hiring qualified teachers. The depth and severity of this crisis is not just a state problem; it is a national crisis which requires an immediate national response. Creating a new teacher workforce for America's public schools is a top priority.

As opportunities to learn are made available, Hispanic students can and will achieve high levels of learning from elementary schools to graduate schools and beyond.

II. STATE PRIORITIES

It is important to distinguish among the testing needs of Hispanic students who are (a) fluent English speakers, (b) English Language Learners, and (c) fully bilingual and biliterate. Even within these distinctions, there are many more levels of language proficiency. These multiple levels of proficiency are further confounded by the limitations placed on teachers by virtue of state laws and regulations as well as local board policies. Few are based on reliable and replicable research. In some cases, assessments are closely aligned to content standards of instructions. In many states, they are not.

Recognizing this mural of complexities, it is still incumbent upon states to frame their testing policies to assure that Hispanic students are tested with assessment instruments specifically designed to measure their levels of English language proficiency for diagnostic and instructional purposes. Their achievement levels in core content areas of the curriculum must also be measured with assessment instruments in the language of their dominance to ensure substantial and timely progress toward meeting their state standards. States must be sure to use tests only for the purposes for which they were designed.

In states such as California where primary language instruction has been severely limited by law, state requirements that children be tested in a language other than English *in which they are not receiving formal instruction* makes no sense. States should revisit such requirements for immediate corrective action.

In designing their accountability systems, states must avoid the exclusion of Hispanic students as a result of exemptions to accommodate for language differences. For example, states such as Texas provide for a grace period to allow students to acquire English language skills. While this policy in and of itself is not necessarily negative, unless there is a process to measure substantial annual progress while students are learning English, they are in danger of falling through the academic cracks for long

periods of their formal schooling without anyone being held accountable for their learning. This benign neglect is not acceptable. Parents, educators, and students should be held accountable for student learning at all times. To that end, disaggregated data showing Hispanic student test scores should be reported publicly on an annual basis and consequences for the results should follow.

On the question of selecting appropriate tests and administering the tests to Hispanic students, it is important that states carefully track the latest research which can provide recommended improvements to the current testing technology. But while the national research agenda unfolds, schools, districts, and states should avoid making costly mistakes which may result in inaccurate testing of Hispanic students, especially English Language Learners. The following practices should be examined and, if deemed necessary, stopped in order to minimize the mismeasurement of Hispanic students:

(a) using translated versions of tests, whether purchased from a publisher or developed locally; there is little evidence that the translated versions of tests have the same technical properties of the original; using data from such tests for accountability purposes may be inaccurate and misleading;

(b) using interpreters in the administration of tests; this practice may destroy standardization and lead to invalid inferences and conclusions;

(c) using excessive testing in an attempt to determine the profile of students where current testing technology is inappropriate and insufficient; and

(d) using *diagnostic* tests administered to Hispanic students to make high stakes decisions, including high school graduation, promotion, and/or retention; the purposes for which the tests were designed must be preserved.

Before purchasing testing materials, states, districts and schools should require test developers and publishers to provide empirical evidence to support claims of equivalence between English

and Spanish versions of tests. Too often, the Spanish language test developed in the United States lacks the rigor built into the English version of the same test. The two tests may not be based on a common set of content and performance standards. Adopting non-equivalent testing materials diminishes the expectations and opportunities of many Hispanic children to keep up academically with their English fluent peers while acquiring language proficiency in English.

States are the gatekeepers for appropriate testing practices and policies affecting Hispanic students. Without their commitment to improve the conditions of testing, little will change.

III. NATIONAL RESEARCH AND INVESTIGATION PRIORITIES

In order to address the myriad of problems related to the fair and accurate assessment of Hispanic students, the US Department of Education should take a leadership role in supporting research that will inform practice in significant ways and ensure wide dissemination of findings which will affect testing policies across the country.

It should seek to answer questions that could bring resolution to technical design problems and remove barriers to the appropriate assessment of Hispanic students. Research could address issues such as:

- (a) determining whether Hispanic English Language Learners can be validly and fairly assessed with tests normed on monolingual student populations, or
- (b) investigating evidence of bias in tests used on Hispanic students.

The research agenda delineated by the National Research Council and published in its report, "Improving Schooling for Language-Minority Children," should be fully supported. The results of that body of work should be broadly communicated for the benefit of all children in the nation's public schools.

In order to evaluate the current level of mismeasurement of Hispanic students, it is critical to gather all of the relevant data from the states. This is not an easy task under any circumstances, but accurate information is crucial in making course corrections. The US Office of Civil Rights is best poised to do this work. OCR should investigate the use of tests on Hispanic students on a state-by-state basis and report its findings to the appropriate policymakers for further action.

Many state and local policy decisions affecting instruction and assessment are made based on questionable national trends or perceived guidance from independent national entities. No single data set is invoked more often than that of the National Assessment of Educational Progress or NAEP. The National Assessment Governing Board which oversees all aspects of the program should take decisive action to ensure that the NAEP is made relevant and useful for Hispanic students; issues related to cultural factors in achievement testing should be investigated and applied to the NAEP.

IV. THE COMMISSION'S AGENDA

To date, the President's Advisory Commission and the White House Initiative have (1) sponsored a series of forums in Washington D.C. which brought together researchers, practitioners, and policymakers to discuss current education policies, (2) produced a policy document framing many of the most important issues relative to the assessment of Hispanic students which resulted from the policy forums, (3) commissioned a study on the technical issues involved in testing Hispanic students prepared by Figueroa and Hernandez, and (4) outlined a testing reform agenda in this document. In the near future, a national report card will be released based on data gathered from each state with a significant Hispanic student population.

These activities and publications of the commission are planned to promote the educational opportunities for Hispanic students nationwide and, more specifically, to achieve the goals relative to inclusion in accountability systems using accurate and fair test results. Leveling the playing field and increasing opportunities-to-learn will assure the academic progress of Hispanic children.

*White House Initiative on Educational Excellence
for Hispanic Americans*

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September 16, 1999, Thursday, PM cycle

SECTION: Washington Dateline

LENGTH: 613 words

HEADLINE: Education panel says use of English-only tests unfair to students

BYLINE: By ANIETTA McQUEEN, AP Education Writer

DATELINE: WASHINGTON

BODY:

As more Hispanic children enter the nation's schools, educators debate whether they could be hard hit by high-stakes English-only tests.

A presidential panel on Hispanic **education** says such tests, often used to move children ahead or graduate them, may violate the rights of millions of Hispanic children. Others still say any accommodations could cheat them out of a fair assessment of their abilities.

"State **education** leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans, released on Wednesday. It urged the **Education** Department to investigate.

The **Education** Department is currently investigating two cases related to testing and language ability, said Rodger Murphey, a spokesman for the civil rights branch. Murphey said he could not discuss the cases, in Nevada and in Texas, or disclose the filing parties.

About 20 percent of the 5,000 cases filed each year specifically relate to laws that prohibit racial discrimination against students, he said. A 1974 Supreme Court ruling in essence includes language ability in that ban by requiring schools to provide help for students with limited English.

However, opponents of bilingual **education** argue that accommodating children on high-stakes tests will hurt them in the long run.

"You want to make sure kids don't graduate with a degree that they can't even read," said Jorge Amselle, the vice president for **education** of the Center for Equal Opportunity, a Washington group that opposes bilingual **education** and affirmative action. "The purpose of **education** in the United States is to prepare students to survive and succeed in this society and that requires mastery in English.

"To say that a student should be able to do math and science and read and write in English is simply a matter of accountability, not a matter of discrimination," Amselle added.

There is no one national measure of how well a schoolchild is learning. Nearly every state has developed its own achievement tests to gauge progress in core subjects such as math and reading - and the tests vary.

The presidential panel said current state approaches to students who are not native English speakers are too vague for tests that are often tied to a child's promotion or graduation. Currently, 19 states require students to pass tests before they receive high school diplomas; seven more plan to follow suit by 2003.

The **Hispanic education** panel, which was created in 1990 by President Bush, issued its first report in 1992. The group is charged with bolstering Hispanics' participation in federal **education** programs and targeting ways to eliminate educational gaps.

Educating the nation's 3.4 million Hispanic children properly is more important than ever, the group says, as such students' enrollment grows but their achievement does not.

In 10 states, the number of children who are not native English speakers more than doubled from the 1992-93 to 1996-97 school years. And 70 percent of those children are Hispanic.

But in learning, Hispanic children are slipping behind. Young Hispanic children perform half as well as their native-English-speaking peers. Hispanic high school students drop out at double the rate of non-Hispanics.

Even well-to-do families will produce dropouts if English is not learned, the panel said.

The panel praised states such as Oregon, which offers its 4,000 Hispanic students tests in English and Spanish; the tests are matched carefully and questions that cannot be matched in both languages are dropped.

LANGUAGE: ENGLISH

LOAD-DATE: September 16, 1999



Search: General News;president's advisory commission, education

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September 16, 1999, Thursday, Home Edition

SECTION: Part A; Page 3; Metro Desk

LENGTH: 785 words

HEADLINE: CALIFORNIA AND THE WEST;
INQUIRY INTO ENGLISH-ONLY TESTS ORDERED;
EDUCATION: PRESIDENTIAL PANEL SAYS USE OF SUCH EXAMS FOR CHILDREN WITH
LIMITED PROFICIENCY IN THE LANGUAGE MAY VIOLATE THEIR CIVIL RIGHTS. IT
CALLS FOR A PROBE.

BYLINE: RICHARD T. COOPER, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

In a report likely to add to controversies already swirling around California schools, a presidential advisory commission said Wednesday that making children with limited English skills take tests written only in English and using the results to decide such pivotal questions as promotion or graduation may violate their civil rights.

The commission called on the U.S. Department of **Education**, which is charged with enforcing federal civil rights laws as they apply to schools, to investigate such uses of so-called English-only tests.

"State **education** leaders have compromised the future of Latino students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

The **Education** Department reacted cautiously to the latest news from what has become treacherous territory in both policy and political terms because it is part of the larger realm of bilingual **education**.

"We appreciate the attention to this area," department spokesman Rodger Murphey said. "We will look at this report, as well as the body of information we collect, as we plan our . . . activities."

Murphey said the department's Office of Civil Rights Compliance has previously investigated and pursued cases involving the testing of students with limited English skills and is developing cases in Texas and Nevada. He declined to provide details on the pending investigations.

The issue of English-only tests for students with limited proficiency in the language is particularly sensitive in California. More Latino children with limited English proficiency are enrolled in schools here than in any other state. And standardized tests, many of them English-only, are likely to play important roles in new educational policies that are being formulated.

Under a new policy mandating an end to social promotion, for example, school districts are in the process of developing criteria to be applied to students in the second, third, fourth, fifth and eighth grades. English-only tests are likely to be part of such criteria.

Testing also will play a role in the state's new accountability system for rating the performance of individual districts, though final decisions on exactly how such data will be used have not been made.

State Supt. of Public Instruction Delaine Eastin said she agrees that using English-only tests is "a serious problem for children who have been in school a short period of time." She favors giving such tests to students with limited English proficiency only after they have attended U.S. schools at least two years.

"Some rule of reasonableness should apply," she said, calling use of English-only tests with children new to the language "ham-handed."

But she said that, as a result of the controversy over bilingual **education**, "right now California is confused. A lot of people in Sacramento are like deer in the headlights."

Assemblywoman Carole Migden (D-San Francisco) is the author of a bill on Gov. Gray Davis' desk that would limit the use of English-only tests in measuring school districts' performance.

"Testing scholastic aptitude in English when students haven't had a chance to learn the language in which the test is written is unfair," she said.

Critics of bilingual **education**, on the other hand, argue that children with limited English skills will suffer in the long term if they are permitted to continue learning and being tested in their native languages.

In Washington, the Center for Equal Opportunity, headed by former Ronald Reagan administration official Linda Chavez, has been among the leading critics of using bilingual strategies for Spanish-speaking students.

"You want to make sure kids don't graduate with a degree that they can't even read," Jorge Amselle, the center's vice president for **education**, told Associated Press. "The purpose of **education** in the United States is to prepare students to survive and succeed in this society, and that requires mastery in English."

Echoing that view, the panel said that even children with limited English who are not troubled by poverty will fail to succeed in school if they do not learn English.

Under a 1974 U.S. Supreme Court ruling, schools are required to provide assistance to students with limited English skills. But the extent of that assistance and its duration remain matters of dispute.

The **Education** Department investigates language issues under Title VI of the 1964 Civil Rights Act, which forbids discrimination on the basis of race, color or national origin.

*

Times staff writer Richard Lee Colvin in Los Angeles contributed to this story.

LANGUAGE: English

LOAD-DATE: September 16, 1999

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September 16, 1999 Thursday, CHICAGO SPORTS FINAL EDITION

SECTION: NEWS; Pg. 24; ZONE: N

LENGTH: 442 words

HEADLINE: ENGLISH-ONLY SCHOOL TESTS CHALLENGED;
HISPANIC RIGHTS MAY BE VIOLATED BY CRITERIA FOR PROMOTION, PANEL SAYS

BYLINE: Associated Press.

DATELINE: WASHINGTON

BODY:

English-only tests that determine whether a student moves ahead or graduates might violate millions of Hispanic children's rights, a presidential panel said Wednesday. It urged the **Education Department** to investigate.

"State **education** leaders have compromised the future of Hispanic students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

The **Education Department** does investigate such cases, said Rodger Murphey, a spokesman for the civil rights branch. About 20 percent of the 5,000 cases filed each year specifically relate to laws that prohibit racial discrimination against students, he said.

The department is currently investigating two cases related to testing and language ability, in Nevada and in Texas. Murphey said he could not discuss the cases or disclose the parties.

A 1974 Supreme Court ruling requires schools to provide help for students with limited English.

However, opponents of bilingual **education** argue that accommodating children on high-stakes tests hurts them in the long run.

"You want to make sure kids don't graduate with a degree that they can't even read," said Jorge Amselle, the vice president for **education** of the Center for Equal Opportunity, a Washington group that opposes bilingual **education** and affirmative action. "The purpose of **education** in the United States is to prepare students to survive and succeed in this society, and that requires mastery in English.

"To say that a student should be able to do math and science and read and write in English is simply a matter of accountability, not a matter of discrimination."

There is no one national measure of how well a child is learning. Nearly every state has its own achievement tests to gauge progress in core subjects such as math and reading, and the tests vary.

The presidential panel said state approaches to students who are not native English speakers are too vague for tests that are often tied to a child's promotion or graduation.

"Nevertheless, the resulting data are often used to hold students accountable for their own success, rather than the educators," said the report by the Hispanic **education** panel, which was created in

1990 by President George Bush. The group, which issued its first report in 1992, is charged with bolstering Hispanics' participation in federal education programs and with finding ways to eliminate educational gaps.

Hispanics are expected to be the nation's largest minority group by 2010.

FEDERAL GROUP REPORT ISSUE MINORITY HISPANIC EDUCATION

LANGUAGE: ENGLISH

LOAD-DATE: September 16, 1999



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September 16, 1999, Thursday

SECTION: NEWS Pg. A-7

LENGTH: 667 words

HEADLINE: Panel says tests hurt Hispanic students; English-only format faulted as narrow

SOURCE: ASSOCIATED PRESS

BYLINE: Anjetta McQueen

DATELINE: WASHINGTON

BODY:

WASHINGTON -- English-only tests that determine whether a student moves ahead or even graduates may violate millions of Hispanic children's rights, a presidential panel said yesterday. It urged the **Education** Department to investigate.

"State **education** leaders have compromised the future of Hispanic students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

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The department is currently investigating two cases related to testing and language ability, in Nevada and Texas. Murphey said he could not discuss the cases or disclose the parties.

In California, educators are creating a high school exit exam, which should be ready in about three years. Plans are for the test to be given in English only.

Rosalia Salinas, director of curriculum, instruction and assessment for the San Diego Office of **Education**, believes that if these tests are to accurately reflect student knowledge, they should not be limited to English.

"It's important for us to also have a way of measuring the actual knowledge a student might have in areas such as mathematics and science and that the language issue not be the sole determinant of whether or not that student has knowledge," she said.

A 1974 Supreme Court ruling requires schools to provide help for students with limited English.

However, opponents of bilingual **education** argue that accommodating children on high-stakes tests will hurt them in the long run.

"You want to make sure kids don't graduate with a degree that they can't even read," said Jorge Anselle, the vice president for **education** of the Center for Equal Opportunity, a Washington group that opposes bilingual **education** and affirmative action. "The purpose of **education** in the United

States is to prepare students to survive and succeed in this society, and that requires mastery in English.

"To say that a student should be able to do math and science and read and write in English is simply a matter of accountability, not a matter of discrimination," Anselle added.

There is no one national measure of how well a schoolchild is learning. Nearly every state has developed its own achievement tests to gauge progress in core subjects such as math and reading -- and the tests vary.

The presidential panel said current state approaches to students who are not native English speakers are too vague for tests that are often tied to a child's promotion or graduation. Currently, 19 states require students to pass tests before they receive high school diplomas; seven more plan to follow suit by 2003.

"Nevertheless, the resulting data often are used to hold students accountable for their own success, rather than the educators," said the report by the Hispanic education panel, which was created in 1990 by President Bush. The group, which issued its first report in 1992, is charged with bolstering Hispanics' participation in federal education programs and targeting ways to eliminate educational gaps.

Educating the nation's 3.4 million Hispanic children properly is more important than ever before, the group says, as such students' enrollment grows but their achievement does not.

Hispanics will become the nation's largest minority group by 2010. In 10 states, the number of children who are not native English speakers more than doubled from the 1992-93 to 1996-97 school years. And 70 percent of those children are Hispanic.

But in learning, Hispanic children are slipping behind. Young Hispanic children perform half as well as their native-English-speaking peers. Hispanic high school students drop out at double the rate of non-Hispanics.

LANGUAGE: ENGLISH

LOAD-DATE: September 17, 1999



Search: General News;president's advisory commission, education

To narrow this search, please enter a word or phrase:

ENGLISH

Example: House of Representatives

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SEATTLE POST-INTELLIGENCER

September 20, 1999, Monday, FINAL

SECTION: EDITORIAL, Pg. A9

LENGTH: 392 words

HEADLINE: FOR ALL STUDENTS, THE KEY IS ENGLISH

BODY: A presidential panel is woefully shortsighted to conclude that Hispanic students' rights are being violated when they're required to take tests in English to qualify for a high school diploma.

The President's Advisory Commission on Educational Excellence for Hispanic Americans has reported that Hispanic students' future has been compromised by requiring them to demonstrate enough English fluency to take tests in English.

Quite the contrary. There should be no confusion on this point: What surely compromises a Hispanic student's future is failing to teach that student to function in English.

As Jorge Amselle, vice president for education of the Washington-based Center for Equal Opportunity, put it, "The purpose of education in the United States is to prepare students to survive and succeed in this society and that requires mastery in English. To say that a student should be able to do math and science and read and write in English is simply a matter of accountability, not a matter of discrimination."

Insisting on accountability by educators to teach Hispanic students English is the best thing that could happen to them. They have every right to expect to have been educated to function in English when they graduate from high school. To excuse them from English-speaking requirements is nothing short of fraud.

Nevertheless, the misguided panel members want the U.S. Department of Education to investigate whether Hispanic students' civil rights have been violated by requiring them to take tests in English.

The panel would have been wiser to insist the department investigate cases where students' civil rights had been compromised because they were not required to learn English.

The department already is investigating two cases of alleged civil rights violations related to testing and language ability in Nevada and Texas. And more such complaints can be expected as the nation, like this state, moves to require students to demonstrate competence in core academic subjects before they are certified as having mastered high school subjects.

Such complaints also are to be expected in this state, which has a rapidly growing Hispanic population. Nationally, Hispanics will become the nation's largest minority by 2010.

The sooner this matter is resolved to require Hispanic students to learn English, the better.

NOTES:
Editorials

LANGUAGE: ENGLISH

TYPE: EDITORIAL

LOAD-DATE: September 21, 1999

Copyright 1999 The Seattle Times Company
The Seattle Times

September 16, 1999, Thursday Final Edition

SECTION: NEWS; Pg. A8; ACROSS THE NATION

LENGTH: 759 words

HEADLINE: NATIONAL-SECURITY PANEL SEES TERROR FOR DECADES TO COME

BODY:

WASHINGTON - Americans are feeling increasingly secure, but they shouldn't, says an independent panel set up by the Pentagon.

Citing dangers ranging from "mass disruption" by attacks on information systems to "mass destruction" from nuclear weapons in the hands of terrorists, the U.S. Commission on National Security/21st Century paints a frightening picture of the next quarter-century.

"Americans will become increasingly vulnerable to hostile attack on our homeland, and our military superiority will not entirely protect us," said the commission, headed by former Sens. Warren Rudman, R-N.H., and Gary Hart, D-Colo.

At a news conference releasing the first of three planned reports, Rudman cited "the spreading ability of terrorists to strike Americans at home and abroad."

Panel members said America needs to restructure forces to meet 21st-century challenges, a topic the panel will continue to address. It will propose a national strategy next year and offer final recommendations to achieve national safety to the next president in 2001.

Presidential panel assails use of English-only testing

WASHINGTON - A presidential advisory commission said yesterday that making children with limited English skills take tests written only in English and using the results to decide such pivotal questions as promotion or graduation may violate their civil rights.

"State **education** leaders have compromised the future of Latino students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

The commission called on the U.S. Department of **Education**, which is charged with enforcing federal civil-rights laws as they apply to schools, to investigate such uses of so-called English-only tests.

FCC enhances 911 service, OKs GPS use for cell phones

WASHINGTON - A new way of linking satellites and cell phones in an emergency received a big boost yesterday from the Federal Communications Commission.

By a 5-0 vote, the commission allowed introduction of cell phones that use Global Positioning System (GPS) satellites to flash their location to 911 operators.

About 70,000 callers a day use cell phones to reach 911, but many don't know their exact location.

Vice president goes on attack against rise of cyberstalking

SAN DIEGO - State and federal laws should be stiffened to outlaw online stalking, according to a new U.S. Justice Department report that warns the practice is on the rise.

"Cyberstalking is a very serious new problem confronting us in the information age," said Vice President Al Gore, who requested the report in February and released it today.

"Cyberspace should be a place for learning and exploration, not a place for fear," he said at a meeting with victims of online stalking and their family members.

Two-thirds of states have no laws that cover stalking on the Internet or through other electronic communications means, the report found.

Medicare expenses to soar for patients who use HMOs

WASHINGTON - Millions of Medicare beneficiaries enrolled in health-maintenance organizations will be forced to pay much more for their health care next year, particularly for prescription drugs and visits to doctors' offices.

The higher charges - in some cases tripling the cost for retirees to visit a doctor and setting strict caps on prescription benefits - were disclosed yesterday by the Health Care Financing Administration, which runs Medicare. They seem sure to set off a new round of debate about medical costs, the role of HMOs and the way society should pay for the health care of an aging population. The higher costs possibly could increase political support for President Clinton's proposal to offer drug benefits under Medicare.

Although HMOs have been warning that benefits were likely to be trimmed in 2000, the size and scope of the increases were unanticipated.

Drugs OK'd to fight cancer, help kidney transplantation

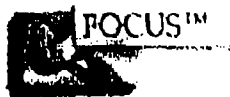
WASHINGTON - The Food and Drug Administration approved two new drugs, one for breast-cancer patients whose tumors have spread to the lymph nodes and one to help prevent kidney-transplant rejection.

Ellence, known chemically as epirubicin, was approved today for treatment of node-positive, early-stage breast cancer.

Yesterday, the FDA approved Rapamune, calling it an important addition to the immunosuppressants available for kidney transplants.

LANGUAGE: ENGLISH

LOAD-DATE: September 18, 1999



Search: General News:president's advisory commission, education

To narrow this search, please enter a word or phrase:

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The Commercial Appeal (Memphis, TN)

September 16, 1999, THURSDAY, FIRST EDITION

SECTION: NEWS, Pg. A4

LENGTH: 420 words

HEADLINE: HISPANIC STUDENTS HURT BY ENGLISH TESTS, PANEL SAYS

BYLINE: The Associated Press

DATELINE: WASHINGTON

BODY:

English-only tests that determine whether a student moves ahead or even graduates might violate the rights of millions of Hispanic children, a presidential panel said Wednesday in urging the **Education Department** to investigate.

"State **education** leaders have compromised the future of Hispanic students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

The **Education Department** does investigate such cases, said Rodger Murphey, a spokesman for the civil rights branch. About 20 percent of the 5,000 cases filed each year specifically deal with laws that prohibit such discrimination, he said.

The department is investigating two cases in Nevada and Texas related to testing and language ability. Murphey said he could not discuss the cases or disclose the parties.

A 1974 Supreme Court ruling requires schools to provide help for students who speak limited English. Opponents of bilingual **education** argue that accommodating children on high-stakes tests will hurt them in the long run.

"You want to make sure kids don't graduate with a degree that they can't even read," said Jorge Amselle, vice president for **education** of the Center for Equal Opportunity, a Washington group that opposes bilingual **education** and affirmative action. "The purpose of **education** in the United States is to prepare students to survive and succeed in this society, and that requires mastery in English."

But the presidential panel said state approaches to students who are not native English speakers are too vague for tests that are often tied to a child's promotion or graduation. Currently, 19 states require students to pass tests before they receive high school diplomas; seven more plan to follow suit by 2003.

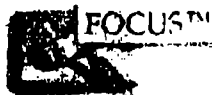
"Nevertheless the resulting data are often used to hold students accountable for their own success, rather than the educators," said the report by the **Hispanic education** panel, created in 1990 by President Bush.

Hispanics will become the nation's largest minority by 2010. In 10 states, the number of children who are not native English speakers more than doubled from the 1992-93 to 1996-97 school years; 70 percent of those are Hispanic.

But in **education**, Hispanic children are slipping behind. Young Hispanic children perform half as

well as their native-English-speaking peers. Hispanic high school students drop out at double the rate of non-Hispanics.

LOAD-DATE: September 16, 1999



Search: General News;president's advisory commission, education

To narrow this search, please enter a word or phrase:



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Milwaukee Journal Sentinel

September 16, 1999, Thursday Final

SECTION: News Pg. 7

LENGTH: 115 words

HEADLINE: Panel chides states for English-only tests

SOURCE: Journal Sentinel wire reports

DATELINE: Washington

BODY:

A presidential advisory commission said Wednesday that making children with limited English skills take tests written only in English and using the results to decide such pivotal questions as promotion or graduation may violate their civil rights.

The panel called on the U.S. Department of **Education** to investigate.

"State **education** leaders have compromised the future of Latino students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

Milwaukee Public Schools requires students to pass an English-only test before graduating.

LOAD-DATE: September 17, 1999



Search: General News;president's advisory commission, education

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Example: House of Representatives

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September 16, 1999, THURSDAY; ALL EDITIONS

SECTION: NEWS; Pg. A13

LENGTH: 292 words

HEADLINE: ENGLISH-ONLY TESTS UNFAIR TO STUDENTS, PANEL FINDS

COLUMN: AROUND THE NATION

SOURCE: Wire services

BYLINE: FROM NEWS SERVICE REPORTS

DATELINE: WASHINGTON

BODY:

English-only tests that determine whether a student moves ahead or even graduates may violate millions of Hispanic children's rights, a presidential panel said Wednesday. It urged the **Education** Department to investigate.

"State **education** leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate information," said the report by the **President's Advisory Commission** on Educational Excellence for Hispanic Americans.

The **Education** Department is currently investigating two cases related to testing and language ability, in Nevada and in Texas. Rodger Murphey, a spokesman for the civil rights branch, said he could not discuss the cases or disclose the parties.

A 1974 Supreme Court ruling requires schools to provide help for students with limited English.

However, opponents of bilingual **education** argue that accommodating children on high-stakes tests will hurt them in the long run.

"You want to make sure kids don't graduate with a degree that they can't even read," said Jorge Amselle, the vice president for **education** of the Center for Equal Opportunity, a Washington group that opposes bilingual **education**. "The purpose of **education** in the United States is to prepare students to survive and succeed in this society and that requires mastery in English."

But the presidential panel said current state approaches to students who are not native English speakers are too vague for tests that are often tied to a child's promotion or graduation.

"Nevertheless the resulting data are often used to hold students accountable for their own success, rather than the educators," said the

report by the Hispanic education panel.

LANGUAGE: English

LOAD-DATE: September 16, 1999



Search: General News;president's advisory commission, education

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The Ledger (Lakeland, FL)

September 19, 1999, Sunday

SECTION: News; Pg. A14

LENGTH: 585 words

HEADLINE: STATES REACT TO TESTING BIAS AGAINST HISPANIC STUDENTS

BYLINE: CATHERINE HOLLINGSWORTH Ledger Washington Bureau

BODY:

WASHINGTON -- Faced with steady increases in Hispanic student enrollment due to the Latino population boom, many states are seeking an academic system that better suits Spanish speakers, with an emphasis on bias-free tests.

Between 1992 and 1997, the number of Latino students still not fluent in English more than doubled in Alabama, Florida, North Carolina, South Carolina, Tennessee and a few western states, according to government data compiled by the **White House Initiative on Educational Excellence for Hispanic-Americans**.

By 2050, one in four school-age children will be Hispanic, Census Bureau projections show. At that rate, schools across the country are bound to be faced with the challenges of educating Latinos, many of whom are enrolled below grade level, have high drop-out rates and low literacy levels.

The Latino population boom in general may be a wake-up call for some school districts.

"If it's not really having some impact now, it will. So they best be paying attention," said Sonia Hernandez, a member of the commission and co-author of a recent report on test bias against Hispanics.

Testing can be a major challenge for schools because of language and cultural barriers, the White House report said.

The report released Wednesday found that too often Hispanic students are made to take tests they do not understand, and alternative tests are not always available.

Only a few states are making progress in this area of eliminating test bias, with Texas and other Southern states leading the way.

"There are states that we believe are making a good-faith effort to retain Spanish-speaking students," Hernandez said.

North Carolina and Texas have closed the gap between the state exam scores of minorities and the rest of the student population. Alabama and Texas give non-English speakers multiple opportunities to pass high-stakes tests required for promotion or graduation.

Oregon created a Spanish version of its state test, and Minnesota developed a pre-test to determine whether limited English speaking students are ready for standardized tests.

But overall, states could do a better job of educating Hispanics, the commission said. It plans to conduct a state-by-state analysis of states' efforts in the coming months.

"In Alabama, we face the challenge of finding teachers who are bilingual," said Dianne Courtney, a specialist in federal education programs at the Alabama Department of Education.

There are only enough resources to offer bilingual instruction during summer school, she said. The state also is hard pressed to find college education programs that certify teachers in bilingual education.

Shortage of funding for language programs is yet another challenge facing school districts with growing Hispanic enrollment.

The North Carolina Legislature for the first time last year provided funding for English-language programs. These programs, which provide tutoring in English and help students with study skills, previously had been funded solely through federal and local sources.

"We're finally having recognition from the state that these students should get a level playing field," said John Wilson, executive director of the North Carolina Association of Educators. "The state never really had addressed this issue."

The difference now is lawmakers are paying attention to the changing demographics, Wilson said. "You can see that the numbers are driving people to make better decisions about individuals," he said.

LANGUAGE: ENGLISH

LOAD-DATE: September 20, 1999



Search: General News;white house initiative on educational excellence for hispanic...

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September 22, 1999

Hispanic Students Left Out By High-Stakes Tests, Panel Concludes

By Mary Ann Zehr

Washington

Hispanic students are not being tested properly, nor are their scores on standardized tests being used for the right purposes, a presidential advisory panel concluded last week.

Members of the President's Advisory Commission on Educational Excellence for Hispanic Americans said that while they wholly support the drive for standards-based school reform, they are not happy with how the educational needs of Hispanic students are being addressed within the movement.

FOR INFORMATION
"A Report to the Nation: Policies and Issues on Testing Hispanic Students in the United States" is available free from the White House Initiative on Educational Excellence for Hispanic Americans by calling (202) 401-1411.

"The assessment dialogue that has been going on in this country has not sufficiently included the Hispanic community," Ana M. "Cha" Guzman, the vice president of Austin Community College in Texas and the chairwoman of the commission, said at a press conference here last week. "If our children are not being tested [properly], they will be left out."



Ana M. "Cha"
Guzman

The 22-member commission, which was appointed by President Clinton in 1994, published its conclusions in "A Report to the Nation: Policies and Issues on Testing Hispanic Students in the United States." The 97-page report calls on the Department of Education's office for civil rights to look on a state-by-state basis into possible discriminatory practices in the testing of Hispanics.

Commission members speaking at the press conference emphasized what they see as a need for developing better tests for assessing Hispanic students, particularly those with limited proficiency in English. In addition, they said, test scores should be used to hold schools accountable for providing an adequate education to Hispanic students.

Until those issues are resolved, Hispanics' test scores should not be used to keep them from being promoted or from graduating, commissioners argued.

"The high stakes have to be on the schools and school districts and not on children," Ms. Guzman said.

Kenji Hakuta, a professor of education at Stanford University, agreed with the commission's main recommendations.

"It's not appropriate to have the high stakes applied to students until the problems can be addressed," he said.

Mr. Hakuta noted that nearly half of the nation's Hispanic students are considered not proficient in English, and that about 75 percent of students who fall under that category are in high-poverty schools.

Lawsuit in Texas

But Kati Haycock, the director of the Washington-based Education Trust, which aims to improve the academic achievement of minority and disadvantaged students, disagreed with the panel's view that individual students shouldn't be held accountable for their test scores.

"It's a little overly simplistic to say schools can be held accountable without high stakes for the kids," she said. "At the high school level, if there are no incentives for students to work hard and meet standards and do well on a test, they won't."

Ms. Haycock agreed with the commission, however, that state and national testing authorities have no excuse for not having developed better tests to assess students who are learning English.

"The need for better exams has been clear for at least a decade," she said. "There's clearly a need to put some big money fast into developing decent assessments for Spanish-speaking kids."

The report is being released at the same time that the debate over standardized testing of minority students is heating up.

A lawsuit challenging the Texas Assessment of Academic Skills was expected to go to trial this week in the U.S. District Court in San Antonio.

In the suit, *GI Forum, et al. v. Texas Education Agency, et al.*, the Mexican American Legal Defense and Educational Fund has taken the lead in claiming that the state's use of the TAAS as a graduation requirement discriminates against Hispanic and African-American students. The rationale is that minorities haven't received an education in Texas equal to that of other students.

"The main goal would be to stop the use of the exit test for getting a

high school diploma," said Alicia Maldonado, the senior director of communications and public policy for MALDEF. "If you're testing kids on certain kinds of information, they need to be getting that instruction. We say they're not."

EDUCATION DAILY

The education community's independent daily news service

Riley Pushes AP Courses, Smaller High Schools

Education Secretary Richard Riley on Wednesday mapped out a plan to reform education for adolescents, calling for increased access to demanding classes, smaller high schools and greater parent involvement.

"Every high school in America should be offering Advanced Placement (AP) or other advanced courses in the core subjects within the next two years," Riley said yesterday in an address before the National Press Club, his sixth straight year of addressing journalists there.

"I remain deeply concerned that we continue to shortchange many of our young people," Riley said, "particularly our minority young people, by not even giving them the opportunity to stretch their minds."

He lamented that 49 percent of the nation's high schools offer AP courses (only 10 percent of all students take such courses), but noted that President Clinton has proposed to spend an added \$20 million on AP test fees in fiscal 2000.

Schools, Classes: 'Size Matters'

The Clinton administration, since the April 20 mass murder at Columbine High School, has promoted smaller high schools and smaller classes not only as a method of improving instruction, but also of interacting more personally with adolescents and preventing violence.

Riley yesterday asked high school educators to "give students a connection. That's hard to do when we are building high schools the size of shopping malls. Size matters."

The National Association of Secondary School Principals (NASSP), Riley noted, published a study recommending that students learn best in high schools with no more than 600 students. Acknowledging budget realities that make schools of 2,500 students more economical, Riley called for "schools-within-schools ...

(more on p. 2)

In This Issue

Vol. 32, No. 175 ■ Thursday, September 16, 1999

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For New York City Kids Page 4

N.H. District Sued Over
Basketball Player's Injury Page 6

High-Stakes Testing Hurts Latino Students, Group Says

In the push to set higher standards, states and school districts should avoid discriminatory testing practices that hurt Hispanics and other students learning English, says a White House advisory panel for Hispanic-Americans.

Nearly 20 states have adopted high-stakes tests as a sole measure to determine whether students advance to the next grade or graduate high school, said the President's Advisory Commission on Educational Excellence for Hispanic-Americans, established by President Clinton in 1994.

But in a report released yesterday, the panel said it wants states and districts to focus reforms on improving schools—instead of taking measures against students who don't pass high stakes tests by ending social promotion and withholding diplomas.

In addition, the group called for the creation of "linguistically and culturally appropriate" tests it said would help Hispanic students meet standards.

"The standards-based movement is the first opportunity we've had in years to bring our children up to par," said Erlinda Archuleta, a

(more on p. 4)

Riley Pushes AP Courses, Smaller High Schools (Cont.)

and mak[ing] sure that every high school student has an adviser for all four years."

He said he would support plans in Congress that would promote the hiring of counselors in schools; President Clinton wants schools to counsel all children who are suspended or expelled (ED, June 2).

Language Excellence

Breaking new ground, Riley also proposed to require every high school graduate to demonstrate fluency in a foreign language.

"We should begin teaching foreign languages in our elementary schools, and then in middle schools and high schools," he said.

Without proposing to test students in foreign tongues, Riley did endorse exit exams for high school graduates, proposing that high schools run review courses—similar to legal courses offered to people taking a state bar exam—that would help students prepare for high stakes tests.

To promote this focus on tougher academics and foreign languages, Riley proposed that parents stop allowing their teenagers to work 20 hours each week in part-time jobs, saying research shows that such labor harms kids' academic performance.

Life After High School

Gerald Tirozzi, now NASSP executive director and until recently the Education Department's K-12 policy chief, welcomed Riley's focus.

"We just have to attack the status quo," Tirozzi said. "We have to reform American high schools, and it can't be piecemeal."

In a statement, NASSP urged that districts stop "warehousing" students in overcrowded, alienating schools that lack mentoring services and high standards.

Riley had picked up on this theme, calling for schools to experiment with a reform promoted as part of the High School That Works program, which is supported by the Southern Regional Education Board in 500 Southern high schools. Freshmen in the program, with help from their parents and an adviser, write a six year plan that addresses high school academics and life after graduation.

"The young people," Riley said, "get the message that they have new and high horizons, and that going to high school has a higher purpose."

Patricia McNeil, the Labor Department's assistant secretary for employment and training, endorsed such six-year planning as an effective reform for students who are not bound for college, but headed into the workforce instead. And she stressed that AP courses, as recommended by Riley, can be critical even to children in vocational education tracks.

"Every kid needs to be prepared for college, whether they go or not," McNeil said. "They need to be prepared ... Employers give that message loud and clear." —William J. Cahir

Resources

■ **The New York Times Upfront**, a new national, bimonthly news magazine targeted at teenagers, features articles adapted for a teen audience on current events, lifestyles, sports, technology, business and science. The annual subscription rate is \$19.95. Bulk subscriptions are available at a reduced rate.

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House Oversight Panel Blasts AmeriCorps, Again

Despite plans to change its management and accounting systems, accountability problems persist for the agency charged with overseeing the AmeriCorps program, which recruits 17- to 24-year olds for national service.

In a hearing Tuesday before the House Education and the Workforce Oversight and Investigations Subcommittee, lawmakers questioned the chairman of the Corporation for National Service, Bob Rogers, about a slew of internal audits that have unveiled numerous examples of AmeriCorps volunteers receiving work credit for inappropriate activities.

"The corporation is not only failing to root out waste and fraud on its own," said Rep. Peter Hockstra, R-Mich., the subcommittee's chairman. "It is failing to pursue collections on fraud identified by the inspector general."

AmeriCorps, started in 1993 by President Clinton, gives high school students vouchers—worth up to \$4,725—that can be used to pay for college, job training or student loans in exchange for one year of volunteer work that provide a tangible benefit for the community. AmeriCorps prohibits the credits from going toward any paid job or political activity.

However, since its inception, the program—currently funded at \$428.5 million—has had numerous problems accounting for its funding on the state and local levels, drawing criticism from Republicans in Congress.

Decentralized Structure

At the hearing, Rogers said that past mismanagement can be explained by the peculiar structure of the program.

Two-thirds of AmeriCorps funding goes to state commissions, which in turn send the money to local AmeriCorps projects. As a result, the Corporation for National Service does not directly oversee individual projects.

"The Terre Haute matter is an excellent example of how the challenges of a devolved and decentralized structure manifest themselves," he said.

Rogers was referring to a recent report in the *Terre Haute Tribune Star* that found Indiana

students receiving AmeriCorps credits for anything from singing in a church choir to holding jobs at a summer camp.

Although Rogers insisted that the Indiana program is an isolated example of mismanagement, testimony from Luise Jordan, the inspector general for the Corporation for National Service, indicates that the kinds of problems in Terre Haute persist at other sites as well.

Jordan sharply disagreed with Rogers, and told the congressional panel that the lack of a direct contractual relationship does not relieve the corporation from oversight responsibilities. In a recent audit of 40 AmeriCorps sites, her office found:

- Participants on the corporation's database did not correspond to the membership rosters at some sites;
- Program officers were unaware of prohibited activities in the AmeriCorps legislation at seven sites; and
- Not all sites had a process to review education award certificates.

One of the IG's audits even revealed that a participant received work credit for a job at McDonald's.

To correct accountability problems, the Corporation for National Service plans to unveil a Web-based accounting system that will eliminate the error-prone paper filing method it uses today to account for hours logged in the program.

It has also recently implemented a new financial records system to make records more accessible to outside auditors.

While Jordan testified that she had no evidence the oversight problems would be corrected by recent management changes the corporation is in the process of implementing, Rogers was more optimistic.

"I believe we are making progress," Rogers said. "There is still a long way to go, but this is a good year for it." —Eli J. Lake

High-Stakes Testing Hurts Latino Students (Cont. from p. 1)

member of the panel. "But our students are being tested in English, for which many do not have the fluency."

Good And Bad Testing

While advocating testing policies it deems fairer, the panel called for ensuring that more Hispanic and minority-language students are included in tests. Often, English language learners are exempted from testing.

"If our children are not tested, they will be left out," said Ana Guzman, chairwoman of the panel and vice president at Austin Community College in Cedar Park, Texas. "Resources go to who is held accountable."

The panel outlined several practices it said harm Hispanic students and students learning English, including: requiring English-only tests for high stakes decisions; providing inadequate support to achieve high standards; and using tests not aligned to school curricula.

The group also recommended several courses of action for states and districts, including testing in Spanish, special accommodations on tests for students still learning English, and efforts to ensure that schools which teach large populations of those students have qualified teachers and equitable resources.

Delaying Accountability?

On the surface, the panel's findings would seem to be in conflict with the Clinton administration's push to get schools to adopt higher standards and end social promotion.

But Mike Cohen, a senior adviser to Education Secretary Richard Riley, said the administration has always supported "valid and reliable" tests, inclusion of all students in testing, and testing in a diagnostic fashion to help improve schools. "To do this in a sound way, there ought to be multiple measures [besides tests]," he said.

He also pointed to a recently released Education Department guidebook that advises schools to end social promotion only after providing tutoring and other services to help students meet standards, a phase-in that could take up to five years (ED, July 1).

But Jorge Anselle, vice president of the Center

for Equal Opportunity, a group that opposes minority preferences, defended high-stakes decisions as a method of forcing schools and students to improve. "How are we going to end social promotion without high-stakes decisions on tests?" he asked. "You can't have it both ways."

He also frowned on testing students on some subjects in native languages while they learn English. "Tests in English should be mandatory because that's the standard," he said. "All [native-language tests] will do is delay the acquisition of English." (more)

Test Snafu Ruins Summer For New York City Kids

Thousands of New York City public school students were improperly required to attend summer school as a result of scoring glitches on a high-stakes test, the city schools chancellor admitted Tuesday.

As part of New York's get-tough policies to end social promotion, 35,000 students attended summer school this year after getting low scores on a spring achievement test. But a mistake made by test publisher CTB/McGraw Hill may have improperly compelled up to 3,000 students to attend summer school.

CTB/McGraw Hill said the mistake affected scores in other districts, but those districts didn't use the test in a high-stakes capacity.

Testing critics argue that the snafu is another reason why high-stakes testing is unfair. In fact, test publishers recommend against high-stakes policies and say districts should weigh other factors besides test scores in determining promotions, such as class work and teacher judgments.

A similar error occurred recently with California's state assessment, the Stanford 9 Achievement Test. Test publisher Harcourt Education Management improperly classified 300,000 English-proficient students as students still learning English, resulting in vastly inflated scores for English learners (ED, July 1).

—Jonathan Fox

High-Stakes Testing Hurts Latino Students, Group Says (Cont.)

The presidential group's findings echo complaints embodied in a lawsuit filed in October 1997 by the Mexican American Legal Defense and Educational Fund (MALDEF), a Latino civil rights group, against the Texas Education Agency.

In Texas, students must pass the three-part Texas Assessment of Academic Skills (TAAS) exit exam to graduate with no exceptions.

Suing on behalf of seven students who flunked the test, MALDEF alleges it discriminates against minorities because the state doesn't provide all students an equal opportunity in education, while many schools don't teach all the material on the test. The case goes to trial Sept. 20.

Texas officials deny that the exam is discriminatory, and say test items are vigorously screened and field-tested for bias. (Members of the presidential panel said they want the Education Department's Office for Civil Rights,

which enforces civil rights laws pertaining to education, to conduct similar inquiries.)

Opinions Vary On Texas

But not all Hispanic advocates agree that Texas is failing its minority students. Many educators praise the state for its requirement that schools raise standards for students in aggregate as well as groups of students divided by race, ethnicity and income status.

"Of any state that's doing a lot of things right, it's Texas," said Sonia Hernandez, California's deputy state education chief and member of the panel, who nonetheless disapproves of the state's high-stakes graduation exam.

"Educational Standards, Assessment and Accountability: A New Civil Rights Frontier" is available from the White House Initiative on Educational Excellence for Hispanic-Americans, 400 Maryland Ave. SW, Washington, DC 20202; (202)401-1411; or on the Internet at www.ed.gov/offices/OIEA/Hispanic.
—Jonathan Fox

Treasury, ED Launch Student Loan Debt Ad Campaign

In conjunction with the Education Department, the U.S. Treasury has unveiled a new advertising campaign aimed at getting delinquent student loan borrowers to pay off their debts.

The ads will start on local radio stations this month in Austin, Texas, encouraging delinquent debtors to call a toll-free number—1-800-IWILLPAY—or access the Web site www.1800iwillpay.com. Austin was chosen because of its large student population, among other things.

In the ad, a voiceover relays the message: "We believed in you and gave you a government student loan to help make your dreams possible." The ad later says ED and the Treasury are "here to work with you no matter how far behind you might be."

Dean Blamacl, who heads the project for the Treasury, says the advertisement was designed to send two messages: "One is to inform the public of the government's debt collection

policies, and [the other is] to set a tone for current students."

The new initiative is an outgrowth of the 1997 Debt Collection Improvement Act, which gave the Treasury the authority to deduct government debts from a debtor's tax refunds. That bill also requires the government to enhance efforts to collect on overdue loans.

In the ad, a voiceover relays the message: 'We believed in you and gave you a government student loan to help make your dreams possible.' The ad later says ED and the Treasury are 'here to work with you no matter how far behind you might be.'

To date, the student loan program is responsible for \$24 billion in unpaid loans to the government, or a little less than half of the Treasury's entire debt portfolio, according to the Treasury's estimates. —Ell J. Lake

N.H. District Sued Over Basketball Player's Injury

A female student is suing a New Hampshire school district because she sustained permanent leg injuries during a basketball game that erupted into a scuffle.

Shaker Regional School District and the Town of Belmont had fought a lower court ruling that allowed the suit filed by Nancy and Charles Hacking Jr. on behalf of their daughter Chelsea.

The New Hampshire Supreme Court cleared the way for the suit last May, when it ruled that the district is not immune from being sued because the coaches and referees present may have been negligent in not stopping the game when it appeared out of control.

Chelsea was a sixth-grade student at Canterbury Elementary School in January 1995. During a basketball game against Belmont Elementary School, her family alleges that "referees, coaches, instructors, and employees of [the school district] permitted the game to

escalate out of control," according to court records.

Belmont players reportedly twice knocked Chelsea down and repeatedly stepped on her left leg, causing her to need surgery and other medical treatment. She will require ongoing medical care to treat her permanent injury.

The school district had argued the family could not sue the district, or the coaches or referees in charge of the game, because it has 11th Amendment immunity from lawsuits. The 11th Amendment protects the government from lawsuits except in cases of gross negligence.

In *Hacking v. Town of Belmont* (97-682), the New Hampshire high court ruled that the harm Chelsea sustained was not "an ordinary risk inherent in the game of basketball that Chelsea or her parents would have known or appreciated." The school district did not appeal the high court's ruling.

—Esmeralda Barnes

Pa. College Not Liable For Baseball Player's Injuries

A Pennsylvania college is not responsible for injuries a visiting student baseball player sustained during a game in which he tripped on a warped section of the field.

A trial court granted Geneva College's pretrial motion to dismiss the case, and the Superior Court of Pennsylvania agreed.

Jason Zachardy, a starting center fielder for Point Park College, and his teammates were scheduled to play a game in April 1994 at Geneva College in Pittsburgh. As he pursued a fly ball during the game, he tripped in a hole in

the grassy field and twisted his right knee, sustaining a severe injury.

Zachardy sued Geneva College, claiming it had a legal responsibility to maintain the playing field. But the college argued that the student had no case because he was aware of the risks of playing baseball.

In *Zachardy v. Geneva College* (98-1684), the Superior Court agreed with the trial court's holding that Zachardy "knowingly proceeded in the face of an obvious danger."

—Esmeralda Barnes

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that they are simply the agents in the ever-rising price of a high-technology widening gap between high inflation in medical costs and what Medicare HMOs are paid" by the federal government, said Alexandra Warnier, spokeswoman at PacificCare Health System's headquarters in Santa Ana, Calif. She said Medicare HMOs are getting an increase of 2.5 percent from Washington, while general medical inflation is climbing at the rate of 6.5 percent a year, and drug costs are rising by 10 percent to 20 percent annually.

"Not only health plans, but doctors and hospitals are being challenged by the widening gap," she said.

But the federal government said its payment rates to Medicare HMOs are "more than generous."

"The Medicare managed care market reflects the trends in the larger health care market," said Michael Hash, deputy administrator of the Health Care Financing Administration.

"We believe and independent experts, including the General Accounting Office confirm that Medicare payment rates are more than generous enough for plans to provide Medicare's basic benefits," he said.

"And this year, every managed care plan that wants to serve Medicare beneficiaries will be paid more in 2000 than in 1999, about 5 percent on average. In some counties, payment rates will increase as much as 12 percent."

Nationally, about 15 percent of the 40 million Medicare beneficiaries persons over 65 and the disabled of all ages are enrolled in HMOs.

Senate Sponsors of Campaign Finance Scale Back Bill

By Art Pine

Los Angeles Times

WASHINGTON The chief Senate sponsors of campaign finance legislation decided Wednesday to scale back their bill substantially before sending it to the Senate floor a sign that they were unable to win enough support to counter an expected filibuster of a more ambitious measure.

Strategists said that Sens. John McCain, R-Ariz., and Russell D. Feingold, D-Wis., will introduce new legislation Thursday that bans "soft-money" contributions to political parties. But they will not try to limit "issue ads," a second often-criticized fund-raising practice.

Although the new, stripped-down version is expected to encounter less resistance in the Senate than their earlier, broader proposal, the sponsors' decision is certain to disappoint some proponents of sweeping campaign finance reform.

The House passed bipartisan legislation Tuesday aimed at reining in both practices and backers had hoped that the step might provide enough momentum to increase support for the more comprehensive McCain-Feingold bill, which is similar to the House measure.

But strategists said the two senators, after a month of conferring with Senate Republicans, had concluded that they would be unable to obtain more than 52 votes for their broader bill and thus would not be able to break an expected GOP filibuster. Sixty votes are needed to end debate and bring legislation to a vote.

Aides to the two lawmakers portrayed the scaling-back as a tactical move, asserting that the two still want to pass broader legislation but had concluded that it is better to start out with a bill that has some prospect of passage.

One strategist said that the two hope to use the narrower bill as a "base" bill and seek to build a coalition that might succeed in expanding the measure on the floor of the chamber. The Senate also could come under pressure in a House-Senate conference committee.

The "soft money" issue is one of the most often-criticized practices in political fund-raising. Current law permits corporations, unions and wealthy individuals to contribute large sums of money to political parties for "party-building" activities without regulation. Direct donations to candidates, so-called "hard money," are subject to strict limits.

The senators' new bill also contains a sweetener for conservatives a provision that would write into law a 1988 U.S. Supreme Court decision which held that nonunion workers who are required to pay union dues can deduct the portion that is used for political purposes.

But the measure would drop an earlier provision designed to tackle a second abuse the use of "issue ads" that avoid regulation because they do not directly urge voters to elect or defeat candidates. Ordinary campaign ads are subject to strict rules.

Both senators were cautiously optimistic about prospects for broadening the bill when it comes to the floor.

McCain said in an interview that the two had realized "we couldn't get to 60 votes just by re-introducing the old McCain-Feingold (bill). I realize it's an uphill fight," he said, but "it's the best shot we have."

Feingold outlined a similar strategy. "The really important thing is what happens on the floor," he said. "We're hoping that the more senators have invested in the outcome (by pushing through amendments of their own), the greater the chance that the bill can be expanded."

The decision by the two senators underscores the sharp differences between the House and Senate on the delicate campaign finance reform issue. The House initially passed broader legislation in August 1998, but the Senate filibustered it to death.

Boxer Filibusters Over Oil Royalties Owed California

Faye Fiore

Los Angeles Times

WASHINGTON Sen. Barbara Boxer, D-Calif., brought Senate action to a halt this week on a key spending bill with a filibuster over money considered "chicken feed" by Washington standards a mere \$600,000 in oil royalties owed to California.

The stand-off began last week when Boxer put a hold on a \$28 billion Interior Department spending bill that would give oil companies a break on the royalties annually paid to state and local governments for pumping on public lands. Boxer likened the provision to cheating taxpayers out of rent, much of which would have gone to support California's schools.

The stakes may be relatively small but the debate loomed large, with Boxer's protestations holding up business with the Senate under the gun to pass 13 appropriations bills by Oct. 1, the start of the new fiscal year.

"It's not just the \$600,000 for California, it's making sure we don't condone this kind of thievery," said Boxer's press secretary, David Sandretti. "And even so, that money can hire hundreds of teachers, wire (for computers) thousands of schools. You can do a lot of very good work with \$600,000."

A move to end the filibuster which requires at least 60 votes failed by just five votes Monday. Ultimately, Boxer's crusade is expected to end when a few more missing Republican senators return to Washington, among them Sen. John McCain, R-Ariz., who is on a book tour promoting his run for president.

But the Senate absenteeism enabled Boxer to hold up action on the spending bill for several days, a symbolic victory if not a legislative one. Politically, she stands to lose little and gain lots.

"The public loves a populist battle against big oil," said Larry Sabato, a University of Virginia political scientist. "And she's not losing a thing because none of the oil companies will ever give her contributions they can't stand her."

The dispute revolves around an Interior Department ruling last year that oil companies had used artificially low prices to calculate royalty payments, costing the Treasury \$66 million annually. The department set new regulations to peg the payments to market prices.

Led by lawmakers from major oil-producing states, Congress has voted on several occasions to block the new pricing policy once late at night when many senators were not present, a maneuver that outraged Boxer.

Inquiry Into English-Only Tests Is Ordered

Richard T. Cooper

Los Angeles Times

WASHINGTON A presidential advisory commission said Wednesday that making children with limited English skills take tests written only in English and using the results to decide such pivotal questions as promotion or graduation may violate their civil rights.

The commission called on the U.S. Department of Education, which is charged with enforcing federal civil rights laws as they apply to schools, to investigate such uses of so-called English-only tests.

"State education leaders have compromised the future of Latino students by making high-stakes decisions based on inaccurate and inadequate information," said the report by the President's Advisory Commission on Educational Excellence for Hispanic Americans.

The Education Department reacted cautiously to the latest news from what has become treacherous territory in both policy and political terms because it is part of the larger realm of bilingual education.

"We appreciate the attention to this area," department spokesman Roger Murphey said. "We will look at this report, as well as the body of information we collect, as we plan our ... activities."

Murphey said the department's Office of Civil Rights Compliance has previously investigated and pursued cases involving the testing of students with limited English skills and is developing cases in Texas and Nevada. He declined to provide details on the pending investigations.

The issue of English-only tests for students with limited proficiency in the language is particularly sensitive in California. More Latino children with limited English proficiency are enrolled in schools in California than in any other state. And standardized tests, many of them English-only, are likely to play important roles in new educational policies that are being formulated.

Under a new policy mandating an end to social promotion, for example, school districts are in the process of developing criteria to be applied to students in the second, third, fourth, fifth and eighth grades. English-only tests are likely to be part of such criteria.

Testing also will play a role in the state's new accountability system for rating the performance of individual districts, though final decisions on exactly how such data will be used have not been made.

Delaine Eastin, California superintendent of public instruction, said she agrees that using English-only tests is "a serious problem for children who have been in school a short period of time." She favors giving such tests to students with limited English proficiency only after they have attended U.S. schools at least two years.

"Some rule of reasonableness should apply," she said, calling use of English-only tests with children new to the language "ham-handed."

But she said that, as a result of the controversy over bilingual education, "right now California is confused. A lot of people in Sacramento are like deer in the headlights."

California Assemblywoman Carole Migden of San Francisco is the author of a bill on Gov. Gray Davis' desk that would limit the use of English-only tests in measuring school districts' performance.

"Testing scholastic aptitude in English when students haven't had a chance to learn the language in which the test is written is unfair," she said.

Critics of bilingual education, on the other hand, argue that children with limited English skills will suffer in the long term if they are permitted to continue learning and being tested in their native languages.

In Washington, the Center for Equal Opportunity, headed by former Reagan administration official Linda Chavez, has been among the leading critics of using bilingual strategies for Spanish-speaking students.

Under a 1974 U.S. Supreme Court ruling, schools are required to provide assistance to students with limited English skills. But the extent of that assistance and its duration remain matters of dispute.

FCC Allows Cell Phone-Satellite Hookups for 911 Calls **By Ricardo Alonso-Zaldivar** **Los Angeles Times**

WASHINGTON A new way of linking satellites and cell phones in an emergency or perhaps only to indulge in a little dining pleasure got a big boost Wednesday from the Federal Communications Commission.

By a 5-0 vote, the commission allowed the introduction of cell phones that use Global Positioning System satellites to flash their location to 911 operators automatically.

Promoters of the link say it has two-way applications, and people who buy the new phones also will be able to get such services as directions when they are lost, or how to find food and lodging in a strange town practically anywhere.

Some 70,000 callers a day use their cell phones to reach 911, but many of them don't know exactly where they are calling from. Three years ago, the FCC set a 2001 deadline for cell phone-service providers to devise a system that would allow 911 operators to automatically pinpoint callers' locations, as is the case with calls from conventional phones.

An unforeseen consequence of the FCC decision was to favor a technology then considered cutting edge, but which is now being challenged.

The FCC effectively confined companies to a network solution that relied on equipment deployed on cell towers to triangulate a signal's location, dependent on handsets that had no capability to use the Global Positioning System, or GPS, to signal their location.

Wednesday's action will allow competition between the network solution and one based on satellite technology.

FCC Chairman Bill Kennard said the decision would save lives, getting aid to callers more quickly. It will allow the agency to remain neutral and let the market determine which technology is preferable.

"Today's action will hasten the day when victims of car accidents and those stranded in hurricanes can get help sooner," Kennard said.

An FCC official, who asked not to be named, said there are pros and cons to both systems.

The original network solution would accommodate all 70 million cell phones now on the market, and could be in place more quickly. However, the official said it would be costly to install in low call-volume areas, such as the countryside.

The satellite solution is less expensive, and has been shown to provide a more accurate location in early testing, said the official. However, effectiveness can be hampered if satellite visibility is obscured by tall buildings or other obstacles. The GPS option would also require people to get new handsets, but estimates are that a quarter of all cell phones are replaced every year anyway.

The FCC set a schedule Wednesday so service providers who choose the GPS option do not lag far behind. They would have to begin offering the new handsets in 2001, and 95 percent of their customers would have to have them by October 2002.

Mike Amarosa, a spokesman for King of Prussia, Pa.-based TruePosition Inc., which makes the network system, said his company welcomes the competition. "We can deal with the phones that are out there today and we would be able to deal with (GPS) phones as well," Amarosa said.

Stephen Poizner, president of SnapTrack Inc., a Silicon Valley company marketing the GPS approach, said he believes its accuracy will sell.

But Poizner sees the potential for a multibillion-dollar global market by piggybacking services for travelers on the 911 lifeline.

Travelers could use their GPS link to readily get directions, or assistance in finding the nearest stores or restaurants. (With the network solution, consumers could get those services too, but through a membership association.)

Gunman Fatally Wounds 7, Himself in Texas Church **By Stephanie Simon, John Beckham and Lianne Hart** **Los Angeles Times**

FORT WORTH, Texas As scores of teen-agers sang out prayers, a gunman opened fire Wednesday evening in a Baptist church here, fatally wounding at least seven people and injuring seven more before killing himself.

Shot after shot echoed through the crowded chapel of the Wedgwood Baptist Church. Worshipers thinking at first that it must be a prank kept on singing. But when they realized what was happening, they dove to the floor and scrunched under pews, terrified and silent as the gunfire continued.

Police confirmed that six people were killed during the barrage, which began about 7 p.m. as a concert of contemporary Christian music was about to get under way. A seventh victim died later at the hospital. At least three of the dead were teen-agers. And four of the wounded suffered critical injuries.

The bodies of the gunman and his victims remained in the chapel for hours as bomb squad dogs and a remote-controlled robot searched for possible booby traps. Police said they were afraid to move the shooter's body because they suspected he had strapped explosives to himself. Officials said he apparently used a semiautomatic handgun for the rampage, and may also have tossed a pipe bomb into the sanctuary.

"There's cartridges, shrapnel ... and blood splattered all over the wall," said Lt. David Ellis, a police spokesman.

Witnesses said the gunman was tall, bearded and dressed in black. But their descriptions of his behavior varied: some said he was calm; others said he shouted obscenities or mumbled anti-religious invective. Some said he was smoking a cigarette as he walked into the sanctuary; others said he ordered the worshipers to "stay still" as he began firing indiscriminately.

He later turned his gun on police. And then, as officers closed in, on himself.

"We were just sitting and praising the Lord when we heard some loud noises," said Haley Herron, a 17-year-old high school senior who was attending the concert with a friend. "We all kept singing because we didn't know what was going on."

Her voice faltered. "They kept shooting and shooting and shooting."

She remembered the scene as being eerily quiet: no one screaming. No one crying. Just the bam, bam, bam of bullets. And the boom of an explosion at the front of the sanctuary. She was lying on the

EDUC -
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Education Q & A
Report by the President's Advisory Commission
on Educational Excellence for Hispanic Americans
September 15, 1999

Q: Today, the White House Initiative on Educational Excellence for Hispanic Americans issued a press release reporting that the President's Advisory Commission on Educational Excellence for Hispanic Americans is critical of the current use by states of high-stakes testing for Latinos. Given the Administration's support for testing and accountability, what is its position on this issue?

A: The report clearly states that clear expectations for students, assessing student progress toward standards, and holding schools accountable offer the greatest probability for leveling the playing field and raising student achievement for all children. That view has been the core of the President's agenda on education, standards, investment, and accountability.

~~After~~ help

The President believes in the importance of holding schools accountable for results. He also believes that states must support the capacity of students to meet high standards. ~~That~~ *So while* is why although the Administration's reauthorization proposal calls for students with limited English proficiency to be included in accountability tests, ~~and~~ *those* allows states three years before students would be incorporated into the English-only scores.

Q: The report is critical of the use of tests for decisions on promotion and retention. Doesn't the Administration's ESEA reauthorization proposal recommend ending social promotion by using performance on accountability tests?

A: The President believes firmly that we must stop the debilitating practice of social promotion in our schools. It is a practice that has let kids move ahead in school but be left behind academically. However, the President also believes that the way to do this is not by simply retaining students. That is why the President's plan to end social promotion ~~does it the right way by holding~~ *those* states accountable for ensuring that students meet challenging standards at key transition points for high school graduation. The proposal requires multiple measures, including teacher evaluations, for promotion and retention ~~issues~~ and would require states to develop reasonable accommodations for students with limited English proficiency. The President's proposal is consistent with the recommendations of this report.

Q: The report says that states and districts are using high-stakes tests to promote and retain students, but that they are not including the scores of these students in their accountability programs. How does the Administration's proposal deal with this issue?

A: Our proposal would require multiple measures for assessing student promotion or retention—it would not be reliant on a single test or on mastery of English for decisions on promotion and retention. As for accountability, the President believes strongly that states, districts and schools should be accountable for the performance of all their students. Current law requires that states develop accountability systems that disaggregate student performance data by 2001. In addition, the ESEA reauthorization proposal calls on schools, districts, and states to disseminate report cards that would,

among other things, include information on the academic achievement of subgroups of students—including racial and ethnic subgroups and students with limited English proficiency. The President believes in accountability at all levels of education.

Q: The report states that the issues is not just a matter of tests, but of the poor state of many schools that serve minority students in America. What is the Administration doing not just to hold schools accountable, but to help them improve?

A: The President believes that holding schools accountable for performance is an important component of reform. He believes that schools, teachers, and students need fair and clear standards, ways to measure progress toward reaching them, and rewards or sanctions based on that effort.

At the same time, the President believes that we must build the capacity of schools to meet high standards. That is why he has proposed efforts to improve the quality of teaching in our schools, reduce class size in the early grades, modernize schools for the information age and expand after-school and summer school programs. Research indicates that all of these investments help improve student achievement. The President's plan also requires states to set aside 2.5% of Title I funding for funds to turn around failing schools and emphasizes the importance of helping LEP students learn English and reach high standards.

Q: The Advisory Committee's report calls for the US Office of Civil Rights to investigate the use of tests on Hispanic students on a state-by-state basis. Is the President supporting a large-scale investigation?

A: The President believes that wherever instances of clear bias exist and the civil rights of students are infringed upon, the Office of Civil Rights should be involved. However, the President believes that his proposals to hold schools accountable for student performance addresses the concerns of the Advisory Commission by calling for high standards, assessing the performance of all students, disaggregating scores by appropriate student subgroups, and focusing attention on the needs of students with limited English proficiency.

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**States and Districts Should Move Carefully in Using High-Stakes Assessments
For Latinos, President's Advisory Commission Warns**

*State Testing Policies Subject to Bias, Unfairness, and Potential for Misuse;
Burden of Accountability Placed on Students, Not Schools, Reports Alleg*

*Two Million Latino Students Underrepresented or Absent from State Testing Programs
That Could Lead To Improvements in the Quality of Education for Hispanic Youth*

WASHINGTON, D.C.— September 15, 1999 At a time when nearly 20 states have established high-stakes tests for students to advance from grade to grade or graduate from high school, the President's Advisory Commission on Educational Excellence for Hispanic Americans warned states and school districts to avoid discriminatory practices in testing that adversely impact students still learning English.

A report prepared for the Commission's Assessment Committee says that states and school districts are pursuing a series of questionable policy options, each of which is subject to "significant degrees of bias, unfairness, or denial of substantive due process." The paper, prepared by Sonia Hernandez, California's deputy state superintendent of education, and Richard A. Figueroa of the University of California at Davis, argues that in their rush to set world-class standards, state leaders "have compromised the future of Hispanic students by making high stakes decisions based on inaccurate data." The test data, the report says, is used to determine student promotion or retention for high school graduation, but rarely for genuine efforts to hold schools accountable. "When it comes to holding schools accountable for the academic achievement of our students, states allow Hispanic youngsters to become transparent inside the very system charged with educating them," the report says.

In a separate briefing document released today, the President's Advisory Commission, established by President Clinton in 1994 to guide federal policy aimed at bolstering Latino success in school and college, lauded the nation's movement to raise standards for students. But the Commission noted that despite its "fervent belief in the promise of meaningful reforms that can benefit all our children, we are greatly concerned increasingly alarmed—with the way in which some of the reforms are implemented. In particular, the rush to establish a statewide test as a single measure of mastery of coursework is of great concern in the many cases where students to be held accountable have not had the kind of instruction that they should have had to allow them to succeed."

According to the briefing document, *Educational Standards, Assessment, and Accountability: A New Civil Rights Frontier*, many of the new tests have not been sufficiently "stress tested" with the nation's most vulnerable population. While many Americans are growing concerned about a potential "train wreck" when too many students from middle-class backgrounds fail to meet high standards being established, efforts to introduce high-stakes testing without paying attention to minority and low-income populations are likely to adversely affect the Latino population still struggling to master the English language.

In the early grades, research indicates that the reading and writing skills of students still learning English are 50 percent behind students for whom English is their native language. When it comes to learning to read, students learning English have to run the 150-yard dash, while native speakers of English have only to run 100 yards, the White House Initiative says. Many Hispanic students never even complete the race. Today, Hispanic high school students drop out at double the rate of non-Hispanics. Half of the Latino community's adult population is functionally illiterate.

According to estimates from the U.S. Department of Education, there are some 3.4 million Latino students still learning English. Most of these students are educated in five states – California, Texas, New York, Florida and Illinois – but English language learners are present in almost half of the nation's school districts. In ten states, (Alabama, Alaska, Florida, Idaho, Nebraska, Nevada, North Carolina, Oregon, South Carolina and Tennessee), the population of students still acquiring English more than doubled between school years 1992-93 and 1996-97.

Worrisome Policies

The briefing document summarizes much of the research on how Hispanic students learn language and become literate. Based on practice, policy and available research, the paper prepared for the Commission's Assessment Committee by Figuero and Hernandez identifies several possible options for states, districts, and schools concerning the measurement of Hispanic English language learners.

- 1) Tests can be administered in English which have been normed on student populations unlike the students who are given the test;
- 2) Testers can be given "cultural training" so that they can interpret the tests in ways that appear to be more valid;
- 3) Accommodations in the tests and the testing environments can be provided without regard for possible negative impact on student scores;
- 4) A moratorium on the use of individual scores for any high-stakes assessment can be put in place until research sorts out the complex issues associated with testing Hispanic students;
- 5) Tests can be used for holding systems legally and politically accountable for educational decisions that adversely impact Hispanic students as demonstrated in differential, negative outcomes;
- 6) Local norms can be developed in order to compare students against students with similar cultural, linguistic, and scholastic experiences; and
- 7) School systems can be supported to provide equitable opportunities-to-learn for Hispanic children across the United States thereby meeting the crucial assumption of tests that all students receive similar educational experiences.

Unfortunately, the paper says, only the first three options – the most limited of all – are in use, while the other four options have received no support or discussion or, in the case of creating equitable opportunities to learn, may take several generations to accomplish.

At the news event, Commissioners identified unacceptable practices that harm Latino students and students still learning English. These include requiring English only tests for high stakes decisions; providing no support for students to achieve new standards and requirements; and using tests that are not aligned to what is taught and learned in school.

Typically poor policies for English language learners solely focus on making up for deficit in English language proficiency at same time sacrificing progress in content areas. In some cases, schools attempt to give students a full dosage of English as a Second Language and nothing else so that students do not

get the content they need in academic courses. Also, there have been instances of school districts using completion of English oral proficiency as a prerequisite for important courses. Schools must not use lack of proficiency as a way to deny access to courses that meet graduation requirements.

Promising Practices

The Commission also pointed out promising efforts in states in school districts that use thoughtful assessment programs to propel achievement rather than punish students.

In Oregon, for example, state leaders have developed curriculum goals, content standards, performance standards and indicators aligned with the new performance-based assessments. The system offers assessments in English and Spanish to accommodate those limited English proficient students among the state's 4,000 Hispanic students. The tests are given in grades 3, 5, 8, and 10 so that school officials know early on what students can and can't do. Students who achieve the grade 10 performance standards in academic content areas will receive a Certificate of Initial Mastery. Students who achieve grade 12 performance standards in academic content areas and achieve career-related learning standards will receive a Certificate of Advanced Mastery.

To ensure the validity and reliability of the assessments, the state created a Spanish-language test with questions that matched the psychometric properties of the English version rather than translating the English test into Spanish. Questions that could not be matched have been dropped from both tests. Teachers are allowed to decide on a case-by-case basis, which students will take the Spanish version of the test and students who are not literate do not take the test. The test is designed to measure student progress and diagnose areas where more help is needed.

The Texas Education Agency is using one of the most stable yet flexible assessment programs to monitor the progress of three million students served in 1,042 districts served. The school accountability system, established in 1992, addresses the state's concern over twin issues of equity and excellence for all students while also ensuring that what gets tested is what gets taught. Student performance is measured through the state's assessment system as well as information collected from teachers. What is particularly unique about the Texas system is that, to be considered successful, a school or district must not only succeed in reaching high standards for its students as a whole but for distinct subgroups of students by race, ethnicity and socio-economic status.

In Minnesota, the absence of a statewide curriculum left state officials in the dark when it came to knowing what was going on in school districts. To remedy the problem, the state implemented a new statewide assessment system, prompting district officials to reexamine the scope and sequence of their curriculum. The state is currently developing performance level benchmarks. The new statewide accountability system factors in programs for economically disadvantaged students and those with limited English proficiency. A new English language skills test will be used to determine when LEP students are ready to participate in the statewide assessments, which are administered in English.

Basic Questions for Educational Decisionmakers

The Commission has identified some simple questions to use to determine how well or poorly tests work. Educational leaders should be able to answer the following questions:

- Are students being afforded or denied educational opportunities based on test scores?

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- Even if not used for such high stakes purposes, are all students included in assessment systems that influence decisions about allocation of resources, interventions designed to promote better learning, and guidance provided to parents about their children's progress.
- Are there inequities in treatment of students or disparity in performance of particular groups of students? What are the explanations for those disparities?
- Is the test used with other information to make high-stakes decisions or is it the sole criterion?
- Are there educationally—and psychometrically—sound foundations for the judgments made about students when those decisions are based upon test scores.

New Areas of Work

In its role as an advisor to the Clinton Administration, the Commission will further explore the effects of standards on students learning English and the impact of federal programs, such as Title I, on the achievement of Latino students. The Commission also will work closely with the U.S. Department of Education's Office of Civil Rights to help ensure that ELL students are afforded educational opportunities guaranteed under federal law and that the use of tests to make high-stakes decisions are fair and accurate.

Beyond these efforts, three key areas of work need to be addressed:

- **Further examination, research and dissemination of promising practices** concerning the administration, interpretation, and use of tests for English language learners. We particularly need to know more about what accommodations are most effective and what are the best practices that can help ensure valid decisions about placement, promotion, and graduation. A new tool kit for school districts seeking to better meet the needs of English Language Learners is now being developed by the Council of Chief State School Officers that can help make best practice everyday practice in schools.
- **Better public awareness** about the complexities of standards-based reform initiatives and issues surrounding the use of high-stakes tests for students with limited facility in English. A new resource guide on high-stakes testing being developed by the U.S. Department of Education's Office of Civil Rights will be a foundation for continuing dialogue and understanding.
- **Stronger engagement with state and local leaders** about the importance of using tests in ways that are valid and reliable and about the need for more equitable opportunities for Hispanic students to achieve desired results.

The Commission also challenges researchers, educators, and leaders of the Latino community to "compel state and local leaders and the public to face reality about the growing percentage of students who are still learning the language and what can be done to ensure that they not only master English but succeed in core academic courses necessary for careers and further education."

Copies of both documents are available from the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW, Room 5E-110, Washington, D.C. 20202, telephone: (202) 401-1411.

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**OUR NATION ON THE FAULT LINE:
HISPANIC AMERICAN EDUCATION**

**TESTING OF HISPANIC
STUDENTS IN THE UNITED
STATES:
AN ACTION AGENDA**

**The President's Advisory Commission on Educational
Excellence for Hispanic Americans**

September, 1999

Prepared by: Sonia Hernandez

**The President's Advisory Commission on Educational Excellence for
Hispanic Americans**

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FORWARD

There is no more promising reform in public education today than the standards-based movement. It is the most widely accepted school change process which offers the greatest probability for leveling the playing field for all children by clearly stating expectations for instruction, assessing the progress of each child toward achieving the standards, and holding schools accountable for student learning. Where these three core elements of a standards-based system are in place, all students begin to experience success as never before. This is especially true for the growing Hispanic student population in America which has been traditionally excluded from access to rigorous mainstream instruction.

But in the current rush to implement world class standards supported by systems of accountability in the nation's public schools, state education leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate testing information. Hundreds of thousands of Hispanic students, many lacking functional fluency in English, are assessed with a myriad of tests entirely in English and, oftentimes, only in English. The resulting test data gleaned from the administration of these tests is used for student promotion or retention, for high school graduation, generally for high stakes decisions --but rarely for the purposes of true accountability. When it comes to holding schools accountable for the academic achievement of our students, states allow Hispanic youngsters to become transparent inside the very system charged with educating them.

State policies often require that Hispanic students be assessed in English with tests they may not even understand or with alternative but less rigorous tests in Spanish whether or not they are receiving instruction in that language. Neither approach produces accurate information about student learning. Nevertheless, the resulting data is often used to hold students accountable for their own success, rather than the educators or the systems of public schooling. **Who should be responsible for what Hispanic students learn in school?** The answer is simple: students,

educators, and parents all must share the responsibility. But what kinds of assessments should be used to provide accurate information about what students have have been taught? Regrettably, the answer to this question is not as simple. It will be explored in this document.

For now, students bear the weight of academic success or failure, with few exceptions, on the basis of one or possibly two test scores. Where exemptions from testing exist, Hispanics disappear from the accountability reports which trigger both positive and negative consequences for the responsible adults in the system. Thus more than two million Hispanic students in the US are underrepresented or absent from the rolls of students who are counted and who, therefore, count.

As America enters the new millennium, deliberate action by policymakers at every level must be taken to include the country's fastest growing and soon-to-be largest minority within the bounds of systems of accountability using accurate information for decisionmaking. It is our belief that Hispanic students, whether they are English dominant or English Language Learners, should be tested with appropriate test instruments in order to be included at all times in the states' accountability systems. If this does not occur, Hispanic children will not benefit from the powerful and promising standards movement.

The purpose of this series of reports is twofold: (1) to bring attention to the growing crisis of the invisible Hispanic students in public education to the nation's leaders and (2) to provide guidance to the nation and the states on taking the necessary steps to rectify the conditions which allow Hispanic students to be wrongly measured and unaccounted for in their own schools. It is our intent to help education leaders in this country choose wisely for the sake of the children.

The Commission Assessment Committee
The President's Advisory Commission on Educational Excellence For
Hispanic Americans

Washington, D.C.
September 15, 1999

INTRODUCTION

In a report on the testing of Hispanic students prepared for the President's Advisory Commission on Educational Excellence for Hispanic Americans in the Fall of 1999, several important issues were raised which called into question the testing policies and practices of states and districts. Some issues in the report clearly require a commitment to in-depth research; others require changes in state level practices; and still others require serious national conversations to create a consensus around a common testing framework to achieve fair and accurate assessment of Hispanic students. All require immediate action.

This document is a response in part to the problems raised in the report by Figueroa and Hernandez and an opportunity to outline our own action agenda on the testing of Hispanic students in the nations' public schools.

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TESTING OF HISPANIC STUDENTS IN THE UNITED STATES: AN ACTION AGENDA

In initiating its work on the policies and practices of testing Hispanic students in this country, the President's Advisory Commission on Educational Excellence for Hispanic Americans has identified three goals which form the foundation for its current and future work in this area. These guiding principles are:

- (a) all Hispanic students must be tested with assessment instruments which are fair and accurate in order to be accounted for within accountability systems,**
- (b) all Hispanic students must be included in state systems of accountability at all times, and**
- (c) Hispanic students must be full participants in national assessments and projects which gauge the progress of states in achieving educational excellence for all students.**

To attain these goals, the commission has organized its action agenda to focus on a set of priorities. These priorities include engaging national and state policymakers and education leaders in reviewing their current practices. At the same time, the commission will continue its own data-gathering processes to determine the depth and breadth of corrective action necessary on a state-by-state basis.

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I. THE NATIONAL PRIORITY

The starting point for the reform of unfair testing of Hispanic students is not simply a matter of "the tests;" it is the instructional context of schooling in too many of America's public schools, especially those serving minority students.

States and districts must ensure equity of standards, curricula and resources for all schools. To achieve equity, federal support is needed to provide guidance and incentives to change rather than to reinforce the status quo.

Access to accomplished teachers with the necessary knowledge and skills to help Hispanic children achieve to standards is a critical component of reform. Yet many states, both large and small, are beginning to experience a significant shortfall in recruiting and hiring qualified teachers. The depth and severity of this crisis is not just a state problem; it is a national crisis which requires an immediate national response. Creating a new teacher workforce for America's public schools is a top priority.

As opportunities to learn are made available, Hispanic students can and will achieve high levels of learning from elementary schools to graduate schools and beyond.

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II. STATE PRIORITIES

It is important to distinguish among the testing needs of Hispanic students who are (a) fluent English speakers, (b) English Language Learners, and (c) fully bilingual and biliterate. Even within these distinctions, there are many more levels of language proficiency. These multiple levels of proficiency are further confounded by the limitations placed on teachers by virtue of state laws and regulations as well as local board policies. Few are based on reliable and replicable research. In some cases, assessments are closely aligned to content standards of instructions. In many states, they are not.

Recognizing this mural of complexities, it is still incumbent upon states to frame their testing policies to assure that Hispanic students are tested with assessment instruments specifically designed to measure their levels of English language proficiency for diagnostic and instructional purposes. Their achievement levels in core content areas of the curriculum must also be measured with assessment instruments in the language of their dominance to ensure substantial and timely progress toward meeting their state standards. States must be sure to use tests only for the purposes for which they were designed.

In states such as California where primary language instruction has been severely limited by law, state requirements that children be tested in a language other than English *in which they are not receiving formal instruction* makes no sense. States should revisit such requirements for immediate corrective action.

In designing their accountability systems, states must avoid the exclusion of Hispanic students as a result of exemptions to accommodate for language differences. For example, states such as Texas provide for a grace period to allow students to acquire English language skills. While this policy in and of itself is not necessarily negative, unless there is a process to measure substantial annual progress while students are learning English, they are in danger of falling through the academic cracks for long

periods of their formal schooling without anyone being held accountable for their learning. This benign neglect is not acceptable. Parents, educators, and students should be held accountable for student learning at all times. To that end, disaggregated data showing Hispanic student test scores should be reported publicly on an annual basis and consequences for the results should follow.

On the question of selecting appropriate tests and administering the tests to Hispanic students, it is important that states carefully track the latest research which can provide recommended improvements to the current testing technology. But while the national research agenda unfolds, schools, districts, and states should avoid making costly mistakes which may result in inaccurate testing of Hispanic students, especially English Language Learners. The following practices should be examined and, if deemed necessary, stopped in order to minimize the mismeasurement of Hispanic students:

(a) using translated versions of tests, whether purchased from a publisher or developed locally; there is little evidence that the translated versions of tests have the same technical properties of the original; using data from such tests for accountability purposes may be inaccurate and misleading;

(b) using interpreters in the administration of tests; this practice may destroy standardization and lead to invalid inferences and conclusions;

(c) using excessive testing in an attempt to determine the profile of students where current testing technology is inappropriate and insufficient; and

(d) using *diagnostic* tests administered to Hispanic students to make high stakes decisions, including high school graduation, promotion, and/or retention; the purposes for which the tests were designed must be preserved.

Before purchasing testing materials, states, districts and schools should require test developers and publishers to provide empirical evidence to support claims of equivalence between English

and Spanish versions of tests. Too often, the Spanish language test developed in the United States lacks the rigor built into the English version of the same test. The two tests may not be based on a common set of content and performance standards. Adopting non-equivalent testing materials diminishes the expectations and opportunities of many Hispanic children to keep up academically with their English fluent peers while acquiring language proficiency in English.

States are the gatekeepers for appropriate testing practices and policies affecting Hispanic students. Without their commitment to improve the conditions of testing, little will change.

III.

NATIONAL RESEARCH AND INVESTIGATION PRIORITIES

In order to address the myriad of problems related to the fair and accurate assessment of Hispanic students, the US Department of Education should take a leadership role in supporting research that will inform practice in significant ways and ensure wide dissemination of findings which will affect testing policies across the country.

It should seek to answer questions that could bring resolution to technical design problems and remove barriers to the appropriate assessment of Hispanic students. Research could address issues such as:

- (a) determining whether Hispanic English Language Learners can be validly and fairly assessed with tests normed on monolingual student populations, or
- (b) investigating evidence of bias in tests used on Hispanic students.

The research agenda delineated by the National Research Council and published in its report, "Improving Schooling for Language-Minority Children," should be fully supported. The results of that body of work should be broadly communicated for the benefit of all children in the nation's public schools.

In order to evaluate the current level of mismeasurement of Hispanic students, it is critical to gather all of the relevant data from the states. This is not an easy task under any circumstances, but accurate information is crucial in making course corrections. The US Office of Civil Rights is best poised to do this work. OCR should investigate the use of tests on Hispanic students on a state-by-state basis and report its findings to the appropriate policymakers for further action.

Many state and local policy decisions affecting instruction and assessment are made based on questionable national trends or perceived guidance from independent national entities. No single data set is invoked more often than that of the National Assessment of Educational Progress or NAEP. The National Assessment Governing Board which oversees all aspects of the program should take decisive action to ensure that the NAEP is made relevant and useful for Hispanic students; issues related to cultural factors in achievement testing should be investigated and applied to the NAEP.

IV. THE COMMISSION'S AGENDA

To date, the President's Advisory Commission and the White House Initiative have (1) sponsored a series of forums in Washington D.C. which brought together researchers, practitioners, and policymakers to discuss current education policies, (2) produced a policy document framing many of the most important issues relative to the assessment of Hispanic students which resulted from the policy forums, (3) commissioned a study on the technical issues involved in testing Hispanic students prepared by Figueroa and Hernandez, and (4) outlined a testing reform agenda in this document. In the near future, a national report card will be released based on data gathered from each state with a significant Hispanic student population.

These activities and publications of the commission are planned to promote the educational opportunities for Hispanic students nationwide and, more specifically, to achieve the goals relative to inclusion in accountability systems using accurate and fair test results. Leveling the playing field and increasing opportunities-to-learn will assure the academic progress of Hispanic children.