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OFFICE OF THE AUDITOR GENERAL

California Legislature



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June 1, 1978

Letter Report 828.1

Honorable John Vasconcellos
Assemblyman, 23rd District
State Capitol, Room 5119
Sacramento, California 95814

Dear Assemblyman Vasconcellos:

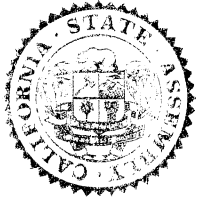
Your Joint Legislative Audit Committee respectfully forwards the Auditor General's letter report on potential efficiencies in the state's annual census of limited-English-speaking and non-English-speaking pupils. The Auditor General concludes that efficiencies can be promoted in the 1978-79 census if the Department of Education would issue guidelines which do not require another entire census. He also concludes that further efficiencies could be achieved by permitting school districts to use a variety of compatible but not necessarily uniform methods for the census. Legislative action to modify present statutory language would be necessary for the latter.

The auditor is Joan S. Bissell, Supervising Auditor.

Cordially,

MIKE CULLEN
Chairman

cc: Speaker of the Assembly
President pro Tempore of the Senate
Members of the Joint Legislative
Audit Committee
Chairman, Senate Finance
Chairman, Ways and Means
Chairman, Senate Education Committee
Chairman, Assembly Education Committee
Assemblyman Gary Hart



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May 26, 1978

Letter Report 828.1

Honorable Mike Cullen
Chairman, and Members of the
Joint Legislative Audit Committee
Room 5144, State Capitol
Sacramento, California 95814

Dear Mr. Chairman and Members:

In response to a resolution of the Joint Legislative Audit Committee, we have reviewed the census of limited-English-speaking and non-English-speaking (LES/NES) pupils required under the Education Code (Section 52164). The review, conducted under the authority vested in the Auditor General by Section 10527 of the Government Code, examined methods for promoting efficiency in the annual census procedure.

The Joint Legislative Audit Committee directed that the Auditor General identify as soon as possible:

- Methods for maximizing the efficiency of the state's annual census of limited- and non-English speaking pupils, including attention to related federal Office for Civil Rights (OCR) reporting requirements and methods for annual census updating that do not require the entire survey to be readministered.

The Committee further directed that during the 1978-79 school year the Auditor General examine:

- The accuracy of the LES/NES counts reported through the census
- Compliance with census requirements.

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Scope and Methodology

In order to report on the analysis of census efficiency as soon as possible, we focussed our review on the overall flexibility permissible within the present state census legislation and the relationship between state census procedures and pertinent OCR requirements.

Our methodology included:

- An analysis of statutes, regulations and guidelines governing state census and OCR language reporting and assessment requirements
- Interviews and review of records at the Department of Education, interviews with federal Office for Civil Rights staff and data collection from 15 school districts of varying sizes
- Obtaining a Legislative Counsel opinion concerning the meaning of the state's statutory requirement for (a) "uniform census-taking methods" and (b) a census "each year."

Background

The Chacon-Moscone Bilingual-Bicultural Education Act of 1976 (Chapter 978, Statutes of 1976) contained detailed requirements for a uniform census of limited-English-speaking (LES) and non-English-speaking (NES) pupils to be taken annually in the month of October by all school districts in the State.^{1/} This requirement replaced a less specific census mandate which was contained in the state's Bilingual Education Act of 1972 (Chapter 1258, Statutes of 1972).

^{1/} Assembly Bill 3470 (Chacon--1978) would revise present census statutory requirements. Among other things, it would require that:

- Beginning in the 1978-79 school year, a complete school-by-school census be taken every third year, except that pupils already identified as limited-English speaking or as fully fluent in English need not be retested, with the census updated in intervening years to include new enrollees and eliminate pupils no longer in the district
- Instruments designated for the census measure pupils' proficiency in speaking, comprehending, reading and writing English
- The Superintendent designate not more than three instruments for use in measuring pupil proficiency in the areas specified for the census, unless he or she determines that additional instruments are necessary to test pupils fairly from widely varied language backgrounds.

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The 1976 legislation took effect in the 1977-78 school year and directed that:

- Each school district shall ascertain, in the month of October of each year, under regulations prescribed by the State Board of Education, the number of limited-English-speaking pupils within the district, and shall classify them according to their primary language, age and grade level. The census shall be taken by individual, actual count and not by estimates or samplings. The results of this census shall be reported to the Department of Education by the first day of December of each year.

- The superintendent shall prescribe uniform census-taking methods, applicable to all school districts in the State. Such census-taking methods shall require an assessment, on a language dominance survey instrument designated by the superintendent, of all pupils whose primary language is other than English. The assessments shall be conducted by persons who can speak and understand the primary language of the limited-English-speaking pupils on the basis of procedures formulated by the superintendent to determine which pupils are limited-English-speaking pupils, as defined in subdivision (d) of Section 52163. The superintendent may waive the requirement that the assessment be conducted by persons who can speak and understand the pupil's primary language where the primary language is spoken by a small number of pupils and the district certifies that it is unable to comply. Pertinent information from the assessment forms for each pupil whose primary language is other than English shall be retained by the school district as long as the pupil is enrolled in the district. Each school district shall report annually to the Department of Education the total number of pupils whose primary language is other than English, the number of pupils who are non-English-speaking, and the number of such pupils who are limited-English-speaking. Each school district shall further report the total number of pupils whose primary language is other than English who have benefited from instruction pursuant to this article to the extent that they are no longer limited-English-speaking pupils, as defined in subdivision (d) of Section 52163.

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The legislation defined "limited-English-speaking pupils" as those:

Who do not have the clearly developed English language skills of comprehension, speaking, reading and writing, necessary to receive instruction only in English at a level substantially equivalent to pupils whose primary language is English (Education Code, Section 52163(d)).

The term "limited-English-speaking pupils" was defined as including "non-English-speaking pupils." The latter are:

Pupils who communicate in their primary language only or who communicate in English at a level which does not enable them to participate meaningfully in an educational setting where only English is used (Education Code, Section 52163(e)).

The 1977-78 LES/NES Pupil Census

In performing the statutory responsibility of prescribing uniform census-taking methods, the Department of Education issued guidelines to school districts which established a two-step process for the 1977-78 school year. First, a Home Language Survey designated by the Department was to be sent by the school district to each pupil's home and to be completed by the pupil's parent/guardian to determine the pupil's primary home language. Second, each pupil whose primary language was reported to be other than English was to be tested to determine his/her language fluency on (a) a particular language test specified by the Department of Education (the San Diego Observation Assessment Instrument as modified) or (b) upon request, an alternative language test selected by the district and approved by the Department as meeting certain criteria. For pupils for whom a Home Language Survey was not returned, the Department judged that the individual pupil assessment (i.e., testing on the San Diego Observation Assessment Instrument) generally should be conducted in order not to remove children from the uniform process of determining the LES/NES population.

Individuals qualified to assess pupils' language fluency (required by the census legislation to be "persons who can speak and understand the primary language" of the LES/NES pupils) were to be trained through state workshops; regular classroom teachers who had not received special training were generally not to qualify to conduct the full assessment.

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In establishing these language assessment procedures, the Department of Education attempted to develop a uniform statewide method for measuring the oral language fluency of pupils whose primary language was other than English based upon a brief testing process. The method was intended to provide a quick (i.e., ten-minute) measure of pupils' oral language comprehension and production (speaking) and was not intended to provide a more comprehensive measure of LES/NES pupils' language proficiency. Administration of a diagnostic testing instrument to identify the strengths and weaknesses of LES/NES pupils in the range of English language skills of comprehension, speaking, reading and writing was optional and at the district's discretion.^{1/}

The Department of Education described the magnitude of the census in testimony before the Assembly Education Committee as follows:

At the outset, it is important to underscore the fact that the census was a massive undertaking in California involving more than 1,000 school districts and four million students and their parents. We believe that it is unprecedented in this nation.

The legislation did not include funds to reimburse districts for the costs of the census. Cost estimates (unaudited) reported by the 15 school districts of varying sizes which we sampled ranged from \$950 for the Gonzales Union Elementary district having a K-8 enrollment of 750 to over \$500,000 for Los Angeles Unified School District, which has a K-12 regular graded enrollment of approximately 570,000. Reported costs included expenses of surveying each pupil's home and conducting individual pupil assessments, release time for personnel to attend census training sessions, administrative expenses and data processing.^{2/}

Office for Civil Rights Language
Reporting Requirements

In addition to the state census, selected school districts in California (and other states) provide information on pupils' language status to the federal Office for Civil Rights in OCR "compliance reports." These districts have

^{1/} The Department has initiated a conference involving a cross-section of scholars and practitioners of a number of issues related to bilingual education, including pupil language assessment. This review is to include attention to the issue of what dimensions of language should be measured to determine LES/NES status and could provide recommendations relating to state policy alternatives in this area.

^{2/} Census procedures do not require districts to report costs. The cost data above are based on costs reported in a variety of formats as available from districts. We did not attempt to verify these cost figures.

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been identified for review of compliance with Department of Health, Education and Welfare regulations and guidelines established pursuant to Title VI of the Civil Rights Act of 1964 and the "Lau v. Nichols" Supreme Court decision pertaining to education of pupils whose primary language is other than English.^{1/} In the compliance reports districts are to provide information concerning the number of students whose primary or home language is other than English, the degree of language function of these students in each language, the number of teachers providing special language instruction, the types of instructional materials and curricula provided to the students, and the nature of any tests used for student placement, screening or program evaluation.

Language classifications used by OCR and those defined under state law for California's LES/NES census contain two basically overlapping categories (limited- and non-English-speaking pupils), but OCR includes three groupings for pupils who under the state system generally are classified as fluent-English speaking.^{2/} Information collected in the state census and by OCR for the LES/NES categories is essentially duplicative.

OCR guidelines go beyond the state census in requiring that districts found out of compliance with "Lau" (and therefore required to develop compliance plans) not only identify home language and conduct an assessment of pupils' language fluency (as required in the state census) but also perform a more comprehensive language assessment for each LES/NES pupil to determine individual pupil placement in an instructional program.

Department of Education staff have met with OCR representatives to discuss issues related to the relationship between state and federal requirements concerning educational programs for LES/NES pupils.^{3/} Department staff are currently participating with OCR staff in analyses of the two sets of legal requirements, including those related to language

^{1/} OCR also conducts a general survey (OS/CR 101 and 102) of over 200 school districts in California biennially, collecting information pertaining to the civil rights laws it enforces. This survey does not include detailed breakdowns of pupil language categories.

^{2/} OCR distinguishes among students who "Speak this (primary) language and English equally," "Speak mostly English and some of this (primary) language," and "Speak only English."

^{3/} These activities have been undertaken in conjunction with federally established "Lau Centers" located in California. The centers provide technical assistance to school districts developing and implementing compliance plans to meet "Lau" requirements.

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assessment. We have been told that the analyses will include attention to the relationship between state and federal language reporting and assessment requirements. For the present, the degree of flexibility allowable in the state census is a factor influencing school districts' ability to select language assessment procedures which address multiple mandates simultaneously.

Potential Efficiencies
In 1978-79 Census

Efficiency could be promoted in the 1978-79 census by not requiring that it include a full reassessment by school districts of each pupil's language classification. A language status determination could be required for only those pupils not assessed in 1977-78 (e.g., new enrollees) or for pupils whose previous language classification is in question. This would reduce substantially the magnitude of the 1978-79 census in relation to that conducted this year.

Additional efficiencies could potentially be achieved through designating a set of options for statewide use in conducting the 1978-79 census. For example, school districts might be enabled to select from more than one test instrument the one which best meets the various state and federal mandates which they are required to address. Some districts might continue to use the 1977-78 individual pupil test which provides a brief measure of pupils' oral language fluency in conformance with state census requirements. Others might select a test which provides more detailed information concerning pupil language proficiency, allowing them to address simultaneously both state census and OCR language assessment requirements.^{1,2/}

1/ Statistical techniques might potentially be used for the purpose of establishing comparability among test instruments if more than one is designated as acceptable for the state census.

2/ Such a policy would be an extension of the procedure adopted during the 1977-78 school year under which school districts were able to request approval for use of test instruments other than the San Diego Observation Assessment Instrument for the state census. Special approval of such test instruments for full or partial fulfillment of state requirements was granted as a function of whether they met the criteria for alternative instruments established by the Department. Based on these criteria, approval for use of alternative instruments was granted to over 40 school districts (having less than four percent of the state's K-12 population).

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Other efficiencies might potentially be achieved through authorizing individual classroom teachers to perform additional roles in the language assessment process on a routine basis without receiving special state training. For example, state guidelines could authorize teachers to determine which pupils for whom the Home Language Survey is not completed need not be tested. This could eliminate testing of some pupils for whom classroom teachers could potentially make a judgement of language fluency.

Legal Interpretation of State's Annual Census Requirements

As a basis for determining the flexibility allowable within the state's census legislation, we requested a Legislative Counsel opinion regarding the meaning of the statutory mandates for census-taking "each year" and "uniform census-taking methods." This legal interpretation was necessary to clarify questions which presently exist concerning the requirements for the 1978-79 census. In particular, such an interpretation was needed to determine whether efficiency could be promoted (a) by not requiring a complete reassessment of each pupil's language classification in 1978-79 and (b) by permitting districts to select from a specified set of census procedures the one best suited to their needs.

In the opinion provided to us concerning annual census updating, the Legislative Counsel interpreted present legislation as requiring that:

The bilingual pupil census must be conducted annually in the month of October. Some "up-dating" techniques to simplify the process could be utilized with regard to pupils who have once been included in a census and continue to be enrolled in the schools of a district at the time of a subsequent census....

However, in relation to the issue of overall flexibility under present law, the Legislative Counsel judged that:

It would not be legally permissible to permit school districts throughout the State to use a wide variety of methods, instruments, and procedures in bilingual census taking. Census-taking methods must be uniform; a single language dominance survey instrument must be utilized statewide; and procedures for conducting assessments must be uniform.

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Nevertheless, Legislative Counsel was also of the general opinion that:

None of the terms used in these provisions has any established legal meaning, and it is clear that their implementation and application is a matter to be resolved by persons with an expertise in the field. The statute leaves the implementation in the hands of the Superintendent of Public Instruction, and we think any reasonable interpretation the superintendent might make of the provisions would be upheld by a court.

The full text of the Legislative Counsel opinion is contained in Appendix A.

Conclusion

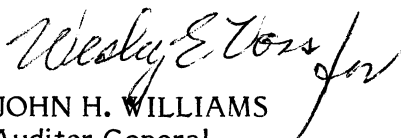
Based on our review and the Legislative Counsel opinion provided to us, we have concluded that efficiency could be promoted in the 1978-79 census through the Department of Education's issuing guidelines to school districts which, while necessitating an annual census report from each school district, require an actual language assessment of only those pupils for whom a determination of language status was not made in 1977-78 or for whom the previous language classification is in question. Such guidelines could promote efficiencies in census procedures by not requiring school districts to conduct language assessments for the substantial number of pupils whose language status is not in question.

However, we have also concluded, based on the opinion of Legislative Counsel, that it would not be permissible for the Department of Education to designate a variety of procedures as acceptable for district use in the census. This is due to the restrictions within the present statutory requirement for "uniform census-taking" methods. It would not be permissible for some districts to conduct a brief test language assessment to meet state requirements while others, under a mandate to meet both state and federal OCR requirements, use a more comprehensive language assessment procedure to meet multiple state and federal requirements simultaneously. This is because little flexibility is allowable under present

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law in the procedures specified for school districts for use in the census. Any attempt to achieve local efficiencies through enabling districts to choose from a set of specified census alternatives the one which best meets their needs would not be consistent with the present statutory prescription for "uniform census-taking methods."

Respectfully Submitted,


JOHN H. WILLIAMS
Auditor General

Staff: Joan S. Bissell, Supervising Auditor

Attachments: Written Response to the Auditor General's Letter Report

Deputy Superintendent for Administration,
Department of Education

Appendix A--Legislative Counsel Opinion



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

May 26, 1978

John H. Williams, Auditor General
Joint Legislative Audit Committee
California Legislature
Suite 750
925 L Street
Sacramento, CA 95814

Dear John:

This is in response to the recommendations in your draft report on "California's Annual Census of Limited-English-Speaking and Non-English Speaking Pupils" dated May, 1978. The report accurately describes the role and procedures of the State Department of Education in implementation of the annual census mandated by the Chacon/Moscone, Bilingual-Bicultural Education Act of 1976.

Following are the Department of Education's comments regarding your staff's conclusions:

We agree that an actual language assessment need only be conducted for those pupils who do not have an assessment on file, and for those whose previous language classifications are questionable. Although we believe that existing statutory language can be interpreted to allow such an assessment process, the Department believes that, to clarify this issue, legislative direction should be provided which explicitly authorizes use of the updating methodology.

Secondly, although we agree that the greatest consistency is provided by the use of a single instrument, we recognize that unique circumstances may exist warranting Departmental approval of an alternate arrangement. Because of the Legislative Counsel's opinion, legislative direction should be provided to permit the use of a limited number of specifically designated instruments approved by the Department of Education.

Thank you for the opportunity to provide our reaction to your report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. D. Whiteneck".

Wm. D. Whiteneck
Deputy Superintendent for Administration
(916) 445-8950

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Sacramento, California

May 15, 1978

Honorable Mike Cullen
Assembly Chamber

Bilingual Education - #8267

Dear Mr. Cullen:

You have asked the following questions regarding required annual censuses pursuant to the Chacon-Moscone Bilingual-Bicultural Education Act of 1976 (Art. 3 (commencing with Sec. 52160), Ch. 7, Pt. 28, Ed. C.*), which are provided for by Section 52164. We have answered the questions in sequence.

QUESTION NO. 1

With regard to bilingual census-taking methods, would it be legally permissible to allow school districts to use a wide variety of methods, instruments, and procedures?

OPINION NO. 1

It would not be legally permissible to permit school districts throughout the state to use a wide variety of methods, instruments, and procedures in bilingual census-taking. Census taking methods must be uniform; a single language dominance survey instrument must be utilized state-wide; and procedures for conducting assessments must be uniform.

* All section references are to the Education Code, unless otherwise specified.

ANALYSIS NO. 1

Section 52164 reads, in pertinent part, as follows:

"52164. (a) Each school district shall ascertain, in the month of October of each year, under regulations prescribed by the State Board of Education, the number of limited-English-speaking pupils within the district, and shall classify them according to their primary language, age, and grade level. The census shall be taken by individual, actual count and not by estimates or samplings. The results of this census shall be reported to the Department of Education by the first day of December of each year.

"(b) The superintendent shall prescribe uniform census-taking methods, applicable to all school districts in the state. Such census-taking methods shall require an assessment, on a language dominance survey instrument designated by the superintendent, of all pupils whose primary language is other than English. The assessments shall be conducted by persons who can speak and understand the primary language of the limited-English-speaking pupils on the basis of procedures formulated by the superintendent to determine which pupils are limited-English-speaking pupils, as defined in subdivision (d) of Section 52163.

* * *

Under the language a survey must be taken annually to determine the number of limited-English-speaking pupils in each school district. The purpose of the act, in general, is to offer bilingual learning opportunities to limited-English-speaking pupils (Sec. 52161). Limited-English-speaking pupils are defined as those not having the clearly developed English language skills of comprehension, speaking, reading and writing necessary to receive instruction only in English at a level substantially equivalent to pupils whose primary language is English (Sec. 52163).

It is clear, thus, that the annual survey will entail personally interviewing the individual pupil to determine, first, the extent, if any, to which the pupil can communicate and be communicated with in the English

language; and, secondly, where it is found that the pupil can communicate only or primarily in a language other than English, what that language is.

Section 52164 specifies that the Superintendent of Public Instruction shall prescribe "uniform census-taking methods," which shall require an assessment. It further provides that he shall designate a "language dominance survey instrument" to be utilized for purposes of the assessment required in the census-taking methods. Finally, it provides that the superintendent shall formulate procedures for the conduct of the assessments.

None of the terms used in these provisions has any established legal meaning, and it is clear that their implementation and application is a matter to be resolved by persons with an expertise in the field. The statute leaves the implementation in the hands of the Superintendent of Public Instruction, and we think any reasonable interpretation the superintendent might make of the provisions would be upheld by a court (see Select Base Materials, Inc. v. State Board of Equalization, 51 Cal. 2d 640, 647; Misasi v. Jacobson, 55 Cal. 2d 303, 308).

While the precise meaning and import of the key phrases and terms used is not clear, we think that the provisions should otherwise be construed by following their plain language (Scott v. McPheeters, 33 Cal. App. 2d 629; Copeland v. Raub, 36 Cal. App. 2d 441).

Using that rule of interpretation, it follows that the census-taking methods prescribed by the Superintendent of Public Instruction must be uniform for use throughout the state. The word "uniform" is defined by Webster's Third New International Dictionary (at page 2498), in the manner most pertinent to the present purposes, as: "marked by a lack of variation, diversity, change in form, manner, worth or degree" Thus, it follows that the census-taking methods used throughout the state must be very much the same.

The language pertaining to the "language dominance survey instrument" is strictly singular, and we conclude, consequently, that it contemplates the use of a single type of such instrument or device throughout the state.

Materials submitted with the request for this opinion include what is denoted the "San Diego Observation Assessment Instrument," and it is indicated that the Department of Education either has adopted, or is contemplating the adoption of, this device for the purposes in question. It is a precisely formulated procedural guide for conducting assessment interviews in a number of different languages, setting out particular questions to be asked with reference to the pupil's observation of certain pictures, and containing specific instructions regarding the rating to be given responses. So far as we can determine, it is an instrument of the type which would come within the statute.

Finally, it follows from the conclusions reached above, we think, that the procedures formulated by the Superintendent of Public Instruction for conducting the assessments must also necessarily be uniform for use throughout the state.

We might point out, also, that Section 52164 contains a provision authorizing the superintendent to waive the requirement that the assessment be conducted by persons who can speak and understand the pupil's primary language where the primary language is spoken by a small number of pupils and the district certifies that it is unable to comply. No further deviations from the prescribed requirements are provided for.

It is our opinion, in summary, that census-taking methods must be uniform; a single type of language dominance survey instrument must be utilized statewide; and procedures for conducting assessments must be uniform. It would, consequently, not be legally permissible to permit school districts throughout the state to use a wide variety of methods, instruments, and procedures in bilingual census taking.

QUESTION NO. 2

Must the bilingual pupil census be conducted annually by a school district? In what way might "up-dating" techniques be used to simplify the process?

OPINION NO. 2

The bilingual pupil census must be conducted annually in the month of October. Some "up-dating" techniques to simplify the process could be utilized with

regard to pupils who have once been included in a census and continue to be enrolled in the schools of a district at the time of a subsequent census, as outlined in the analysis below.

ANALYSIS NO. 2

Section 52163, as quoted in Analysis No. 1, requires each school district, pursuant to regulations adopted by the State Board of Education, to annually, in the month of October, ascertain the number of limited-English-speaking pupils in the district according to their primary language, age, and grade level and report annually the results of such a census to the Department of Education. Regulations adopted to date by the State Board of Education do not deal more particularly with the matter in question.

Insofar as "up-dating" techniques are concerned, no provision is made by the pertinent statutes. We think that some simplification of procedures could be accomplished with regard to pupils who have once been included in a census and continue to be enrolled in the schools of a district at the time subsequent censuses are taken. In this connection, Section 52164 contains the following language:

"Permanent information from the assessment forms for each pupil whose primary language is other than English shall be retained by the school district as long as the pupil is enrolled in the district.

* * *

"Each school district shall further report the number of pupils whose primary language is other than English who have benefitted from instruction pursuant to this article to the extent that they are no longer limited-English-speaking pupils"

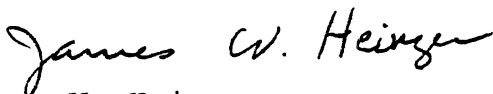
We think that once a student has been identified as limited-English-speaking and included in a census report, a less formal procedure can, in some instances, be utilized with regard to that pupil during subsequent census periods. If the pupil continues to be limited-English-speaking he will, of course, have to be included in subsequent census reports. However, if a pupil has overcome the language

handicap, such pupil need only be reported as a pupil who has benefitted from the bilingual education program. The pupil's classroom teachers, we think, would be in the best position of determining whether the pupil has developed, in language mastery, to a point where the pupil is satisfactorily mastering instruction in the English language.

It is our opinion, therefore, that the bilingual pupil census must be made annually in the month of October. Some "up-dating" techniques to simplify the process could be utilized with regard to pupils who have once been included in a census and continue to be enrolled in the schools of a district at the time of a subsequent census, as outlined above.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
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JWH:jp