

# The Bilingual Education Act: Language Minority Students and Equal Educational Opportunity

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## Abstract

This paper traces the Bilingual Education Act (BEA) from its inception in 1968 through its most recent reauthorization in 1994 as the primary federal legislative effort to provide equal educational opportunity to language minority students. Federal legislative initiatives which provide the foundation for the BEA are discussed. The polemic between two philosophical positions, assimilation and multiculturalism, is introduced along with the need for further colloquy. The evolution of the BEA from its inception in 1968 through its reauthorization in 1994 is analyzed. Finally, the authors comment on the current proposed reauthorization of the Elementary and Secondary Education Act and the future of Title VII.

Today, one in three children nationwide is from an ethnic or racial minority group, one in seven speaks a language other than English at home, and one in fifteen was born outside the United States. Educating language minority children has been a broader concern throughout our nation's history, and in 1968, the Bilingual Education Act (BEA),<sup>1</sup> Title VII of the Elementary and Secondary Education Act (ESEA), specifically identified the education of "children of limited English-speaking ability" as "one of the most acute educational problems in the United States" (BEA, 1968, Sec. 701). Since 1968, the BEA has attempted to articulate how state and school districts can facilitate equal access to education for language minority students.

This paper investigates federal bilingual education policy as a legislative attempt to remedy the inequities experienced by language minority students in the educational system. The first section presents a long-standing polemic between two philosophical positions, assimilation and multiculturalism. The second section introduces federal legislation and litigation which provide the initial foundation for the BEA. The third section follows the evolution of the BEA from its inception in 1968 through its reauthorization in 1994. Finally, the authors comment on the current proposed reauthorization of the Elementary and Secondary Education Act and the future of Title VII, attesting that Title VII policy must further address the following issues: (a) the role of teachers in the local enactment of policy, and (b) assessment and accountability.

## Philosophical Positions in Educational Reform for Language Minority Students

In discussing the various reauthorizations of the BEA from 1968 until 1994, it is important to note the long-standing tension over whether equity in education is independent of cultural and linguistic attributes. One end of the debate over how to educate language minority students is a host of voices that insists that attending to the linguistic and cultural diversity in our schools thwarts efforts at social assimilation. Manifestations of ethnic pride and linguistic maintenance, the argument goes, hide undercurrents of discrimination, privilege, social and economic fragmentation, and re-segregation that can erode our nation's way of life (Chávez, 1991; Crawford, 1999; Schlesinger, 1992; Unz, 1998). These efforts only keep the United States from achieving a harmonious society in which racial, cultural, and linguistic differences are of no personal or social consequence. In such a world, equity in education is independent of such attributes as well. Efforts to pass English-only laws at both national and state levels reflect such a philosophy, as does California's Proposition 227.

Historically, the Common School movement of the late 1800s marked the first large scale policy efforts to influence education and emphasized an "Americanizing" process for immigrants in order to educate them as responsible citizens, and hence, maintain a stable government (Kaestle, 1983; Malakoff & Hakuta, 1990). At the time, the increasing numbers of "new immigrants" from Southern and Eastern Europe raised nativist fears of separatism, and the only viable solution to this fear was their rapid assimilation into American culture.

In this endeavor, language was seen as symbolic of overall integration into the larger society. The loss of the native language became an indicator of the abandonment of one's culture of origin (Malakoff & Hakuta, 1990). So, in terms of language, acculturation becomes a "zero-sum process," or "subtractive acculturation" (Portes & Rumbaut, 1996). Immigrants and language minorities were forced to learn English and leave their native languages behind: "Language and homogeneity came to be seen as the bedrock of nationhood and collective identity. Immigrants were not only compelled to speak English, but to speak English *only* as the prerequisite of social acceptance and integration" (p. 196).

This policy applied to Native American language minorities as well, but was manifested in a more aggressive form. As early as 1879, federal officials began separating Native American children from their families, forcing them to attend off-reservation boarding schools to learn English and abandon their native language and culture: "In the difference of language today lies two-thirds of our trouble. . . . Their barbarous dialects should be blotted out and the English language substituted" (Indian Peace Commission, 1868, cited in Crawford, 1999). This drive toward English only was a clear departure from policy during colonial times which

accepted, protected, and even appreciated bilingualism as a social benefit (Fitzgerald, 1993; Malakoff & Hakuta, 1990). In sum, a philosophy of assimilation promotes educational reform to provide equal educational opportunity as independent of linguistic and cultural differences.

On the other side of this issue, promoters of a philosophy multiculturalism view notions of equal educational opportunity as inextricably tied to cultural and linguistic diversity. Early in our nation's history, during the 17th and 18th centuries, federal and state legislation, where it existed, primarily required that schools be established. Since educational policy was fundamentally in the hands of towns or districts, the language of instruction was frequently the language of the community (Malakoff & Hakuta, 1990). As the argument for multiculturalism goes, equality in the United States cannot be achieved by surrendering one's cultural and linguistic heritage, but rather by building upon these and adding English. Instead of a subtractive view of acculturation, an additive view is promoted.

Over the years, the most salient feature of the polemic between assimilation and multiculturalism has been language, particularly the role of native language instruction. The debated role of language in this discussion points to larger concerns with the symbolic meaning of language and identity in a pluralistic society. While philosophical positions of assimilation and multiculturalism are evident in the BEA, they are not responsible for any particular trajectory. In fact, the tension between them is long-standing and will likely continue. There is a need for colloquy about individual and group differences that minimizes the polarization of assimilation and multiculturalism and better informs educational reform for language minority students.

### Federal Legislation and Litigation as a Foundation for Title VII

The U.S. Congress set a minimum standard for the education of language minority students with Title VI of the 1964 Civil Rights Act which prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving federal financial assistance. The U.S. Supreme Court ruling in *Lau v. Nichols* (1974) was based on the Civil Rights Act of 1964 and established language minority status as a claim for discrimination. In the class action suit filed on behalf of Chinese background students against the San Francisco Unified School District, the Supreme Court ruled: "It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from the respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations." Despite establishing the right of students to differential treatment based on their language minority status, *Lau v. Nichols* did not require a particular instructional approach.

Schools were required to “. . . take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. . . No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others.”

In similar fashion, the subsequent passage of the Equal Educational Opportunity Act of 1974 (EEOA) made Title VI of the Civil Rights Act applicable to all educational institutions but did not prescribe a specific remedy. The EEOA was an effort by the U.S. Congress to define what constitutes a denial of constitutionally guaranteed equal educational opportunity. The EEOA provides:

No state shall deny equal educational opportunities to an individual on account of his or her race, color, sex, or national origin by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. (EEOA, 1974, Sec. 204 (f))

Still, while Title VI of the Civil Rights Act, *Lau v. Nichols*, and the EEOA focused attention on educational equity and access, they did not define “equality” for policy-makers. As the Office of Education Survey of Equality of Educational Opportunity<sup>2</sup> stated, the definition of equality “will be an outcome of the interplay of a variety of interests and will certainly differ from time to time as these interests differ” (Coleman, 1968, p. 27).

### The Bilingual Education Act: Language Minority Students and Equal Educational Opportunity

On six occasions the U.S. Congress has passed specific legislation related to the education of language minority students (1968, 1974, 1978, 1984, 1988, 1994). The Bilingual Education Act (1968), Title VII of the Elementary and Secondary Education Act of 1965, serves as a guide for state and local policy regarding language minority students. Since its inception, the primary aim of the BEA has been “providing meaningful and equitable access for English-language learners to the curriculum, rather than serving as an instrument of language policy for the nation through the development of their native languages” (August & Hakuta, 1997, p. 16). In other words, the BEA has aimed to address equal educational opportunity for language minority students and has not evolved as a language policy.

The initial Title VII legislation built upon the Civil Rights Act of 1964 and originated as part of the “war on poverty” legislation. The legislation was primarily a “crisis intervention” (García & González, 1995), a political strategy to funnel poverty funds to the second largest minority group in

the Southwest, Mexican Americans (Casanova, 1991). The BEA was intended as a demonstration program to meet the educational needs of low-income, limited English speaking children.

The “war on poverty” legislation was largely based on the cultural deprivation theory (Erickson, 1987; Riessman, 1962), or culture of poverty theory, which dominated educational psychology. Instead of genetic inferiority, environmental factors were viewed as the main reasons for the underachievement of minority children. In theory, specific types of attitudes, language styles, work values, and other behaviors dampened the abilities necessary to overcome poverty (Levin, 1971). This implicitly encouraged a subtractive form of bilingual education, where the native language and culture were not viewed as resources to build on, but as barriers to overcome (Cummins, 1991). Bilingual education was a remedial effort, aimed at overcoming students’ “language deficiencies,” and these “compensatory efforts were considered to be a sound educational response to the call for equality of educational opportunity” (Navarro, 1990, p. 291).

No particular program of instruction was recommended: in fact, financial assistance was to be provided to local educational agencies (LEA) “to develop and carry out new and imaginative . . . programs” (BEA, 1968, Sec. 702). Grants were awarded to local educational agencies or institutions of higher education working in collaboration with local education agencies to (a) plan and develop programs “designed to meet the special educational needs” of language minority students, (b) provide preservice training to personnel such as teachers and teacher aides, (c) establish, maintain, and operate programs (Sec. 704). Among the approved activities were: bilingual education, teaching the history and culture of the target population, early childhood education, and adult education for parents. Although bilingual education was mentioned as an approved activity, the legislation did not specify the role of native language instruction.

#### Title VII Reauthorization of 1974: A Definition of Bilingual Education

In line with the legislation and litigation which provided the initial foundation for the Bilingual Education Act, the 1974 reauthorization specifically incorporated language to address equal educational opportunity and linked it to bilingual education programs: “the Congress declares it the policy of the United States to establish equal educational opportunity for all children (a) to encourage the establishment and operation . . . of education programs using bilingual education practices, techniques, and methods” (BEA, 1974, Sec. 702[a]). For the first time, bilingual education was defined as “instruction given in, and study of, English, and, to the extent necessary to allow a child to progress effectively through the educational system, the native language” ( Sec. 703[a][4][A][i]).

The inclusion of native language instruction in the definition of bilingual education was influenced by bilingual programs in Dade County, Florida, which were founded to address the needs of the first wave of professional class Cuban immigrants.<sup>3</sup> The Cuban immigrants saw themselves as temporary residents of the United States who would soon return to their country, and therefore, wanted to preserve their culture and language. Thus, the bilingual programs encouraged Spanish language maintenance and English language acquisition (Casanova, 1991). At the same time, the success of the programs gave encouragement to the idea of bilingual education as a method of instruction for students from disadvantaged backgrounds (Hakuta, 1986). Native language instruction could serve as a bridge to English language acquisition, by providing equal access to the curriculum until students were English proficient. While the BEA acknowledged the role native language could play in supporting a transition to English, it did not promote bilingual education as an enrichment program where the native language was maintained.

Other changes in the legislation included eliminating poverty as a requirement, the specific mention of Native American children as an eligible population, and a provision for English speaking children to enroll in bilingual education programs to “acquire an understanding of the cultural heritage of the children of limited English-speaking ability” (Sec. 703 [a][4][B]). In addition to the grant categories listed in 1968, new programs were funded including a graduate fellowship program for study in the field of training teachers for bilingual education programs, a program for planning and providing technical assistance to the development of programs, and a program to develop and disseminate instructional materials.

### Title VII Reauthorizations in 1978, 1984, 1988: Special Alternative Instructional Programs

During the years of the next three reauthorizations, public opinion reflected a strong aversion to the use of federal funds to preserve minority languages and cultures, claiming that federal funds should focus on English language acquisition and assimilation into the mainstream (Crawford, 1999). Historically, during times of peak immigration there is a decline in the acceptance of bilingualism. Increased immigration tends to create a feeling of instability, perhaps due to the unsettling aura of change, apparent increased job competition, or fear of an inability to communicate with immigrants. This feeling of instability often leads to a fear of the unknown and an insistence on using the status quo language, English (Fitzgerald, 1993; Portes & Rumbaut, 1996). From 1981 to 1990 around 7,388,062 people immigrated to the United States; this represented a 63% increase in the immigrant population as compared to the previous decade (García & González, 1995). Most new immigrants were not viewed as temporary residents like the Cuban community of Dade County in the

early 1970s. New immigrants were here to stay, which precipitated the danger of separatism. Preservation of minority languages could very possibly lead to the fragmentation of American society. Bilingual education programs that encouraged native language maintenance would only foster children's allegiance to minority languages and cultures, and this was not an acceptable responsibility for schools. It should only be carried out by families, churches, and other institutions outside the school (Casanova, 1991; Crawford, 1999).

The 1978 reauthorization of the BEA added language to the 1974 definition of bilingual education which specified that instruction in English should "allow a child to achieve competence in the English language" (Sec. 703 [a][4][A][i]) and when enrolling English-speaking children "the objective of the program shall be to assist children of limited English proficiency to improve their English language skills" (Sec. 703 [a][4][B]). Other changes in the legislation included the following: parents were given a greater role in program planning and operation; personnel were required to be proficient in the language of instruction and English; and grant recipients were to demonstrate how the program would continue once federal funds were withdrawn.

The 1984 reauthorization of the BEA marked a shift from mandating only bilingual programs to the acceptance of English-only programs. As Birman and Ginsburg (1983: xx) explained:

The ultimate goals of bilingual education are that the students learn English and keep up with English-speaking peers in subject matter. Although bilingualism is a laudable and a worthwhile outcome, we judge benefit in terms of English-language acquisition and subject-matter learning.

Transitional bilingual education programs were defined as providing "structured English-language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language" (Sec. 703 [a][4][A]). So, the purpose of native language instruction is to support transition to English instruction, and the allocation of funding reflected a preference for this program: 60% of Title VII funds were allocated to the various grant categories, and 75% of these funds were reserved for transitional bilingual education programs. In contrast, developmental bilingual education programs were defined as providing "structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills" (Sec. 703 [a][5][A]). So, the goal of this program included native language and English language competence, yet no specific funding allocations were specified.

In addition to delineating these two bilingual education programs, the grant categories included special alternative instructional programs (SAIPS) that did not require the use of native language and 4% of Title VII funds were allocated to SAIPS. These programs were created in recognition “that in some school districts establishment of bilingual education programs may be administratively impractical” (Sec. 702 (a)(7)). While the 1984 grant categories remained the same for the 1988 reauthorization, funds allocated to SAIPS were increased to 25%. Furthermore, the legislation included a three year limit on an individual’s participation in transitional bilingual education programs or SAIPS: “No student may be enrolled in a bilingual program . . . for a period of more than 3 years” (BEA, 1988, Sec. 7021 [d][3][A]).

### Title VII Reauthorization of 1994: Bilingual Education, Language Enhancement, and Systemic Reform

The 1994 reauthorization of the BEA still aimed to “to ensure equal educational opportunity for all children and youth and to promote educational excellence . . . for children and youth of limited English proficiency” (BEA, 1994, Section 7102 (c)). In particular, this reauthorization introduced new grant categories, gave preference to programs which promoted bilingualism, introduced language enhancement of indigenous languages, and stood as part of a larger systemic reform effort.

#### *The Premise of Local Control*

While federal educational policy provides national goals for language minority students, local education agencies are responsible for their implementation (see Table 1). The local education agency is the locus of control for design and implementation of programs and is eligible for the following grant categories: program development and implementation, enhancement, comprehensive school, and systemwide improvement.<sup>4</sup> The 25% cap on funding for SAIPS is retained in the 1994 legislation, but with a special provision for exceeding it if an applicant can demonstrate that developing and implementing a bilingual education program is not feasible due to the language diversity of the students or the lack of qualified instructional personnel. While state education agencies must approve the grant application before submission, they play no official role in the grant’s implementation. In addition, substantial efforts have been made to comprehensively package funds by allowing Title VII funds to be used collaboratively with funds from Title I, Goals 2000, other ESEA programs, state education agencies, and local school districts.

While the legislation does not prescribe particular methods of instruction, each LEA should still create a program based on the general goals of the legislation. Then it must justify particular strategies to the



federal government if it is to receive funds. As the LEA articulates a program of instruction, Title VII will hold the school accountable for its own goals, assessments, and evaluation procedures to determine whether language minority students are acquiring English and improving academically. Federal policy recognizes both the complexity of educational responses for language minority students and the need for locally designed and implemented programs (García, 1998). Therefore, Title VII turns to the local education agency as the locus of control in guaranteeing equal access to education for language minority students. Federal policy stands as a beacon, stating the guiding principles, providing guidance on appropriate practices, and providing assistance with developing effective programs of instruction. More specifically, support includes the dissemination of research findings, descriptions of successful Title VII programs, and technical assistance through regional centers (García, 1998).

### *Bilingualism as a Priority*

In considering grant applications, Title VII uses the goals delineated in the legislation as a guide (see Table 1). The grants authorized should help language minority children “develop proficiency in English, and to the extent possible, their native language” (Sec. 7111 [2][A]). Furthermore, Title VII will give “priority to applications which provide for the development of bilingual proficiency both in English and another language for all participating students” (Sec. 7116 [i][1]). Overall, LEAs have the right to develop English language acquisition and academic achievement of language minority students within the context of their particular needs and resources, but priority will be given to programs which develop bilingual competencies.

### *Language Enhancement*

Although Native Americans and Native Alaskans have been included in the Bilingual Education Act since 1974, for the first time these communities are encouraged to develop programs for language enhancement, “the preservation and maintenance of native languages” (Sec. 7105). Bilingual programs will still build English language skills as well as bilingualism: “Native American children and youth [are] learning and studying Native American languages” (IASA, 1994, Section 7122). In addition, Native Hawaiians and Native American Pacific Islanders are specifically mentioned as eligible populations (see Table 1).

### Goals 2000: Systemic Reform and National Standards

The 1994 reauthorization of Title VII reflects the guiding ideology of two major legislative initiatives, Goals 2000: Educate America Act and the Improving America’s School Act (1994) (see Table 1). These legislative initiatives work together to promote and support equality and quality of education for all students. As part of a larger systemic reform effort, Title VII programs must help language minority children “meet the same

challenging State content standards and challenging State student performance standards expected for all children and youth” (Sec. 7111 [2][B]). In fact grant applicants must specify how the Title VII program “is coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts as appropriate” (Sec. 7116 [g][1][B][iii]). Goals 2000 legislation provides resources for all states to develop challenging voluntary standards based on a broad consensus process for what all students need to know and be able to do.

Goals 2000 expanded upon the National Education Goals of 1990 and made them law, to serve as benchmarks for state and local agendas.<sup>5</sup> Each state is encouraged on a voluntary basis to develop content standards, performance standards, and an action plan to help students achieve both sets of standards. In fact, Goals 2000 is “the prism” through which all new legislation and amendments to the ESEA were considered (Riley, 1995). The three major components of this systemic reform effort include the following: (1) curriculum frameworks which establish what children should know and provide direction for upgrading the quality of content and instruction for all schools, (2) alignment of state educational policies, and (3) schools are given the resources, flexibility, and responsibility for preparing students to learn. This new federal policy provides a vision for reform, and at the same time, contains few prescriptions. There are no new mandates on states or localities; burdensome federal regulations are waived. This is very different from prior federal policy which focused on stringent fiscal process regulations to ensure conformity to practice.

### The Improving America’s School Act

The ESEA was reauthorized as the Improving America’s School Act (IASA). The IASA is designed to work within the framework of Goals 2000 while focusing on student populations that demonstrate a pattern of academic underachievement. In the past, “the remedial, ‘basic skills’ focus of many compensatory education programs, designed to provide additional help for poor, educationally disadvantaged students, limited-English-proficient students, and others, has often led to the use of watered-down curricula taught in uninspired, rote-oriented ways” (Smith & Scoll, 1995, p. 393). Therefore, while IASA continues to target additional educational supports to particular students, these students are held to the same content performance standards as all other children. The intent is to help the students reach the challenging standards, and consequently, raise the level of access and achievement throughout the nation.

In the past, federal government funds created narrow categorical programs, the accumulation of which, each with separate rules, was beginning to negatively affect education (Riley, 1995). Consequently, the IASA allows schools flexibility in how they structure programs and funds. For example, a school is encouraged to integrate funds from Title I and Title VII in order to best serve all students. Allowing categorical program

funds to serve all children in a school “will help erase the stigma and lower standards of many pullout programs” (Smith & Scoll, 1995, p. 398). The development of standards, the realignment of educational systems in support of those standards, and the placement of the ultimate responsibility, flexibility, and resources at the local level will take time. These are long-term challenges for every teacher, parent, and school administrator in every state and local community.

### Looking Forward: Future Role of Title VII Legislation

This paper has traced the various reauthorizations of Title VII: Bilingual Education Act from its inception in 1968 to its most recent reauthorization in 1994. The polemic between the philosophical positions of assimilation and multiculturalism is long-standing and will likely continue to be present in educational reform efforts for language minority students. What needs to develop is a philosophical framework that allows us to engage in discussions about individual and group differences without emphasizing the negative consequences for any individual or group. At the same time, future Title VII policy must further address particular issues: (a) the role of teachers in the local enactment of educational policy and (b) accountability and assessment of the academic achievement of language minority students.

### Teachers and Local Policy Enactment

As collaborative relationships develop among federal, state, and local education agencies, special attention should focus on the role of teachers in reconstructing the goals of program policies (Darling-Hammond, 1990). Policy is not merely implemented, rather it is enacted through daily interactions among teachers, students, and the larger school community. While the BEA act has provided funds for personnel training, the nature of training must move beyond the learning of effective teaching strategies. As policy is enacted in local school communities, beliefs, knowledge, and the social context of the school will shape the daily reality of the educational program for language minority students. Consequently, as schools develop an educational program for language minority students, teachers, staff, administrators, and parents should all take part in conversations which focus on student goals and instructional strategies, not just programmatic issues (Miramontes, Nadeau, & Commins, 1997; Taylor & Bogotch, 1994).

Schools need to create support structures for teachers to share their philosophies with one another and to work together to build a common vision for the school. Schools must set aside time for open and continuous dialogue about what staff believe about students and schooling. A cohesive educational program, built upon shared teacher contributions and philosophies, can lead to a cohesive academic experience for language minority students (Miramontes et al., 1997). Schools should

also encourage teachers to communicate about curriculum, content, and instructional strategies across grade levels because: “The issue of what to teach and how to teach it extends beyond a single teacher or grade level. It involves how the curriculum will be articulated across grade levels, within a program. . . . The goal of the decision-making is to create a rigorous curriculum that prepares students to be academically successful” (pp. 148-149). Schools should develop instructional programs with teachers as collaborative partners, who negotiate the goals and instruction of the program to best serve the needs of the language minority students in the context of available resources. In turn, federal bilingual education policy can serve as a beacon and provide resources to guide the collaborative process at the local level.

### Accountability and Assessment

As collaborative relationships develop among federal, state, and local education agencies, clear measures of accountability for student achievement must be developed and articulated. The 1994 reauthorization holds local education agencies accountable for their own goals and assessments. As Title VII provides flexibility and accountability, it needs to work with local and state education agencies to define appropriate goals and assessments in different contexts. Assessment and accountability have figured prominently in the current reauthorization of ESEA.

The Department of Education’s proposal embeds a three year goal for Limited English Proficient (LEP) students to reach English proficiency into a broader policy of increased accountability for LEP students. The White House and the Department of Education—as a response to Proposition 227 in California that limits special instruction for LEP students to one year—have insisted that a goal of learning English within three years is “reasonable.” The budget summary for FY2000 cites Secretary of Education Riley’s announcement of a three-year goal for preparing LEP students to transfer to an all-English classroom. In fact, the Department of Education intends to work with school districts to ensure that the English skills of LEP students are assessed once they have been in a bilingual or ESL program for three years.

Still, a three-year goal, irrespective of how it is articulated, can quickly become a presumption, then a requirement, and ultimately a sanction. A three-year goal for English proficiency can drive curriculum in a way that refocuses resources, staff material, and accountability on English language acquisition. This will come at the expense of other content areas such as math, science, social studies, etc. In order for LEP students to achieve at a level comparable to their native-English speaking peers, they need academic mastery of the English language which is cognitively more demanding than conversational skills. So, while research indicates that LEP students may achieve in two to three years a

significant level of fluency in conversational English, five to seven years are needed to develop the cognitive level of a native speaker (Bialystok & Hakuta, 1994; Cummins, 1989).

As part of the proposed accountability system for ESEA reauthorization, the Department of Education is recommending a series of mandated assessments for LEP students in Title I and Title VII. They are as follows: (a) a reading diagnostic assessment for all Title I students. (It is unclear whether for LEP students this test could be in their native language); (b) an annual test of English proficiency administered to LEP students served by Title I and Title VII; (c) LEP students who have been in U.S. schools for three years will take the state assessments in English, without any accommodations.

This proposed battery of tests will be more harmful than helpful to language minority students in accurately assessing their academic progress. While the 1994 reauthorization of Title I moved away from excessive testing of students, the current proposal will excessively test only LEP students. The disparate treatment of this particular group of students raises concerns for their civil rights. Also, as discussed above, expecting children to achieve English fluency in three years has no basis in sound educational theory or practice. Requiring assessments after attending U.S. schools for three years merely adheres to an arbitrary time limit. Instead, assessments should be tied to the type of instruction the child is receiving.<sup>6</sup>

Furthermore, the proposed assessments will generate faulty information about the academic achievement of LEP students. For example, when an LEP student who reads at grade level in his or her native language is given a reading test that is administered in English, the reading test does not assess his or her reading skills. Rather, it reflects the student's ability to understand English (August & Hakuta, 1997). These assessment results will go into the student's permanent record with the potential of being used for high stakes decisions regarding future educational opportunities. Moreover, the proposed battery of assessments is narrowly focused on academic progress in the English language, when these children need to reach academically proficient levels in math, science, and other content areas. Unfortunately, the misdirected education goal focused on English spreads beyond Title VII across all of the ESEA programs, particularly Title I.

Since its inception in 1968 through its most recent reauthorization in 1994, the Bilingual Education Act stands as the primary federal legislative effort to provide equal educational opportunity to language minority students. While this paper has introduced two philosophical positions related to educational reform for language minority students, the tension between assimilation and multiculturalism is not responsible for any particular trajectory in the legislation's history. In general, the BEA needs to address the prominent role of teachers in the local enactment of policies

and revise the current proposed accountability system for the reauthorization of ESEA. In its current form, the battery of assessments will only prove harmful to language minority students. As the 21st century approaches, society still looks to educational agencies for help in realizing the moral imperative of equity. As educational agencies are called on to develop and implement models of culturally competent practices in creating and delivering services to growing numbers of language minority students, they must adhere to the imperative of equal educational opportunity and strive for educational excellence.

## Notes

<sup>1</sup> The Bilingual Education Act refers to the population of children it aimed to serve, not a particular instructional program.

<sup>2</sup> This survey was carried out under a mandate of the Civil Rights Act of 1964 to assess the “lack of educational opportunity” among racial and other groups in the United States (Coleman, 1968).

<sup>3</sup> The bilingual programs in Dade County, Florida were funded by a grant from the Ford Foundation.

<sup>4</sup> In addition to the bilingual education grants, Title VII has set aside funds for research, professional development, the Foreign Language Assistance Program, and the Emergency Immigrant Education Program (EIEP). By targeting immigrant children and youth, the EIEP inherently focuses on language minority children and aims “to assist eligible local education agencies that experience unexpectedly large increases in their student population due to immigration to (1) provide high quality instruction to immigrant children and youth; and (2) help such children and youth (A) with their transition into American society; and (B) meet the same challenging State performance standards expected of all children and youth” (BEA, 1994, Section 7301(b)). State education agencies will receive an allocation equal to the proportion of the number of immigrant children enrolled in school, and then they will distribute funds to eligible local education agencies.

<sup>5</sup> The National Education Goals were originally adopted by the nation’s governors: (1) All children will arrive at school ready to learn, (2) The high school graduation rate will increase to at least 90 percent, (3) Students will master challenging subject matter, (4) Teachers will have access to training programs to improve their skills, (5) U.S. students will be first in the world in math and science, (6) All adult Americans will be literate and be able to compete in a global economy, (7) Every school will be free of drugs and violence, (8) Every school will strive to increase parental involvement and participation in their children’s education (Shogren, 1994).

<sup>6</sup> Further, prohibiting the use of necessary accommodations is inconsistent with the Standards for Educational Psychological Testing. The National Assessment of Educational Progress currently allows for necessary accommodations for LEP students as well as students with disabilities.

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Table 1: Review of critical changes in the 1994 Title VII reauthorization

Issue	Previous Title VII	1994 Title VII Reauthorization
Cohesiveness	<p>One several fragmented, narrow categorical programs which target specific populations and problems, each with separate rules and regulations.</p> <p>Funds from various ESEA programs cannot be used to serve all students at the school.</p>	<p>Part of a larger systematic reform effort to define the federal role as one of support and facilitation while maintaining state and local control through Goals 2000. National Standards serve as the benchmark for states and localities, and all students should be held to the same standards.</p> <p>Comprehensively packages funds for educational services, professional development, and research. Title VII funds can be used by collaboratively with title I, Goals 2000, and other ESEA programs to serve all students. In particular, Title I will more directly increase services to language minority students.</p>
Eligible Populations	<p>Limited English proficient students.</p> <p>Native Americans and Native Alaskans.</p>	<p>Limited English proficient students.</p> <p>Native Americans, Native Alaskans, Native Hawaiians, Native American Pacific Islanders.</p> <p>Recent immigrants which: "have not been attending one or more schools in any one or more States for more than three full years."</p>

Goals	<p>"Program which serve limited English proficient students have equally important goals of developing academic achievement and English proficiency."</p> <p>"The instructional use and development of a child's non-English native language promotes self-esteem, subject matter achievement, and English-language acquisition."</p>	<p>"It is the purpose of this title to help ensure that limited English proficient students master English and develop high levels of academic attainment in content areas."</p> <p>"The use of a child's . . . native language native language and culture in classroom instruction can-(a) promote self-esteem and contribute to academic achievement and learning English . . . (c) develop our Nation's national language resources, thus promoting our Nation's competitiveness in the global economy."</p> <p>The "unique status of Native American languages" and language enhancement.</p>
Funding Priority	<p>60% of Title VII funds allocated for grants, and 75% of these funds are reserved for transitional bilingual education programs.</p> <p>25% of Title VII funds are allocated for SAIPs and no particular priority is given to programs which promote bilingualism.</p>	<p>Priority is given to programs which "provide for development of bilingual proficiency both in English and another language for all participating students.</p> <p>"Cap of 25% of Title VII funds for SAIPs, can be lifted if an applicant has demonstrated that developing and implementing a bilingual education program is not feasible.</p>
Locus of Control	<p>Federal regulations delineate how funds can be used and require certain procedures</p>	<p>The local education agency is the locus of control and is granted great flexibility on how to best serve students. Four functional discretionary grant categories for local education agencies are aligned with the Department's comprehensive educational reform efforts.</p>