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ABSTRACT

Sponsored by the National Task Force de la Raza, the conference was attended by prominent lawyers and educators from throughout the United States. The conference was an "exploratory" or "brainstorming" session, designed to identify key issues and to lay the groundwork for techniques and strategy of dealing with various problems. Purpose of the conference was to: (1) review various legal, administrative, and legislative actions having serious implications on the concept of quality and equal education for the culturally and linguistically distinct child; (2) assess the implications and impact of activities and trends against Equal Educational Opportunity for minority groups, particularly the Mexican American and the Puerto Rican; and (3) identify lines of legal and education action and strategy needed to combat such alleged discriminatory practices. This report summarizes the key concerns, issues, actions, and recommendations of the participants. Topics summarized are: general myths to be combatted; educator-lawyer interface needs; data base system; bilingual bicultural dichotomy; equal access vs equal benefits; compensatory assumption; the Lau Case and its implications; and the tangential suggestions. (NQ)

REPORT

EDUCATOR-LAWYER CONFERENCE

OCTOBER 17, 1973

Albuquerque, N.M.

Sponsored By

NATIONAL EDUCATION TASK FORCE DE LA RAZA

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A. OVERVIEW

This document constitutes a report of an historic first conference, sponsored by the National Task Force De La Raza, between prominent lawyers and educators throughout the United States.

Purpose of the meeting was three-fold:

(1) To review a number of legal, administrative, and legislative actions having serious implications on the concept of quality and equal education for the culturally and linguistically distinct child.

(2) To assess the implications and impact of such activities and trends against Equal Educational Opportunity for minority groups, particularly the Mexican American and the Puerto Rican.

(3) To identify lines of legal and education action and strategy needed to combat such alleged discriminatory practices.

This initial conference can be described as an "exploratory" or "brainstorming" session, designed to identify key issues and to lay groundwork for techniques and strategy of dealing with these problems.

This report on the conference will not follow a chronological sequence of dialogue, but rather, will attempt to summarize and crystalize the key concerns, issues, actions, and recommendations of the group.

B. GENERAL MYTHS TO BE COMBATTED

To achieve equal educational opportunity for the Mexican American and other Spanish speaking children, four general myths must be dispelled. These are:

(1) That bilingual-bicultural education is inherently unAmerican.

(2) That bilingual-bicultural education is not needed, not demanded.

(3) That members of minority groups themselves believe no economic benefits accrue to either the students or the system.

(4) That if educational monies go to make "them" like "us", then it's okay, we can justify the expenditure.

It is felt that such myths exist in the attitudes, beliefs, and behavior in the thinking of the public, the administrators, and the courts--across-the-board myths.

To achieve the dispelling of such myths, to evolve a plan or strategy in concrete terms, and to deal with them in courts of law, two specific problems were set forth:

(1) How do you make strong cases against alleged discriminatory practices in school districts?

(2) If such cases can be proved, what are you then going to have these school districts do in the way of bilingual-bicultural programs that rectify the iniquities?

The posing of these two questions suggested the litigation framework in which educators and lawyers should interact.

C. EDUCATOR-LAWYER INTERFACE NEEDS

What do the lawyers and the Civil Rights Office need from the educators, and what do the educators, in turn, need from the lawyers in order to address ourselves effectively these two problems? Put differently, what role does each play in relation to the other in accomplishing the objectives of proving inequities and then suggesting educationally sound programs as remedies?

In this connection, the position of the Civil Rights Office in implementing legislation mandated by the 14th Amendment was made clear. The office can charge and try to prove inequities, and can also say in general what relief in a given school district must accomplish, but it cannot tell a district what that relief must be in terms of specifics. In other words, it can mandate that unequal educational services, once proved, be equalized but can't put forth curriculum plans, staff development programs, suggest specific hours of instruction, etc. Nor can it say to a proposed district plan ad infinitum "that's not good enough".

The role of the educator then becomes one of a swing role, two fold: He is needed to give testimony in cases in which inequities are trying to be proved, and he is needed

to put forth sound educational plans and strategies to be implemented, both of which go hand-in-hand in litigation.

The lawyers, then, need educators to act as expert witnesses in giving evidence and testimony, and also to tell them what must be done if relief is granted. The educators on the other hand, need lawyers to help prepare a case with good and sound testimony as witnesses, and also to clarify the legal technicalities they face.

A few key examples of such legal technicalities and problems were listed:

--From a case-making standpoint, there's no problem in putting forth large numbers of children who have Spanish surnames; the problem is to show the extent of kids who are being harmed because of the lack of a bilingual-bicultural program.

--Again, in case-making situations, it's no problem to prove Spanish as an appreciably dominant language, the problem is to prove the group injured. In this connection, census data and Title VII data have been used, but have not proven reliable.

--We are going to have to prove in practical terms precisely what is meant by "dominance in Spanish".

--Also, what issue, with its accompanying evidence, do you put your hands on to convince districts and courts, in a given situation, that there ought to be relief.

Educators and lawyers must interact to resolve these problems, and this becomes a question of "how to," a question of techniques and ways of getting the job done.

D. DATA BASE SYSTEM AS STARTING POINT

The OCR/HEW Office has instituted in Chicago, as an initial step in an enforcement program designed to have eventual national impact, a data base system for acquiring and analyzing data relevant to discriminatory educational practices. The basic purpose of such a system is to provide experts with data necessary for building cases and for establishing expert testimony that will enhance the winning of cases. Lawyers over the country can utilize this system to assist, for example, in building solid Title VI cases.

The system is being formulated on the basis of four major issues, which themselves become data classification headings for the system. These four issues have been sub-divided into 165 sub-issues expressed in the form of specific questions. The four major issues, all of which can be used for identifying and proving discrimination, were listed and defined as follows:

(1) Comparability. This refers to those programmatic elements of a system that can be compared with others or with educationally sound ideals. It concerns such questions and specifics as: How is the money being split up? What kinds of programs were being offered? What are the kinds and qualifications of teachers? What about the facilities? The equipment? The area covers a range of institutional programs.

(2) Incompatability of Educational Services. The main purpose of this issue-area is to determine if there are disadvantaged minority children in the system as a result of having created a program that benefits Anglos only. The area has been broadened to include controlled education achievement of children by controlling level textbooks, where, for example, one level of textbook is given majority children and a lower level to minority children, even though achievement testing is given to all uniformly.

(3) External Channeling. This issue addresses itself to practices of extra-curricular activities, of the disciplinary system for blatant child offenders, with the practices of children paying course and lab fees, and with the referral patterns to other institutions, for example, in the treatment of drug offenders. Is there differential treatment here.

In each issue, the kind of data gathered forms a basis for determining the nature and extent of a discriminatory violation, results in a proposition to be proved before the courts, and suggests the framework for a remedy.

E. THE BILINGUAL-BICULTURAL DICHOTOMY

Running throughout the discussions was the issue of the prevalent viewpoint of the courts, administrators, and parents that if we solve the language problem of offering

both languages to Anglos and minorities alike that we have thus achieved educational opportunity and alleviated educational discrimination.

This bilingual viewpoint was contrasted with the truly desired one of a bicultural viewpoint, one in which the bilingual viewpoint is seen in the large cultural contest. The cultural approach inculcates elements of a multicultural program beyond the elementary grades, and considers the educational needs for preparing both Anglos and minority children for entering a multicultural society.

The impact of this split perspective was reviewed both from the issues it posed in enlarging the thinking of administrators and parents, and from the problems it posed in convincing the courts that merely a bilingual program only was not the panacea to equal educational opportunity.

With respect to the courts, it was pointed out that most cases had heretofore been argued on the basis of the bilanguage approach. It was the opinion of the Civil Rights Office that the courts are not yet ready for a purely cultural argument. Therefore, the language argument has been the most prevalent, practical argument. Anglo courts can see the non-communication of language problem much more easily than they can grasp and deal with the more subtle cultural argument.

Although the cultural incompatability was what we really wanted to argue in the courts, this issue is not really practical because it is difficult to raise the argument, let alone argue it.

Some success has been reached in court cases in bridging the gap between the two viewpoints by taking a case that eliminates the language factor, i.e., the case in East Chicago, Ind. where the argument involved blacks and Anglos. The language factor obviously was not present, yet inequities still existed, so the multicultural issue was raised and listened to.

In the main, however, the Civil Rights Office has attempted to overcome the problem "bootstrapping" the cultural argument onto the language argument. That is to say, there are two divisions of prosecuting a discrimination case: one is the proving of the case, the other the remedy asked for. In proving the case, the courts were appealed to on the basis of language argument, but in asking for a remedy on relief, the cultural argument was made in the form of a proposed "how to" plan of program.

One educator said that he felt too much time was used in researching those who speak Spanish, instead of researching and talking to the issues. The reply by the lawyers was that they agreed but that in practical terms on had to address himself to what the judge is going to ask, like the number of people who failed the system, because judges were only language-oriented.

In any event, it was stressed that we must move toward multicultural educational programs that involve all children in a school district as opposed to bilingual-bicultural programs involving only Mexican American and other Spanish speaking children.

F. EQUAL ACCESS VS. EQUAL BENEFITS PERSPECTIVE

Another viewpoint allied to the bilanguage-bicultural dichotomy was the perspective of equal access that also prevails among the courts, administrators, and public.

This viewpoint says essentially that if Mexican American or minority children are given equal access to materials, resources, quality teachers, facilities, etc. we then have equal educational opportunity without discrimination.

The access argument runs "If we can provide bilingual education that grants minority children equal access what difference does it make about anything else if we can do that?"

In contrast with the access argument, the point we want to get across is that equal educational opportunity without discrimination should be judged and evaluated on the basis of "equal benefits". If benefits, the end results of education, are inequitable, cases against the system can be built.

In connection with this, the bilingual argument is an access-oriented argument, but you prove it by equal benefits. Ultimately we want to move to the benefits analysis and argument which says that if a system doesn't work, it's not equal.

When courts and judges say, in effect, if we provide bilingual programs and equal access, then doesn't that do the job, the Civil Rights Office outlined the general type of response it has tried to make:

"The educational process involves both cognitive and affective skills. The cognitive skills involved the separate aspects of self-concept motivation. The impact on self-concept development will not equalize cognitive development of skills in any language. Without a truly bilingual-bicultural program for all children in both languages, this self-concept development will not be realized even if equal cognitive development is reached.

G. THE COMPENSATORY ASSUMPTION

Another perspective allied to the ones of bilingual-bicultural and equal access vs. equal benefits is the thinking in the minds of the courts, administrators, and parents, that a Chicano or other linguistically and culturally distinct child comes to school with certain deficiencies and that the school must make up or compensate for these deficiencies.

In contrast to this, one of the first key points that must be made is the simple proposition that deficiencies are within the school system, and not automatically in the minority child or in his home environment.

To countervail this view, we must focus on aspects of the school system rather than on aspects of the home, and we must attack the assumption that minority kids come to school handicapped.

As a working alternative to assist in combatting the compensatory viewpoint and its implications, a plan utilized five basic factors was put forth:

(1) Increase use of minority languages as medium of instruction.

(2) Include cultural elements of heritage in all materials.

(3) Increase the number of minority members in key decision-making positions.

(4) Increase involvement of minority community members in the school system.

(5) Improve and equalize counseling and testing programs.

H. THE LAU V. NICHOLS CASE AND ITS IMPLICATIONS

The Lau v. Nichols case is a suit be a neighborhood legal association in San Francisco against a local school board charging them with failing to take action to provide equal non-English educational services, and alleging that they have such an obligation under the 14th Amendment.

The District Court ruled that there was no obligation on the basis of language origin to provide service, but only to provide identical assistance. The Court of Appeals upheld that decision, though the panel was split two to one. The Supreme Court will hear the case this Fall.

Speculation on the case seemed to reach a concensus that the case would be reversed, for various legal reasons. The major concern was what the court would say in reversing the case. Two possibilities were speculated on:

(1) The Supreme Court would reverse and remand to District Court.

(2) The Supreme Court would say, "We don't know, it"s not our jurisdiction, but it's clear that the District Court can't usurp authority given to the executive branch under the 14th Amendment.

It was noted that it was especially significant that for the first time in any such case, the Government, via the Civil Rights Office was on the side of the plaintiffs in citing a Civil Rights violation. The Justice Department wrote an amicos brief.

The LAU case did not involve the Spanish-American nor did it concern itself with the four general myths propogated earlier. However, the Mexican American Legal Defense and Educational Fund filed an Amicos brief..

The key significance of the case is that judges and courts all over the country have their eyes on the Supreme Court decision, and that other cases upcoming or pending await and will be affected by the decision.

It was generally agreed that if LAU was upheld, it would deal a blow to the effort.

TANGENTIAL SUGGESTIONS AND COMMENTS

Several comments and suggestions of significance were waved throughout the discussion of the major issues. They included:

(1) There is a tremendous need for documentation and circulation of successful cases.

(2) Social, educational, and psychological damages in cases have not really been shown.

(3) So that discrete areas of the country are not operating in a vacuum, monitoring and reporting devices need to be set up.

(4) Allocation and distribution of monies to Mexican American and other linguistically and culturally distinct groups in schools have not been equalized. Earmarked monies don't reach their target.

(5) Equalization of increased costs of school districts does not insure equalization of educational opportunity.

(6) As of now, the real winner in a bilingual program is the Anglo child.

(7) Our job is to develop a sufficiently open and flexible school system so that all kids can relate to each other and to society within the framework of their experiential background, and the only way to do that is to include and weave into the curriculum and into the climate of the school, a bilingual, bicultural heritage for all.

J. SUMMARY OF ISSUE AND STRATEGY

It was agreed that the elements of any overall strategy must incorporate specific techniques and ways of dealing with the major concerns and issues cited above.

The framework for such a strategy, then, should be built on the key issues as categorized above. Initial elements of a strategy will concern itself with ways and means the following issue areas:

(1) General Myths. Two specific problems must be dealt with: How to make strong cases, and how to devise programs that will rectify inequities?

(2) Educator-Lawyer Interface. Ways and Means must be found to further this interaction, educating lawyers as to sound educational systems to recommend, and educating educators as to legal technicalities and techniques of testimony.

(3) Data Base System. Ways and means must be executed to spread access of use of the system across the country.

(4) Bilingual-Bicultural Dichotomy. Here we must deal with the specifics of what essentially is a perspective. One key problem is to find a way to utilize the bicultural argument and to convince courts and administrators the language argument is not enough.

(5) Equal Access vs. Equal Benefits. Here is another perspective that must be dealth with in terms of specifics. The key problem here is to find ways to convince people that the equal benefits argument is the true test of equal opportunity.

(6) The Compensatory Assumption. A third perspective calls for plans to countervial the generally held assumption that the minority child comes to the school deficient, but that instead it is the school system that is deficient.

(7) LAU v. NICHOLS Case and Others. The problem here is one of information, a need to circulate summary of legal cases being contested, and the results of those having received adjudication, and their litigation implications.

(8) Tangential Suggestions. Find ways and means of documenting and circulating information about especially successful cases.

To these ends, several recommendations were made and initial actions taken.

K. RECOMMENDATIONS AND ACTIONS

(1) Essential that lawyers and educators work more collaboratively in education lawsuits.

(2) Need to meet again soon - mind expanded group.

(3) Develop plan to identify experts in the field to get them involved early in the case.

(4) Develop a position which would pertain to both the Bilingual Regulations and the two Bilingual Bills in the Senate.

(5) Go to court if the new regulations do not reflect the above imput or position.

(6) Write letters to the Secretary of HEW and the members of the Education and Labor Committee pursuant to the above imput.

(7) Dr. Dolores Gonzales and Carlos Alcala and Dr. Henry Casso are to review and make changes in the proposed Regulations.

(8) Try and get an extension of the hearing date.

(9) Identify groups and inform them of the changes which should be made in the regulations.

(10) Contact the Native American Rights Fund and get black community imput..

(11) Send regulations to other Chicano groups to get their comments and then send in their comments.

(12) Request 15 minutes to make presentation at the Regulation hearing.

(13) Contact following Congressmen for support: Sen. Haskel, Sen. Javits, Sen. Cranston, Sen. Percy, Sen. Stevenson, Sen. Montoya, and others.

(14) Contact USOE - Office of Spanish Speaking Affairs and Cabinet Committee for Spanish Surnamed Americans for a list of key Chicano groups in U. S.

(15) States that have a small number of minorities should also be included.

(16) After the Lau Case, HEW Civil Rights should come out with a revised updated memo. Also after the other educational cases.

(17) Set up a central center and nerve center on Bilingual Education to act as a clearing house for experts who could testify in court cases (possible item for the National Bilingual Bicultural Institute).

(18) The Task Force or some other group come up with a model for a Bilingual State Education Bill.

(19) Task Force identify other educators who should be involved in next meeting.

(20) MALDEF should assist in contacting other lawyers who should be involved in the next meeting.

(21) Identify Mexican American Educational leaders who can deliver educational expertize to school districts with need in this area.

(22) Develop a list of state legislatures who are favorable to bilingual education.

(23) Identify the target states for bilingual education.

(24) The Urban Coalition has resources and should be involved.