LESSONS FROM NEW YORK

City Schools

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New York City has been providing special programs for language minorities since the 1960s. The most controversial of these is bilingual education. Critics complain that it produces low-scoring students with poor English language skills. Supporters counter that short-term achievement in English is not the goal and that ultimately language minority children who learn to read and write in their native tongue will be more cognitively developed than language minority children who learn to read and write in English. In my opinion, almost everyone is confused to one degree or another, in part because bilingual education is ill defined and inconsistently implemented, and in part because people are generally confused about what test scores mean.

This chapter will attempt to clear up some of the confusion. First, bilingual education needs to be defined because it has, unfortunately, come to mean many things to many people, a problem that has contributed to the disagreement over it. In fact, people who appear to be in disagreement about the effectiveness of bilingual education may just be talking about different policies.

There are currently three very different instructional programs for limited English proficiency (LEP) students: (1) native-tongue instruction with transition to English, (2) structured immersion—all English instruction in a self-contained classroom, and (3) regular classroom instruction with English as a second language (ESL) instruction in a pullout setting. All three are being implemented in the New York City public schools and all are being called bilingual education by state and local administrators, legislators, reporters, and educators. Thus there is no treatment called "bilingual education" in the sense that it is implemented in the same way and under-
stood to be the same thing by everyone, and this is true not just in the New York City public schools but throughout the United States.

According to state law (sec. 3204 [3] of the education law), state regulations (Part 154, Title 8), and city regulations, bilingual education in New York City must consist of five parts:

1. Instruction in native language arts
2. Social studies instruction in the native language
3. Science instruction in the native language
4. Math instruction in the native language
5. Instruction in English as a second language (ESL)

In a transitional bilingual education program (TBE), students learn to read and write first in their native tongue and they learn subject matter in their native tongue, but they are gradually transitioned to English until they are taught completely in English. In a dual immersion or maintenance program, students not only learn to read and write in their native tongue and learn subject matter in their native tongue, but this is continued throughout the program, along with language instruction in English, since its goal is to develop full proficiency in both the native language and English. I am referring to both types of programs when I use the terms bilingual education and bilingual education taught according to the theory.

There are also two all-English techniques for educating LEP children—structured immersion, and regular classroom instruction with ESL pullout. ESL pullout is a program in which the LEP student is in a regular classroom with fluent English speakers but is pulled out for an hour a day, or several hours a week, for small-group instruction in English. Structured immersion is all-English instruction in a self-contained classroom containing only LEP students. The teacher teaches in English, but at a level the student can understand. At the secondary level, these programs are sometimes called sheltered classes. Both of these techniques are practiced in the New York City schools, although structured immersion is called "bilingual" education, and ESL pullout is occasionally called "bilingual" education, despite the fact that both are taught entirely or almost entirely in English.

Structured immersion is called bilingual education by school systems because the teacher is usually bilingual, the students are in a self-contained classroom separate from fluent English speakers, and the classes are typically formed with the declared intent of providing native tongue instruction. In some of these classrooms there may be a bit of native tongue instruction as an enrichment, but it is not a means of instruction nor of acquiring literacy. Occasionally ESL pullout programs are called bilingual education if the students receiving the ESL instruction are of the same language minority group and the teacher is bilingual. The fact that these so-called bilingual classrooms are actually taught in English is ignored by the administrators, the policy makers, the parents, and the advocates of bilingual education—indeed, the advocates passionately deny it.

In general, teaching LEP children of the same language group and grade only in English in a self-contained classroom could be a violation of state and board policy because, according to section 3204 (3) of the education law and Part 154 (Title 8, Chapter 2, Subchapter 1) of the New York Codes, Rules, and Regulations, if there are twenty students in a grade of a single language group—enough to fill a classroom—bilingual education must be offered. School districts that want to be eligible for state funds for LEP programs are supposed to teach LEP students completely in English only if they have fewer than twenty students in a grade of a single language group.

New York City board policy goes even further than state policy. According to board policy, bilingual education must be offered if there are only fifteen students in two contiguous grades in elementary through junior high schools, meaning 7.5 students per grade, rather than the twenty required by the state. For high school students, city policy is the same as the state's—bilingual education must be offered when there are twenty or more LEP students with the same language background enrolled in the same grade within a school.

Parents do have the option of withdrawing their children from bilingual education, but doing so is difficult and discouraged by administrators and teachers. Chinese parents appear to exercise this right more than other language minority parents because Chinese is defined as one language, although immigrants from China speak dozens of dialects such as Cantonese, Mandarin, Toisanese, Fujianese, and so forth. In fact, although there is a Chinese written language, there is no Chinese spoken language, only the various dialects.

A school in New York City with fifteen Chinese LEP students in two contiguous grades is required to offer a Chinese bilingual program with instruction in "Chinese" even if each Chinese LEP student speaks a different dialect. This is obviously senseless, and so most schools just teach the children in English, and all of the schools teach the Chinese LEP children to read and write initially in English, either in a regular classroom with ESL pullout or in a self-contained classroom that is labeled "bilingual" education. Many parents also refuse to allow their children to enroll in a "Chinese" bilingual program in the first place, since a child's dialect may not be spoken by the "Chinese" bilingual program teacher.

### The Facilitation Theory

The theory underlying bilingual education is the facilitation theory, developed by Jim Cummins. This theory has two parts: (1) the "threshold" hy-
hypothesis, which states that there is a threshold level of linguistic competence in the first language that a bilingual child must attain in order to avoid cognitive disadvantages, and (2) the “developmental interdependence” hypothesis, which states that the development of skills in a second language is facilitated by skills already developed in the first language.

It is a limited theory, however, because it ignores the issue of the great variation in written language. In particular, it is silent on how you would teach Asian children to read and write in their native tongue and why you would want to do that. The majority of Asian languages use an ideographic system of writing, rather than an alphabetic or phonetic system, and have no similarity to English in appearance, thus reducing the number of transferable skills, such as sight recognition of words, sounding out of words, and so forth. These languages also take much longer to master than English. In other words, learning to read in the native language, if it is ideographic (i.e., Chinese or Japanese), may actually be harder than learning to read and write in the second language, if the latter is English or another phonetic, alphabetic language. Indeed, some Chinese bilingual teachers in New York City are not literate in their native tongue because they were educated in the United States and becoming literate in Chinese is so difficult that even fluent speakers of a Chinese dialect cannot do it on their own. As a result of these problems, I have not found any nonalphabetic bilingual education programs that actually teach initial literacy in the native language, although many of them are taught in self-contained classrooms, are called bilingual education, and receive bilingual education funding.

I also have not found any non–roman alphabet bilingual education programs, even if the alphabet is phonetic (e.g., Hebrew, Arabic, the Indian dialects, Russian, and Khmer), that teach initial literacy in the native language. I suspect this is because educators perceive it to be too difficult or distracting to teach initial literacy, particularly to young children, in a language with a completely different alphabet from English. One Russian “bilingual” program teacher in New York City explained to me that she was not teaching her Russian LEP students to read and write in Russian because she thought it would be too confusing until they had a solid foundation of English language literacy.

Interestingly, neither the federal and state laws nor bilingual education theory recognizes these limitations to the facilitation theory. According to bilingual education theory and New York State law (and that of many other states), all LEP students are to be taught initially to read and write in their native tongue regardless of the language. Indeed, I have not read any official document that addresses any particulars other than the numbers of students of the same language group and the number of certified teachers in that language group.

Moreover, this silence has been going on for two decades. In 1977, the Board of Education negotiated a Lau agreement with the U.S. Office for Civil Rights and issued Special Circular No. 69, which defined the criteria for identifying non-Spanish-speaking LEP students and the program they would receive. This six-page memo solemnly describes the program that non-Hispanic LEP children, most of whom are Chinese, would receive in exactly the same terms used for Spanish speakers. Not one word of explanation was offered about how one teaches native language arts or substantive subject areas to children who have a non–roman alphabet language and for whom there are no textbooks. Indeed, there is not a single non–Hispanic language minority group with textbooks in their language written for the U.S. curriculum. But this and subsequent board memos are silent on this problem. So are the state laws and regulations.

Figure 8.1 is a flow chart that predicts instruction in a self-contained classroom and native tongue instruction across different language groups, not according to the numbers of speakers of that language, but according...
to important practical criteria, all of them ignored in the theory and in policy statements. This chart is based on logic and on my classroom observations in schools in New York City, as well as in Minnesota, California, and Massachusetts. Assuming a language minority group meets the minimum New York City criterion of fifteen students in two contiguous grades (7.5 students per grade) of a single dialect or language, my flow chart predicts that if the elementary LEP student is of northern European or more affluent Eastern origin (e.g., Japan or Israel), that student will be in a regular classroom where he or she will receive instruction in English with pullout support or in-class ESL tutoring, although there may be a bilingual teacher or teacher’s aide for support. Elementary LEP students from poor Asian countries such as China, Cambodia, Laos, the Philippines, or Vietnam; poor southern European countries like Greece or Portugal; or a Latin American country are likely to be in self-contained classrooms because they are thought need the protection of a specialized classroom for LEP students.

However, students in self-contained TBE classrooms may or may not receive native tongue instruction. As shown in figure 8.1, even if the students are in a self-contained classroom consisting only of the same country of origin LEP students, they will be taught to read and write in their native tongue only if (a) their native tongue is a phonetic language with a roman alphabet, (b) their teacher is fluent in their dialect/language, (c) all the students in the classroom speak the same dialect, (d) there are published textbook materials in the native tongue written for the U.S. curriculum, and (e) the dialect or language is the official language of one or more large country.

The bottom line is that it is pretty much only the Spanish speakers who receive bilingual education according to the theory, because they are usually the only ones who fulfill all the conditions for receiving it: that is, there are enough of them to fill a classroom by combining two grades and they have a native tongue that is a phonetic language with a roman alphabet, and they are likely to have a teacher who is fluent in their language, and all the students in the classroom speak the same dialect since Spanish has no dialects, and there are published textbook materials in the native tongue written for the U.S. curriculum, and the dialect or language is the official language of one or more large country.

The causal path for secondary students is different and is not shown here. Secondary schools (defined by the grade at which departmentalization of subjects occurs) differ from elementary schools in the rationale for bilingual education, since the typical secondary LEP student already knows how to read and write in the native tongue and has many years of cognitive development. The purpose of bilingual education for secondary students is to protect the LEP students from the competition and, it is believed, an assault on their self-esteem found in the regular classroom and

to enhance their self-esteem by showing respect for their native tongue and culture. Some of the secondary programs also have another purpose—to keep at-risk LEP high school students from dropping out and to enable them to attain a high school degree by offering as many required courses as possible in the native tongue or in a “sheltered” environment on the assumption that they would have trouble passing the same course in a regular English-language classroom and/or would feel alienated to the point of dropping out.

But the reality at the secondary level is that it is rare for a school to have enough resources to offer all courses in the native tongue, even if it is Spanish, since teachers have to be certified in both the subject matter and a foreign language. Therefore, bilingual education at the secondary level is a hit or miss proposition. If it is offered, it is usually in one or two subjects, although this does not stop many junior and senior high schools in New York City from declaring that they have a bilingual program.

At all grade levels, claims are made in reports to the state about offering bilingual education when the numbers indicate there couldn’t possibly be a bilingual program taught according to the theory and state law. For example, one intermediate school claims to have a Chinese bilingual program for two students in seventh grade and six students in eighth grade, although there is no “Chinese” bilingual teacher at that school. At the same school, there are apparently four Haitian students in seventh grade and eight in eighth grade receiving “bilingual” education from three Haitian bilingual teachers, a pupil-teacher ratio of four to one. Another school claims to have a Haitian bilingual program for eight Haitian students across three grades: third, fourth, and fifth—a pupil-teacher ratio of eight to one even if all three grades were combined. This same school claims to have a French bilingual program for six students in grades four and five—a pupil-teacher ratio of six to one.

In a city bulletin titled “Facts and Figures: Answers to Frequently Asked Questions about Limited English Proficient (LEP) Students and Bilingual/ESL Programs, 1996–97,” the Office of Bilingual Education in the New York City schools lists the “Languages in Which There Are Bilingual Programs” and the number of LEP students of that language. The city claims to be offering a bilingual program for 648 Korean LEP students, 310 Bengali LEP students, 269 Polish LEP students, 144 French LEP students, 142 Arabic LEP students, 48 Urdu LEP students, and 47 Vietnamese LEP students in hundreds of schools across the city—which works out to only a few LEP students in each school supposedly receiving bilingual education from a bilingual teacher.

It is hard to believe that the New York City public schools can actually do this, since it is certain they cannot afford it. What is more likely is that these students are in a regular classroom and the bilingual teacher is in fact
an ESL pullout teacher who is bilingual. For example, I visited a Bengali “bilingual” program at an elementary school in New York City which was not only taught completely in English but the sign on the teacher’s small room clearly said “ESL Content Instruction.” Why was it called a bilingual program by the city, the principal, and the teacher? Probably because the teacher was bilingual in English and Bengali and all the students who came to see him were Bengali speakers. Nevertheless, because English was the means of instruction—reading and writing was taught in English and all subject matter was taught in English—and because these students spent most of their day in a regular English language classroom, this is not a bilingual education program. It is exactly what the sign on the door says—an ESL program. If the students had been in the ESL teacher’s classroom all day, it would have been a structured immersion program.

Figure 8.2 shows the outcome of these policies and practices for the five largest language minority groups in New York City in 1994–95 and 1997–98. The 1994–95 data come from a 1994 Board of Education report called “Educational Progress of Students in Bilingual and ESL Programs: A Longitudinal Study, 1990–94.” The 1997–98 data come from individual school reports that are sent to the Office of Bilingual Education at the state department of education. Reports were not filed for the high schools in that year (and perhaps not in other years) and so the 1997–98 data are for elementary and middle school students only. As shown, 76 percent of Hispanic LEP students in 1994–95 and 65 percent in 1997–98 were enrolled in nominal bilingual education classes. The decline from 1994–95 to 1997–98 is due to a 1996 change in policy. The board had previously administered the L.A.B. (“language assessment battery”) to all Hispanic students, but in 1996 began to administer the exams only to Hispanic students who came from language minority families. The eleven-point decline suggests that at least 11 percent of Hispanic students classified as LEP in 1994–95 were from families for which English was the home language. They were eliminated from the LEP category when the home language survey became a screening device.

Although the Spanish bilingual classes are the most likely to be taught according to the theory, some unknown percentage of them are not, either because of a shortage of Spanish-speaking teachers or because not all the students in them can speak Spanish or because the teacher or principal has a philosophy of emphasizing English. I have reduced the percentage of Spanish LEP students in bilingual education in figure 8.2 by five percentage points—my estimate of the percent not enrolled in bilingual education taught according to the bilingual education theory. This is just a guess derived from my classroom observations—the actual percentage is truly unknown since this is a topic that no one discusses and on which there is not an ounce of information.

Figure 8.2 also shows that in 1994–95, 40 percent of Haitian LEP students, 29 percent of Chinese LEP students, 11 percent of Russian LEP students, and 10 percent of Korean LEP students were in nominal bilingual education. In 1997–98, 37 percent of Haitian LEP students, 39 percent of Chinese LEP students, 15 percent of Russian LEP students, and 14 percent of Korean LEP students were in nominal bilingual education. However, since there are no textbooks in any of these languages for the U.S. curriculum and three of these languages do not have a roman alphabet, these students will, contrary to bilingual education theory, learn to read and write initially in English and learn science, math, and social studies from English-language textbooks, although explanations may be given in the native tongue in some classrooms. Therefore, the percentage of Haitian Creole, Chinese, Russian, and Korean students predicted to be in a bilingual education program taught according to the theory is zero.

These Chinese, Russian, Korean, Haitian, and other languages represent only 10 percent of the enrollment in “bilingual” education programs, however. This is an important fact that has the following implications. First, it means that bilingual education is really a program for Hispanics even if you believe that the other bilingual programs are truly bilingual education. Second, it means that the program evaluations that do not distinguish between nominal and actual bilingual education programs do not have a lot of error in them, since 90 percent of the bilingual education enrollment is Spanish-bilingual and these are the programs that are likely to be taught according to the theory.
Across all language groups, only about half of all LEP students are in bilingual education. In 1994–95, 55 percent of LEP students were in nominally bilingual education programs. A total of 47 percent of LEP students were in Spanish bilingual programs—the only programs likely to be taught according to the theory—and some unknown smaller percentage—perhaps 42 percent—were in bilingual education taught according to the theory. In 1997–98, 52 percent of LEP students were in nominally bilingual programs, again with 47 percent in Spanish bilingual programs and some unknown smaller percentage—perhaps 42 percent—in bilingual education according to the theory. Thus, there has been a small reduction from 1994–95 to 1997–98 in the percentage of LEP students in bilingual programs, largely because of the elimination of the automatic L.A.B. testing of all Hispanic students.

Since most LEP students in New York City are receiving instruction only in English, including many of those enrolled in programs called “bilingual,” critics of bilingual education are wrong when they blame the low achievement of LEP students solely on bilingual education. Even the relatively lower Hispanic achievement cannot be blamed solely on bilingual education since, although 65 percent of Hispanic LEP students in New York City are in bilingual education, only one-third of Hispanic students are limited-English-proficient. Hence only 21 percent of all Hispanic students are in bilingual education. This is an important fact since it means that doing away with bilingual education is unlikely to dramatically improve the relative achievement of Hispanic students in the New York City schools and in the nation.

The History of Bilingual Education in New York City

Indeed, we know that eliminating bilingual education will not dramatically improve the achievement of Hispanic students because the impetus for bilingual education was the relatively low achievement of Hispanic students taught completely in English. Long before bilingual education was on the scene, the New York City Board of Education and the Fund for the Advancement of Education undertook a major research project on the education of Puerto Rican students in the city, published in 1958 as the Puerto Rican Study. This study found that Puerto Rican students had the lowest graduation rate of any identifiable ethnic or racial group. That report recommended English language orientation classes for new immigrants and the classification of students according to their English language ability.

It was not until the 1960s civil rights movement that Hispanic activists put bilingual education on the political agenda nationally and in New York City specifically by depicting Hispanic students as victims of an educational system that had deprived them of their native tongue and culture. The first bilingual programs in New York City were established in 1968, one in the Ocean Hill–Brownsville School District in Brooklyn at P.S. 155 and another at P.S. 25 in District 7. More followed in quick succession.

With bilingual education, Hispanics in New York City continued to have lower achievement rates than Anglos, just as they had with all English instruction. So in 1972, the Aspira lawsuit was filed, named after the organization (Aspira of America) that had first begun building the legal case on behalf of “Spanish-speaking or Spanish surnamed” children “whose English language deficiencies prevent them from effectively participating in the learning process and who can more effectively participate in Spanish.” A consent decree was signed between Aspira and the Board of Education which required that such children be so identified and classified at least once a year and be provided an appropriate program of Spanish and English literacy and content area instruction in Spanish.

However, determining the eligible class of children to receive this program turned out to be difficult and contentious, and the litigants found themselves back in court. The Board of Education had created the group of tests called the “language assessment battery” [L.A.B.] in both English and Spanish. Those who scored higher on the Spanish version than on the English version would be enrolled in bilingual education programs, but only if they scored above the tenth percentile on the Spanish L.A.B., indicating that they did function in Spanish to some degree.

The plaintiffs demanded that there be no cutoff at all—that every Spanish-surnamed student receive the Spanish L.A.B. and be assigned to the bilingual program if he or she scored better on it than on the English version, regardless of how high the student’s test scores were. After listening to the conflicting testimony, the court concluded: “The most vivid point to emerge from all the argumentation is that we confront an enormous amount of speculation and uncertainty.” But “without approaching confidence or certainty,” the court defined the plaintiff class as Hispanic students who scored at or below the twentieth percentile on the English L.A.B., but higher on the Spanish L.A.B. The court then went on to say: “The crudity of this formulation is acknowledged on all sides. It is not possible to say with precise and certain meaning that an English-version score at a given percentile is similar to the same percentile score on the Spanish version. . . . But we are merely a court, consigned to the drawing of lines, and we do the best we can.”

Identifying a Child as Limited English Proficient

The judge in the Aspira case accurately portrayed the state of knowledge. Unfortunately, this situation has not improved with time. Moreover, his
decision reflects the continuing willingness of people to select criteria despite their understanding that these are arbitrary and meaningless.

The identification process in New York City, typical of that in other school districts in New York and in other states, involves the following steps:

—STEP 1: Administer home language questionnaire to all students.
—STEP 2: Administer the oral portion of the L.A.B. (English proficiency test).
—STEP 3: Administer the written portion of the L.A.B. to end-of-year kindergarten and older students.
    (If the student scores at or below the fortieth percentile on the L.A.B., but is not Spanish speaking or Spanish surnamed, he or she is classified as LEP and placed in an appropriate program; if the student scores at or below the fortieth percentile on the L.A.B. but is Spanish speaking or Spanish surnamed, he or she is classified as LEP and goes to STEP 4.)
—STEP 4: Administer the Spanish portion of the L.A.B. to Spanish-sur
named or Spanish-speaking students and assign to bilingual education even if the student scores the same or lower on the Spanish L.A.B. (called “comparably limited”).

Step 1 in the identification process has changed since Aspíra. As shown in table 8.1, from 1975 through 1996, all Spanish-surnamed or Spanish-speaking students were eligible to take the L.A.B. regardless of whether a language other than English was spoken in their homes. The practical effect of this is that from 1975 to 1996 some unknown number of Hispanic students from English-speaking families were assigned to bilingual education.

In 1977, a home language survey began to be administered and used as a screening device for non-Hispanic entrants into the public schools as part of the Lau agreement with the Office for Civil Rights. Thus, from 1977 until 1996, non-Hispanic students were more accurately identified as LEP than Hispanic students because the only non-Hispanic students classified as LEP were those from families in which a language other than English was spoken.

It was not until 1996 that the city decided to stop automatically testing all Spanish-speaking or Spanish-surnamed students regardless of their home language and to start using the Home Language Identification Survey (HLIS) as a screening device for all students. This policy has continued to the present day. Students must come from a non-English-speaking environment, as determined by the HLIS, to be eligible to take the L.A.B. In short, some twenty-one years after Aspíra, Hispanic students were finally treated equally with non-Hispanic students. Ironically, it was their advocates who had demanded their unequal treatment.

### TABLE 8.1 New York City and State Standard for Classifying Student as LEP, 1975–1998

<table>
<thead>
<tr>
<th>Year</th>
<th>Spanish Surname or Speakers</th>
<th>Non-Hispanic Students</th>
<th>State Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975–89</td>
<td><em>Aspíra</em>: at or below 20th percentile on English L.A.B. and higher score on Spanish L.A.B. for all Spanish-surname or Spanish-speaking students.</td>
<td>OCR: 20th percentile on English L.A.B. for non-Hispanic students identified as having a home language other than English.</td>
<td>At or below 23rd percentile on an English-language assessment test.</td>
</tr>
<tr>
<td>1980–89</td>
<td></td>
<td></td>
<td>At or below publisher’s cut-off on oral English proficiency test; if pass oral test, at or below 40th percentile on standardized achievement test in English reading.</td>
</tr>
<tr>
<td>1989–96*</td>
<td>At or below 40th percentile on English L.A.B. for all Spanish surname or speaking students regardless of Spanish L.A.B. score.</td>
<td>At or below 40th percentile on English L.A.B. for students identified as having a home language other than English.</td>
<td>At or below publisher’s cut-off on oral English proficiency test; if pass oral test, at or below 40th percentile on standardized achievement test in English reading.</td>
</tr>
<tr>
<td>1996–</td>
<td>At or below 40th percentile on English L.A.B. for students identified as having a home language other than English.</td>
<td>At or below 40th percentile on English L.A.B. for students identified as having a home language other than English.</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>

*Note: that 40th percentile was optional in 1989–90 for state aid; required by 1990–91.

Step 4 also represents a departure from the Aspíra decision. As shown in table 8.1, Aspíra required Hispanics to be assigned to bilingual education only if they scored at or below the twentieth percentile on the English L.A.B., and their Spanish score was higher than their English score. But in 1989, the policy changed to one of administering the Spanish L.A.B. to low-
scoring Hispanics, but disregarding the score. If a student scored at the thirty-ninth percentile on the English L.A.B., but zero on the Spanish L.A.B., he or she was nevertheless classified LEP, and assigned to a program (and called “comparably limited”).

These assessment tools may give the appearance of being scientific, but it is an illusion. Every single step in this process is capable of classifying a student who is fluent in English as a limited-English-speaker, and this was even more of a possibility from 1975 to 1996, when Hispanic students didn’t even have to be from a Spanish-speaking family to be classified as LEP and assigned to a bilingual education program.

The Home Language Identification Survey. The home language survey in New York City, the first step in the identification process, consists of the following questions:

1. What language(s) does the child understand?
   ( ) English ( ) Other __________________

2. What language(s) does the child speak?
   ( ) English ( ) Other __________________

3. What language(s) does the child read?
   ( ) English ( ) Other __________________ ( ) None

4. What language(s) does the child write?
   ( ) English ( ) Other __________________ ( ) None

5. What language is spoken in the child’s home or residence most of the time?
   ( ) English ( ) Other __________________

6. In what language does the child speak with parents / guardians most of the time?
   ( ) English ( ) Other __________________

7. In what language does the child speak with brothers, sisters, or friends most of the time?
   ( ) English ( ) Other __________________

8. In what language does the child speak with other relatives or caregivers (e.g. babysitters) most of the time?
   ( ) English ( ) Other __________________

A student is potentially LEP and eligible to take the L.A.B. if any one response to questions 1–4 and any two responses to questions 5–8 include a language other than English. So if the parent answered “English and Cantonese” to question 1 and 2, only “English” to questions 3 and 4, “Cantonese” to questions 6 and 8, but only “English” to questions 5 and 7, the child is considered potentially LEP despite the fact that he or she speaks English and can only read and write in English. In short, the problem with the home language survey is that it does not try to determine if the child in question is fluent in English. The wording of the questions are intentionally broad in order to identify children who come from language minority backgrounds, not children who are limited in English.

Norm-Referenced Tests. The overinclusiveness of the home language survey would not be a problem if the subsequent steps accurately identified who was not fluent in English. Unfortunately, they do not. On the other hand, as I explain below, it is only the home language survey that keeps 40 percent of all New York City students from being classified as limited English proficient.

The oral part of the Language Assessment Battery (L.A.B.) was normed in 1981–82 on a citywide population that consists mostly of native English speakers. The written part of the L.A.B. was normed in 1985 on the same citywide population. In other words, questions were selected so that their answers produced a normal distribution of scores among a sample of all students in the city’s public schools.

The criterion for determining whether a child is limited English proficient is currently the forty-fifth percentile. It is a mathematical principle that 40 percent of the population scores at the forty-fifth percentile. If the L.A.B. were administered citywide, 40 percent of the children in the city, almost all of whom are English native speakers, would be classified as limited English proficient.

An important question is why people set norms for limited English proficient students that cannot be met by 40 percent of the citywide student population. One reason is ignorance. Educators seem to have been misled by the constant criticism they receive from intellectuals, policy makers, and reporters who castigate them for such sins as having “only half their students at grade level.” In my discussions with school personnel, I have found most of them ignorant of the fact that nationally it is only possible to have half the population at grade level.10

Another reason why people adopt a standard for LEP students that cannot be met by 40 percent of the students in the city is confusion. Educators apparently believe that children who score below average—any score below the fiftieth percentile—are children who are in academic difficulty. Since the home language survey identifies those who are from a home in which a language other than English is spoken, many educators believe that setting a standard such as the forty-fifth percentile identifies children who are academically in trouble because they come from a home speaking a language other than English.

Indeed, the judge in Aspina reiterated this common misperception when he stated that “a Hispanic student scoring better than a fifth of his English-speaking peers on the English-version L.A.B. has a level of proficiency enabling him to participate effectively in English-language instruction.” The implication of his statement is that a student scoring worse than a fifth of his English-speaking peers on the English version L.A.B. has a level of pro-
Defining Good Pedagogy

Teaching Language Minorities

ficiency that prevents him from participating effectively in English-language instruction.

This is, however, wrong. The twentieth percentile is that point at which
20 percent of the population scores—no more and no less. All of the stu-
dents, including those scoring below the twentieth percentile, could be ex-
tremely smart and highly knowledgeable (let us say by comparison to pre-
vious generations). Conversely, all the students, including those scoring
above the ninety-ninth percentile, could be stupid and ignorant (let us say
by comparison to previous generations). We just can't tell from percentiles,
or from any score computed in order to differentiate children. They are
rank orders, not absolute standards.

Unfortunately, we human beings do not know any other way to evalu-
ate than comparatively, either explicitly with norm-referenced tests which
are designed to produce a bell-shaped curve or implicitly with criterion-
referenced tests that have larger categories—what the average student
knows at a certain age, what the below average student knows at a certain
age, and sometimes what the advanced student knows at a certain age.
Moreover, people do not agree on these categories, and the tests are con-
stantly being "renormed." In short, we are more or less stuck with the prob-
lem that we do not know how to impose realistic and accurate absolute
standards and must therefore fall back on rank orderings that can be mis-
leading and misused.

Oral Proficiency Tests. All New York City students identified by the
home language survey as potentially LEP have to take an oral proficiency
test—the listening and speaking portion of the L.A.B.—as well as the writ-
ten portion. Beginning kindergarten students take only the oral portion.
On the face of it, oral proficiency tests would seem to be better than writ-
ten norm-referenced achievement tests at determining whether a child
knows enough English to function in a regular classroom, because the child
doesn't have to know how to read to take an oral proficiency test. Unfor-
nately, oral proficiency tests are no better than standardized achieve-
ment tests and for many of the same reasons.

Oral proficiency tests are known to be unreliable—that is, you cannot
get the same outcome in subsequent tests of the same child—and inval-
- id—that is, they do not accurately determine who is LEP. Like stan-
dardized achievement tests, language proficiency tests cannot tell the dif-
ference between a student who does not know English and a student who
does not know the answer—that is, they confuse intelligence with knowl-
edge. In addition, they have the same arbitrary cut-off points that stan-
dardized achievement tests have. There have been several experiments in
which oral proficiency tests have been administered to English monolin-
gual students. Between 40 and 50 percent of these children who know no
language other than English received a score that classified them as lim-
ited English proficient. Other studies have found that the tests classify
students as limited in their native language as well as in English. In addi-
tion, the tests do not agree with each other. A student can be classified as
limited English proficient by one test but not by another.

An experiment in Chicago suggests that even above-average students
are not immune from being classified as LEP by an oral proficiency test.
The Chicago Board of Education administered the Language Assessment
Scales (LAS) to students who spoke only English and were above the city-
wide ITBS norms in reading. Almost half of these monolingual, above-
average, English-speaking children were misclassified as non- or limited
English speaking. Moreover, there is a developmental trend. Seventy-eight
percent of the English monolingual five-year-olds, but only 25 percent of
the fourteen-year-olds were classified as LEP. Similar results would be
found with the L.A.B. Since the cut-off point is the fortieth percentile es-
blished by a citywide population, 40 percent of the citywide population
would be classified as LEP by the L.A.B. even though they are over-
whelmingly fluent English speakers. Teachers are better than tests in de-
termining whether a child is proficient in English, but even they make mis-
takes and for the same reasons. Like the tests, they can become confused
as to whether a child does not understand English or does not know the
answer, particularly if they do not know the child very well.

In short, the procedures and criteria used by New York City (and every
other school district in the United States) to determine if a child is LEP
identify more children as LEP than actually are because they cannot tell
the difference between a child who does not know English and a child
who does not know the answer. Second, the criterion used—the fortieth
percentile as determined by a mostly native English-speaking population—
guarantees that at a minimum 40 percent of the students who are
administered the L.A.B. will be classified as LEP no matter how fluent
they are in English.

Not only does this occur, but these students get assigned to bilingual
education. I visited a first grade Spanish transitional bilingual education
class in New York City composed only of Hispanic students. Nevertheless,
during the Spanish reading period the teacher translated most of what she
said in Spanish into English because there were Hispanic students in her
class who understood little or no Spanish. They had been assigned to the
bilingual program because they had scored below the fortieth percentile
on the L.A.B.

The original Aspira decision required dual language testing. A student
was classified LEP only if he or she scored higher in Spanish than in En-
lish among those who scored below the twentieth percentile in English.
This reduces error, but it does not eliminate it because the two tests are not
equivalent. The fortieth percentile on the Spanish L.A.B. does not indicate
As shown in Table 8.2, there are language-minority students regardless of whether they come from automatic- or derived-backgrounds. New York City has increased the number of LEP students from 1987 to 1998. As shown in Table 8.2, the number of LEP students in New York City has increased dramatically as a result of the 1999 change in the LEP standard. The number of immigrant students in New York City has increased dramatically as a result of the 1999 change in the LEP standard. The number of immigrant students in New York City has increased dramatically as a result of the 1999 change in the LEP standard.


<table>
<thead>
<tr>
<th>Year</th>
<th>Total Enrollment</th>
<th>General Education</th>
<th>SPEd</th>
<th>Total</th>
<th>Immigrant Enrollment</th>
<th>Annual Change in Enrollment (%)</th>
<th>Ratio of LEP to Immigrants</th>
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<tr>
<td></td>
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<td></td>
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<td>Total</td>
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<tr>
<td>1987–88</td>
<td>939,933</td>
<td>93,637</td>
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<td>1988–89</td>
<td>936,153</td>
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<td>12,274b</td>
<td>103,189</td>
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**40th percentile**

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<th>Annual Change in Enrollment (%)</th>
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<td>1989–90</td>
<td>940,000</td>
<td>110,246</td>
<td>14,883b</td>
<td>125,129</td>
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<td>1990–91</td>
<td>957,000</td>
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<td>16,440b</td>
<td>138,217</td>
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<td>973,000</td>
<td>125,984</td>
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<td>1992–93</td>
<td>995,000</td>
<td>134,124</td>
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<td>1994–95</td>
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<td>163,558</td>
<td>22,080b</td>
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<td>1995–96</td>
<td>1,075,605</td>
<td>167,602</td>
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**LM Only**

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<th>Annual Change in Enrollment (%)</th>
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<td>20,832b</td>
<td>175,143</td>
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<td>0.8</td>
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**Change**

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<th>Total Enrollment</th>
<th>General Education</th>
<th>SPEd</th>
<th>Total</th>
<th>Immigrant Enrollment</th>
<th>Annual Change in Enrollment (%)</th>
<th>Ratio of LEP to Immigrants</th>
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<td>1987–97</td>
<td>1,144,010</td>
<td>60,674</td>
<td>8,191</td>
<td>68,865</td>
<td></td>
<td>45,774</td>
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*Includes special education.
*cChange from the 30th to the 40th percentile on L.A.B. as criterion for classifying LEP.
**L.A.B. only administered to language minority (LM) students; elimination of automatic L.A.B. testing of Hispanic students.
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dents. From 1987–88 to 1997–98, total enrollment grew by 15 percent, immigrant enrollment by 49 percent, but LEP enrollment by 65 percent, as shown in the bottom line of table 8.2. LEP enrollment is about one and a half times that of immigrant enrollment. If the L.A.B. were truly detecting limited English ability because the children come from families speaking a language other than English, you would expect LEP enrollment to be lower or at least the same as immigrant enrollment.

What all of this research indicates is that national, state, and local estimates of the number of LEP students cannot be relied on. It is an absolute certainty that the true number of LEP students is much smaller than the published estimates, and the only uncertainty is exactly how much smaller.

Program Effectiveness—Reclassification Rates

State law requires that students be in bilingual education for no more than three years. However, this may be extended for another three years with the approval of the commissioner. But even this does not end bilingual education for a LEP student in New York City, since according to a letter written by a special assistant to the chancellor to the attorney for the Bushwick Parents Organization, the school district serves LEP students until they reach the forty-fifth percentile no matter how many years it takes. They simply do not use state funds to pay for the special program after six years. Thus the state laws and regulations that govern bilingual education are merely funding requirements as interpreted by the city. If schools want state money, they must abide by these rules. If they are willing to do without state money, they can ignore state rules. And they do.

There is very little information on how long students are classified LEP and how long they stay in special programs. The New York City public schools, like almost all school districts in the country, do not do real (i.e., scientific) program evaluations. In general, the reports they produce to evaluate their programs are simple descriptions of what the program’s goals are, what the program did, which schools had the programs, and how many students were served. On occasion, there will be aggregate statistics on achievement for the students served. But even aggregate statistics are rare.

A scientific (or real) program evaluation has the following four characteristics. First, there should be a treatment group—for example, LEP students in a bilingual program—and one or more comparison groups—for example, similar LEP students in one or more types of all-English programs. Second, the achievement (or any other outcome) of these students should be compared after some time period in their respective programs. Third, any differences between the students initially should be controlled for statistically in order to give each group a level playing field. (This is not necessary if there is random assignment.) Fourth, the same students must be followed over time, since there is no way to statistically control or match on initial differences, nor would it make any sense to do so, if different students are in the study at different points in time.

The only data on the effectiveness of bilingual education programs in New York City that is even close to being scientific is the 1994 report published by the Board of Education. Typically such educational reports list the authors on the title page, but this one is anonymous. Apparently, the report’s conclusions were thought to be so controversial that nobody in research and evaluation wanted to take credit for it.

According to this study, the percentage of LEP students still classified LEP after three years (from 1990–93 or 1991–94) is 41 percent for those entering in kindergarten, 52 percent for those entering in first grade, 62 percent for those entering in second grade, 67 percent for those entering in third grade, 85 percent for those entering in sixth grade, and 89 percent for those entering in ninth grade. One way to interpret these results is to compare them to a citywide student population consisting mostly of native English speakers. When the L.A.B. was normed in 1981 (oral) and 1985 (written), 40 percent of the citywide population received a score that would designate them as LEP. Since for most of them this is their true score (i.e., it is not caused by the fact that they do not understand English), 40 percent of these English monolingual students would still be classified as LEP no matter how many years they were in bilingual education.

Using this standard, the results for the kindergarten cohort are excellent. They are achieving what children citywide would achieve, because 41 percent are still LEP after only three years in the public schools. Even the results for the first grade cohort are very good—52 percent are still LEP after only three years in the public schools compared to 40 percent of the citywide population. The results after that do not look good, culminating in 89 percent of the ninth grade LEP cohort still classified LEP after three years. We do not know, however, whether the problem is the test or the students or the programs. The report itself offers no explanation for this pattern across the grades. Part of the answer may be the L.A.B. itself. It was normed almost fifteen years ago. It may no longer reflect the curriculum in the later grades, and if so, the increasing percentage across grades still classified LEP is simply an artifact of the test.

Part of the answer may also be that the earlier a child enters a school system, the more his educational experience is a product of that system and the sooner he is on an equal footing with his peers. Older children will have had a varied early educational experience ranging from good schools to bad schools to none at all. Indeed, there are older children who enter the New York City public schools illiterate in their native tongue. These students not only don’t know English, they don’t know how to read and write at an age when everyone else does. The kindergarten child, by contrast, is
only disadvantaged by not knowing English, since very few students at that age know how to read and write.

Figure 8.3 shows the percentage of LEP students still classified LEP after three years by program enrollment in ESL or bilingual education. Unfortunately, the nominal bilingual education program category includes all the Chinese, Korean, Russian, and Haitian "bilingual" classes in which native tongue use in instruction is minimal or nonexistent. But since the Spanish bilingual education students represent 85 percent of all bilingual education students in this sample, the inclusion of these structured immersion programs does not bias the results much.

Figure 8.3 indicates that at every grade students in ESL classes get reclassified as fluent English proficient at a much faster rate than students in nominal bilingual education programs. For students who entered in kindergarten, only 21 percent of the ESL students were still classified as LEP after four years compared to almost half of the bilingual education students. From kindergarten through third grade, the differential between the ESL programs and the bilingual education programs in the percentage of students who are LEP favors the ESL program by about forty percentage points. The ESL advantage narrows to fourteen points by ninth grade. A difference this large across grades is unlikely to be due only to the characteristics of the children enrolled in the two programs. Unfortunately, we do not know how much, since in this sample 85 percent of the students in the bilingual programs were Spanish speakers and 70 percent

of the students in the ESL programs were non-Hispanic students, most of them Asian.

Even controlling for social class does not adequately eliminate the differences in student characteristics between the two programs because it does not eliminate the cultural difference between Asian students and all other American students. Asian students study more and watch less television than other American students and as a result learn more and get better grades than would be predicted from their social class. Thus the difference between the two programs cannot be accurately determined unless this cultural difference is controlled for. This can be done by comparing the reclassification rates of Spanish speakers in bilingual education to Spanish speakers in ESL programs, controlling for student characteristics such as L.A.B. score upon entry into the school system, free/reduced lunch status, parents' occupation, and so forth. Since 35 percent of Spanish-speaking LEP students are in ESL programs, it is in fact possible to do this analysis.

Unfortunately, the school district did not do it. They did control for the student's L.A.B. score upon entering the school system. The results of this analysis for students who entered in kindergarten are shown in figure 8.4. At every level of initial English language proficiency, the bilingual program has a much higher rate of students still classified LEP. For students scoring at the first percentile when they entered the school system in kindergarten, the percentage of students still classified LEP after four years is 20 percent for the ESL program and 50 percent for the bilingual program—a thirty point disparity. The disparity is less for students who know some English and/or are of higher ability. For those entering in kindergarten with scores between the second and fortieth percentile, the advantage of being in an ESL program is only fifteen percentage points.

The analysis shown in figure 8.4 controls for the student's English language ability upon entering the school system, but it is still confounded by the large ethnic difference between the bilingual and ESL programs. Figure 8.5 addresses this issue by breaking the data down by ethnic group and program enrollment for students entering in kindergarten. The percentage of LEP students still classified LEP after four years is compared to the percentage of that ethnic group enrolled in nominal bilingual education and the percentage enrolled in bilingual education taught according to the theory.

The only comparison in this chart that I feel is meaningful as a measure of the relative effectiveness of the two programs is that between the Haitian and the Spanish LEP students classification rate. Only 23 percent of Haitian LEP students are in nominal bilingual education compared to 75 percent of Spanish LEP students. Although Haitian students have lower test scores and lower social class than Hispanic students, they have eight points fewer students still classified LEP after four years. If we were able
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classroom and put into a new classroom taught by a new teacher. Many “LEP Program” teachers believe these regular teachers will not provide the LEP students with proper support and a nurturing environment.

In addition, there is a cultural enrichment that goes on in the bilingual programs, even the ones taught completely or almost completely in English, that some parents and teachers may be reluctant to give up by having their children reclassified. In short, the reclassification rate might be lower for students in a self-contained classroom than in ESL pullout for reasons not related to the language or quality of instruction. What is most likely, however, is that some of the differential favoring ESL pullout is due to the organizational issues discussed above and some to the greater exposure to English. The proper analysis to determine how much is due to each would be to compare the Chinese students in “bilingual” education classes to those in ESL pullout. If the Chinese students in “bilingual” classes have lower reclassification rates than Chinese students in ESL pullout, we would know that the organizational structure is a factor causing it since the language of instruction is English in both situations.

These data are from 1994. By 1996, the reclassification rate for bilingual education had not only not improved, it had generated a lawsuit against the state by the Bushwick Parents Organization. The lawsuit was filed against the state because of its policy of mass approvals of the three-year time limit for enrollment in bilingual education.

There is no information on whether things have improved since 1996.

Figure 8.4. Percentage of LEP Students Entering in Kindergarten Still Classified LEP after Four Years by Program and Initial English Proficiency (L.A.B.), New York City, Fall 1990–1994

to control for the lower test scores and social class of the Haitian students, the gap would be even larger favoring ESL. Thus I feel confident in concluding that LEP students in ESL classes get reclassified as FEP at faster rates than do similar students in bilingual programs and that this has something to do with the characteristics of the program. Indeed, the authors of the Board of Education report themselves conclude: “That students in ESL classes exit their programs faster than students in bilingual classes is not surprising, considering that proficiency in English is the criterion for exiting LEP entitlement. As would be expected, the greater the time on task, the greater the level of proficiency on that task.”

Although the greater reclassification rate for students in ESL is probably a true program effect, we do not know why. Is it a function of the greater exposure to the English language or the organizational structure or both? It may be that students are tested more and pushed to be reclassified more in the ESL alternative because they are already in a regular classroom and the ESL pullout is a disruption of their education. Getting them reclassified means ending the disruption. The reclassified students in an ESL program continue in the same classroom and program they have been in.

Just the opposite dynamic is operating in any program with a self-contained classroom, even one taught completely in English. When the student is in a self-contained classroom with second-language learners, getting them reclassified disrupts their education. They are pulled out of their

Figure 8.5. Percentage of LEP Students Entering in Kindergarten Still Classified LEP after Four Years, by Ethnic Group and Percent in Bilingual Programs, New York City, 1990–1994
Each year, the Board of Education produces annual report cards with basic statistics and achievement data for each of the 1,100 New York City public schools. These report cards show that approximately 25 percent of elementary school LEP students and 14 percent of middle school LEP students were reclassified as FEP in 1996–97. The previous year’s percentage is 23 percent of elementary students and 11 percent of middle school students. This may look like a miserable statistic, but in fact it is too good to be true. If these were the same students over time (unfortunately, they are not), almost all elementary school students and half of middle school students would be reclassified fluent English proficient within four years. It is hard to imagine that things have improved this much since the 1994 longitudinal Board of Education study. It is also hard to imagine that all elementary LEP students are above the fortieth percentile when only 60 percent of the city student population was above it. But there is no breakdown by program or ethnicity, nor do we know what a true longitudinal study (the same students over time) would show.

Program Effectiveness—Student Achievement

The 1994 Board of Education study looked at the achievement of students who had been reclassified from each program. They found that once students had been reclassified, the students who had been in ESL programs continued to outscore the students who had been in the bilingual education programs on the Degrees of Reading Power and the CAT/5 tests of reading and mathematics. The problem with this analysis is that it did not control for ethnicity, social class, years in the program, or initial proficiency in English.

The only recent student achievement data comes from the 1996–97 Annual School Report for New York City. These report cards show that approximately 13 percent of LEP elementary students and 8 percent of LEP middle school students were reading above grade level as of 1996–97. These are good results since we would expect no students to be above grade level, because LEP students are defined by their below average achievement on the L.A.B. and since the definition of grade level is the average for a grade. Indeed, the only reason there are any LEP students above grade level is that the L.A.B. is administered in the fall and the CAT/5 in the spring and because the tests are not perfectly synchronized. To put it another way, if the tests were administered at the same time and were equivalent, it would be an “error” to have any LEP students reading at or above grade level, since LEP students are defined as below-grade-level students.

To conclude, we cannot tell from aggregate achievement statistics what kind of a job the New York City public schools are doing for LEP children. Nor can we tell from a LEP child’s test scores what kind of job the schools are doing educating that child. We can assess the effectiveness of alternative programs and we can determine whether a child is achieving more or less than would be predicted from the given IQ and home environment, but that requires a massive amount of data and a sophisticated statistical analysis that is simply not available at this point. For now, we know only that ESL programs are more effective than bilingual education programs in teaching children enough English to get themselves reclassified FEP. Unfortunately, only about half of the LEP students are in the more effective program.

Although the school district continues to favor bilingual education, LEP children are no longer excused from the promotional standards for New York City students. Those promotional standards, however, make no more sense than the L.A.B. criterion for classifying a child as LEP. In order to be promoted in New York City, a child in grades three through eight must achieve a score at or above the fifteenth national percentile on the CAT reading test—for grades three, six, and eight, the state Degrees of Reading Power (DRP) may also be used—and on the CAT math test in English or in translation. LEP students who are exempt from taking the CAT and DRP must meet the promotional standard for reading in English on the L.A.B.

The only problem with a promotional standard such as the fifteenth percentile is that it means that at a minimum, 15 percent of the students will not be promoted no matter how learned they are. Indeed, since New York City students are poorer and more likely to be from non-English-speaking families than the national student body on which these tests are normed, we can expect more than 15 percent will not be promoted. Why does the city set standards for itself that cannot be achieved by at least fifteen percent of a more affluent, native English-speaking population? My guess is politics. The public wants standards and the school district is willing to give them what they want, even though the standards are arbitrary and meaningless, and individual students will suffer from them.

At the same time that the city is imposing standards that can never be met by all LEP students, the state of New York is revising its policies in two contradictory directions. On the one hand, LEP students can now take the Regents exam in their native tongues. This means they can graduate without learning English. On the other hand, the state department of education is proposing to modify Part 154 of the regulations so as to triple the amount of ESL instruction for high school LEP students at beginning levels of English language proficiency and double it for those at intermediate levels of fluency. This proposal will also double the amount of time for ESL instruction for elementary and middle school students at beginning and intermediate levels of English language proficiency. Finally, the proposal will double the amount of time for English language arts for elementary and
high school LEP students at advanced and transitional levels of English language proficiency.

Although I have no confidence that anyone can accurately determine "beginning," "intermediate," "advanced," and "transitional" levels of English proficiency, the increase in the amount of English is a step in the right direction. If this is approved by the Board of Regents, it is not clear how New York City will respond nor whether they will be exempt because of the Aspia consent decree and the Lau agreement with the Office for Civil Rights.

Conclusions

Bilingual education began as a Hispanic program and it continues to be an Hispanic program, although Hispanic intellectuals and bilingual education advocates deny this. With rare exceptions, only Hispanic LEP students are taught according to bilingual education theory—that is, learning subject matter in the native tongue, learning to read and write in their native tongue, and transitioning to English when they have attained native tongue literacy. The most successful language-minority students—Asians—are taught completely in English. The implications of this are that there is something wrong with the theory that children will be cognitively disadvantaged unless they are taught to read and write in their native tongue. This is undoubtedly why bilingual education advocates vehemently deny the fact that only Hispanic students are receiving native-tongue instruction according to the theory. To acknowledge the ethnic apartheid that exists is to raise troubling questions about the efficacy of the program and the civil rights of Hispanic LEP students.

We cannot tell how effective bilingual education is simply from the aggregate reclassification rates of LEP students. The procedures used to identify a child as LEP and to reclassify him or her as FEP guarantee that at a minimum 40 percent of students from language-minority homes will never be reclassified no matter how good the program is and no matter how fluent the student is in English. Indeed, the test used to reclassify a student as FEP is one that classifies 40 percent of the city's students as limited English proficient. Nor is there any real solution for this involving testing on a mass scale. Teachers do a better job than tests in identifying whether a students is LEP, but they are fallible also.

One reform that would improve the classification process is to revise the home language survey so that it determines whether the child in question is fluent in English. This process could be a three-step one:

1. Administer a short home-language survey to all entrants into the school system to find children who speak a language other than English.

2. Administer a longer home-language survey to entrants who speak a language other than English to determine how limited the child is in English and how proficient the child is in the non-English language.

3. Identify children who are of a language-minority background.

Children would never be reclassified because their identification would not be as limited English proficient, but as language minority, a classification that is not dependent on misleading test scores. This is an identification they would have all their school careers and it would avoid the impossible task of deciding when a child is, or is not, LEP. The instructional staff would give these students the academic support they need, as it does for any other child in the school system.

I have two recommendations regarding program characteristics for language-minority children. First, language-minority children should be taught in English if the goal is to reach the highest level of English language ability. Scientific research indicates that language-minority children generally have higher achievement if they are taught in English rather than in their native tongue. Second, even when taught in English, LEP children should not be in a self-contained classroom (as in the Chinese, Russian, and Haitian "bilingual" programs) for more than a year. Such time limits are necessary because, just as we do not know how to tell if a child is initially LEP, we do not know how to determine when a child is no longer LEP.

If a fluent English-speaking child is misclassified as LEP and placed in a self-contained classroom of second-language learners, he or she will be slowed down by the children who truly do not know English. If formerly limited students become proficient in English while in a self-contained classroom, their teachers will nevertheless tend to keep them in what they perceive as a nurturing and supportive environment, and they too will be slowed down. Therefore, a time limit on enrollment in a self-contained classroom must be imposed to protect LEP children from being trapped by good intentions. Bilingual education, like many educational programs, is an example of good intentions that were not well thought out.

NOTES


2. The exceptions are Hmong and Vietnamese, whose written languages were created by Westerners with roman alphabet languages.

3. There is, however, a Russian bilingual program called Globe, for gifted students from Russian-speaking homes, in which literacy is taught simultaneously in
Russian and English. But even in this program, the emphasis is on English, and Russian is taught only because it is believed these gifted students can handle it.

4. Occasionally, other roman alphabet language groups will have the numbers to fill a classroom—in Massachusetts this is sometimes true of Portuguese speakers—but even in these cases, it is rare for a true bilingual program to be offered.


9. Ibid., at 1168.

10. The concept of grade level and reading below grade level is almost universally misunderstood, not only by laymen but by educators. Grade level is simply the average achievement for a particular grade; it has no “absolute” meaning. It is not possible, for example, for all students in the norming population to be above grade level because it is not possible for all students to be above average; only half can be.


15. D. Ulibarri, M. Spencer, and G. Rivas, “Comparability of Three Oral Language Proficiency Instruments and Their Relationship to Achievement Variables” (Report submitted to the California State Department of Education, 1980); G. Gillmore and A. Dickerson, “The Relationship between Instruments Used for Identifying Children of Limited English Speaking Ability in Texas” (Houston, Tex.: Education Service Center [Region IV], 1979); Robert A. Cervantes, Entry into and Exit from


23. According to the Ramirez study (J. David Ramirez, David J. Pasta, Sandra D. Yuen, David K. Billings, and Dena R. Ramey, “Final Report: Longitudinal Study of Structured Immersion Strategy, Early-Exit and Late-Exit Transitional Bilingual Education Programs for Language-Minority Children” [San Mateo, Calif.: Aguirre International, report to the U.S. Department of Education, Washington, D.C., 1991]), by the fourth year in immersion, having been taught completely in English since kindergarten, only 58 percent of the immersion students were mainstreamed. This is only somewhat higher than the percentage mainstreamed from the early-exit bilingual program—42 percent. What these results tell us is that teachers will keep their students in these sheltered programs far beyond the time period when they can benefit from them regardless of the language of instruction.


25. While the parents lost their case because the court concluded that the state had the right to approve the extensions to the three-year limits, there is a possibility that the lawsuit was the impetus for the Board of Education’s 1996 decision to require the home language survey as a screening device.

26. Most of this data is also available from the New York City Board of Education website. For some odd reason, the web pages for each school do not include LEP achievement data.

27. I am indebted to Public Education Associates in New York City and Ray Domanico, in particular, for computing this figure from the Annual School Reports.
However, their table labels this as the percentage attaining proficiency in English. In fact, it is the percentage reclassified as fluent English proficient, since a student can be proficient in English—indeed, they can be English monolingual—and still not be reclassified.

28. See Rossell and Baker, *Bilingual Education in Massachusetts*. 